

VOL. I

April, 2017

ISSUE III

NUJS Journal of Regulatory Studies

ISSN: 2456-4605 (O)



**CENTRE FOR REGULATORY STUDIES,
GOVERNANCE AND PUBLIC POLICY**

WBNUJS

CENTRE FOR REGULATORY STUDIES, GOVERNANCE AND PUBLIC POLICY

NUJS Journal of Regulatory Studies

ISSN: 2456-4605(O)

Editor-in-Chief:

Prof. (Dr.) T. R. Subramanya
Research Fellow and Coordinator

Guest Editors:

Prof. (Dr.) P. Ishwara Bhatt
Vice-Chancellor, WBNUJS

Dr. Subesh Das

Additional Chief Secretary & Director General, Administrative Institute

Dr. Manoj Kumar Sinha

Director, Indian Law Institute

Assistant Editor:

Rajat Banerjee
Research Associate, CRSGPP, WBNUJS

Publisher:

Sarfaraz Ahmed Khan
Registrar, WBNUJS

Editor's Note

CRSGPP is happy to present its third online version (Volume 1 Issue 3) of NUJS Journal of Regulatory Studies. The present Issue is on Disability and Education and comprises articles on the penetration of education among the disabled, the role of law and policy in disability and education, access and delivery of education for the disabled, etc. There are also articles that focus on specific types of disorders that cause disability. In this Issue, we are able to provide to the readers seven articles that were rigorously reviewed and cross-checked before they got published in the present form.

The articles that are published in this Issue are mainly in the form of working papers, which were submitted during a National Seminar organised by CRSOPP on "Disability and Education: Socio-legal

Approach" on 29th and 30th November, 2016 at WBNUJS. Thus, most of the articles are written in light of the Persons with Disabilities Act, 1995 and not in light of the Rights of Persons with Disabilities Act, 2016.

I sincerely thank the Hon'ble Vice-chancellor Prof. (Dr.) P. Ishwara Bhat and the entire WBNUJS staff members for helping us bring out the Issue. I also thank all the contributors, who are either academicians or scholars or students pursuing their education in various prestigious law schools and colleges, for their support in the publication process.

I genuinely hope this Issue will meet the hopes of the readers.

Prof. (Dr.) T. R. Subramanya
Coordinator and Research Fellow

NUJS Journal of Regulatory Studies
(A Peer Reviewed/Referred Journal)Volume I Issue III
April, 2017

ISSN: 2456-4605 (O)

Editor's Note**CONTENTS**

Sl No.	Articles	Page No.
1.	Inclusion of Persons with Disabilities: A Long-awaited Journey! <i>Bubai Bag</i>	1
2.	Challenges of Rehabilitation of Special Children in India: The Law, Policy and Practice <i>Anit Kumar</i>	14
3.	Visibility of Blindness: Interrogating Ableism in the System of Higher Education <i>Anirban Mukherjee & Ishan Chakraborty</i>	26
4.	Barriers to Education for Students with Autism Spectrum Disorder <i>Mitu De & Indrani Basu</i>	35
5.	Disability and Education: A New Horizon Towards Justice <i>Sanketh Hareesh Kumar & Varsha Raghunandan</i>	47

INCLUSION OF PERSONS WITH DISABILITIES: A LONG-AWAITED JOURNEY!

Bubai Bag*

ABSTRACT

This paper discusses the present scenario of persons with disabilities in West Bengal, India. Even after 70 years of independence, 20 years of the passing of Persons with Disabilities (1995) Act and a few months of the Rights of Persons with Disabilities Act (passed in December 2016), the daily environments of persons with disabilities in the state remain inaccessible. This is despite the fact that in the last two decades of the twentieth century, UNO sponsored multiple initiatives for the empowerment and inclusion of disabilities in the mainstream society that finally culminated in the United Nations Conventions for Rights of Persons with Disabilities (2006). Although disability rights movements that emerged in the late twentieth century within the broader disability discourse have taken a new shape, many issues especially those at the intersection of disability and education remain unaddressed. In this global scenario, the perpetuation of overt and systemic discrimination against persons with disabilities by institutions in the state of West Bengal is a result of lack of empathy and understanding. In this paper, we examine different aspects of inclusivity and the current state of 'mainstreaming efforts' in West Bengal within a broader historical perspective. We emphasise the respective roles of the state, the civil society, and individuals, both with and without disabilities, in this context. Our discussion is primarily based on a field survey, and a critical examination of popular theoretical assumptions regarding persons with disabilities, in the context of West Bengal. Finally, we also present a few case studies, which were recorded during our field-study, to humanise the condition of persons with disabilities in West Bengal. Overall, this article tries to highlight the daily experiences of disabled persons in the state.

* Assistant Professor, Department of History, Bagnan College, Bagnan, Howrah, West Bengal. Email- bubaibag086@gmail.com

1. Introduction

Inclusion and mainstreaming of persons with disabilities is a significant area in Disability Studies. A remarkable change in the history of disability could be noted from early 1970. The change encompassed many facets of disabled peoples' lives such as education, vocational training, rehabilitation and employment. From 1990s, the legislations proposed inclusion and mainstreaming of disability in different countries. In India, The Rights of Persons with Disabilities Act of 2016, which eventually repealed the Persons with Disability Act of 1995, emphasises on non-discrimination, full and effective participation and inclusion in society, equality of opportunity and raising accessibility in every sphere. But whether the new legislation is going to improve the daily environments of persons with disabilities remains to be seen.

Both the definition of disability and the attitude towards persons with disabilities are changing. But the central question of the problem has remained unaltered. Is it really possible to think that persons with disabilities and persons without disabilities are equal, ignoring the body image and physical appearance?

The article develops in four stages. Firstly, it discusses the definition of disability and its evolution. Next, it focuses on the inclusion process and the role of the state policies for mainstreaming. The discussion on different phases of inclusion in West Bengal follows. Finally, it dwells on a few case studies about discriminatory attitude towards disability based on daily experience of persons with disabilities gathered through personal interview.

2. Methodology

The study, which involves the interplay of both qualitative and quantitative methods, is based on a field survey, and we examine certain well-known theoretical assumptions regarding the daily experiences of the disabled persons. The article embodies interviews of more than twenty-five persons, including different sections of persons with disabilities (such as right activists, teachers, hawkers, and beggar(s), parents of disabled persons and persons without disabilities. The interviews were conducted from March, 2012 to April, 2016. This article attempts to be combine theoretical and empirical research findings on persons with disabilities in the state of West Bengal.

3. Definition of ‘Disability’

There is a lot of debate regarding the definition of disability. The United Nations Convention of Rights for Persons with Disabilities (UNCRPD), 2006 proclaims that disability is an evolving process. There are multiple definitions of disability dependent on a boarder historical context. In general, there are four models of disability, viz., the Charity Model, the Medical Model, the Social Model and the Human Rights Model. Each model provides a different a certain kind of definition of disability.

In developed countries, there is a clear distinction between impairment, handicap and disability. P. Donald and P. Headly (1989) explain different positions about disabilities:

Impairment: any loss of physiological or psychological normality or anatomical structure or function.

Handicap: a disadvantage for a given individual resulting from impairment or a disability that limits or prevents the fulfilment of a role that is normal (depending on age, sex, and socio-cultural factors) for the individual.

Disability: any restriction or lack (resulting from an impairment) of ability to perform an activity in a manner or within the range considered normal for a human being.¹

Historically, disability is usually defined based on a few physical traits. Primarily, medical science had defined disability based on some particular parameters. Thereafter, a lot of further definitions have come forward from the sociologists. It has been seen that the definitions have been continuously modified over time. And going by the trends, newer changes are awaiting in the future.

Disability is situated within a larger social context, while impairment is a biological condition. Lennard Davis has succulently described the relationship between disability and impairment as follows: ‘Disability is not so much the lack of a sense or the presence of a physical or mental impairment as it is the reception and construction of that difference.... Impairment is a physical face but disability is a social construction.’² For example, the lack of mobility is impairment, but an environment without ramps turns that impairment into a disability

¹ P. Donald, & P. Headly (ed.) (1989), *Disablement in the Community*, New York: Oxford Medical Publication, p. 5.

² Lennard Davis, (2006), ‘Constructing Normalcy: the Bell Curve, the Novel, and the Invention of the Disabled Body in the Nineteenth Century’ in Lennard J. Davis; *The Disability Studies Reader*, New York: Routledge, Second Edition, p. 3.

..... A disability must be socially constructed.³ Mike Oliver (1990, 1996) coined the term ‘social creationist’ to describe the British Social Model approach,⁴ distinguishing it from both the biological determinism of the medical model and the less materialist approaches associated with social constructionist ideas.⁵

Tom Shakespeare (2014) argued that the Social Model also replaces a traditional deficit approach with a social oppression understanding. It was and remains very liberating for the disabled individuals. Suddenly, people were able to understand that disability was a social lacuna. The people need not change; the society needs to change. They did not have to feel sorry for themselves; rather they could be angry. They were empowered to mobilise for equal citizenship. Rather than a demeaning reliance on charity, disabled activists could now demand their rights-based environment. They further interpret disability within a multicultural context as a manifestation of the diversity of the human condition and not as an undesired biological ailment to be cured and corrected through medical intervention. Disability is, thus, understood as a culturally constructed phenomenon rather than a biological one.

UNCRPD defines disability as follows: ‘Disability results from the interaction between persons with impairments and attitudinal and environment barriers that hinder their full and

³ Ibid

⁴ In the world of academia, the British social model opened up new lines of enquiry. Whereas the medical sociology of disability had traditionally investigated issues such as individual adjustment to impairment, and explored the consequences of impairment for identity, the social model inspired researches in the new field of disability studies to turn their attention to topics such as discrimination, the relationship between disability and industrial capitalism or the varying cultural representations of people with impairment. Tom Shakespeare, (2014) *Disability Rights and Wrongs Revisited*, New York: Routledge, p. 13

⁵ Mike Oliver (2013), ‘The social model of disability: Thirty years on’, *Disability & Society* Vol. 28, Issue 7, pp. 1024-1026

effective participation in society on an equal basis with others’ and more emphasis on ‘Persons with Disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’⁶

4. State policy and inclusion

Post Second World War, different parts of Europe developed a consciousness and concern for disabilities. As a result, many states implemented quite a few policies and reform programmes for the welfare of the disabled community. These changes are also seen in contemporary India, but in a very laid-back manner. In the first four decades after independence, Indian state treated persons with disabilities as a weaker section of the society similar to schedule caste and tribe.⁷ India, however, never had a definite and consolidated approach to the problem of disability for the reason that disabled community never emerged as vote-banks unlike other marginalised groups.

⁶ The Convention notes that disability is an evolving concept and results from the interaction between a person’s impairment and obstacles such as physical barriers and prevailing attitudes that prevent their participation in society. UNCRPD,2006, www.un.org, (accessed on 1st June, 2012)

⁷ The first three 5-year plans treated disabled people as constituting the weaker section of the society. Their inclusion was limited within the boundaries of welfare. For further details refer to www.planingcommission.nic.in (accessed on 13th January, 2013).

From the 1980s, the Government of India created a few policies such as 3% reservation of education and group C or D category job for the welfare of the disabled people.⁸ Over time, due to pressure from the society, there have been meaningful responses from the authorities. The PWD Act of 1995 is one such meaningful response. It proposed equal opportunities, protection of rights and full participation in every sphere of life. However, the implementation of the Act was insufficient in West Bengal due to lack of proper consciousness, want for socioeconomic support and many others odd administrative reasons. Post 1995, the initiative for implementing the welfare schemes somewhat shifted to Non-government organisations (NGOs). The NGOs had limited reach and, thus, the developmental work was also inconsistent. The progress of the community as a single entity was not possible. The rural areas were the worst sufferers as most of the NGOs could only penetrate into the urban areas. As more persons with disabilities live in rural areas, the purpose of extending benefits and assistance to the disabled people was defeated. Recently, the Rights of Persons with Disabilities Act (2016) opened up new lines for mainstreaming inclusion of disabilities.

5. Different stages of inclusion

In West Bengal, the history of inclusion and mainstreaming process has three overarching concerns. Firstly, there is a stark division between persons with and without disabilities. Secondly, the malpractice to wrongfully acquire disabled credentials to enjoy the advantages

⁸ Indira Gandhi (1981), 'Sympathy for Disabled Persons', Ministry of Information and Broadcasting, Prime Minister Speaks', cited in Mani (1988), *The Physically Handicapped in India: Policy and Programme*, Delhi: Ashish Publishing House, p. 134

provided by the government, and finally, there are continuous endeavours of the persons with disabilities to gain true appreciation in the society.

