

THE EDUCATION SYSTEM FOR THE DISABLED IN INDIA:

A Study of the Rights of Persons with Disabilities Act, 2016 and the UN Convention on Rights of Persons with Disabilities, 2008¹

INTRODUCTION

Article 21 of the Constitution of India states that, ‘no person shall be deprived of his life or personal liberty except according to ‘procedure established by law’’.² In *Mohini Jain v. State of Karnataka*,³ the Court argued that without making the Right to Education under Article 41 a reality, the Fundamental Rights enshrined in our Constitution would remain beyond the reach of a large majority which is illiterate. Further, ‘life’ in Article 21 means right to live with human dignity⁴. “Right to Life” is the compendious expression for all those rights which are basic to the dignified, enjoyment of life. Thus, ruled the Court, ‘the right to education flows directly from the right to life’. The Right to Education, being concomitant to the fundamental rights, ‘the state is under Constitutional mandate to provide educational institutions at all levels for the benefit of all citizens.’⁵

Thereby, by the 86th Constitutional Amendment Act, 2002 Article 21A was introduced to make the right to education a fundamental right. The State was directed by the Court to provide children at all levels with free education and educational necessities inclusive of the disabled persons. Thus, The Rights of Persons with Disabilities Act, 2016 came into force in December, 2016. Chapter 3, of the Act, 2016 make available the provisions that provides free education to those persons with disabilities.

The objective of the RPWD Act, 2016 is to ensure that persons with disabilities enjoy legal capacity on an equal basis in all aspects of life and has the right to equal recognition everywhere as any other person before the law and have the right, equally with others, to own and inherit movable and immovable property as well as control their financial affairs. The Act lays stress on non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of

¹ Shilpa Margaret Kurian & Arya S. Puthran, Symbiosis Law School, Hyderabad.

² M.P. Jain, Indian Constitutional Law 7th Ed., Lexis Nexis, 2016.

³ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

⁴ *Anand Vardhan Chandel v. University of Delhi*, LAWS(DLH)-1978-5-6.

⁵ M.P. Jain, Indian Constitutional Law 7th Ed., Lexis Nexis, 2016.

opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities. It stressed on making the barrier-free situations as a measure of non-discrimination.⁶

The RPWD Act, 2016 was legislated in accordance with the United Nations Convention on Rights of Persons with Disabilities, 2008; India being a signatory to the Convention. The Act strives towards the upliftment and development of the disabled. The Act provides for the access to inclusive education, vocational training, and self-employment of disabled persons without discrimination and educational necessities of buildings, campuses, and other facilities to be made accessible to the disabled community so their special needs are recognised and addressed.

A STUDY ON UNITED NATIONS CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES, 2008 and RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The Convention on the Rights of Persons with Disabilities and its Optional Protocol⁷ was adopted on 13 December 2006 at the United Nations Headquarters in New York and opened for signature on 30 March 2007. This convention has the highest number of signatories in the history of UN conventions⁸. It is the first comprehensive Human Rights treaty of the 21st century and is the first Human Rights Convention to be open for signature by regional integration organizations.

The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively

⁶ The Rights of Persons with Disabilities Act, 2016.

⁷ *Optional Protocols*: to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty. The Optional Protocol for UNCPRD is the Committee on the Rights of Persons with Disabilities.

⁸ Division for Social Policy and Development Disability adopted by United Nations Organisation.

exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.⁹

As under Article 10 of the CRPD, '*States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.*'¹⁰ Right to Education as provided under UNCRPD has an impact on the enjoyment of all the other rights protected by the CRPD. To maximise the chances of children with disabilities to enjoy equal treatment, Article 24 of the CRPD proclaims the right to inclusive education.

India being a signatory to the United Nations Convention on Rights of Persons with Disabilities, 2008, on complying with the conditions of the same, made changes in the Persons with Disabilities Act, 1995 and replaced it with the present Rights of Persons with Disabilities Act 2016.

