

EDUCATION AND LEAVING NO ONE BEHIND: A CRITICAL ANALYSIS OF LAW AND POLICY FOR CHILDREN WITH DISABILITIES IN INDIA

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Inclusive education has been embedded into Goal 4 of sustainable development. The Sustainable Development Goals ('SDGs'), 2030, developed by the United Nations and agreed upon by all its member States, explicitly integrate persons with disabilities and their voices, unlike the erstwhile Millennium Development Goals. In this paper, we assess the compliance and compatibility of India's legal and policy framework for education of children with disabilities with the goals enumerated under SDG 4 on education. In order to make such an assessment, the paper focuses on the Rights of Persons with Disabilities Act, 2016, the Right to Education Act, 2007, and the National Education Policy, 2020. Data sources, studies, and ongoing litigations in India reveal that the needs of children with disabilities continue to be inadequately met by the State. Therefore, the government's present policy initiatives towards early childhood interventions, school-going age initiatives, and integration into higher education are mapped and analysed in this paper. Lastly, the paper provides certain suggestions that could facilitate holistic and inclusive education of children with disabilities and ensure our achievement of SDG 4 on education.

TABLE OF CONTENTS

<i>I. Introduction.....</i>	<i>486</i>	<i>A. The Three Schooling Systems: a Move Towards Inclusive Education?</i>	<i>496</i>
<i>II. Fundamental Issues with Approach to Education of Children with Disabilities.....</i>	<i>489</i>	<i>B. Key to Inclusive Education: Non-Discrimination and Access to Quality Educators.....</i>	<i>499</i>
<i>III. Early Childhood Interventions (Zero To Six Years).....</i>	<i>492</i>		
<i>IV. School Going Years (Seven To Fourteen Years)</i>	<i>496</i>		

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<i>C. SDG Goals of Learning</i>	<i>V. Secondary and Senior Secondary</i>
<i>Environment and</i>	<i>Education (Fifteen And Above).....</i>
<i>Learning Support.....</i>	<i>VI. Conclusion.....</i>
502	506

I. INTRODUCTION

Agenda 2030 for sustainable development, adopted in 2015 by all member states of the United Nations (‘UN’), shares a blueprint to end all forms of deprivation by establishing strategies that would improve health and education, spur economic growth with reduced inequalities, as well as, address the challenges of climate change through the protection of oceans and forests.¹ One of the noteworthy developments in Agenda 2030 is the explicit references to persons with disabilities, unlike the Millennium Development Goals of 2015.²

As stated in the Preamble of the United Nations Convention on Rights of Persons with Disabilities, 2006 (‘UNCRPD’), disability results from the “interaction between persons with impairment and attitudinal and environmental barriers that hinders their full and effective participation in society on equal basis with others”.³ Disability creates barriers to attaining the Sustainable Development Goals (‘SDGs’), including accessing education, employment and health care, and thereby, leads to impoverished standards of living – while on the other hand poverty increases the risk of disability. Building on the principle of ‘leaving no one behind’,⁴ the new set of goals explicitly emphasise the need to promote the achievement of SDGs for persons with disabilities and promote an active dialogue among stakeholders. In total, there are eleven references to disability. Specifically, Goal 4 on education emphasises the provision of free, equitable and quality education for children of all age groups in an environment that is inclusive and child, disability and gender sensitive. The education goal lays onus on universal literacy and numeracy, inclusive educational facilities and an education system that promotes sustainable living. Importantly, the three means of implementation that are identified are – focusing on the learning environment, quality educators and learning support through scholarships.

¹ UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *Transforming our World: The 2030 Agenda for Sustainable Development*, September 27, 2015, available at <https://sdgs.un.org/2030agenda> (Last visited on October 17, 2023).

² International Disability Alliance, *The 2030 Agenda for Sustainable Development*, available at <https://www.internationaldisabilityalliance.org/content/2030-agenda-sustainable-development-0#:~:text=The%202030%20Agenda%20for%20Sustainable%20Development%20includes%20persons%20with%20disabilities,be%20left%20out%20or%20behind> (Last visited on October 17, 2023).