Concerning the first point, there has always been an invisible borderline between the two communities. Dwelling deep into the consciousness of a contemporary person with disability, there is apprehension and fear in daily life. On the other hand, their associations encourage them to break free. Unfortunately, their acceptance has always been difficult for the mainstream society as one of their own and persons with disabilities always feel themselves as the 'other'. Even after fifty years of the 'stigma' theory by American psychologist E. Goffman, the worlds of people with and without disabilities are not accepting each other.⁹ The people without disabilities more often than not are ignorant of their disabled counterparts; on the other hand disability is used as a weapon to gain advantages from the society. Historically, people without disabilities ignore that issue. I think this issue has tremendous relevance and, in modern times, requires further research and importance.

⁹ According to Goffman, stigma is to protect their identities when they depart from approved standards of behaviour or appearance, people manage impressions of themselves – mainly through concealment. He showed three form of stigma- firstly, Overt or external deformations, such as scars, physical manifestations of anorexia nervosa, leprosy (leprosy stigma), or of a physical disability or social disability, such as obesity. Secondly, Deviations in personal traits, including dropping out of school, working a low wage job, single parenthood, bankruptcy, unemployment, welfare dependency, adultery, mental disorder, teenage pregnancy, drug addiction, alcoholism, and criminal background are stigmatized in this way and finally 'Tribal stigmas' are traits (imagined or real) of ethnic group, nationality, or of religion that is deemed to be a deviation from the prevailing normative ethnicity, nationality or religion. E. Goffman (1963), *Stigma: Notes on the Management of Spoiled Identity*, New York: Prentice-Hall.

In the second stage, the society reacted to the problem and started developing policies and reform programmes to bring the persons with disabilities into mainstream inclusive society. Initially these steps were driven by a sense of humanity and service but gradually the outlook began to change. Promotion of education, setting up of special residential educational institutions and different vocational training programmes and proper rehabilitation policies saw they progress from strength to strength.¹⁰ The results reflected not only economic independence on the part of the disabled people but also self-respect and dignity.

The consciousness about rights also came into play in the light of education. And in response to the ages of discrimination, ignorance, isolation and neglect, a movement started to claim equal citizenship and full participation in the society and opportunities for development. Though a lot of help and involvement in the movement came from people without disabilities, the primary initiative and work was completely done from within the community. It is safe to say that the persons with disabilities themselves tried to improve their condition and advance.¹¹

But these efforts are not unanimously fruitful. Compiled data from surveys reflect that most of the persons with disabilities have been reluctant to move up to inclusive or mainstream society and world of people without disabilities. The mentality of the so-called ‘normal people’

¹⁰ There has been so many residential educational institution since last decade of the Nineteenth Century such as *Calcutta Deaf and Dumb School* (1893), *Calcutta Blind School* (1894), *Light House for the Blind* (1941), *Ramakrishna Mission Blind Boys Academy* (1955) and *Ananda Bhawan Special Education & vocational Training Centre* (1997), where numbers of People with different kind of disabilities get education and vocational training.

¹¹ Bubai Bag. 2011. “Paschim Bangyer Pratibandhokotajukto Manushder Artha-samajik Ruparekha: 1947-1995.” M.phil thesis. Jadavpur University, Kolkata. p 73

is also responsible for that. In most of the cases, persons with disabilities and their family are concerned with advantages and benefits, rather than their rights and duties to the societies.¹² . For example, beggars with disability always ask ‘Give the money in the name of Gods’ and ‘if you give the money to me, god will bless you’,¹³ which is based upon charitable form and divinity of the persons with disabilities. As result, a disabled person always shows be deficient in of normalcy. Due to this abnormality, persons with disabilities are dissimilar from many others marginal groups.

6. Case Study of West Bengal

In this part, I will point out the present picture of disability within the context of socioeconomic, political and cultural historical development, since independence. These pictures will provide a reasonable idea of the attitude of the civil society towards disability over the first and second decades of the present century. Here, we discuss a few case studies which were conducted during survey period. These pictures also help us understand the daily life and living experience of persons with disabilities in West Bengal.

I. In 2013, an incident took place in the district of Nadia, which is about 80 kms away from Kolkata. The Head Master of a government-aided primary school denied admission to a child with special needs. The Head of the institution told that the parents of the other children might not be too pleased with that. He also suggested that there are many special residential schools meant for such children and the child should be admitted there. This incident clearly reflects that

¹² Bubai Bag. 2016. “Paschim Bangyer Pratibandhi Manush: Prantikotar Nanadik (1947-2012)”, Ph.D. thesis. Jadavpur University, Kolkata. p. 231

¹³ Interview with Sk. Mujibar Alam, Beggar with Disability, Burdwan (15th December, 2014).

the concept of ‘inclusive education’ (which is an integral part of Right to Education Act, 2009) has brought no change in the outlook in among people inhabiting the rural parts of West Bengal.

II. A girl with a locomotor disability cleared the medical entrance examination in 2012 but was denied admission by the principal of a government medical college citing the reason that she would be unable to cope with the physical challenges of the training, though many accomplished practitioners held a different view on the matter. Here again we see that contrary to the idea proposed by the Persons with Disability Act 1995 that a disabled person should be allowed full participation and protection of rights in any activity which he/she thinks he/she is fit to go for, the unfortunate candidate had to bear the brunt of the social problem.

III. A Person with deafness had gone to the district general hospital for treatment. He used sign language to communicate with the doctor, who, being unable to understand the language, could not provide the appropriate treatment to him. This resulted in the worsening of the patient’s condition. Here again we see that the physician was reluctant to use an interpreter to help. The mistreatment of the patient reflects the negative attitude of the society towards the disabled.

IV. Amal Mondal, a person with Blindness (100%) was recruited on his merit in a government-aided school through the School Service Commission examination held in 2007. When he went to join his school, he got stigmatised as a ‘Blind’ by one of his own colleagues who expressed her dissatisfaction on the new teacher’s appointment. This incident indicates the mentality of a certain specific class towards disability.

V. Rafiqul Islam (lost his both lower limbs in an accident at the age of 10) is a resident of Amta Block in the district of Howrah. He is unable to avail public transport with ease due the disability. He was standing at a bus stop on 25th March, 2014; the incoming buses noticing him

sped past and parked at a distant location, which was not possible for him to reach. The conductor of the bus reasoned that he being a disabled person wouldn't be charged any fare but would occupy a precious seat. This kind of insult affected poor Rafiqul and he subsequently made himself aloof from social gatherings. It should be noted that buses and trains, which are the commonest modes of transport, are still devoid of disabled friendly facilities.

VI. Dinabondhu Banerjee of Bankura district came out with flying colours in School Service Commission examination and got appointed as an Assistant Teacher in a government-aided school. Dinabondhu is a person with visual impairment. After reaching his goal, he was looking to settle down in life. But his repeated advertising in matrimonial sites in all leading dailies yielded no result. His accomplishments as an individual were demeaned and he was judged by each prospective bride only on his physical traits. Like family, marriage in itself is a huge institution. But entry to that institution is restricted for disabled persons. This restriction is based on the popular misconception that a child born out of wedlock of a disabled person inherits his or her disability. The situation of disabled women is worse than that of men in this respect. Every time the news of marriage of a disabled person is announced, a popular question pops: 'is the partner also disabled? Or 'are both same?' This thought reflects the general outlook of the society towards disability.

VII. In recent times, it is seen that most social parties prefer buffet arrangements for food. A person with locomotor disabilities or a person with visual impairment faces a lot of challenges to enjoy food in this kind of understanding. This highlights his/her disability amongst the gathering. Moreover, if a disabled person enters a buffet s/he becomes subject to instant sympathy from others. This unwelcome sympathy makes him/her feel less significant and neglected.

The case studies concentrated on different kinds of disabilities. However, though their forms of disabilities are different, but the social outlook is almost similar. Moreover, the body image of physical disability transcends wealth, education and social status and becomes the most important factor in determining the social attitude towards a person. Finally, I must mention that people with mental illness are the worst affected group. The people with cerebral palsy, autism and multiple disabilities are marginalised even within the disabled community.¹⁴

7. Conclusion

Disabled people encounter a variety of incidents in their lives. The so-called ‘able-bodied’ or ‘normal’ people overlook these problems or ignore them by labelling them as inconsequential. From this perspective, I would like to say that there has always been a clear prejudice against persons with disabilities in the history of West Bengal. These problems have pushed disabled people into becoming a marginal social group and, thus, their history becomes included in the history of marginality.

¹⁴ Bubai Bag, (2016), *op.cit*

CHALLENGES OF REHABILITATION OF SPECIAL CHILDREN IN INDIA: THE LAW, POLICY AND PRACTICE

Anit Kumar^{*}

ABSTRACT

A Special Child is the one who differs so much from his peer group in respect of physical, mental or social characteristics that he is unable to develop his full potential under normal conditions in the ordinary class, and for whom some special attention is required for his rehabilitation in the form of inclusive education in the school by the specially trained teachers. It is found that the progress in rehabilitation of Special Children is limited by a lack of specially trained educators and financial resources. So far, the amenities designed to trained teachers for inclusive education are extremely less and insufficient. Therefore, it is essential to expand inclusive education for special children such as physically, mentally, intellectually and specially abled children. An attempt should also be made by the government to set up inclusive educational centres with well-equipped special educators in order to support these special children. In light of this, the present research paper tries to evaluate the role of Rehabilitation Council of India for imparting special education to special children. In addition to this, an attempt has also been made to examine the policies and legislation along with the newly enacted law passed in 2016, in order to appraise rehabilitation of Special Children in India. Lastly, through the concluding remarks, the article throws light into the unvarying delight of all unalienable rights and rudimentary privileges to all Special Children and to uphold admiration for their intrinsic nobility so that they are brought at par with other children of the nation.

^{*} L.L.M, Department of Law, University of North Bengal, Darjeeling, West Bengal. Email-anit.kumar4u@gmail.com

1. Introduction

The challenges of rehabilitation¹ of special children presented by disability in India are colossal and require a resolute act to trounce it. Undoubtedly education is an important instrument for acquiring and transmitting knowledge which will improve the sensory, intellectual, social, personal and psychological growth and development. But it is imperative to underline that in the past, such children have constantly been excluded to be a part of the so-called educational system, which not only undermines their legal rights but also outlaws them. In spite of many initiatives, inclusive education for special children is still in a state of infancy and the segregation of special children in education continues to be a cause of concern.² The present study primarily focuses on the mentally challenged children of India (hereinafter referred to as special children) who differs so much from their peer group average in respect of physical, mental, or social characteristics that they are unable to develop their fullest potential under normal conditions in the ordinary class, and for whom some special organisations have to be created.³ Here, the term special children would generally mean children with a very wide range of differing life experiences in respect to their physical and mental states and having different physical, intellectual and mental abilities compared to other normal children. Their daily bustle is limited by intellectual and physical disabilities, mental health, communication disorders, genetic disorders and disfigurement.⁴ They are one of the most vulnerable groups of humanity. They face dual bigotry, one on their so-called gender and the other on their disability, which ultimately places them at a higher risk of physical abuse and, moreover, they are also barred from realising their right to healthcare, right to special education and right to physical integrity.⁵ In India, according to the Census Report of 2011,⁶ the total percentage of specially abled persons is 2.21%. Out of that, the percentage of age-wise distribution of special children population from 0-4 years is 1.14%, from 5-9 years is 1.54% and from 10-19 years is 1.82%.

¹ The term 'rehabilitation' means to bring special children into the mainstream of the society by providing them equal opportunities in respect to inclusive education through which they can accomplish their physical, intellectual, sensory and social level of functional skills so as to have a normal growth and development which brought them at parity with non special children of the nation. Recently it has been defined under section 2(z) of RPD Act, 2016.

² Payel Rai Chowdhury, *Human Rights of Persons with Disabilities: A Conceptual Discourse*, in HUMAN RIGHTS IN 21ST CENTURY – AN ANTHOLOGY 179-180 (Manik Chakraborty ed., 2014).

³ Sonam Yangchen Bhutia, *Protection of the Rights of Female Children with Disability – A Legal Framework in India*, in HUMAN RIGHTS AND DUTIES 321 (Dr. Rathin Bandyopadhyay, Prof. Gangotri Chakraborty et.al. eds., 2015).

⁴ JAYNA KOTHARI, THE FUTURE OF DISABILITY LAW IN INDIA 29 (2012).

⁵ Bhutia, *supra* note 3 at 320.