This chapter is divided into four main parts; namely: PART A: Inclusive Education, PART B: Reasonable Accommodation, PART C: Support Measures, and PART D: Special Schools

PART A: INCLUSIVE MEASURES

Article 24 (1) of the CRPD provides that '*States Parties shall ensure an inclusive education system at all levels and lifelong learning*'. The Convention thus make inclusive education the principle and special education the exception. Article 24 (2) (a) and (b) of the CRPD further stipulates that the States Parties shall ensure that '*children with disabilities are not excluded from free and compulsory primary education on the basis of disability*' and that '*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*'.¹¹

In order to achieve inclusive education, a crucial aspect is support given to teaching staff. Teachers and supervisors need advice and assistance to be able, and be encouraged, to work on inclusion. Both internal and external factors should be addressed in order to create inclusive education systems. The former includes 'altering the physical environment, such as the design of hallways and classrooms, desks, widening entrances, building ramps, installation of

⁹ Convention on Rights of Persons with Disabilities 2008 adopted by United Nations.

¹⁰ Committee on the Rights of Persons with Disabilities, Optional Protocol adopted by Convention on the Rights of Persons with Disabilities, 2006.

¹¹ Convention on Rights of Persons with Disabilities 2008 adopted by United Nations.

elevators, altering or reconsidering geographical locations, adapting rules and admission standards’, whereas the latter include ‘the provision of supplementary classes, alternative/additional forms of communication, special tutors or support staff, and nutritious meals’.¹²

PART B: REASONABLE ACCOMMODATION

Reasonable accommodations are individualised measures meeting the special needs of children with disabilities. They aim to move beyond formal equality and achieve substantive equality, and ensure that the disabled can reach the same level of opportunities as other persons. Article 24 (2) (c) of the CRPD and Sec. 16(iii) provides that States shall ensure that ‘*reasonable accommodation of the individual’s requirements is provided*’. While this obligation is already provided for in Article 5 (3), it is repeated in relation to education, which emphasises on the importance for inclusive education. Article 2 of the CRPD defines the concept of ‘reasonable accommodation’ as follows: ‘*necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms*’¹³. It furthermore provides that ‘denial of reasonable accommodation’ is a form of discrimination.

The duty to provide reasonable accommodation means, for example, that buildings and classrooms must be accessible, transportation to schools is available and communication technology is used, as also provided for in Article 9 (1) of the CRPD. This obligation also applies to higher education, as well as to pre-school, since Article 24 (1) guarantees ‘*an inclusive education system at all levels and lifelong learning*’ and since reasonable accommodation have to be provided to the disabled, in both private and public schools.

PART C: SUPPORT MEASURES

The CRPD prescribes a number of support measures so that children with disabilities can participate in the general education system. The support measures supplement the reasonable accommodations and add a human rights dimension to the RPWD. Article 24 (2) (a) and (b) of the CRPD stipulates that ‘*children with disabilities are not excluded from free and compulsory*

¹² Gauthier De Beco, “The Right to Inclusive Education According to Article 24 Of the UN Convention On The Rights Of Persons With Disabilities: Background, Requirements And (Remaining) Questions”.

¹³ Convention on Rights of Persons with Disabilities 2008 adopted by United Nations.

primary education on the basis of disability’ and that *‘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’*¹⁴ The RPWD Act, 2016 provides for under Sec16 (ii), (v), (viii), *‘make building, campus and various facilities accessible’*, *‘ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication’* and *‘provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.’*¹⁵, respectively.

According to Article 24 (2) (d) of the CRPD, States Parties guarantee *‘persons with disabilities receive the support required, within the general education system, to facilitate their effective education’*. The obligation to *‘ensure that effective alternative support measures are provided’* was subsequently replaced by the obligation to *‘ensure that effective individualized support measures are provided in environments that maximize academic and social development’*, which eventually became Article 24 (2) (e).

