

# THE PROTECTION OF SOCIO-ECONOMIC RIGHTS OF CHILD WITH DISABILITIES IN INDIA: AN ANALYTICAL STUDY

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## **Abstrac:**

Special care and assistance is the basic human right of a child. It is the duty and obligation of Governmental machineries as well as of every prudent human being of the society to give that fair amount of care and assistance to every child. But these duties and obligations are magnified many folds in case of a child with disability as they are undoubtedly vulnerable not only as a child but also due to disability and being more exposed to the chances of being attacked or discriminated in comparison to any other child per se. Therefore, there is need to have some special affirmative legislations and implementational machineries which shall protect and promote the rights of the children with disabilities. The Universal Declaration of Human Rights under Article 1 as well as the Constitution of India under Article 21 proclaims that every human being is born equal and everyone has equal right to live with dignity. This expression includes the child with disability. However, unfortunately it is evident that there exists lack of knowledge and inclusive policies to give proper assistance to the children with disabilities. Promulgation of Persons with Disabilities Act, 2016 has not received the expected response largely due to discrimination against them in the society which amounts to violate their inalienable basic human rights.

**Key Words:** Socio-Economic Rights, Child, Disability, Discrimination and Vulnerability.

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### I. INTRODUCTION

'Socio-Economic Rights' are inclusive rights which are interdependent on the civil and political rights. They include the right to adequate food, housing, education, health, social security and to take part in social and cultural gatherings. On the other hand, a child is a human being between the various stages of birth and puberty, below the legal age of majority set by a particular country. Legally a child is usually referred to as a minor. Every child has the socio-economic rights, which are important for their mental and physical growth. It is because of their tender age and lack of experiences, that they are vulnerable by nature and the children with disabilities remains more prone to violation and abuse. Therefore, they need special care and protection of law. For this purpose there are several international and national instruments proclaiming the rights of child which includes the children with disabilities.

The Universal Declaration of Human Rights under Article 25 states that every child is entitled to special care and assistance. The Declaration of the Rights of Child adopted by the General Assembly on November 20, 1959 as well as the Convention on the Rights of the Child (CRC), 1989 together proclaims certain basic and inalienable human rights of child. Those rights are as follows-

1. Right to life,
2. Right to acquire Nationality,
3. Right to freedom of expression, thought, conscience and religion,
4. Right to freedom of association and freedom of peaceful assembly,
5. Right to education,
6. Right to social security,
7. Right to standard of living adequate for the physical, mental, spiritual and social development of the child,
8. Right to protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

All these rights mentioned above are the combination of civil, political and socio-economic rights and include the child with disabilities within its ambit. The child with disabilities has the equal right to live freely without any discrimination and violation. They have the right to get protection of law, to get proper and adequate food and education and at the same time it is the duty of the Government of a country and the people at large to protect and promote the same for the children as a whole without any discrimination.

However, at the present-day scenario all the rights ensured to the children seems to be the proclamation only in *abstracto* rather being in *concreto*. The lack of social awareness and reluctance of Government in implementation, children are being subjected to violation and exploitation throughout the world and among them the plight of the child with disabilities is even worse. Their issues should be looked upon with due care and a proper legislative, executive and judicial machinery is the need of the hour for their protection.

### II. DATA RELATING TO CHILDREN WITH DISABILITIES

The United Nations Convention on the Rights of Child (CRC) has been recognized as the most widely adopted Human Rights treaty as over 190 countries have ratified to it. However, mere acceptance of these rights is not enough to uphold the rights of children with disabilities. Issues like child marriage, adequate food, child labour, lack of access to education, child soldiers, lack of access to clean water and sanitation, female genital mutilation, lack of access to proper health care are the vices of the present-day world and the children are the prominent victims.

The plight of the children with disabilities increases due to lack of awareness and education of the people in general. Their socio-economic rights are at stake. More than 1 billion people i.e 15% of the world's population suffer from disability and out of them 90-150 million people are children.<sup>2</sup> Throughout Africa, less than 10% of the children with disability have access to primary education. In Bangladesh

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• <sup>3</sup>Children with Disabilities, Theirworld (Aug 9, 2021, 09.00 AM) <https://theirworld.org/children-with-disabilities>.