⁶ Please See, Census Report of 2011, at <http://www.languageinindia.com/jan2014/disabilityinindia2011data.pdf> (last visited January 22, 2017).

It is also interesting to note that right to education, which is guaranteed under Article 21A of the Indian Constitution, extends in its ambit to all persons, including special children.⁷ But despite the above-stated provisions, the exclusionary policies and practices regarding inclusive education to special children are extensively rampant throughout the country. It is also evident that several foremost normal schools of our country refuse entry to special children in contravention of their basic educational rights. Therefore, the question that emerges for consideration is that does education merely aim at preparing only one group of children and ignore others, especially the special children who need special attention and appropriate training. If such is the case, then what meaning should be given to the terms ‘equality’ and ‘social justice’ used in the Constitution of India? Therefore, there is a need to evaluate the existing education system and to develop a systematic plan to assist the special children in India.⁸

2. Disability under the International and the National Laws

In the international scenario, international organisations such as the World Health Organization (hereinafter referred to as WHO) has clearly spelt out the meaning of ‘disability’ as, “an umbrella term, covering impairments, activity limitation and participation restrictions. Further clarified, impairment refers to a problem in the body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; and a participation restriction is a problem experienced by an individual in involvement in life situations”. In India, there are generally three legislative enactments which specifically define disability. Firstly, the newly enacted law called as The Rights of Persons with Disabilities Act, 2016,⁹ (hereinafter referred to as RPD Act, 2016) which came into existence by repealing the old Person with disabilities Act, 1995 (hereinafter referred to as PWD Act, 1995). The newly enacted disability law clearly describes ‘person with disability’ under section 2(s) which states that a person with long-term physical, mental, intellectual or sensory impairment which in interaction with barriers, preclude his full and

⁷ Justice Depak Misra, *Right to Education*, 8(1) NYAYA DEEP 24-28 (2007).

⁸ M. Afzal Wani, *Disabled Children’s Right to Education*, in RIGHTS OF PERSON WITH DISABILITIES 106-109.(S. K. Verma & S. C. Srivastava eds., 2002).

⁹ See, the newly enacted law for the special children called as The Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016) which was passed by the parliament on 16 Dec. 2016 and hence received the assent of the President on December 27, 2016.

effective participation in society equally with others, which shows or covers a wider connotation in it. Moreover, under section 2(j) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (hereinafter referred to as National Trust Act, 1999)¹⁰ the term ‘person with disability,’ literally connotes a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability. But on the other hand, The Rehabilitation Council of India Act, 1992,¹¹ (hereinafter referred to as RCI, Act 1992) has not used and defined the term person with disability; rather it uses the term ‘handicapped’ under section 2 (c) to explain disability which means a person suffering from any disability referred to in clause (i) of section 2 of the PWD Act, 1995 which is now repealed by the newly enacted law for special children called as the RPD Act, 2016. Therefore the RCI, Act 1992 should also have to be amended so as to have a clear concept of disability at par with the newly enacted law of RPD Act, 2016.¹²

3. Special Children in India: Characteristics, Problems and Magnitude

Special children are mainly characterised by the condition of mental retardation in which there exists a delay and deficiency in all aspect of their development such as motor, cognitive, social and language function. Mental retardation is now increasingly referred to as intellectual disability which we can see the reference to this term in the RPD Act, 2016 under the schedule of specified disability defined under section 2(zc). Moreover, the term mental retardation has also been described under section 2(g) of the National Trust Act, 1999 which expressly defines it as ‘a condition of arrested or unfinished development of the mind of a person, which is specially characterised by sub-normality of intelligence.’ From this, it can be understood that the notion of mental retardation among special children is not at all a concept of mental illness. Mental illness can transpire at any time period while mental retardation can be witnessed from childhood age or even since birth. Moreover, mental retardation is basically the result of congenital defects and birth injuries.¹³ The main problem that such children face is that they are unable to protect themselves against the common physical danger that one faces in life. Secondly, they cannot manage their affairs well unless proper

¹⁰ National Trust Act, 1999 (Act No. 44 of 1999) was passed and received the assent on December 30, 1999.

¹¹ See, The Rehabilitation Council of India Act, 1992 (Act No. 34 of 1992) which came into force on 22nd June 1993.

¹² Anand Gupta, *Definition of Disability-A Critical Study*, 39(2) INDIAN BAR REVIEW 145-151 (2012).

¹³ DR. RATHIN BANDHYOPADHYA & SANGEETA ROY (MAITRA), LAW AND THE DISABLED 54-64 (2011).

training of their body care is extended. Thirdly, they need parental care, supervision and control as they cannot avail benefits available for others.¹⁴ There are different degrees of mental retardation, ranging from mild to profound which are discussed as below. .

- a. **Mild Retardation:** The development of special children in this category is slow; however, they can be educated to some extent and with training so that they are capable of earning, at least partially, their livelihood without living an undue parasitic life.¹⁵
- b. **Moderate Retardation:** The special children under this category are slow in their development, but they are capable of learning to look after their personal needs. They can be trained to some extent to work in a sheltered workshop and to live in a protected environment.¹⁶
- c. **Severe Retardation:** Under this category, special children are often unable to manage their own affairs, like they cannot dress or wash themselves properly, and their motor development, including speech and language, may also be affected in many cases.¹⁷
- d. **Profound Retardation:** The degree of defectiveness of the special children in this category is of a very serious nature rendering them unable to guard themselves even against common physical danger and they need constant custodial care for survival.¹⁸

4. United Nations and its Instruments uphold an Inclusive Model of Education for Special Children

The United Nations through its various instruments and agencies has reiterated the importance of education for special children. At the outset, it can be said that the concept of right to education for all children was first enshrined under Article 26 of the Universal Declaration of Human Rights, 1948¹⁹ (hereinafter referred to as the UDHR, 1948) which was also acknowledged by the World Declaration on Education for All in 1990. In 1983, the United Nations World Programme of Action Concerning Disabled Persons clearly espoused the guiding principles that perceive the human rights of the specially abled children for inclusive education through general school system for both normal and specially abled

¹⁴ Subhas Chandra Singh, *Neglect of the Rights of Mentally Sick in the Age of Human Rights*, 90 ALL INDIA REPORTER 189-191 (2003).

¹⁵ ANIMA SEN, *PSYCHO-SOCIAL INTEGRATION OF THE HANDICAPPED: A CHALLENGED TO THE SOCIETY* 185 (1988).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Adopted by General Assembly Resolution No. 217 (iii) of December 10, 1948.

persons under one roof. There is some international covenant having specific provision for the inclusion of education for special children like Convention on the Right of the Child, 1989²⁰ (hereinafter referred to as CRC, 1989), which, under Articles 23 and 28, specifically emphasises the rights of the special children to effective access of compulsory primary education on the basis of equal opportunities. However, in the international arena, the role of United Nations Standard Rules for Equalization of Opportunities for Person with Disabilities, 1993²¹ and UNESCO Report on the education of special children, commonly known as the Salamanca Statement has witnessed a shift in attitude towards inclusive education which proclaimed and asserted the rights of all children, including special children to access equal education regardless of their physical, intellectual, social, emotional conditions through common school system.²² In spite of the above, there are some international instruments, which are specially drafted for the specially abled persons, such as the Declaration on the Rights of Mentally Retarded Persons, 1971²³ and the Declaration on the Rights of Disabled Persons, 1975,²⁴ which proclaimed that human dignity will be ensured only when the specially abled persons also enjoy the inclusive education along with others.²⁵ On the other side, the African Charter on the Rights and Welfare of the Child, 1990²⁶ under Article 13 clearly recognises the rights of the special children in respect of special measures of protection in keeping with their physical and moral needs and under conditions which ensure their dignity and promote their self-reliance and active participation in the community.²⁷ Lastly, the landmark international convention for specially abled children named the United Nations Convention on the Rights of Persons with Disabilities, 2006 (hereinafter referred to as UNCRPD, 2006) has strongly explicated the educational rights of the special children under Article 24, which, realising the right to education to all including special children without discrimination on the basis of equal opportunity, clearly suggest for an inclusive

²⁰ Adopted by General Assembly Resolution No. 44/25 of November 1989.

²¹ Adopted by General Assembly Resolution No. 48/96 on December 20, 1993.

²² Dr. J. K. Das and Prof. (Dr.) D. C. Nath, *Emerging Trends of Rights of Person with Disabilities: An Appraisal*, 3 CALCUTTA LAW TIMES 4 (2011).

²³ Proclaimed by General Assembly Resolution No. 2856 (XXVI) of December 20, 1971.

²⁴ Adopted by General Assembly Resolution No. 3447 (XXX), December 9, 1975.

²⁵ Soma Das, *Right of Person with Disability: A Human Rights Perspective*, 4(2) INDIAN HUMAN RIGHTS LAW REVIEW 235-236 (2013).

²⁶ It was the first regional charter treaty on the rights of child and hence adopted on July 1990 w.e.f. November 29, 1999.

²⁷ Bhutia, *supra* note 3 at 322-323.

model of education.²⁸ Therefore, to give effect to the international agreement, the RPD Act, 2016 was enacted so as to fulfill the obligation of inclusive education under the provisions of UNCRPD, 2006, which was duly ratified by India in 2007.

5. National Legal Framework in Respect of Inclusive Education for Special Children

- a. **Constitution of India, 1949:** Unfortunately, the Indian Constitution carries no specific provision for the education of the special children. The only Article to make a passing reference in relation to disablement is Article 41, which makes bestows an obligation on the States to formulate effective laws, which can secure the educational rights of the special children. Further, Article 21A read with Article 45 assures free education for all children till 14 years of age but regrettably these provisions are conspicuously silent on the inclusive educational needs.²⁹
- b. **RPD Act, 2016:** The new RPD Act was passed by the parliament on 16 December, 2016, replacing the PWD Act, 1995. Section 2(m) of RPD, Act 2016 defines inclusive education as “a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.” Section 31 requires that special children are provided free education until the age of 18, thereby surpassing the benchmarks in The Right of Children to Free and Compulsory Education Act, 2009 popularly known as Right to Education (RTE) Act, 2009 (hereinafter referred to as RTE Act, 2009). Sections 16 of the RPD Act directs all educational institutions supported by the Government or any local authorities to provide inclusive education by admitting special children in regular schools without any discrimination and by granting them educational and other recreational opportunities equally with other normal children. It also directs them to monitor their participation and progress report with respect to their completion of education. Section 17 of the Act also obliges the appropriate Government and the local authorities to conduct surveys in educational institutions every five years provided that the first survey is completed within two years from the date of commencement of RPD Act, 2016. The surveys are meant for

²⁸ For details please see, Article 24 of UNCRPD, 2006 which was adopted on December 13, 2006 in the 61st session of General Assembly through Resolution No. A/RES/61/106 w.e.f. May 3, 2008. However, India is the signatory party of it and ratified it on October 1, 2007.

²⁹ V. N. SHUKLA, CONSTITUTION OF INDIA, 211(Mahendra P. Singh ed., 11th edn. 2010).

identifying special children and for ascertaining their special needs and correspondingly check whether those particular needs are being met or not. In *Vijay kr. Agarwal v. State of Rajasthan*³⁰ and *Deputy Sec. (Mart), Deptt. of Health and Family Welfare v. Sanchita Biswas & others*,³¹ it was observed by the respective courts that the State is bound to bestow 3% reservation of the total seats in educational institutions for the special children.

- c. **RCI, Act 1992:** Unfortunately, the uniformity in the teaching standards for special children has not been found in the country. It was only in 1992, that the government enacted the RCI Act, for regulating the training of rehabilitation professionals. Training of special educators and resource teachers that can offer support services to special children in regular schools is the responsibility of RCI. It also states that children with special needs will be taught by trained teachers.³²
- d. **National Trust Act–1999:** It provides for the establishment of institutions for the protection of interest of special children suffering from autism, cerebral palsy, mental retardation and multiple disabilities after the death of their parents so as to enable them to live independently within the community to which they belong. Although it does not deal explicitly with inclusive education for special children but it endorses the programme for respite care, foster family care and day care services, which may develop their functional ability to handle their day-to-day activities.³³
- e. **The Mental Health Act, 1987**³⁴: It is presumed that mentally ill children respond differently in the educational institutions because of the dearth of basic human rights that other children enjoy. Thus, they ought to have parallel human rights as enjoyed by normal children. It signifies that they must have a right to accessible care in every aspect of their life and to reintegrate them in the social life without any exploitation.³⁵

³⁰ Vijay Kumar. Agarwal v. State of Rajasthan, AIR 2001 RAJ. 261.

³¹ Deputy Sec. (Mart), Deptt. of Health and Family Welfare v. Sanchita Biswas & Others AIR 2000 Cal. 202.

