

## LEGISLATIVE AND CONSTITUTIONAL PERSPECTIVE OF RIGHTS OF DISABLED IN INDIA - AN ANALYSIS

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### INTRODUCTION

The study of the Constitutional framework is necessary as it is the root from which all the statutes draw their existence. The disability jurisprudence in the form of statutory law came into India only after 1995. Until then the persons with disability were protected under the umbrella of the Constitution of India. The framers of the Constitution were more inclined to lay down the general principles on which the State must progress and they provided the general goals which every Government must strive to achieve. Therefore, the research aims to study the document by keeping in mind, the intention of the framers. Therefore the researcher will not search for any specific provision for the disabled persons as a community, but will try to bring out better protection within these general principles. Special mention needs to be made here about the Preamble. Though it does not make any specific reference to any community or persons, its objective is to ensure social, political and economic justice. The Preamble thus addresses the needs of the persons with disability to larger extent in general terms.

#### **Disabled persons and Fundamental Rights**

##### i) Right to Equality<sup>1</sup>

The fundamental right to equality is provided under Article 14 of the Constitution of India. The study of various decisions of Supreme Court of India and different High Courts reveals that Art 14 does not only speak of formal equality where the State is under the duty to treat all persons in the same manner, but it also requires the State to provide 'substantive equality'. This implies that only equals must be treated as equals, and unequal may not be treated so. This interpretation imposes a responsibility on the State to consider the historical and systemic disadvantaged groups while providing equal status and opportunity.<sup>2</sup>

This new found approach of equality has two important implications. One, it makes it mandatory on the part of the State not to discriminate against any individual or class on arbitrary or unreasonable basis. Second, it permits the State to take up affirmative action by way of special laws creating special rights and allowing 'positive discrimination'.<sup>3</sup>

Articles 15 and 16 are the continuation of the mandate provided by Art 14. Here the State is permitted positive discrimination, for the upliftment of the socially and economically backward classes. This indirectly includes the persons with disability.

It is pertinent to note that the State cannot discriminate on grounds of age, sex, caste, race religion and place of birth. However, the recognition to persons with disability as a class is missing from the list. As a result, discrimination of persons with disability by the State would not guarantee automatic constitutional protection. In *K. C. Vasant Kumar v. State of Karnataka*<sup>4</sup>, the Court tried to read into Articles 15 and 16 and tried to bring in reservation for classes other than those mentioned in the article. The Court held that physical disability, poverty and habitation, can each be the

<sup>1</sup> Article 14, Constitution of India, Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

<sup>2</sup> Shruti Pandey, Priyanka Chirimar, Deepika D'souza, "Disability and the Law", (Human Rights Law Network, New Delhi, June 2005) pg 3

<sup>3</sup> Id, pg 4

<sup>4</sup> 1985 Supp SCC 714

sole factor for providing reservation. Such an attempt can succeed only if rational principle of classification is adopted under Art 15(1) and Art 16(1), Art 15(4) and 16(4), as they are incapable of providing such kind of reservations.

The Supreme Court of India considered the reservation issue again in a case popularly known as the 'Mandal Case'<sup>5</sup>. Petition was filed to consider the larger issue of providing reservation for Socially and Educationally Backward Classes (27% quota) and 'Other Economically Backward Sections (10% quota). The cause of the persons with disability was impleaded by Adv, Rungta.<sup>6</sup> The Court upheld the reservation for socially (disability included) and educationally backward classes but rejected the reservation for economically backward classes.

**ii) Right to Life**

Article 21 of the Constitution of India has laid down certain principles regarding right to life and liberty. However, the judiciary has breathed life into the provisions through a phenomenon called judicial activism. Therefore, right to life has been expanded to several other rights and they all are held to be necessary components of life. In *Francis Coralie v. Union Territory of Delhi*<sup>7</sup>, the Court held that the right to life includes right to live with human dignity. Therefore, all the necessary rights go along with it, like bare necessities of life such as adequate nutrition, clothing and shelter, facilities for reading, writing and expressing oneself in diverse forms, free movement and being part of the society without being discriminated.

