

A CONJOINT STUDY OF THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 AND STUDENTS WITH DISABILITY

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Abstract

The disabled population of the land are on equal footing with their so-called 'able' counterparts, both in the statutory and constitutional plateau, so far as the Indian legal system is concerned. But in reality, the disabled population is one of the marginalized communities of the land, in terms of inter alia education, job opportunity etc. which is in sharp contradiction with the constitutional mandate along with the statutory one. The concept of inclusive education somewhere goes in vain because the issue of participation restriction is mostly in oblivion. The issues concerning disabled persons of the land revolve mostly around the conferring of rights by constitutional or statutory means, but these rights, which are so conferred cannot be materialized without proper education and the biggest impediment in the way towards education is participation restriction of the disabled students. Concepts like 'Learning Poverty', 'Human Capital Index (HCI)' etc. evolved to assess the proficiency of learners and can be used as indicators of the participation of disabled students in the education system. Hence, closer scrutiny of the RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 is required.

Keywords: *Disability, Human Capital Index (HCI), Human Capital Country Brief, Impediment to Education, Right to education*

The term education as it is understood now, was probably used for the first time in the early 1500's.¹ As per the Cambridge Dictionary the term 'Education' means the process of teaching or learning in a school or college or the knowledge that one gets from this.² As per Collins Dictionary, the term 'Education' is an uncountable noun, which means 'Education of a particular kind involves teaching the public about a particular issue'.³ On the other hand, the Encyclopedia Britannica gives a more rigid and orthodox definition of the term 'Education' as it denotes education as a discipline which is 'concerned with methods of teaching and learning in schools or school-like environments as opposed to various non-formal and informal means of socialization'.⁴ This particular definition is both

¹ OXFORD ENGLISH DICTIONARY,

<https://www.oed.com/dictionary/education_n?tl=true> (accessed on October 18, 2024).

² CAMBRIDGE DICTIONARY,

<<https://dictionary.cambridge.org/dictionary/english/education>> (accessed on October 18, 2024).

³ COLLINS DICTIONARY,

<<https://www.collinsdictionary.com/dictionary/english/education>> (accessed on October 18, 2024).

⁴ ENCYCLOPEDIA BRITANNICA,

<<https://www.britannica.com/topic/education>> (accessed on October 18, 2024)

orthodox and vague as this definition loosely attends to the question and issue of the non-institutionalized education aspect of both children's education and higher education and it is more prominent so far as the education of disabled students is concerned and this is true for all levels of education. Though, on the other hand, this particular definition highlights another aspect that, education in the modern world must be imparted in an institutionalized manner (though without prejudice to the requirement of adult education, night school etc.; though these aspects of education have little connection with the education of children in general and also with that of higher education) to extract maximum benefit from imparting education, from the perspective of knowledge enhancement, overall development of children, socialization etc. But the most important aspect may be the employment opportunity which is created and enhanced by getting institutionalized education, which is vehemently clear as, according to the World Bank, for every extra hour of schooling, there will be a 9% increase in hourly earnings.⁵ Thus, institutionalized education can play a pivotal role in creating and enhancing employment opportunities, which is a highly crucial aspect in a developing country like India. The World Bank also recognized this aspect and as per the World Development Report (WDR) 2018,⁶ the developing countries achieved remarkable success in getting children to schools, so that the benefit of institutionalized education can be provided even to the most marginalized section of the society. Thus, this highlights the requirement for the development of human resources by making significant investments in education without any discrimination whatsoever.⁷

Learning Poverty

The World Bank and the United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics jointly created and evolved the concept of Learning Poverty, which means the inability of children by the age of 10 to read and understand a simple text.⁸

This concept on the other hand also helped to create the Human Capital Index (HCI) of the world at large⁹ and also country-specific HCI.¹⁰ Moreover, the

⁵ THE WORLD BANK, *Education Overview*, <<https://www.worldbank.org/en/topic/education/overview#1>> (accessed on October 18, 2024).

⁶ THE WORLD BANK, *World Development Report 2018*, <<https://www.worldbank.org/en/publication/wdr2018>> (accessed on October 18, 2024).

⁷ THE WORLD BANK, *Education Overview*, <<https://www.worldbank.org/en/topic/education/overview#2>> (accessed on October 18, 2024).