³² Bhutia, *supra* note 3 at 323.

³³ *Id.*

³⁴ The Mental Health Act, 1987 (Act No. 14 of 1987).

³⁵ Dr. Malabika Talukdar, *Human Rights of Disabled Person in India: A Critical Study*, in HUMAN RIGHTS AND DUTIES 247 (Dr. Rathin Bandyopadhyay, Prof. Gangotri Chakraborty et.al. eds., 2015).

6. Policy and Practices for Special Education

In order to defend inclusive education for special children, various initiatives have been taken up by the Government of India. Firstly, it began with the recommendation of Kothari Commission in 1964. In this, it was suggested that inclusive education for special children should be organised not merely on humanitarian grounds, but on the ground of utility, which can be achieved through the adoption of an integrated approach so as to avoid isolation of special children. After that, in 1986 the national policy for education was formulated. The policy vouched for equality in education among all children, including special children. It advocated for common education and school system for the normal and special children of India under one roof.³⁶ But later, it was revised by a Plan of Action in 1992. It was suggested that children of special schools should be transferred to regular schools once they attain the necessary academic abilities but no significant action was taken on it.³⁷ However, the same was achieved through a centrally sponsored scheme of integrated education for special children in 1972 known as Integrated Education of Disabled Children (hereinafter referred to as IEDC), which purported to provide inclusive education for special children in regular schools. Therefore, after they attained their communication and daily living skills at the functional level, it was preferred to place them in the regular schools from special schools but unfortunately it had also been a failure.

On the other hand, in 1987, the government has shifted its strategy from school-based approach to a merged-area approach, which is known as Project for Integrated Education for the Disabled (hereinafter referred to as PIED), where all regular schools were expected to enroll special children along with the teachers training programme designed especially for training special children to acquire their normal growth. District Primary Education Programme (hereinafter referred to as DPEP), which was launched in 1994, also had a substantial role to play in amalgamating special children in mainstream schools. The main advantages of DPEP are identification, assessment and enrollment of special children in regular schools with resource support teacher training and parental counseling. Later, Sarva Shiksha Abhiyan was implemented by the Government of India in 2000-2001 with the goal of universalising elementary schooling for special children of the age group of 6-14 by 2010

³⁶ V. P. Niranjana, *The Right to Education, Constitution and the Common School System in India*, 14 (3&4) NYAYA DEEP 57 (2013).

³⁷ D. V. Divya, *Right to Education of Differently Abled: Expectation and Realities*, 37(1&2) COCHIN UNIVERSITY LAW REVIEW 105-108 (2013).

at the district levels. It provides learning aids and tools, mobility assistance and support services to special children.³⁸ In the mean time, the RTE Act, 2009 was enacted to provide free and compulsory education to all children including special children between 6-14 years. The Act, although, is silent on pre-primary education of special children aged below 6 years. However, Section 12(1)(c) of RTE Act, 2009 binds public and private schools to reserve 25% of seats for children, including special children, from socially and economically disadvantaged sections. Although RTE Act, 2009 is considered as landmark legislation but practically it does a very little work to oversee the implementation of inclusive education in India. In fact, the RTE (Amendment) Bill 2017, which was introduced in the Lok Sabha on April 10, 2017 and which is currently pending, does not contain any explicit provisions for inclusive education for special children.³⁹ Undoubtedly, the National Policy for Persons with Disability of 2006 had also acknowledged the self-esteem of special children and, furthermore, it created a milieu that provided protection of their basic rights and freedoms which help them to partake in society. Sections 20 to 27 of the said policy highlight the requirements for mainstreaming regular schools through inclusive education policy for all.⁴⁰ Lastly, the twelfth five year plan of 2012 to 2017 clearly emphasises that States and NGOs must work closely with Rehabilitation Council of India for an individualised educational plan and inclusive educational placement of special children in general schools. Moreover, it also highlights the engagement of resource teachers, volunteers and caregivers to cater to the special needs of these children.⁴¹ Therefore, these are some of the policies and practice taken up by the government for implementing inclusive education for the special children. But unfortunately, even after the implementation of the above-mentioned policies, the ground reality has not changed much.

7. Challenges towards Rehabilitation and Imparting Special Education

Despite all the strategies and policies adopted at various levels, the most important challenge that creates hurdle in the physical and mental development through inclusive education is disability-based discrimination such as segregation, institutionalisation and

³⁸ *Id.*

³⁹ Prof. Suman Gupta, *The Right of Children to Free and Compulsory Education Act, 2009: Fulfillment of a Dream of Millions of Children*, 14(3&4) NYAYA DEEP 35-36 (2013).

⁴⁰ Divya, *supra* note 37.

⁴¹ *See*, THE TWELFTH FIVE YEAR PLAN (2012-2017), PLANNING COMMISSION, which is now been replaced by the NITI AAYOG, *available at* http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol3.pdf (Nov 12, 2016).

exclusion which bear out to be the main obstacles in the process of rehabilitation. Many a time, special children have to make greater efforts even to realise their basic rights. Moreover, it is noteworthy to state that parents of such special children are generally not aware of the policies relating to inclusive education and the benefits available to the special children to include them in regular schools for rehabilitation. Finally, the bulk of school employees including teachers, staff and other support members are not properly skilled to plan and put into practice the inclusive educational programme for special children in regular schools and in ground reality the Government failed to train teachers adequately to work in an integrated situation. Thus, governments will have to provide augmented resources for the purposes of inclusive education to guarantee thriving implementation of integrated practice for inclusive education in regular schools.⁴²

8. Concluding Remarks

The need of this hour is a complete overhaul of the educational system and the educational institutions should incorporate inclusive educational curriculum and its practices in the regular schools so that both normal children and special children are equally served. But even before that, we have to change our narrow thinking and apathetic attitude towards special children. We must understand that they do not want our sheer sympathy but our assurance that they enjoy an equal place in the society. Also required is the political will to fuse the responsibility of inclusive education under the Ministry of Education.⁴³ Undoubtedly, the RPD Act of 2016 witnesses a welcome stride in the light of its wider definition of disabilities and conforms to the spirit of UNCRPD, 2006 in respect of inclusive education among the special children. But it can be concluded that India is way behind to actually secure the special educational rights of the special children in the form of inclusive education, which in ground reality continues to be neglected. The Constitutional machinery has also failed to provide the necessary impetus for it. The legislation is a paper tiger failing to implement the precious guarantees as envisaged in the Act. In this scenario, the most appropriate remedy to rehabilitate special children would be to end the prejudice approach towards providing special education to special children and any rule that may encourage segregation of special children from other children and exclude them from access to mainstream schooling should be disavowed. Secondly, special teachers should be recruited

⁴² Kothari, *supra* note 4 at 202.

⁴³ Das, *supra* note 25 at 241.

and they should be specially trained to provide inclusive education to special children. Thirdly, all teacher training courses must include a component on special education and for children with special needs. Fourthly, all efforts should be made to make inclusive education a reality by not subjecting it to the limitation of fiscal ability of the government.⁴⁴ It is not just sufficient on the part of the State to merely declare rights rather it should specify the redressal mechanism to facilitate its effective implementation by which the special children in respect of their inclusive education are brought at parity with non-special children of the nation.⁴⁵

⁴⁴ Bandyopadhyay & Roy (Maitra), *supra* note 13, at 30.

⁴⁵ Bhutia, *supra* note 3, at 329.

VISIBILITY OF BLINDNESS: INTERROGATING ABLEISM IN THE SYSTEM OF HIGHER EDUCATION

Anirban Mukherjee* & Ishan Chakraborty**

ABSTRACT

Socio-cultural discourses and forms of activism, which engage with the issue of participation of disabled persons and the barriers faced by them in higher education, usually tend to focus on solutions such as installation of adaptive technologies and implementation of inclusive design in classrooms, toilets and libraries. When analysed from the perspective of spatial politics, we can see through the hierarchy of space in a given campus, created by such strategies of prioritisation. Accessibility to the broader physical and academic atmosphere of university and college campuses often remains unaddressed. This centre-periphery structure of space in the present context is essentially an outcome of ableist assumptions. Attempts to promote disabled friendliness in canteens, union rooms, common rooms, playgrounds, seminar halls, etc., receive a disturbingly limited attention, if any. In other words, participation of disabled persons in community activities, co-curricular activities and entertainment is treated with least importance, especially in the field of higher education. In the context of a developing country such as India, where scarcity of resources is a major challenge, speaking about such overlooked areas of discourse might appear as an instance of literary utopia. However, we think it is useful to make these unseen areas visible in order to thoroughly disrupt the habits and attitudes endorsed by ableism. In our paper, we shall endeavour to show how increase in visibility and representation of disabled persons in a given space can bring about changes in societal approach towards disability. The scope of our paper would also encompass a selective discussion of the various models of disability, an understanding of which might help us in developing resistance against ableism in a more specific manner. We also intend to discuss how inadequate visibility of disability in curricula promotes misconceptions, which in turn lead to 'othering'.

* Assistant Teacher, Kaswara Yeasin Mondal Shikshaniketan High School, Chinsurah, West Bengal. Email id- sparsha.anirban@gmail.com

** PhD Scholar, Department of English, Jadavpur University, Kolkata. Email id- wrick.ishan@gmail.com

1. Introduction

Attempts to define disability often encounter the problem of causing further exclusion and marginalisation. For instance, in The Persons with Disabilities Act of 1995¹ (which stands repealed following the enactment of Rights of Persons with Disabilities Act, 2016)—“Disability means

- (i) Blindness;
- (ii) Low vision;
- (iii) Leprosy-cured;
- (iv) Hearing impairment;
- (v) Loco motor disability;
- (vi) Mental retardation;
- (vii) Mental illness.”

(PWD Act of 1995, Chapter 1, Section 2, i)

Undoubtedly such a list is neither exhaustive nor inclusive. In The Rights of Persons with Disabilities Act, 2016, it has been stated that—“Person with disability means a person with long-term physical, mental, intellectual or sensory impairment which hinder his full and effective participation in society equally with others.” (RPD Act of 2016, Chapter 1, Section 2, s).

Legal discourses and activism have often articulated the need to define and redefine disability in order to minimise confusion. It is beyond the scope of our discussion to elaborate on the problems and/or the subtle complexities of the definitions of disability presented in various discourses and legal literature. Nevertheless, it needs to be clearly spelt out that in the subsequent discussion, we shall use the term ‘disability’ in the sense in which it has been described in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). While defining what constitutes ‘disability’, the Convention states—“Recognizing that disability is an evolving concept and that disability results from the interaction between persons with

¹ Since this article was in the form of a working paper submitted in November 2016 in a National Seminar on Disability and Education, most of the arguments in this paper are made in light of the provisions of the PWD Act, 1995 and not in light of the provisions of the RPD Act, 2016, which was passed in December 2016.

impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.” (UNCRPD, Preamble, e). This definition marks a significant departure from the prevalent notions of disability, constructed and endorsed by the apparatus of ableism.² Here we wish to take the opportunity to briefly comment on three of the many models used to interpret and react to the concept of disability.

2. The Three Disability Models

The model that dominates any discourse on disability is the Medical Model.³ According to Ciara Doyle, the Medical Model sees disability as “a failure of a part of the body (very specifically), which must be put right... because only normality is acceptable... and normality must be strived for at all costs.”⁴ This model scrutinises the ‘defective’ body, and subsequently quantifies and certifies the disability. In the Indian scenario, it is this certification which enables a disabled person to access institutionalised education, employment, etc. In this context, it may be mentioned that the PWD Act of 1995 clearly states—“Person with disability means a person suffering from not less than forty per cent of any disability as certified by a medical authority.” (The PWD Act of 1995, Chapter 1, Section 2, t). Thus, a rejection of the Medical Model in the present legal situation would strip a disabled person of the basic facilities necessary to pursue his or her higher education. For instance, a blind person lacking a disability certificate would be denied the services of an amanuensis, essential for him or her to write in the examinations.

² Ableism is a way of interpreting the issue of disability. According to the ableist notion, a disabled body or mind is essentially inferior to that of a body or mind without disability.

³ The Medical model of Disability advocates that disability is located in the impaired body. Therefore, the focus is to cure the body of that disability or lessen the degree of disability. Disability is sought to be quantified in this model.

⁴ Ciara Doyle, “Lecture Two Models of Disability.mpg.” Accessed November 25, 2016 <https://www.youtube.com/watch?v=Ifv-WfDut7k>.

The other model which needs to be resisted more strongly is the Charity Model.⁵ Here, a disabled person is seen as an object of pity and sympathy, and ‘helping’ him or her transpires as an act of charity and benevolence.

