CHAPTER VI

RIGHTS OF DISABLED CHILDREN:
SOCIO-LEGAL ISSUES

Article 23 of the UN Convention on Rights of the Child provides special rights to disabled children.\(^1\) The *travaux preparatua* of this Convention had made it a point that the recognition of rights especially meant for disabled children would never mean to treat them as ‘simply a vulnerable category’ of children. But, it means that they should be a dignified category which deserves special treatment.\(^2\)

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\(^1\) Article 23 says:

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

2. State Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, healthy care services, rehabilitation service preparation for employment and recreation opportunities in a manner conductive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries”

\(^2\) UN Doc. E/CN.4/L.1366 p.3, (Submission by Poland)
The assertion in the 1989 Convention was actually the crystallization of the proposal provided by the 1959 UN Declaration of the Rights of the Child.\(^3\) The declaration of rights of disabled children can again be identified as a follow up to the recognition of human rights of disabled persons generally, in the international sphere.\(^4\)

**Meaning of the Term ‘Disabled Person’**

The International community gives the meaning to the term ‘disabled person’ as ‘any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities.’\(^5\)

The UN Declaration on the Rights of Disabled Persons 1975 also sets out the following principles, for the actual enjoyment and exercise by disabled persons of the full range of human rights:

i. The principle of non-discrimination in the enjoyment and exercise of human rights;

ii. The right to respect for one’s human dignity, and the right to protection against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature;

iii. The right to enjoy a decent life, as normal and full as possible;

iv. The right to measures designed to enable disabled persons to become as self-reliant as possible;

v. The right to medical, psychological and functional treatment; medical and social rehabilitation; education; vocational training; rehabilitation;

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3 Principle 5
4 Resolution No. 2856 (XXVI) of 20 December 1971 (Declaration on the Rights of Mentally Retarded Persons); Resolution No. 3447 (XXX), 9 December 1975 (Declaration on the Rights of Disabled Persons).
aiding and counseling; placement services; and other services aimed to enable disabled persons to develop their capabilities and skills to the maximum and to hasten the process of their social integration or reintegration;

vi. The right to a decent level of living, and economics and social security;

vii. The right, according to one’s capabilities, to work;

viii. The right to join trade unions;

ix. The right to live with one’s family or with foster parents;

x. The right, if placed in a specialized establishment, to an environment and living conditions as close as possible to those of the normal life of a person his or her age;

xi. The right to participate in all social, creative or recreational activities;

xii. The right to qualified legal aid when necessary for the protection of one’s person and property.

The Declaration of UN General Assembly, 6 1981 as the International Year of Disabled Persons devoted the following set of objectives too:

i. Helping disabled persons in their physical and psychological adjustment to society

ii. Promoting all national and international efforts to provide disabled persons with proper assistance, training, care and guidance to make available to them opportunities for suitable work and to ensure their full integration in society;

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6 UN General Assembly Resolution 31/123, December 16, 1976
iii. Encouraging study and research projects designed to facilitate the practical participation of disabled persons in daily life, e.g. by improving access to public building and transportation systems;

iv. Educating and informing the public of the rights of disabled persons to participate in and contribute to various aspects of economic, social and political life; and

v. Promoting effective measures for the prevention of disability and for the rehabilitation of disabled persons.\footnote{7}

In a later attempt, the UN adopted the World Programme of Action concerning Disabled Persons\footnote{8} and proclaimed the period 1983-1992 as United Nations Decade of Disabled Persons and encouraged member states of the UN to utilize the period as one of the means of implementing the World Programme of Action concerning Disabled Persons.\footnote{9} It was also planned to initiate action beyond the end of the Decade and made a preliminary outline for a long-term strategy to the year 2000.\footnote{10}

In 1993 the UN also adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.\footnote{11} The principal purpose of these Rules is “to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others.”\footnote{12}

In relation to the international human rights documents only, the specific assertions for disabled persons will have its full momentum. Though the UDHR or

\footnote{8 General Assembly Resolution 37/52, December 3, 1982.}
\footnote{9 General Assembly Resolution 37/53, December 3, 1982}
\footnote{10 See, Resolution 45/91, December 14, 1990; Review by UN Secretary General of the implement of the World Programme of Action concerning Disabled Persons & the United Nations Decade of Disabled Persons, 1992}
\footnote{11 UN General Assembly Resolution 48/96, December 20, 1993}
\footnote{12 Para 15, Standard Rules on the Equalization of Opportunities for Persons with Disabilities 1993.}
ICCPR or ICESCR contain special provisions relating to disabled persons, the UN Committee on Economic Social and Cultural Rights in 1994 issued a General Comment on Persons with Disabilities which provides:

“Since the provisions of the ICESCR apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the ICESCR”.

