



The role of educational institution: a study on the legal framework in India for providing barrier free environmental educational opportunities for the aspirant disabled student

BY

N.VISAKAMURTHY

Introduction

Albert Einstein stated, “Education is not the learning of facts, but the training of the mind to think.”

This statement by the renowned scientist – a dyslexic himself is more appropriate for our topic, as the renowned scientist if alive today would have fallen under the category of the disabled as defined by the UN Convention for the Rights for People with Disabilities and the Rights of Persons with Disability Act ,2016.

The same scientist also said, “Education is what remains after one has forgotten what one has learned in school.”

The importance of education for all was stressed by the Great Indian Visionaries such as Swami Vivekananda and “Educator Extraordinaire”, Ishwar Chandra Vidyasagar, when they stressed on the need for “Comprehensive Knowledge”. The words of Swami Vivekananda and Vidyasagar were echoed by our Hon’ble Prime Minister Narendra Modi when he said that the New Education Policy 2020 was inspired by Swami Vivekananda.

The New Education Policy 2020 has placed importance to the disabled when the Social Justice and Empowerment Minister Thawarchand Gehlot has said that barrier-free access to education will be enabled for all children with disabilities in the New Education Policy. He said that knowledge on how to teach children with specific disabilities will be an integral part of all teacher education programmes under the New Education Policy. The Union Cabinet approved the National Education Policy (NEP) 2020. The education policy, framed in 1986, was last revised in 1992. In a series of tweets, Gehlot highlighted some of the points in the NEP with respect to children with disabilities and those from socio-



economic disadvantaged backgrounds. “Knowledge of how to teach children with specific disabilities will be an integral part of all teacher education programmes,” he said in a tweet. “Barrier-free access for all children with disabilities will be enabled as per the RPWD Act,” he said in another tweet.

There is no iota of doubt in any quarter of this World that education is vital for an individual’s and nation’s growth.

India adopted a new Education Policy in the year 2020. Though it is reasonable to criticize the Government wherefore they had to embrace this policy during a raging pandemic when discussions with various participants are difficult, we need to see how it will impact education of disabled people. We must remember that India adopted its first Education Policy in 1968. The second one was adopted in 1986. None of this mentioned disability at all. So, when in 2020, India adopted a new education policy and recognized and included disability, many from the sector became elated. The fact that Rights of Persons with Disabilities Act was mentioned in this policy was appreciated by many disability activists and scholars.

However, the thrust of National Education Policy adopted in 2020 is privatization. Disabled people do not belong to a separate society but are part of the larger population within this country. So, every law enacted, or policy implemented affects them also. We cannot read disability within NEP 2020 in a vacuum – we need to understand the existing socio-political background and read between the lines to understand the nuances of same.

If we look at history, we know that formal education of disabled people started in India in the year 1869 by Church Missionary Society. To be honest, education of the disabled people in India is still dependent on charity groups or NGOs. Government run educational institutions are few and far between. As a result, majority of the disabled children, who are from rural areas cannot access education at all. It may be noted that most of the special schools run by NGOs are concentrated in urban areas.

Even though the terms like equality, equity and inclusion are used many times in the policy document, there are many loopholes which need to be addressed from a disability activist perspective. One amongst them is the recommendation of grouping schools together to form a school complex. NEP says school complex will consist of one secondary school and other schools, aanganwadis in a 5-10 km radius. We have no idea where special schools will fall in this space.



How will privatization of educational institutions affect disabled community? RPD Act specifies reservation of seats in Government run institutes of higher learning only. Thus, private organizations do not have any obligation to these students. We can never forget that disability and poverty issue go hand in hand. So, making education an expensive commodity will affect disabled community as also other marginalized the most.

Rajneesh Kumar Pandey v Union of India (2016) is an ongoing public interest litigation (PIL) case before the Supreme Court. This PIL concerns the shortage of special education teachers in Uttar Pradesh squarely concerns with the objective of this research paper. The Hon'ble Supreme Court of India has given an interim order on 4th February, 2021, wherein the Apex Court whilst being ceased of the matter stated as follows:

“Amongst other issues, the central point urged by the petitioners is about the obligation of the schools, including of the concerned State Government to ensure appointment of duly qualified special teachers to impart quality training to the child with disability in the ratio enunciated in the central enactments as also the schemes propounded by the Central Government from time to time and service conditions of such teachers. The incidental issue that needs to be examined is whether the central scheme(s) relied upon by the State can be taken forward if the same is not in consonance with the subsequent enactments in the form of the Right of Children to Free and Compulsory Education Act, 2009, the Rights of Persons with Disability Act, 2016 and the Rehabilitation Council of India Act, 1992. Needless to observe that the interpretation of the provisions of the stated acts and of the central scheme(s) may have bearing on dispensation to be provided by all the States and the Union Territories.”

