

RIGHT TO EDUCATION FOR PERSONS WITH DISABILITY: A
CRITICAL ANALYSIS FROM THE HUMAN RIGHTS LAW
PERSPECTIVE

Dissertation submitted to National Law University and Judicial Academy,
Assam

In partial fulfillment for award of the degree of
MASTER OF LAWS/
ONE YEAR LL.M PROGRAMME

Submitted by:

Arpita Deb

UID NO.: SFO221006

Year & Semester: LL.M (2ND Semester)

Supervised by:

Dr. Ishrat Husain

Associate Professor of Law

National Law University and Judicial Academy, Assam



National Law University and Judicial Academy, Assam

July, 2022

CERTIFICATE

This is certified to be the bonafide work submitted by **ARPITA DEB**, bearing UID No: **SF0221006**, in partial fulfillment of LL.M 2ND Semester, 2021-22, for the award of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME under National Law University and Judicial Academy .

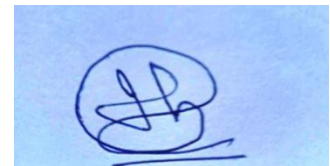
This report has been prepared under my supervision. She has taken proper care and shown utmost sincerity in completion of this report.

I certify that this project is as per the guidelines issued by **National Law University and Judicial Academy**.

I wish her success in her life.

Place: National Law University and Judicial Academy, Assam

Date: 30.06.2022



SIGNATURE OF GUIDE

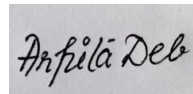
Dr Ishrat Husain

Associate Professor of Law

National Law University and Judicial Academy, Assam

DECLARATION

I, Arpita Deb, do hereby declare that the dissertation titled “ RIGHT TO EDUCATION FOR PERSONS WITH DISABILITY: A CRITICAL ANALYSIS FROM THE HUMAN RIGHTS LAW PERSPECTIVE”, submitted by me for the award of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted elsewhere for any purpose, academic or otherwise.



Arpita Deb

SF0221006

Date: 14.07. 2022

Place: National Law University and Judicial Academy, Assam

ACKNOWLEDGEMENT

I take this opportunity to express my sincere gratitude towards all those who played an important role in the successful completion of this dissertation by their constant support and encouragement.

Firstly, I would like to sincerely thank Prof (Dr.) V.K Ahuja, Vice Chancellor, National Law University and Judicial Academy, Assam for allowing me to carry out the research study in this institution.

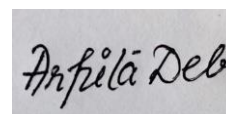
I am grateful to Dr. Indranoshee Das, ACS, Registrar, National Law University and Judicial Academy, Assam and Dr. Nandarani Choudhury, Assistant Registrar, National Law University and Judicial Academy, Assam for their untiring support.

I would like to extend my sincere gratitude towards my guide, Dr. Ishrat Husain for his all round guidance for completion of this dissertation.

Lastly, I'm thankful to all those who either directly or indirectly supported me and helped me in successful completion of the dissertation.

PLACE: National Law University and Judicial Academy, Assam

DATE: 14.07.2022



Arpita Deb

TABLE OF CONTENTS

Particulars	Page No.
Preface	VI
Table of Cases	VII
Table of Statutes	VIII
Table of Abbreviations	IX
Chapter 1- Introduction 1.1 Research Background 1.2 Statement of Problems 1.3 Literature Review 1.4 Aims of the Study 1.5 Objectives of the Study 1.6 Scope of the Study 1.7 Limitations of the Study 1.8 Research Questions 1.9 Research Methodology 1.10 Research Design	1 - 17
Chapter 2- International Legal Framework of the Right to Education for Persons with Disabilities 2.1 General Overview 2.2 History of the Right to Education 2.3 Global Policy Framework of Education for Children with Special Needs 2.4 International Legal Framework for Higher Education of Persons with Disabilities: An Overview	18 - 27
Chapter 3- Legal Framework of the Right to Education for Persons with Disabilities in India 3.1 History of Disability Rights Movement in India 3.2 Major Policies and Legislative Framework for RTE for Persons with Disabilities 3.3 Recent Developments towards RTE for Persons with Disabilities 3.3.1 Rights of Persons with Disabilities Act, 2016 3.3.2 National Education Policy, 2020 3.4 Persons with Disabilities in Higher Education: Legal Provisions 3.5 Status of Education and Current Educational Practices for Persons with Disabilities	28 - 49

Chapter 4- Judicial Response Towards Right to Education for Persons with Disabilities	50 - 54
Chapter 5- Challenges and Issues Related to RTE for Persons with Disabilities 5.1 Challenges and Issues faced by Children with Special Needs with regard to their Right to Education 5.2 Common Barriers to Right to Education for Persons with Disabilities	55 - 57
Chapter 6- Summary, Findings and Conclusion	58 - 61
Bibliography	X - XIII

PREFACE

Education is the main instrument in the possession of the human beings through which they can accomplish their individual, environmental and social aspects and achieve the ideals of peace, liberty, social justice and human development. Education is the first essential ingredient required for development of human beings. It sharpens a person's inner qualities, widens his intellectual horizon and makes him self-reliant and independent. The imperatives of social justice and equity mandate education for disadvantaged and marginalized sections of society such as the persons with disabilities including children with special needs. Education, being the means of human development is crucially important for all specially the Persons with disabilities.

According to the United Nations Convention on Rights of Persons with Disability, the Persons with Disabilities should be given an equal opportunity in education. Across the world, governments of various countries are viewing the rights of their citizens including those who are differently abled, in a manner consistent with international human rights laws. Initiatives are being taken to address disability issues from a human rights perspective.

The Indian Constitution provides certain rights and freedoms to all citizens of the country. The persons with disabilities are also part of our society and deserve humane treatment like other citizens. They have an equal right to take part in any social event and also right to full enjoyment of that programme irrespective of the race, caste, class or disability etc., that they are born with. In India, the Kothari Commission was the first to address issues of access to education and participation by all. A study was conducted to evaluate the education system and its accessibility for persons with disabilities including children. The results implied lack of inclusive education.

In the light of the above, the paper shall dwell upon the present day scenario of the fundamental right to education for persons with disabilities, also taking into account the challenges and issues in this regard.

TABLE OF CASES

1. *Anmol Bhandari v. Union of India*
2. *Aswathy v. Union of India and others*
3. *Cam v. Turkey*
4. *Cesar Alan Rodriguez*
5. *Irene Clemance Thottapilly v. State of Kerala*
6. *Kamal Gupta v. State of Uttarakhand and Others*
7. *Rukam Pal Singh and others v. State of Rajasthan*
8. *University of British Columbia v. Berg*

TABLE OF STATUTES

- 1948- Universal Declaration of Human Rights
- 1960- Convention Against Discrimination in Education
- 1966- International Covenant on Economic, Social and Cultural Rights
- 1975- Education for All Handicapped Children Act
- 1989- Convention on Rights of Child
- 1995- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act
- 2006- Convention on Rights of Persons with Disabilities
- 2016- Rights of Persons with Disabilities Act

TABLE OF ABBREVIATIONS USED (Sort by A to Z)

AIR	<i>All India Reporter</i>
Art	<i>Article</i>
CRPD	<i>Convention on the Rights of Persons with Disabilities</i>
CRC	<i>Convention on Rights of Child</i>
CWD	<i>Children with Disabilities</i>
CWSN	<i>Children with Special Needs</i>
DRM	<i>Disability Rights Movement</i>
EFA	<i>Education for All</i>
EHA	<i>Education for All Handicapped Children Act</i>
Eg	<i>Exempli gratia (For example)</i>
Govt	<i>Government</i>
GOI	<i>Government of India</i>
HEPSN	<i>Higher Education for Persons with Special Needs</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
i.e.	<i>Id est (In other words)</i>
PWD	<i>Person with Disabilities</i>
RTE	<i>Right to Education</i>
SDG	<i>Sustainable Development Goal</i>
SWD	<i>Student with Disabilities</i>
UDHR	<i>Universal Declaration of Human Rights</i>
UGC	<i>University Grants Commission</i>
UN	<i>United Nations</i>
UNGA	<i>United Nations General Assembly</i>
UNESCO	<i>United Nations Educational, Scientific and Cultural Organization</i>
UPIAS	<i>Union of Physically Impaired Against Segregation</i>
WHO	<i>World Health Organization</i>

CHAPTER 1

INTRODUCTION

1.1 Research Background:

“Education is the manifestation of perfection already in man.”

Swami Vivekananda¹

Education is a key element for healthy and all round socio- economic development of every human being. The Constitution of India provides certain rights and freedoms to every national of the country. The PwDs belong to our society as well and deserve humane treatment like other citizens. They have a right to participate in any social event and also have a right to completely enjoy that programme irrespective of the race, caste, class or disability etc., that they are born with. The United Nations initiated various agreements, world conferences, statements and treaties focusing on the disabled peoples’ rights. In the year 2006, the UNGA adopted the UNCRPD and its Optional Protocol.² It is the first international human rights treaty specifically drafted to protect the rights of the differently abled persons under International law. According to the UNCRPD, the PwDs should be given an equal opportunity in education. The governments of the various countries spread across the world are increasingly monitoring that the rights of their citizens are consistent with the IHRL. Approaches are being taken to address disability issues from the lens of human rights. As per the “World Report on Disability, 2011”, published by WHO, “about 15% of the world's population lives with some form of disability, among those 2-4% experience significant difficulties in functioning.”³

¹ Swami Vivekananda (1863-1902) was an Indian monk, philosopher and author.

² A total of 44 countries signed the Optional Protocol on the opening day for signatures.

The Optional Protocol authorizes the receipt and examination of individual complaints under the CRPD and inquiries by the CRPD Committee in cases of alleged grave and systematic violations of the Convention. General Assembly Resolution 61/106, Convention on the Rights of Persons with Disabilities United Nations A/RES/61/106 (January 24, 2007), available at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/500/79/PDF/N0650079.pdf?OpenElement>; (hereafter “CRPD”); see also Arlene S. Kanter, The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities, 34 Syr. J. of Int’l L& Comm. 287 (2007).

³ World Health Organization ‘World Report on Disability 2011’ (World Health Organization, 14 December, 2011) <<https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability>> accessed 4 May,2022

In accordance with the Census of 2011, “India has a population of 2.68 Crore persons with disabilities. Out of that, 56 per cent are males and 44 per cent are females. But only 12,46,857 disabled persons have received higher education.”⁴

The United Nations and the national governments have made significant efforts to ameliorate the status of the population of PwDs through introducing various policies and legislative measures, specially in the field of health, education, employment, accessibility and social security. However, persons with disabilities have been considered as subjects for charity, welfare and protection. Until the late 20th century, the people across the globe had a perception citing the problems faced by the disabled population as limited to an issue of assistance via social security and welfare and not as an issue of rights or equality.

Among the population of disabled population, girls and women with health disorders are subjected to multiple disadvantages in terms of both their disability and sex. Females are more likely to face abuse, violence and experience poor health and usually have less opportunities for education and recruitment.

Moreover, CWSNs are also among the highly deprived population in terms of access to schooling & fulfillment of elementary education. CWSNs tend to be out of school than children without disabilities.⁵ Out of school rates are the highest among children with acute disabilities.⁶

Therefore, the persons with disabilities including children need to be provided opportunities for availing education and employment facilities.

A. Conceptual Understanding:

The concept of the term “disability” can be understood as, “any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities and interact with the world around them.”⁷ Several kinds of

⁴ Editor, Enabled.in ‘Disability Population in India as per Census 2011(2016 updated)’ (Enabled.in, 28 August, 2017) <<https://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/>> accessed 4 May, 2022

⁵ UNICEF, ‘UNICEF data: Monitoring the situation of children and women- Education’ (UNICEF, February, 2022) <<https://data.unicef.org/topic/child-disability/education/>> accessed 4 May,2022

⁶ ibid

⁷ ‘Disability and Health Overview’(Centers for Disease Control and Prevention, 16 September,2020) <[https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html#:~:text=A%20disability%20is%20any%20condition,around%20them%20\(participation%20restrictions\)>](https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html#:~:text=A%20disability%20is%20any%20condition,around%20them%20(participation%20restrictions)>) accessed 5 May, 2022

problems might affect a human's ability to see, move, intellectual ability, communication skills, hearing, mental health etc.

The term "Person(s)with disabilities" refers to "a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others".⁸ The UNCRPD in its Art. 1 establishes that, "persons with disabilities" includes "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."⁹

Furthermore, the term " Children with Special Needs", implies "those children who have a disability or a combination of disabilities that makes activities such as learning difficult for them". CWSNs include, "those who have: Mental Retardation, which causes them to develop more slowly than other children; Speech and Language Impairment i.e, they experience a problem while expressing themselves or understanding others; Physical Disability, such as vision impairment, cerebral palsy or other conditions."¹⁰

B. Dimensions of Disability:

Though the term "Persons with disabilities" generally implies to "a single population, it is in reality a diverse group of individuals with a wide range of needs. Two human beings with the same kind of disability can be affected in different ways."¹¹

According to the WHO, there are three dimensions of disability:¹²

⁸ ' Disability in India' (Vikaspedia, 2018) <<https://vikaspedia.in/social-welfare/differently-abled-welfare/disability-in-india#:~:text=%22Person%20with%20disability%22%20means%20a,in%20society%20equally%20with%20others.>> accessed 5 May,2022

⁹ 'Health and Human Rights Resource Guide' (FXB Centre for Health and Human Rights, Harvard University, 21 March, 2014) < <https://www.hhrguide.org/2014/03/21/disability-and-human-rights/#:~:text=Defining%20disability&text=The%20CRPD%20establishes%20in%20Article,an%20equal%20basis%20with%20others'>> accessed 7 May, 2022

¹⁰ ' Who are the Children with Special Needs?' (Jamaica Association for the Deaf, 1996) <<https://www.jamdeaf.org.jm/articles/who-are-the-children-with-special-needs>> accessed 7 May, 2022

¹¹ World Health Organization, 'International Classification of Functioning, Disability and Health(ICF)external icon'; Geneva, 2001, WHO;

¹²Ibid

- **“Impairment** in a person’s body structure or function, or mental functioning; Examples of impairments include loss of a limb, loss of vision or memory loss.”
- **“Activity limitation**, such as difficulty seeing, hearing, walking, or problem solving”.
- **“Participation restrictions** in normal daily activities, such as working, engaging in social and recreational activities, and obtaining health care and preventive services.”