The World Conference on Human Rights, in 1993, adopted the Vienna Declaration and programme of Action which states:

“..all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights…”

“Disabled Children”

Article 23 of the 1989 Convention does not describe what constitutes a mental or physical disability which entitles a child for special protection. But based on the 1993 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities the term ‘disability’ may be explained as a great number of different functional limitations occurring in any population. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness, which may be permanent or transitory in nature.

The Special Rapporteur on Human Rights and Disability divides the cause of disabilities into those that do not necessity entail human rights violations such as hereditary factors and those which are a direct or indirect consequence

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13 Para 63
14 UN Doc. E/CN.4/ Sub. 2/1991/31
15 but the disability done to hereditary factors will not outweigh the gravity of the situation.
of human rights violations including mutilations in armed conflicts. But this categorization cannot be considered satisfactory as whatever be the cause of disability, at any state of disability the status requires concern so as to enable the person the full realization of his enjoyment of all human rights. In other words, it is better to identify such children as ‘children with special needs’ to indicate that because of their status their special needs have to be met so that they are able to benefit from the exercise of their general human rights.

It is pertinent to note the implications of ‘UNICEF Prevention and Rehabilitation Strategy for Children with Disabilities’ based upon the recommendations submitted to it by Rehabilitation International.\(^\text{16}\) It is identified that many of the impairments of childhood in developing states are preventable, as they are caused by inadequate nutrition, faulty child bearing practices, disease and accidents which may be prevented. Sometimes it is possible to eliminate or minimize the disabilities if they are detected and corrected earlier. Community based rehabilitation is also found important as the correct response can often be provided by the family and other members of the community if they have the right information, knowledge and training.

The protection assured under Article 23 of the 1989 Convention reminds the right of children with disabilities to special care, and undertake to extend assistance, upon application, to any eligible child, taking into account the circumstances of the child and those responsible for his or her care.\(^\text{17}\) The assistance should be designed to ensure that children with disabilities have effective access\(^\text{18}\) to and to receive education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to achieving the fullest possible integration and social development.\(^\text{19}\) The UN has also identified that it is less expensive to provide

\(^{16}\) UNICEF Executive Board 1980

\(^{17}\) Article 23(2)


\(^{19}\) Article 23 (3)
appropriate rehabilitation services than to provide the necessary care for an impaired individual, who without rehabilitation is dependant.\textsuperscript{20}

**Protection of Children with Special Needs: The Indian Scenario**

The population of Indian children with disabilities include mainly those with locomotor handicap, hearing handicap, speech handicap, visual handicap, mental retardation and cerebral palsy. The periodical surveys conducted by the national sample survey organization and the reports of the Rehabilitation council of India on Manpower Development show a general picture that about 2% of the total population of the country consists of children with disabilities of the age group of 5-14 years. Being shocked at this the government has formulated legislations and polices pertaining to disability. A brief note of the same will help to find out the inadequacies in the field.

**The National Policy of Education (NPE) 1986**

The main objective formulated under this policy is to provide education to all including the disabled. The objective of the policy is to integrate the physically and mentally handicapped with the general community\textsuperscript{21} as equal partners to prepare them for normal growth and to enable them to face life with courage and confidence. It is specifically provided that wherever possible, education for children with motor and other mild handicap will be with ordinary children.

This may help to go hand in hand the educational changes in the United States, Canada Europe and Australia. Australia has laid greater emphasis on

\textsuperscript{20} UNDP Technical Advisory Note No. 1202

\textsuperscript{21} Globally it is estimated that 70% of children with disabilities, including those with mild mental retardation, can attend regular schools provided the environment is designed to be accessible and the institution has the facility to accommodate them. See for details, http://www.unicef.org/rosa/inclusiveind.pdf, visited on 10/03/2011; See also Karna G.N., *United Nations and the Rights of Disabled Person: A study in Indian Perspective*, APH Publishing Corp., New Delhi, 1999.
inclusive educational practices for children with disabilities. The teachers are required to ensure that the rights of children with disabilities are met within their classroom.

The 1986 policy also envisages that special schools with hostels will be provided as far as possible at district head quarters for severely handicapped children.

The Plan of Action 1986

This identifies that education of handicapped children in special schools is very expensive; so it will be ensured to only those children whose needs cannot be met in common schools. Once the communication and reading and writing skills are acquired they will be integrated in regular schools.

The 1989 Central Scheme for Integrated Education proposes to provide educational opportunities for the disabled in regular schools.