On the similar line, in *Chameli Singh v. State of U.P.*<sup>8</sup>, the Court held that the right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter all civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights or under the Constitution of India cannot be exercised without these basic human rights. The attempt of the judiciary has lead to unprecedented expansion of the provision of Art. 21. As a result of such an expansion, a plethora of rights have been brought under the ambit of the provision. Most important rights recognized under Art. 21 are the right to housing<sup>9</sup>, right to health<sup>10</sup>, right to food<sup>11</sup>, right to clean water<sup>12</sup> and right to education<sup>13</sup>. At the later stage, right to education has been specifically added into part III Fundamental Rights Chapter by inserting Art. 21A. This expansion of rights under Art 21 has indirectly secured the rights of the persons with disability.

**iii) Directive Principles of State Policy & the Rights of Disabled**

Part IV of Constitution of India provides for Directive Principles of State Policy. These rights are on a different footing as they cannot be invoked to demand anything as a matter of entitlement. They cannot be enforced by the Court. They are mere guidelines given to the State in carrying out its functions. These are the lofty goals set by the Constitution for the successive governments and they are expected to fulfill it based on the availability of resources. Even though, they are not justiciable, they cannot be termed as less important than Fundamental Rights. They have been used by the Court, to adjust and expand the ambit of fundamental rights from time to time. Increasingly, the Court is issuing instructions and directions to the Government and other administrative authorities to remove grievances caused by the non implementation of the Directive Principles.

<sup>5</sup> *Indra Sawhney and Others v. Union of India and Others* 1992 Supp (3) SCC 217

<sup>6</sup> Advocate Rungta is blind by birth. He practices at Supreme Court and he is one of the pioneers in protection of rights of persons with disability.

<sup>7</sup> AIR 1981 SC 746

<sup>8</sup> (1996) 2 SCO 549

<sup>9</sup> *Shatistar Builders v. Narayan Rhimal Tortame* (1990) 1 SCC 520, *P.G.Gupta v. State of Gujarat* (1995) Supp 2 SCC 182, *Chameli Singh v. State of UP* (1996) 2 SCC 549, *Ahmadabad Municipal corporation v. Nawab Khan Gulab Khan and others* (1997) 11 SCC 121

<sup>10</sup> *CBSE, Ltd. v. Subhas Chandra Bose* (1992) 1 SCC 441, *Consumer Education and Research Centre and others v. Union of India and others* (1995) 2 SCC 42.

<sup>11</sup> *People's Union for Civil Liberties v. Union of India and Others* (Civil Writ Petition No, 196 of 2001)

<sup>12</sup> *Attakoya Thangal v Union of India* 1990 (1) KLT 580

<sup>13</sup> *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161, *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666, *Unnikrishnan J.P. v. Union of India* (1993) 1 SCC 645

The Directive Principles also lend support to the rights of persons with disabilities. Article 4114 specifically provides that the State should make effective provision to secure right to Work, to education and to public assistance in cases of disablement. Article 39 A15, envisages that equal justice and free Legal Aid should be provided to all citizens and justice should not be

A denied by reason of economic or 'other disabilities'. Article 4516 has created a duty towards providing early childhood care and providing education for all until age of six<sup>17</sup>. Articles 4618 and 4719 also have the potential for raising the standards of living, education and development of persons with disabilities. The Directive Principles of State Policy thus attempt to cater to the rights of disabled to a certain extent.

iv) Schedule VII of Indian Constitution & Rights of Disabled Persons

The State is under an obligation to discharge the duties imposed by the Constitution. In federal setup like India, there is a need to demarcate the role of the Centre and the State. In this regard, the Constitution provides for three lists; the Union list, State list and the Concurrent.