C. Models of Disability:

“Model(s) of Disability” implies the approaches in which we look at disability and recognize it. It is a kind of framework for understanding disability and matters connected therewith. There are various models of disability and a paradigm shift is noticed in the same. The differences are due to factors like advancement of our knowledge about the given phenomena, scientific and technological developments, alteration in the human attitude and composition of the society, increase in the number of educated population, increased awareness about disability among the people in general, enactment of several laws, rules, regulations and policies and fight for their rights by the persons with disabilities. A brief account of the various models of disability is discussed below:

■ Moral or Religious model:

It is the ancient replica of disability. This model perceives disability almost in a negative way which perceived occurrence of disability as some sort of punishment inflicted on the disabled by some external forces. Henderson and Bryan¹³ gave broad ideas about the religious model of disability: “Some people, if not many, believe that some disabilities are the result of lack of adherence to social morality and religious proclamations that warn against engaging in certain behaviour. To further explain this model, some beliefs are based upon the assumption that some disabilities are the result of punishment from an all-powerful entity. Furthermore, the belief is that the punishment is for an act or acts of transgression against prevailing moral and/or religious edicts.”

In other words, in this, “disability is perceived as having meaning associated with the person’s or the family’s character, deeds, thoughts, and karma.” From this viewpoint,

¹³ George Henderson, Willie V Bryan, *Psycho-social Aspects of Disability* (Fourth Edition, Charles C Thomas Publisher Ltd, 2011) 7

disability carries disgrace, humiliation and onus, in particular, if the disability is understood as a symbol of misconduct. As another option “disability can be seen as a sign of honor, faith or strength.” This replica is extremely popular globally and frequently shown in the media. E.g., while some films make use of bodily disability to portray evil. On the other hand, some movies portray a person with disability as someone makes a way far off normal human levels to realize distinctive goals.

From the point of view religion, “Disability was considered almost in each part of the world as the divine punishment for the wrong doings or sin in the past or previous birth. Sometimes it is not only the individuals’ sin that is regarded as a possible cause of their disability, but also any sin that may have been committed by their parents and/or ancestors”.¹⁴

Highlighting the pessimistic aspects of religious model on the PwDs and on their household, Rimmerman¹⁵ stated that “the potentially destructive consequences of such a view may lead to entire families being excluded from social participation in their local communities. Another prominent form of the religious model of disability is the idea that disabilities are essentially a test of faith or even salvific in nature”. Niemann stated that, “disability is a test of faith, whereby individuals and families are specially selected by God to receive a disability and are given the opportunity to redeem themselves through their endurance, resilience, and piety”. Black¹⁶ stated that “some people conceive of passing the test of faith as receiving physical healing. If the person does not experience the physical healing of their disability, he or she is regarded as having a lack of faith in God.”

Presently this is not as predominant as during the past. However, even today, the central idea cardinal to the prototype is often experienced in the manner persons resonate when an individual become challenged by illness or disability.¹⁷ Furthermore, “there are certain cultures and practices where the religious model of disability is still the predominant view”¹⁸ especially “in societies dominated by religious or magical ways of thinking.” PwDs are frequently mercilessly criticized.

¹⁴ George Henderson, Willie V Bryan, *Psycho-social Aspects of Disability* (Fourth Edition, Charles C Thomas Publisher Ltd, 2011) 7

¹⁵ Arie Rimmerman, *Social Inclusion of People with Disabilities- National and International Perspective* (First Edition, Cambridge University Press, 2013)

¹⁶ Kathy Black, *A healing homiletic*, (Abingdon Press, Nashville, 1996)

¹⁷ *Ibid*, p.13, 14

¹⁸ Dana S Dunn, Erin E Andrews, ‘Person-first and identity-first language: Developing psychologists’ cultural competence using disability language’ (National Library of Medicine, 7 April 2015) <<https://pubmed.ncbi.nlm.nih.gov/25642702/>>

They also face the prospect of infanticide and neglect in those societies. Therefore, it is evident that an individual with disability is the victim of impairment and his/her suffering provokes emotion of pity and sympathy. It constructs an identity that disability makes an individual sufferer who should be helped by the other people of the society. On one side, it subordinates the self-esteem of the individual and on other side it heightens the feeling of superiority in those who help the persons having disability.

■ **Medical model:**

It was during the mid 19th century when the moral or religious model of disability started to get restored by the medical or biomedical prototype of disability. In the medical model, “Disability is seen as a medical problem that resides in the individual. It is a defect in or failure of a bodily system and as such is inherently abnormal and pathological. The goals of intervention are cure, amelioration of the physical condition to the greatest extent possible, and rehabilitation (i.e., the adjustment of the person with the disability to the condition and to the environment). Persons with disabilities are expected to avail themselves of the variety of services offered to them and to spend time in the role of patient or learner being helped by trained professionals.”¹⁹

In this, “disability is perceived as an impairment in a body system or function that is inherently pathological. From this perspective, the goal is to return the system or function to as close to normal as possible. The medical model suggests that professionals with specialized training are the experts in disability. Persons with disability are expected to follow the advice of these experts. The language of the medical model is clinical and medical (e.g., left hemiplegia; partial lesion at the T4 level). This view is one that can sometimes be seen within the fields of health, mental health, and education.”

In other words, this prototype is known as the “personal tragedy model” the reason being that it depicts “disability in a fundamentally negative way”. In this, “Disability is perceived as objectively bad, as a pitiable condition, a personal tragedy for both the individual and his/her family, something to be prevented and, if possible, cured. This negative conception of disability has contributed to some of the questionable medical

¹⁹ Rhoda Olkin, What Psychotherapists Should Know About Disability (Guilford Publications, 1999)26

treatments performed on PwDs such as involuntary sterilization and operation and alike.”²⁰

PwDs depart from what is normal as a result of medical model. This model generates several coarse terminologies such as “invalid”, “cripple”, “spastic”, “handicapped” and “retarded.” “The medical model of interpretation of disability projects a dualism which tends to categorize the able-bodied as somehow better or superior to people with disabilities.” This model does not take into account the societal structure and the physical environment that act as disabling factors. The medical dimension to disability strongly advocates that, “the disability as a condition should be fixed by medical treatment and intervention which can help them lead a better life in the society.” Hence, deep down it is an effort to establish the superiority of one person’s diversity over another taking no notice of the inherent value of the individual.

Medical point of view of looking at disability sets up an ideal state and each individual is compared with the pre-set ideals disregarding the individual differences. Traditionally, PwDs have been seen from a negative and weak point of view about their in-capacities and insufficiency while doing anything in comparison to the normal people. The medical model has also generated massive prejudices against the PwDs. The labeling of PwDs led to strong discrimination against them. As a result of medical model, common people including educators and employers allowed to imagine that the PwDs are vulnerable to ill health, disease and injury and gradually become less productive as the time passes by. This interpretation was biased, discriminatory and groundlessly established.

■ **Social model:**

Apart from impairment, society is one more factor which contributes in construction of disability. It is strongly argued that the strong norms, values and rules of society have power to construct disability. The UPIAS in 1976 emphasized on social dimension while defining the concept of disability:

“Disability is a situation, caused by social conditions, which requires for its elimination, (a) that no one aspect such as incomes, mobility or institutions is treated in isolation, (b) that disabled people should, with the advice and help of others,

²⁰ Eva Feder Kittay, Licia Carlson, Cognitive Disability and its Challenge to Moral Philosophy (First Edition, Wiley Blackwell publication 2010)

assume control over their own lives, and (c) that professionals, experts and others who seek to help must be committed to promoting such control by disabled people .”

It is the society that plays a vital role in interpreting differences as natural phenomenon or differences as disability. “The social construction of disability puts forward a new way of looking at and understanding ability and disability as a result of social construction that points out how society perceives and interacts with individuals who behave or do the things in ways that are different from societal norms, attitude, culture, values and rules.”²¹ Ability should be redefined and reconstructed in such a way so that society or system does not label and perceive some condition as disability which, in fact, is difference. This way, social construction may help in creating more equitable society and triggering inclusive practices. In recent years, disability is no more considered as individual pathology as was considered earlier according to medical dimension. Now it is emphasized that shortcomings in the environment and social norms and conditions functions as disabling factors for a community by neglecting their specific requirements of accessing the environment and chances befitting their needs and circumstance .

Disability has its origin in society and it does not lie with the individual alone. It is the social structure which holds back the PwDs from participating and performing optimally in life. For instance, if the environment is not disabled friendly, it creates disability by imposing barriers in their normal functioning. Authors, Albrecht and Levy²² are of the opinion that “despite the objective reality, what becomes a disability is determined by the social meanings individuals attach to particular physical and mental impairments”. Additionally, they submitted that “social construction of disability allows one to shift away from viewing ability as normal toward questioning what social and environmental factors make some abled while others disabled”. The most positive facet of the social dimension to looking at disability is that it places the responsibility of disability on the society and not on a particular human being. It argues that in a conducive and structured society where environment is unrestricted, no one will feel disabled. Therefore, this model has projected the need for a right based society that provides equal opportunity, full participation and anti-discriminatory legislations for the PwDs.

²¹ Marno Retief, Rantsoa Letsosa “Models of Disability: A brief review” (HTS Theological Studies, 6 March, 2018) <<http://www.scielo.org.za/pdf/hts/v74n1/06.pdf>>

²² Albrecht and Levy, 1981 p.14

In a nutshell, “in the social model, disability is perceived as one aspect of a person’s identity, much like race/ethnicity, gender, etc.” From this point of view, “disability is believed to result from a mismatch between the disabled person and the environment (both physical and social). It is this environment that creates the handicaps and barriers, not the disability.” Moreover, the purpose to speak about disability is to commute the surroundings and society, instead of PwDs. Attitudinal issues, prejudice, and abuse are roadblocks to environmental change and involvement.

■ **Legal Model:**

Differently abled people are prone to discrimination more often as a result of prevailing fears, prejudices and misconceptions among people. The legal construction of the concept of disability is grounded in formulation of non-discriminatory law to prevent prejudice against PwDs. It has been striving to eliminate attitudinal, physical and social barriers for facilitating participation and the promotion of equality. Sometimes legal framework itself may be discriminatory when the perception of disability by society is based on the prejudices and misconceptions on the one hand. However, it is due to the strong legal interventions that many concessions, facilities; reservation systems have come in place to ensure protection of rights of PwDs. Thus, legal dealings should determine the impairment only to make sure who are entitled for disability related benefit, however, protection against discrimination should be unarguably and easily accessible to all the deserving individuals.

The way concept of disability has been constructed legally now is quite different from that of the earlier one. This shift in perception of disability is due to the positive outlook and attitude towards disability in society, advancement of science and technology and other reasons. If we go through the definitions given in the following section, our understanding would be clear on how the concept of disability has been changing over at the passage of time.

“The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” mentions about the seven disabilities such as; “blindness, low vision, leprosy-cured, hearing impairment, orthopedic disability, mental retardation and mental illness”. The Act defines “person with disability as a person suffering from not less than forty per cent of any disability as certified by a medical authority.”

Whereas the “United Nations on Convention on the Rights of Persons with Disabilities, 2006,” defines disability as “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.”

According to the RPwD Act, 2016, “person with disability means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.”

By critically looking into the above-mentioned definitions of disability we find that the concept of disability has got drastic change over period of time. In PwD Act, 1995 the disability has been depicted from a medical model perspective and the Act totally ignores the social construct of disability whereas in UNCRPD (2006) and RPwD Act (2016) disability has been perceived totally from the perspective of social model on equal basis with others.

■ **Rights Based Model:**

Another model which is diligently connected with the social model of disability is the “Human Rights model of disability”. Human right movement has constructed the concept of disability and related aspects from entirely different perspectives and has highlighted the need to retrospect the past lenses with which disability and related issues were seen. The human right dimension to disability has offered a totally different lens to re-examine and redefine the concept of disability by changing the perceptions of society and the policy makers towards PwDs. This dimension affirms that each one of us regardless of our abilities or disabilities and its severity is must have equal access to all the human rights without making any compromise.

The right based approach to disability includes political, civil, economic and cultural rights. This dimension is primarily grounded on the basic premises of UDHR (1948). Art. 1 and 2 of the Declaration enunciates that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. And everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to

which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.”

If disability is looked critically from human rights-based perspective, we would know that the disability, as a condition, is not a rational reality rather it is the consequence of discrimination and neglect to the individual needs of PwDs. The society excludes PwDs from the mainstream society systematically without recognizing and paying attention to their needs and requirements. Diversity is central characteristics in human beings and their cultures. It is diversity which forms the base for the fact that disability should be accepted as a part of human variation rather than something else. The PwDs experience fewer problems as a result of his/her impairment but more as a result of non-responsiveness and ignorance of State and Society towards the disabling conditions and varied needs of PwDs. Human rights dimension to disability places the individual in the centre for all the decisions which may affect his/her life. Non-discriminatory laws and practices, full accessibility, removal of barriers, equal opportunity and full participation are the core components of rights-based model. The prime aim of this very model is to ensure and safeguard the inherent rights and dignity of each individual in an inclusive, democratic, egalitarian and enabling society.

