

Right To Education For Visually Impaired: Reviewing The U.K. Equality Act, 2010 For A Better Vision In India

**Ashish Virk*

ABSTRACT

It was in 1990's that the Indian Disabled population saw a dawn of their rights when India finally shed its traditional largesse approach. The culmination of a long, tenacious struggle for rights could be witnessed from the series of laws that were passed by the India Government for them. The excitement about this change went off after a few years when the laws passed were never translated in terms of real enforceable rights. The disability rights movement of India thus took another turn when they brought this into the notice of the Judiciary and demanded for actualization of these laws by filing various cases. The disability rights jurisprudence has thus been gradually unfolding in India now.

India has become the first country in the world to ratify the Marrakesh Convention. The various rights legally bestowed to this blessed population include right to equal opportunity, rehabilitation, participation and most importantly right to education; the areas which are discussed in the present work. The paper will also make a comparative study of educational laws of India and UK on the primary schooling of blind students. The work will conclude with certain sub-monitions because we all need to know that just because they are born without eyesight doesn't mean they don't have a vision.

DISABILITY THROUGH AGES: HISTORICAL PERSPECTIVE

'Education must aim at giving the blind child a knowledge of the realities around him, the confidence to cope with these realities, and the feeling that he is recognised and accepted as an individual in his own right.' Berthold Lowenfeld¹

The quest for health and happiness has been one of the perpetual goals of mankind since the dawn of civilization. The promotion of health has been a complex and powerful factor, entwining all aspects of social structure. Societies, however, differ in terms of their perceptions of health. While primitive religious and folklores seem to be inclined to trace in the remote past this idyllic state of paradise on earth. In the Old Testament, patriarchs are said to have lived

* M.A (Pol.Sc), LL.M, Ph.D, Associate Professor, Panjab University Regional Centre, Civil Lines, Ludhiana, Punjab. E-mail: ashishvirk77@gmail.com.

¹ Kiran Devendra, 'Maintaining dignity in Difficult Situations', *The Primary Teacher*, Vol. XXXVI No. 1&2, January and April 2011, p.102.

hundreds of years. The early Greeks, too, conceived of happy races as vigorous and virtuous. According to their legends, the Hyperborean and the Scythians in the north, the Ethiopians in the south, were supposed to be immune from toil and warfare as well as from disease and old age². The scriptures of the Hindu religion and folklores also corroborate this fact. Like primitive societies, men in modern civilized nations are also oriented towards envisaging the prospects of the ideal state of health and happiness. Thus, the mirage that health and happiness are within the possibilities of human race, continuous to flourish in diverse ways throughout history³.

The norms of pre-historic society were governed by Darwinian principle of survival of the fittest. Most of the primitive tribes were quite accustomed to discarding their disabled children on the grounds of physical unfitness. Disabled children were killed outright without any resistance from the tribal chiefs.⁴ Generally, the well known ancient Greek practice of abandoning disabled children to die of exposure is repeatedly cited as evidence for infanticide in all traditional societies.⁵ The Todas of India practiced female infanticide; they refrained from touching their weak and deformed members⁶. Notwithstanding, these forward steps in the early India society, the Babylonians and the Hebrews perpetuated a discriminatory attitude towards their disabled fellows.⁷ In Denmark, they were placed in hot oven, while in the Western Isles of Scotland, 'changelings' were abandoned on a beach at low tide in the forlorn hope that the little people would take back the undesirable child.⁸ The Homo Sapiens utilized the deformed children also as commercial objects and thus exploited them.⁹ So much so Plato and Aristotle even justified the liquidation of such disadvantaged people from the society. While envisaging his

² Rene Dubois, "Mirage of Health", in Nick Black ed. *Health Disease: A Reader*, Open University Press, Milton Keynes, 1984, p.4.

³ G.N.Karma, *UN and The Rights of Disabled Persons: A Study in Indian Perspective*, APH Publishing Corporation, New Delhi, 1999, p.11.

⁴ Patricia Minnes, "Factors Affecting Perceptions of Disability and Persons with Disabilities," *Action Aid Disability News*, Vol. 5, No. 2, 1994, pp. 100-101.

⁵ Linda Hickson, *Mental Retardation: Foundations of Educational Programming*, Allyn and Bacon, Boston, 1995, p.2; John G. Greer, *Strategies for Helping Severely and Multiply Handicapped Citizen*, University Park Press, Baltimore, p.20; George Nelson Wright, *Total Rehabilitation*, Little Brown & Co., 1980, p.119.

⁶ Wallace W. Taylor, I.W. Taylor, *Services for the Handicapped in India*, International Society for Rehabilitation of the Disabled, New York, 1970, p.8..

⁷ Usha Bhatt, *The Physically Handicapped in India: A Growing National Problem*, Popular Book Depot, Bombay, 1963, p.84.

⁸ Doreen Trust, *Overcoming Disfigurement: Defeating the Problems- Physical, Social and Emotional*, Thorsons Publishing Group, Willingborough, 1987, p.29.