Programme of Action 1992

This lays importance on the implementation of the project ‘Integrated Education for Disabled’. The National Council for Educational Research and

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22 Marge Hauritz, Charles sampford, Sophil Blencowe(eds), Justice for people with disabilities – Legal and institutional Issues, the Federation Press, 1998 p.109

23 Inclusive education is not simply the assimilation through the placement of disabled students; it requires additional resources and classrooms in regular schools so that the disabled students can lead a more normal school life. See for a detailed discussion, sandy Cook & Roger Slee, “Struggling with the Fabric of Disablement: Picking Up the threads of the law & Education”, Melinda Jones & Lee Ann Basser Marks(Ed.), Disability, Divers-ability and Legal Change, Martinus Nijhoff Publishers, 1999 at pp. 327-332:

Training (NCERT) is bestowed with the responsibility to train and provide resource teachers to implement the integrated education scheme\(^\text{24}\).

**Comprehensive Action Plan on Inclusion in Education of Children and Youth with Disability 2005**

Here also the Ministry of Human Resource Development has promised to adopt inclusive education for disabled children.

**The Rehabilitation Council of India Act 1992**

The main aim of the Act is to regulate the manpower development programmes in the field of education of children with special needs, in line with the governmental decision to set up a rehabilitation council under the Ministry of Social Justice and Empowerment. The objectives of the Rehabilitation Council of India Act 1992 are the following:

i. to regulate the training polices and programmes in the field of rehabilitation of people with disabilities.

ii. to standardize training courses for rehabilitation professionals / personnel dealing with people with disabilities and ensure uniformity in various training centers throughout the country;

iii. to prescribe minimum standards of education and training institutions in the field of rehabilitation uniformly throughout the country;

iv. to recognize institutions or universities running degree / diploma / certificate courses in the field of rehabilitation of the disabled and to withdraw recognition, wherever the facilities are not satisfactory.

v. to recognize and equalize foreign degree/Diploma/Certificate in the field of rehabilitation awarded by universities or institutions.

vi. to maintain a central Rehabilitation Register of person possessing the recognized rehabilitation qualification.

vii. to collect information on a regular basis, education and training in the field of rehabilitation of people with disabilities from institutions in India and abroad.

viii. to encourage continuing rehabilitation education by way of collaboration with organization working in the field of rehabilitation of persons with disabilities.

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

This comprehensive legislation defines the responsibilities of the central and state governments with regard to the services for disabled persons. The Act ensures full life to disabled individuals so as to make full contribution in accordance with their disability conditions. The Act covers the disability conditions like blindness, low visions, leprosy-cured, hearing impairment, locomotor disability, mental illness and mental retardation.

Under chapter II the Central Coordination Committee and the Central Executive Committee are to be set up by the Central Government. The power to review and co-ordinate the activities of all the Departments of Government and other Governmental and non-governmental organizations which are dealing with matters relating to persons with disabilities is vested with the Central Coordination Committee. Chapter III provides for the State Coordination Committees and the State Executive Committees to be set up by the State governments.
Chapter IV provides for prevention and early detection of disabilities through surveys, investigations and research conducted concerning the cause, occurrence and prevention of disabilities. With a view to prevent the occurrence of disabilities, the appropriate governments and local authorities are duty bound to undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities. All the children shall be screened at least once in a year for the purpose of identifying “at risk” cases. Training facilities to the staff at the primary health centers shall be provided. Provisions are also incorporated for creating awareness and training and taking measures for pre-natal and postnatal care of the mother and child.25

Under Chapter V, the Central and State governments shall ensure that every child with disability has access to free and adequate education till the age of 18 years. It also indicates that integrated education and special schools will have to be set up to meet the educational needs of children with disabilities. Introduction of non-formal education, functional literacy schemes, provision of aids and appliances, education through open schools and universities, etc. are also stressed in the Act. It is also indicated that the government should create adequate teachers’ training facilities to prepare teachers for special schools. The role of local authorities in providing educational facilities is highlighted.26

The comprehensive education scheme prepared by the Government shall make provision 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 institutions imparting vocational and professional training;

25 See section 25
26 See sections 26&27
c) the supply of books, uniforms and materials to children with disabilities, attending school;

d) the grant of scholarship to students with disabilities;

e) setting up of appropriate centers for the redressal of grievances of parents 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) re-structuring of curriculum for the benefit of children with disabilities;

h) restructuring the curriculum for the benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum\(^\text{27}\)

All educational institutions shall provide or cause to be provided amenities to blind students and students with low vision.\(^\text{28}\) Section 39 of the Act provides for 3% reservation of seats in all educational institutions, Chapters VI and VII mandates the government to prepare schemes for providing aids and appliances to persons with disabilities.