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30% people with disabilities have completed primary school, whereas 48% people without disabilities have completed primary education. 75% children with disabilities in Afghanistan are out of the light of education.<sup>3</sup> According to the Census of 2011 in India, 2.21% people<sup>4</sup> [2.40% Male and 2.01% Female] of the total population are suffering from disability and out of them 20.42 lakhs are children.<sup>5</sup> Due to non-accessibility of education, these children remain dependent onto their family members being deprived of their basic inalienable civil, political, economic, social and cultural rights leading towards a gross Human Rights violation. These children around the world require special assistance of the Government and local authorities on primary basis to curb the social menace.

There are only around 2500 special schools<sup>6</sup> in India which are well equipped to deal with the students with disabilities and all these schools are not Government aided. In fact, most of these schools are run by NGOs and private institutions.<sup>7</sup> The number of the schools shows that the lack of intentions and initiatives of the Government to promote awareness relating to disability which needs to be changed to ensure social justice. Though the guideline has been made relating to the admission of children with disabilities in all the schools, still they are denied admission. The obstacles are not only limited to primary education, even in the higher education system in India, academicians with disability face broader range of issues. Though University Grant Commission (UGC) has given guideline relating to admission of all without any discrimination, yet the institutions are reluctant to give admission to the students with disabilities.

Through a field work undertaken by the researcher in 2017 at the District of Coochbehar of West Bengal, it was found that there are no special schools for children with disability of any kind. If any child with disability wants to take admission in a

school, they will have to study in the common schools where they are likely to be subjected to discrimination. By some people they are even considered to be a bad omen, the result of ill fate. Through the census of 2011 it was found that most of the disabled children of the rural areas and their families fail to take the children to school due to lack of accessible conveyance and economical backwardness. This shows the clear picture of the whole country where the children with disability gets deprived of the basic socio-economic right to education, health, food and the list goes on.

### III. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF THE RIGHTS OF CHILD WITH DISABILITIES

Persons with Disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>8</sup>

In order to promote and protect the rights and dignity of persons with disabilities, General Assembly of the United Nations established an Ad hoc committee on December 19, 2001 for preparation of a comprehensive and integral international convention on protection and promotion of the rights and dignity of persons with disabilities. The committee adopted a draft text of a convention which was forwarded to the General Assembly for adoption and finally in 2006 the General Assembly adopted by consensus the Convention on the Rights of Persons with Disabilities, which came into force in May 3, 2008 after its ratification by 20 States. The Convention has 161 State parties.<sup>9</sup>

The Convention on the Rights of Child (CRC), 1989 proclaimed that every child, including the child with disabilities, has right to life, right to acquire

<sup>3</sup>Id.

<sup>4</sup>Disabled Persons in India: A Statistical Profile, (Aug 9, 2021, 09.00 AM) [http://mospi.nic.in/sites/default/files/publication\\_reports/Disabled\\_persons\\_in\\_India\\_2016.pdf](http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf).

<sup>5</sup>Id.

<sup>6</sup>Special needs education in India, Angloinfo (Aug 9, 2021, 09.00 AM) <https://www.angloinfo.com/how-to/india/family/schooling-education/special-education>.

<sup>7</sup>Id.

<sup>8</sup>The Convention on the Rights of Persons with Disabilities, art. 1.

<sup>9</sup>As on February 2016, H.O. Agarwal, International Law And Human Rights 882-883 (21st edn, 2016).

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nationality, education, social security; freedom of expression, thought, conscience so on and so forth.

There are some Optional Protocols to the Convention on the Rights of the Child which are as follows-

1. **Optional Protocol on the Involvement of Children in Armed Conflict, 1977** states that the Parties to the conflict shall take all feasible measures in order to protect the children below fifteen years of age from any kind of hostilities and they shall refrain from recruiting them into armed forces. Thus, this protocol gives protection to the children with disabilities too under its umbrella.
2. **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2002** defines these particular offences separately and sets criteria for the treatment of violation under domestic laws of the State parties. Under this protocol the children with disabilities are also protected and the State parties are bound to take actions in case of violation of their rights.
3. **Optional Protocol on the Rights of the Child on a Communication Procedure, 2014** empowers individual children or their representatives of the ratifying States to submit communications in writing regarding specific violation of the Rights of the Child mentioned in CRC and its two protocols. The children with disabilities are also entitled to communicate their complaints regarding their violation of rights under this protocol.<sup>10</sup>

These are the basic inclusive international instruments which talk about the rights of the children of the world as a whole.