Finally, the model which has been widely accepted and advocated by many disabled persons and disability rights activists is the Social Model. The essence of this model is perhaps best summarised in the meaning of ‘disability’, put forward in the Preamble of UNCRPD, which has already been cited earlier. This shifts the focus of scrutiny from ‘impairment’, located in the body of an individual, to ‘barriers’, located outside it—the ‘barriers’ that these bodies and minds have to run up against in order to interact with the society. In other words, it is the ‘barriers’ imposed by the ableist societal forces which hinder their ‘full and effective’ participation. This paradigm shift in the discourse of disability gains all the more significance in the field of higher education, for it is one of the most effective fields that has the potential of creating newer socio-political discourses.

A cursory look at the spectrum of disability, which as stated in the UNCRPD is “an evolving concept”, would reveal intricate diversities. An attempt to contain and examine all these intricacies and diversities within a single set of parenthesis is impossible. Therefore, keeping in view our limited scope, we shall confine our attention mainly to the category of blindness and the lived experiences of blind persons.

3. Education and the Legal Provisions

In order to sketch out a general idea about the scenario of recognising education as a universal human right, we wish to provide a few citations from legal literature.

⁵ The advocates of the Charity model of disability are of the view that one must do something good for persons with disability out of pity or sympathy. Doing something for the disabled people, they feel, is an act of benevolence.

- “Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms.” (UNCRC, Preamble, v).
- “We raise the flag for education as a universal human right. No one must be denied access because of disability.” (UNESCO, The Right to Education for Persons with Disabilities, Introduction).
- “States Parties shall ensure an inclusive education system at all levels and life-long learning...” (UNCRC, Article 24, Section 1).

4. Revamping the Curriculum

Now, we shall move on to focus on the politics of constructing curriculum and how it influences disabled persons and the disability movement in general. It needs to be clarified that in the present context we use the term ‘curriculum’ to refer to the content, the instructional formats, the assessments and also the environment which are needed to get to the desired outcome in an institutionalised educational set-up. Here we have two interrelated areas to be addressed—

- Incorporating elements related to the issue of disability in the curricula.
- Designing the curricula in such a way that it can be accessed by all students, irrespective of their disabilities.

One of the most effective ways of creating newer discourse is by propelling students and young scholars to engage with the concept of disability through their curricula. Discussions on disability, works featuring disabled characters, works by disabled authors, etc., should be included in various curricula, especially in the ones which deal with cultural studies. This can help in creating a more critical and nuanced understanding about disability, a domain which often remains less addressed in academia. In academia, which highly encourages interdisciplinarity, it is both necessary and feasible to merge disability studies with many other

strands of humanities. For instance, the departments of literature, social sciences, philosophy, etc., should encourage more scholarly attention to the issue of disability. In other words, disability studies should not be treated in isolation. Rather, disability studies and other related disciplines should make parallel attempts to mainstream the discourses, directly or indirectly associated with disability. This may contribute an important step towards increasing the visibility of disability.

Now we proceed to the other aspect of curriculum, which deals with its accessibility. If we observe the distribution of disabled students across the different disciplines in a given university, a predictable pattern becomes evident. The number of visually disabled students in the engineering and science departments is far less than those in arts or humanities departments. The few students with visual impairment enrolled in science or engineering departments have the degree of their disability ranging between mild and moderate. Here, it needs to be mentioned clearly that the authors made these observations on the basis of a list of disabled students enrolled in Jadavpur University, Kolkata in the academic year 2015-16, provided by The Centre For Studies and Rehabilitation of Differently Aabled Persons. In other words, blind (profound visual impairment) students have their choice of disciplines restricted to the Faculty of Arts. Science subjects which involve laboratory-based practical work or extensive field work automatically renders themselves inaccessible to blind students. As a result, we note a concentration of visually challenged students in departments such as Bengali, English, Philosophy, History, International Relations, Comparative Literature, etc. These departments should design their curricula in such a way that the blind students (or disabled students in general) do not face discrimination in terms of accessibility.

With development in Cultural Studies, the concept of text has undergone a remarkable change. Any form of semiotic expression/symbolic system, which has the potential of being studied and interpreted, can be considered a 'text'. Films, documentaries, paintings, photographs, maps, diagrams, graphic literature, comics, artifacts, etc., form a major part of the cultural and arts subjects. It is not difficult to comprehend that these texts cannot be independently accessed

by persons with severe to profound visual impairment. If the content of any such text is communicated to a blind student through a stage of mediation, it is undoubtedly going to influence/hamper his/her independent reading of the texts.

From this discussion, it is evident that the choice of subjects which can be accessed by visually impaired students in higher education becomes alarmingly limited, which in turn constitutes another factor that hinders their full and effective participation in society. Having recognised this barrier, The RPD Bill of 2014 holds up the need for “redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities...” (The RPD Bill of 2014, Chapter 5, Section 28, f). Here, it is further to be mentioned that The RPD Bill of 2016 has also promoted the need for making “art accessible to persons with disabilities” (The RPD Bill of 2014, Chapter 5, Section 28, c). In this context, it must be admitted that in The PWD Act of 1995, the need for “restructuring of curriculum for the benefit of children with disabilities...” (The PWD Act of 1995, Chapter 5, Section 30, g) has been acknowledged. However, the use of the phrase ‘children with disabilities’ which becomes ‘persons with disabilities’ in the RPD Bill of 2014, by implication confines the focus within the limit of school education.

In the above discussion, we have attempted to argue that the system which strives to make education accessible to all, irrespective of their disabilities, must consider with adequate importance the issue of accessible curriculum. A disabled student/scholar should not be compelled to compromise and conform to a structure of curriculum designed by ableism to sustain itself.

5. The Spatial Politics in College and University Campuses

Socio-cultural discourses and forms of activism, which engage with the issue of participation of disabled persons and the barriers faced by them in higher education, usually tend to focus on solutions such as installation of adaptive/assistive technologies and implementation of inclusive designs in classrooms, toilets and libraries. When analysed from the perspective of

spatial politics, we see through the hierarchy of space in a campus, created by such strategies of prioritisation. Accessibility to the broader physical intellectual and cultural environment of the college or university campus often remains unaddressed or even ignored. This centre-periphery structure of space in the present context is essentially an outcome of ableist assumptions.

Attempts to promote disabled friendliness in places such as canteens, union rooms, common rooms, seminar halls, auditoriums, playgrounds, offices, etc. ,(which constitute an integral part of college or university campus and its functioning) receive an extremely limited attention, if any. In other words, participation of disabled persons in community activities, co-curricular activities, cultural and recreational activities, and also political activities is treated with least importance. In the context of a developing country such as India, where many (if not majority) of the institutions for higher education hardly have any disabled-friendly atmosphere, and where scarcity of adequate resources is a major challenge, it might appear quite ambitious to speak about such overlooked areas of discourse. Nevertheless, we think it is useful to make these invisible and, therefore, unseen areas visible in the realm of dominant academic discourses, in order to thoroughly disturb the habits and attitudes of the ableist society.

The two barriers, identified by UNCRPD, as the cause of disability are ‘attitudinal’ barriers and ‘environmental’ barriers. The former, owing to its extensive involvement of human elements, is far more complex, subtle and abstract than the latter. Both these factors are interrelated. If any one of them is addressed efficiently and effectively, it would consequently influence the other. If environmental barriers are eliminated or minimised through strict implementation and enactment of legislation, it would positively influence the participation of disabled persons in various social activities. Increase in participation means increase in visibility. Again, increase in visibility and representation of disabled persons in a given space (university and college campuses in the present context) can bring about progressive changes in societal attitude towards disability. Inadequate visibility of disability promotes ‘othering’ and stereotyping of disabled persons which in turn gives rise to misconceptions, prejudices and presumptions about them.

In the PWD Act of 1995, the issues relating to the participation of disabled persons in higher education are addressed most inadequately.

- “... The removal of architectural barriers from schools, colleges or other institution, imparting vocational and professional training” (the PWD Act of 1995, Chapter 5, Section 30, b)
- “All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seat for persons with disabilities.” (The PWD Act of 1995, Chapter 6, Section 39).

These are perhaps the only two areas in mainstream higher education which have been addressed in the present Act. To make education accessible and disabled-friendly, we must strive to take the entire system into consideration. Removal of architectural barriers and ensuring a reservation of not less than three per cent seats may be important steps to begin with, but if the focus is restricted merely to these areas, then it would take us away from the Social or Rights-based Models.

6. Conclusion

Education, which itself is a multi-dimensional process, must be seen as an integral part of the larger matrix of socio-cultural exchange. Increasing the participation of disabled persons in this process and using it to increase the visibility of disability are two complimentary mechanisms for disrupting the politics of marginalisation, endorsed by the oppressive structure of ableism.

BARRIERS TO EDUCATION FOR STUDENTS WITH AUTISM SPECTRUM DISORDER

Mitu De* and Indrani Basu**

ABSTRACT

Individuals with Autism spectrum disorder (ASD) have difficulties in three core areas, viz., difficulty in social and emotional interaction; difficulty in communication and language, both verbal and non verbal; difficulties in imagination and flexibility of thought. Though the areas of impairment are the same yet the degree differs. When autistic individuals are admitted in an inclusive educational institution, the support they require should be different for each individual student. The Right of Children to Free and Compulsory Education Act, 2009, entitles all children to have the right to education as a Fundamental Right. All children including those with disability have the right to education. Regardless of their ability in an inclusive education setting, all children are enrolled in the mainstream classroom. Inclusive education can empower learners, combat discrimination, celebrate diversity, encourage and promote more inclusive societies. The Rights of Persons with Disabilities Act, 2016 states that all disabled children between the age group of 6 and 18 years shall have the right to free education'. So that implies that all classrooms must be equipped with the support needed for children with special needs. But inclusive education without the right kind of support causes barriers to education. Classrooms are social environments where individuals with ASD may find different degrees of difficulties in communicating, interacting or socialising. Inclusive education for individuals with autism spectrum disorder should begin with the first step of understanding this invisible disability. Likewise, the support needed for the student to overcome the barrier to education should be specific to the needs of the individual. In this paper, few common types of difficulties that autistic individuals may face in educational institutions are listed. Some of the attitudinal and social support strategies required by students with ASD which may help in removing these difficulties or barriers in the education process are also discussed.

* Assistant Professor, Department of Botany, Gurudas College, Kolkata. Email id- mituaswb@gmail.com

** Director, Autism Society West Bengal (ASWB), Kolkata. Email id- indranibasus55@gmail.com

1. Introduction

Over the past few years, there have been several initiatives at the global level for visualising and incorporating strategies for imparting quality education for differently abled children. The term ‘inclusive education’ has become common and most educational institutions strive to be inclusive. Seats are reserved for differently abled students in educational institutions now so as to enable the differently abled individuals to get quality education.

The 2006 UN Convention on the Rights of Persons with Disabilities (UNCRPD) was a milestone in this regard. Article 24 of the UNCRPD focuses on the urgent need for governments to ensure equal access to an “inclusive education system at all levels” and to provide realistic support services to persons with disabilities to facilitate their education, with a view to realising this right without discrimination and on the basis of equal opportunity.¹

However, as there are different types of disabilities in an inclusive educational set up, the support system should also be varied. In case of some disabilities such as autism spectrum disorder where the impairment itself is varied among different individuals the support of ‘special need’ for the students should be varied.

2. Some observations

Given below are experiences of 10 (ten) autistic students,² some of whom are school students. Though apparently they seem discrete incidents and experiences, there is an invisible thread of similarity among all experiences.

1. Arvind is a young boy of eight years studying in standard III. He enjoys going to school and is quite good in studies, especially in mathematics. However, he does not have any close friends. He feels that his classmates only talk to him when they need his help in their studies. He always feels alone in the crowd.

¹ United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). (2006).

² The names of the respective students have been changed for the purpose of maintaining confidentiality.

