



RIGHT TO EDUCATION OF PERSON WITH DISABILITY DURING PANDEMIC

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Abstract

This paper deals with right to education of children with disability specially during pandemic situation. Before going into discussion of education it is really want to understand the person with disability and their specific situation in relation to legal system. Therefore, right to education for person with disability is discussed after the legal recognition of disability in law can be identified in medical model and social model. The researcher has used the doctrinal method to analyse the right to education of person with disability and barriers coming in their path. The result of this research was in the nature of suggesting the measure for removal of barriers in the education of person with disability.

Introduction

Covid¹ pandemic have altered the way of life throughout the world in many aspects. This was the situation where no remedial medication was available and health system was under tremendous pressure. Precaution was only available remedy against this problem. In order to prevent the spread of Covid 19 lockdown was started throughout the world. Lockdown have changed the manner of teaching and learning processes drastically. The teaching system have suddenly changed from personal and interactive teaching to the teaching based on virtual mode. This transition from offline teaching to the online teaching have altered the scope of education of student with disability². It is necessary before considering rights of person with disability to identify what is disability itself.

Background

The identification of disability is significant because person with disability can be entitled to certain rights and there may be certain restriction due to disability whether the differential treatment for person with disability is valid or not is another question to be decided. It is more important how to identify disability and what should be the reason behind the disability. Primarily both these questions are answered with respect to medical model of disability³.

This model is the proponent of ablest paradigm⁴. The standards of bodily function of human being are defined with respect to an abled bodied person. It means the capacities and abilities of person with disability are the ideal standards of society. Any person who does not reaches to that level of ablest standards fall short of normal standards or abilities and hence he is disable. The medical or biological variations are treated as disease which needs to be cured in the medical model. Evaluation of disability is based on the quantifiable and non-quantifiable medical parameters. The medical intervention and treatment are the only remedy available to solve the problem. The fault and effect of disability lies in the

human body and surrounding is not necessary to be accommodative for such defect. Provisions for disability are treated as an exception and the ablest paradigm in medical model treats disability as a problem which needs to be solved but only medical remedies are sometimes not sufficient or ineffective. In this model of disability difference of person with disability from the ablest standard are recognised and this difference is addressed by providing the medical remedy. The positive dimension of this model is it tries to improve the abilities of person with disability through medical intervention. So, there is possibility of improvement in the life of disabled through medical assistance. With further legal development the medical model-based identity appears to be inadequate to solve the issues of disabled. The very literal meaning of disability is the product of medical model. Another method to understand disability is social model of disability⁵. Here are the reasons to experience disability is taken into consideration. Disability is not considered as bodily phenomenon but it is a result of interaction between the person and his non-assessable surroundings. Social model of disability held the surrounding social factors responsible for the experience of disability. The disability will not be experienced, if the building, study material, medium of communication and entertainment health facilities and transport are accessible for person with disability. Social model identifies barriers as cause of disability and therefore the focus upon removal of barrier. Social model differs from the medical model also on the count of dealing with the person with disability. For social model person with disability are recognised and promoted.

Right to education under UNCRPD⁶ and RPWD Act 2016⁷

The initial International documents on this ability which involves the International standard rules for accessibility or Asia-Pacific declaration on disability 1993 or person with disability prevention of discrimination Act 1995 are some of the legal instruments which can dominantly reflect the model of disability. United Nation Convention on Rights of Person with disability and Right of Person with Disability Act 2016 are some of the example which promote the social model of disability. United Nation convention on rights of person with disability was

came into existence for promoting, protecting and ensuring the full and equal enjoyment of human rights by person with disability. Person with disability are defined and identified as follows:

" person with disability includes all those who have long term physical mental intellectual or sensory impairments which in interaction with various barriers⁸ may hinder their full and effective participation in the society on an equal basis with others."⁹