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental retardation and Multiple Disabilities Act, 1999

This Act provides for the constitution of a body for the welfare of persons affected with certain disabilities like Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. This Trust, as narrated by the object clause itself, “will be promotive, proactive and protectionist in nature”. Towards this goal, the Trust will support programmes, which promote independence, facilitating guardianship where necessary and address the concerns of those special persons who do not

\(^{27}\) section 30

\(^{28}\) section 31
have their family support. The Trust will be empowered to receive grants, donations, benefactions, bequests and transfers. The Central Government will make a one-time contribution of rupees one hundred crores to the corpus of the Trust to enable it to discharge its responsibilities.

Lacunae in Right of Children to Free & Compulsory Education Act, 2009 w.r. to Rights of Disabled Children for Education.

The protection of disabled children in need of education is much limited by including them in the broader category of ‘disadvantaged groups’.  

Further, doubts remain unsolved, regarding the age limits of enjoyment of educational rights by the disabled. The reason is that, the 2009 Act is specific about the upper age limit of 14 years, for the enjoyment of right to education, whereas the 1995 Act ensures free education for the disabled till the age of 18.

Moreover, the 2009 Act does not specifically require disabled – friendly infra structure in schools. The norms and standards require that all schools must compulsorily adhere to, such as play grounds, separate toilets for boys and girls, drinking water etc. But there is no express mention of special facilities for disabled children such as ramps, special study materials, study aids, trained teachers etc. Instead, the Act uses the vague and undefined phrase of ‘barrier free access’. Careful study in this regard reveals that barriers could emanate from situations like scarcity of resources, negative attitude of teachers who are not specially trained to consider children with disabilities as a burden and disturbance to the class. So they may choose to ignore their presence and concentrate on execution of their lesson plans.

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29 S. 2(d)
30 Section 26(a), Persons with Disabilities (Protection of Rights, Equal Opportunities and Full Participation) Act, 1995.
31 Teachers not specially trained may consider children with disabilities as a burden and disturbance to the class. So they may choose to ignore their presence and concentrate on execution of their lesson plans.
Initiatives taken for the Disabled Children

Educational Programmes

The following are the presently available programmes for education of different categories of handicapped children:

a) Integrated Education Programme for children with mild disability in an ordinary school, under the Scheme of Integrated Education for Disabled Children formulated by the Ministry of Human Resources Development.

b) Special School Programme for the severely disabled children in a special school formulated under the Ministry of Social Justice and Empowerment.

c) Opportunities through the National Open School provided to children with disability within the age group of 14-35, through the support of study centers, sponsored under the Ministry of Human Resources Development.

The educational programmes offered include parent-infant training (for age group 0-2 years), pre-school (2-5 years), preparatory classes (5-8 years), remedial teaching through non-formal education set-up (8-14 years)\textsuperscript{32}.

Bharathi Braille for Visually Impaired Children

India did not have a Braille Code for the Indian languages. The decision of UNESCO in 1947 to follow a phonetic-base Braille Code brought forth the evolvement of a Braille Code in India in 1951, which enables the large number of educational institutions in the country for persons with visual impairment.

\textsuperscript{32} In UK, the Special Educational Needs and Disability Act 2001 divides school system into two, (i) pre-16 education and (ii) post-16 education where the post-16 education poses thrust on employment training. See, Anna Lawson, \textit{Disability and Equality Law in Britain}, Hart Publishing, oxford, 2008 at p.94
National Institute for the Visually Handicapped

This institute was established in 1979. The institute concentrates on Braille production, employment, training of staff etc. Regional training centres are also initiated by this institute.

Scheme of Integrated Education for Disabled Children

The scheme provides the following assistance:

1. Appointment of a resource teacher for every 8-10 disabled children enrolled in the school
2. Stationary allowance of Rs.50 per child per annum
3. Uniform allowance of Rs.50 per child per annum
4. Transport allowance of Rs.50 per child per month
5. Reader allowance of Rs.50 per month per child with visual impairment
6. Escort allowance for severely handicapped children with lower extreme disabilities @ Rs.75 per child per month
7. Actual cost of equipment subject to a maximum of Rs.2000 per student for a period of 5 years.33

Education for All Campaign & Disabled Children

As a phase of the governmental commitment to special education in 1993 the disabled children were also included in the campaign for education which is designed with the expansion of early childhood care and development activities,

33 But the application of their scheme is limited, as the State governments have not accepted the financial responsibility for the same.
especially for poor, disadvantaged and disabled children, through a multi-pronged effort involving families, communities and institutions.