⁸ THE WORLD BANK, *Ending Learning Poverty*, <<https://www.worldbank.org/en/topic/education/brief/ending-learning-poverty>> (accessed on October 18, 2024).

⁹ THE WORLD BANK, *Human Capital*, <<https://www.worldbank.org/en/publication/human-capital#About>> (accessed on October 18, 2024).

¹⁰ THE WORLD BANK, *Insights from Disaggregating the Human Capital Index*, <<https://www.worldbank.org/en/publication/human-capital/brief/insights-from-disaggregating-the-human-capital-index>> (accessed on October 18, 2024).

concept of Learning Poverty as a part of HCI also helped in the creation of 'Socioeconomically-disaggregated Human Capital Index (SES-HCI).¹¹

As both the concept of HCI¹² and SES-HCI¹³ include in its fold, inter alia the capacity of learning and acquisition of skill as prime factors, the World Bank and UNESCO developed a few paradigms to minimize and in the long run to eradicate learning poverty across the globe,¹⁴ which can be summarized into three broad heads, viz. - i) Literacy Policy Package- Focused on reading proficiency at primary school level.¹⁵; ii) Renewed Education Approach- Focused on rejuvenating the entire education system, which also includes the domain of higher education.¹⁶; iii) Learning assessment Platform- This is to eliminate the assessment measuring gap.¹⁷

Human Capital Country Brief of 2023- India

As per the HCI-Country Brief and Data¹⁸ of the World Bank, the HCI in India is slightly better than the average of the South Asia Region and Lower Middle-Income Countries,¹⁹ as if one child in India able to enjoy complete education and full health will be 49% more productive in comparison to those who did not get these benefits, which is in the former two cases 48% respectively.²⁰

¹¹ THE WORLD BANK, *Insights from Disaggregating the Human Capital Index*, <<https://www.worldbank.org/en/publication/human-capital/brief/insights-from-disaggregating-the-human-capital-index>> (accessed on October 18, 2024).

¹² THE WORLD BANK, *Human Capital*, <<https://www.worldbank.org/en/publication/human-capital#About>> (accessed on October 18, 2024).

¹³ THE WORLD BANK, *Insights from Disaggregating the Human Capital Index*, <<https://www.worldbank.org/en/publication/human-capital/brief/insights-from-disaggregating-the-human-capital-index>> (accessed on October 18, 2024).

¹⁴ THE WORLD BANK, *Learning Assessment Platform (LEAP)*, <<https://www.worldbank.org/en/topic/education/brief/learning-assessment-platformleap#:~:targetText=To%20move%20forward%20the%20learning,learning%20more%20efficiently%20and%20effectively>> (accessed on October 18, 2024).

¹⁵ THE WORLD BANK, *Literacy Makes Sense*, <<https://www.worldbank.org/en/who-we-are/news/campaigns/2019/literacy-makes-sense>> (accessed on October 18, 2024).

¹⁶ THE WORLD BANK, *Learning Assessment Platform (LEAP)*, <<https://www.worldbank.org/en/topic/education/brief/learning-assessment-platformleap#:~:targetText=To%20move%20forward%20the%20learning,learning%20more%20efficiently%20and%20effectively>> (accessed on October 18, 2024).

¹⁷ THE WORLD BANK, *Learning Assessment Platform (LEAP)*, <<https://www.worldbank.org/en/topic/education/brief/learning-assessment-platformleap#:~:targetText=To%20move%20forward%20the%20learning,learning%20more%20efficiently%20and%20effectively>> (accessed on October 18, 2024).

¹⁸ THE WORLD BANK, *Human Capital*, <<https://www.worldbank.org/en/publication/human-capital#Briefs>> (accessed on October 18, 2024).

¹⁹ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafa8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on October 15, 2024).

²⁰ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafa8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on October 15, 2024).

Apart from these basic statistics, this report²¹ also highlight a few components and elements of HCI which can be summarized as follows: i) Expected years of school- If started at the age of 4, up to 11.1 years of school by the age of 18.²²; ii) Primary school completion rate- 97%.²³; iii) Net school enrollment in lower secondary level- 87%.²⁴; iv) Youth literacy rate- Between the age of 15-24, it is 95%.²⁵

On the other hand, this particular report²⁶ also indicate that, the unemployment rate among the adults of the age of 25 years and above is 5%,²⁷ which is similar to the average regional level.²⁸ This indicates both the success of the institutionalized education system of India on one hand and on the other depicts the possibility of improvement.

