

How to Cite:

Thakur, A., Sahni, S., Manisha, M., & Singh, V. (2022). Role of inclusive pedagogical structure in education: An analysis with reference to Indian case laws. *International Journal of Health Sciences*, 6(S1), 555-562. <https://doi.org/10.53730/ijhs.v6nS1.4798>

Role of Inclusive Pedagogical Structure in Education: An Analysis with Reference to Indian Case Laws

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Abstract---An efficient pedagogical structure in educational institutions plays an important role in mental well-being of students. The research paper talks about Inclusive pedagogy in educational culture. Inclusion is a form of integration where all diversities are celebrated at an educational setup. One such form of inclusive setup implies inclusion of persons with disabilities with equal accessibility and participation to all the students. Such practice has a great impact on mental as well as emotional well-being of students with disabilities and confirms an environment that celebrates diversity. The paper also refers to international and Indian legal documents and policies regarding Inclusive Education. Furthermore, a brief reference of Indian case laws with respect to Inclusive educational structure embarks the status of inclusion when it comes to persons with disabilities.

Keywords---education, Indian case laws, pedagogical structure, students.

Introduction

Inclusive education is education for all-in-one system and focuses not on disability, but the recognition of human diversity and the benefits to all when

International Journal of Health Sciences ISSN 2550-6978 E-ISSN 2550-696X © 2022.

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Manuscript submitted: 18 Nov 2021, Manuscript revised: 27 Feb 2022, Accepted for publication: 09 March 2022

diversity is valued and difference is accommodated in practice (Graham, 2020). Education is one of the first learning practices of our communities and society, and it must value, embrace and cater for pluralism and human diversity. Inclusive education promotes and respects the idea of human diversity and inherent dignity of all members of human family, thus being a step towards diversity.

The provisions for Inclusive Education are promoted under various laws and policies with respect to protection of rights of persons with disabilities. Such provisions under the Disability law form a major step towards acceptance and mental well-being of students. On the other hand, if we take the instance of exclusive education for 'disabled' and 'non-disabled' students, a typical student in such case will detect disability as something unrecognisable and a segregated part of the society (Hornby, 2016). Hence, it also affects an educational setup and tends to narrate narrow intellectual development of students. Not only at the level of education, but a pedagogical structure based on inclusion, also leaves a long-term impact on a person by developing a welcoming and broader narrative towards people at large. It also tends to yield results at the time when a student finishes education and commences his/her working life, as it leads to emergence of a diverse friend group of people with diverse range of abilities.

There has been put lot of pressure on the concept of an inclusive pedagogical structure as the right to education is recognised as a central pillar of human rights, which is also enshrined under international law (Kanter, 2008). The Convention on the Rights of Persons with Disabilities is also based on the premise that disability is but one aspect of human diversity and such practice can be developed among the peers from root level through the means of inclusive education.¹

An inclusive school structure serves the purpose of full participation and equality among individuals, irrespective of any disability. It can help in great revolution in the education structure of students with disability from comprehensive exclusion to progressive inclusion. The persons with disabilities since the early education years have to face discrimination and exclusion from the society due to non-accessibility to equal facilities. The idea of requirement of segregated facilities tend to pave a hurdle towards an inclusive school pedagogy. This has always encouraged the exclusive concept of disability and in order to efface out such concept, practices like inclusive education and their strict incorporation and implementation under the can be effective to a great extent.

Convention on the rights of persons with disabilities (CRPD)

In order to efface out the concept of disability, it is essential for the societies' structures to recognise human diversity in all its forms and develop policies to reflect that diversity and one of such enactment that considers human diversity

¹ *Ibid.*

as an essential part of the society is the Convention on the Rights of Persons with Disabilities (CRPD).²

