

MARCHING TOWARDS EDUCATIONAL INCLUSION: A LEGAL PERSPECTIVE

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Abstract: *Inclusive education is about how we develop and design our schools, classrooms, programs and activities so that all students learn and participate together. It simply means that Schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions. Inclusive education is needed to provide equal access to a quality and barrier free education. Lack of awareness, orthodox thinking, superstitious beliefs, untrained teachers, lack of funds etc. are few obstacles in the way of educational inclusion. There is a great need to make powerful legislations in order to deal with the problems so that objectives of educational inclusion can be achieved. Besides, it is also needed to appraise and make people aware to a larger extend of the existing provisions to materialize educational inclusion. The purpose of this paper is to throw light on international and national policies and legislations regarding educational inclusion. In addition to international conventions and declarations the government of India has also came up with numerous policies regarding inclusive education since 1947 which will also be deliberated upon in this paper.*

Key Words: *Perspective, Legislations, Inclusive education, disability etc.*

1. INTRODUCTION

Inclusive education is about how we develop and design our schools, classrooms, programs and activities so that all students learn and participate together. In simple words it means that schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions. This should include different abled, gifted children, street children, working children, children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities and children from other disadvantaged or marginalized areas or groups.

Rather than being a subsidiary theme on how some learners can be integrated in regular education, inclusive education is an approach that looks into how to transform education systems in order to remove the barriers that obstruct children from participating fully in education. These barriers may be related to ethnicity, gender, social status, poverty, disability etc. In some situations certain ethnic minorities face discrimination in the classroom, in other contexts the family's low socio economic status might make it difficult for a family to afford sending their children to school. One group, in particular, most at risk of exclusion is learners with disabilities. However, this is not a homogeneous group.

Inclusive education scrutinize how the educational provisions can be modified to make sure that the education is relevant to the local need, that it includes and treats all pupils with respect and that it is flexible so that all can participate. It is a transverse issue that cuts across all education initiatives- from early childhood education to primary education, vocational education, adult education, teacher education and curriculum development. It has implications for teacher training, curriculum development, local capacity building and community involvement and requires re-directing resources and inter-sectorial cooperation. It aims to enable both teachers and learners to feel comfortable with diversity and to see it as a challenge and enrichment in the learning environment, rather than a problem.

The national policy on inclusive education should be grounded in international legislation and policy. The right to an education free of discrimination is stated in the Universal Declaration of Human Rights (UN, 1948) and the Convention on the Rights of the Child (UN, 1989). Moreover, Rule 6 of the UN's Standard Rules on the Equalization of Opportunities for Persons with Disabilities (UN, 1993) provides for equal rights for children and adults with disabilities and for the provision of an integrated school setting. The subsequent sections of this paper deal elaborately with international and national legislative initiatives in the area of educational inclusion.

2. INTERNATIONAL LEGISLATIONS

2.1 The Universal Declaration of Human Rights:- The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

Article 1.

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.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, 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.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 26.

- Everyone has the right to education. 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.
- 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.
- Parents have a prior right to choose the kind of education that shall be given to their children.

2.2 Convention on the Rights of the Child (UN, 1989)

The first UN document specially focused on child rights was the Declaration on the Rights of the Child, but instead of being a legally binding document it was more like a moral guide of conduct for governments. It was not until 1989 that the global community adopted the United Nations Convention on the Rights of the Child, making it the first international legally binding document concerning child rights.

Article 23: States recognize that children with disabilities (mental or 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 the family's financial situation and aim for the child's social integration. The state shall also take measure to prevent the disabilities in children.

Article 28: All children have the right to education. The state shall endeavor to provide free primary education, encourage different forms of secondary education, make higher forms of education accessible, make vocational information available and encourage school retention and prevent drop outs. School discipline should not be in violation of child rights.

2.3 The Standard Rules on the Equalization of Opportunities for Persons with Disabilities

Among the major outcomes of the decade of Disabled Persons was the adoption, by the General Assembly, of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993. Although not a legally binding instrument, the Standard Rules represent a strong moral and political commitment of Governments to take action to attain equalization of opportunities for persons with disabilities. The rules serve as an instrument for policy-making and as a basis for technical and economic cooperation.

Rule 6 (Education):- States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.