There are certain entries under these three lists, which relate to the rights of disabled, directly or indirectly. The Union List requires the State to conduct census periodically. The census is very helpful to the Authorities to understand the position of the persons with disability<sup>20</sup>. Another entry no. 55 of the Union List requires the State to prevent disability by bringing in safety measures at dangerous workplace<sup>21</sup>. The State is also required to include labour welfare practices at workplace including provident funds, employer's liability, and workmen's compensation<sup>22</sup> in order to bring certain level of economic stability in case of accidents, and to protect the rights of the person and their family by attempting to provide relief to the persons with disability<sup>23</sup>. This attempt is expected to be done at different levels; from establishing institutions, to providing professional and vocational program<sup>24</sup> and promoting special studies or research of different areas<sup>25</sup>.

The concurrent list prescribes the entries, where both State as well as Union has the obligation to perform. Under this list, the treatment of lunatics and persons with mental deficiency has been mentioned.<sup>26</sup> In addition to the treatment,

<sup>14</sup> Art 41; Right to work, to education and to public assistance in certain cases. - 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.

<sup>15</sup> Art 39A; Equal Justice and Free Legal Aid. - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Art 45; Provision for Free and Compulsory Education for Children. - The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

<sup>17</sup> The original Art 45 was substituted by The Constitution (Eighty-Sixth Amendment) Act, 2002 on 12th December, 2002. The substituted Article is as follows; Art 45; - The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

<sup>18</sup> Art 46; Promotion of Educational and Economic interests of Scheduled Castes, Scheduled Tribes and other weaker Sections: The State shall promote with social care the educational and economic interests of the weaker Sections of the people, and, in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

<sup>19</sup> Art 47; Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

<sup>20</sup> Entry 69 Union List, Census

<sup>21</sup> Entry 55 Union List, 'Regulation of labour and safety in mines and oil - fields'

<sup>22</sup> Entry 24 Concurrent List; Welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

<sup>23</sup> Entry 9 State list, 'Relief of the disabled and unemployable'

<sup>24</sup> Entry 65 (a), Union list, 'union agencies and institutions for professional, vocational or technical training...

<sup>25</sup> Entry 65 (b), Union list, 'union agencies and institutions for the promotion of special studies or research.'

<sup>26</sup> Entry 16 Concurrent List, 'Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient'

on a broader canvas, both State and Centre are under the duty to provide social security<sup>27</sup>. This provision is broadly applicable to all the persons living in India. However, same can be extended to address the needs of the persons with disabilities. Another broad provision that can address the needs of the persons with disability specifically is regarding the provision of education, and vocational and professional training<sup>28</sup>. These entries sufficiently, if not fully, cover a number of aspects regarding disability prevention as well as relief.

### **Legislative Framework on Rights to - Education & Education of Disabled Persons**

The Constitution of India as well as the judiciary has been making constant efforts to protect the rights of the persons with disability. However, such attempts achieved limited success, as the Constitution contains broad guidelines, and the judiciary was struggling to recognize the rights in absence of legislations. The latter part of the eighties till the last decade of 20th century saw spurge in enactments recognizing and elevating the position of rights of the persons with disability.

The Persons with Disabilities (Equal Opportunities, Protection Of Rights and Full Participation) Act, 1995<sup>29</sup>

Among all other legislations, the PWD Act of 1995 stands out as the major and comprehensive legislation to protect the rights of the persons with disability. The Act was in response to the international pressure, as well as the promise made to the international community. This Act was part of efforts of Government of India to discharge the international obligation created by the 'Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region'<sup>30 38</sup>. The Act is comprehensive in nature and mainly deals with persons with physical disability. But also includes provisions in relation to mental retardation and other forms of disability.

#### **Right to Education under the Act**

The PWD Act has given due importance to the education of the child with disability. The approach is consistent with the other Chapters where in the attempt has been made to include different departments in providing holistic support to the right to education of the child with disability.

Chapter V of the Act deals with the right to education.<sup>31</sup> Initial thrust is given in explaining the role of the appropriate Government and Local Authorities in fulfilling the basic right to education. The importance of the Chapter lies in making education. The importance of the Chapter lies in making education, the basic right to every child with disability till he attains the ages of eighteen years.<sup>32</sup> The major shift in the approach to right to education has been to promote the integration of students with disabilities in the normal schools.<sup>33</sup> This provision makes study of the child with disability in the normal school a rule, and creating a special school an exception.

