

Rights of the Disabled Child – International and Domestic Perspectives

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Abstract

Children are a vulnerable group due to their tender years. Children with disability have to bear the brunt of both childhood and disability. This paper analyses some of the most important child rights like the right to a family and the right to education from the disabled child's perspective. The author looks at the two United Nations Conventions relevant to the theme, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disability.

The paper also looks at domestic provisions like the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 and the Right of Children to Free and Compulsory Education Act, 2009 with respect to the rights of the disabled child vis-à-vis education. It is argued that the latter Act has merely stated that disabled children can fall back on the former Act and that this is an unhappy solution. This is because all children with intellectual, developmental and learning disabilities are not covered under the Persons with Disabilities Act.

The denial of education to a disabled child would lead to the double discriminatory disadvantage of poverty and disability in the child's adult life. The need for specially trained teachers, sensitized parents and overall systemic adjustments is stressed upon.

An attempt is also made comparatively analyze the rights of the disabled child across jurisdictions and how they compare to the standards set and the expectations out of the two United Nations Conventions which focus on the overall development of the child and its personality. This analysis takes into account the child's disability, his or her status as a child and the fact that certain necessary and vital rights like the right to education and family transcend disability.

KEYWORDS: Disability, child welfare, equality, education.

Introduction

Article 23(1) of the Convention on the Rights of the Child (CRC) reads: “*States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.*”¹ A disabled child bears the brunt of tender years and disability simultaneously. Unless the responsibility undertaken in the above Article is discharged in all earnestness, a disabled child would face other

¹<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, accessed on August 17, 2016.

disabilities like the lack of education, poverty and an abysmal quality of life during his or her adult life in addition to the physical or mental disability that the child already has. The Convention on the Rights of Persons with Disabilities (the UNCRPD) states that “Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities” shall be one of the general principles governing the Convention². Article 7 of the UNCRPD deals specifically with children with disabilities and asks State Parties to take all measures to ensure disabled children enjoy their rights and fundamental freedoms at par with other children and to ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right. In all matters governing disabled children, the best interests of the child shall be the primary consideration. Article 23(3) provides that States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families. The right to education of children with disabilities is also provided for in the UNCRPD. Article 24 forbids exclusion of persons with disabilities, especially children from the system of education. It is the duty of the State to ensure that disabled children are not excluded from compulsory primary and secondary education. Hence, it is seen that both the CRC and the UNCRPD have provisions to safeguard the interests of a disabled child. The UNCRPD has many provisions that are similar to provisions in the CRC. The best interest principle, the right to be taken care of by the child’s parents, family life, health and education are some of the provisions that are common in both convention, save in so far as that the UNCRPD deals specifically with disability. Reasonable accommodation for children with disabilities is thus a thrust area in the UNCRPD³.

Caring for disabled children is a complex issue and the legal ramifications for a child who is disabled (or a child with special needs) is the joint responsibility of several departments like health, social services and education. There is the interplay of various agencies, legislations and rules and there are several factors that need to be addressed to ensure that a disabled child gets its due⁴.

Statistics from a range of UN agencies reveal that in many developing countries 90% of disabled children will not survive beyond 20 years of age, 90% of intellectually impaired children do not survive beyond 5 years of age and only 3% get education

² General Principles, Article 3 (h). The Convention is available at <http://www.un.org/disabilities/convention/conventionfull.shtml>, accessed on August 17, 2016.

³“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

⁴ S. Gatiss and G. Beasley: *Creating the ‘Least Restrictive Environment’ for Disabled Children*, 4, Tolley’s Journal of Child Law, 19-25, January 1992.

beyond the bare minimum. 97% of disabled children receive no rehabilitation and no education.⁵

In the Indian context, Census 2011 which enumerated eight kinds of disabilities⁶ found that there are about 2130 disabled persons for every 100000 population. According to the final census report, there were 20.42 lakh disabled children aged between 0-6 years. 11.04 lakh of these children are male and 9.38 lakh are female. 71% of this population lives in rural areas and the rest are found in urban India. There are about 5.80 lakh children with autism and cerebral palsy in this age group. 6.71% of India's disabled population is below the age of 19. That is approximately 17.99 lakh children⁷.