- General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization.
- Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.
- Parent groups and organizations of persons with disabilities should be involved in the education process at all levels.
- In States where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe.
- Special attention should be given in the following areas:
 - Very young children with disabilities;

- Pre-school children with disabilities;
- Adults with disabilities, particularly women.
- To accommodate educational provisions for persons with disabilities in the mainstream, States should:
 - Have a clearly stated policy, understood and accepted at the school level and by the wider community;
 - Allow for curriculum flexibility, addition and adaptation;
 - Provide for quality materials, ongoing teacher training and support teachers.
- Integrated education and community-based programmes should be seen as complementary approaches in providing cost-effective education and training for persons with disabilities. National community-based programmes should encourage communities to use and develop their resources to provide local education to persons with disabilities.
- In situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered. It should be aimed at preparing students for education in the general school system. The quality of such education should reflect the same standards and ambitions as general education and should be closely linked to it. At a minimum, students with disabilities should be afforded the same portion of educational resources as students without disabilities. States should aim for the gradual integration of special education services into mainstream education. It is acknowledged that in some instances special education may currently be considered to be the most appropriate form of education for some students with disabilities.
- Owing to the particular communication needs of deaf and deaf/blind persons, their education may be more suitably provided in schools for such persons or special classes and units in mainstream schools. At the initial stage, in particular, special attention needs to be focused on culturally sensitive instruction that will result in effective communication skills and maximum independence for people who are deaf or deaf/blind.

2.4 Conventions and Declarations related to Inclusive Education:

In order to achieve the goal of inclusion of children with different backgrounds and abilities many efforts were made at international level. World Health Organization (WHO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Bank, United Nations Economic and Social Council (ECOSOC), International Labour Organization (ILO), United Nations International Children's Fund (UNICEF), and regional bodies work together and independently to promote inclusive approaches to policy, practice and investment strategies. Following are the conventions and declarations at international level promoting educational Inclusion.

2.4.1 Conventions

- ***Convention against Discrimination in Education (1960)***: Right of access to education and to quality of education.
- ***International Covenant on Economic, Social and Cultural Rights (1966)***: Right of everyone to access all levels of education, including technical and vocational education.
- ***International Covenant on Civil and Political Rights (1966)***: Elimination of discrimination to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- ***International Convention on the Elimination of All Forms of Racial Discrimination (1965)***: Adoption of measures, particularly in the fields of teaching, education, culture and information to combat prejudices that lead to racial discrimination.
- ***Convention on the Elimination of All Forms of Discrimination against Women (1979)***: Elimination of discrimination against women in the field of education. Elimination of stereotyped concept of the roles of men and women by encouraging co-education, the revision of textbooks, school programmes and the adaptation of teaching methods.
- ***Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989)***: Right to education that is responsive to culture and needs of indigenous peoples. Elimination of prejudices ensuring that textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.
- ***Convention on the Rights of the Child (1989)***: Right to free and compulsory primary schooling without any type of discrimination. Emphasis on child well-being and development, and measures to support child care.
- ***International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)***: Facilitation of teaching of mother tongue and culture for the children of migrant workers.
- ***International Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)***: Access to free basic education and to vocational training for all children removed from the worst forms of child labour.

- **Convention on the Protection and Promotion of Diversity in Cultural Expressions (2005):** Equal dignity of and respect for all cultures, including the cultures of persons belonging to linguistic minorities.
- **The convention on the rights of people with Disabilities (2006):** Promotes the goal of full inclusion and guarantees rights of every child to attend the regular school with the supports they require.
- **The World Blind Union and The International Council for Education of People with Visual Impairment (ICEPVI) (2003):** Place the educational services for blind and visually impaired children and youth under the same government bodies as that of children without blindness or visual impairment.

