

## HAS INDIA UNDENIABLY SECURED THE EDUCATIONAL RIGHTS OF THE DIFFERENTLY ABLED? —AN APPRAISAL

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### PROLOGUE:

Education is crucial for any individual's growth. Education enables a person to acquire knowledge, makes him interact, communicate and lead a better life and facilitates in availing employment opportunities. Without education no person can understand either the world around him or his place in it. It is an elevating process—broadening the outlook of mind and making one self-reliant or independent through information and training. Education sharpens the inner faculties of man, his thinking, feelings and sentiments.<sup>1</sup> In short, without education, no person or State can fully develop. Same is the case for persons with disability. Every child has the right to be educated in spite of his/her disability or learning difficulty, since education is a human right issue. As a matter of fact, education can transform the life of a specially abled person and turn them as important human resource for the community as a whole.<sup>2</sup> However, exclusionary policies and practices are extensively rampant throughout the country. Several leading schools in the country refuse entrance to disabled children in contravention of their right to education.

### THE ROLE OF THE UNITED NATIONS:

The United Nations through its various instruments and agencies has reiterated the importance of education for the persons with disabilities. The right of every child to education is proclaimed in the Universal Declaration of Human Rights and has been forcefully reaffirmed by the World Declaration on Education for All. The World Declaration on Education For All (1990) exhorted States to provide equal access to education to every category of disabled person. The UN World Programme of Action Concerning Disabled Persons (1983) was one of the earliest statements of the UN which called up

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1. M. Afzal Wani, "Disabled Children's Right to Education", in S. K. Verma, S.C. Srivastava (ed.), *Rights of Persons with Disabilities* (ILI Publication, New Delhi, 2002), pp.106-122 at p. 106.

2. *Ibid*

on all States to adopt policies that recognise the rights of the disabled to equal educational opportunities. It also recommended that the education of the disabled persons should as far as possible take place in the general school system. The *Vienna Declaration*<sup>3</sup> says that ‘persons including person with disability is born equal and has same rights to life and welfare, education and work, living independently and active participation in all aspects of society’. The *Convention on the Rights of the Child (CRC)*, 1989 emphasises the rights of the disabled child to effective access and reception of education. The *United Nations Standard Rules for Equalization of Opportunities for Persons with Disabilities* (1993) and the UNESCO Report on the education of children with disabilities, popularly known as the *Salamanca Statement* also affirms the rights of all children to equal education without discrimination within the mainstream education system. The recently convened *Convention on the Rights of Persons with Disabilities* (2006) has strongly explicated the educational rights of the persons with disabilities in Article 24.<sup>4</sup> It *inter alia*

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3. The Vienna Declaration on Human Right, 1986

4. Convention on the Rights of Persons with Disabilities, Article 24- Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual’s requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social

aims to secure inclusive education, enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community, and such other measures as are necessary to put the educational rights into practice.

### CONSTITUTIONAL POLICY:

Unfortunately, the Indian Constitution carries no specific provision for the education of the persons with disability. The only articles to make a passing reference in relation to the disabled is Articles 41 which makes it an obligation of the State to make effective provision for securing right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of underserved want. Further, Article 45 enjoins state to provide free and compulsory education up to the age of fourteen years and Article 21-A has elevated the right to education as a Fundamental Right. But these Articles are silent about the special educational needs of the persons with disabilities.

development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

### LEGISLATIVE INTENT:

The principal legislation pertaining to the human rights of the persons with disabilities is *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*. Chapter V of the Act contains the provisions relating to education. *Section 26* makes provision for free education for all children with disabilities up to the age of 18 years and there is also the requirement of encouraging them to study in normal schools. The Section also directs the appropriate Government and the local authorities to set up special schools in the Government and the private sector for those in need of special education and equip them with vocational training facilities. *Section 27* mandates the appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc. *Section 28* obliges the appropriate Government to initiate or cause to be initiated research by official and non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give child with disability equal opportunities in education. *Section 29* directs the appropriate Governments to set up adequate number of teachers' training institutions and assist the national institutes and other voluntary organizations to develop teachers' training programmes specializing in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities. *Section 30* directs the appropriate Government to prepare a comprehensive education scheme for the persons with disabilities. *Section 31* obliges all educational institutions supported by the Government or any local authority to provide or cause to be provided amanuensis to blind students and students with low vision. *Section 39* requires all Government educational institutions and other educational institutions receiving aid from the Government to reserve not less than three per cent seats for persons with disabilities. *Section 49* provides for financial incentive to universities and other institutions of higher learning, professional bodies and non-governmental research units or institutions to undertake research in special education, rehabilitation and manpower development. In addition the *National Policy of the Persons with Disabilities, 2006*<sup>5</sup> has also emphasized the need of education and training.

