

# Right to Education - A Legal Perspective

## Abstract

Millions of children around the world wish most of all, for the chance at an education. Their thirst for education is so great that when barriers such as school fees have been removed in some countries school populations surge almost overnight. Now a days justice of education has become a basic human right of citizens. Therefore, we must, through the making and enforcing of laws, regulate the relations b/w educational interests, balance educational interests, integrate educational resources, maintain educational order; permeate the whole law making process with the values of fairness and justice, strictly enforce relevant laws and national policies; carry out the responsibility system, tighten up supervision, and ensure the correct enforcement of laws, so as to gradually realize and maintain educational justice in India.

**Keywords:** Legal Provisions, Discrimination, Disabilities, Justice, Sociology.

## Introduction

Good education means possibility of the improvement of a person's life. Equal opportunity of education is a key fulcrum for the pursuit of social fairness and social harmony. The issue of educational justices is an extension of the issue of social justices in the field of education. In the present world, receiving education has become a basic human right of citizens. Education, able to considerably improve the state of human existence and forward the improvement of population quality and the sustainable development of the whole society, is considered the most important means of realizing social justices. Therefore the present paper will about the issue of educational justices against the background of a harmonious society from the perspective of legal sociology, so as to offer a practical mechanism through legislation to solve this contemporary social problem. The Constitution of India had included a right to education under the 'Directive Principle of State Policy'. Part 1V of the Constitution relating to Directive Principles of State Policy reads as under: Article 41-Right to work, to education and to public assistance in certain cases. It states that- "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

## Aim of the Study

The aim of the study is related to the issue of educational justices against the background of a harmonious society from the perspective of legal sociology so as to offer a practical mechanism through legislation to solve this contemporary social problem

## Review of Literature

Dhar (April 1, 2010) wrote an article entitled "Education is a fundamental right now" on the verge of implementation of the RTE Act, 2009. She said that the Right to Education Act, 2009 was a historic law making education a fundamental right of every child, directly benefiting close to one crore children who did not go to schools at present. The Right to Education Act would be binding on the part of the government to ensure that all children in the six to 14 years age group get schooling. On April 1, 2010 India joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force. She cited the words of the then Union Human Resource Development Minister Kapil Sibal that "Nearly 92 lakh children, who had either dropped out of schools or never been to any educational institution, will get elementary education as it will be binding on the part of the local and State governments to ensure that all children in the 6-14 age group get schooling". She pointed out some provisions of the RTE Act one by one. As per the Act, private educational institutions should reserve 25 per cent seats for children from the weaker sections of society.

Vithalrao (2011) conducted an enquiry entitled "Child Rights as a

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Part of Human Rights – A Comparative Study” to know the awareness about child rights among teachers in Mumbai city. A sample of 150 teachers was selected randomly. The study revealed that significant difference was found in the awareness level of male and female teachers but all the teachers were aware of the child rights more or less.

Kumar & Sharma (2011) have conducted a study on “A Study of Parents and Teachers Awareness towards Right to Education Act 2009” to assess the level of awareness of teachers and parents of primary to upper primary level students towards the RTE Act, 2009. The findings of the study reveal that the teachers are more significantly aware than that of parents. They have conducted the study on 320 parents and teachers of primary to upper primary level at Sardarshahar town in the Churu district of Rajasthan to assess their awareness towards RTE Act. The study revealed that teachers are significantly more aware than that of parents. Among the teachers 72.12%, 11% and 13% were found moderately, high and low aware of the RTE Act.

Rajput & Aziz (2013) conducted a study “Awareness of Right to Education Act among Urban Slum Dwellers: A Case Study of JJ Resettlement Colony of Madanpur Khadar of New Delhi” to examine the level of awareness regarding Right to Education Act, 2009 among urban slum dwellers. The study was a case study of JJ Resettlement Colony of Madanpur Khadar of New Delhi. This study was based on data collected from the slum survey through a questionnaire developed by the researchers. The result was very disheartening to observe that there is lack of awareness regarding the Right to Education Act, 2009. A sample of 200 people of JJ Resettlement Colony of Madanpur Khadar of New Delhi was selected purposively by the researchers. The study revealed that 80% parents in JJ Resettlement Colony Madanpur Khadar were sending their children to school, out of which 80% children were going to Government school, 15 % were going to private school and only 5% were going to NGO's. Out of the

sample, 20% were not sending their children to school because of lack of birth certificates, lack of fund to spend on their child's education, lack of interest, lack of regular livelihood and lack of awareness about the RTE Act among the parents. 88% parents of the sample were unaware of the provisions of the RTE Act.