2.4.2 Declarations

- **Universal Declaration of Human Rights (1948):** Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.
- **World Declaration on Education for All (1990):** Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet their basic learning needs.
- **The Delhi Declaration (1993):** Eliminate disparities of access to basic education arising from gender, age, income, family, cultural, ethnic and linguistic differences, and geographic remoteness.
- **Declaration and Integrated Framework Of Action on Education for Peace Human Rights and democracy (1995):** Respect for the educational rights of persons belonging to ethnic, religious and linguistic minorities, as well as indigenous people, and this must also have implications in curricula and methods as well as in the way education is organized.
- **The Hamburg Declaration on Adult Learning (1997):** The State as essential vehicle for ensuring the right to education for all, particularly for the most vulnerable groups of society, such as minorities and indigenous people.
- **Recife Declaration of the E-9 countries (2000):** Effecting changes in legislation to extend basic education and to include education for all in policy statements. Ensuring access and equity for population located in remote areas.
- **Beijing Declaration of the E-9 countries (2001):** Reinforce action-oriented programmes to meeting the learning needs of disadvantaged groups such as children with special needs, migrants, minorities and the urban/rural poor.
- **Universal Declaration on Cultural Diversity(2005):** Encouraging linguistic diversity while respecting the mother tongue at all levels of education; Incorporating, where appropriate, traditional pedagogies into the education process with a view to preserving and making full use of culturally appropriate methods of communication and transmission of knowledge.
- **United Nations Declaration on the Rights of Indigenous Peoples (2007):** Recognizes the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child; Indigenous peoples have the right to establish and control their education systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

3. LEGAL FRAMEWORK FOR INCLUSIVE EDUCATION IN INDIA:

3.1 Constitutional Commitments:-The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. In the recent years, there have been vast and positive changes in the perception of the society towards persons with disabilities.

- **Article 29 (2):-** provides that no citizen shall be denied of admission into any educational institutions maintained by the state or receiving aids out of the state funds on ground of religion, race, caste, language or any of them. The right is guaranteed to disabled as much as to the non disabled.
- **Article 45:-** directs the state to provide free and compulsory education for all the children (including the disabled) until they attain age of 14 years. Keeping in mind the commitments made under article 45 (directive principle of state policy) the government of India came up with 86th amendment in December 2002 which inserted the following articles in the Constitution.
- **Article 21(A):-** The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." – (It also include disabled and gifted children, street and working children, children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities and children from other disadvantaged or marginalized areas or groups.)
- **Article 51A:** Article 51A of the Constitution directs the parents and guardians to provide opportunities for education to his child, or a ward between the age of 6-14 years as the case may be.

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

The act is guided by the philosophy of empowering person with disability. The endeavor of act has been to introduce an instrument for promoting equality and participation of person with disability on the one hand and eliminating discrimination of all kinds, on the other.

3.3 National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999

The Act provides for constitution of the Board of the National Trust, Local Level Committees, Accountability and Monitoring of the Trust. It has provisions for legal guardianship of the four categories of the persons with disabilities and for creation of enabling environment for their as much independent living as possible.

3.4 Right to Education

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

The RTE Act provides for the:

- Right of children to free and compulsory education till completion of elementary education in a neighborhood school.
- It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. 'Free' means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,
- It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning.

4. SUGGESTIONS:

- Empathy, tolerance and compassion towards the weaker sections of the society.
- The success of students with disabilities in more inclusive settings doesn't depends merely upon meeting their academic needs but their social and emotional needs must be addressed. The school climate needs to be more inclusive, a space where all students feel safe and supported, have positive attitude towards each other.

- Schools should run programmes of disability awareness so as to acquaint non disabled children and staff members about their physiological, psychological and educational needs.
- Awareness should be created among students with different abilities and students with different background about their constitutional right to education by utilizing different media sources.
- Majority of teachers are not even aware about the concept of Educational inclusion, then how could we expect inclusive teaching practices from them. Hence it is advisable to provide them proper pre-service and in-service training so that they could able to create more inclusive environment in the schools.
- No doubt we r constitutionally committed to provide social and educational inclusion of children with different abilities and backgrounds through many legal backings. We are still confused between Integrated and inclusive education. To tackle this problem we should first of all clear our understanding about two concepts and in spite of coming up with legislation after legislations, we should work at gross root level to ensure implementation of previous acts and legislations to ensure 100% inclusion.
- Regional governments, local self governments and NGO'S should be given more autonomy for ensuring social, educational and psychological inclusion of children with different abilities and different background.

5. CONCLUSION:

In the light of above facts collected its quite evident that no doubts a number of efforts has been made at international as well as national level for educational inclusion but so far the results are not satisfactory. Despite of all the international and national agencies working in the field of educational inclusion, the number of children who are excluded from schools are still very high, especially in rural areas because the majority of policies and programmes mostly remain on papers only or lacks proper monitoring, evaluation and supervision.

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