#### **v) Right to Employment under the Act**

Right to employment of persons with disability is dealt under Chapter VI of the Act. The provisions pertain to various aspects of right to employment. The Chapter provides for reservation in governmental sector. In addition, S. 47 under the Chapter of 'non-discrimination' provides for right against discrimination. Right to employment is also provided under private sector through sec. 41. State has been asked to take affirmative action to provide opportunities for self employment<sup>34</sup>. In addition to facilities mentioned above, the law works out 'unemployment allowance' for persons with disability.<sup>35</sup>

<sup>27</sup> Entry 23, Concurrent List, 'Social security and social insurance; employment and unemployment.

<sup>28</sup> Entry 25. Concurrent List: Education including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65, and 66 of the list I; Vocational and technical training of labour.

<sup>29</sup> The Act of Parliament received the assent of the President on the 1st January, 1996 and was published as Act No. 1 of 1996.

This Proclamation was adopted in the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December 1992.

<sup>31</sup> Chapter V is divided into 6 Sections, providing different approach in realizing the right to education of children with disabilities.

<sup>32</sup> See S. 26(a).

<sup>33</sup> See S. 26(b).

<sup>34</sup> S. 43.

<sup>35</sup> S. 32.

### **The Mental Health Act, 1987<sup>36</sup>**

The history of mental health legislations in India clearly demonstrates that though this need has long been recognized, legislative attempts to address it have not been satisfactory. The Lunatic Asylums Act, 1858 was the first enactment solely governing persons with mental disabilities. It was replaced by the Indian Lunacy Act, 1912. This stayed in force for three decades after independence. Then the present Act dealing with mental health came into force.

This Act has been passed with a definite intent to consolidate the existing provisions relating to treatment and care for mentally ill persons and has been amended in accordance with the international obligations. The major step taken under the Act is to make better provisions with respect to property of the mentally ill persons and matters connected.<sup>37</sup> The scope and the objective of the Act is all together different from the other legislations. Even though the Act deals with the persons with disability, it is restricted only to the persons suffering from mental illness. Along with this restriction, the major restriction comes in the form of objectives of the Act. The major objective of the Act is to construct, maintain and regulate the psychiatric hospitals and nursing homes.<sup>38</sup>

The other incidental objective is to provide protection to the properties belonging to the mentally ill persons. It becomes a very important requirement on two fronts. One task is to provide financial stability to the mentally ill persons. This becomes necessary as the property of a disabled is prone to be under threat of misappropriation, putting such mentally ill person under economic distress. Second task is to provide medical care. Even existence of property may not ensure proper treatment to the curable mental illness. This Act ensures prevention of such misappropriation and proper usage of the profits from the property towards treatment of the mentally ill person.

### **The Rehabilitation Council of India Act 1992<sup>39</sup>**

This Act was enacted for the constitution of the Rehabilitation Council of India. It is solely created to regulate the training of rehabilitation professionals.<sup>40</sup> The Act addresses the other part of the rehabilitation task, i.e. the training of the trainers. As a part of the applicability, the Act also deals with the definition of the persons with disability.<sup>41</sup> This Act is made to streamline the training of trainers by creating the national authority.<sup>42</sup>

The Council is made to represent the cross section of the Government of India, to ensure that the members are chosen from different department who play an important role in training of rehabilitation experts. The Chairman shall be the person with social work background, for which proper representation is ensured from Social Welfare, Health and Finance Department. As the role of the Council is to train the professionals, the membership is ensured from University Grants Commission and the Directorate General of Indian Council of Medical Research. To bring in representation from States, two members from Ministry or Department of the States or the Union Territories are appointed by rotation in alphabetical order. Medical practitioners and rehabilitation professionals working as volunteers are also appointed as a part of the Council. Finally, four members of Parliament are appointed to have parliamentary representation and social workers to have a representation of people working on field.<sup>43</sup>

This Council functions by creating Executive Committees.<sup>44</sup> They are required to execute any special or general work allotted to them. The main function of the Council is to recognize the Universities and other institutions to grant

<sup>36</sup> The Act bearing No. 14 of 1987, passed on 22<sup>nd</sup> May, 1987

<sup>37</sup> See the Preamble of the Act

<sup>38</sup> See Chapter m of the Act, which deals with Psychiatric Hospitals and Psychiatric Nursing Homes. The Chapter provides for establishment or maintenance of psychiatric hospitals and psychiatric nursing homes, licensing, procedure for obtaining and renewal of license, prescribing conditions for hospitals and nursing homes, revocation of license for not fulfilling conditions, inspection etc.