The implementation of these obligations by both the Central and State Government's in India even to this day as can be seen is to be streamlined and brought out in an orderly and workable method.

Education and disability

Education is recognized as a basic human right, the need and significance of which has been underscored on the common stage of the United Nations, through the medium of various Covenants and Treaties. Education was commonly referred to as the process of learning and acquiring knowledge at school, in a system of prescribed education. However, this usual definition just touches upon the top layer of the need of education and does not dwell up on the all-round personality development of an individual.



Although countries all over the world have made laws relating to imparting of education, these laws have not been created in a vacuum. There exist various international commitments by way of convention, treaties etc., which have compelled governments all over the world to enact provisions relating to education and its establishment as a human right. Article 26 of the Universal Declaration of Human Rights, 1948 clearly proclaims the right to education. Protocol 1 of the European Convention on Human Rights, 1952, states that no person shall be denied the right to education. According to UNESCO Convention against Discrimination in Education, 1960, the States' parties to this convention undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and of treatment and in particular to make primary education free and compulsory.

However, till the mid-1960's, the UN recognized the importance of education but did not make any strong policy recommendation in terms of making it a fundamental right. It was only after the International Covenant on Economic, Social and Cultural Rights, 1966 that the United Nations started viewing education as a right. Protocol of San Salvador to the American Convention on Human Rights, 1988, states that the States' parties to this Protocol recognize that in order to achieve the full exercise of the right to education, primary education should be compulsory and accessible to all without cost. In 1989, Convention on the Rights of the Child, the rights of the children were standardized, in a single legal instrument, approved by the international community.

In the context of education for the disabled the international community has woken up to their plight albeit late. While earlier treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, established universal rights that cover all people, including persons with disabilities, the CRPD is the first binding UN human rights treaty to address the equal rights of individuals specifically and comprehensively with respect to disability status. The Convention on the Rights of the Child (CRC) is the only UN treaty preceding the CRPD that explicitly referenced disability.⁸ Article 2 of the CRC calls on states to prohibit discrimination on the grounds of disability, and Article 23 requires states to address the specific needs of children with disabilities, including the provision of special care, access to health care services, and education. However, CRC Article 23 also includes qualifying language— “subject to available resources,” whenever possible”—that limits the strength of these guarantees. Still, the CRC as a precursor to the CRPD signals the importance of addressing disability explicitly, rather than presuming that broad anti-discrimination provisions will be sufficient, for furthering equity.



Eventually, while the explicit recognition of the rights of persons with disabilities in international conventions is a crucial first step, the impact of these agreements is contingent on individual countries' actions. Critically, to realize the objectives of the CRPD, States parties must embed its principles in national law. Yet, to our knowledge, there are currently no studies that assess on a global scale to what extent countries address the rights of persons with disabilities in their laws or constitutions.

Constitution of India and disability.

The Constitution of India ensures equality, freedom, justice, and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. In the recent years, there have been vast and positive changes in the perception of the society towards persons with disabilities. It has been realized that most persons with disabilities can lead a better quality of life if they have equal opportunities and effective access to rehabilitation measures.

Education is also being seen as an instrument of social change leading to empowerment which is very important for a country like India, which nearly in its 75th years of independence has not been able to eradicate illiteracy despite the constitutional mandate given by way of Article 45 of the Constitution of India.

In India the development of right to education has undergone an eventful journey, when the Constitution was enacted education was kept in the Part IV of the Constitution, as Directive Principles of State Policy, wherein Article 41 provides rights to work, to education, and to public assistance in certain cases. Article 45 makes provision for free and compulsory education. Article 46 provides the promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections. Education is a two-way concept, it is the state's obligation to provide education by way of the Directive Principles of State Policy, and it is also guaranteed as a fundamental right in Part IV of the Indian Constitution.

Right to education, was for the first time recognized as a fundamental right in the case of Anand Vardhan Chandel v University of Delhi , the Delhi High Court observed that the law has now settled that the expression 'life and personal liberty' in Article 21 of the Constitution includes a variety of rights, though they are not enumerated in Part III of the Constitution, provided that they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individual. The right to education is, therefore, also included in Article 21 of the



Constitution.