### THE REALITY:

Justice S.B. Sinha in his article "*Disability vis-à-vis Human Rights*"<sup>6</sup>

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5. No.3-1/1993-DD-III, Government of India, Ministry of Social Justice and Empowerment
  6. Justice S.B. Sinha, "Disability Law vis-à-vis Human Rights", *Supreme Court Cases*, (2005) 3 SCC, pp. 1-14 at p. 6

has highlighted a very interesting fact. He writes,

“In 1973, an American Children’s Advocate Marian Wright Edelman launched the Children Defence Fund in the United States with a survey. One US Census figure haunted her. Some 750,000 American Children between the age of 7 and 13 did not attend school. She assumed they were Negro students, but then dawned an unanticipated reality, “handicapped kids were those seven hundred fifty thousand kids,” she said. A similar deplorable condition prevails in India, where it is estimated, less than 1% of disabled students ever manage to receive formal education.”

The above lines clearly speak of the education scenario of the disabled children. In spite of such encouraging provisions laid down in the Persons with Disabilities Act, 1995 the lag in their implementation has made the provisions a farce. In spite of the constitutional provision of free and compulsory education to all the children below the age of fourteen, the government has not yet included the clause of education of disabled children explicitly in the ‘Education for all’ programme. Education for non disabled children comes under the Ministry of Education, whereas for the disabled children it comes under the Ministry of Social Justice. This shows that all the discourse around inclusive education and mainstreaming the issue is only at a theoretical level, the reality reflects something else. The Act does not define the parameters of segregationist, integrationist, and inclusive education. The lack of ideological commitment of the government towards this issue is reflected in the various forms.<sup>7</sup> Educational prospects to children do not make sense when there are not sufficient primary schools admitting disabled children, schools not having enough skilled teachers and reading material not being available in Braille, and there is a lack of sign language interpreters, assistive aids and appliances. About 6% of the population is disabled; out of whom around 25-30% require assistive devices in their day to day life. Such devices comprise of mobility devices, braces, hearing aids, audio meters, educational aids, Braille writing appliances and low vision aids. In India most of advanced equipments are available in the urban areas only and are very expensive making it difficult for such persons to afford it. Hence the Government must take initiatives to make available all advanced, sophisticated and hi-tech equipments at reasonable rates to persons with disabilities throughout the country. The Governmental undertaking enterprise should undertake research (not only in paper as laid

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7. Leni Chaudhari, Disability, Health and Human Rights, p. 32, viewed at [www.cehat.org/humanrights/lenichaudhury/pdf](http://www.cehat.org/humanrights/lenichaudhury/pdf) (Last accessed on 19.3.2008)

down in the Act, but in practice) to find substitutes to the expensive devices, which cut down the cost but not the comfort or usage.<sup>8</sup> The steps for encouraging non-formal education as spelt out in Section 27 is negligible compared to the huge demand. More so such steps have been confined only in the urban areas and rural areas continue to reel under oblivion and superstition. Although the Government is to make schemes for imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation; but the ground reality is that we can hardly witness any such popularized schemes in the lines of Jawahar Rozgar Yojana or the Indira Awas Yojana. Until and unless awareness of the various schemes of the Government is made, their success too is under a question-mark. So far as the issue of conducting classes for literacy, where a huge section of 'normal' citizens remain illiterate in the country which is by far based on a rural economy, expecting literacy movement for the disabled person seems to be a distant dream.<sup>9</sup>