Apart from the Convention on the Rights of Child, there are some ample numbers of International Instruments which talk about Human Rights in an inclusive manner and include the Child Rights too. The United Nations Charter, 1945; the Universal Declaration of Human Rights, 1948 and the International Covenant of Civil and Political Rights

(ICCPR) and International Covenant of Economic, Social and Cultural Rights (ICESCR), 1966 uphold the inalienable civil, political, economic, social and cultural rights of Children of the world.

There is a specific Convention for the rights of Persons with Disabilities too in which the rights of children with disabilities are also included. The United Nations General Assembly on December 13, 2006 adopted by consensus the Convention on the Rights of Persons with Disabilities, 2006 which came into force on May 03, 2008 after its ratification by States.

### IV. RIGHTS OF CHILDREN WITH DISABILITIES IN INDIA

The Indian Legal System not only accords the rights of the persons with Disabilities which are inalienable in nature and available to all human beings but also protects other rights which are provided to them by way of some affirmative legislation. It is essential to check the rights proclaimed under that Constitution of India and other legislations which meet the international obligation of protecting and promoting the rights of the disabled persons (including children).

#### The Constitution of India

The Constitution of India secures to all its Citizens a right of Justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity.<sup>11</sup> It further enjoins that the Government must not discriminate against any citizen of India on the ground of religion, race, caste, sex or place of birth, which includes the disabled persons too.<sup>12</sup> Moreover, it states that no person shall be subjected to any restriction on any of the above grounds to access any shop, public restaurants, hotels, bathing ghats, any place of public entertainment and so on.<sup>13</sup> The expression "any person" as mentioned in the above provision is an inclusive term which includes the persons with disabilities.

Article 16 of the Constitution of India provides that every citizen shall have equal rights in the

<sup>10</sup>H.O. AGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS 856-859 (Central Law Publications, Allahabad, 21st edn, 2016).

<sup>11</sup>The Preamble of the Constitution of India.

<sup>12</sup>The Constitution of India, art. 15 (1).

<sup>13</sup>The Constitution of India, art. 15 (2).

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matters relating to employment or appointment to any office under the State. Article 17 provides that no person including the disabled can be treated as untouchable and in case of doing so it will be a punishable offence. Article 21 of the Constitution of India states that every person of India has Right to Life and Personal Liberty. Trafficking in human being including forced labor is prohibited under the Constitution of India which includes the disabled persons.<sup>14</sup> Thus it is evident from the abovementioned provisions that all the Fundamental Rights proclaimed under part III of the Constitution of India are applicable to the persons with disabilities. It is also evident that Indian Constitution is meeting all the international obligations proclaimed for the protection of the persons with disabilities (including children). Apart from this, the Government of India has enacted the Persons with Disabilities Act, 2016 by way as affirmative legislation to protect their rights.

### Health Laws

Article 47 of the Constitution of India imposes upon the Government a primary duty to raise the level of nutrition and standard of living of its people and make improvement of the public health which includes the persons with disabilities too. The Mental Health Act, 1987 talks about the improvement of the mental health of all persons including that of any person with disabilities.

### Educational Laws

The right to education is a right available to every person in India. Article 29 of the Constitution of India states that no Citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on any ground of religion, race, caste or language. This provision includes any child or person with disabilities.

Article 21A, 38, 39, 41 and 45 of the Constitution of India talk about Right to Education which has been extended to all persons including the persons with disabilities. The basic purpose of this State obligation is to provide educational facilities to make every person and to build capacity for living with human

dignity. Moreover, education can make the life of a physically challenged person useful and make them a pivotal human resource for the humanity as a whole. On receiving proper education any physically challenged child or adult can take themselves to a level where they would not be considered as a matter of pity and grace but as a contributor to the society as a whole.

Yet these ideals at ideological level proved inadequate and to facilitate the disabled children as well as learners of any age, the Government of India had passed a specific legislation named as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 with the objective to secure the rights of the person with disabilities in India. The Act defines Disability as-blindness, low vision, leprosy, hearing impairment, locomotor disability, mental retardation or illness.<sup>15</sup> However, this Act had several gaps and lacunae and was repealed in 2016 by the Rights of persons with Disabilities Act, 2016 which defines Disability under three heads-

- [1] "person with benchmark disability" means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;<sup>16</sup>
- [2] "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;<sup>17</sup>
- [3] "person with disability having high support needs" means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support.<sup>18</sup>

The new definition of the persons with disability is inclusive in nature and gives very specific parameters to identify disability of a person. It is an Affirmative legislation which provides for the reservation of any

<sup>14</sup>The Constitution of India, art. 15 (2).