⁹ S.M. Smith, *The Battered Child Syndrome*, Butterworth Publications, Heinemann, 1975, pp.29-20.

conception of Communism, Plato minces no words in categorically denying the survival of disabled children. In his own words, 'deformed children and children of inferior parents will be put away in some mysterious places, as they thought to be.'¹⁰ Plato is credited with the view, which 'it was not right to treat as a man who could not live in his ordinary round of duties, such a man being useless to him and to the state.' Similar is the observation of Aristotle, who precisely advocates, that 'nothing imperfect or maimed shall be brought up.'¹¹ This societal attitude of exposure and elimination was followed by a phase of **Care and Patronage** of the disabled. The immediate stimulus for this approach came from the preaching of primarily two religions-Christians in the West and Buddhist in the East. Both these religions reinforced the care and custody of all under-privileged groups, including disabled people. One of the most important sermons of Jesus Christ was that one should have compassion and mercy towards the deprived, the needy and the poor. Similarly, the Christian community, in general, and the Church officials, in particular, concentrated their attention in this direction. While the disintegration of the authority of the Church, the State and the local bodies, subsequently, assumed responsibility of such disadvantaged groups. **Educational and Vocational Training** is another area which was considered for the disabled. With the emergence of the 'Era of Renaissance', the third stage of the social perception of disability begins. Though conditions for disabled persons did not improve substantially during the Renaissance (approximately 1350-1550), no major changes occurred which set the stage for future developments. The advances in clinical and laboratory medicine in Britain and the Western societies in the Nineteenth century had far-reaching implications for the social status of the disabled people in the world. **Social Assimilation** was remained. Despite all these achievements in the fields of medical science and technology, social attitude towards disabled persons remained drastically unchanged. Persons with disabilities were still regarded as objects of pity and charity. The basic postulates of rehabilitation philosophy,

¹⁰ Ironically, both Plato and Aristotle sought to legitimize the then tradition of liquidation of persons with disabilities by maintaining that the body and should be regarded as the two aspects of defects. Plato himself asserts in his masterpiece *The Republic*: 'surely then, to him, who has an eye to see, there can be no fairer spectacle than that of a moral beauty in his soul with out-ward beauty...No, Not, if it is only a bodily blemish, he may so bear with it as to be willing to regard with complacency.' Plato quoted by B. Russell, *History of Western Philosophy: And its Connection with Political and Social Circumstances from the Earliest Times to the Present Day*, George Allen & Unwin Ltd, 1971, p.128.

¹¹ Irving Terence, *Plato: The Republic* Translated by A.D. Lindsay, J.M. Dent & Sons Ltd, 1992, p.89.

however, started crystallizing into more definite direction for disabled persons. Remarkable advances were registered in the area of rehabilitation during the nineteenth century. Moreover, the twentieth century heralded the age of industrialization and growing awareness about legislation for the welfare of disadvantaged persons. According to a Jerold D. Bozarth, the rehabilitation movement during the twentieth century could be chronologically divided into five stages. These are inseparable from each other. These stages are¹²:

- (i) Medical stage (1935-1945)
- (ii) Vocational stage (1935-1955)
- (iii) Psychological evaluative stage (1955-1970)
- (iv) Psychological developmental stage (1955-1970)
- (v) Psycho-socio-political stage (1970-present time)

Medical stage: Denotes the systematic modern medical rehabilitation of persons with disabilities. It was during this stage that major attempt was made towards their physical rehabilitation. *Vocational stage*: refers to the stage of emphasis on the restoration of persons with disabilities to productive work. Thus, the focus of attention was on collecting, synthesizing and furnishing relevant information to the clients in adopting an acceptable course of action. This stage marked the beginning of the vocational guidance movement. *Psychological evaluative stage*: concentrated its attention on the impact of situational impingements on the client. The philosophy of instrumentalism, espousing commitment to democratic system and to free choice of occupation, was the prime motivating factors during this phase. *Psychological developmental stage*: tended to reinforce the potential of disabled persons and the necessity of their participation in self-choices. In other words, during this stage, the counselor-client relationship was greatly emphasised. *Psycho-socio-political stage*: This stage is marked by an intensified struggle for professional identity. The major thrust areas of this stage include strong and viable political measures, directed towards influencing legislation so as to mandate the role of rehabilitation

¹² Jerold D. Bozarth, 'Philosophy and Ethics in Rehabilitation Counseling', in Parker and Hansen, *Rehabilitation Counseling: Foundations-Consumers-Service Delivery*, Massachusetts Press, Boston, 1981, pp.62-65; G.N.Karma, *UN and The Rights of Disabled Persons: A Study in Indian Perspective*, APH Publishing Corporation, New Delhi, 1999, p.25-27.

counselor in education programmes and other allied activities. Hence, this stage represents the stage of pragmatism, action and technology in the field of disability.

