

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 Delhi*⁸. 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.