In the case of Bapuji Education Association v State the Court, expanded the contours of personal liberty guaranteed by Article 21 of the Constitution to the extent it includes in its ambit the right of the minorities to education. But the Supreme Court took notice of this controversy in the case of Mohini Jain v State of Karnataka while deciding issues of capitation fee in education institutions in Karnataka, the court held that the right to life under Article 21 and the dignity of an individual couldn't be assured unless accompanied by the right to education. The very next year in 1993 the Supreme Court delivered the judgment in the case of Unnikrishnan J.P. v State of Andhra Pradesh, which overruled the decision in Mohini Jain's case, wherein, it was held that the right to education was a fundamental right available to all the citizens of India, but the said right is available only up to the age of 18 years.

The 86th Amendment Act was a result of the recommendations of the two committees namely the Education Commission and Saikia Committee. The Amendment Act provided for the following three insertions/changes in the Constitution. The insertion of Article 21-A, which provides that the State shall provide free and compulsory education to all children between the ages of 6-14 years in such a manner as the State may by law determine. An amendment to Article 45, that is the provision for early childhood care and education to children below the age of 6 years; the State shall endeavor to provide early childhood care and education for all children until they complete the age of 6 years. In Article 51-A, after clause (j) the following clause (k) has been inserted: "a parent or guardian shall provide opportunities for education to his children or ward between the ages of 6-14 years.

National Policy for education disabled children

The policies of the Government of India towards the welfare of persons with disabilities have been reflected in the enactments, schemes and through Institutions established for development of manpower for rehabilitation of persons with disabilities. However, the need for a comprehensive document on National Policy for Persons with Disabilities was being felt for quite some time and especially in the field of education facilities and infrastructure for the differently abled. The Central Government on its own initiative has formulated efficient schemes for the education of the disabled

Education is the most effective vehicle of social and economic empowerment. In keeping with the spirit of the Article 21A of the Constitution guaranteeing education as a fundamental right and Section 26 of the Persons with Disabilities Act, 1995, free and compulsory education has to be provided to all children



with disabilities up to the minimum age of 18 years. According to the Census, 2001, fifty-one percent persons with disabilities are illiterate. This is a very large percentage. There is a need for mainstreaming of the persons with disabilities in the general education system through Inclusive education.

Sarva Shiksha Abhiyan (SSA) launched by the Government has the goal of eight years of elementary schooling for all children including children with disabilities in the age group of 6-14 years by 2010. Children with disabilities in the age group of 15-18 years are provided free education under Integrated Education for Disabled Children (IEDC) Scheme.

Under SSA, a continuum of educational options, learning aids and tools, mobility assistance, support services etc. are being made available to students with disabilities. This includes education through an open learning system and open schools, alternative schooling, distance education, special schools, wherever necessary home-based education, itinerant teacher model, remedial teaching, part time classes, Community Based Rehabilitation (CBR) and vocational education.

IEDC Scheme implemented through the State Governments, Autonomous Bodies and Voluntary Organizations provides hundred percent financial assistance for various facilities like special teachers, books and stationery, uniform, transport, readers allowance for the visually handicapped, hostel allowance, equipment cost, removal/ modification of architectural barriers, financial assistance for purchase/ production of instructional material, training of general teachers and equipment for resource rooms.

There will be concerted effort on the part of the Government to improve identification of children with disabilities through regular surveys, their enrollment in appropriate schools and their continuation till they successfully complete their education. The Government will endeavor to provide right kind of learning material and books to the children with disabilities, suitably trained and sensitized teachers and schools which are accessible and disabled friendly.

Government of India is providing scholarships to students with disabilities for pursuing studies at post school level. Government will continue to support the scholarships and expand its coverage.

Facilities for technical and vocational education designed to inculcate and bolster skill development suited to various types of productive activities by adaptation of the existing institutes or accelerated setting up of institutes in un-served / underserved areas will be encouraged. NGOs will also be



encouraged to provide vocational training.

Persons with disabilities will be provided access to the Universities, technical institutions, and other institutions of higher learning to pursue higher and professional courses.

Problems faced by disabled students in their education institutions.