Perceptions of Disability in Indian Society through the Ages

From time immemorial it has been the part and parcel of the cultural heritage of India to provide help and sustenance to the poor and the destitute. Dedication, service towards one's fellowmen, love for charity and brotherhood existed even in feudal times. The Hindu religion emphasized the value of compassion, charity, philanthropy and mutual aid. Moreover, the custom of the joint family, kinship and other social institutions also provided an added in-built mechanism to such philanthropic activities. In conformity with this tradition, care and protection was bestowed by society on the disadvantaged people in every possible way. The classical text of Hinduism (which is the major religion in India) also mentions disabilities and deformities. Vedic references are known mainly to academicians and scholars, but for the rest the epics contain various disabled characters familiar to the Indians. According to the Bhagwat Gita, charity is valid, if it takes into account *Desha* (place), *Kala* (Time), and *Patra* (Recipient). The forms of charity are *Artha* (Money), *Vidhya* (Education), and *Abhaya* (Courage)¹³. Similarly, the Rigveda also lays stress on human concern for and services to be provided to the disabled and needy people¹⁴. The greatest Sanskrit epic, the Mahabharata enunciates not only the legal disqualification prescribed for the blind to inherit kingdom but also the strife and rivalry between competitors to the throne. However, worth-noting that the inhuman and barbaric practice of exposure and elimination of disabled children was never perpetrated in the Indian society. Despite this historical fact, some foreign authors have maintained that "In ancient India, the physically deformed children were cast into the Ganges". In the recorded history of India, there is no such evidence to suggest that infanticide was a general practice. Manu, however, does not seem inclined to assign the disabled an equal status in society. During the third century B.C. emperor Ashoka is reported to have organised care institutions for the disabled, though little is known how they functioned. Kautilya's *Arthashastra* provides a panoramic overview of social security measures in the early phases of Indian history. He has cited several schemes in this regard. The Public Poor Relief was the most notable among them. "The King was regarded by

¹³ D. Paul Chaudhary, A Handbook of Social Welfare, Atma Ra, and Sons, Delhi, 1981, p.1.

¹⁴ B. N. Kaushik, Viklang Shiksha Sindhu, Rajasthan Hindi Granth Akademi, Jaipur, 1971, p.8.

the jurists and thinkers of India as the natural guardian of the orphan and the widow, the patron of the Srotriya and the protector of the helpless, the aged or the starving poor.” The Mughals concern for the disabled and disadvantaged may be substantiated from the fact that they had set up a special department (of administration) to manage charities and endowments. Among the Mughal rulers, Akbar the Great, Shahjahan and Aurangzeb occupy prominent places insofar as the promotion of the social security measures is concerned. Subsequently, Western aggression messed up many of old institutions in the eighteenth century. The Government of India has also taken numerous measures ranging from physical to vocational rehabilitation of disadvantaged citizens since the achievement of Independence in 1947. Some of these measures would be discussed in the latter part of the present research work.

DISABILITY AND LAW IN REFERENCE TO RIGHT TO EDUCATION FOR VISUALLY IMPAIRED

Disability is a ten letter word which incorporates within itself the globe of its types and dimensions. The visual system can be justly considered as a dominant sensory modality in humans. Almost half of the brain is devoted to sight, and about 70% of the total capacity of the brain is devoted to processing sensory information and handling visual information.¹⁵ With so much of human experience bound up with vision, it seems important to consider its social and legal aspect.

International Perspective

Children with visual disabilities and their families constantly experience barriers to the enjoyment of their basic human rights and to their inclusion in society. Their abilities are overlooked, their capacities are underestimated and their needs are given low priority. Yet, the barriers they face are more frequently as a result of the environment in which they live than as a result of their impairment. While the situation for these children is changing for the better, there are still severe gaps. On the positive side, there has been a gathering global momentum over the past two decades, originating with persons with visual disabilities and increasingly supported by civil society and governments. As a result, one by one the barriers to the participation of persons

¹⁵ Shams, L. (2000) A visual illusion induced by sound, Abstract 17, 2nd Annual Multisensory Research Conference, 6-7 October New York, <http://www.inform.umd.edu/imrf/abstracts.html>, (5th February 2017).

with visual disabilities as full members of their communities are starting to fall. In this process of their enhancement UN is playing a very important role if one studies the public international law drafted by this international organization. One can broadly divide the law into two set of categories. **Category I** deals with set of laws or conventions¹⁶ which are general in nature but gives special rights to disabled and **Category II** is a set of laws which targets specifically disabled population including visually disabled persons¹⁷. United Nations and is committed on education as a right for all children which was firstly proclaimed in UNDHR, 1948, was strongly reaffirmed by the World Declaration on Education for All, 1990, and the philosophy agreed upon at the Jomtien World Declaration¹⁸. It asserts that the learning needs of the disabled demands special attention. Steps need to be taken to provide equal access to education to every category of

¹⁶ Convention on the Rights of the Child, U.N. Convention and the Right to Education, Universal Declaration for Human Rights, 1948.