Objectives

This paper aims to critically analyze the rights of the disabled child from the international and domestic perspectives. Provisions in two International Covenants, the Child Rights Convention and the Convention on the Rights of Persons with Disabilities are analyzed. This paper also looks into provisions in two domestic legislations, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Right to Education Act, 2009 apart from analyzing various programs and policies made for the benefit of children with disabilities and for the protection of their rights. Priority areas are highlighted; areas of concern like family life and education form the mainstay of the analysis in this paper. The fact that children with disabilities are not considered serious stakeholders and their opinion is seldom taken into account even when there are issues concerning their own wellbeing are an area of concern that has to be urgently addressed. Shortcomings in the legislations are stated and analyzed in this paper which concludes that the needs of children with disabilities, especially those of children with learning disabilities, have to form the mainstream of the disability debate, sooner rather than later.

Research Methodology

This paper is a doctrinal study of the provisions relating to the rights of the disabled child. Provisions in international conventions and domestic laws are analyzed in context of the objectives of the study. An attempt is made to enumerate the rights of children with disabilities and ascertain whether these rights, which are guaranteed, have been effectively protected and effectively enforced. An analysis of provisions is made in the context of identified critical areas, viz., family life and education. A critique of the laws is attempted to highlight the gaps in what the letter of the law

⁵ Gerison Lansdown: "Practice and Implementation – The Rights of Disabled Children", The International Journal of Children's Rights, Dordrecht: Kluwer Law International, Volume 6, pp. 221-27, at p. 221, 1998.

⁶ Seeing, speech, hearing, moving, mental retardation, mental illness, multiple disability and other forms of disabilities were the eight categories.

<http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/disabilityinindia2011data.pdf>, accessed on August 17, 2016.

⁷ Source: Census of India Report 2011, <http://enabled.in/wp/census-of-india-2011-disabled-population/>, accessed on August 17, 2016.

provides and what is the prevailing reality. The Conventions and the statutes form primary sources along with their interpretation as given by the various committees of the United Nations and judicial authorities in India.

Priority Areas for Disabled Children

Family care and support

Family care and support and education are the most fundamental requirements for children with disabilities. While both these are assured both under the CRC and the UNCRPD, domestic law is found lacking and domestic policies especially towards the education of the disabled child leaves a lot to be desired. It is clear that disability of any nature is a disadvantage. Coupled with disability, if a child is denied education and family care and support, the child grows up as an illiterate or an unqualified person unable to fend for himself or herself. The entire future of an individual is thus wiped out if education and family care are denied to the disabled child in its formative years. Both the CRC and the UNCRPD make it incumbent on the State to deliver these fundamental requirements as priorities in several of their respective Articles.

Family care and support for the disabled child becomes more long-term and essential due to the disability. Most countries in the first world had structures in place to cater to these needs and parents often relied on these service providers. In a country like India, like in most developing countries, the disabled child is not even allowed to survive as the parents who themselves may be from economically and socially backward classes just could not 'afford' a disabled child. Furthermore, a care giving career for most women (on whom the burden of bringing up the disabled child falls) in addition to her normal career (which may be one of an agricultural laborer, for instance) is just not a viable option. After all, a caregiver's career cannot be entered into and left at will⁸. Viewed in this light, the question is again raised as to whether the disabled child really has the right to care, affection and family life that a 'normal' child has been granted under the CRC and other laws that govern a child in this sphere.

In the west, there had been a shift from parents of the disabled seeking state services to take care of their disabled children to opting to care for these children at their own homes. But as the caregivers aged, the problem became two-fold as both the caregivers and the disabled ward need care from outside. An aged parent of a disabled ward had to revert back to the social service net but faced new problems of rigid policies, long waiting lines and poor communication between themselves and the service providers.⁹

In India, any formal system towards this end is clearly absent. The joint family, which is quickly disintegrating used to be a support system for parents with disabled

⁸Upali Chakravarti: *Burden of Caring: Families of the Disabled in Urban India*, a study conducted in New Delhi where the universe comprised of families with young children and adult suffering from Cerebral Palsy which highlights these issues. This study is published in Renu Addlakha [Ed.]: *Disability Studies in India – Global Discourses, Local Realities*, New Delhi:Routledge, 122-144, 2013.