Gandhi & Jadav (2013) undertook a study entitled “Study of Awareness among

Primary School Teacher's Towards Right to Education Act, 2009” to analyse the awareness among primary schools teachers towards RTE Act, 2009. A sample of 100 primary schools teachers was selected by the researchers from 4 blocks of Gurgaon

District of Gujarat. Out of 100 teachers, 42 government and 58 were private school teachers. The self-made questionnaire - “Right to Education Awareness Questionnaire for the Teachers” was used as a data collecting tool. The study revealed that there is significant difference in awareness of male and female primary school teachers working both in

government and private schools towards Right to Education Act, 2009. Again there is no significant difference in awareness of teachers working in government and private schools towards Right to Education Act, 2009.

Sukanya & Priyanta (2017) wrote a paper entitled “Resource requirements for Right to Education (RTE): Normative and the Real” The paper examines the issue of resource adequacy for RTE by estimating the resource requirement for universalization of elementary education across twelve Indian states. The results indicate that even with minimal norms, there is a vast amount of underspending by governments. Except in the case of Tamil Nadu, the required expenditure per student is short of the normative requirement. In states like Bihar, Jharkhand, Orissa and Madhya Pradesh, not only is the requirement falls disproportionately on these poorer states. The present set of policy interventions and inter-governmental resource sharing arrangements fail to adequately address the specific resource needs of these states for fulfilling the basic entitlement.

#### **Right to Education:**

Persons with disabilities are often excluded from mainstream education. As basic education is essential for employment in many spheres and a prerequisite to economic independence, the right to education is of particular importance for disabled persons. Education is also an important part of the rehabilitation process, as persons with disabilities develop their capacities to become more independent and integrated into mainstream society. The most important step for the integration persons with disabilities into mainstream life is through education. A legal provision stating the right for everyone to receive education has little significance if no positive measures are taken to ensure that children, youth and adults with different types and levels of disabilities have access to quality education at the primary, secondary and tertiary levels. It is important that no obstacles - legal, physical or psychological - should exist to hinder the access of disabled persons to education, that special education be provided when necessary, and that education should as far as possible be given in integrated settings. It is also important to point out the importance of education not only as part of rehabilitation, but also as part of prevention.

#### **Access to Education**

Access to education is the most fundamental aspect of the right to education. It is therefore important to ensure that all legal and technical obstacles to it are removed and that positive measures are taken to facilitate access for all persons with disabilities. Several international instruments call for equal access to education for disabled persons. General statements can be found in the Convention against Discrimination in Education (article 1), in The Salamanca Statement (paragraph 2), in the Sundberg Declaration (article 1) and in The Copenhagen Declaration and Programme of Action in Commitment 6. The purpose of this commitment to universal access to education is to eradicate poverty, promote

full and productive employment and foster social integration. The Convention Against Discrimination in Education confers a whole range of duties on States in order to eliminate and prevent discrimination in education. Although the notion of disability is not explicitly mentioned in Article 1 as one of the criteria according to which distinction is prohibited, disability can be taken as one factor determining the social origin of a particular person, and distinction based on social origin is expressly prohibited by Article 1. Article 3 obliges States Parties to eliminate and prevent discrimination in education. Article 4 requires that States Parties promote equality of opportunities in education.

Some international instruments provide more specific guidelines and areas of concern in relation to access to education. The Universal Declaration of Human Rights (article 26) calls for free and compulsory education "...at least in the elementary and fundamental stages..." and article 13 of the International Covenant on Economic, Social and Cultural Rights adds that "...secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by progressive introduction of free education." The Convention on the Rights of the Child (article 23) also stresses the need to provide services "...free of charge, whenever possible, and taking into account the financial resources of the parents or others caring for the child." Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights confers a general right to education including free and compulsory primary education; Article 13 (3) (e) requires States Parties to provide for programmes of special education as adapted to the special needs of persons with disabilities. Article 17 of the African Charter on Human and Peoples' Rights confers that every individual shall have the right to education.

Article 3 (1) of the World Declaration on Education for all - Meeting Basic Learning Needs outlines the principle that basic education should be provided to all children, youth and adults. In particular, article 3 (5) provides that the learning needs of the disabled demand special attention and that steps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system.

Special attention to different groups of persons with disabilities implies that equal opportunities should be made available to them at all levels of education: pre-school, primary and secondary schools, university and adult education programmes. This is one of the concerns expressed by the World Programme of Action concerning Disabled Persons. The World Programme of Action also calls for special attention to persons with disabilities in rural areas and draws attention to problems caused by traveling distances.

The right to education relating to children is emphasized by the International Conference on Children's Rights in Education (Convened by the

Danish Ministry of Education, Copenhagen (Denmark) 26-30 April 1998), which was based on the Convention on the Rights of the Child. Herein the conference elaborated the following issues especially concerning disabled children:

1. Education is a right, not a privilege;
2. The child's participation and full development must be supported in all educational goals, setting and practices;
3. Existing identifiable barriers to implementation of the child's rights to education can be overcome;
4. Education must respect individual, contextual and cultural differences.