¹⁷ Convention on the Rights of Persons with Disabilities, 1975, 2006, U.N. Standard Rules with Equalization of Opportunities for Persons with Disabilities, 1993, 1981- U.N. International Year for Disabled Persons, 1982- World Programme of Action Concerning Disabled Persons, 1983-92- U.N. International Decade of Disabled Persons, 1990- World Declaration on Education for All and Framework for Action to Meet Basic Learning needs adopted at the World Conference on Education for All, in Thailand, it promotes 'equal access to education' to every category of disabled persons as an integral part of the education system, 1993-2003- Asian Pacific Decade of Disabled Persons, 1994- Salamanca Statement and the Framework for Action on Special Needs Education. It was adopted by UNESCO World Conference on Special Needs Education: Access and Quality. It was an attempt by U.N. to develop the principle of inclusive education, World Summit for Social Development, Copenhagen Declaration and Programme of Action, 1995. It calls upon governments to ensure equal educational opportunities at all levels for disabled children, youths and adults, in integrated settings, 1998- Human Rights of Persons with Disabilities, Commission on Human Rights Resolution 1998/31, 2000- World Education Forum, Dakar, Statement and framework for Action established. Attainable and affordable educational goals, including the goals of ensuring that by 2015 all children of primary age have better access to complete free schooling of an acceptable quality, that gender disparities in schooling are eliminated and that all aspects of educational quality are improved, 2002- U.N. General Assembly Resolution on the Rights of Child, following the World Summit on Children, calls upon states to take all necessary Measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms by children with disabilities, and to develop and enforce legislation against their discrimination, so as to ensure dignity, promote self-reliance and facilitate the child's active participation in the community, including effective access to educational and health services, 2002- 'A World for Children', is an outcome document of the U.N. General Assembly Special Session on Children makes clear reference to the rights of children with disabilities; especially regarding protection from discrimination, full access to services and access to proper treatment and care, as well as the promotion of family based care and appropriate support systems for families, 2003-2012- II Second Asian and Pacific Decade of Disabled Persons.

¹⁸ The World Conference on Education for All held at Jomtien, Thailand in March 1990 adopted two historical documents such as: 1. The World Declaration on Education for All 2. The Framework for Action to Meet Basic Learning Needs. Objectives of Jomtien Declaration: 1. Expansion of early childhood care and development activities; 2. Universal access to and completion of primary education; 3. Improvement in learning achievement; 4. Reductions of adult illiteracy rate; 5. Expansion of provisions of basic education and training in other essential skills required by youth and adult; 6. Education through channels including the mass media and other forms of modern traditional communication. required by youth and adult; 6. Education through channels including the mass media and other forms of modern traditional communication.

disabled persons as an integral part of the educational system. The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993 was another important resolution for improving the educational conditions of persons with disabilities. The Salamanca Statement and Framework for Action on Disability Education, 1994 emerged as a result of deliberations held by more than 300 participants representing 92 governments including India and 25 international organizations in June 1994. For furthering the objectives of education for all, it considered the fundamental policy shifts required to promote inclusive education. It emphasizes that schools should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions. The Convention on the Rights of Persons with Disabilities, 2006, the first legally binding disability specific human right convention, adopted by the UN was a landmark in this area.¹⁹

Indian Perspective

The Constitution of India

The basic structure of the Constitution of India as reflected in the Preamble ensures social, economic and political justice as well as equality of status and of opportunity to all citizens of India. It is thus constitutional obligation of the State to ensure equal justice and equality to all citizens including persons with disabilities and other marginalized groups of people. Similarly, the Directive Principles of State Policy embody the aims and objects of the State under the Republican Constitution e.g. that it is a Welfare State. In other words, it shall strive to promote welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of normal life. The State Policy regarding right to work in case of disablement is enshrined in the Directive Principle under Article 41 of the Constitution of India. It states that the State shall, within the limits of its economic capacity and development, make effective provision for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved wants. The Persons with Disabilities Act, 1995, a Central Legislation made by the Parliament of India goes a step further and desires provision of free education to children with disabilities till the age of 18 years. Thus the law in

¹⁹ Ajit Mondal, Jayanta Mete, Education of Children with Disabilities in India: Concern and Policy Perspective, Indian Journal of Educational Research, Vol. II, March 2013, pp.56- 67.

India has duly recognized the objective of education to all children including those with disabilities, but also dealt with disability on priority and humanitarian basis.

National Policy on Education (1986)

On the objectives of Indian Constitution, the Government of India has time and again taken different initiatives to work for the education of visually impaired children. Some of the programs and policies framed by the government are briefly discussed. Outlining the steps for ensuring equal educational opportunities for the children with disabilities, the National Policy on Education states that 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.”

The Plan of Action (1986)

The Plan of Action also stresses that as education of children with disabilities in special schools is very costly, it will be ensured that only those children whose needs cannot be met in common schools be enrolled in special schools. Once they acquire communication skills and study skills, they will be integrated in common schools.

The Bahur Islam Committee on Legislation for Persons with Disabilities (1988)

According to this committee the State shall endeavor to provide free and universal elementary education to children with physical and mental disabilities. The State shall also provide assistance to them for education and training at the secondary and higher levels. It also emphasized promotion of integrated education and continuation of residential education.