⁹Luana Olivas: *Helping them Rest in Peace: Confronting the Hidden Crisis Facing Aging Parents of Disabled Children*, *The Elder Law Journal*, Volume 10, No. 2, 393-424, 2002.

children. The emergence of nuclear families has definitely put both parents and disabled children at greater risk. While there is no real succor in the law at sight, the Rehabilitation Council of India Act of 1992 and the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 are the legislature seeming answers to this conundrum. Both Acts are not shorn of criticism from stakeholders.

Treatment of the disabled child as a serious stakeholder

Both the CRC and the UNCRPD give paramount importance to the opinion of the disabled child in all matters concerning its welfare. However, it should be noted that children are placed in a quandary when it comes to the way they are treated in the legal system. Their legal competence in every area is compromised, be it in the area of consent or capacity to contract. The rubric of the legal system is especially harsh on disabled children. They are non-subjects for almost all practical purposes. Social exclusion, fundamental denial of their basic rights, abuse and neglect by the adults who may be their caregivers and their continuing ‘invisibility’¹⁰ continue to be causes of concern even after the Child Rights Committee discussed the rights of the disabled child as far back as in 1997¹¹.

It has also been uniformly observed that all legislations aimed at the alleviation of the disabled and disabled children have raiders. Decisions are seldom taken after the opinion of the disabled child is taken into consideration seriously, if taken into consideration at all. As to the raiders, one author calls them ‘get out’ clauses and cites examples like “taking into account the age and maturity”, “sufficient understanding” and “whenever possible”. He rightly points out that it is difficult to assess these concepts and it is even more difficult to determine the standard of assessment and who makes the assessment.¹²

India’s disability discourse is deeply rooted in the medical model. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was passed after India’s participation in the Economic and Social Council for the Asian and Pacific Region in Beijing to where the Proclamation on the Full Participation and Equality with Disabilities in the Asia and Pacific Region was adopted in 1992. The Act is a pre-convention legislation and pre-dates both the CRC and the UNCRPD. The numbers of disabilities are limited and mention of disabled children is made in Chapter V of the Act concerning education. However, there is no mention of seeking the child’s opinion or any of the rights based approaches with respect to disabled children.

¹⁰Op. cit. n. 5, at p. 222.

¹¹See UN Document CRC/C/69, paragraphs 310-339.

<http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/disabled.pdf> accessed on August 19, 2016.

¹²John Davis and Nick Watson: *Disabled Children’s Rights in Everyday Life: Problematizing Notions of Competency and Promoting Self-Empowerment*, The International Journal of Child Rights, Volume 8, Dordrecht: Kluwer Law International, 211-228, 2010.

The dreaded 'get out' clause, "Within the limits of their economic capacity and development," is found in more than one place in the Act.¹³ The Supreme Court has held that the provisions where the expression is used makes them directory¹⁴. The expression "shall endeavor" is found twice in Section 26. Section 26 makes it mandatory for the State to provide free education to disabled children.

Education

Education for the disabled child is a challenge. It is also a necessity. A child denied education has a futile adult life. This is especially true of the disabled child. As has been pointed out earlier, disability without education causes a double disability. Employment opportunities, which are scarce in themselves even for the educated disabled due to other problems like mobility and employer attitudes¹⁵ simply vanish for the uneducated disabled.

Disabled children who are denied education end up in urban centers as beggars and are trafficked by cartels. Some children are deliberately maimed to force them into begging¹⁶. Begging becomes an inevitable option for disabled children and this leads to other problems that are associated with the lack of education and begging.¹⁷

The disabled child beggar becomes a child in conflict with law. Most children in conflict with law are those who have committed petty crimes or such minor offences as vagrancy, truancy, begging or alcohol abuse. Many are trafficked girls who are being sexually exploited for commercial reasons whereby they are picked-up by the police and put behind bars. There are also some children who have been caught for their criminal behavior on account of being used or coerced by adults.¹⁸ Maimed children are the largest component of the victims who are in conflict with law under the last category of children being used or coerced by adults.

Disabled Children and family life in India

A study conducted in 2009 revealed that within the family members, there were issues that emerged with respect to the child with a disability. It was understood that though all the members knew about the condition of the child with a disability and his/her limitation, still at times, issues came up due to simple mistakes made by the ignorant child (child with a disability). It was found that some of the family members, sometimes, were not ready to accept the child and the illness that he/she was having and ignore his/her mistakes. The respondents sometimes felt that the death of the

¹³See for example Section 25, Section 44.