Right To Education Under the Auspice of Indian Constitution

Art.21 of the Indian Constitution²⁹ paved the way for Art.21A,³⁰ which is subsequently added to the Indian Constitution via the 86th Amendment in 2002,³¹ which provides for the right to education as Fundamental Right³² for the children between the age group of 6 to 14 years.³³

Though, in the original constitution, the right to education of children was not expressly provided and mentioned in the Fundamental Right³⁴ segment, the apex court of the land in the case of *Unni Krishnan, J.P. and others. v. State of A.P. and*

²¹ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on 15 October 2024).

²² THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on 15 October 2024).

²³ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on 15 October 2024).

²⁴ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on 15 October 2024).

²⁵ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on 15 October 2024).

²⁶ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on October 15, 2024).

²⁷ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on October 15, 2024).

²⁸ THE WORLD BANK, *HUMAN CAPITAL COUNTRY BRIEF-INDIA*, <<https://thedocs.worldbank.org/en/doc/64e578cbeaa522631f08f0cafb8960e-0140062023/related/HCI-AM23-IND.pdf>> (accessed on October 15, 2024).

²⁹ *Art. 21, The Constitution of India, 1950.*

³⁰ *Art. 21A, The Constitution of India, 1950.*

³¹ *Art. 21A, The Constitution of India, 1950.*

³² *Part- III, The Constitution of India, 1950.*

³³ *Art. 21A, The Constitution of India, 1950.*

³⁴ *Part- III, The Constitution of India, 1950.*

*others*³⁵ observed that, the concept of 'Implied Fundamental Right' is true in the case of the Indian Constitution also and every Fundamental Right need not be expressly provided in the bare provision but notwithstanding that, the judiciary can expand the scope of an existing provision of the Indian Constitution (Fundamental Right part is not an exception³⁶) to safeguard a right and this is what happened with Art.21 as the judiciary expanded and extended the scope of Art.21 in several cases.³⁷

The basic concept of the right to education though now enshrined in the Constitution of India,³⁸ the elements of this particular right can be traced in the Directive Principles of State Policy chapter of the Constitution of India,³⁹ specifically inter alia in Art.39, 41, 46, 47⁴⁰ and most specifically in Art.45.⁴¹ Art.45 was amended in the same 86th Amendment, 2002,⁴² which incorporates Art.21A⁴³ and after this amendment, Art.45⁴⁴ now cast a directive principle to provide early childhood care and education for the children below the age of 6⁴⁵ as the age group of 6 to 14, which was erstwhile mentioned in Art.45 now transformed into a Fundamental Right, thanks to Art.21A.⁴⁶

Right of Children to Free and Compulsory Education Act, 2009⁴⁷

The preamble of this enactment clearly states that, this Act⁴⁸ is there to provide free and compulsory education to children between 6 to 14 years, which is clearly in consonance with the scheme as laid down in *Unni Krishnan, J.P. and others. v. State of A.P. and others*⁴⁹ verdict vis-à-vis Art.21A of the Constitution of India.⁵⁰ In order to grasp the scheme of this enactment, a few definitions must be taken into cognizance- i) Child- Sec. 2(c)⁵¹- Here, child means and include both male and female children between the age of 6 to 14 years; ii) Child belonging to disadvantaged group- Sec. 2(d)⁵²- This provision singles out the children of disadvantaged groups, which shall be again categorized into 3 broad heads viz. -

³⁵ *Unni Krishnan, J.P. and others. v. State of A.P. and others*, AIR 1993 SC 2178.

³⁶ *Part- III, The Constitution of India, 1950.*

³⁷ M P JAIN, *INDIAN CONSTITUTIONAL LAW*, (first published 1962, 8th edn, Justice Jasti Chelameswar & Justice Dama Seshadri Naidu 2019) 1284.

³⁸ *Art. 21A, The Constitution of India, 1950.*

³⁹ *Part-IV, The Constitution of India, 1950.*

⁴⁰ *Part-IV, The Constitution of India, 1950.*

⁴¹ *Part-IV, The Constitution of India, 1950.*

⁴² *Art. 45, The Constitution of India, 1950.*

⁴³ *Part- III, The Constitution of India, 1950.*

⁴⁴ *Art. 45, The Constitution of India, 1950.*

⁴⁵ *Art. 45, The Constitution of India, 1950.*

⁴⁶ *Part- III, The Constitution of India, 1950.*

⁴⁷ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁴⁸ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁴⁹ *Unni Krishnan, J.P. and others. v. State of A.P. and others*, AIR 1993 SC 2178.