Central Scheme of Integrated Education for the Disabled Children

With the emergence of the National Policy on Children (1974) which envisages coverage of children with disabilities as well, the Ministry of Social Justice and Empowerment introduced this scheme. It was a centrally sponsored scheme with 50 percent financial support to State Governments by the Ministry for this purpose. This scheme was liberalized during April 1981 providing for 100 percent financial support to State Governments in addition to other facilities such as setting up of an assessment room, resource room, and special pay to special teachers etc. With the coverage of education of children with disabilities in the National Policy on Education during 1986, the scheme was shifted to the Ministry of Human Resource Development. The

scheme purports to provide educational opportunities for children with disabilities in common schools. A large number of state governments have already adopted this scheme. They have established administrative cells for monitoring the scheme. However, the coverage of visually impaired children under the scheme at present is negligible. In light of the successful experience of Project on Integrated Education of Disabled (PIED), the scheme was revised further during 1992 to give an opportunity to the NGOs to implement the scheme.

Evaluation of IEDC

The NCERT evaluated the IEDC in 14 states during 1989-90. The study established that IEDC is not being implemented properly due to lack of trained manpower and lack of coordination regarding the scheme (Azad, 1996). The states/UTs are facing problems in its implementation mainly due to lack of orientation. Late receipts of grants from State/Central Governments and lack of coordination among different agencies associated with its implementation.

Department of Special Education

The National Council for Educational Research and Training (NCERT), a premier institute run under the auspices of the Ministry of Human Resource Development has established the Department of Special Education for promoting education of persons with disabilities. The department has been playing a key role in the promotion of integrated education, implementation of UNICEF sponsored project on integration education, teacher training and the implementation of District Primary Education Programme.

Rehabilitation Council of India Act, 1992

There was no mechanism in the country to standardize and monitor the training of special educators and other rehabilitation professionals in the country. Therefore, in 1992, Parliament of India enacted the Act, to establish a statutory mechanism for monitoring and standardization courses for the training of 16 categories of professionals required in the field of special education and rehabilitation of persons with disability.²⁰

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

²⁰ Ajit Mondal, Jayanta Mete, Education of Children with Disabilities in India: Concern and Policy Perspective, Indian Journal of Educational Research, Vol. II, March 2013, pp.60.

To give effect to the proclamation on the full participation and Equality of the People with Disabilities in the Asian and Pacific Region, the Parliament enacted the Persons with Disabilities Act, 1995 which came to force with effect from 7th February, 1996. The Act desires the appropriate Governments and local authorities to ensure that every child with a disability has access to free education in appropriate environment till he attains the age of eighteen years. It encourages promotion of integrated, residential education, functional literacy, non-formal education, education through open school or open universities. It desires initiation of research for designing and developing new assistive devices and developing human resources. It also ensures reservation of at least three percent seats in the educational institutes for persons with disabilities. It also encourages preparation of comprehensive education schemes with a variety of facilities for such persons.

District Primary Education Programme (DPEP)

Evolving from the national experience with area-specific projects is an ambitious nationwide plan, popularly known as District Primary Education programme (DPEP), to put local communities in charge of education in their area and enhance investments in primary education. The DPEP attempts to complete overhaul of the system of educational planning in the country and to implement interventions in primary education in a holistic and coordinated fashion. It is being implemented in mission mode through registered autonomous societies in each state. As a first step, a five year plan for selected districts has been chalked out. The district planning process, however, is distinct in its emphasis on participation by all major actors in the education system, such as parents, guardians, teachers, educational administration and voluntary organizations. From the year 1995, the education of children with disabilities has also been included as integral component of the program. All such children in the selected districts would be enrolled for inclusive education at the primary level. The DPEP envisages following measures in this regard:

- Providing all children, including children with disabilities, with a access to primary education either in the formal system or through non-formal education programme.
- Facilitating access for disadvantaged groups such as girls, socially backward communities and children with disabilities.

- Improving effectiveness of education through training of teachers, improvement of learning materials and upgrading of infrastructure facilities.
- Short training of selected primary teachers as regard imparting education to children with disabilities.
- Provision of assistive devices and educational devices to these children
- Involvement of experts in disability development in the State Co-ordination Committee
- Orientation of Master Trainers at the state and District level in respect of educational needs of children with disabilities.
- Improving the quality of education through a process of demand creation for better services DPEP is an excellent and bold step towards promotion of inclusive education of children with Disabilities.

The Sarva Shiksha Abhiyan

This scheme has been operational since 2000-01 in partnership with state governments. Early detection and identification, parental training and community mobilization, aids and appliances, teacher training, removal of architectural barriers etc., are some of the components under this scheme for education of disable children.

The Right to Education Act, 2009

The present act tries to safeguard the rights of the children belonging to the disadvantaged groups and the weaker sections, protect them from any kind of discrimination and ensure their completion of elementary education. As per the amendment in the act in 2010, children with disabilities have been included in the definition of child belonging to disadvantaged group in the Section 2(d) of the act. The landmark step mentioned in this act that Section 12 (1/c) mandates for private unaided and specified category schools to admit at least 25% of its entry level class from children belonging to weaker and disadvantaged groups. India is the largest democracy in the world and the disabled population needs special and immediate attention at national as well as international level.