¹⁴*Dalco Engineering v. Satish Padhye* (2010) 4 SCC 378, See: Surendra Malik and Sumeet Malik [Eds.] "*Supreme Court Words and Phrases*", Lucknow: Eastern Book Company, 1890, 2012.

¹⁵See: Amit Upadhyay: "*Corporeality, Mobility and Class – An Ethnography of Work Related Experiences in Urban India*". This study is published in RenuAddlakha [Ed.]: "*Disability Studies in India – Global Discourses, Local Realities*", New Delhi: Routledge, 169-200, 2013.

¹⁶<http://www.childlineindia.org.in/children-with-disabilities.htm>, accessed August 19, 2016.

¹⁷See: Maya Kalyanpur: "*The Paradox of Majority Underrepresentation in Special Education in India: Constructions of Difference in a Developing Country*", *The Journal of Special Education*, Sage Journals, 2008.

¹⁸SavitaBhakry: "*Children in India and their Rights*", New Delhi: National Human Rights Commission, 23, 2006.

child could bring an end to the sufferings however, their heart never agreed to this. From the social context, the first aspect that emerged was in relation to the reaction of society. Society either showed sympathy for the child as well as the family or they tried to simply ignore/avoid mixing with such a family. Even the family members avoided discussing much about them or the members. The last aspect that emerged from the discussion was in relation to the label that the family seemed to have gotten due to the child with a disability. It was understood that the entire family was recognized by the child with a disability and their family by the society. The family had also accepted this painful fact and was living with it. Due to the label, the whole family was distinguished from other families in the society. Also due to this, the parents had to face the major problem of getting their other children married to good families because of the fear that the other members, probably, might have similar disabilities.¹⁹

It is also a common belief in India that disability is due to the misdeeds of a person in his or her previous life. This belief is especially strong in rural India and the child is discriminated against and often chastised or rebuked for this. In families which accept the disabled child, an attitude of sympathy is often seen; the child is never treated as an equal and is often shielded and overprotected. This attitude too could lead to disastrous effects psychologically on the child especially in his later adult life.

Disabled Children and Education in India

Whether integration into mainstream education along with normal children is the panacea to stop the isolation of children with disability is a debatable question. What is not debatable is the fact that disabled children need education that would give them a level playing field in their social and professional lives when they grow to become adults. Towards this end, various committees starting from the Sargent Committee Report of 1944 to the Kothari Committee Report of 1966 have mulled over the question of whether the disabled child should be sent to an isolated special school because of his special needs or should the child's education be an integrated one. Both committees suggested a "dual approach" to the issue.²⁰ It is now seen that the integrated approach has gained ground and isolated, special schools which actually caused the disabled to distance themselves have been abandoned. Although there were various efforts in various education policies of the government to enforce the recommendations of the Kothari Committee, the committee's observation that "*handicapped* students were hesitant to attend normal schools"²¹ seems to have had its effect on our policy makers for long. While it is not the purpose of this article to dwell into the veracity of this claim, suffice to say that it has indeed been found that children with disabilities do find it difficult to adjust to normal schools, primarily

¹⁹Rajib Lochan Dhar: "*Living with a developmentally disabled child: attitude of family members in India*", The Social Science Journal, Volume 46, No. 4, December, 749, 2009.

²⁰Rumi Ahmed: "*Legal and Policy Response to the Right to Education for Children with Disabilities in India*", Journal of National Law University of Delhi, Volume 2, New Delhi: National Law University, 90, 2014.

²¹Report of the Education Commission 1964-66, 124 [Kothari Commission], available at: <http://krishikosh.egranth.ac.in/bitstream/1/2041424/1/CCS270.pdf>.

because of issues of accessibility, more specifically structural barriers²². The various policies are analyzed at a later part of this article but it is no doubt that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWDA) gave the disabled child his first real chance and right to free and compulsory education up to the age of eighteen.