**Measures for Early Detection and Prevention**

National measures for immunization are taken under the expanded programme of immunization to prevent some of the childhood diseases, which may lead to the onset of hearing impairment. The National Iodine Deficiency Disorder Control Programme is also carried out as iodine deficiency leads to diseases like goiter, mental retardation, and hearing impairment.

The Child Survival and Safe Motherhood Programme aims at prevention of early infections, which might have hearing impairment as a side effect.

The National Nutrition Policy aims at providing supplementary nutrition to children below 6 years of age, pregnant women and women in 15-41 years of age group.

The National Programme to Overcome the Problems of Ignorance deals with increasing awareness about the prevalence causes and prevention measures of hearing impairment.

Primary health centers have been set up by the government for primary health care. These centers have *gram sevikas, anganwadi* workers, *vikalanga bandhus*, nurses etc.

Though the initiative of government aim to help the disabled children to enjoy their human rights as ordinary children, for the time being the objective remain unattained. The identification of the reasons for failure highlights the following realities.
i. Failure to Account for Societal Responses

The society’s relationship with children with disabilities, help a lot to deal with the complex process of adopting disabled children to the society as ordinary children\(^{34}\). The societal assistance\(^{35}\) should have a four fold objective:

a) the society should realise that children with disabilities have needs, characteristics and potentials similar to other children.

b) The change in societal response should occur in cultural, governmental, organizational and procedural strands of life. Each of these strands should offer its own opportunities to disabled children for creative participation.

c) The changes occur in various strands of life should be interdependent.

d) The sustainable progress occurs when all four arenas (cultural, governmental, organizational, and procedural) are structurally integrated.\(^{36}\)

This four-fold preposition is aimed to attain the participation of disabled children in society. The individual skills should be ascertained and a skill-based training programme should be offered so that the disability could be defected. As next step these individuals should be supported to cope with the natural work environment. Actually this is a transition from the status of disability to the status

\(^{34}\) J. E. Bickenback, *Physical Disability and Social Policy*, University of Toronto Press, Toronto, 1993


\(^{36}\) This four-fold proposition is actually the content of the theory of Braid of Progress. See, Marge Hauritz, Charles Sampford, Sophie Blencowe (eds.), *Justice for People with Disabilities*, p. 2-10
of individual existence. But this transition depends much upon the attitude and responses of the society\textsuperscript{37} and government.\textsuperscript{38}

\textbf{ii. Need for Reasonable Accommodation}

Reasonable accommodation for disabled children is in other words an affirmative action\textsuperscript{39}. It requires non-discrimination, positive action, preferential treatment and to a certain extent, reverse discrimination\textsuperscript{40}.

This reasonable accommodation shall include programmes designed to improve the self-reliance of the disabled children who form a disadvantaged group in our society. The concept of reasonable accommodation should be guided by the following motives:

i. non-discrimination shall reflect the removal of prejudices so that the disabled children can have the opportunity to be treated according to their merit.

ii. the barriers created by society shall be removed so that qualified individuals can demonstrate their merit.

iii. The ‘merit’ should be redefined in the event of disability so that we can give greater value to the traits and abilities which are possessed by the disabled groups.

\textsuperscript{37} In U.S., public and private entities are required by statute to provide ‘reasonable accommodation that allow otherwise qualified persons with disabilities to participate in employment and public activities. See, Rehabilitation Act 1985 and 1996, Americans with Disabilities Act, 1994.

\textsuperscript{38} In Australia, by the 1997 budget, the government announced cash payments for the first time to people caring for ‘profoundly disabled children under 16 years of age.


\textsuperscript{40} See generally, Anna Lawson, Disability and Equality Law in Britain, Hart Publishing, Oxford, 2008; Anna Lawson and Caroline Gooding, Disability Rights in Europe: From Theory to Practice; Essay in European Law, Hart Publishing, Oregon, 2005
iv ‘reverse discrimination’ reflects the awarding of an additional concern to the disabled persons so that they can have greater opportunity of being appraised with the ordinary children.41

iii. Need for Defining Disability

The Australian legal system defines disability as includes:

a. Total or partial loss of the person’s bodily or mental functions;

b. Total or partial loss of a part of the body;

c. The presence in the body of organisms causing disease or illness;

d. The malfunction, malformation or disfigurement of a part of the person’s body;

e. Disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction;

f. A disorder, illness or disorder that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behavior.

The International Classification of Impairments, Disabilities & Handicaps (1980) of the WHO states that disability is ‘a restriction or lack (resulting from an impairment) of ability to perform an activity in the manner within the range considered normal for a human being.’ The WHO has recently revised the classification and provided a more circumstantial perspective on functioning disability and health.