There has been a judicial debate over the application of the provisions of Section 39. Thus, under Section 39, all government educational institutions and institutions receiving aid from the government shall reserve not less than 3% seats for persons with disabilities. *Vijay Kumar Agarwal v. State of Rajasthan*<sup>10</sup> and *Deputy Secretary (Mart), Dept. of Health and Family Welfare v. Sanchita Biswas & Others*<sup>11</sup> are the two landmark cases where it was held that the State is bound to provide 3% reservation of the total seats in an educational institution for the disabled candidates.<sup>12</sup>

Further, the situation of special schools in India is quite appalling. According to the Sixth All India Educational Survey Report, of the 6461 town and cities in India, only 334 or 5.1 percent of the towns and cities have the facility of special schools catering to serve disabilities. In these towns, a total

8. Gautam Banerjee, *Disability and the Law*, Commercial Law Publishers (2005), pp. 185-186

9. People with Disabilities in India: From Commitments To Outcomes, *Human Development Unit, South Asia Region, The World Bank*, May 2007, pp. 56, 57, 58, 59

10. AIR 2001 Raj. 261

11. AIR 2000 Cal.202

12. Also refer, *Binita Senapati v. State of Assam* (AIR 2000 Gau. 1). The Supreme Court in *All Kerala Parents Association v. State of Kerala* ((2002) 7 SCALE 198) while settling this issue said that the inclusion of the Section 39 under the chapter on employment is due to an error in drafting and affirmed that reservation of 3% of available seats in government educational institutions for students with disabilities should be applied.

of 630 schools are actually functioning of which 97 admit only boys and 33 are for girls and the rest admit both. Some schools are dedicated exclusively to a particular disability, while others cater to the needs of children suffering from different types of disability. Categorization of these schools according to their specialization indicates that 215 are for the visually impaired, 290 for hearing impaired, 190 for those orthopedic problems, 173 for the mentally challenged and 60 for those with other locomotive disabilities. The facility of special education is rather skewed. Data shows that of a total number of 586465 villages in the country only 241 have facilities for special education for the disabled. In fact, the Universal Education program envisages universalizing education by educating the disabled children through the mainstream schools. But one of the major setbacks of the integrated education system is that it is suitable only for children with moderate disabilities. The system is unable to include children with mental disability. These children are unable to attend the mainstream schools due to stigma and discrimination and also because of their inability to cope with the academic syllabus. Provision of a barrier-free environment also remains a pipe dream, though it, too, has been mandated. It is the odd public building that will have any kind of access for the physically handicapped, or signposting in Braille, even in the biggest cities. Public transport is mostly out of bounds for independent disabled travellers anywhere in India. The government clearly needs to do more than just enact legislation and announce action plans. It must put enforcing and monitoring mechanisms in place. An Action Plan for making education disabled friendly by 2020, announced by the Human Resources Development Ministry in March 2005, sets no interim targets.<sup>13</sup>

So far as the modification of curriculum is concerned, provisions of teaching science, mathematics and technical skills to disabled students in secondary and high schools must be introduced. As a matter of fact the best remedy here would be to establish a separate educational board which shall chalk out academic, syllabus and training of educational personnel to deal with persons requiring special education. Hence it is suggested that the best remedy would be pass a separate legislation in lines with Individuals with Disabilities Education Act 2004 (IDEA) in the U.S.A. Prior to its passage in 1975, at least one million children with disabilities in the United States were denied any public education, and at least four million more were segregated from their non-disabled peers. IDEA is the primary federal law that governs Individualized Educational Programs (IEPs) and the special education process. IDEA guarantees children with disabilities a 'Free, Appropriate Public Education'

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13. *Supra* note 8 at pp. 20, 21

(FAPE) in the 'Least Restrictive Environment' (LRE). IDEA was reauthorized in 2004 and its implementing regulations were released in August 2006.<sup>14</sup> Thus it has to be accepted that India lags far behind so far as such a special legislation is concerned.