<sup>15</sup>The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996), s. 2 (i).

<sup>16</sup>The Rights of persons with Disabilities Act, 2016 (Act 49 of 2016), s. 2 (r).

<sup>17</sup>The Rights of persons with Disabilities Act, 2016 (Act 49 of 2016), s. 2 (s).

<sup>18</sup>The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016), s. 2 (t).

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person with disability for Education, Government Jobs. It also provides for reservation for the disabled persons for allocation of land, poverty alleviation schemes etc. It further states that every child [including the child with disability] between the age of 6 to 18 has Right to Education and every Government Funded or Aided schools have the duty to promote and protect this fundamental right of every child.

### V. THE RIGHTS OF CHILDREN UNDER THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The Rights of the Persons with Disabilities Act, 2016 is enacted to give effect to the United Nations Convention on the Rights of the Persons with Disabilities, 2006 which lays down the following principles for the empowerment of persons with disabilities-

- a) Respect for inherent dignity, individual autonomy including the freedom of making one's own choice;
- b) Right to equality and non-discrimination, and equal opportunity;
- c) Full and effective participation in the social activities;
- d) Mutual respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality between man and women, and
- f) Respect for the evolving capacities of children with disabilities and respect for rights of children with disabilities to preserve their identities.

The above-mentioned objectives of the Convention show that the children with disabilities have equal right to dignity, freedom of speech and expression, right to life and personal liberty, right to education and all other rights which are inalienable for all human beings. It is noteworthy to state that, even before 2016, India had an enactment ensuring certain rights to the persons with disabilities which was titled as the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which was repealed by the Government in order to ratify the International Convention of 2006 and enacted the new Act fulfilling all the essential criteria mentioned therein.

Section 9 of the said Act states that no child with disability shall be separated from his or her parents on the ground of disability except according to the procedure established by law and in such cases where the parents are unable to take care of a child with disability, the competent Court has the power to place the child with his or her near relations and failing that within the community in a family setting and in exceptional cases in shelter home run by the Government.

In Chapter III of the Act, Section 16 imposes duty on the Government and the local authorities to endeavour that all educational institution funded or recognized by them provide inclusive education to the children with disabilities and towards that end shall-

- a) Admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- b) Make building, campus and various facilities accessible,
- c) Provide reasonable accommodation according to the requirements of the individuals,
- d) Provide necessary support for the academic and social development of the children with disabilities consistent with the goal of full inclusion;
- e) Provide transportation facilities to the children with disabilities and also to the attendant of the children with disabilities having high support needs.

In order to fulfill the purpose of Section 16, the appropriate Government and the local authorities have to take the following measures-

- a) To conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs;
- b) To establish adequate number of teacher training institutions,
- c) To train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;
- d) To train professionals and staffs to support inclusive education at all levels of school education;

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- e) To establish adequate number of resource centers to support educational institutions at all levels of school education;
- f) To promote the use of alternative modes of communication like Braille and sign language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities;
- g) To provide books, other learning facilities and appropriate assistive devices to students with benchmark disability;
- h) To promote research to improve learning and to provide any other measure, as may be required.<sup>19</sup>

Chapter VI of the Act gives special provisions for the persons with benchmark disabilities and states that every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbouring school or in a special school of his/her choice. It is further stated that the appropriate Government and local authorities are under obligation to ensure that every child with benchmark disability has access to free education in an appropriate environment till the child attains the age of eighteen years.<sup>20</sup>

Under Section 32 of the Act, it is stated that all the Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent (5%) seats for persons with benchmark disabilities and their upper age for admission in institutions of higher education is subject to five years relaxation.

The Act empowers the Central Government to designate persons, having requisite qualifications and experience, as certifying authority, who shall be competent to issue the certificate of disability<sup>21</sup> and any person with specified disability, may apply, in such manner as may be prescribed by the Central Government.<sup>22</sup> On receipt of the application by the applicant, the certifying authority shall assess the disability of the concerned person in accordance with

relevant guidelines notified under section 56.<sup>23</sup> It is further stated that the certificate issued under this section shall be valid across the country.<sup>24</sup>

The Rights of the Persons with Disabilities Act, 2016 enumerates certain number of offences against the persons with disabilities including the children with disabilities. Under section 92 of the Act, it is stated that whoever-

- a) Intentionally insults or intimidates with intent to humiliate a person with disability (including children) in any place within public view;
- b) Assaults or uses force to any person with disability (including children) with intent to dishonor him or outrage the modesty of a woman with disability;
- c) Being in a position to dominate the will of a child or woman with disability and uses that position to exploit his or her sexuality;
- d) Voluntarily injures damages or interferes with the use of any limb or sense or any supporting device of a person with disability; shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Thus, the Act identifies any violence committed against any person with disabilities a criminal offence which is punishable under the Act.