The convention lays down binding legal obligations for the States that become party to the Convention. The CRPD provides a framework for policy analysis, design and implementation and is a tool for disabled persons' organisations in advocating for the rights of persons with disability (MacKay, 2006). According to the Convention, Education for persons with disabilities is considered as a cornerstone of social inclusion and Article 24 of the Convention establishes the right to education for persons with disabilities without discrimination based on the principle of inclusive education and promotes reasonable accommodation of an individual's requirements.³ It requires States Parties to take effective measures to support people with disability in the general education system and provides all support measures are provided in environments that maximise academic and social development of people with disability.⁴

Laws and policies: right to education of persons with disabilities

Talking particularly about Indian perspective, the steps taken by the Government of India for implementing educational rights of children and the disabled section of society are as follows:

- The Right of Children to Free & Compulsory Education (RTE) Act, 2009
The Act has come into force with effect from 1st April, 2010. The RTE Act provides for free & compulsory education to children in the age group of 6-14 years at elementary level.⁵ Government of India has since aligned the Sarva Shiksha Abhiyan (SSA) norms with the provisions of Right of Children to Free and Compulsory Education Act, 2009 and has committed a funding of Rs. 2,31,233 crores for implementation of the combined RTE-SSA program during the next five years in partnership with the States.⁶ The Right to Education is also being increasingly being recognized as the right to Inclusive education. Inclusive Education is today "acknowledged as the most appropriate modality for states to guarantee universality and non-discrimination in the right to education."⁷
- Rights of Persons with Disabilities Act, 2016

² Valentina Della Fina, Rachel Cera and Giuseppe Palmisano, "A Commentary on The UNCRPD" (2017), (1-41) (last accessed on 18th August 2021)

³ See Article 24 of United Nations Convention on Rights of Persons with Disabilities, 2006 (gives international recognition to Inclusive Education)

⁴ See Article 24 of United Nations Convention on Rights of Persons with Disabilities, 2006

⁵ The Right of Children to free and compulsory education (RTE) Act, **Section -3**

⁶ Disability News India. (2010, December 6). Educational Rights of Children with Disabilities - Disability News India. *Disabled World* available at <https://www.disabled-world.com/news/asia/india/educational-rights.php> (last accessed on November 2021)

⁷ Centre for research and policy in disability, 'Fourth Annual Report on The Status of Inclusive Education of Children with Disabilities' under the Right to Education act, 2009 (2014-15), available at https://www.eenet.org.uk/resources/docs/right%20to%20education_in.pdf (last accessed on December, 2021)

The RPWD Act, 2016 provides that “the appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity, and respect for his or her own integrity equally with others.”⁸ Thus, Right to Education shall also be accessible to all children, irrespective of their disability. The Act deals with education of the persons with disabilities and make it necessary for the appropriate government to provide inclusive education to the children with disabilities and to enact specific measures and policies for the promoting and facilitating inclusive education.⁹In order to promote the mental well-being of all students and to build an inclusive pedagogical structure of education, there need to be continuous surveys on inclusion and mental health of students. Hence, the Act provides for and encompasses such basic requirements.¹⁰

- Other Acts for the Purpose
 - National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
 - Rehabilitation Council of India Act, 1992
 - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; a nodal Act which provides an enabling legal framework for undertaking measures for providing equal opportunities, protection of rights and full participation.
- ‘Sarva Shiksha Abhiyan’ Policy – (SSA)
SSA ensures that every child with special needs, irrespective of the kind, category and degree of disability, is provided meaningful and quality education. Hence, SSA has adopted a zero rejection policy. This means that no child having special needs should be deprived of the right to education and taught in an environment, which is best, suited to his/her learning needs.¹¹ SSA provides up to Rs. 3000 per child for the inclusion of disabled children, as per specific proposal, per year. District plan for children with special needs is formulated within the Rs. 3000 per child norm, with Rs. 1000 earmarked exclusively for engagement of resource teachers. The interventions under SSA for inclusive education are identification, functional and formal assessment, appropriate educational placement, preparation of Individualized Educational Plan, provision of aids and appliances, teacher training, resource support, removal of architectural barriers, research, monitoring and evaluation and a special focus on girls with special needs (Abhiyan, 2001).
- The National Policy for Disabled, 2006
The National Policy for Disabled, 2006 recognises persons with disabilities as valuable human resource for the country and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society.¹² The three main constituents of the Policy are:

⁸ The Rights of Persons with Disabilities Act, 2013, **Section - 3**

⁹ The Rights of Persons with Disabilities Act, 2013, **Section - 16**

¹⁰ The Rights of Persons with Disabilities Act, 2013, **Section – 17** Available at https://www.indiacode.nic.in/handle/123456789/2155?sam_handle=123456789/1362

¹¹ *Supra* note 10.