<sup>39</sup> No. 34 of 1992 (1st September, 1992)

<sup>40</sup> The Preamble of the Act is read as, 'An Act to provide for the Constitution of Rehabilitation Council of India for regulating the training of rehabilitation professionals and the maintenance of a Central Rehabilitation Register and for matters connected therewith or incidental thereto'.

<sup>41</sup> The word used to describe the persons with disability is 'handicapped' 'Person with disability' and 'Handicapped' has been frequently used interchangeably.

<sup>42</sup> S. 3(1), provides for Constitution of an Authority. This Authority is created in the line of other authorities like, Bar Council of India under Advocates Act, Medical Council of India under Medical Council Act, etc.

<sup>43</sup> See S. 3(3) clauses (a) to (h).

<sup>44</sup> See S. 7.

qualifications for rehabilitation professionals. If any qualification is not recognized, then the Council shall be the sole authority to recognize and recommend the amendment of the schedule to add this new qualification.<sup>45</sup> The Council enjoys monopoly over granting practicing certificate to the rehabilitation professionals, In addition to this work, the Council may also enter into negotiation with any foreign country to recognize their qualification in reciprocity, and issue notice to that effect.<sup>46</sup>

### **The Income Tax Act, 1961**

To provide further incentive to the working class of persons with disability, the Income Tax Act, 1961 has been suitably amended to provide some important exemptions. The special provision is created under the Act in favour of persons with disability and for their parents / legal guardians. Under the Income Tax Act, the exemption of forty thousand rupees is allowed from the income of the person with disability.<sup>47</sup> In addition, parent or relative upon whom the person with disability is dependent is allowed similar exemption, which includes the expenses for medical treatment of person with disability.<sup>48</sup> Along with these direct provisions, the Income Tax Act also creates some indirect provision which benefits the community of persons with disability, in which deductions are allowed to persons making donations to registered trusts and societies doing work for the handicapped.<sup>49</sup>

### **The All India Service (Special Disability Leave) Regulations, 1957**

These rules regulate the leave entitlement for the persons with disability working under All India Services. These rules have been enacted in pursuance of the obligation imposed on the Central Government.<sup>50</sup> The rules have been framed with an entirely different objective. It does not include a person with disability who joins All India Service, but it covers only those persons who suffer from disability during their service.<sup>51</sup> The provisions are drafted in such a way that a leave is available only to the person who suffer from disability which has direct relation with the office that he holds.<sup>52</sup> This narrow applicability of the provision makes it unusable. This limited approach needs to be amended, and a broad rule should be laid down looking at the special needs of the disabled. There is a need to change the outlook of the society. This is not the undue advantage given to this particular community, but these are the basic needs. If fulfilled, the community also can contribute to the growth of the nation.

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999<sup>53</sup>

This Act came into force with entirely different objective. Its aim is to provide for the constitution of a body at the national level for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities.<sup>54</sup> Along with the Trust, the Act also provides for procedure for appointment of the guardian for the disabled person. The Act is specially passed to cover severe disabilities,<sup>55</sup> and it addresses the needs of the severely disabled persons. Here the object is to provide empowerment through the Trust established under the Act to lead life independently and more importantly within the community. This could be achieved if support to the person with disability is extended. To have a deeper reach in the country the Trust can associate with other registered organization and strengthen those organizations. The role of the Trust gets a serious turn in two cases, where the person with disability does not have family support, or has lost his/her parents. Here the Trust extends all types of help to such person with

<sup>45</sup> See S. 11.

<sup>46</sup> See S. 12

<sup>47</sup> See S. 80 U, Income Tax Act 1961.