The Sundberg Declaration is concerned with the education of persons with disabilities Article 1 provides: "Every disabled person must be able to exercise his fundamental right to have full access to education, training, culture and information." Article 2 provides that Governments and national and international organizations must take effective action to ensure the fullest possible participation by disabled persons. Article 5 provides that persons with disabilities shall have access to educational programmes adapted to their special needs. Pursuant to article 11, disabled persons must be provided with the facilities and equipment necessary for their education and training.

#### **Quality of Education**

The quality of education should be equal to that of persons without disabilities and should meet the special needs persons with disabilities. Similarly, the quality of education should be the same irrespective of gender, age or degree of disability. International instruments stress the need to guarantee high standards for education of all: The Universal Declaration on Human Rights (article 26 (2)) and the International Covenant on Economic, Social and Cultural Rights (article 13 (1)) state that "Education shall be directed to the full development of the human personality." In the same spirit, the Sundberg Declaration states that education has to promote the self-fulfillment of all disabled persons and their full participation in social life. The Convention on the Rights of the Child (article 23) provides that "...the disabled child has effective access and receives education (...) in a manner conducive to the child's fullest possible social integration and individual development, including his or her cultural and spiritual development." Article 6 of the Convention Against Discrimination in Education lays down the purposes of education, which include the full development of the human personality and the strengthening of respect for human rights and the promotion of understanding, tolerance and friendship among all nations.

The Salamanca Statement asks Governments to "...give the highest policy and budgetary priority to improve their education systems..." (point 3). The content of education should be geared to high standards and the needs of individuals with a view to enabling them to participate fully in development.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Rule 6) states that "...[t]he quality of such education should

reflect the same standards as general education and should be closely linked to it."

World Programme of Action concerning Disabled Persons, Paragraph 122, states that educational services for disabled children and adults should be comprehensive, individualized - leading to specific curriculum goals that are regularly reviewed and revised - and offering a range of choice commensurate with the range of special needs in any given community.

Paragraph 2 of the Declaration on the Rights of Mentally Retarded Persons confers the right of mentally retarded persons to receive such education as will enable them to develop their ability and maximum potential.

Paragraph 6 of the Declaration on the Rights of Disabled Persons states that disabled persons have the right to education, which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.

#### **Integrated Education**

Integrated education means that persons with disabilities have the right to be educated in the same schools and follow the same curriculum as non-disabled students. Integrated education can include special education if that education is given in special classes in regular schools or in the form of support teaching in regular classes and resource rooms. Integrated education is the key to equal educational opportunities for persons with disabilities. It maximizes disabled persons opportunities for participation in society and facilitates the transition from school to work.

Many international instruments focus on the integrating function of education: according to the Sundberg Declaration (article 6), "Education, training, culture and information programmes must be aimed at integrating disabled persons into the ordinary working and living environment.

The World Programme of Action concerning Disabled Persons (paragraph 120) calls for States to adopt policies "...which recognize the rights of disabled persons to equal educational opportunities with others." More explicitly, it states that "...the education of disabled persons should as far as possible take place in the general school system."

The Salamanca Statement on special needs education calls for inclusion to be the norm in the education of all disabled children. According to the Statement and the Framework of Action, all children, regardless of their physical, intellectual, social, emotional or other conditions should be accommodated in ordinary schools. The framework of action adds that "...regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all. Moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system."

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

support inclusive education. Rule 6 provides that "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. The rule also recognizes that the education of persons with disabilities is an integral part of the educational system." This implies that "...general educational authorities are responsible for the education for persons with disabilities in integrated settings..." and that "...education for persons with disabilities should form an integral part of national education planning, curriculum development and school organisation."

The United Nations Children's Fund has estimated that 90 percent of disabled children can join regular education programmes if a limited number of prerequisites are complied with. Regular schools are expected to educate all children with a slight disability who require little support, but it is preferable if all disabled children can get access to the general school system. This of course requires special measures in order to meet the needs of disabled students.

First of all, as pointed out in The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (rule 6), it is necessary that States should have a clear policy understood and accepted at the school level and by the wider community. These policies and financial arrangements should encourage and facilitate the development of inclusive schools, and the removal of barriers that impede movement from special to regular schools. Educational policies should take full account of individual differences and situations and special attention should be given to the needs of children and youth with severe or multiple disabilities.