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

Chapter V and Section 39 of Chapter VI of the PWDA deals with education of the disabled child in India. Section 26 makes it incumbent on the appropriate government to ensure that every disabled child is given free education till he attains the age of eighteen years. The section further mandates that the government shall promote the setting up of special schools for persons with disabilities. The recognition of trained manpower for teaching children with disabilities is there in Chapter. The Chapter also envisages arrangements for trained manpower and makes provisions for providing books, transport etc. for students with disabilities. Section 39, erroneously inserted in Chapter VI²³ of the PWDA applies to reservations in admissions in to educational institutions²⁴.

Education under the Right of Children to Free and Compulsory Education Act, 2009

Under Section 3 (2) of the Right to Children to Free and Compulsory Education Act, 2009, (RTE Act) children with disabilities have the right to free and compulsory education up to the age of eighteen years. Section 4 talks of special training for students with special needs. Section 6 (7) of the RTE Act makes arrangements for safe transportation of disabled children to school. It should be noted that till an amendment in 2012, the RTE Act applied to children who suffer from disabilities listed in the PWDA only. The exclusion of children having disabilities under the National Trust Act was considered a serious shortcoming. The amended Act now allows children with severe disabilities to receive home based education. The RTE Act extends Chapter V of the PWDA to children with disabilities for the purposes of free and compulsory education under the RTE.

Various Educational Policies and Schemes for the Disabled Child

The National Policy on Persons with Disabilities, 2006 has, as one of its salient features the education of the disabled through rehabilitation which included vocational training.²⁵The Integrated Education Scheme for Disabled Children, 1974 and revised in 1992 by the Central Government was one of the first schemes in this area. It aims to provide educational opportunities for the moderately disabled children

²²Jude Mac Arthur, Sarah Sharp, Berni Kelly and Michael Gaffney: *“Disabled Children Negotiating School Life: Agency, Difference and Teaching Practice”*, International Journal of Children’s Rights, Volume 15, Leiden: Koninklijke Brill NV, 99-100, 2007.

²³Chapter concerning employment of persons with disabilities.

²⁴*All Kerala Hearing Impaired Parents Association v, State of Kerala* (2002) 7 SCALE 198.

²⁵ http://mospi.nic.in/Mospi_New/upload/disability_india_statistical_data_11mar2011/Chapter%208%20-National%20redressal.pdf, accessed on August 19, 2016.

in the general school system. The scope of the Scheme includes pre-school training, counseling for parents and community involvement. Besides providing allowances for books and stationary, uniform, transportation, attendant, reader and escort, hostel facilities and assistive devices, IEDC provides for one special teacher for every eight disabled children and also resource room in every cluster of 8 to 10 schools²⁶. In 1987, the Ministry of Human Resource Development (MHRD), in association with UNICEF and the National Council of Educational Research and Training (NCERT) developed the Project for Integrated Education for the Disabled (PIED). The aim of the project was to strengthen the IEDC plan (NCERT, 1987). Instead of confining the program to a particular institution or school, PIED adopted a "Composite Area Approach" that converted all regular schools within a specified area, referred to as a block, into integrated schools. These schools had to share resources such as specialized equipment, instructional materials and special education teachers²⁷.

Sarva Shiksha Abhyan (SSA) has been operational since 2000-2001 to provide for a variety of interventions for universal access and retention, bridging of gender and social category gaps in elementary education and improving the quality of learning. With the passage of the RTE Act, changes have been incorporated into the SSA approach, strategies and norms. The SSA aims at creation of conditions in which the disadvantaged sections of the society including children with special needs. One of the thrust areas is access, which is not to be confined to ensuring that a school becomes accessible to all children within specified distance but implies an understanding of the educational needs and predicament of the traditionally excluded categories including children with special needs²⁸.

The Salamanca Statement and Framework for Action on Special Needs Education (1994) emerged as a result of deliberations held by more than 300 participants representing 92 governments 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 Statement affirms: "those with special educational needs must have access to regular schools which should accommodate them within child centered pedagogy capable of meeting these needs". India was a signatory to the Salamanca Statement. Pursuant to this, the Action Plan for Inclusive Education of Children and Youth with Disabilities was launched in 2005. The aims were to provide education through mainstream schools for children with disabilities in accordance with PWDA and all the schools in the country will be made disabled friendly by 2020. In 2005-06, the Project Approval Board has allocated an amount of Rs.187.79 crores under this component for a total 20.14 lakh disabled children²⁹.