Although both the models are perceived as virtually synonymous, Degener has showed several differences between them. These differences are: “Firstly, while the social model helps people to understand the underlying social factors that shape our understanding of disability, the human rights model moves beyond explanation, offering a theoretical framework for disability policy that emphasizes the human dignity of PwDs.”²³ “Secondly, the human rights model incorporates both first- and second-generation human rights, in the sense that ‘it encompasses both sets of human rights, civil and political as well as economic, social and cultural rights.’”²⁴ “Thirdly, while the social model mostly fails to appreciate the reality of pain and suffering in the lives of some PwDs, the human rights model respects the fact that some PwDs are indeed confronted by such challenging life situations and argues that such factors should be taken into account in the development of relevant social justice theories.”²⁵ “Fourthly, while the social model does not pay adequate attention to the importance of

²³ Theresia Degener, ‘10 years of Convention on the Rights of Persons with Disabilities’ (Netherlands Quarterly of Human Rights, August 24, 2017)

<<https://journals.sagepub.com/doi/abs/10.1177/0924051917722294>>

²⁴ Ibid

²⁵ Ibid

identity politics, the human rights model offers room for minority and cultural identification.”²⁶ “Fifthly, while the social model is mostly critical of public health policies that advocate the prevention of impairment, the human rights model recognizes the fact that properly formulated prevention policy may be regarded as an instance of human rights protection for PwDs.”²⁷ Lastly, “while the social model can helpfully explain why so many PwDs are living in poverty, the human rights model offers constructive proposals for improving the life situation of PwDs.”²⁸

1.2 Statement of Problem:

The present research study “ Right To Education For Persons With Disability: A Critical Analysis From The Human Rights Law Perspective” is an endeavour to recognize the level of consciousness among the people and the actual implementation of the prevalent laws to ensure right to education for differently abled persons including CWSNs. Furthermore, the study shall also highlight the challenges and issues relevant to the problem under the present research study.

1.3 Literature Review:

“Review of literature” is essentially a vital part of a research study as it provides information about all the previous research works done in the circumstances of the research problem and sets the background on which the research work is founded. It helps a researcher to acquaint himself with the prevailing knowledge in the selected area. It also provides a comparison between the previous research works and the present research and helps the researcher to determine the aims, objectives, prospects and drawbacks of the research study.

This research study shall study the aspect of the RTE for individuals with disabilities and analyse the current scenario of the subject matter under study. Furthermore, the study shall also highlight the prevailing problems and obstacles in pertaining to this fundamental right with regard to the specially abled section of the society.

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

While preparing the outline of this research report, the researcher studied certain books, journals, magazines, newspaper articles, blogs and reports. These were extremely helpful in selecting the research problem and provided detailed knowledge about the topic of the research study.

Here, an attempt is made by the researcher to carefully write a review of the available literature on the RTE for PwDs. A list of important literature on the subject matter of this research work is reviewed below:

1.3.1: Related Studies Done at International Level

Hillson Maurie's edited book "Elementary education: current issues and research" edited and published by Free Press, University of Michigan in the year 1967, throws light on the current issues and research in Elementary Education. The book not only incorporated the theoretical perspective, but discussed the research problems and trends in elementary education as well. Crucial issues discussed under this volume are mainly the problems of elementary education, attitude of government towards elementary education, lack in policy formation etc.

UNESCO, "Towards Inclusive Education for Children with Disabilities: A Guideline," is also of great value while dealing with the education of special children. In addition to dealing with the rationale behind the focus towards the disabled children, it also provides a number of guidelines in terms of formulating policies, enacting legislation and in budgetary sanction as well. It also stresses on the need of cooperation from parents, family, care givers, different social organizations and community members while educating such children.

The article "Lessons for All of us: Protecting the Right to Education for Persons with Disabilities" by "National Council on Disability" published in the book, "Right to Education - Emerging scenario", focuses on the requirement for disabled children's RTE. The writer talks about the "International legal framework related to disabled children, International Human Rights Law, the development and evolution of law related to disabled children's education in USA."

The article, "Guidelines for Inclusion: Ensuring Access to Education for All" by UNESCO, stresses on the "importance of Inclusive Education". It also proposes the instruments for planners and policy makers, the stages concerned and the tactical planning in the way of attaining education for each human being.

1.3.2 Related Studies at National Level:

Panda K C, "Education of Exceptional children: A Basic Text on the Rights of the Handicapped and the Gifted" is a must read to understand the conceptual background of education for exceptional children. It covers up some fundamental issues related to integrated education and comes up with useful strategies to overcome the academic barriers associated with special education. It also focuses on the historical background of the policies and programmes adopted for the progress of differently abled children in India.

Chatterjee Bhaskar, "Education for All: The Indian Saga", is the notable work done to illustrate India's struggle in ensuring elementary education. The book is the amalgamation of both historical analysis of educational development and policy framework as well. Most important contribution of this book is its chapter on the development of girls' education and related problems in India.

Zahoor Naheed, "Educational Challenges and Reforms in Modern India", beautifully examined the challenges present in Indian education system. This book has highlighted the initiatives taken by the GOI to bring about quality education in India.

Idnani Deepa's edited book "Right to Education and Schooling", is the culmination of the conference on the theme "The Changing Contours of Indian Education: Issues and Challenges". The different chapters of this book are based around the Right to Education Act and contain meaningful discussions and engagement at different levels.

Sharma, Mool Chand, "Right to Education- Imperative for Progress", is an analysis of various nuances of education especially RTE. The theme of this book is the role of education for promoting Inclusive Development and Inclusive Democracy.

1.4 Aim of the Study:

This study directs at analyzing the current scenario of the Right to Education for the PwDs highlighting the legislative framework governing this fundamental right at International and domestic levels & the respective challenges and issues in this regard.

1.5 Objectives of the Study:

The objectives of the present study are:

- A. To study about the legal framework governing the fundamental right to education for PwDs;
- B. To determine the actual status of the aforesaid right in India;
- C. To study about the issues and challenges in the relation to this right.
- D. To suggest some recommendations for the effective implementation of the schemes exclusively drafted for the educational welfare of the PwDs to achieve the real objectives behind these schemes.

1.6 Scope of the Study:

Considering that the nature of the theme under this research study, i.e., “ Right to Education for Persons with Disabilities” is very extensive, the scope of this research study has been restricted to the study of the right to education for persons with disabilities in general.

1.7 Limitations of the Study:

There are certain limitations in every research study. The present research study has the following limitations:

I) Heterogeneous nature of the concept of disability:

Disability is a vast and a heterogeneous concept. Two individuals even with the same disability may have different specific needs. Hence, it was difficult to cover all the forms of disabilities by the researcher. Therefore, for the quality of the research, the study focused or was limited to persons (including children) with physical disabilities only.

II) Limited access to data:

Since the subject matter under this research study involves surveying the differently abled population but the researcher due to certain physical limitations had no access to the actual respondents, she faced the problem of having limited access to data.

III) Data collection method used:

Since the researcher lacks expertise in primary data collection methods and has no access to collect first hand data from respondents who are physically handicapped themselves, there is a chance that the method of implementation and analysis of the data might have flaws.

IV) Scope of discussions:

Because the researcher does not have much experience in doing researches and producing academic papers involving socially sensitive issues, the scope and depth of discussions in this research study is compromised as compared to the works of experienced scholars.

V) Time Constraints:

The time available to study the research problem was limited which has impacted the quality of the research study. Thus, there is a need for a detailed study in the future.

1.8 Research Questions:

The following research questions have been formulated by the researcher to achieve the objectives of this research study:

- a. What is the legal framework at the International and Domestic levels of the Right to Education for Persons with Disabilities?
- b. What is the status of the fundamental Right to Education for Persons with Disabilities in India?
- c. What is the judicial response in the context of the Right to Education for the specially abled persons?
- d. What are the challenges and issues faced by the persons with disabilities in the context of availing their right to education?

1.9 Research Methodology:

Research Methodology means the particular techniques that are used to recognize, select, process and analyze data about a topic under study. Doctrinal or library based research method has been used by the researcher for collection of data required for completion of this paper; that includes literature available in various journals, dissertation, news reports and books have been referred to in order to develop a wide theoretical basis for the present research study.

The type of research applied for the present study is analytical research.

The mode of citation used while preparing this report is OSCOLA fourth Edition.

1.10 Research Design:

The present research study entitled, “Right to Education for Persons with Disability: A Critical Analysis from the Human Rights Law Perspective” dwells upon the concept of the fundamental right to education for persons with disabilities, its present day scenario in India and the respective issues and challenges faced by the physically challenged people. Since the scope of the study and time for its completion is limited, the study precisely focuses on the legal regime of the right to education for persons with disabilities at the International and domestic levels. It also takes into account the judicial response in the context of the above-mentioned fundamental right and the challenges and issues pertaining to the subject matter under present research study.

This entire report is divided into 6 chapters.

Chapter 1 gives an idea about the background of the research study, comprising of its aims and objectives, scope and limitations, research questions and research methodology used.

Chapter 2 deals with the International legal framework of the Right to Education for Persons with Disabilities.

Chapter 3 speaks about the domestic legal framework of the RTE for persons with disabilities and the position of education for persons with disabilities in India.

Chapter 4 gives an overview of the judicial response to the Right to Education for Persons with Disabilities.

Chapter 5 deals with the challenges and issues faced by the differently abled persons in order to enjoy their Right to Education.

Lastly, Chapter 6 consists of the conclusive remarks, findings and suggestions of the researcher.

CHAPTER 2

INTERNATIONAL LEGAL FRAMEWORK OF THE RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES

2.1 General Overview:

The RTE is absolutely necessary to make sure that “ free and compulsory education” is obtainable to each individuals. Rights are certain necessary legal, social or ethical entitlements or claims of individuals which the society acknowledges to be pivotal for their upliftment and welfare. Rights can be defined as, “Rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states. Rights dominate modern understandings of what actions are permissible and which institutions are just. Rights structure the form of governments, the content of laws, and the shape of morality as many now see it.”²⁹ The “Right to Education” means that, “education is the fundamental right of every individual and it is the responsibility of the government to ensure that individuals are able to exercise their right.”³⁰ “A State should make adequate provisions for educating its people who do not have education. In addition to this provisions related to access to education , the right to education also encompasses the obligation on the state to rule out discrimination at all levels of the educational system, to set minimum standards and to improve the quality of education.”³¹

Education is important in the lives of human beings as it strengthens intelligence, furnishes individuals with the capacity to work and trains them in the art of being a better and reasonable person in life. “The Right to Education is reflected in the international law in Art. 26 of the Universal Declaration of Human Rights and also in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights.” Art. 26 (1) of the UDHR states that, “Everyone has the right to education.

²⁹ ‘Rights’(Stanford Encyclopedia of Philosophy, 19 December, 2005)
<<https://plato.stanford.edu/entries/rights/>> accessed 27 May, 2022

³⁰ ‘10 things you need to know about RTE Act’(OXFAM India, 4 December, 2018)
<[³¹ <https://shodhganga.inflibnet.ac.in/handle/10603/205985>](https://www.oxfamindia.org/blog/10-things-rte#:~:text=Right%20to%20education%20means%20that,ensure%20the%20right%20to%20education.> accessed 27 May, 2022</p></div><div data-bbox=)

Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit”.³² Art. 26 (2) states that, “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”³³ In addition to this, Art. 13 of the ICESCR, 1966 recognizing the RTE states that, “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”³⁴ Art. 28 and 29 of the CRC, 1989 “deals with the right to education, that means every states have to sure compulsory education and available without any cost, encourage the development of secondary education and vocational education and also government have to provide financial support if needed.”³⁵

The RTE is categorized into three levels:

- **Primary Education:** Primary education is basically the first stage of formal education that takes place in a primary or elementary school. “This shall be compulsory and free for any child regardless of their nationality, gender, place of birth, or any other discrimination.”
- **Secondary Education:**

³² ‘Universal Declaration of Human Rights’ (United Nations) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2026,on%20the%20basis%20of%20merit.>> accessed 29 May, 2022

³³ ibid

³⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)993 UNTS 171 (ICESCR)

³⁵ United Nations, ‘Convention on the Rights of Child’ UNGA Res 44/25 (20 November, 1989) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 29 May, 2022

Secondary or elementary education is the second stage traditionally found in formal education and is disseminated to young children of the age between 11 to 18 years.

● **Higher Education (at the University Level):**

Higher education is the tertiary education that leads to award of an academic degree. It is the third stage of formal education. It shall be provided to anyone who meets the requisite academic criteria formulated as the eligibility criteria for such education.

“A 4A’s Framework was developed by Katarina Tomasevski, the former UN Special Rapporteur to assess the fulfillment of the Right to Education. The 4As framework proposes that governments, as the prime duty-bearers, have to respect, protect and fulfil the Right to education by making education available, accessible, acceptable and adaptable. The framework also places duties on other stakeholders in the education process which includes the child, the parents and the teachers.”³⁶

The 4A’s Framework has the following elements:

- i. **Availability:** Education shall be made available for all children, at least the primary education at the fundamental level shall be free. A duty is vested upon the government of the countries to make necessary arrangements required to make education available for its citizens. “Art. 13(2)(a) of the ICESCR lays down that, primary education or basic education shall be compulsory and available completely free to all.” It states that the “States parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular; make primary education compulsory and available free to all.”³⁷
- ii. **Accessibility:** Another A in the 4A’s framework stands for Accessibility to education. States parties should make educational institutes accessible for all. No one shall be discriminated on the bedrock of race, sex, colour, religious or financial status, linguistic and immigration status or disability in terms of accessibility to education. The schools should provide affordable education and must be safe for all and shall be at reasonable distance. Furthermore, Higher education should be accessible and equitable for all.
- iii. **Acceptability:** The learning process at school must be easy and acceptable to all, i.e., it shall be understandable for the children, their parents and the people of the

³⁶ Ibid p.14

³⁷ General Comment No.13, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)993 UNTS 171 (ICESCR)

various communities. At the same time, the curriculum should be set according to the national norms so that schools can provide equal education.³⁸

- iv. **Adaptability:** Adaptability means flexibility of the education system. Education should be an easy and a fun learning process so that the children can adapt to it according to their capacity. Adaptability promotes equitable outcomes for children and individuals of all age groups in the form of better performance.³⁹

On analyzing the above, it can be said that RTE is a duty or obligation of the State to furnish quality education for all persons lacking prejudice. Here, the term “persons” includes both children of all ages and adults above eighteen years of age.

2.2 History of Right to Education:

The efforts to ensure the Right to Education have a long history behind it. The thrust for education started with the Enlightenment Movement in Europe. Before the 18th and 19th century, education was mainly considered to be a commitment of guardians and the church. After the French and the American Revolution, people started to think that the State should assume a more active and dominant role in the area of education. It is in this way, the State can assist to make education attainable and accessible to everybody. However, it was still considered as a privilege of “the upper social classes and public education was perceived as a means of realizing the egalitarian ideals underlining both revolutions”. It was the obligation of the states, to “ensure that parents complied with the duty of sending their children to school.” Many laws were enacted to make school attendance compulsory. In addition to this, there was also child labour laws that were brought into force to curtail the amount of working hours for which each day young persons could be employed, to assure they would attend school. Slowly, States started to be engaged in the legal regulations of curriculum and other related matters.