41 For Example, a school which may ordinarily resist including a child with mobility problems from an outdoor pursuits camp on the ground that it will be difficult for that child, can include this particular child also with a preferential treatment by providing an attendant/alternative activities at the camp.
42 Section 14, Disability Discrimination Act 1992
43 ICFDH, 2001
The Social Mode of Disability developed by Michael Oliver deserves mention. This does not deny the problem of disability, but locates it squarely within society. Basically, he sees ‘disability’, by contrast with ‘impairment’, as something imposed on disabled people by oppressive and discriminating social and institutional structures. Thus according to Social Model, ‘impairment’ is lacking part or whole of a limb, or having defective limb, organ or mechanism of the body and ‘disability’ is the disadvantage or restriction of activity caused by a contemporary social organization which takes no or little account of people with impairments and thus excludes them from participating in the mainstream of social activities. This social model definition points to the need of capability approach in education, which intents to develop the possible capacities of the disabled. Being thus educated improves one’s opportunities in life. Hence a capacity perspective provides new and fundamental insights into the conceptualization of impairment and disability.

Again, the traditional concept of disability may fail to identify the problems of the present generation children. Along with Dysmorphism, microcephaly, cerebral palsy, seizures, autism, down syndrome, single gene disorder etc., the developmental disorders, behavioural problems, learning disabilities and the like also make children ‘disabled’ which deserves special attention and care.


The learning disability has identified as a ‘disability’, which requires special care and training, very recently only. In fact, it is a neurodevelopment defect in the capability to acquire all or most learned higher mental skills. It shows extreme aetiological heterogeneity and could be the result of prenatal (most common and mostly genetic), perinatal (mostly hypoxicischaemia) or post-natal (mostly trauma) or infective) onset diseases processes.\(^\text{47}\)

**iv. Need to Supervise Emotion Regulation in Infants**

This aspect lays stress on the social context. In other words, the State in partnership with the community and the family shall bring into effect the emotion regulation of infants so as to prevent and minimize the impacts of disabilities.

In fact, the social context widely influences the development by providing information about behavioural responses and providing feedback about desirable emotional expression. This helps the child to function adaptively, by building the repertoire of behaviors as the child is growing.\(^\text{48}\) The failure to achieve ‘emotion regulation’ may be manifested as aggression, depression, or withdrawal. The technique of emotion regulation manifestly depends upon the influence of mother/care giver of the infant during a period of rapid neurological growth and maturation. This influence has long-term effects on the organization and development of the infant’s brain. By providing stable routines and responding appropriately to their infant needs, the caregivers help them modulate their physiological tension and support the development of emotional regulation. This technique effectively works during a period from the birth of the child to the age of 3 months. The period of 4-9 months age, witnesses the process of differentiation and infants become more interactive. Infants gradually modify their behaviours to meet the expectations of their environment. The processes that underlie the infant’s growing ability to regulate their emotions are maturation of


neurological inhibitory systems, cognitive development and parental socialization. The development of these factors enables infants to regulate their behavior and to adopt and coordinate the infant to meet the demands of the environment. These psychological and medical observations remind the legal system to frame a supporting mechanism to ensure the following:

a. find out the disabilities at the earliest, during infancy or even prior to it, at the womb itself;

b. ensure that during the period of ‘emotion regulation’ the infant remains with the caregiver;

c. the caregiver shall be provided with sufficient support (economic/professional etc) so that he/she can effectively discharge the responsibilities towards the infant in need.

V. Understanding ‘Conjoint Behavioural Consultation’ (CBC)\textsuperscript{49}

This is a relatively new model of consultation for disabled children that provides a solution-oriented focus in which parents and educators are linked in a collaborative problem-solving process to address the academic, social or behavioural needs of a student for whom all parties assume some responsibility. CBC incorporates the problem-solving stages and objectives of the traditional behavioural consultation approach (problem identification, problem analysis, treatment implementation and treatment evaluation). Parents and teachers shall work co-operatively to target a specific problem, collect date, develop a treatment plan and conjointly evaluate the success of the treatment plan.

VI. Upholding & Supporting Parental Responsibilities

Children are considered as vulnerable group in society; those with disabilities face additional challenges. Enabling disabled children to face additional challenges, is the greatest challenge on the part of the parents and caregivers. To discharge effectively this responsibility, governmental support plays a vital role.

VII. Need of Rejuvenating the Education Pattern

Various States like USA, Canada, Europe, Italy and Australia have adopted a system of education for the disabled children, which gives emphasis on inclusive educational practices.