2. Ritwesh is a young adult studying in his second year undergraduate course in a reputed college in the city. He is very curious and everyday he asks the teachers several questions during the course of the lectures. At the start of the session, most of his teachers encouraged him to ask questions. So, he started asking several questions during the 45-minutes lecture duration, every day. To his disappointment, nowadays, most of his teachers tell him to ask his queries after class.
3. Irfan's parents had hoped to send their only child to an elite boarding school so that he receives quality education. But two-year-old Irfan has not started talking yet and this is a matter of great concern to his parents. They have also noticed that Irfan does not like playing with kids of his age. Instead, he seems to enjoy the company of children several years his senior. After many visits to various doctors, he was diagnosed having Autism Spectrum Disorder (ASD)³.
4. Julie is a shy girl of six. She studies in standard II. She can sing beautifully and loves to arrange her toys neatly in a row. She likes to repeat whatever another person utters. This makes life difficult for her mother as she constantly repeats everything. But her mother is pleased that Julie always likes to keep all objects in their assigned places. She always wants everything in order and seems to enjoy routines. One day, her elder cousin visited and he messed up with her toys. Her mother was shocked because Julie created such a fuss, cried and rolled on the floor and later started banging her own head on the wall. The aftereffect of this incident seemed to last several weeks as Julie refused to go to school for three weeks.
5. Mainak, a 10-year-old autistic boy goes to a school that supports inclusive education. Because he has special needs, he has to go to his special educator in the resource room a few times in a day. Mainak feels he understands whatever the teacher is teaching, however, when they question him he finds himself tongue tied. Just because he cannot articulate the answers, his teacher thinks that he has not been able to grasp the concept of that day's lesson. Mainak finds himself back in the resource room where he has to go over the concepts that he already knows.

³ Autism Spectrum Disorder 299.00 (F84.0) (DSM-V, American Psychiatric Association, 2013; Retrieved from Autism Speaks: <http://www.autismspeaks.org/what-autism/diagnosis/dsm-5-diagnostic-criteria>).

6. Nilesh, a one-and-half-year-old boy has what was earlier called as ‘high functioning autism’ or HFA⁴. He went through intensive intervention therapy in a reputed facility. He progressed well and his parents were advised to enroll him in a mainstream school. To his parents’ horror, several schools refused to admit him stating that even though they admitted differently abled students they did not have adequate support system to handle students with ‘high functioning autism’. After facing refusal from six schools, Nilesh’s parents did not disclose about Nilesh’s condition and got him admitted to a well-known school.
7. Anurag, a five-year-old boy goes to a reputed inclusive school. His teachers noticed that he had trouble following the verbal instructions of his teachers. Furthermore, he had difficulties transitioning from one subject to the other during the course of the day. The school Principal told the parents to hire a ‘shadow teacher’ for Anurag. The shadow teacher was experienced with many of the teaching methods for autistic individuals.⁵ She incorporated many strategies within Anurag’s existing curriculum. With positive collaboration among the teachers, Anurag learnt to cope with the class load.
8. Rudrapalash is an 11-year-old non-verbal autistic boy. He has been going to a special school only meant for autistic students for six years. His teachers use various teaching methods such as Applied Behaviour Analysis⁶ and Verbal Behaviour Analysis. Further, Treatment and Education of Autistic and Related Communication Handicapped Children (TEACCH) method is implemented in his classroom. The TEACCH program⁷ provides community-based services to children with autism and related disorders from preschool

⁴ Earlier the term ‘high functioning autism’ or HFA was used for individuals who were cognitively less challenged and had the ability to speak, read and write. But according to the American Psychiatric Association's Diagnostic and Statistical Manual, Fifth Edition (DSM-5), 2013 that provides standardised criteria to help diagnose ASD, the term HFA is no longer used.

⁵ Ontario Ministry of Education (2007). Effective educational practices for students with autism spectrum disorder, A resource guide. Toronto: Ontario Ministry of Education.

⁶ LOVAAS IVER OLE, TEACHING INDIVIDUALS WITH DEVELOPMENTAL DELAYS: BASIC INTERVENTION TECHNIQUES. (2003).

⁷ The program was developed at the University of North Carolina at Chapel Hill. See Schopler, E., Mesibov, G., & Hearshey, K., *Structured Teaching in the TEACCH System*, in LEARNING AND COGNITION IN AUTISM 243-268 (E. Schopler & G. Mesibov eds., 1995).

age till adulthood. Schedules, Visuals, Work Stations are a part of his class. His class teachers make Individual Educational plans (IEPs) for all their students. He is happy when he is in school. He understands what is expected from him by looking at the visual cues. He participates in annual concerts and school picnics with gusto.

9. Arunika, a seven-year-old autistic girl goes to a special school meant only for autistic children. She likes to paint, sew and do clay modeling. She has an IEP in class and the TEACCH program is implemented in her class by trained special educators. Even though she can speak, she talks very rarely. She has a younger brother, Sagnik, who was also on the autism spectrum. He started his intervention from the age of one year and four months. He responded very well and has joined a mainstream school. Sometimes he finds it difficult to understand the concepts of some of the topics taught in class. So he comes for monthly counseling sessions. The special educators explain the concepts visually with lots of diagrams. Then he grasps the concept easily and it becomes hard to forget.
10. Rishi has just completed his post graduation in Botany. Though he has sufficient knowledge of his subject, his post graduation marks are not very good. He now realises that he did not attempt all the questions in this Final exams as he was busy writing an in-depth answer to some short questions. He had forgotten to do the time management procedure despite his teachers narrating him the procedure before the examinations. He understands that he needs a job and also understands that all types of jobs will not suit him. He hopes that one day he will get a job where there is minimum contact with his employer and other employees. He knows that he makes a fool of himself in social gatherings. But he is ready to adjust and learn. He knows that he has a diagnosis of ASD.

In the above ten examples though there are huge differences in the experiences, all the students were autistic and had a 'triad of impairment,' viz., Social impairment; Verbal and Non-Verbal language impairment; difficulties in flexibility of thought leading to repetitive activities. The degree of impairment varies. As their needs are different, the support that they will require in educational institutes will be different.⁸

⁸ NATIONAL RESEARCH COUNCIL, EDUCATING CHILDREN WITH AUTISM (2001).

Children with disabilities represent more than one-third of the 67 million children who are out of school worldwide as estimated by UNESCO in 2011.⁹ Inclusive education is fundamental for tapping the human resource potential of all students and also for achieving better quality in education. In an inclusive classroom we expect to see students with different learning styles and abilities. Inclusive education should ideally use teaching methods and strategies that cater for diverse learning styles of all students.

Originating from the Salamanca World Conference on Special Needs Education (UNESCO, 1994), which Ainscow and Cesar (2006) referred to as “the most significant international document that has ever appeared in the field of special education” (p.231),¹⁰ inclusive education received extensive recognition across the world, including in developing countries such as India. The Salamanca statement eventually gave birth to the most promising international instrument, the UNCRPD 2006,¹¹ promoting inclusive education rights for the disabled.

Article 24 of the UNCRPD mentions that education shall be made available to all without discrimination and on the basis of equal opportunity. The provision creates an obligation on the governments to ensure an inclusive education system at all levels. This concept of inclusive education has been later incorporated into various international and national declarations, policies and Acts.

⁹ UNESCO, Education for All Global Monitoring Report 2007, p. 74. UNESCO, Education For All Global Monitoring Report 2011, p. 1.

¹⁰ Ainscow M. & Cesar M., *Inclusive Education Ten Years after Salamanca: Setting the Agenda*. EUROPEAN JOURNAL OF PSYCHOLOGY OF EDUCATION, XXI, 3, 231-238 (2006).

¹¹ India is a signatory to the UNCRPD.

The Millennium Development Goals (MDGs)¹² were a stance against hunger, disease, poverty, illiteracy, environmental degradation, and discrimination against women by world leaders. The MDGs were established following the Millennium Summit of the United Nations in 2000, following the adoption of the MDGs. The first step towards ensuring that persons with disability benefit from the MDGs. The MDGs was primarily to identify the factors that cause a barrier to their inclusion process in various programs and policies based on the MDGs.

In India, The Right of Children to Free and Compulsory Education (RTE) Act, 2009, entitles all children to have the right to education as a fundamental right. All children including those with disability have the right to education. Regardless of their ability in an inclusive education setting, all children are allowed to be enrolled in mainstream classrooms making the cause of inclusive education, which can empower learners, combat discrimination, celebrate diversity, encourage and promote more inclusive societies, being promoted to a higher level. The Rights of Persons with Disabilities Act, 2016 came into effect in late December 2016, after almost a decade's wait. The Lok Sabha passed it on 6th December and the Rajya Sabha on 14th December. The Act has replaced the Persons with Disability (PwD) Act of 1995. Under the newly enacted Act, disability has been defined based on an evolving and dynamic concept. The types of disabilities have been increased from the existing seven to 21.

In the Rights of Persons with Disabilities Act, 2016 it is stated that 'Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education', salient feature no. vii.¹³ So that implies that all classrooms must be equipped with the supports needed for children with special needs.

¹² United Nations Millennium Development Goals website, retrieved from <http://www.un.org/millenniumgoals/pdf/report>

¹³ Rights of Persons with Disabilities Bill-2016. Press Information Bureau Government of India, Ministry of Social Justice & Empowerment. Retrieved from <http://pib.nic.in/newsite/PrintRelease>.

But inclusive education without the right kind of support causes barriers to education. Classrooms are social environments where individuals with ASD may find different degrees of difficulties in communicating, interacting or socialising. A salient feature of the Rights of Persons with Disabilities Act, 2016 is that the government will fund educational institutions as well as the government recognised institutions to provide inclusive education to the children with reasonable accommodation to disabled. However, it must be kept in mind that the support needed for the student with ASD to overcome the barrier to education should be specific to the needs of the individual. Inclusive education for individuals with ASD should begin with the first step of understanding this invisible disability.

Quality education ushers in changes in the life of any child. For a disabled child quality education helps in every sphere of life, from knowing and understanding their rights as a citizen, getting jobs, health and other services. For education to play this role as ‘an enabling right’, it must be of high quality, available equitably, built to tackle discrimination and allow each child to flourish according to their own talents and interests.¹⁴

In recent times, the trend in education is toward inclusion of children with disabilities, a type of inclusion that supports various learning styles and diverse instructional practices.¹⁵ Under the aegis of inclusive education, the multi-pronged strategies that a teacher can employ include planning techniques, organising learning environments, mastering instructional delivery that reaches students of different abilities, and evaluating the usefulness of teaching strategies.¹⁶

¹⁴ Singal, N., *Inclusive Education in India: International Concept, National Interpretation*, 53(3) INTERNATIONAL JOURNAL OF DISABILITY, DEVELOPMENT AND EDUCATION, 351-369 (2006).

¹⁵ Yell M. L. & Katsiyannis A., *Critical Issues and Trends in the Education of Students with Autism Spectrum Disorders: Introduction to the Special Issue*, 18(3) FOCUS ON AUTISM & OTHER DEVELOPMENTAL DISABILITIES, 1088-3576 (2003).

¹⁶ SCOTT J., CLARK C. & BRADY M., *STUDENTS WITH AUTISM: CHARACTERISTICS AND INSTRUCTION PROGRAMMING FOR SPECIAL EDUCATORS* (2000).

3. **Identifying and understanding the unique needs of students with ASD:**

ASD happens when the brain develops differently. As an autistic person is born with an impaired brain h/she has a lot of trouble in interpreting the sensory input perceived by the brain. So the autistic person often faces difficulty in talking, listening, understanding, playing and eventually learning. ASD is a lifelong developmental disability.

The rise in the number of children with ASD and the kinds of difficulties that they face raises quite a few questions and concerns on how to create a level-playing platform that ensures appropriate education in the least restraining environment to children on the spectrum. This can be achieved only if the nature of impairment and its implications are kept in mind during the education process.

4. **Triad of Impairment in persons with ASD**

There were three areas of impairment, forming a cluster of features that provide an indicative criteria for identifying of autism.¹⁷ The external manifestation of the triad of impairment in individuals with ASD is in their restricted, repetitive, and stereotyped patterns of behavior. Findings suggest that repetitive behaviors emanate from unusual wiring patterns in the brain. ASD manifests itself in a myriad of ways in different individuals and this fact must be kept in mind while teaching them. All autistic students will have difficulties in the three areas with differential overlapping. This is the reason why ASD is called a ‘spectrum disorder.’

This cluster referred to as the triad of impairments which are as follows.

- A. **Impairment of Social Interaction:** The implications of this impairment is that the individual may show impaired, deviant and extremely delayed social development, especially interpersonal development. There may be difficulties in the use of multiple nonverbal behaviors, viz., facial expressions, gaze, body postures, eye-to-eye, etc.

¹⁷ Wing L. & Gould J., *Severe Impairments of Social Interaction and Associated Abnormalities in Children Epidemiology and Classification*, 9 JOURNAL OF AUTISM AND CHILDHOOD SCHIZOPHRENIA 11-29 (1979).