However, with the emergence of Liberalism, a new speculation had emerged in the form of danger of states being involved in school education. Liberalism also pleaded that the states should take actions necessary to lessen the supremacy of the church, and to protect the RTE of children. In the late 19th century, academic rights were

³⁸ <https://shodhganga.inflibnet.ac.in/handle/10603/205985>

³⁹ *ibid*

added in domestic bills of rights. “The Constitution of the German Empire”, 1849, dynamically impacted succeeding European Constitutions and allocated Art. 152 to 158 of its Bill of Right to Education. It recognized education as “a function of the state, not of the church”. As a extraordinary step, the Constitution demonstrated the right to free education for all, including the poor. It recognized the right of nationals to find schools, operate them and also to provide home education. It was under the development of Socialist Theory in the 19th Century, education rights got its recognition. Now, the major piece of work of the state was to assure the financial and social welfare of the section through govt interference and order. “Socialist ideals were enshrined in the 1936 Soviet Constitution and in this way; it became the first constitution of the world to recognize the right to education with a corresponding obligation of the state to provide such education. The Soviet Constitution guaranteed free and compulsory education at all levels, a system of state scholarships and vocational training in state enterprises.” Since then, many nation states have formulated legal procedures and enactment to give recognition to the right to education and to ensure this right to all human beings.

2.3 Global Policy Framework of Education of Children with Special Needs:

“Children with Special Needs refers” to, “all children those who require adaptations to the normal process of education due to problems of vision, hearing, movement, learning and intellect. These adaptations could be of learning materials like textbooks, teaching methods, homework and other assignments given in the class, assessment and examinations.” Education for the CWSNs has always been a critical issue. Being considered as an inferior section of society, this group was generally denied from all the opportunity for development. But with the development of the humanitarian approach, people slowly began to recognize the rights of this special group. Education is one of the rights that were considered as necessary for these children to overcome their difficulties and to grow like other normal children.

The UN has been playing major role in popularizing education for the CWSNs. A number of convention, conference and declaration were adopted by the UN to draw attention towards the rights of the CWSNs. Some major initiatives of the United Nations are:

a. Universal Declaration of Human Rights:

The right of every child to education is proclaimed by the UDHR (1948). “The Preamble of the Universal Declaration of Human Rights recognizes the inherent dignity and the equal and inalienable rights of all the human family”.⁴⁰ Article 1 proclaims that “all human beings are born free in dignity and rights. People are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Article 2 maintains that “everyone is entitled to all the rights and freedom without distinction of any kind”. “Right to life, liberty and security of person is also guaranteed under Article 3”. Article 22 says that “everyone, as a member of society has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” Again, the right to social security in the event of disability also has been recognized. “The Declaration made significant announcement regarding the Right of Education under Article 26. This Article states that education shall be free and compulsory, at least in the elementary and fundamental stages.”

b. The Convention against Discrimination in Education, 1960 :

The “Convention against Discrimination in Education” was adopted by the UNICEF in November, 1960. It was the first international treaty and legally binding document to bring quality education for children. It brings into light the concept of “Inclusive Education” to educate the students with special needs. Under the model of inclusion, the CWSNs gain the facility to spend their time with the normal children, in normal schools. Article 4 of the UNESCO Convention foresees:

The States Parties to this Convention shall undertake:

- “To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law”;
- “To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent”;

⁴⁰ Universal Declaration of Human Rights 1948

- “To encourage and intensify by appropriate methods the education of persons who have not received any primary education.”

c. Education for All Handicapped Children Act, 1975:

This Act was enacted by US Congress in 1975. The EHA Act, therefore, made it compulsory for CWSNs to have access to “Free, Appropriate, Public Education”. To fulfil this, “the Congress prescribed a set of minimum standards to be followed by the state and local educational institutes.”⁴¹

d. UN Convention on the Rights of Child:

The UN CRC 1989, makes certain provisions for CWSN. It is clearly stated under Article 19 that, “the state would protect children from any kind of neglect”. Furthermore, Article 23 says, “States recognize that the children with disabilities (mental/physical) have the right to a life with dignity and all other rights of this convention. The state also recognizes the need to provide children with disabilities with special care, family assistance, free education, health, training, etc in accordance with family’s financial situation and aim for the child’s social integration the state shall also take measure to prevent the disabilities in children.”⁴²

e. World Declaration on Education for All (EFA, 1990):

Education rights of the children were strongly reaffirmed by the EFA, held in Thailand in 1990. The delegates from one hundred fifty five nations in addition representatives from one hundred and fifty governmental organizations and NGOs , consented at the “World Conference on Education for All” to make primary education reachable to all children and to massively bring down illiteracy before the end of the decade. It defined the following targets and strategies to meet the basic learning needs for all by the year 2000:

- “Universal access to learning”;
- “A focus on equity”;
- “Emphasis on learning outcomes”;
- “Broadening the means and the scope of basic education”;

⁴¹ Jeffrey J. Zettel, ‘ The Education for all Handicapped Children Act of 1975 PL 94-142: Its History, Origins, and Concepts’ (Journal of Education, 1979) <<https://doi.org/10.1177/002205747916100303>>

⁴² Convention on Rights of Child(adopted 20 November, 1989; Entry into Force 2 September,1990) 196UNTS1577 (CRC)

- □ “Enhancing the environment for learning”;
- □ “Strengthening partnerships by 2000”.

f. World Conference on Special Needs Education:

The “World Conference on Special Needs Education” was another important discussion regarding the educational development of the special children. This conference was held at Salamanca in June 1994 and was organized by the Govt of Spain in cooperation with the UNESCO. This conference adopted a framework of action on special needs education declaring that, “education policies at all levels, from the national to the local, should stipulate that a child with disability should attend neighbourhood school that is the school that would be attended if the child did not have a disability.”

g. Convention on the Rights of Persons with Disabilities:

The 2006 UN CRPD was a milestone treaty that recognized the human rights of PwDs. Through the Convention, UN discourse on the rights of persons with disabilities laid out a particular and innovative framework for the human rights of the disabled persons. It placed special focus on the academic rights of CwDs. In Art. 24 of this convention urge that “such children are not to be excluded from education on the basis of their disability.” It thrusts a certain type of academic articulation system for CWSNs saying “States Parties shall ensure that Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the community.”

Influenced by these initiatives taken by the International communities to popularize education for the differently abled, many countries around the world have come up with necessary Constitutional and legal provisions suitable for their nations to establish the system of inclusive education as a basic policy of their educational system. Many independent nations came forward with their innovative education policies to spread awareness for education for the special children. “The United States of America was first of its kind to establish legal system for the implementation of the inclusive education as a basic education policy in all the states of USA. It provided the children and youths with disabilities access to a higher quality of education related services, ensuring all students the complete access to the most appropriate education within the least restrictive environment”.

2.4 International Legal Framework for Higher Education of Persons with Disabilities: An Overview:

a. The Universal Declaration of Human Rights, 1948:

Article 26 of the Universal Declaration of Human Rights (1948) states that “Everyone has the right to education”.⁴³

b. International Covenant on Economic, Social and Cultural Rights, 1966:

Article 13(2)(c) of the ICESCR draws provisions related to the Right to higher education. It states that, “Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.”⁴⁴ Higher education consists of the constituents of availability, practicability, fitness and workability that are ordinary to education in all its forms at all levels.⁴⁵

c. UN Convention on the Rights of Persons with Disabilities (2006):

Article 24 (5) of the CRPD lays down a duty on the States, “ States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.”⁴⁶

d. 2030 Agenda for Sustainable Development:

The International community in 2015 adopted the “2030 Agenda for Sustainable Development”, which set up a worldwide response plan to meet the huge problems to sustainable development, with a shared pledge to assure that no person is left behind. SDG 4 requires States to “Ensure inclusive and equitable quality education and

⁴³ UNESCO, ‘The Right to education for Persons with disabilities’ (United Nations Educational, Scientific and Cultural Organization, 2019)
<<https://unesdoc.unesco.org/ark:/48223/pf0000371249/PDF/371249eng.pdf.multi>> accessed 2 June, 2022

⁴⁴ United Nations Office of the High Commissioner, ‘International Covenant on Economic , social and Cultural Rights’ [UNGA Res 2200A(XXI)] <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 2 June, 2022

⁴⁵ General Comment No.13, International Covenant on Economic,Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)993 UNTS 171 (ICESCR)

⁴⁶ United Nations, ‘ Article 24- Education’ (Department of Economic and Social Affairs)
<<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>> accessed 5 June, 2022

promote lifelong learning opportunities for all”, and target 4.5 explicitly calls on States to “ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.”⁴⁷

e. UNESCO Convention against Discrimination in Education:

The “UNESCO Convention against Discrimination in Education”, which has been accepted as a foundation of Education 2030 Agenda, is the first legally-binding international instrument which assigns fundamental components of the RTE. “This Convention prohibits any discrimination in the field of education and expresses the principle of equality of educational opportunities.”⁴⁸

⁴⁷ UNESCO, ‘ Education 2030’ (United Nations Educational, Scientific and Cultural Organization, 2019)

<<https://unesdoc.unesco.org/ark:/48223/pf0000371249/PDF/371249eng.pdf.multi>> accessed 5 June 2022

⁴⁸ Ibid

CHAPTER 3

LEGAL FRAMEWORK OF RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES IN INDIA

3.1 History of Disability Rights Movement in India:

The beginning of the DRM in India spans over a long period of time. The demands for the rights of persons suffering from disabilities commenced in the early 1970s; it was not considered a movement during that time, since the several demands of individuals and groups were disintegrated. It was during 1980, there was a combining of demands from different sections and organizations took place showcasing the interests of the differently abled persons. During this, many NGOs had started working in the disability sector and this as a result provided momentum to the Movement. After a long list of petitions and protests, the government passed the “Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which reserved 3% of government posts for those in the Persons with Disabilities category.” Thus, the year 1995, became an important year for this Movement and was the starting of a new era in which people suffering from disability found place in educational institutions and government services.

Furthermore, the CRPD was adopted by the United Nations in 2006 which was signed and ratified by our country in 2007. By then, there was a request for an increase in the reservation for the disabled category by various groups working on disability issues. In 2012, the GOI came up with a bill on disability, and after making some changes in the original draft, the bill was presented in the Parliament in 2013. After waiting for 3 years, the Rights of Persons with Disabilities Bill, 2016 was passed by both houses of Parliament.

All in all, something that began as scattered demands for rights for differently abled people has today developed into an issue area that is the subject matter of many academic works. Although there are barriers that exist in the way of the Disability Rights Movements, the achievements till today are praise-worthy and should be highlighted.

Till the 1970s, the mass in general who were diagnosed with any sort of disability were thought about as pariah from the conventional society and were abused. Even they were thought to be a burden by the system as well, these humans were

considered to be of little use to society and hence their problems were critically disregarded.

On the other hand, changes were taking place rapidly in other countries across the world. “In the West, the disability rights movement had gained momentum in the 1950s, and by the 1970s it had begun challenging governments with a much greater force. In India, such demands had only started to emerge. Even in Western societies, people suffering from disability were not exactly treated as they should have been. The world was still only 30 years removed from Adolf Hitler’s attempt to eliminate the disabled population in Germany, due to his belief was that disabled persons were of no economic use.”⁴⁹

“In the West, things started to change after World War II, when thousands of soldiers returning home were left with several kinds of disabilities. These soldiers became an initial source of the DRM and they even saw some success in getting their rights, mainly because these soldiers were considered heroes of the war and thus their demands garnered immense public support.”⁵⁰

However, in India, nothing such happened. Assistance from our society towards its disabled population was seen as charity and not legitimate rights to specially abled persons.

“ The 1980s saw a shift in the policy frame with the welfare model being transformed into a developmental model. This was a phase where the disabled persons, hitherto treated as recipients of charity, became participants in the developmental process. By the end of the 1980s, people also started focusing on disability on medical grounds, with the objective of trying to reduce suffering via medical treatments, medical equipment, and technical help, to make the lives of disabled people normal. But these ideas were practiced only by a limited section of the society, which was literate, sensitized, economically well-off, and modern in a real sense.”⁵¹

Another shift in the entire debate regarding the goals of rehabilitation was during 1982-1993 when the UN declared the timeline as the “Decade of Disabled Persons.”

⁴⁹ Martand Jha, ‘The History of India’s Disability Rights Movement’ The Diplomat (21 December,2016) <<https://thediplomat.com/2016/12/the-history-of-indias-disability-rights-movement/#:~:text=By%202012%2C%20the%20Union%20Government,of%20parliament%20just%20last%20week.>> accessed 10 June, 2022

⁵⁰ Ibid

⁵¹ Ibid, p. 44

“The Rehabilitation Council of India was set up by the Government of India in 1986 to regulate and standardize training policies and programs for the rehabilitation of persons with disabilities. The Mental Health Act, 1987 came into existence after that. The Mental Health Act is a civil rights legislation that focuses on regulating standards in mental health institutions.”⁵²

“The last decade of the millennium brought drastic changes in the disability sector of India. A distinct self-advocacy movement of people with disabilities, which started during the 1970s, began campaigning for protection and recognition of their human rights. It advocated the enactment of a comprehensive legislation with a rights-based approach, placing special emphasis on social and economic rights.

The government had recognized the need for such legislation in 1980. But since the legislative power regarding disability was kept on the State List, the matter could not be pursued. However, Article 253 of the Constitution of India enables the Parliament to override the federal distribution of powers and to give effect to a treaty entered with a foreign power or an international body, even if the matter of legislation relates to an entry in the State List. With the signing of the Proclamation of Equality and Full Participation of People with Disabilities in the Asian and Pacific Region, the PWD Act was enacted by Parliament in 1995.”