SUGGESTIONS

Accessibility to Normal World

In this developing world, lot of favorable things are happening, however for the visually disabled the world is not developing at the same pace. They still have to face many barriers to enjoy a routine life. The barriers faced by them can mainly be classified into two categories. Firstly, the environmental barriers which could be further divided into two sub-heads; the architectural and the communicational barriers. To overcome in the architectural barriers the Government of India should make every institution or organization duty bound to make reasonable adjustments in the building designs. Ramps, hand rails, kab ramps in pavements, seats, taps, telephone booths, wash basins at the accessible height, Braille Prints and road signals with adequate timings, audio announcements and usage of bright colours, space for wheel chair users, accessible parking space, sign language, slip resistant grab bar and flooring etc., should be considered while constructing a building. It is interesting to note that making a building disabled friendly cost just 2% of the total building cost. A lot of cost effective adaptations can be made within and outside buildings to make them exclusively barrier free. Mr. Rama Krishnan, President of Amar Seva Sangam, an NGO working for disabled people, is using a lift working on pulleys at his residence. It's very simple, easy to manipulate as well as cost effective.²¹ Such innovative and simple techniques can be adopted to suit the needs of disabled people as well as to implement the appropriate provisions of the Persons with Disabilities Act, 1995.

Another important barrier is the disability insensitive attitude of the society. Even a stringent law can do very less unless there is a change in the mindset of the people. They should be willing to accept them as part of their normal society. The society should relate the disable person with his abilities rather than disabilities. The society should develop a natural tendency and duty towards providing them, respect individuality, equal rights and opportunities. The attitudinal change will make the disable believe that they are normal human beings who can contribute towards the overall development of society.

Inclusive Education

The society should learn to cater to different disabilities. Creating special schools for disables have certain positive as well as negative aspects. It should be seen that as far as possible inclusive education should be preferred unless otherwise is required for the benefit of the disabled.

²¹ Ajit Mondal, Jayanta Mete, Education of Children with Disabilities in India: Concern and Policy Perspective, Indian Journal of Educational Research, Vol. II, March 2013, pp.62.

The teacher in the school should be given adequate training to handle such children, and to cater their educational needs. It has been observed over the years that by segregating them, somewhere, the mainstream schools have never felt it to be their responsibility to include all children. There is a need to better understand the synergies between special needs education and inclusive education in view of the complexity and severity of the disability considered. Using inclusion as a blanket policy is not a healthy sign. There is a need to take into account the complexity, that is, to rethink on the various parameters of inclusion. Therefore, screening procedure, peer acceptance, support services, knowledge of behaviour, management techniques, Braille and sign language.

Inaccessibility of Education

The negative attitude of the parents and other family members is one of the biggest hindrances in accessibility of education for the disabled. Secondly, the teaching methods, learning aids, the curriculum and the evaluation system are not disabled friendly. Braille books and material, readers for the students are not available in most of the schools. The Sarva Siksha Abhiyan which aims for Education for All should pay special attention to these children. Moreover, the Persons with Disabilities Act, 1995 should deal with every disability separately because every disability has its own needs and requirements. One law or similar provisions of the law cannot cater all kinds of disabilities. The visually impaired children needs to be handled differently, especially in case of their educational rights as their requirements are all together different from the rest. The printing of separated literature for them in Braille or other languages is need for an hour.

Signing and Ratification of Marrakesh Convention, 2013

India has become the first country in the world to ratify the Marrakesh Convention, 2013 that codifies exemptions to copyrights to benefit blind and vision-impaired readers. It requires ratification not just by 20 countries so that the treaty enters into force, but by all countries so that borders no longer pose barriers to accessible books for blind. We need to explain to blind and print disabled people, and their organizations, what the treaty means for them. There is a need to build the capacity of blind people's organizations and other bodies serving blind people all round the world to ensure they are able to take advantage of the opportunities this treaty creates to

share books. The governments need to continue to work with organizations which help to make digital books accessible. Hard work and dedication is required before the right to read of blind and print disabled people is achieved in full. Marrakesh, though, is a real leap forward, removing the barriers to access inherent in copyright law. At Marrakesh, the international community also sent a strong message that now is the time to take clear action to really, truly, end the book famine; hence the entire world community should come forward and make this dream a reality.

The U.K. Equality Act, 2010: Lessons India can Learn

The English Poor Law, 1601 and the Poor Law Reform Act, 1834 marked a watershed on so far as the generation of public accountability for the care of disabled persons is concerned. The English Law and English Poor Law System encouraged government officials to provide some sort of vocational training to the blind and physically disabled children. However, these measures failed to achieve their desired objectives of fulfilling the educational and vocational requirements of disabled children. The credit for making first effective venture in this direction goes to the Royal Commission in the U.K. The Commission, in its reports submitted in 1889, noted that, apart from some charitable institutions and schools, very little was being done for the disabled children. Hence, it strongly recommended that the state should accept responsibility for the education of blind, deaf and dumb, and 'feeble-minded' or mentally retarded children; but no major break-through was achieved during this phase.