¹² The National Policy for Persons with Disabilities, 2006 https://www.nhp.gov.in/national-policy-for-persons-with-disabilities-2006_pg (last accessed on December,2021)

- Physical Rehabilitation,
- Educational Rehabilitation including vocational training;
- Economic Rehabilitation¹³
- Other Policies for the Purpose
 - *The National Policy for Children, 2013* document also reaffirms that the State is committed to take affirmative measures-legislative, policy or otherwise to promote and safeguard the Rights of all children, including 'children with disabilities'¹⁴.
 - "*Inclusive Education for Disabled at Secondary Stage*" (IEDSS) - A centrally sponsored scheme of "Inclusive Education for Disabled at Secondary Stage" (IEDSS) has been implemented since 1-4-2009 in place of CSS of Integrated Education for Disabled Children (IEDC). The objective of the IEDSS scheme is to enable the disabled children who have completed eight years of elementary education to continue their education at the secondary stage (class IX to XII) in an inclusive environment in regular schools.¹⁵

Case laws: protection of right to education of 'persons with disabilities'

In order to promote the right to education of the persons with disabilities, the State has made certain reservations for the students with disabilities in all educational institutions and made it compulsory for the institution to comply with such guidelines. But what comes as an issue sometimes, when a student with disability claims for his/her right to admission, is the percentage of disability required. Hence, Disability is sometimes defined restrictively and in a confined manner, which creates confusion when a person actually claims his right on the basis of the disability.

In the case of, *Mr. D. Pugazhenthii Vs Secretary to Government, Higher Education Department*¹⁶, P. Rajaprabharan was a physically disabled person with 48 percent disability who applied to the MBBS Course for academic year 2004-05 against the seats reserved for physically handicapped persons. But the claim was rejected on the ground that the prospectus issued by the Director of Medical Education provided, that candidates with 50% to 70% disability alone were entitled for consideration under the reserved quota.

Thus, the petitioner filed a writ petition challenging the same, but he was dismissed on the ground that State Government had the power to prescribe higher level of disability than that prescribed in the Act. But the aggrieved

¹³ The National Policy for Persons with Disabilities, 2006 available at <http://inclusion.skoch.in/story/12/education-for-children-with-disabilities-312.html> (last accessed on 16th December, 2021)

¹⁴ The National Policy for Children, 2013 available at <http://inclusion.skoch.in/story/12/education-for-children-with-disabilities-312.html> (last accessed on 16th December, 2021)

¹⁵ IEDSS, 2009 'available at' <https://www.disabled-world.com/news/asia/india/educational-rights.php> (last accessed on December, 2021)

¹⁶ *Mr. D. Pugazhenthii Vs Secretary to Government, Higher Education Dept.*, AIR 2005 Madras High Court 346

still filed an appeal. In the higher court, it analysed the relevant provisions of the Persons with Disabilities Act to see if Prabhakaran's disability fell within the definition of disability under the Act. The Court observed that the Section 2(t) of the Act lays down the minimum percentage of any disability to enable a person to claim and avail the benefits of reservation. The Court disagreed with the previous order, and held that the State Government could not prescribe a higher level of disability than the one prescribed under the said Act. The Court held that Prabhakaran was entitled to the benefits of reservation and that the prospectus prescribing a higher level of disability for consideration under seats reserved for the physically disabled persons was invalid.¹⁷

Similarly, in the case of *Dr. Raman Khanna Vs University of Delhi*,¹⁸ the petitioner was suffering from partial loco-motor disability of the upper limbs and applied for admission to MBBS Course conducted by Delhi University and was selected on merit. Thereafter, he graduated and completed one year of internship. He then applied for post-graduate studies where he was denied admission. Thus, he filed a Petition against the decision of the University of Delhi refusing him admission.