“The Persons with Disabilities Act focused more on rights. The substantive provisions of the Act relate to prevention and early detection, education, employment, affirmative action, non-discrimination/barrier free access, research and manpower development, and institutions for persons with severe disabilities.

Different kinds of disability in the Act are classified based on medical grounds and not on social perception of disability. Critics of the PWD Act say that the Act is replete with numerous flaws, as it was passed by Parliament without a full length debate. They say that the Act lacks teeth and provides ample escape routes to the concerned government.”

Earlier, discrimination on grounds of disability was considered a myth. Legislations enacted 2 decades ago were reluctant regarding inclusion of disability in the list of prohibited heads of discrimination. For example, even if “the Indian Constitution in its Articles 15 and 16 prohibits discrimination in the matter of employment and access

⁵² Ibid

to public facilities on grounds of religion, race, caste, sex, and place of birth, it is silent on disability.”

According to Census 2011, “over 26.8 million people in India suffer from some kind of disability. This is equivalent to 2.21 percent of the population. Among the total disabled in the country, 14.9 million are males and 11.8 million are females; 18.6 million PWD reside in rural areas while 8.2 million reside in urban areas.”⁵³

“Looking at this situation and the demands from civil society, the Union Government came up with a National Policy on Disability in the year 2006. This was a comprehensive national policy on disability covering critical areas like education, employment, support services, access, social security, etc. However, this policy also needed to be comprehensively modified in the light of the UN Convention. Somehow, the national policy is nearly silent on the civil and political rights of persons with disabilities. Unfortunately, most of the states of India do not have a state-level disability policy in place yet, though a few states are in the process of evolving such a policy.”

The Present Decade:

“The Rights of Persons with Disabilities Bill, drafted in 2011, was meant to be an enactment to codify India’s obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which it ratified without reservations. There was a committee set up in 2009 by the Ministry of Social Justice and Empowerment to draft a bill to this effect. In accordance with the UNCRPD, the committee included different people with different disabilities to draft this bill. The Rights of Persons with Disabilities Bill, 2014, defines for the first time the meaning of disability and extended it from seven to 21 categories. Categories include sickle cell disease, thalassemia, muscular dystrophy, autism spectrum disorder, blindness, cerebral palsy, chronic neurological conditions, mental illness, and multiple disabilities.”⁵⁴

“Based on vital amendments, the bill, for the first time, represented rights-based disability legislation. Its focus is on transforming the meaning of disability, expanding

⁵³ Office of the Registrar General and Census Commissioner, India ‘Census-2011’ (Ministry of Home Affairs, Government of India <<https://censusindia.gov.in/census.website/>>

⁵⁴ Martand Jha, ‘The History of India’s Disability Rights Movement’ The Diplomat (21 December, 2016) <[31](https://thediplomat.com/2016/12/the-history-of-indias-disability-rights-movement/#:~:text=By%202012%2C%20the%20Union%20Government,of%20parliament%20just%20last%20week.> accessed 12 June, 2022</p></div><div data-bbox=)

its definition from the existing medical framework to a social one. The amendments included hiking the quota of government jobs from three to five percent and underlining the need to make private companies responsible for creating a friendly workplace environment for employees with disabilities.”

3.2 Major Policies and Legislative Framework for RTE for Persons with Disabilities:

a. Constitution of India

Art 14 of the our country’s Constitution enshrines for “Equal Protection of Law and Equality before Law which is common for all citizens as well as non-citizens within the territory of India”.⁵⁵ Furthermore, Article 19 and 21 provide citizens including Persons with Disabilities with six basic kinds of freedoms and the right to live a life with human dignity. However, all these provisions do not make any special reference to PwDs but are common for all including them.

Art 41 is a Directive Principle “to make an effort in motivating the working abilities, increasing public assistance, or like other means for the PwDs during their period of disablement”. It states that, “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”⁵⁶ However, Art 45 of the Constitution was an important provision for all children including disabled children, within the territory of India, since it made education compulsory for every child. The same provision was made a Fundamental Right under 86th Amendment to the Constitution under Article 21 A. Now, education for all children including the children with special needs is not only a right given to them but also a duty of the State to provide for such arrangements so that the said right is exercised by all children without any discrimination. However, this Fundamental Right made a separate provision for especially promoting education among the PWD children

⁵⁵ Hanamant Karanure, ‘Article 14- Equality before the Law and Equality Protection of the Law’ (Manupatra, 2 June, 2022) <<https://articles.manupatra.com/article-details/Article-14-Equality-Before-Law-and-Equality-protection-of-the-law>> accessed 12 June ,2022

⁵⁶ This corresponds to Article 6 of the ICESCR (1966); ‘Justiciability of ESC Rights- the Indian Experience’ (Circle of Rights: Economic, social & cultural rights activism: A Training Resource) <<http://hrlibrary.umn.edu/edumat/IHRIP/circle/justiciability.htm#:~:text=Article%2041%20of%20the%20Constitution,cases%20of%20undeserved%20want.%E2%80%9D16>> accessed 12 June,2022

whereby the age limit for which education was to be provided for free was 6-14 years for normal children while it was made 6-18 years for PWD children.⁵⁷

b. Kothari Commission (1964-66):

The Kothari Commission was the first to officially address the problems of access and participation by all. It focused on a common school system open to all children irrespective of caste, creed, community, religion, financial condition and social status. “In 1968, the National Education Policy followed the commission’s recommendations and suggested the expansion of educational facilities for physically and mentally handicapped children, and the development of an integrated programme enabling handicapped children to study in regular schools. It was very first time in India, Government of India took action for the Rights of Persons with disabilities and specially for the children with disabilities who wants to take education as like other children.”⁵⁸

c. National Policy on Education (NPE) –1986:

“The NPE highlighted the problem of equality for all. The policy focuses on the needs of the children with disabilities.⁵⁹ The objective should be to integrate the physically and mentally handicapped with the general community as equal partners, to prepare them for normal growth and to enable them to face life with courage and confidence.”⁶⁰

d. Integrated Education of Disabled Children (IEDC):

“The Government of India’s appreciation of the need to integrate children with disabilities came in 1974, when the Union Ministry of Welfare launched the centrally sponsored scheme of Integrated Education of Disabled Children (IEDC). The centrally sponsored scheme of Integrated Education of the Disabled Children provides educational opportunities for the disabled children in common schools, to

⁵⁷ Jayanta Boruah, ‘ Right to education for Persons with Disabilities in India: An Analysis of the Contemporary Legal Developments’ (SSRN, 20 April, 2021)
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3821873> accessed 13 June, 2022

⁵⁸ Sagar Bhalerao, Amrin Mogar, ‘ Right to Education for Persons with Disabilities and Current Scenario’ (ResearchGate, December 2016)
<https://www.researchgate.net/publication/349838072_Right_to_Education_for_Persons_with_Disabilities_and_Current_Scenario> accessed 24 June,2022

⁵⁹ National Policy on Education-1986, s.4.9

⁶⁰ Ibid

facilitate their retention in the school system, and also to place in common schools, such children already placed in special schools after they acquire the communication and the daily living skills at the functional level”.⁶¹

e. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

The major landmark legislation in the chronicle of special education in India is the “Persons with Disabilities (Equal opportunities, protection of rights & full participation) Act, 1995”. This extensive Act covers 7 disabilities viz., “blindness”, “low vision”, “hearing impaired”, “loco motor impaired,” “mental retardation”, “leprosy cured” and “mental illness”. “ Section 26 of the Act, which deals with education, mentions that the appropriate Governments and the local authorities shall”:

1. “Ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;”
2. “Endeavour to promote the integration of students with disabilities in the normal schools;”
3. “ Promote setting up of special schools in governments and private sector for those in need of special education, in such manner that children with disabilities living in any part of the country have success to such schools;”
4. “ Endeavour to equip the special schools for children with disabilities with vocational training facilities”.⁶²

f. Right to Education Act,2009:

The 86thAmendment introduced new Article 21A, making the right to education of children from 6 to 14years of age a fundamental right. “Article 51A (K) was added to Part IV-A of the Constitution as a fundamental duty of parents to provide opportunities for education to their children aged between 6 and 14.The Right to Free & Compulsory Education Act 2009 provides a justifiable legal framework that entitles all children between the ages of 6-14 years free and compulsory admission, attendance and completion of elementary education. It provides for children's right to an education of equitable quality, based on principles of equity and non-discrimination. Most importantly, it provides for children's right to an education that is free from fear, stress and anxiety.”⁶³

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

Apart from the above major policies and legislative framework regarding right to education for persons with disabilities, in India, there are certain legislative provisions in the context of differently abled students in higher education.

3.3 Recent developments towards Right to Education for Persons with Disabilities:

3.3.1 The Rights of Persons with Disabilities Act, 2016:

The Government of India passed the Rights of Persons with Disabilities Act, 2016 (RPwD Act, 2016) to replace the earlier PwD Act, 1995, which was enacted 21 years back. The new Act aims to bring out the Indian law in line with the UNCRPD, to which India is a signatory. This proclaims to fulfil the obligations on the part of India in terms of UNCRPD. Further, the new law not only safeguards the rights and entitlements of PwDs but also provides effective mechanism for ensuring their empowerment and true inclusion in the society in an effective and meaningful manner. The “new Act has now brought private establishments within its ambit whereas the applicability of the 1995 Statute was restricted to government controlled/aided establishments”. Though the Act or the Rules do not require private establishments to mandatorily appoint PwDs, there are certain obligations that have been imposed on private establishments under this Act. The definition of private establishment under the Act is also quite broad. It includes “companies, co-operative or other societies, firms, associations, trusts, agencies, institutions, organizations, unions and factories”.

3.3.1.1 Historical Background of the Act:

The Rights of Persons with Disabilities Bill, 2014 was introduced into the Parliament on 7th of February, 2014. On 14th of December, 2016 it was passed by the Lok Sabha and by the Rajya Sabha on 16th of February, 2016 and it received the assent of the President on 28th of December, 2016. The Act becomes operational on 19th of April, 2017. The Central Government rules 2017 have been notified under Section 100 of the Act and have come into force with effect from 15th of June, 2017.

3.3.1.2 Salient Features of the Right of Persons with Disabilities Act, 2016:

The salient features of the Right of Persons with Disabilities Act, 2016 have been briefly discussed below:

- The aforesaid Act has defined the term “Disability” based as a dynamic concept.

- The types of disabilities recognized under the Act have been increased from seven to twenty-one and the Central Government has been empowered to add more types of disabilities in due course, if needed. The twenty-one forms of disabilities are- “blindness; low-vision; leprosy cured persons; hearing impairment (deaf and hard of hearing); locomotors disability; dwarfism; intellectual disability; mental illness; autism spectrum disorder; cerebral palsy; muscular dystrophy; chronic neurological condition; specific learning disabilities; multiple sclerosis; speech and language disability; thalassemia; haemophilia; sickle cell disease; multiple disabilities including deaf blindness; acid attack victim; and Parkinson's disease”.
- “Speech and language disability and specific learning disability have been added for the first time. Acid attack victims have been included. Dwarfism and muscular dystrophy have been indicated as separate class of specified disability. Other new categories of disabilities include three blood disorders, thalassemia, haemophilia and sickle cell disease.”
- “The Government has been authorized to notify any other category of specified disability under this Act.”
- “Responsibility has been given to the appropriate governments to take effective measures to ensure that the PwDs enjoy their rights equally with others.”
- “Persons with benchmark disabilities and those with high support needs benefits will get “additional benefits such as reservation in higher education, government jobs, reservation in allocation of land, poverty alleviation schemes etc.”
- “Each and every CWSN with special reference to individual with benchmark disability between the age group of 6 and 18 years will have right to free inclusive and quality education with reasonable accommodation.”
- “Educational institutions which are funded and recognized by government will be bound to provide inclusive education to each and every student with disabilities.”
- “Reservation for PwDs in job in government establishments has been increased from 3% to 4%.”
- “The Act provides for grant of guardianship by District Court under which there will be joint decision-making between guardian and PwDs.”

- “Central and State Advisory Boards on Disability will be set up to serve as apex policy making bodies at the Central as well as at State level to look into the disabilities related issues.”
- “Office of Chief Commissioner of PwDs has been strengthened who will now be assisted by two Commissioners and an Advisory Committee comprising of not more than 11 members drawn from experts in various disabilities.”
- “Likewise, the office of State Commissioners of Disabilities has been strengthened who will be assisted by an Advisory Committee comprising of not more than 5 members drawn from experts in various disabilities.”
- “The Chief Commissioner for PwDs and the State Commissioners will act as regulatory bodies and Grievance Redressal agencies and also monitor implementation process of the Act.”
- “ District Level Committees will be constituted by the State Governments to address local issues and concerns of PwDs. Details of their constitution and functions of such committees would be prescribed by the State Governments in the rules.”
- “National and State Fund will be created to provide financial support to the PwDs. The existing National Fund for PwDs and the Trust Fund for Empowerment of PwDs will be subsumed with the National Fund”.
- “ The Act provides for penalties for offenses committed against persons with disabilities and also violation of the provisions of the new law.”
- “Special Courts will be designated/formed/established in each district to handle cases concerning violation of rights of PwDs.”
- “Any person, who violates provisions of this Act, or any rule or regulation made under it, shall be punishable as specified by the concerned govt.”
- “Whoever intentionally insults or intimidates a PwDs, or sexually exploits a woman or child with disability, shall be punishable with imprisonment between six months to five years and fine”.

3.3.2 National Education Policy, 2020 :

The National Education Policy was approved by the union Cabinet, chaired by Hon’ble Prime Minister on July 29, 2020.

The policy is based on the Draft National Education Policy 2019, which the Committee for Draft National Education Policy submitted to the Ministry of Human Resource Development on December 15, 2018.

The NEP 2020 covers the following: school education; higher education, other key areas of focus such as adult education, promoting Indian languages and online education.