Perhaps the only silver lining in this situation is the judicial response in upholding the educational rights of the disabled. A few cases may be mentioned here. In the case of *National Federation of the Blind v. Government of NCT of Delhi and Others*,<sup>15</sup> the Delhi High Court has held that '... the purposes of the Act would be defeated if free education is provided only up to class 10 and not up to the age of 18 years. Since in the latter age, he/she may be able to complete the school education up to class 12.' *National Association for the Blind & Others v. Central Board of Secondary Education & Others*<sup>16</sup> is a landmark case in which the Delhi High Court directed to 'grant an extra hour to blind students (appearing for a written examination): meaning thereby that they shall be given 4 hours instead of 3 hours given to normal students.' The Gujarat High Court in *Palak Kailashchandra Jain v. Union of India*<sup>17</sup> held that a person with disability may be admitted in the MBBS course only after ascertaining that he/she will be in a position to undergo the medical course and will be able to discharge the functions of at least a physician.<sup>18</sup> But again, most of the judgments reveal that though in most cases the courts have not as yet begun to evolve a jurisprudence of disability rights. The issues raised are being decided on a case to case basis and sympathy rather than entitlement is determining the decision of the courts. Yet, if courts are to perform an activist role in the realization of disability rights particularly educational rights, the need for jurisprudence of these rights cannot be gainsaid.<sup>19</sup>

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14. Theresia Degener and Gerard Quinn, "A Survey of International, Comparative and Regional Disability Law Reform", for details visit [http://www.dredf.org/international/degener\\_quinn.html](http://www.dredf.org/international/degener_quinn.html), last accessed on 12.10.2008.

15. CW 6456 / 2002, decided on 06.11.2003

16. CWP No 1015/2001 & CM No. 1712/2001.

17. S.C.A. 7410/2000 dated 27.11.2000

18. Also refer *Raman Khanna (Dr.) v. University of Delhi* [(2003) 106 DLT 97]; *Rekha Tyagi v. Vice-Chancellor, University of Delhi and Others* (2001 V AD (DELHI) 746); *All Kerala Parents Association v. State of Kerala* ((2002) 7 SCALE 198); *Dr. P.D. Benny v. State of Kerala & others* (AIR 2003 Kerala 208); *Harsha Shivaram v. National Law School of India* (XC III DLT 813 (2001)); *Social Jurist v. Government of National Capital Territory of Delhi & Others* (CW No. 3156 of 2002).

19. Amita Dhanda, "According Reality to Disability Rights: Role of the Judiciary", in S.K. Verma and S.C. Srivastava, (ed.), *Rights of Persons with Disabilities* (Indian Law Institute, New Delhi, 2002), pp. 90-102 at p. 95

### CONCLUSION AND SUGGESTIONS:

Thus it may be concluded that India is way behind to actually secure the educational rights of the differently abled. The Constitutional machinery has failed to provide the necessary impetus. The legislation is a paper tiger failing to implement the precious guarantees as envisaged in the Act. In this scenario, the most appropriate remedy would be to enact legislation on the lines of IDEA or alternatively the existing Act may be amended with a view to:

- ✓ End prejudiced approach towards educating disabled people. The traditions and unfounded myths must be substituted with progressive ideas and practices supported by relevant research findings.
- ✓ Ample financial, technical and human resources as well as adequate infrastructure for providing education to children and adults with disabilities has to be ensured.
- ✓ Sufficient provisions of teaching science, mathematics and technical skills to disabled students in secondary and high schools must be taken up.
- ✓ All teacher training courses must include components of special education and for children with special needs; as well as financial and other incentives must be provided for teachers to acquire special skills and techniques to manage disabled children with special needs.
- ✓ Incentives and transport facilities needs to be made available to parents to send disabled boys and, more importantly, girls to school and to complete their education.
- ✓ Supply of suitable adequate educational materials like Braille text books, audio-visual assistive devices has to be made easily available.<sup>20</sup>
- ✓ All efforts to make inclusive education a reality not subjecting it to the limitations of economic capacity of the State.
- ✓ Incorporate the judicial pronouncements in amending the Act.

With these measures it is hoped that the educational rights of the differently abled will improve to a considerable extent; and now India being a State Party to the Convention on the Rights of the Persons with Disabilities and its Optional Protocol, the State has to make every effort to implement the provisions pertaining to education incorporated therein.

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20. Ali Baquer, Anjali Sharma, 'Disability — Challenges vs Responses', <http://www.healthlibrary.com/reading/disability/3chap/html> last accessed on 12.1.2009