⁵⁰ *Part- III, The Constitution of India, 1950.*

⁵¹ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁵² *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

a) Child with disability, b) Child belonging to Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class, c) Child belonging to other disadvantaged groups, where disadvantage is connected with social, economic, linguistic, geographical, gender etc; iii) Child belonging to weaker section- Sec. 2(e)⁵³. This particular category is connected with economic disadvantage, which can in its fold contain a child with disabilities, if that particular child belongs to the economically weaker strata, whereas the criteria of economic weakness for the purpose of this Act⁵⁴ will be specified by way of notification by the appropriate government; iv) Child with disability- Sec.2 (ee) ⁵⁵. Surprisingly this definition was not part of the original enactment, but was subsequently added in 2012.⁵⁶

This is an inclusive definition, which contains in its fold, children belonging to any of these heads- a) a child, who comes under the definition 'Disability' as it is provided under Sec. 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; b) a child, who comes under the definition of disability as enshrined in Sec2(j) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; c) child comes under the category of 'severe disability' as provided under Sec.2(o) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

Surprisingly again, this particular definition does not carry in its fold the definition of 'person with disability',⁵⁷ 'person with benchmark disability',⁵⁸ 'person with disability having high support needs'⁵⁹ provided under the Rights of Persons with Disabilities Act, 2016,⁶⁰ which is a major drawback as, if these definitions are provided under this impugned Act⁶¹ along with separate and category-specific guidelines and legal schemes for the children belonging to these sub-categories or sub-classified groups of disability definition (which is essentially classified on the basis of degree of disability in one hand and consequential degree of care corresponding with such degree of disability on the other), the effective implementation of Art.21A⁶² and the Right of Children to Free and Compulsory Education Act, 2009⁶³ can be achieved. v) Elementary education- Sec.2 (f)⁶⁴ - It means the education from 1st to 8th class. Hence, elementary education as

⁵³ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁵⁴ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁵⁵ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁵⁶ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁵⁷ *The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).*

⁵⁸ *The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).*

⁵⁹ *The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).*

⁶⁰ *The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).*

⁶¹ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁶² *Part- III, The Constitution of India, 1950.*

⁶³ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁶⁴ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

envisaged in this Act, must be provided to disabled children as well, as this will comply with the mandate of Art.21A.⁶⁵

Thus, from the close scrutiny of the definitions under this Act,⁶⁶ it is evidently clear that, this Act⁶⁷ provides a comprehensive scheme but notwithstanding that, practically only Sec.3 of this Act⁶⁸ provide express mechanisms for disabled students. Apart from this, a few other elements of this Act⁶⁹ can be considered to ascertain the benefits provided by this Act⁷⁰ to disable students, though it is also true that, the demarcation of this kind cannot be executed in a water-tight chamber manner, as all the provisions of this Act⁷¹ is ipso facto applicable to disabled students, but this demarcated cognizance is needed, on the other hand, to ascertain the impact of this Act⁷² on the disability-specific needs of students with disability and on the other stakeholders of the education of disabled students. Right of child to free and compulsory education- Sec.3⁷³ - Sec.3 (1) and (2) provides that, every child between the ages of 6 to 14 is entitled to free elementary education. Sec.3(3)⁷⁴ is the only express provision regarding disabled students, which provides that, children with a disability under this Act⁷⁵ are entitled to the same right to elementary education with their normal counterparts and also provides that, a child with 'multiple disability' and 'severe disability' as provided in Sec.2(h) and 2(o) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 respectively has the option for home-based education.

Thus, this particular provision only puts a disabled child on par with other students (with one option for home-based education) but does not address the issue of disable specific requirements.

Duties of appropriate government- Sec. 8⁷⁶- It cast several obligations on the appropriate government and these are to ensure the right to education, which are inter alia- i) provide free and compulsory education; ii) ensure neighbourhood school availability to every child; iii) to ensure non-discrimination of disabled students (termed as 'child belonging to disadvantaged group' which include disable); iv) provide infrastructure to realize right to education; v) provide training facility to teachers etc.

⁶⁵ Part- III, *The Constitution of India, 1950*.