³ *Convention on the Rights of Persons with Disabilities*, G.A. Res. 61/106, Preamble (May 3, 2008).

⁴ Nola E. Groce, *Global Disability: An Emerging Issue*, Vol. 6(7), THE LANCET GLOBAL HEALTH, 724-725 (2018).

The Indian census officially reports 2.6 crore (2.2 percent) persons with disabilities, of which approximately 0.8 crores are within the age group of zero to nineteen.⁵ Through a constitutional amendment in 2002, the right to education was made a fundamental right for all children under the Article 21A of the Indian Constitution, 1950.⁶ The State, in order to fulfil this obligations, enacted the Right to Free and Compulsory Education Act, 2009 ('RTE Act').⁷ The RTE Act mentions the rights of children with disabilities to be those as defined under the Persons with Disabilities Act, 1995.⁸ The latter statute, however, has been replaced with the Rights to Persons with Disabilities Act, 2016 ('RPwD').⁹ The RPwD speaks of creating equal opportunity and an inclusive education for children with disabilities.¹⁰ These legal enactments are largely within the international rights framework under the Convention on Rights of the Child, 2005 ('UNCRC') and the UNCRPD.

Further, the Parliament enacted the Mental Health Care Act ('MHA') in 2017 which protects and promotes rights of persons with mental disabilities living in the community and in healthcare institutions.¹¹ The Persons with Autism, Cerebral Palsy, Mental Retardation,¹² and Multiple Disabilities Act, ('National Trust Act') is also in place since 1999 which caters to specific disabilities mentioned in the title and enables and empowers independent living, apart from laying down procedures for guardianship and trusteeship where necessitated.¹³

The official digital records of the Ministry of Education ('MoE') in 2023 depicts that there are 14.89 lakh schools in India, relying on ninety-six lakh teachers and serving 26.5 crore children.¹⁴ We find that despite gains made due to the introduction of education and disability laws, a miniscule number of 'children with special needs', that is eighteen lakhs of the estimated 0.8 crores, are in school.¹⁵ Even overall, the SDG quality education target is marked only between

⁵ UNESCO, *N for Nose: State of the Education Report for India 2019: Children with Disabilities*, June 27, 2019, available at <https://unesdoc.unesco.org/ark:/48223/pf0000368780> (Last visited on October 17, 2023) ('UNESCO').

⁶ Additionally, Article 45 provides for early childhood care and education while Article 21A lays onus on the parents to send their child aged six to fourteen years to school; *See* The Constitution (Eighty Sixth Amendment) Act, 2002, §21A.

⁷ The Right of Children to Free and Compulsory Education Act, 2009.

⁸ *Id.*, §3(3).

⁹ The Rights of Persons with Disabilities Act, 2016.

¹⁰ *Id.*, Preamble, §3.

¹¹ The Mental Healthcare Act, 2017, Preamble.

¹² This term has been replaced by the intellectual disabilities under the Rights of Persons with Disabilities Act, 2016.

¹³ Rakesh K. Chadda, *Influence of the New Mental Health Legislation in India*, Vol. 17(1), BJPSYCH, 20-22 (2020).

¹⁴ MINISTRY OF EDUCATION DEPARTMENT OF SCHOOL EDUCATION AND LITERACY, *Unified District Information System for Education Plus (UDISE+)*, November 4, 2022, available at https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/udise_21_22.pdf (Last visited on September 16, 2023).