### VI. POSITION OF CHILDREN WITH DISABILITY UNDER THE NEW EDUCATION POLICY (NEP), 2020

The Government of India has introduced the New Education Policy (NEP) on July 29, 2020 which replaces the National Policy on Education, 1986. This policy intends to develop human beings capable of rational thought and action, possessing compassion and empathy, sound ethical values and creative imagination. The guiding principles behind this education system is to recognize the unique capabilities of each students, to achieve foundational literacy and numeracy by all the students by grade 3, not to make a hard segregation between Arts

• <sup>19</sup>The Rights of Persons with Disabilities Act, (Act 49 of 2016), s. 17.

• <sup>20</sup>The Rights of Persons with Disabilities Act, (Act 49 of 2016), s. 31.

• <sup>21</sup>The Rights of Persons with Disabilities Act, (Act 49 of 2016), s. 57.

• <sup>22</sup>The Rights of Persons with Disabilities Act, (Act 49 of 2016), s. 58.

• <sup>23</sup>Id.

• <sup>24</sup>Id.

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and Science and most importantly establishing an education system on the basis of equity and inclusion.

This new policy intends to build a strong base of Early Childhood Care and Education (ECCE) on the basis of the structure 5+3+3+4. This policy upholds the basic principle of inclusion which intends to include all children with disability (mental and physical). In order to do so, the policy talks about the special eligibility test and trainings for the teachers in schools. Teachers will be trained on different matters relating to how to deal with the children with disability. Section 6 of the NEP, 2020 upholds the motto of inclusive and equitable education. It intends to include the socio-economically disadvantaged group. In order to do so it intends to declare certain places as Special Education Zones (SEZs) so that special care can be taken in those places for the backward students.

Overall the new policy seems to be more inclusive of children with disability. However, the effectiveness of the same can only be fathomed after the implementation of the NEP, 2020.

### VII. CONCLUSION AND SUGGESTION

A close scrutiny of the provisions of the national and international legal framework shows that it intends to protect the socio-economic rights of the persons with disabilities including children and also provides some special measure by way of affirmative action for both children and adults with disabilities. However, there exists some implementational hazards and lack of awareness of people while implementing the provisions of this Act. Enacting legislation only by way of affirmative action cannot wholly serve the purpose, as there is need of acceptance and understanding by the common people about the plight and difficulties of the persons (especially children) with disabilities. The affirmative action cannot be of any use if it is offered to the people with disabilities by way of pity. There is need of change in mentality.

Another important aspect is that the term 'Disability' should be removed from the legislations and the term 'specially abled' should be made popular instead. As referring a person as 'disabled' gives the initial negative impression that the person or child is not able to do certain things. Whereas, in reality there are numerous instances around the world where the persons with disabilities have achieved enormous fame in life in comparison to any other abled person. There are ample number of famous people who were disabled but as the same time they were specially abled to do certain extraordinary things viz. Stephen Hawking (famous scientist of the 20th century), Frabklin Delano Roosevelt (president of the United States during the period of 1933-1945), Ludwig Van Beethoven (the greatest composer in history who was deaf), Stevie Wonder (the famous piano artist), Helen Keller (great author, political activist and teacher), Frida Kahlo (famous Mexican painter), Marla Runyan (US Olympic Gold Medalist) so on and so forth. Hence it can be said that the issue is not only about the lack of legal framework or the intention of the Government. Initiatives must be taken by the family members as well as by the society members to come ahead and make social awareness about the persons with disabilities.

To conclude it will be appropriate to say that in an inclusive society, every human being should be accepted as an entity with dignity and their basic inalienable human rights should not be subjected to violation only on the basis of their vulnerability. Some special measures ought to be taken for the upliftment of backward classes of the society who are in need of special assistance and among those backward classes of the society, the people with disabilities; specially the children with disabilities deserve special care as the children form the foundation of the future of the society and exclusion of a particular group of children cannot lead the society to a healthy and favourable future.