Second, according to The Salamanca Statement and its Framework of Action, it is necessary to make changes at the level of school management. Local administrators and heads of schools should be given the necessary authority and adequate training to play a major role. They should be invited to develop more flexible management procedures, to re-deploy instructional resources, to diversify learning options, to mobilize child-to-child help, to offer support to pupils experiencing difficulties and to develop close relations with parents and community. School heads should have the primary responsibility for promoting positive attitudes throughout the school community and arranging for effective co-operation and teamwork between teachers and support staff. International instruments also stress the need for curriculum flexibility, addition and adaptation. Curricula should be adapted to children's needs following the principle that all children should be provided with the same education adapted to suit different individual needs. Support services are needed to enable disabled children to receive the same education as non-disabled children in mainstream schools. Facilities and equipment necessary to meet the needs of disabled pupils are described in international instruments. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities mention the provision of interpreter services. The Salamanca Statement and

its Framework of Action indicate the need for special materials and support teachers. There should be support programmes within the school and, where necessary, provision of assistance from specialist teachers and external support staff. Appropriate and affordable technology should be used when necessary to enhance success in the school curriculum and to aid communication, mobility and learning. To facilitate the provision of support services, training institutions and special schools can be useful. They can provide access to specific resources that are not provided in regular classrooms. The Sundberg Declaration (article 11), concerned by the accessibility to the necessary equipment, points out the importance to enable developing countries manufacture such equipment.

### **Special Education**

Not all persons with disabilities can follow education in mainstream schools, and need, therefore, a special form of education.. Special education should receive at least the same level of educational resources as education for students without disabilities, and a common administrative structure should be organized.

The purpose of special education is to allow "...all persons with handicaps, especially those with communication problems..." to have access to educational programmes adapted to their specific needs "...so as to put the maximum of their capacity at the service of the society" (article 5 of the Sundberg Declaration). However, special education should only be directed to students with severe or multiple disabilities, and should be aimed at preparing them for education in the general school system by integrating special education services into mainstream education (rule 6 (8) of The Standard Rules of Equalization of Opportunities for Persons with Disabilities).

According to The Standard Rules of Equalization of Opportunities for Persons with Disabilities, Rule 6 (9) states that special education might be adequate especially for the deaf and / or blind people because of their special communication needs. This education could be provided in special schools, or special classes in regular schools. In any case, special education should not prevent them from following the general school curriculum, although it is important that at an early stage attention should be given on instruction "...that will result in effective communication skills."

Paragraph of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty guarantees that every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

### **Teacher Training**

Teacher training is especially necessary to enable disabled children and youth to fully enjoy the advantages of the mainstream educational system. The Salamanca Statement asks Governments to ensure that teacher education programmes address the provision of special needs education in inclusive

schools. The Sundberg Declaration (article 9) states that educators and other professionals responsible for educational programmes must be qualified to deal with the specific situations and needs of disabled persons. "Their training must, consequently, take account of this requirement and be regularly brought up to date." Expressing the same concern, The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Rule 6 (6) (c)) call States to provide ongoing teacher training and support teachers to ensure that the education of persons with disabilities is an integral part of the educational system. Pre-service and in-service training programmes should provide all students and teachers an orientation on disability. The knowledge and skills required include: assessing special need; adapting curriculum content; utilising assistive technology; individualising teaching procedures, etc., always keeping in mind that the priority is to meet pupils' needs. Specialised training in special needs education should encompass all types of disabilities, prior to further specialisation in one or more disability-specific areas. Universities have a major role to play as regards research, evaluation, preparation of teacher trainers, and designing training programmes and materials. Written materials should be prepared and seminars organised for local administrators, supervisors, head teachers and senior teachers to develop their capacity to provide leadership in this area and to support and train less-experienced teaching staff. Co-operation should also be established between teachers, specialists and parents. Disabled persons should be involved in research and training roles. It is also important that education systems recruit education personnel who have disabilities to provide students with disabilities with examples of disability empowerment.

### **Vocational Training**

Laws are also needed to assure equal access for persons with disabilities to vocational training. The transition from school to work is most successful when it is already incorporated in the education programme. In that sense, the right to education can be seen as a corollary to the right to employment. The norms and standards on vocational training in relation to the employment of persons with disabilities are included above Right to Develop Work Skills. Specific instruments in this area are the Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons), the Recommendation concerning Vocational Guidance and Vocational Training in the Development of Human Resources.

### **Conclusion**

It is well known that education is basic human right for the success of democratic system of government education is one of the basic element , an educated citizen has to choose the representative who form the government. Education gives a person human dignity who develops himself as well as contributes to the delopment of his country

The question arises as to how this gigantic project would be implemented, The Population of the country has considerably increased and the number

of children of age from 6-14 yrs. are in crores .The govt. doesn't have money at present to run its educational institutions . In the area of education , it is emphasizing on privatization majority of higher secondary schools are run by private persons , where there is no provision for free education , they charge high fee. only rich person can afford to send their children to these schools. When the education will become a fundamental right , a citizen would go to the court for enforcement of his right and the court would be obliged to give an order for its enforcement but if there are no schools , how would be govt. implement it. The only alternative is to encourage non-governmental organization to come forward and participate in it to fulfil the mandate of constitution .

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