¹⁵ *Id.*

fifty to sixty-four points out of a total of 100 (performer stage). According to the Niti Ayog Index on SDG compliance it has remained stagnant with a negative shift from fifty to eight points in 2018 to fifty to seven points in 2022.¹⁶ Nine States are in the poor and still aspirant stage (zero to forty-nine points) and performance in the education sector is in the bottom third of all SDG goals.¹⁷

In this regard, the government has enacted two recent policies that aim to propel the stagnant education progress, both generally and in specific to children with disabilities. *First*, is the National Education Policy, 2020 ('NEP') that seeks to align our education policy framework with the SDG goals, international conventions and education and disability laws.¹⁸ *Second*, a Draft National Policy on Persons with Disabilities Policy, 2022 ('NDDP') has been released by the government that specifically covers the educational needs of children with disabilities in concurrence with the NEP.¹⁹ Both the NEP and the NDDP are important policy documents that will guide India's approach to education of children with disabilities in the coming decades.

In the given context, this paper comprehensively discusses the expected implications of these legal and policy frameworks for children with disabilities in terms of their access to quality and inclusive education. Focusing on age-specific integration into the realm of education, we deal with early childhood interventions, school education and integration into secondary and higher secondary education. The purpose is threefold: *firstly*, to assess the alignment of the laws and recently introduced policies and schemes with the framework on education of children with disabilities under the SDG, while keeping in consideration the demand for multidirectional change. *Secondly*, to study whether the laws, policies and schemes are synergised with each other to ensure effective operationalisation. *Thirdly*, as we understand, policies are always formed and 'reformed' while being implemented. Thus, it is not exclusively a top-down approach since the stakeholders also engage in interpreting the relevant policies and implementing them based on the said interpretation.²⁰

Therefore, relying on data sources, litigations and surveys, the paper puts forth the ground realities in order to compute the differences between the vision for the education of children with disabilities and the implementation on the

¹⁶ National Institute for Transforming India Aayog, *SDG India Index & Dashboard (2020-21)*, March 5, 2021, available at https://sdgindiaindex.niti.gov.in/assets/Files/SDG3.0_Final_04.03.2021_Web_Spreads.pdf (Last visited on September 16, 2023).

¹⁷ *Id.*

¹⁸ MINISTRY OF HUMAN RESOURCE DEVELOPMENT, *National Education Policy 2020*, available at https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf (Last visited on November 17, 2023).

¹⁹ MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, *The Draft National Policy for Persons with Disabilities (Divyangjan), 2021*, available at <https://socwelfare.py.gov.in/sites/default/files/mini-stry-social-justice-and-empowerment.pdf> (Last visited on November 17, 2023).

²⁰ See Les Bell & Howard Stevenson, *EDUCATION POLICY: PROCESS, THEMES AND IMPACT* (Routledge, 2006).

ground based on social, cultural and economic factors. This allows one to map the gaps and suggest measures that need to be taken to ensure that the SDG goals of education for children with disabilities are fulfilled. We should, however, state the limitations of this paper that both the RTE Act and RPwD are implemented at the State level through respective rules, executive guidelines, and orders. However, an extensive analysis of the State policies and comparisons is beyond the purview of this paper.

In Part II of the paper, we highlight some of the fundamental issues with the government's approach to the rights of children with disabilities that persist. Part III maps the initiatives taken by the government towards education during early childhood (zero to six years) and finds that, although there are health interventions for prevention and management of disabilities at a young age, we are still at an early stage in terms of providing holistic edu-care to children. In Part IV we analyse the three types of school systems that the government has in place for children with disabilities in the school going years (seven to fourteen years) to map the extent to which inclusive education is guaranteed and the SDG is realised through the present system. Part V on the secondary education (fourteen to eighteen years) draws on the provisions for children with disabilities to complete school and notes the absence of deliberations on their concerns that creates impediments in access to education beyond primary. In Part VI, suggestions for appropriate policy changes and interventions are made with the caveat that, in order to achieve the SDGs, sufficient budgetary allocations and coordinated efforts across department and between local bodies, both at the State and the Central level, is required. The said part also offers the concluding remarks.