In Australia, basic procedures have been established which allow children with disabilities to attend regular schools. But there is no specific legal protection of the rights of children with disabilities who are included in regular class rooms. Instead, the rights of these children have to be addressed by considering aspects of the law that relate more to the educational rights of all children rather than specifically to those with a disability. Teachers have a responsibility to supervise all students in their care, including students with disabilities. Supervision that falls below a certain standard may result in injuries to students and create legal

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52 In recent years, in U.K the support of government is on an increased rate. In Scotland this goes up to the level of full community support. See for details, Tonks N. Fawcett, Sarah E. Baggley, Cynthia Wu, Dorothy A.Whyte, Ida M.Martinson, “Parental Responses to Health Care Services for children with chronic conditions and their families, a comparison between Hong Kong and Scotland”, Journal of Child Health Care, Vol. 9 (1), 2005, pp. 8-19

53 See, Eaton v. Brant (County) Board of Education, 142 DLR 385 (SCC); The Ontario Court of Appeal held that section 15 of the Charter of Rights and Freedoms gives children with disabilities the right to be educated in an integrated setting with students without disabilities. The court held that segregated classes exert a disadvantage and burden on students with disabilities and therefore are discriminatory.
consequences. The duty to look after students while exercising appropriate care intensifies when students with a range of disabilities including behavioral and emotional problems, are included in regular classrooms. The legal framework for this duty is complex and embraces both common law. The majority of issues concerning the duty of care of educators have been determined by the courts.⁵⁴

The statutory duty of Australian teachers towards children with disabilities include the following aspects:⁵⁵

1. teaching in accordance with the needs of the pupils having regard for the requirements of the curriculum;

2. supervising pupils in a reasonable manner;

3. maintaining the health and safety of all students so far as is reasonably practicable;

4. co-operating with the principal and other members of the school administration in the management and organization of the school; and

5. keeping required records

In England also importance is given to inclusive education. It is unlawful for the body responsible for a school to discriminate in the arrangements it makes for determining admission; in the terms on which it offers to admit a disabled person as a pupil; by refusing or deliberately omitting to accept an application for admission from a disabled person; in the education or associated services provided by the school; or in the school’s exclusion of the disabled person from the school whether temporary or permanently.⁵⁶

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⁵⁴ Rickets v. Erith Borough Council (1943) 2 All ER 629; Wyong Shire Council v. Shirt (1980) 146 CLR 40
⁵⁵ See, Marge Hauritz, Charles Sampford, Sophie Blencowe (ed.), Justice for People with Disabilities – Legal and Institutional Issues, pp. 109-126
⁵⁶ See Part IV of the Disability Discrimination Act 1995 with (Amendment) Regulations 2003 (UK); Part IV was introduced pursuant to Special Education Needs and Disability Act, 2001; See also, Code of Practice for Schools 2002.
The British Practice of ‘SEN framework’ deserves mention. A child will be identified as one with ‘special education needs’ (SEN), if he has a learning disability which calls for special educational provision to be made for him.57 Parents can choose to send a child with SEN to an independent or non-maintained school, provided that the local Education Authority (LEA) is not funding the placement.58

Again, Section 316(2) of the Education Act provides that a child must be educated in the mainstream school (unless the parent prefers otherwise), provided that this is compatible with his receiving the special education provision, his learning difficulty calls for the provision of efficient education for the children with whom he will be educated and the efficient use of the resources.

The Italian Constitution also has given special reference to the rights of the disabled.59 The right to education is ensured for all disabled people, leaving aside any learning, socializing difficulties, which are caused by disability. In Italy, all public and private schools, which have obtained recognition, have the obligation to accept disabled children, even if they are in a situation of gravity and the refusal of such children will amount to criminal offence. The schools must develop plans to assure free and appropriate education in line with the governmental policies.

In Germany, if the child cannot have sufficient improvement in ordinary schools, different special schools are there to deal with children with disabilities concerning hearing, language, physical, motor functioning, mental development, emotional and social development and general sickness.60 The special schools are obliged to examine at the end of each school year whether or not attendance at the special school is still required or whether the child is able to learn in an ordinary school. Under the Federal Social Assistance Act, funding for the educational

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57 Section 312, Education Act 1996 (UK)
58 S. 316 A of the Education Act 1996 inserted by the Special Educational Needs and Disability Act 2001 in order to be compatible with the Human Rights Act 1998
59 See for detailed discussion, Article 38 of the Italian Constitution.
60 See, Marge Hauritz, Charles Sampford, Sophie Blencowe(ed.), Justice for People with Disabilities – Legal and Institutional Issues, p. 607
needs of the disabled children is provided by the Social Assistance Fund and financial means are provided up to university education.