This identification of disability under United Nation convention on rights of person with disability is based upon certain important terminology for example there is impairment refers to weakness or injury on certain physical condition which is less than a healthy capacity. But having physical mental, intellectual or sensory impairment does not qualify disability. Disability is a product of interaction of impairments with barriers in the society. When these barriers hinder, prevents the full and effective participation in the society then disability is the consequence. United Nation convention on rights of person with disability is determined to promote inherent dignity for person with disability. This objective of United Nation convention on rights of person with disability can be achieved by removing the stereotype against disabled. The prevention of discrimination against person with disability in the primary focus of the convention under article 5. This prevention of discrimination is the first condition to bring person with disability into the mainstream. Article 9 of United Nation convention on rights of person with disability ensures accessibility for person with disability in all fields of life. Therefore, full participation and independent life of person with disability is the primary objective behind the accessibility of rights of person with disability. Accessibility rights are universally applicable which makes the experience of disability negligible or irrelevant. The accessibility of surrounding, accessibility of infrastructure, accessibility study material, accessibility of learning medium, accessibility of working medium is essential for the inherent dignity and life of person with disability.

Article 24 of United Nations convention on the rights of person with disability protects right to education of person with disability. It is objective of this Article that person with disability shall be able to assess to education equally with others. For this purpose, the education system should be inclusive at all levels. Education of the children that is primary, secondary education should be available and accessible for person with disability. As far as possible the primary Education should be free and accessible for person with disability. The

means of learning like books Braille material, assessable devices should be made available for PWD at primary and secondary level. The educational right also includes that the education of person with disability should be inclusive medium. It means person with disability shall not be separated from the regular school and they should have an opportunity of equal education. Similarly, in the Rights of Person with Disability act 2016 under chapter 3 provides for right to education of person with disability. Section 16 provides the duty of educational institution for including person with disability into education. The educational institutions are under duty to make available assessable material of study. The means of learning and teaching should be inclusive one. The infrastructure of the institution needs to be accommodative and inclusive for person with disability.

Section 17 of this Act provide for the measures specially to promote and facilitated inclusive education. In this system student with disability have integrated with the regular School by meeting their special requirements and giving an opportunity of integrated learning with other. Example. The means of transport to the school should be accessible. Manner of teaching of the school should be accommodative, suitable for blind, deaf and other disabilities.

Methodology

The researcher has to adopt doctrinal method to establish the right to education for person with disability. Researcher have made to explore the right to education of person with disability in the international Human Rights instrument as well as under Right of Person with Disability Act 2016. Therefore, researcher have to rely on secondary available data and Human Rights convention and statutes. The researcher has tried to answer following question in this research-

1. What are the legal parameters for the identification of the disables?
2. How does the right to education of person with disability is protected under United Nation convention on the rights of person with disability and Rights of Person with Disability Act 2016?
3. What is the effect of covid-19 on right to education of person with disability?

Result-

In during the covid pandemic the social barriers¹⁰ or barriers of any other kind which prevent the full and equal participation of PWD in the society have been increased. Therefore, the barrier was more effective to prevent the students with disability for continuing their schooling. It is very likelihood that student with disability may not complete or continue their

education as compared to students without disabilities. In covid lockdown schooling in the physical mode was interrupted all over the country. Teaching and learning was hampered but the teaching of private educational institution was continued to some extent through online mode. The sudden change in the mode of education was demanding for a student as well as the teachers. Families and the schools, who was able to afford the virtual mode of teaching in the form of mobile data, mobile devices, only they continued education to some extent. With respect the disabled students this mode of teaching has some benefit and some disadvantage. Example- student are able to join the classes without having the trouble of transportation. But this also comes with a limitation that the interactivensess of the teaching have been compromised.

Conclusion

Therefore in order to really exercise right to education for person with disability the devices which will give to them access to all fields of education needs to be made available and they should be made accessible as well the state have tried to make the examination possible through online medium. But the system which was used for this purpose must be accessible. Article 24 of United Nations convention on rights of person with disability or it may be section 17 of Right of Person with Disability Act 2016 makes it very clear that education has a substantive right of an individual and to have necessary condition to realise this right to education becomes equally binding rights for person with disability.

Reference:

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2. Changing concept of accessibility for PWD by Dr. Girsh Kulkarni.
3. Cerommentary on UNCRPD by Prof. Anna Losson.
4. United Nation Convention on Rights Of Person With Disability.
5. Right of Person with Disability Act, 2016