- B. **Impairment of Social Communication:** The individual with autism will have impaired and nonstandard language skills and communication lingo, both verbal and non-verbal.
- C. **Impairment of Behaviour & Social Understanding:** Individuals will possess rigidity of thought & behavior and poor social imagination, ranging from inability to play imaginatively with toys to not being able to mix freely with other children, especially when such individuals are in childhood days. They may be involved in repetitive stereotyped activities. Individuals will also have difficulties in understanding abstract concepts such as feelings and emotions.

5. Attitudinal and social support for students with ASD

Students with autism require attitudinal and social support to be integrated into mainstream education for the maximum realisation of their human resource potential. Given that the disorder is complex and in a way incurable, it is understandable that the educational needs of persons with autism remain largely unattended.

In case of other disabilities, often a universal strategy works fine for many students. For example, if there are a few students who have locomotor impairment and need to use the wheelchair, then a ramp in the school provides accessibility to classrooms. If there are some visually impaired students, reference material in Braille along with appropriate training would go a long way in inclusion. These support systems would benefit a number of students with the same disability. The 10 (ten) examples that were cited earlier elucidate that the barriers to quality education are varied among students with ASD. So, the issue becomes complex because the teachers must first understand and acknowledge the 'culture of autism' first and then devise strategies to overcome the barrier.

For the students in the examples, their support systems could be Visual schedules, Structured classrooms, individual work stations, Social stories, IEPs, Picture Exchange

Communication System, providing ‘shadows’ and ‘buddies’. But most of the support system(s) must be evaluated for their success and improved/replaced on a regular basis. The type of support for students will change over time and situation, in addition to being individualised. The fact that ASD is an invisible disability further makes inclusion quite difficult. The teachers have to have a clear idea of challenging behaviours due to ASD and other behaviour due to some other cause.

The teachers are the ones entrusted with the task of making situation work in complex situations and the success of inclusion is dependent on the class teacher accepting diversity, different learning styles and maintaining a flexible system. In the evaluation of UNESCO funded project ‘Special needs in the classroom’ the researchers concluded that *“relatively small changes in schooling, supported by better teacher preparation, can facilitate the education of many children with disabilities and make better arrangements for many others who experience difficulties in learning.”*¹⁸

Although knowing the general characteristics of ASD is helpful, teaching strategies for students with ASD still need to be individualised. It is imperative for teachers to appreciate the expectations of their students. Children with ASD often have visual-spatial strengths. Knowing this, teachers can modify their instructional strategies.¹⁹ Attitudinal and social supports are needed by all students with ASD to remove the barriers for quality education.

¹⁸ Ainscow M., Jangira N. K., & Ahuja A., *Education: Responding to Special Needs Through Teacher Development*, in *DISABLED CHILDREN AND DEVELOPING COUNTRIES* 131-146 (P. Zinkin & H. M. Conachie eds., 1995).

¹⁹ GRANDIN TEMPLE, *THINKING IN PICTURES, EXPANDED EDITION: MY LIFE WITH AUTISM* (2006).

6. Conclusion

Many students with ASD disabilities are now inducted in general education classes and are spending the majority of their school day in schools promoting the cause of inclusive education. It is widely recognised that students with ASD require attitudinal and social support to be truly integrated into a general education classroom. Parents are an untapped resource when it comes to their children's educational, social, mental and intellectual development. Past research shows that parental involvement is linked to greater developmental outcomes in children who are diagnosed with ASD. As there is diversity among students with ASD, there is no 'one-size-fits-all' strategy. Different students with ASD will require different support in the classrooms. Teachers must be aware of this fact.

It is important to remember that it is the behavior which causes trouble, and certainly not the student. It is important to make this distinction even though in some cases a student may seem to continually try the teacher's patience. Since ASD is a disability, rather a medical condition that varies both in degree and in form from student to student, a comprehensive program that best meets the needs of such students with autism should be put in place.

Acknowledgement: Thanks to all the children with ASD who come to Autism Society West Bengal (ASWB) for intervention. They have shown us how ASD manifests itself in a myriad of ways in different individuals. The first author is indebted to her son, Dipyaman Dey a ten-year-old boy with ASD for introducing her to his fascinating yet enigmatic world of autism.

DISABILITY AND EDUCATION: A NEW HORIZON TOWARDS JUSTICE

Sanketh Hareesh Kumar* & Varsha Raghunandan**

ABSTRACT

Disability is an impairment which can be physical, mental, cognitive, sensory, intellectual or developmental. According to the census report of 2011, 2.21% of the population of India are disabled with 2% of those between the age of 20 and 29 are disabled, which goes on to say that there must be a considerable number of youth that are disabled. They may have one or more impairments, but in most cases these individuals still have the capability to develop a skill. Barring a few cases (where the disability is so grave that the individual cannot learn or develop any skill at all), the disabled have the capacity of supporting themselves and contributing to the economy. It is important to note that governmental measures and policies play a major role in terms of facilitating proper infrastructure and trained professionals in order to equip the differently abled to sustain themselves and contribute to the economy. In light of this, the authors of this paper would like to analyse the various policy measures such as the constitutional safeguards, the National Policy on Education, 1986, the Government's scheme of Integrated Education of Disabled Children, 1974, Rights of Persons with Disabilities Act, 2016, Rehabilitation Council of India Act, 1992 among others, that have been adopted to facilitate directly or indirectly, the education of the disabled. The authors would also like to highlight the extent to which these measures have been successful in implementing inclusive education with regard to the disabled. This paper includes an analysis of the feasibility of adopting the 'capability approach' of Amartya Sen and to what extent its incorporation may prove beneficial in this sphere. Thus, this paper's objective is to highlight the relevance of law and policy in education of the disabled.

* B.A LLB (2nd Year), Christ University, Bengaluru. Email id- sanketh.hareesh@law.christuniversity.in

** B.A LLB (2nd Year), Christ University, Bengaluru. Email id- varsha.raghunandan@law.christuniversity.in

1. INTRODUCTION

The term disability can be an extremely deceptive word. When one comes across this word, more often than not, the person associates it with an inability of some kind. The problem with this interpretation is that we fail to understand that disability of any kind may not necessarily mean that someone has no capability to do anything at all. While disability is most definitely a hindrance for an individual to convert his/her resources to something valuable for his or her well-being, it does not mean that the person is incapable of achieving such well-being for himself or herself. Justice, well-being and equality are terms often understood as ideals the society needs to achieve so that progress and development take place. Thus, we must focus on achieving the ideals of justice, equality and well-being by providing opportunities and looking beyond the generalisation of disability as an inability.

One of the best means to ensure that a person can support his or her well-being is through education. Helping people to recognise their skills and allowing them to build on them are the most effective means of ensuring well-being and justice. The state is the only body which can authoritatively and effectively adopt means to achieve these ideals and what better means than policies and law? Also, the state investing in resources for the achievement of these social ideals has a positive impact on the economy. The people, who we term as disabled, will no longer be so because they will develop those requisite skills that will not only support their well-being but also contribute to the economic development of the country. Through the journey of this paper we will see the various measures that have been taken to ensure the inclusion of the disabled in the education system and what are the positive impacts that they have created.

2. LAWS, POLICIES AND COVENTIONS DEALING WITH DISABILITY AND EDUCATION¹

The famous jurist Roscoe Pound propagated the theory that law is a tool which can be used to engineer the society. To engineer the society so as to achieve the ideals of justice, equality and well-being, we have constitutional and other legal frameworks. Let us take a look at the various legal and policy measures adopted in the sphere of disability and education.

A. INTERNATIONAL PROVISIONS

- THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES:

The Convention in its Article 1 states the purpose of such a convention:

“The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

Through this statement of purpose we come to understand that social, economic and political inclusion of whom we term ‘disabled’ becomes extremely important to achieve their ‘*equal enjoyment of all human rights and fundamental freedoms*’. The best way to ensure this is to provide them with education in an inclusive system and to allow them to develop their skill sets for their social and economic well-being. Education, thus, becomes a means for us to support them to sustain themselves. Article 24 of this Convention specifically deals with the education of the disabled. This Article speaks about an inclusive education system and the provision of necessary infrastructure and trained teachers to facilitate such an inclusive education system to function. The Article also asks State parties to provide for tertiary education, vocational training and adult education which will further ensure social and economic inclusion.

¹ *Education of Children with Disabilities in India: Concern and Policy Perspective*, Ajit Mondal and Jayanta Mete

One of the most important developments with regard to the legal framework of providing for the betterment of the disabled has been the adoption of this Convention. This Convention passed by the United Nations General Assembly on 13th December, 2006, has been ratified by most countries, including India.

- **PROJECT FOR INTEGRATED EDUCATION FOR THE DISABLED**

A joint venture of the Ministry of Human Resource Development and United Nations Children's Fund (UNICEF), it was launched in 1987 to execute the provisions for disabled children in National Policy for Education, it read "*wherever feasible, the education of children with motor handicaps and other mild handicaps will be in common with that of others.*"

The Integrated Education for Disabled Children was revised in the year 1992. It includes a number of facilities and allowances which include:

- a. Books and stationery allowance of Rs. 400 per annum.
- b. Uniform allowance of Rs.50 per annum
- c. Transport allowance of Rs. 50 per month (however, if the disabled child resides in the same hostel facility or premises then transportation allowance is not applicable)
- d. Actual cost of equipment subject to the maximum of Rs. 2000 for a period of five years

This was replaced by the Scheme of Inclusive Education for Disabled at Secondary Stage (IEDSS) in the year 2009-10. This was later subsumed under the Rashtriya Madhyamik Shiksha Abhiyan in the year 2013. The RMSA includes provision of educational and medical assessment as well as appointment of special education teachers.

B. NATIONAL PROVISIONS

- **THE CONSTITUTION OF INDIA:**

The Constitution in its Preamble states that it would secure to all its citizens justice-social, economic and political and equality of opportunity and status. These are

carefully crafted words and capture the true essence of what the Constitution wants to achieve. We realise that ensuring that the disabled get access to equal opportunity and justice is essential to achieve these ideals. Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. Article 15 talks about prohibition of discrimination. Article 19 secures the Fundamental Right to freedom and Article 21 secures to the citizens of India the Right to Life. Through the 86th Constitutional amendment Article 21A was added, which secures the Right to Education, which is free and compulsory education for all children within the age of 6-14 years. Thus, it is evident that the Constitution of India echoes the voice of equality and justice. Having provided such safeguards in the grundnorm of the country, we still see that most of the disabled are either not provided the education they are capable of achieving or the institutions they are admitted to, are not disabled friendly.

- **THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016:**

A recent legislation in the country, the act covered various disabilities, namely, blindness, low vision, hearing impairment, loco motor impairment, mental illness, mental retardation and leprosy cured and provides for the rights and entitlements of the disabled along with provisions relating to education, skill development and employment and also provisions for the security, health, rehabilitation and recreation of persons with disability. With regard to the education of children with disabilities, as per Section 16 of the Act, contained under Chapter III, educational institutions recognised or funded by the Government are required to provide inclusive education and for the same shall:

- a. admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;*
- b. Make building, campus and various facilities accessible;*
- c. Provide reasonable accommodation according to the individual's requirements;*

- d. *Provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;*
- e. *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;*
- f. *Detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;*
- g. *Monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;*
- h. *Provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.*

The Act in the similar manner has provisions regarding the training and opportunity regarding the persons with disabilities for their skill development and employment and also for their security and health among others.

- THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

Through the 86th Amendment of Constitution, the government after continued demand for making education a fundamental right, introduced Article 21A, making the Right to Education of every child between the age of 6 and 14, a fundamental right. There was also an addition to the fundamental duties through Article 51A (k), “*who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.*” The Right to Education Act tries to safeguard the rights of the children belonging to disadvantaged and weaker groups and protect them from any discrimination. Through an amendment to the Right to Education Act in 2010, children with disabilities have been included in the definition of child belonging to disadvantaged group. Section 2(d) of Right to Education Act, “ ‘*child belonging to disadvantaged group*’ means 3[*a child with disability or*] a...”, read as above after the 2010 amendment thereby essentially

safeguarding and ensuring education of those children suffering from any form of disability.

- NATIONAL TRUST ACT, 1999

With the long title of the aforementioned act being “*NATIONAL TRUST FOR THE WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999*”, the act does not directly deal with the education of those with special needs, but has areas dealing with promotion programmes, which encourage the inclusion and independence by creating an environment without barriers, developing the functional skills of the disabled and promoting self-help groups.

- REHABILITATION COUNCIL OF INDIA ACT, 1992:

The enactment of Rehabilitation Council of India Act strengthened the Plan of Action. This Act showed that the mechanism to standardise and monitor the training of special educators and other rehabilitation professionals in the country was absent. Therefore, in 1992, The Parliament of India enacted the Rehabilitation Council of India Act (amended in 2000²) so as to establish the required mechanism for monitoring and standardising courses for the training of professionals required in the field of special education of persons with disability.