It was The Disability Discrimination Act, 2010, which was codified to make it unlawful to discriminate against disabled persons in connection with employment, the provision of goods, facilities, and services or disposal or management of premises, to make provision about the employment of disabled persons, and to establish a National Disability Council. The Equality Act brings together over 116 separate pieces of legislation into one single Act. The Equality Act 2010 has now brought under one umbrella the various anti-discrimination laws including those relating to disability, age, sexual orientation, equal pay, race and religion. The Act applies to all organizations that provide service to the public and also applies to certain clubs and associations and to those who sell goods or provide facilities. Under the Equality Act, 2010 there are nine

characteristics which are protected from discrimination²². Disability is one of these protected characteristics and is defined by the Act as a physical or mental impairment that has a substantial and long term adverse affect on the ability to carry out normal day to day activities. Discrimination by way of harassment, victimizing the disabled person, discrimination while giving employment to them, are some of the safeguards provided by the law for this section of the population²³. The law also puts duty on the institutions and organizations to make reasonable adjustments in the employment terms and architectural designs of buildings to make it friendlier

²²**The Legal Definition of Discrimination:** It is illegal under the Equality Act to discriminate against someone because of a protected characteristic. The definition of discrimination varies under the Act depending on which protected characteristic is being considered. With regard to disability, the various types of discrimination which apply are: **Direct discriminations**, s.13(1) and s.13(3) – where someone is treated less favourably because of his disability, than others would be treated. However positive discrimination is permitted in respect of disability i.e. if a disabled person is treated more favourably than someone who is not disabled, this is not discrimination because of disability. Direct discrimination is broad enough to cover instances where less favourable treatment is because of the person's association with someone disabled or where someone is incorrectly thought to have a disability. **Discrimination arising from disability** (s.15); if someone is treated unfavourably because of something arising from his disability and this treatment is not proportionate to achieving a legitimate aim, this is unlawful discrimination. This does not apply if the institution did not know or could not have been expected to know that the person had a disability. **Indirect discrimination** (s.19) – If a discriminatory practice is applied to someone who is disabled and it is also applied to others who are not disabled and it puts the disabled person at a disadvantage and it cannot be shown to be a proportionate means of achieving a legitimate purpose. Harassment and victimisation of someone because of disability is also unlawful under the Equality Act 2010.

²³**Harassment** (s.26) is defined as unwanted conduct related to disability and the conduct violates dignity or creates an intimidating hostile degrading humiliating or offensive environment. Protection from harassment is also provided for someone who is perceived to have or associates with someone who has a disability. **Victimisation** (s.27) is defined as where one person treats another detrimentally because they have asserted legal rights under the Equality Act or they have helped someone else to do so. **Discrimination in the Provision of Services:** Many colleges and universities provide services to people who are not connected with the institution – for example there may be a theatre group which offers events to the public, or an institution which lets its student accommodation to others in holiday periods or provides conference facilities including ICT facilities to external groups. In terms of the Act there is a duty not to discriminate in the provision of these services. The full terms of the Act in relation to provision of services are contained in s.29 and the duty to make reasonable adjustments applies. **Discrimination in the Provision of Educational Services:** In addition to the general provisions against discrimination due to the protected characteristic of disability outlined above, particular provisions at s.91 of the Act apply to educational services provided to students, prospective students and in limited areas to other disabled persons by further and higher education institutions. FE and HE institutions must not discriminate in decision arrangements for admissions, admission terms, in education provision, service access, and exclusion of a student. Qualification decision making arrangements, by not conferring, varying or withdrawing a qualification or its terms are also covered here. The Act at s.92 also makes it illegal to discriminate against a person in relation to course enrolment arrangements or acceptance, and at s.93 in provision of recreational or training facilities. The duty to make reasonable adjustments as outlined below also applies here. **Discrimination against Employees and Prospective Employees:** It is also illegal in terms of the Act for an institution to discriminate against a disabled person or an employee in arrangements, terms, offers and dismissals and with regard to promotion, training or transfer opportunities. The full list is at s.39 of the Act and the duty to make reasonable adjustments applies.

for them²⁴. However, if one goes through the provisions of the act, it incorporates some exceptions to the duty of not to discriminate against disabled.²⁵

²⁴**Duty to Make Reasonable Adjustments:** Alongside the requirement not to discriminate runs a duty to make reasonable adjustments for disabled people (by virtue of s.20). This duty has three requirements: **Firstly**, where an institution's provision criterion or practice puts a disabled person at a substantial disadvantage compared to a non disabled person, reasonable steps must be taken to avoid the disadvantage. **Secondly**, where a physical feature (for example access to a building) substantially disadvantages a disabled person reasonable steps must be taken to avoid the disadvantage. **Thirdly**, where provision of an auxiliary aid (or service) would prevent substantial disadvantage, reasonable steps should be taken to provide the aid. Where the first or third requirements of the duty relate to provision of information, there is an express requirement in the Act (s.20(6)) that reasonable steps must be taken to provide information in an accessible format. Although the basic principle remains the same, the duty to make reasonable adjustments does vary slightly depending on whether it is general service provision, education service provision, and employment and the specific requirements should be referred to as required. For example there is an anticipatory duty with regard to reasonable adjustments for students but not in relation to employment. The duty to make reasonable adjustments should be revisited at regular intervals, as it is an ongoing duty, and further reasonable adjustments should be made in the light of experience gained and new forms of assistance (for example, the availability of new software). The overall aim is to remove where possible a disadvantage encountered by disabled people. Failure to comply with the duty to make reasonable adjustments in relation to a disabled person is an act of unlawful discrimination in terms of the Act (s.21). A reasonable adjustment is measured against available resources, cost of adjustment, practicality and potential benefit to other users. More detail on this is available in 'Managing Reasonable Adjustments in Higher Education'. Most colleges and universities currently make reasonable adjustments such as individual computer and special assistive software availability for an otherwise paper exam or provision of course materials, in alternative formats and further examples are available in 'Managing Reasonable Adjustments in Higher Education' above.