Article 8 (2) (b) of the CRPD, which provides that States Parties must undertake measures among which *‘fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities’*. Support measures though general, have to be tailored to the special needs of the child. The general measures include providing personal assistance, including medical assistance, as well as the necessary equipment and material, including Braille and sign language, as provided in Article 24 (3) of the CRPD. Furthermore, Article 30 (5) (d) of the CRPD provides that States Parties should *‘ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school’*.

Support measures should also be taken in the broader school life. They must facilitate interaction with fellow classmates and are therefore not only for children with disabilities. To this end, it is necessary that schools promote respect for diversity with a view to combating stereotypes and prejudices against children with disabilities.

PART D: SPECIAL SCHOOLS

¹⁴ Convention on Rights of Persons with Disabilities 2008 adopted by United Nations.

¹⁵ The Rights of Persons with Disabilities Act, 2016.

Draft Article 17 (3) of the CRPD provides ‘*where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning should be made available*’.¹⁶ However, this part was subsequently deleted, and Article 24 (3) (c) made an exception for the blind, deaf or deaf-blind children.

Article 24 does not prevent States from establishing special schools for these children. Nor does it compel them to be equipped with special schools. In other words, while such schools can be established for some children with disabilities, there is no requirement to have them. States, thus, have a certain leeway, although they should provide a strong CRPD based justification if they keep a – partially – segregated education system. Special education may also not be of lesser quality than normal education, because this would again lead to discrimination. The risk is nonetheless that only children with less severe disabilities have the chance to be educated in mainstream schools, whereas the others will remain in special schools.

ISSUES FACED IN THE PRESENT EDUCATIONAL SYSTEM

An education system’s main focus should be on the overall development of a student’s personality and must not be limited to bookish learning. Whereas the present education system in India does not build or enhance the persona of a child. Despite efforts to incorporate all sections of the population into the Indian education system, through mechanisms such as positive discrimination and non-formal education, large numbers of young people still remain uneducated¹⁷. The 2011 census figures show that the literacy rates for persons with disabilities are much lower than that of the non-disabled population of the country and even within that, certain disabilities and women across disabilities have a lower percentage. The overall literacy rate for persons with disabilities is 59 percent compared to 74 percent for the general population.¹⁸

There are several disabilities faced by the disabled children when it narrows down to the education they receive. For instance, in the case of children with print impairment, there is need for aggressive implementation of schemes to provide assistive technology since most disabled students do not have access to technologies in most states. Students who are blind are

¹⁶ Gauthier De Beco, “The Right to Inclusive Education According to Article 24 Of the UN Convention On The Rights Of Persons With Disabilities: Background, Requirements And (Remaining) Questions”.

¹⁷ Marie Lall, Chathie House, The Challenges for India’s Education System, ASP BP 05/03.

¹⁸ The Census of India, 2011.

dependent upon Braille materials, which often do not reach them before half the school term is over. And this only supports the bare minimum need in terms of reading and not any extra knowledge building requirements. In some states, laptops are being distributed; however, these are unaccompanied by any training requirements, so it is unclear how many students are really able to use their devices. Similarly, children with hearing impairments also face difficulties as they are isolated from the mainstream communication and will find it very difficult to grasp information. Sadly, there are only around 250 sign language interpreters in India and sometimes one person has to cater to the requirements of an entire state. Hence, they grow and are educated in isolation without proper means of integration in inclusive schools. The physical environments in most schools also tend to be inaccessible for those with mobility impairments.

Another challenge faced by the disabled is the lack of trained manpower and resources to provide an enriching reading experience for a child with a disability. Clearly, there is a long way to go before we can talk of inclusive education for children with disabilities; there is a severe shortage of even exclusive or special education.

SUGGESTIONS

The authors of the paper, after much research, are of the opinion that, in order to improve the educational system and its efficiency to have the maximum effect, the implementation of the provisions for the disabled as provided in the Indian Copyright Law and the adoption of the concept of Universal Design is essential.