3.3.2.1 Salient features of the NEP 2020:

The following are the salient features of the new National Education Policy, 2020:

- “The policy seeks to restructure school curricula and pedagogy in a new “5+3+3+4” design, so that school education can be made relevant to the needs and interests of learners at different developmental stages – a Foundational Stage (five years), a Preparatory Stage (three years), a Middle Stage (three years) and the High Stage (four years, covering grades nine, 10, 11 and 12).”
- “It aims to achieve ‘universal foundational literacy and numeracy’ in primary schools by 2025. For this, the Ministry of Human Resource Development shall set up a National Mission on Foundational Literacy and Numeracy.”
- “Public and private schools – except the schools that are managed, aided or controlled, by the central government – will be assessed and accredited on the same criteria, benchmarks, and processes.”
- “The Gross Enrolment Ratio from preschool to secondary education should be 100 per cent by 2030. (GER is defined as the ratio of the total enrolment in education – regardless of age – to the official population in a given school year, expressed as percentage.) The policy states that universal participation in schools shall be achieved by tracking students and their learning levels to ensure they are enrolled and attending school, and have suitable opportunities to re-join or catch up at school in case they have dropped out or fallen behind.”
- “The medium of expression until at least grade five – but preferably till grade eight or beyond – shall be the student’s mother tongue, or the local or regional language. The three-language formula will continue to be implemented in schools, where two of the three languages shall be native to India.”
- “The policy seeks to standardize the school curriculum for Indian Sign Language across the country.”

- “The government of India shall constitute a ‘Gender-Inclusion Fund’ to provide equitable and quality education to all girls and transgender students. States shall use this fund to implement the central government’s policies for assisting female and transgender students, such as provisions for toilets and sanitation, conditional cash transfers and bicycles. The fund will enable states to support ‘community-based’ interventions.”
- “All education institutions shall be held to similar standards of audit and disclosure as a not-for-profit entity, says this policy. If the institution generates a surplus, it shall be reinvested in the educational sector.”
- The policy says that all “ ‘higher education institutions’ (HEIs) shall aim to be multidisciplinary by 2040. By 2030, there shall be at least one multidisciplinary HEI in or near every district. The policy aims for the Gross Enrolment Ratio in higher education to increase to 50 per cent by 2035 from 26.3 per cent in 2018.”
- “HEIs shall have the flexibility to offer Master’s programmes of two years for those who have completed a three-year undergraduate programme, of one year for students who have completed a four-year undergraduate programme, or five-year integrated Bachelor’s and Master’s programmes.”
- The policy says that “‘high performing’ Indian universities shall be encouraged to set up campuses in other countries. Similarly, selected universities – such as those from among the top 100 universities in the world – shall be encouraged to operate in India.”
- “A National Research Foundation shall be established to facilitate “merit-based but equitable” peer-reviewed research funding.”
- The policy says that “the centre and states shall work together to increase public investment in education to 6 per cent of the gross domestic product, from the current 4.43 per cent.”

3.3.2.2 NEP 2020 and the Right to Education for Students with Special Needs:

The National Education Policy acknowledges the significance of making implementation mechanisms for providing CWSNs the same chances to acquire quality education as others.

Furthermore, the policy highlights that “there is an urgent need for additional special educators for certain areas of school education.” Such educators would need subject-

teaching knowledge along with understanding of subject-related aims of education, and the pertinent skills for understanding of special requirements of children.

3.4 Persons with Disabilities in Higher Education: Legal Provisions:

In India, traditionally, the population of the disabled people were not recognized as a separate group. Instead, the Indian Constitution categorized them under the marginalized sections of our society. The first comprehensive legislation in India post-independence, that exclusively focused on the various needs of the persons with disabilities was the Persons with Disabilities Act, 1995 which was enacted as a response to the recommendations by the Kothari Commission and lobbying by disability rights groups.

a. Persons with Disabilities Act, 1995: The efforts to promote inclusion of specially abled students in higher education was undertaken by the State in the 1990s through the Persons with Disabilities Act, 1995. In order to facilitate access to higher education by the persons with disabilities, Section 39⁶⁴ of this Act states that, “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.” In addition, Section 30⁶⁵ of the aforesaid Act mentions that, “Without prejudice to the foregoing provisions, the appropriate Governments shall by notification prepare a comprehensive education scheme which shall make provisions for”:

- (a) “Transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;”
- (b) “The removal of architectural barriers from schools, colleges or other institution, imparting vocational and professional training;”
- (c) “The supply of books, uniforms and other materials to children with disabilities attending school;”
- (d) “The grant of scholarship to students with disabilities;”

⁶⁴ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

⁶⁵ Ibid

- (e) “Setting up of appropriate fora for the redressal of grievances of parent, regarding the placement of their children with disabilities;”
- (f) “Suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;”
- (g) “Restructuring of curriculum for the benefit of children with disabilities;”
- (h) “restructuring the curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.”

Section 31 lays down that, “All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision.”⁶⁶

b. Higher Education for Persons with Special Needs Scheme:

The 9th Five Year Plan acknowledged a policy to improve differently abled student’s learning experience in higher education through the UGC’s HEPSN scheme. The scheme focuses to assist Higher Educational Institutions to provide support to PwDs through accessible infrastructure, provision of assistive technology and aids for learning, facilitate admission of such specially abled students in various courses, provision of guidance and counselling to these students and assisting them to successfully gain employment after the completion of their course of study. Under this scheme, HEIs have to submit an application to the UGC to obtain the funds allocated for various provisions of the scheme. Although the scheme promotes greater assistance for differently abled students, its implementation has been dismal as HEIs often struggle to obtain the requisite funds.⁶⁷ The National Policy for Persons with Disability announced in 2006 refers to the need for addressing issues in various areas including higher education. But, it does not provide a clear direction or even a list of priorities on implementation. Thus, while the will to facilitate a comprehensive learning experience for disabled students in higher education is expressed on paper, the same is not reflected in practice.

c. Convention on the Rights of Persons with Disabilities:

In 2007, India became one of the first countries to ratify CRPD. Since then, the demand to amend the PWD Act on the lines of the provisions of CRPD intensified.

⁶⁶ Ibid

⁶⁷ https://shodhganga.inflibnet.ac.in/bitstream/10603/174509/9/09_chapter%201.pdf

d. Right of Persons with Disabilities Act,2016:

This Act ensures safety and prohibition of discrimination of the PwDs. It replaced PwD “Equal Opportunity Protection of Rights and Full Participation) Act 1995” since it was not in compliance with the UNCRPD.

“Section 32 of the Act deals with provisions related to reservation in higher educational institutions.” It states that, “All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.” Also, Section 32(2) states, “The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.”

e. National Education Policy, 2020:

The policy puts emphasis on Equitable and Inclusive Higher Education. It lays down that “making quality higher education opportunities available to all shall be among highest priorities.”

3.5 Status of Education and Current Educational Practices for Persons with Disabilities :

In India, as per the Census 2011, out of the total population of PwDs fifty-five percentage were literate. Simultaneously, sixty-two percent of this total were male, while only forty- five percent constituted of the female population who were literate. On the contrary, only 6% and 3% of the males and females belonging to the disabled community were graduates and above.

In general parlance, 3 types of traditional educational practices or approaches are there for the Persons with Disabilities in India. These three practices are viz;

- (i) special education, in which students are categorized according to their disabling conditions and its severity and they are sent to a school specially designed to educate that particular group of students;
- (ii) integrated education, where students are placed in the regular schooling system with provisions of extra supports as long as they can adjust with environment and meet its demand; and
- (iii) inclusive education which recognizes the need to transform the cultures, policies, practices, administration, supervision, management and politics in schools to eradicate

the obstacles that hamper the possibility for responding to the diverse needs of the CWSNs. A detailed account of these three educational practices for students with special needs is given below.

a. Special Education:

In India, and worldwide, “the special education developed as a system to meet the needs of children with special educational needs.” This practice was an outcome of the charity model of disability (Mitchell, 1987) and, later on, accepted as a responsibility of the Government. Govt. of India has undertaken numbers of initiatives to pave the ways of special education for CwDs in the 1970s. However, “in the 1980s, this practice was challenged for its effectiveness and questioned from the perspectives of human rights and latterly from a perspective of social, cultural and political reasons for its existence” (UNESCO, 2005). To mention the usefulness of special education, Dunn (1968) in his seminar report stated that “pupils with mild and moderate disabilities made just as much progress in regular school as they did in the special school. It has also been found that the labelling of SwDs that happened in segregated (special) settings had an unfavourable impact on their self-concept and their teachers’ expectations for their achievement”. He believed that “special education is a system of segregation for ethnic minorities”.

The socio-political and cultural rationales also influence the challenges of special education. It was broadly accepted as a fact that the separate convenience and services, under special settings, were formulated to meet the needs of SwDs. This rationale was later scrutinized and questioned by several scholars. The ideology of special education was also challenged and questioned (Ballard, Ware, 2004). Several scholars criticized special education for the reasons that “it was constructed upon a belief system of individual pathology, ideas about what is normal and abnormal, theories of deficit, and the belief that only expert teachers have understanding, and can meet the needs of, SwDs” (Ballard, 1990). This is a clear echo of “medical model ideology” which was connected to the “phenomenon of exclusion” of individuals with disabilities.

This very fact was also supported by Booth and Ainscow (1998a) when they argued that “this ideology led to exclusion and segregation because it assumed that children who have impairments were deficient and therefore, they are in need of ‘special’ and ‘different’ forms of education”. In the same way, Corbett and Slee (2000) also agreed upon the fact when stated that: “A great deal of theory and practice which forms the special educational tradition is essentially compounding the patterns of educational

and social exclusion we witness in schools and communities”. Due to these criticisms and challenges, attention was shifted towards an education system which is fabricated based on integrated and latterly on inclusive ideology.

b. Integrated Education:

There remained huge difference in the approaches of integrated and inclusive ideologies. Inclusive education emphasizes on the placement of CwDs in the mainstream or regular school. The major focus was on presence of CwDs in regular settings. No attempts are being made to modify and reform the rigid schooling programme and therefore most of the CwDs often fail to manage in the rigid education system. In the integrated system, the CwDs are being seen as problem, not the education system. The students with disabilities are considered as different from their non-disabled counter parts and an individual with disabilities is being looked from medical perspective. To a great extent the integrated education is grounded on the “medical model” of disability ideology and very partially linked with “social model” and “rights-based model” of disability.

The practices of the integrated education system have been challenged from ideological perspectives. Critical questions were raised on its effectiveness in many studies. For example, Algonaito (2003) and Migaliova (2004), the famous advocates of the integration of CwDs, ascertain that integration of CwDs into mainstream may solve educational and social problems of CwDs and help them to achieve their equal rights and possibilities to participate in regular school. However, Ruskus (2001) in a research found that: “although the ideas of social and educational integration were given due importance under the integrated ideology, children with disabilities are still subject to negative assessment in integrated set-up.”

Lam and Yeung (2005) found that teachers do not like the idea of complete integration of CwDs in mainstream school. The teachers mainly focus on the normal students rather than the looking into the problems of CwDs. Teacher shows more care and attention only on integration of CwDs in the mainstream school as mandate of integrated education policy but do not try to understand and meet the varied needs of CwDs in effectively. This marked difference between social and academic aspect could easily be explained by a concept namely “positive discrimination” which reveals “that the acceptance from teachers and non-disabled peers toward the CwDs is a kind of superiority; their acceptance stems from the inferiority of the CwDs who

need sympathy and help. Such culture undoubtedly affects special need learners' self-perception, and thinking that they are different from the rest and this causes a psychological distance towards their social environment" (Lam and Yeung, 2005). Several studies have confirmed that the "low levels of social acceptance and exclusion may lead to emotional and mental health problems in the adulthood of individuals with disabilities and the occurrence of aggressive and disruptive behaviour" Thus, an urgent need of inclusive education was felt to bring qualitative change by reforming the schooling system for Students with Disabilities.

c. Inclusive Education:

Inclusive education is the philosophy of valuing and acceptance of the differences and ensuring the fundamental right to education of all CwDs. It seeks to combat all sorts of barriers that stop CwDs to have access to qualitative education in an inclusive and enabling setting on non-discriminatory basis. Inclusive education is "a process of increasing participation of students within and reducing their exclusion from, the cultures curricula and communities of neighbourhood centres of learning". An inclusive school rethinks of their values, organizational structure, curriculum, teaching learning methods, and assessment and evaluation process and arrangements to remove barriers to participation and learning for all students with special focus on SwDs (Mittler, 2000). Thus, the ideology of inclusive education practices is grounded to the principles of "social model" and "rights-based model" of disability.

Literature (Skrtic, 1991) revealed that inclusive education not only focuses on the students but also it looks into the regular education programme, its organizational structure and mechanism. Very recently, its focus has shifted to the social, cultural and political aspects of education and the effect of the same on inclusion and exclusion of SwDs and this is evident from the statement of Ware (1999): "I view inclusion as a social justice project that begins with understanding how exclusionary we are in schools and in society, how we are sanctioned to maintain exclusion, and how we are rewarded to remain exclusionary- all of which suggests that deconstruction would be the most useful tool for analysis." (p. 43).

Several experts of inclusive education supported the traditional concept of inclusive education but argued that it is a complex and debatable concept. One of the traditional debates in this context is that "inclusive education is mainly rooted in special education and many has described it as a mere transfer of special education principles, knowledge, theories, language, and practices into mainstream education set up, under

the name of inclusive education”. These arguments have also been supported by Corbett and Slee (2000) who state that: “Inclusive schooling according to traditional special educational perspectives is seen as a technical problem to be solved through diagnosis and remedial interventions. Typically, this generates policies whereby the expert professions are called in to identify the nature and measure the extent of disability. This is followed by highly bureaucratic ascertainment processes where calculations of resources, human and material, are made to support the locating of the disabled child in the regular school or classroom (p. 143).”

However, finally it is to admit that inclusive philosophy of education mainly seeks to restructure the mainstream schools so that it can respond to the diverse need of all SwDs (UNESCO, 2005). Therefore, it does not bother about the remediation practices and deficits of disabilities or training of students to enable them to meet the necessities of the regular schooling system, rather it believes that all SwDs can attend their local neighbourhood school provided with reasonable accommodation. It holds every teacher responsible for the development of SwDs by establishing sound collaboration among caregivers, parents and all types of support service providers.