In the case of physical handicap, Medical Council of India (MCI) had clearly provided guidelines for the eligibility criteria of candidates suffering from loco motor disability. According to these guidelines only individuals suffering from a 40% to 60% impairment of lower limbs could be considered for admission to medical educational institutions. This limit was later changed to 50% to 70% limit. It was argued that the disability suffered by Raman was of the upper limbs and furthermore his impairment was only 40% so he was not eligible for admission to the Postgraduate medical education. The Court held that Raman's disability had been certified by a hospital that was especially designated by the Government of NCT (National Capital Territory) for the purpose of assessing the disability level of persons with disabilities, hence, the certificate was completely valid and the University of Delhi would have to accept it.¹⁹

In another case of, *Social Jurist, A Civil Rights Group Vs Government of NCT of Delhi*²⁰, the writ petition was filed in public interest, for the enforcement/implementation of certain facets of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). In this case, the Delhi School Education Act, 1973 was challenged which had no provisions for reservation for the disadvantaged and economically weaker group in the schools. According to the Right to Education Act and also as per the UN Convention, the children with disabilities have a right to admission to any school or educational institution, but such provisions was not brought

¹⁷ *Nandini Devare*, 'Article on 'Disability and Education in India' available at <http://www.legalserviceindia.com/article/l283-Disability-and-Education.html> (last accessed on December, 2021)

¹⁸ *Dr. Raman Khanna Vs University of Delhi and Ors*, 2003 V AD(Delhi) 343 Delhi High Court

¹⁹ *Supra* note 22.

²⁰ *Social Jurist Vs Government of NCT of Delhi*, (2012) 190 DLT 345

under implementation in majority of schools (private) in Delhi. Hence, as a result the RTE Act was amended in 2012, making it compulsory for private and non-aided schools to keep provisions for 25 percent reservation for students with disabilities and that also under the category of EWS rendering them free education.²¹

Conclusion

“The right to education is being increasingly being recognized as the right to Inclusive education and Inclusive Education’ is today acknowledged as the most appropriate modality for states to guarantee universality and non-discrimination in the right to education”.²² The concept of Inclusive education shall not only protect the Right to Education of the children with disabilities, but also has a major role in protection of their Right to Equality and to live with dignity. Rather than segregation of children with disabilities in special schools, inclusive education entails providing meaningful learning opportunities to all students within the regular school system. Ideally, it allows children with and without disabilities to attend the same age-appropriate classes at the local school, with additional, individually tailored support as it requires physical accommodation as well as a new, child centred curriculum that includes representations of the full spectrum of people found in society and reflects the needs of all children.

Finally, it must be said that inclusion is a process not a program. It is a process of constantly eliminating barriers that restrict or ban the participation of children within a system. As we take stock of the process it becomes important for us to develop frameworks that assess how far a system is becoming inclusive not only through the numbers but also through an evaluation of the values that the system carries with it.²³ The philosophy of Inclusive Education is based on the principle of “Respect for difference and acceptance of disability as part of human diversity and humanity.” An important feature of Inclusive Education is that it not only makes it compulsory for the ‘children with alphabets to learn alphabets’, but also for the non-disabled children to learn sign language and braille etc. This feature could later play a big role in social integration of all individuals.²⁴

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²¹ *Case law (Social Jurist Vs. NCT of Delhi)* available at <https://www.legitquest.com/case/social-jurist-v-govt-of-nct-of-delhi/7AF8C> (last accessed on December, 2021))

²² *Centre for research and policy in disability*, ‘Fourth Annual Report on The Status of Inclusive Education of Children with Disabilities’ under the Right to Education act, 2009 (2014-15), available at https://www.eenet.org.uk/resources/docs/right%20to%20education_in.pdf (last accessed on December, 2021)

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