- NATIONAL POLICY ON EDUCATION:

This policy was brought about in the year 1986. Part IV of the policy deals with education and equality and section 4.9 of this policy addresses the education of the differently abled. This section essentially tries to integrate the physically and mentally handicapped with the mainstream society and to face life with courage and confidence. The section has included the following measures:

² The amendment included replacement of the word ‘handicapped’ with ‘person with disability’. Also Rehabilitation Professionals was amended to Rehabilitation professionals/ personnel to increase the scope of applicability. Further, a sub clause to clause (m) of sub section (1) of section 2 of the Act was added which the definition of rehabilitation.

- a. *“Wherever it is feasible, the education of children with motor handicaps and other mild handicaps will be common with that of others;*
- b. *Special schools with hostels will be provided, as far as possible at district headquarters, for the severely handicapped children;*
- c. *Adequate arrangements will be made to give vocational training to the disabled;*
- d. *Teachers’ training programmes will be reoriented, in particular for teachers of primary classes, to deal with the special difficulties of the handicapped children and;*
- e. *Voluntary effort for the education of the disabled will be encouraged in every possible manner”*

This was a huge leap towards the betterment of the lives of those disabled and wherever possible allowed them to lead a normal life without looking at their disability as their inability.

- **INTEGRATED EDUCATION OF DISABLED CHILDREN:**

The scheme of Integrated Education of Disabled Children sponsored by the central government provides education opportunities for disabled children in regular schools, in order to retain them within the school system while also incubating into the school system those children already placed in special schools after they acquire a basic level of communication and daily living skills. The scheme was conceptualised and launched by the Union Ministry of Welfare in 1974 but was transferred to the Department of Education of the Ministry of Human Resource Development in 1982.

- **PLAN OF ACTION:**

Being the successor to the National Policy on Education, 1986, the Plan of Action suggested that those children with disability who can be educated in general schools should be educated only in general schools. Even those initially learning in the special schools should be transferred to general schools once they acquire basic communication and academic skills.

- DISTRICT PRIMARY EDUCATION PROGRAMME

The concept of Integrated Education for Disabled (IED) was adopted under this programme, as a result of its success in the Project for Integrated Education for Disabled, launched in the year 1994 by the Central Government for the betterment of elementary education. The programme is functioning in 242 districts of the country with approximately over six lakh children³ with special needs enrolled in regular schools with sufficient support services.

- SARVA SHIKSHA ABHIYAN

In operation since the year 2000-01, the Sarva Shiksha Abhiyan works in association with the State Governments to provide elementary education universally. This scheme has a '0' rejection policy and combines the best of various existing schemes and programmes. Regarding the education of children with disability, it covers numerous components. Some of them are (i) Early detection and identification; (ii) Functional and formal assessment; (iii) Education placement; (iv) Aids and appliances; (v) Support services; (vi) Teacher training; (vii) Resource support; (viii) Individual Education Plan; (ix) Girls with disability, etc.

- THE KOTHARI COMMISSION:

The Kothari Commission also known as the Indian Education Commission was set up by the Government of India to receive reports and recommendations with regard to the education sector in India. It was operational between the year 1964 and 1966 and stressed on a common school system open to all students. This acted as the precursor to the National Education Policy in 1986 which suggested the inclusion of physically and mentally handicapped children to study in regular schools.

³ *Education of Children with Disabilities in India: Concern and Policy Perspective*, Ajit Mondal and Jayanta Mete

3. DISABILITY: VARIOUS DEFINITIONS AND DECEPTIVE INTERPRETATIONS

Broadly speaking, disability has been defined as an impairment which could be cognitive, locomotive, sensory, intellectual or developmental. This definition of the word disability has a negative social connotation to it and has caused the society to not recognise the ability of such individuals owing to their impairment. Arguably, there are two models, which view disability in different ways. One is the medical model (which is the model widely accepted and adhered to) and the second is the social model. The medical model strongly associates the body with normality and disability. The social model, on the other hand, refuses to associate body and normality to conclude who is disabled and who is not.⁴ Medicalisation could be the process of applying medical knowledge to individual and social problems and establishing medicine as an instrument of their management and control. In the context of disability, the medical model has played a fundamental role in the categorisation and labelling of bodies as normal or pathological; and devising medically oriented remedies to control the manifestations of impairment and bring the disabled in conformity with an assumed norm of normality, which is more often than not the condition or perception of the majority.⁵ This often leads to the disabled being disentitled to various facilities even though they may be deserving of them. To understand this, let us take a look at the case: *Naveen Kumar v. University of Delhi*⁶ (2000). Naveen Kumar was physically challenged and used a wheelchair. He was denied admission to the Bachelor of Computer science in the Delhi University and the reason given was his impairment. Kumar had secured a rank of 5016 out of 25000 in the entrance test and, hence, was eligible for admission. The respondents argued that Kumar was so ‘badly handicapped’ that he would not be able to cope with the requirements of the course and, therefore, blocking of this seat for him would come to no use and would instead deprive someone else who is ‘deserving’. The court instead of commenting on the intellectual ability of the candidate, directed the University to conduct a medical

⁴ *From Impairment and Beyond: Critical Explorations in Disability Studies*, C Raghava Reddy, Indian Sociological Society

⁵ *Disability Law in India: Paradigm Shift or Evolving Discourse?* Renu Addlakha and Saptarshi Mandal, *Economic and Political Weekly*, Volume 44 Pages 62 - 68, October 2009

⁶ Writ Petition (civil) 4657/2000 (unreported)

examination and along with a lab assistant to see if the candidate's impairment would actually prevent him from pursuing the course successfully. The court dismissed the case by directing the University to come to a conclusion on the basis of a medical examination.⁷

This case is an example of how despite the fact that we have so many policies and provisions, we still look at disability as an inability. The Judge viewed the disability only from the medical perspective and failed to consider the fact that Kumar was probably more capable and a more deserving candidate for the course having secured such a good rank, which should have ideally been the only criteria for him to be qualified or disqualified from securing a seat in the University. The learned Judge also did not consider section 39 of the Persons with Disabilities Act, 1995 where reservation should be given to the disabled but left it to the University's discretion to decide on the basis of medical examination. This judgement has been criticised especially in the case of Kumari Rekha Tyagi v. Vice Chancellor of University of Delhi⁸. It is said that the interpretation of the word 'seat' in section 39 of the Persons with Disabilities Act to mean seat in educational institutions for students is not correct and, thus, the three percent reservation which it mentions is only applicable to employment. This brings us to question the fact whether all these policies and laws are actually benefitting the disabled and their inclusion in educational institutions. Time and again we come across cases where the disabled have to fight for their inclusion in the educational institutions, not because they are incapable or undeserving of the seats in various courses but because of the view that their disability is their inability.

Thus, the narrow sense in which we view disability and the inapplicability of existing provisions in various situations lead us to question what is awry and what could be done to overcome this. The authors are of the view that the perspective in which we understand disability needs to change. This change in perspective of the definition of disability and its

⁷*Disability Law in India: Paradigm Shift or Evolving Discourse?*Renu Addlakha and Saptarshi Mandal, Economic and Political Weekly, Volume 44 Pages 62 - 68, October 2009.

⁸ 93 (2001) DLT 813

reflection in the policies we frame and adopt can do wonders to achieve the inclusion of the disabled in the educational institutions as well as in the mainstream society. The authors are of the view that the ‘capability approach’ would be an ideal solution for this change in perspective.

4. CAPABILITY APPROACH

People with physical and mental disability are not only among the most deprived human beings in the world, they are also, frequently enough, the most neglected. In the developing world, the disabled are quite often among the poorest of the poor in terms of income and their need for income is more than the able-bodied people since they require money for their assistance and to attempt leading a normal life⁹. The reason behind this is the viewpoint we hold towards disability. Instead of viewing it as incapacity, it is high time we accept that they are just different and welcome the difference. Accepting heterogeneity becomes the key to providing justice in terms of the capability approach. The capability approach deals with the idea of comparative justice. This approach deals with providing justice by understanding the capabilities and functionings of the individuals.

Amartya Sen distinguishes functionings and capabilities. Functionings are defined as ‘beings and doings constitutive of a person’s being’, such as being adequately nourished, being in good health, being happy and having self-respect, or taking part in the life of a community. Since functionings are constitutive of a person’s being, according to Sen, ‘an evaluation of a person’s well-being has to take the form of an assessment of these constitutive elements’.¹⁰

⁹ The Idea of Justice, Amartya Sen, 2009 , pg 258

¹⁰ Justice and Equality in Education: A capability perspective on disability and special educational needs, Lorealla Terzi, Pg no. 85-107

Capabilities refer to the capability to function and include a person's freedoms to achieve valuable functionings. This approach leads to the understanding that disability or impairment counts as an individual condition which is contributory to the persons capability of achieving valuable functionings. The first thing we come to understand through these two concepts is that the view of disability as an individual condition which affects their interaction with their physical, social, economic and cultural environment. This approach thus leads us to understand disability as a part of human diversity which could be like other metrics such as age or gender rather than viewing it as an abnormality or inability. This understanding is probably the best way to accept heterogeneity and overcome notions centred around normality, abnormality and diversity.¹¹

An understanding of the example given by author Lorella Terzi in her book¹², proves advantageous in understanding this concept. She gives the example of moving from one place to another as a functioning which enables further complex functionings. She explains that a disabled person moves from one space to another with the help of the wheelchair. She argues that the person to achieve his/her most valuable ends requires to perform the basic functioning of moving from one space to another. This is facilitated by the wheelchair in this case. When this example is viewed from the perspective of the capability approach, the disadvantage is not the impairment that the person has but the facility of not having the wheelchair and other infrastructure around which would hinder his ability to perform and achieve his functionings.

The capability approach also brings forth the idea of democratic participation to determine relevant capabilities. When policies and laws are framed, there is a need to consider the relative capabilities of individuals with some impairment. This means that social schemes and policies could turn out to be more effective and relevant if they are framed with

¹¹ Justice and Equality in Education: A capability perspective on disability and special educational needs, Lorealla Terzi, Pg no. 85-107

¹² Justice and Equality in Education: A capability perspective on disability and special educational needs, Lorealla Terzi, Pg no. 85-107

consultation of people who have some impairment. This would ensure that we actually consider what needs of theirs we need to cater to.

5. APPLICABILITY OF THIS APPROACH TO THE SPHERE OF EDUCATION AND DISABILITY

Viewing the above concept in light of disability and education is probably what could make our policies more effective and relevant. The idea of justice to each differs. We cannot have one perfect model of what justice is because each individual's ability differs based on various criteria. Thus, the authors are of the view that ensuring that the relevant resources need to be provided through the policy measures rather than trying to provide resources on an equal line with other humans with other capabilities and functionings. Thus, when we talk of inclusive education in policies we must not only focus on including them or admitting them into the general schools and institutions but also ensure that mechanisms and relevant infrastructure are present in these institutions to cater to the needs of the disabled. Admitting them into institutions on the basis of their intellectual ability and skills is important but providing mechanisms wherein they can effectively convert these skills or capabilities to achieve valuable ends makes the process of achieving justice more effective.

The other suggestion the authors would like to provide is that there should be consultation with the disabled themselves while framing policies for them. It is logistically a Herculean task, however, devising a means to include the disabled while framing policies and laws for them would definitely prove more effective. After all, these policies are for these very people and it is only reasonable to include them and their ideas to cater to their needs.

6. CONCLUDING COMMENTS

Policies and laws cannot be framed in vacuum. There are various factors we need to consider before we frame a policy. The most important of them all is to consider why we are

framing a law or policy and who constitute the interest group. As stated in the beginning of this paper, law and policy are one of the most powerful means to provide justice. Thus, there is a huge pressure on these documents to make sure that they prove beneficial and not remain mere papers with black text. Policies concerning the education of the disabled play a key role in ensuring that we move towards a new horizon of justice for the disabled. Education is the fundamental key towards a person's well-being- socially, economically and politically. A democracy like ours simply cannot ignore even a small fraction of the demography just because of their impairment or any other factor. It is high time we understand the extremely important role laws and policies play in this sphere and frame them to effectively benefit the people.



**CENTRE FOR REGULATORY STUDIES, GOVERNANCE AND PUBLIC POLICY
THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES,
KOLKATA**

E : crsgpp@nujs.edu

B : <https://nujs.edu/nujs-crsgpp.html>

P: +91(033) 2335 7379 (Ext. 7210)