⁶⁶ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁶⁷ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁶⁸ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁶⁹ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁷⁰ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁷¹ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁷² *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁷³ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁷⁴ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁷⁵ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

⁷⁶ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009)*.

Thus, this provision cast three most important obligations to address the issues of disabled students viz. - i) non-discrimination, ii) accessibility, iii) training of teachers who are the most important stakeholders in disable education.

More or less the same kind of obligation is also cast on local authorities.⁷⁷

School's responsibility- Sec.12⁷⁸- Sec. 12(1) (c) provides that, the specified category schools and unaided schools shall admit disadvantage group children, which include disable and economically weak children, up to the extent of at least 25% of its class strength in class-1.

Conclusion

Thus, the evolution of this enactment from the perspective of disabled students can safely follow the concept of 'claim' as envisaged by Hohfeld and used by Prof. Honore, which means what a person is entitled to demand, which is quintessentially different from what a person is permitted to do and on the basis of this line of argument, claim co-relative to positive duty can be divided into two heads viz. 1) claim against individual and 2) claim against state,⁷⁹ and as far as the right to education under Art.21⁸⁰ and Art21A⁸¹ of the Indian Constitution on one hand and disabled students on the other is concerned, it must be treated in a single fold and hence, the statutory framework must be moulded in such a manner so that it fully complies (in word and essence) with the mandate of the Grundnorm. Thus, the approach towards this statute must be jurisprudential in nature, which clearly leads to the fact that, the statute⁸² shall contain express provision for disabled students in general and particular provision for different kinds of disability, as the nature and degree of care and support heavily differ so far as different kinds of disability are concerned and this very requirement must be addressed in the statute itself which is connected with education i.e. The Right Of Children to Free and Compulsory Education Act, 2009,⁸³ which at present is noticeably absent in this particular statute and the concept of 'claim' as mentioned above, will be futile unless a skirl can be created with the ground reality of disabled students and their corresponding needs and the statutory framework. Hence, it can be safely assumed that, the incorporation of disabled-specific infrastructure and care requirements will metamorphose the lacuna present in the RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009⁸⁴ into an advantage and will make this statute a disable-friendly and disabled student-oriented one which in turn will materialize the 'claim' of disabled students regarding access to education, which is a major issue and one of the greatest

⁷⁷ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁷⁸ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁷⁹ RWM Dias, *Jurisprudence* (5th edn, 2017) 68

⁸⁰ *Part- III, The Constitution of India, 1950.*

⁸¹ *Part- III, The Constitution of India, 1950.*

⁸² *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁸³ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

⁸⁴ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*

impediments to the inclusion of disabled students in the mainstream education system of the land. This disable-specific statutory incorporation will also facilitate the most cherished goal which is inclusive education and will dilute up to a great extent the participation restriction issue but it shall also be kept in mind that, without proper orientation of the stakeholders in the school education system, any amount of statutory alternation, notwithstanding how great such statutory changes is in the direction of incorporation of disable students, will go in vein and hence, alongside the legal changes in the direction of infrastructure improvement and disable specific care requirements, the orientation of stakeholders, which include disable students also, must be incorporated within the statutory framework to materialize and to extract the most benefit of this trailblazing statute⁸⁵ in the Indian legal regime.

A pertinent issue may arise that, on the basis of what line of argument, the concepts of Learning Poverty and Human Capital Country Brief can be used to assess the soundness and the relevance of the RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 for the purpose and from the perspective of disabled students. The issue is more complex and multidimensional as, the RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 do not contain any disable specific statutory mandate and moreover the Rights of Persons with Disabilities Act, 2016 is the nodal law, which shall be considered while discussing the educational rights of disable students and the conjoint reading of these two statutes invariably leads to the conclusion that, though they operate in their respective arenas, they share some overlapping issues and the conscious blending of the 2016 Act may possibly increase the effectiveness of the 2009 Act and this assimilation of 2016 Act with that of the educational rights requirement as enshrined in the 2009 Act, will materialize the rights of disable students regarding education and moreover in a multidisciplinary manner, the parameters like Human Capital Country Brief can lead and illuminate the path of the integration of these two statutes and apart from statutory framework, such parameters can optimize the policy so much so that, the djellaba of status in the grassroots level can be minimized and the by this recalibration, the constitutional and statutory mandates can be implemented in a coruscate manner.

⁸⁵ *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).*