²⁵**Exceptions to the Duty Not to Discriminate:** The exceptions under the Act to the duty of colleges and universities not to discriminate against disabled people are similarly divided into exceptions for particular provisions. Those of most relevance are: **Curriculum content:** (s.94) states that the prohibition against discrimination does not apply to anything done in relation to the curriculum content itself. This is to retain the institution's ability to include a full range of issues and materials and allows exposure to all kinds of ideas and thoughts. However the issues, ideas and materials that the student may be exposed to need to be taught in an accessible way so as not to subject the student to discrimination. **Knowledge of a person's disability:** it is not unlawful discrimination under provision of services where the institution, having fulfilled its duty to anticipate what reasonable adjustments should in general be made, still discriminates against an individual but did not know, or could not have been expected to know, that an individual person had a disability. But if an appropriate reasonable adjustment to accommodate disabled people has not been made, it is more difficult to say that the unfavourable treatment is justified. There is a corresponding duty on the education provider to be proactive in enabling disclosure from those with disabilities. **Confidentiality:** if a request for confidentiality is made by the disabled student, this may mean that no reasonable adjustment can be made, or the reasonable adjustment which can be made is less beneficial as it is taking into account the respecting of confidentiality. **Competency standards:** with regard to the level of attainment used to determine whether a student has reached a particular level of ability or competency, there is no duty to make reasonable adjustments to the standard, but there is to the process of showing that someone meets it. **Discrimination as a proportionate means of achieving a legitimate aim:** with regard to indirect discrimination and discrimination arising from disability, examples of legitimate aims might include the maintaining of academic and other standards or ensuring the health and safety and welfare of students. If the aim is legitimate, the way of achieving it must be proportionate i.e. appropriate and necessary. It is likely that the more serious the discriminatory provision criterion or practice which results in these types of discrimination, the more robust and convincing must be the justification. In addition it should be noted that in a discriminatory situation involving disability, if you have not complied with your duty to make relevant reasonable adjustments it will be difficult for you to show that the treatment was proportionate. **Public Sector Equality Duty:** The Public Sector Equality Duty is effective from 5 April 2011. There is a general and a specific duty under

However, the Equality Act 2010 (Disability) Regulations 2010 place restrictions on what is classed as a severe disfigurement or impairment. The full list is contained in Section 3 to Section 7 of the Regulations. The Act also protects someone who has or who has had a disability in the past and is discriminated against, e.g. harassed, because of this. The scrutiny of the provisions reveals that the act not only protects the rights of disabled but also provide them with proper infrastructure to make the educational facilities easily accessible.

‘I am now aged 72. In my lifetime, the attitude of the general public in the United Kingdom towards visually disabled people, and their rights, has undergone a radical change. This has meant that it has been possible for lawmakers to confer a large collection of rights on blind people.’²⁶ The law has a deep impact on the formation of a social opinion on an issue. Sir John Wall above quoted statement is a proof to this fact. The law of UK for visually disabled has successfully attained its aims and objectives with the passage of time. The provisions are clear on the objective of making an anti discriminatory society for this section of population. India can take the UK Law as a beacon light to accomplish its ambitions. The Indian society needs to realize that visually impaired don’t want to add ‘dis’ with the ability, it is the society, government and all other institutions which needs to change their spectacle and make the vision clear; a vision towards an equal society for all.

the Equality Act. It applies to public sector organisations including those in UK further and higher education. It places both general and specific duties on colleges and universities with regard to the protected characteristics and replaces the Disability Equality Duty. The general duty (s.149 of the Act) comprises three needs a public authority must address: the elimination of discrimination, harassment and victimisation; the promotion of equal opportunities; and the fostering of good relations between people who do and do not share a protected characteristic. In addition regulations covering the specific duty have been brought into force separately for Scotland, England, and Wales. The specific duties are intended to help public authorities comply with the general duties and contain requirements to publish on a regular basis, relevant proportionate information which shows compliance with the Equality Duty and also requires specific measurable equality objectives to be set and applied. The EHRC has various guidance documents on the public sector equality duty in England, Wales, and Scotland.

²⁶ Sir John Wall, ‘The Rights of Blind People’, *Community Eye Health Journal*, Vol. 65 (45) 2003, pp. 1-2.