3.5.1 Concept of Inclusive Education:

There is “no single definition that yet been agreed for the concept of inclusion though many have been advanced” (Pearson, 2005). The concept of inclusion has been defined differently by different Countries based on their own social and cultural perspectives from time to time (Mitchell, 2005) and thus several definitions of inclusive education have emerged throughout the world. The most known definition of inclusive education is “the practice of educating individuals with moderate to severe disabilities alongside children without disabilities in general classrooms within their home neighbourhood schools” (Brown et al. 1983, 1989a, 1989b; Gartner and Lipsky 1987; Stainback and Stainback 1989; Giangreco and Putnam, 1991; Wheeler, 1991; Lipsky and Gartner, 1992). Moreover, Ryndack and Alper (2003) added, “Inclusion includes physical integration, social integration, and access to normalized educational, recreational, and social activities that occur in school”.

Fig. 3.1 Definitions of Inclusive Education

“Everyone belongs, is accepted, supports, and is supported by his or her peers and other members of the school community in the course of having his or her educational needs met...” -(Stainback and Stainback, 1990).

“Being with one another...how we deal with diversity. How we deal with difference”- (Forest and Pearpoint, 1992).

“Every child has unique characteristics, interests, abilities and learning needs and therefore, if the right to education is to mean anything, education systems should be designed and educational programmes implemented, to take into accounts the wide diversity of these characteristics and needs” - (UNESCO, 1994)

“Inclusive education is the process with which schools try to respond to all students as individuals, reviewing the organization and provision of their curriculum”

- (Sebba and Ainscow, 1996).

“Increasing participation and decreasing exclusion from a mainstream social setting”- (Potts, 1996, cited in Florian, Rose and Tilstone, 1998, p.16).

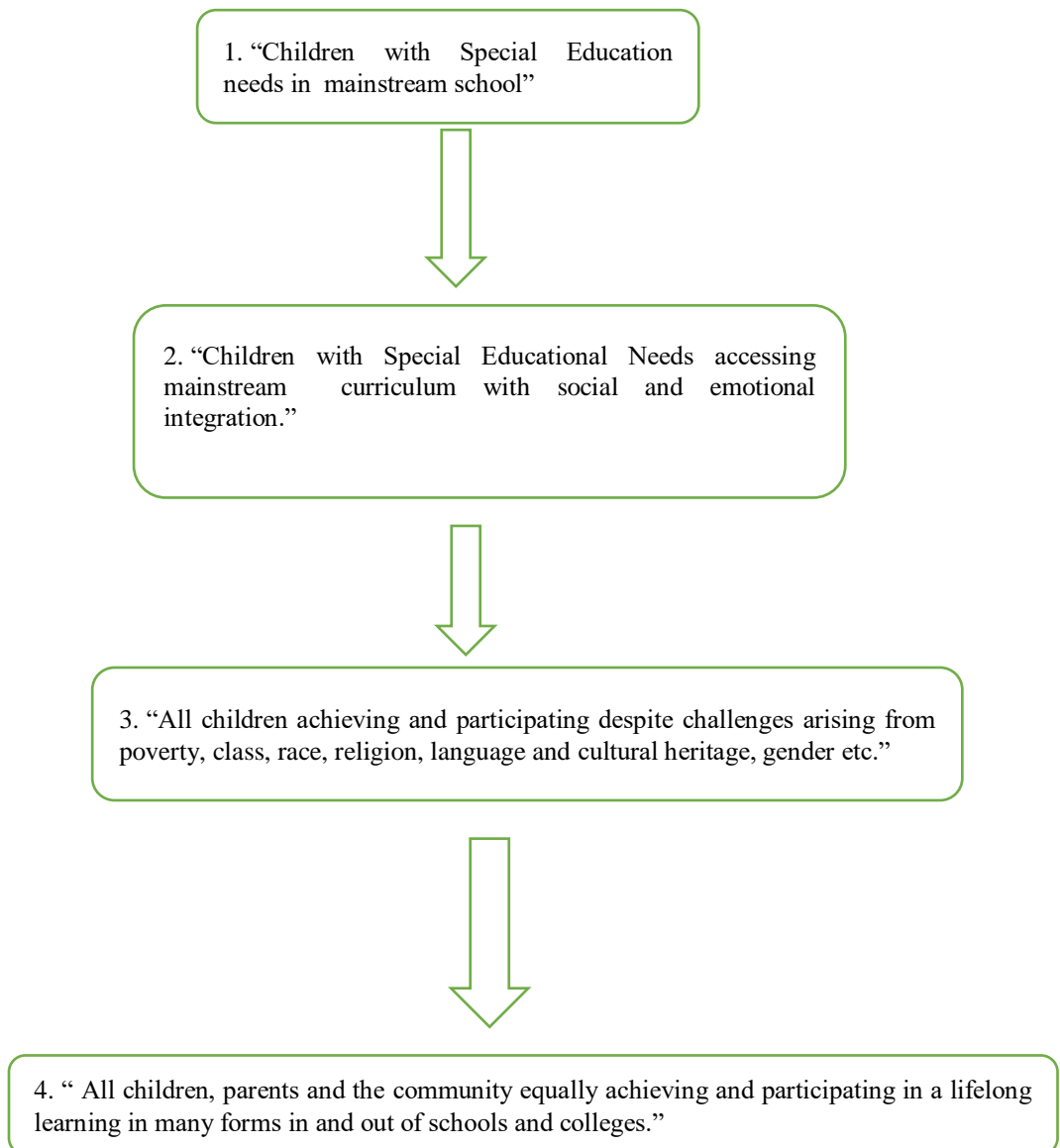
“The fundamental principle of inclusive school is that all children should learn together wherever possible regardless of any difficulties or differences they may have. Inclusive school must recognize and respond to the diverse needs of their students, accommodating both different styles and rates of learning and ensuring quality education to all through appropriate curricula, organizational arrangements, teaching strategies, resource use and partnership with their communities”- (Lipsky and Gartner, 1999)

“Inclusive education as a concept is a notion that requires school to respond to the varying competencies of children”- (Sandil and Singh, 2004).

“Inclusive education is about embracing all... Inclusion is not confined to the disabled, it also means non-exclusion”- (NCF, 2005).

Topping and Maloney (2005) have indicated four levels to give a complete understanding and knowledge about the concept of inclusion. The levels start from accessing and participation in regular schools and grow to a meaningful and wider participation within an inclusive, enabling, barrier-free, democratic and rights-based society.

Fig. 3.2 Four levels of the concept of Inclusive Education



Source: Topping and Maloney, 2005, p.6

CHAPTER 4

JUDICIAL RESPONSE TOWARDS RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES

The judicial organ plays a vital role in ensuring the protection of the rights and empowerment of differently abled people is crucial. Despite its modest beginnings, “judicial activism” in the area of human rights has emerged as a new source of hope for the weaker sections of our society including the persons with disabilities.

On account of the above, this chapter shall dwell upon the approach by the judiciary towards “protection of the right to education for the persons with disabilities”. This chapter is designed into two tiers wherein the first tier is about “the role of judiciary in protecting the right to education of the persons with disabilities at the international level.”

The second tier discusses “the role of the judiciary in preserving PWD’s right to education on at the domestic level. This portion looks at its significance in defining the idea of non-discrimination, equal opportunity and inclusive education both in school and higher education institutions as it applies to persons with disabilities.”

A. Judicial Protection of the Right to Education for Persons with Disabilities in the International Arena:

1. Cam v. Turkey⁶⁸

In this case, Miss Cam was a blind applicant who had passed the entrance exam of the Turkish National Music Academy was rejected due to her blindness.

With regards to rejection of Cam’s enrolment into the music institute, the ECtHR at first noted that the law in force at that point of time had laid down children with special needs were entitled to education without any discrimination.⁶⁹

However, the ECtHR found that there was a breach of “Article 14 of the European Convention on Human Rights (to be read with Article 2 of Protocol 1 to the ECHR- Right to Education).” Art. 14 of the ECHR states that, “ The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion,

⁶⁸ Cam v. Turkey [2016] IHRL 3940 (ECHR 2016)

⁶⁹ Oxford Reports on International Law, (2016) OPIL <<https://opil.ouplaw.com/view/10.1093/law-ihrl/3940echr16.case.1/law-ihrl-3940echr16?rskey=MyqPcg&result=1&prd=ORIL>> accessed 25 June, 2022

national or social origin, association with a national minority, property, birth or other status.”

Considering lack of infrastructure suited to students with disabilities and also considering that discrimination due to disability involved the refusal to make reasonable accommodation for her disability, the Court found that, “the national authorities had made no attempt to identify the applicant’s needs and had failed to explain how her blindness could prevent her from attending music lessons. It also noted that the academy had made no attempt to tailor its lessons to blind students. The Court therefore concluded that the refusal to enrol Miss Çam, which had been based solely on her disability and the fact that the authorities never considered the chances of making reasonable accommodation for her.” Furthermore, the court considered that Miss Cam was denied enrolment without any reasonable justification and held that “she was entitled to be paid 10000 Euros as non-pecuniary damages and 3000 Euros in respect of costs and expenses.”⁷⁰

2. University of British Columbia v. Berg⁷¹

In this case, ‘A’ was a patient of depression who was denied entrance to the university building after hours although other students were granted access.

The court held that “the University’s denial of access based on the student’s mental health was discriminatory because the access was part of services that were normally open to the general public.”

3. Cesar Alan Rodriguez⁷²

Here, it was pointed out by the Court that the RTE of the child with disability was violated, since the academia did not give him completion certificate for his education despite the fact that he had met all the requirements. The Court concluded that, “people with disabilities have the right to an inclusive education on an equal basis with others, and this includes the right to have their capabilities and accomplishments certified under equal conditions. ‘Equal conditions’ does not necessarily mean identical requirements but rather, making reasonable adjustments to ensure that

⁷⁰ Allen Tyrer, ‘Cam v. Turkey’ (StammeringLaw, 30 April, 2016)
<<https://www.stammeringlaw.org.uk/cam-v-turkey/>> accessed 25 June, 2022

⁷¹ [1993] 2 SCR 353.

⁷² <https://www.right-to-education.org/resource/c-sar-alan-rodriguez>

individuals are treated as equals. Namely, the Court explained that the plaintiff, having met the specific requirements of his project and having attended and passed 5 years of courses at the institution, had the same right as his classmates that had met the requirements imposed on them to receive a certificate”.

B. Judicial approach for the Protection of RTE for Persons with Disabilities in India:

1. *Anmol Bhandari v. Union of India*⁷³

In this case, it was held by the Supreme Court that, “the Specially abled Persons will be entitled to get equal benefit and relaxation as it is given to the Scheduled Caste as well as Scheduled Tribes in public employment and in education sector. Under Article 15(4) and Art 15(5) of the Indian Constitution Scheduled Caste and Scheduled Tribes were given benefits for their upliftment.”

2. *Rukam Pal Singh and others v. State of Rajasthan*⁷⁴

In this writ petition, it was pointed out by the petitioners that the provisions of the “Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” were not given effect to. It was argued that “keeping in view the object and the purpose of the Act the State and the local authorities have to ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years. Besides, it has to be the endeavour of the State and the local authorities to promote the integration of students with disabilities in the normal schools. The Government and the local authorities are also required to set up special schools in government and private sectors for those in need of special education in such a manner that children with disabilities living in any part of the country have access to such schools.”

It was held by the Court that, “Having regard to the provisions of Section 26 and 29 of the Act, we direct the State to take steps to impart requisite training to the teachers for imparting special education to the children with disabilities and to appoint them with a view to promote the integration of students with disabilities in the normal schools. The State shall also take steps to promote setting up special schools in the government

⁷³ [2014]W.P.(C) 4290

⁷⁴ RLW 2004 (4) Raj 2515, 2004 (3) WLC 105

and private sectors for those in need of special education in such a manner that children with disabilities have access to such schools.”⁷⁵

3. *Kamal Gupta v. State of Uttarakhand and Others*⁷⁶

In this case, the Uttarakhand High Court had taken cognizance of a letter written by the petitioner where he had highlighted the problems faced by the children with special needs while pursuing education in the schools throughout the State of Uttarakhand.⁷⁷

It was directed by the High Court of Uttarakhand while delivering the landmark judgment on July 11, 2018 that “the State Government shall appoint special educators in all Government aided and unaided private schools for children with special educational needs and the premises of the schools and transportation shall be made barrier-free.”

4. *Aswathy v. Union of India and others*⁷⁸

In this case, a woman who was suffering from cerebral palsy filed a petition as she was rejected admission to the MBBS course despite qualifying NEET, 2020.

The Kerala High Court, held that, “Persons with Disabilities have a right not only to basic education but also to higher education and directed the concerned respondent to admit the petitioner provisionally to the MBBS course in the institution referred.”

5. *Irene Clemance Thottapilly v. State of Kerala*⁷⁹

In this case, the petitioner claimed to be suffering from learning disability and argued that she was entitled to pursue MBBS in the medical colleges of the State of Kerala as per the provisions of the Rights of Persons with Disabilities Act, 2016 but was denied admission as the respondents took a stand that the benefit of reservation could not be extended to her since in her case it was impossible to ascertain the extent of disability. Taking into account the above mentioned circumstances, the Court held that, “the petitioner shall have to be assessed duly by a Medical board.” Post assessment she was found to have mild specific learning disability and was found capable of pursuing the MBBS curriculum.

⁷⁵ <https://indiankanoon.org/doc/1712667/>

⁷⁶ [2018] WRIT PETITION (PIL) No.87 OF 2014

⁷⁷ <https://indiankanoon.org/doc/185384160/>

⁷⁸ WP(C).No.27225 OF 2020(C)

⁷⁹ WA No.1729 of 2018

Furthermore, it was held by the Court that, “although the petitioner was suitable for pursuing MBBS course, she cannot do so by claiming reservation as is given to the physically challenged candidates. Thus, the writ appeal was found void of merit and was dismissed.”

CHAPTER 5

CHALLENGES AND ISSUES RELATED TO RTE FOR PERSONS WITH DISABILITIES

5.1 Challenges and issues faced by Children with Special Needs with regard to their Right to Education:

According to WHO & the World Bank, “one billion people experience some form of disability. Of those, it is estimated that 93 to 150 million are children.” As per Plan International, “these children are 10 times less likely to go to school than other children and when they do attend school, it is likely to be in a segregated setting.”