²⁶<http://pib.nic.in/feature/feyr2000/fdec2000/f011220001.html>, accessed August 19, 2016.

²⁷Umesh Sharma and Joanne Deppeler: *"Integrated Education in India: Challenges and Prospects"*, Disability Studies Quarterly, Volume 25, No. 1, 2005.

²⁸<http://mhrd.gov.in/sarva-shiksha-abhiyan>, accessed on August 19, 2016.

²⁹Kumar Sanjeev and Kahendra Kumar: *"Inclusive Education in India"*, Electronic Journal of Inclusive Education, Volume 2, No. 2, 2007, <http://corescholar.libraries.wright.edu/cgi/viewcontent.cgi?article=1086&context=ejie>, accessed on August 19, 2016.

Inclusive Education for the Disabled at Secondary Stage, 2009 covers all children studying at the secondary stage in Government, local body and Government-aided schools, with one or more disabilities as defined under the Persons with Disabilities Act (1995) and the National Trust Act (1999) in the class IX to XII, namely blindness, low vision, leprosy cured, hearing impairment, locomotors disabilities, mental retardation, mental illness, autism, and cerebral palsy and may eventually cover speech impairment, learning disabilities, etc. Girls with the disabilities receive special focus to help them gain access to secondary schools, as also to information and guidance for developing their potential. Setting up of Model inclusive schools in every State is envisaged under the scheme.³⁰

Shortcomings

When one analyses the provisions for education for the disabled child in India contained in the PWDA and the RTE Act, the letter of the law seems to be adequate to protect some of the interests of the disabled child. However, one has to realize that disabilities cover a wide spectrum and the extension of the provisions of the PWDA to the RTE can be considered, at best, a “Something is better than nothing” scenario. Children with mental retardation, cerebral palsy and other multiple and severe disabilities were in fact left out till 2012 when the RTE Act was amended. Furthermore, the number of schemes and policies which outnumber the statutory provisions and aim to focus on inclusive education are appear to be impracticable simply because the PWDA is still rooted in the medical model. Barriers, attitudinal and structural, continue to follow the disabled child. While the thrust on trained manpower to educate the disabled child is a welcome move, there seems to be no attempt to remove these attitudinal barriers. Training and sensitization of all stake holders is the need of the hour and till such time that there is a revision in the laws and the action plans and policies, we will never be able to meet CRC or UNCRPD standards that we are bound by.³¹

Conclusion

Children are no longer objects of charity but subjects with rights with the adoption of the CRC. The adoption of the UNCRPD puts disabled on the same footing. The UNCRPD is a charter of rights and is based on the rights based model rather than the charity, medical or social models of disability³². In this context, children with disability have a right and not just a charitable endowment to be cared for by their families and to be educated. The two rights go hand in hand. The disabled form a vast pool of human resources and their being differently abled contributes immensely to our diversity and progress. One should not lose sight of this aspect when we consider the right of the disabled child to a family and education.

³⁰<http://mhrd.gov.in/iedss>, accessed on August 19, 2016.

³¹Vanessa Torres Hernandez: “*Making Good on the Promise of International Law: The Convention on the Rights of Persons with Disabilities and Inclusive Education in China and India*”, Pacific Rim Law and Policy Journal, Volume 17, 512-514, 2008.

³²Roopali Adlaka and Shovik Kumar Guha: “*Protecting the Disabled Persons Under the Human Rights Regime – The Shift from Welfare to Rights*”, Journal of Indian Law and Society, Volume 3, pp. 66-109, at p. 108, 2011-12.

This article has dealt with the right to family life and education of the disabled child. In the field of education of the disabled, one category of learner has always been left behind – the child with learning disability or the “slow” learner³³. Learning disabilities have not formed part of the mainstream disability discourse and this category of the disabled child is often left behind. Learning disabilities are disabilities that ought to form part of the main disability discourse.

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³³See generally: Rosalie Levindson:” *The Right to a Minimally Adequate Education for Learning Disabled Children*”, Valparaiso University Law Review, Volume 12, 1977-78, pp. 253-287 and Jayna Kothari: “*The Future of Disability Law in India*”, New Delhi: Oxford University Press, pp. 79-81, 2012.

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