<sup>48</sup> See S. 80 DD.

<sup>49</sup> See S.S. 80 G and 80GGA, Income Tax Act, 1961

<sup>50</sup> Rule 16 (1) of the All India Services (Leave) Rules, 1955 had made it mandatory to frame Special Disability Leave Rules.

<sup>51</sup> Read Rule 3 of the All India Service (Special Disability Leave) Regulations, 1957

<sup>52</sup> This provision says that special disability leave may be granted to a member of the service who suffers a disability as a result of risk of office or special risk of office'.

<sup>53</sup> Act No. 44 of 1999 [30th December, 1999.]

<sup>54</sup> See Preamble, The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

<sup>55</sup> The Act only addresses the needs of person suffering from autism, cerebral palsy, mental retardation and multiple disabilities.

disability. In accordance with the object of the PWD Act, this Trust tries to facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability.<sup>56</sup>

#### **Employee's State Insurance Act, 1948**

The Employee State Insurance Act, [ESIC] 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity, employment injury and disablement. The Act in fact tries to attain the goal of socio-economic justice where the State tries to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. But the benefits of this Act extend to employees, whether working inside the factory or establishment or elsewhere, or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment. The Act contains schemes for social security of the employee, the discussion where of becomes necessary to understand the level of protection granted under the Act.

#### **The Right of Children to Free and Compulsory Education Act, 2009<sup>57</sup>**

This is an ambitious Act passed by the Parliament, where the State is under the duty to provide free and compulsory education to children. The Act successfully addresses the different needs of certain groups, which have been identified. However, it is sad to note, that a child with disability has been completely ignored by the Act. The Act classifies children into three categories. First are the children belonging to general category. As usual this category is not defined. If a child does not belong to any of the other two categories then he will be considered to belong to general category.

Secondly, the child belonging to disadvantaged group, which means a child belonging to SC, ST, socially and educationally backward section; child belonging to the group having a disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factors, as may be specified by the appropriate Government.<sup>58</sup> Thirdly, a child belonging to the weaker section, means a child belonging to such parents whose annual income is lower than minimum limit specified by the appropriate Government.<sup>59</sup>

The term disabled does not find a mention in the Act, this insensitive approach is unpardonable as the Parliament is committed to international obligation, and more than that, its commitment to people of India is unabridged. The definition of disadvantaged group is not exhaustive. It is left open for appropriate Government to add different groups. However, this may protect the rights of children with disability, but it will not absolve the Parliament from the accusation of insensitivity. The right provided under this Act is in conflict with the right provided under PWD Act. Free and compulsory education is to be provided from six years up to age of fourteen years,<sup>60</sup> However the age for free education prescribed under PWD Act is up to eighteen years.<sup>61</sup> To overcome this disparity a proviso has been added to section 2 limiting the applicability of this general legislation.

Central Government has been given the task of preparing the national curriculum. This task does not specify any additional duty of considering the needs of the child with disability.<sup>62</sup> The appropriate Government is under the duty to ensure free and compulsory education for every child. To ensure the same, the appropriate Government has to undertake different steps like, providing infrastructure, avoiding discrimination on any grounds against child belonging to disadvantaged group or weaker section, providing training facility to teachers, etc.,<sup>63</sup> However, this

<sup>56</sup> See S. 10

<sup>57</sup> Act No 35 of 2009, 26<sup>th</sup> August 2009.

<sup>58</sup> See S. 2 (d)

<sup>59</sup> See S. 2 (d)

<sup>60</sup> See S. 3 (1)

<sup>61</sup> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, S. 2 (i).

<sup>62</sup> See S. 7 (6) The Right of Children to Free and Compulsory Education Act, 2009.

<sup>63</sup> See S. 8

duty which has been imposed on the appropriate Government, does not make any specific mention about addressing the needs of child with disability. The Act imposes duty on all the schools to make a provision for admission to the extent twenty-five percent of the strength of the class, children belonging to weaker section and disadvantaged groups.<sup>64</sup>

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<sup>64</sup> See S. 12 (c)