“Children with disabilities have very low rates of initial enrolment. Even if they do attend school, children with disabilities are more likely to drop out and leave school early without transitioning to secondary school and beyond .”⁸⁰ “Children with disabilities are also at increased risk of school violence and bullying, preventing the safe enjoyment of their right to education.”⁸¹ These facts and figures reflect the impact of the significant ongoing barriers to education faced by many people with disabilities, which include:

- “lack of accessibility, both in terms of physically inaccessible school buildings and unsuitable learning materials.”
- “discrimination and prejudice which prevents people with disabilities from accessing education on equal terms to others.”
- “exclusion or segregation from mainstream school settings (also referred to as ‘regular schools’)”
- “inferior quality of education, including in mainstream settings where children with disabilities have been ‘integrated’ into the existing non-inclusive system.”

Human rights law seeks to directly tackle these issues by placing obligations on states to respect, protect, and fulfil the right to education of people with disabilities, through the implementation of ‘inclusive education’.

⁸⁰ Global Campaign for Education, GCE Reports 2014
<<https://campaignforeducation.org/en/resources/gce-reports?start=12>>

⁸¹ UNESCO, School violence and bullying: Global status report, 2016.

5.2 Common Barriers to Right to Education for Persons with Disabilities:

The main barriers to the Right to Education identified both at the International and domestic levels for Persons or Students with Disabilities are discussed in brief in the following points:

Barriers to education can take a variety of forms. They can be physical, technological, systemic, financial, or attitudinal, or they can arise from an education provider's failure to make available a needed accommodation in a timely manner. The following appear to be the main barriers to educational service for students with disabilities:

- i. **Insufficient funding:** The main reason for delayed and diminished special education services at the elementary and secondary levels. Usually decisions regarding accommodation are made based on budgetary considerations rather than on an assessment of the actual needs of students with disabilities. At the higher-secondary level, the funding structure is highly complex, with some programs containing eligibility requirements and restrictions that raise human rights issues.
- ii. **Physical Inaccessibility:** Students with disabilities come across physical barriers such as unavailability of ramps and/or elevators in multi-level school buildings, heavy doors, inaccessible washrooms, and/or inaccessible transportation to and from school, colleges and Higher Educational Institutions.
- iii. **Process of Accommodation:** “Accommodation is not always provided in a timely manner, is often insufficient, and sometimes not provided at all. At the elementary and secondary levels, other difficulties include: delays at many stages of the accommodation process, a large backlog in the processing of claims for special education funding, long waiting lists for professional assessments, and delays in the provision of special education programs and services. At the post-secondary level, information about services and supports is not always accessible, there are delays in accessing accommodations, and the right of students to confidentiality is not always respected”.
- iv. **Lack of Individualization:** “At the elementary and secondary levels, some education providers are relying on blanket approaches to accommodation, rather than assessing each student on an individual basis. Some funding schemes rely

on previously set categories and labels, and emphasize student weakness rather than strength. Suspension and expulsion policies are at times rigidly applied and do not take into account a student's individual circumstances. At all levels of education, there needs to be a greater recognition of the context in which discrimination occurs. Not all students will experience discrimination in the same way. For example, some students with disabilities are also members of other historically disadvantaged groups, and thus may experience discrimination on more than one ground.”

- v. **Negative Attitudes and Stereotypes:** “Children and young adults with disabilities face bad attitudes and stereotypes in the education system. Lack of knowledge about and sensitivity to disability issues on the part of some educators, staff and students can make it difficult for students with disabilities to access educational services equally.”

CHAPTER 6

SUMMARY, FINDINGS AND CONCLUSION

Education is a powerful weapon for bringing awareness towards a social change. It works as a tool to uplift socio- economic status and to provide a respectable place to any person including persons with disabilities in the society. While, school education is the fundamental stepping stone for the all round development of any child, on the other hand, higher education serves as an important means for exploring, generating, conserving and transmitting knowledge. It is to be noted that education in all forms is directly related to skill development, nation-building, research and development, national integration and employment. It can enhance the potential to make economic as well as social development. Thus, education plays an important role in uplifting economic, social, political status of all including Persons with Disabilities.

However, there were certain problems faced by persons with disabilities in pursuing education.

Therefore, the present research study tried to study the legislative frameworks at national and international levels regarding right to education for persons with disabilities and find out the key problems faced by them during enjoyment of their right to education and also explored the barriers encountered by these students with disabilities.

Hence, this chapter provides an overview of the findings, conclusive remarks, suggestions and recommendations of the study.

6.1 Summary of the study:

Education plays an important role in the over all development of human beings. Education is a tool for socio- economic development of all and it is a boon for persons with disabilities as it helps them in becoming self dependent and thereby uplift their social status, so that they can live with dignity and respect. Although measures are being taken to ensure right to education for all including those with disabilities, these students (persons with disabilities) face certain challenges and issues while pursuing education. The present study focused on the various policies and legal framework at the international and national levels ensuring Right to Education for persons with

disabilities. The researcher also discussed in brief about issues and challenges with regard to RTE for persons with disabilities.

Apart from these two, the other objectives of the study was to evaluate the current position of the Right to Education for PwDs in India and to put forward certain suggestions and recommendations to ensure effective implementation of the laws and policy measures to protect this fundamental right of the persons with disabilities.

The present study was descriptive as well as analytical in nature. An attempt was made by the researcher to resolve the research questions to achieve the objectives of this study by using these methods.

The present study focused on two categories of persons with disabilities:

- a) The Children with Special Needs; and
- b) The young individuals with disabilities.

Therefore, their right to education was studied under two levels. At first, the primary and secondary level, i.e. school level and then at the level of higher education.

6.2 Findings and Discussion:

The present study aimed at analyzing the current scenario of the Right to Education for the persons with disabilities highlighting the legal framework governing this fundamental right at International and national levels and the respective challenges and issues in this regard.

The findings of the investigation revealed the following:

- 1) The enrolment of female students is lower than the enrolment of male students in higher education institutions. Census of India supported the findings of the study. A gender gap is existed in literacy rate as well as in a number of graduates. According to Census (2011), the literacy rate among persons with disabilities was 55% in which 62 % were male and 38% were female. Similarly, the male graduation rate was 67.34% and the female graduate rate was 32.96% (Census, 2011).⁸²
- 2) The overall physical infrastructure of the organizations has been found good but some problems in accessing lifts/ramps, main doors of the buildings and disabled-friendly toilets.

⁸² See <https://censusindia.gov.in/census.website/>

3) It is seen that students with visual impairments have a problem in the tactile path. Therefore, they encounter problems in finding classrooms and accessing other buildings of the campus.

4) It was also found that the toilets in the various educational institutions meant for use by the differently abled students are usually not maintained properly and are not in use.

5) The study found that the students with disabilities faced academic problems due to lack of awareness, lack of understanding and co-operation of the administrators and other official staffs, lack of aids and appliances and other academic support and difficulty in accessibility of buildings.

6.3 Suggestions and Recommendations:

After analyzing the above, the researcher would like to suggest the following for effective implementation of policies and procedures for education for the differently abled people:

1. "There is a need to address attitudinal barriers through different awareness programmes."
2. "Special educational needs should be identified as per RPWD Act , 2016 with proper mechanism."
3. "Identification of disability and procuring the certificate of disability from the concerned authority should be made simpler."
4. "Schools with special equipments for different types of disabilities should be established for decreasing the dropout rate of Children with Special Needs."
5. "Provisions should be made for barrier free architecture irrespective of types and category of disabilities."
6. "Relaxation in admission procedure of children and persons with disabilities in terms of age of admission, reservation, no rejection policy, evaluation procedures in terms of time, type of questions, grace marks, weightage to co-curricular activities as per procedure should be encouraged."
7. "Respective NGOs should be encouraged to take initiative for education of the differently-abled people along with health, advocacy, livelihood training, providing scholarship, rehabilitation, physiotherapy, counselling and creating awareness about the rights and laws."

6.4 Conclusion

To conclude, in our society, there are children with disabilities and young adults, who face discrimination in day-to-day life in the form of negative attitude, which implies that there is a need to counter the serious problem of attitudinal barriers. People must be made aware about their right to education and inclusive education and provisions for the differently-abled persons should be created among all sections in the society in order to change the negative attitude about the differently-abled.

Despite efforts being made by various agencies and the government there exists certain gaps in the implementation of policies and measures for the benefit and welfare of the differently abled population.

Furthermore, inclusion shall remain a policy merely on paper, unless the challenges are carefully identified and addressed. Along with focus on physical access to school, emphasis should be laid on curriculum, teachers training and equal treatment in the class.

BIBLIOGRAPHY

List of Books-

1. Kanter, A. "The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities", 34 *Syr. J. of Int'l L& Comm.* 287 (2007).
2. Henderson, G., Bryan, W. "Psycho-social Aspects of Disability (Fourth Edition, Charles C Thomas Publisher Ltd, 2011) p. 7
3. Rimmerman, A. *Social Inclusion of People with Disabilities- National and International Perspective (First Edition, Cambridge University Press, 2013)*
4. Kathy Black, *A healing homiletic*, (Abingdon Press, Nashville, 1996)
5. Rhoda Olkin, *What Psychotherapists Should Know About Disability (Guilford Publications, 1999) p.26*
6. Kittay, E., Carlson, L. *Cognitive Disability and its Challenge to Moral Philosophy (First Edition, Wiley Blackwell publication 2010)*

Online Sources-

7. World Health Organization 'World Report on Disability 2011' (World Health Organization, 14 December, 2011) <<https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability>> accessed 4 May, 2022
8. Editor, Enabled.in 'Disability Population in India as per Census 2011(2016 updated)' (Enabled.in, 28 August, 2017) <<https://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/>> accessed 4 May, 2022
9. UNICEF, 'UNICEF data: Monitoring the situation of children and women- Education' (UNICEF, February, 2022) <<https://data.unicef.org/topic/child-disability/education/>> accessed 4 May, 2022
10. 'Disability and Health Overview'(Centers for Disease Control and Prevention, 16 September, 2020) <[https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html#:~:text=A%20disability%20is%20any%20condition,around%20them%20\(participation%20restrictions\)>](https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html#:~:text=A%20disability%20is%20any%20condition,around%20them%20(participation%20restrictions)>)> accessed 5 May, 2022
11. Disability in India' (Vikaspedia, 2018) <<https://vikaspedia.in/social-welfare/differently-abled-welfare/disability-in->

23. United Nations, ‘Convention on the Rights of Child’ UNGA Res 44/25 (20 November,1989) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 29 May,2022
24. General Comment No.13, International Covenant on Economic,Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)993 UNTS 171 (ICESCR)
25. Zettel, J. ‘ The Education for all Handicapped Children Act of 1975 PL 94-142: Its History, Origins, and Concepts’(Journal of Education, 1979) <<https://doi.org/10.1177/002205747916100303>>
26. Convention on Rights of Child(adopted 20 November, 1989, entry into Force 2 September,1990) 196UNTS1577 (CRC)
27. UNESCO, ‘The Right to education for Persons with disabilities’ (United Nations Educational, Scientific and Cultural Organization, 2019) <<https://unesdoc.unesco.org/ark:/48223/pf0000371249/PDF/371249eng.pdf.multi>> accessed 2 June, 2022
28. United Nations Office of the High Commissioner, ‘International Covenant on Economic , social and Cultural Rights’ [UNGA Res 2200A(XXI)] <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 2 June, 2022
29. United Nations, ‘ Article 24- Education’ (Department of Economic and Social Affairs) <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>> accessed 5 June, 2022
30. UNESCO, ‘ Education 2030’ (United Nations Educational, Scientific and Cultural Organization, 2019) <<https://unesdoc.unesco.org/ark:/48223/pf0000371249/PDF/371249eng.pdf.multi>> accessed 5 June 2022
31. Martand Jha, ‘The History of India’s Disability Rights Movement’ The Diplomat (21 December,2016) <<https://thediplomat.com/2016/12/the-history-of-indias-disability-rights-movement/#:~:text=By%202012%2C%20the%20Union%20Government,of%20parliament%20just%20last%20week.>> accessed 10 June, 2022
32. Office of the Registrar General and Census Commissioner, India ‘Census-2011’ (Ministry of Home Affairs, Government of India <<https://censusindia.gov.in/census.website/>>

33. Karanure, H. “Article 14- Equality before the Law and Equality Protection of the Law” (Manupatra, 2 June, 2022) <<https://articles.manupatra.com/article-details/Article-14-Equality-Before-Law-and-Equality-protection-of-the-law>> accessed 12 June ,2022
34. “Justiciability of ESC Rights- the Indian Experience” (Circle of Rights: Economic, social & cultural rights activism: A Training Resource)
35. <<http://hrlibrary.umn.edu/edumat/IHRIP/circle/justiciability.htm#:~:text=Article%2041%20of%20the%20Constitution,cases%20of%20undeserved%20want.%E2%80%9D16>> accessed 12 June,2022
36. Jayanta Boruah, ‘ Right to education for Persons with Disabilities in India: An Analysis of the Contemporary Legal Developments’ (SSRN, 20 April, 2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3821873> accessed 13 June, 2022
37. Bhalerao, S., Mogar, A “Right to Education for Persons with Disabilities and Current Scenario” (ResearchGate, December 2016) <https://www.researchgate.net/publication/349838072_Right_to_Education_for_Persons_with_Disabilities_and_Current_Scenario> accessed 24 June,2022
38. https://shodhganga.inflibnet.ac.in/bitstream/10603/174509/9/09_chapter%201.pdf
39. <https://opil.ouplaw.com/view/10.1093/law-ihrl/3940echr16.case.1/law-ihrl-3940echr16?rskey=MyqPcg&result=1&prd=ORIL>
40. Tyrer, A. ‘Cam v. Turkey’ (StammeringLaw, 30 April, 2016) <<https://www.stammeringlaw.org.uk/cam-v-turkey/>> accessed 25 June, 2022
41. <https://indiankanoon.org/doc/1712667/>
42. Global Campaign for Education, GCE Reports 2014 <<https://campaignforeducation.org/en/resources/gce-reports?start=12>>
43. UNESCO, School violence and bullying: Global status report, 2016.