The frequent problems felt by the differently abled students collected from news articles and case laws are stated below: 1. Access to quality education facilities and infrastructure, 2. Disparity in Student-Teacher ratio, 3. Visually challenged students have no Medical Aid Room, 4. Insufficient sole/single regular residential sanctioned School, 5. Lack of qualified and quality teachers in all subjects and also lack of computer Teachers, 5. Insufficient and inadequate transport such as Bus/Van for disabled students studying from Class I to Class XII, 6. Lack of disable friendly chairs and desks for students studying in the Class I to Class classroom X, 7. Lack of teachers trained in Braille., 8. No Hearing-Impaired Specialized Teacher, 9. Demand for a non-cumbersome syllabus, 10. Requirement for more class rooms and separate hostel rooms for boys and girls with required disabled friendly facilities for boys and girls, 11. Requirement for separate Hostel building for girls, 12. lack of geysers and other essential facilities, 13. Lack of maintenance of buildings and restrooms, 14. There was lack of doctors and nurses, psychiatrist, physiotherapists, 15. There was no scope to pursue higher education., 16. No Vocational Course available, 17. There was no Sports Teachers, 18. There were no disabled friendly school buildings. 19. There was total lack of sports and recreational facilities.

Educational institution should provide certain facilities as listed below.

The facilities listed below are not expressed in detail as these are the internationally best known and currently accepted facilities given to the disabled persons who seek educational avenues for their individual growth to benefit the society at large.

A. Infrastructure facility

- a. Free hostel facility
- b. Ground floor facility
- c. Separate restroom



d. Barrier free excess to canteen

e. Free transport facility

B. Library facility

a. Screen reading software and magnifier

b. Braille printer

c. Braille display keyboard

d. Jaws screen reader software

e. Kruzweil 3000

f. Cranktop table

g. Scanner

h. Natural speaking software

C. Exam related facility

a. Scribe facility

b. Extra time

c. Ground floor choice

d. Separate exam room

e. Exemption of payment of exam fee

D. General related facility

a. Scholarship meant for disabled students

b. Celebration of important days pertaining to disabled

c. Electronic talking board (for communication)



- d. Providing job relating training for disabled student
- e. Specialized trained teachers or facility
- f. Sports and training facility for disabled students
- g. Grievance redressal officer to solve discrimination related issues faced by disabled students

Suggestions

The issues and problems faced by the disabled students in accessing a barrier free environment in the educational institutions are aplenty. Change needs to start from the top down. A few initial remedies and suggestions are as follows.: -

1. The Central and State Government must make rules listing out the essential facilities required by differently abled students to be maintained by Universities, Board and affiliated institutions from the kindergarten level to the University level.
2. These Essential facilities must be in accordance with international conventions and national laws.
3. The appropriate Government should ensure that these essential facilities are provided before granting/renewing their annual recognition to the said institutions.
4. The Universities and affiliating boards should appoint wholly dedicated committees to oversee the welfare of the disabled students in all institutions coming under their purview.
5. This committee must ensure that all institutions comply with the barrier free environment for disabled students in accordance with international covenants and national laws and make modifications with respect to the local situation of the institutions.
6. Further, the committee should make it mandatory for the institutions to ensure compliance of these rules and laws meant for the disabled are enforced failing which the recognition for the institutions should be withdrawn.
7. The Universities, Boards and their affiliated institutions must ensure that while they are issuing their prospectus to the students every year must list out the facilities provided to the disabled



students. There must be photographic evidence of the availability of such facilities in their institutions.

8. The State Commissionerate of Differently Abled should ensure that institutions subordinate to it in the district have duly appointed Grievance Redressal Officers to investigate the grievances of the differently abled students and must ensure proper documentations of the grievances and upkeep of records showing the appropriate steps taken to redress the grievance.
9. There should be a State Government Ministerial level supervisory committee to ensure that all essential facilities are given in all the Universities, Boards and Institutions located in the state regardless of the nature of the ownership of the said institutions.

Conclusion

It goes without saying that the Indian Government has been at the forefront of bringing the disabled into the mainstream society. The Government of India has shown the temerity and the leadership in being one of the first states in signing the UN charter on rights of persons with disabilities. The consequences of bringing about change as observed by the Apex Court in the Rajneesh Kumar Pandey v Union of India (2016) case is the allocation and proper utilization of funds. There is no dearth to vision, leadership and legislation but there is a lack of urgency in bringing about these suggested changes in the bureaucratic and lower levels of Governance. There is an urgent need for reset in the administrative mindset. The International community has realized that the disabled have been relegated to the backstage of society and their roles were hitherto typecast as that of the cursed and condemned by the divine. The inspiring value building shown by the greatest of great visionaries such as Albert Einstein, Hellen Keller, Stephen Hawking, Actor Rowan Atkinson (Mr. Bean) , Indian dance maestro Sudha Chandran, Lyricist and musician – Ravindra Jain, and Mountaineer-Arunima Sinha has shown the world and India that the Governments of the world over to take the initiative and support the cause of the disabled in letter, spirit and funds.