In United States of America also, the ‘free appropriate public education’ is tailored to the unique needs of the handicapped.\textsuperscript{61} Earlier in \textit{Mills v. Board of Education of District of Columbia},\textsuperscript{62} the concept of ‘free appropriate public education’ was explained as inclusive of special and related services which (A) have been provided at public expenses, under public supervision and direction, and without charge (B) meet the standards of the state educational agency (C) included an appropriate pre school, elementary, or secondary school education in the State involved and (D) are provided in conformity with the individualized education program\textsuperscript{63}. In another illustrative situation seen in \textit{Henry Muller},\textsuperscript{64} Pursuant to the New York State Regulations, an emotionally disturbed student is recognized as one who is: a student with an inability to learn which cannot be explained by intellectually sensory or health factors and who exhibits one or more of the following characteristics over a long period of time and to a marked degree:

i. an instability to build or maintain satisfactory interpersonal relationships with peers and teachers;

ii. inappropriate types of behaviour or feelings under normal circumstances;

iii. a generally pervasive mood of unhappiness or depression; or

\textsuperscript{61} See the interpretation of the Education of the Handicapped Act in \textit{Amy Rowley, by her parents and natural guardians v. S.C of the United States Board of Education of the Hendrict Central School District, West Chester County et. al.}, 458 US 176 (1982).

\textsuperscript{62} 348 F. Supp. 866 (D.C. 1972); See also, 36 L.Ed. 2d 16 (1973); 72 L.Ed 2d. 358 (1982).

\textsuperscript{63} Even for the purpose of education, but unjustified isolation or segregation is a form of disability based discrimination prohibited by the Americans with Disabilities Act 1990: See, \textit{Olmstead, Commissioner, Georgia Department of Human Resources v. LC(98-536)} 527 US 581 (1991) 138 F. 3d. 893

\textsuperscript{64} \textit{Henry Muller, on behalf of Treena Muller a minor and Catherine Muller, on behalf of Treena Muller, a minor v. Committee on Special Education of the East Islip Union Free School District and Board of Education of the East Islip Union Free School District}, 145 F 3D 95 (1998)
iv. a tendency to develop physical symptoms or fears associated with personal or school problems.

With a comparison of legal protection for educational rights available in various municipal legal systems to disabled children, Indian legislative framework currently available needs a thorough verification and restructuring. The 1995 Act for persons with disabilities\(^6^5\) makes it obligatory on the part of the appropriate Government and local authorities to:

a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of 18 years;

b) endeavour to promote the integration of students with disabilities in the normal schools;

c) promote setting up of special schools in Government and private sector 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;

d) endeavour to equip the special schools for children with disabilities with vocational training facilities. It is quite clear that the Parliament has acknowledged the internationally obliged responsibility, by bringing the same into the municipal legal regime; but the application of the legal provisions has just become a wild dream. The responsibility of equipping special schools has never been attended by the states effectively.

Section 27 of the 1995 Act has formulated many schemes, which may be notified to take effect by the appropriate governments and local authorities, for:

\(^6^5\) See Chapter V, Persons with Disabilities (Equal Opportunities, Protection of Rights etc) Act, 1995
a) conducting part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole-time basis;

b) conducting special part-time classes for providing functional literacy for children in the age group of 16 and above;

c) imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;

d) imparting education through open schools or open universities;

e) conducting classes and discussions through inter-active electronic or other media;

f) providing every child with disability free of cost special books and equipments needed for his education.

The appropriate governments shall initiate research for designing and developing new assistive devices, teaching aids etc. and also have to set up teachers’ training institutions to develop trained manpower for schools for children with disabilities, and the judiciary has also acknowledged these needs of the disabled category generally.66

Recognition of disability of the child may be initially done by an efficient teacher. Hence, all the teachers in pre-primary and primary levels should be adequately trained in this regard also.67

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Conclusion

In brief, the advocacy for disabled children continually plays a vital role in attaining positively new goals in favour of them. Disabled children are now considered and appreciated as ‘otherwise abled children’. The special education paving way to integrated education facilitates the recognition of their special abilities.

Further the access to goods, facilities and services shall be made easier to the disabled group as a whole, especially our disabled children. By law it should be made unlawful for a provider to discriminate against a disabled child. The term ‘services’ here may include public places, means of communication and information services, accommodation services, banking, insurance, credit or financial facilities for education, entertainment, recreation or refreshment facilities, employment training agencies, etc.

And, with a strong legislative frame work and the united attempts of the state, society and family the better upbringing and rehabilitation of disabled children be effectively attained.