As far as the Indian Copyright Law is concerned, providing access to disabled persons would constitute a form of fair use/fair dealing. Further this has been clearly dealt with under the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled which has been ratified by several countries including UK, USA and the European Union. This treaty requires ratifying countries to have an exception to domestic copyright law for visually impaired and print disabled people. This means that countries which ratify the treaty must ensure that their laws allow blind people and their organisations to make accessible format books without the need to ask permission first from the holder of copyright. Further it allows for import and export of accessible versions of books and other copyrighted works again without the copyright holder's permission.

Additionally, in India the Amendment to Indian Copyright Law, 2012 under Sec 52(1)(zb)¹⁹ provides a new copyright exception for the benefit of persons with disabilities and envisages conversions by any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research.

Universal Design is the design and composition of an environment so that it can be accessed, understood and used to the greatest extent possible by all people regardless of their age, size, ability or disability. An environment (or any building, product, or service in that environment) should be designed to meet the needs of all people who wish to use it.²⁰

If the concept of universal design was implemented in schools and other educational institutions it could provide for a better and more efficient learning system as it provides an approach to design that considers the varied abilities of users. There have been several cases in which the concept of universal design has been used and has helped in the betterment and equal accessibility to all individuals. For instance, a case which can be referred to is that of an American website provider who wanted their project to reach maximum people, learnt that their project did not reach the crowd they desired to reach. Upon research and analysis, it was understood that the project failed to reach a portion of the crowd because some of the people suffered from dyslexia, myopia, amongst other disabilities. On improving its strategy by adopting the principles of UD, the American provider was successful in reaching larger crowds.

UD means that, rather than designing your facility and services for the average user, you design them for people with a broad range of abilities, disabilities, ages, reading levels, learning styles, native languages, cultures, and other characteristics.

The concept of Universal Design can be used in schools by providing retrofitted ramps and other architectural features to provide physical access. The Universal Design Learning mechanism provides for three main principles which could help enhance the learning experience for the disabled children.

- Principle 1: Provide multiple means of Representation (Recognition Network).
- Principle 2: Provide multiple means of Action and Expression (Strategic Network)
- Principle 3: Provide multiple means of Engagement (Affective Network)

¹⁹ The Indian Copyright Amendment Act, 2012.

²⁰ The Centre for Excellence in Universal Design-National Disability Authority, 2000.

CONCLUSION

While the purpose of inclusive education seems clear in theory, there are many problems putting it into practice. It is however essential for children with disabilities, since segregated education systems contribute to their marginalisation and jeopardize their participation in society. As proclaimed by the US Supreme Court in relation to racial minorities in the *Oliver M. Brown et. Al. v. the Board of Education of Topeka*²¹, it was held that, '*separate educational facilities are inherently unequal*'. The same can be said to be true for persons with disabilities.

Education was made a fundamental right to all children as enshrined in the Constitution of India. Part IV, Article 41 of the Constitution of India, under the Directive Principles of State Policy's, states that the State shall provide free and compulsory education to all children upto the age of 14 years. By the judgement given in *Mohini Jain v. State of Karnataka*, Right to Education was made a fundamental right to all children until they attain the age of 14 years, and the state is obliged to provide education to all people at all levels. Basic necessities and facilities are to be provided by the educational institutions to their students. However, as already seen above, educational institutes fail to provide all necessities and facilities required to their students especially in the case of the disabled.

On making accessible to the disabled, Format books and such aid such that would help them in excelling not only in academics but also in co-curricular. Material, such as in braille for the blind and hearing aids for the deaf would definitely allow them to learn and understand their respective subjects, the same way a normal healthy child would do. Such providence along with the concept of Universal Design is efficient and on adopting the same, there would be a drastic change in the working of the system. It is evident from the case of the American Provider above that with the adoption of the UD and its principles, a drastic change in reaching larger crowds was observed and they were successful. The authors conclude by emphasizing on the concept of UD and its Principles and the adoption of the same for a better and more efficient working of the educational system for all people especially the disabled in order to ensure that equality is provided to all.

²¹ Oliver M. Brown et. Al. v. the Board of Education of Topeka (KS) [1954] 347 US 483.