II. FUNDAMENTAL ISSUES WITH APPROACH TO EDUCATION OF CHILDREN WITH DISABILITIES

Before proceeding with the analysis, certain concerns regarding the government's approach towards the issue of education of children with disabilities are flagged off. Any meaningful policy making involves availability of reliable data. While there have been several micro-level studies which document the vulnerabilities of persons with disabilities and their dispossession, macro level data at the State or national level on persons with disabilities remain inadequate. Apart from decennial census statistics, National Sample Survey Organisation ('NSSO') has undertaken surveys exclusively on disability in 2002 and recently in 2018.²¹ However, since the earlier RPwD Act only recognised seven types of disabilities, the census reporting on numbers of persons with disability in India (2.21 percent of the population) is considered as a gross underestimation, compared to reports from countries with reliable data where around seven to fifteen percent of the

²¹ MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION & the National Statistical Office, *Persons with Disabilities in India – 2018*, November 22, 2019, available at https://www.mospi.gov.in/sites/default/files/publication_reports/Report_583_Final_0.pdf (Last visited on September 16, 2023).

population falls under persons with disabilities.²² As a natural corollary, the number of children with disabilities too, is therefore severely underreported and there is limited statistical information collected by the State or Central government on their general and educational concerns.

Further, there is a multiplicity of definitions in the legal and policy framework and these definitions need to be harmonised.²³ For instance, the RTE Act under §2(ee) defines child with disability in accordance with the then legal definition under the Persons with Disabilities Act, 1995, which is now repealed, and the legal definition under the National Trust Act which caters to only four disabilities. The National Trust Act uses the terms ‘child with severe disability’ (eighty percent and above), ‘multiple disabilities’ (combination of two or more disabilities) and ‘severe multiple disabilities’.²⁴ On the other hand, the RPwD recognises twenty-one types of disabilities and uses two specific terms which are ‘benchmark disabilities’ (forty percent or more under §2(r)) and ‘persons with high support needs’ within the benchmark disabilities (under §2(l)).²⁵

If we examine the policy and executive guidelines, the NEP, the NPPD and the NSSO surveys mention ‘benchmark disabilities’ whereas the phrase ‘high support needs’ does not find any mention. Instead, the terms ‘multiple’ and ‘severe’ are used which are technically limited in application to only four disabilities defined under the National Trust Act. Further, the NEP used the term ‘socio-economically disadvantaged groups’ to encompass marginalised sections of the society, whereas the term defined in RTE Act under §2(d) is ‘child belonging to a disadvantaged group’. At the implementation level, the Samagra Siksha Abhiyan (‘SSA’) and related schemes continuously refers to inclusive education for ‘children with special needs’, a term not defined in any relevant legislations.²⁶

In addition to these definitional multiplicities, the term ‘*Divyang*’ (meaning divine body) for persons with disabilities was introduced in May 2016 by the government which has now entered the legal discourse.²⁷ This has been met with criticism from the disability rights sector as it is considered to perpetu-

²² See also Rakhi Dandona et al., *India's Disability Estimates: Limitations and Way Forward*, Vol. 14(9), PLoS ONE, 1-19 (2019); Baikunth Roy, *Assessment and Mapping of Disability Prevalence in India: A District Level Analysis*, Vol. 50(1), DEMOGRAPHY INDIA, 55-72 (2021) (discussing underestimation and underreporting).

²³ See also Nandini Ghosh, *Citizenship, Rights and Persons with Disabilities in India*, Vol. 28, SOUTH ASIA MULTIDISCIPLINARY ACADEMIC JOURNAL, 1-18 (2022) (discussing the differences and diversities within the disability sector in India).

²⁴ The Persons with Disabilities Act, 1995, §§2(o), 2(h), 2(j), 56(4).

²⁵ The Rights of Persons with Disabilities Act, 2016, §2(l).

²⁶ Samagra Shiksha, *Inclusive Education for Children with Special Needs*, August 17, 2020, available at <https://samagra.education.gov.in/inclusive.html> (Last visited on September 16, 2023).

²⁷ The Press Trust of India, *Govt Renames Disability Dept; 'Divyang' Replaces 'Viklang'*, BUSINESS STANDARD, May 24, 2016, available at https://www.business-standard.com/article/pti-stories/govt-renames-disability-dept-divyang-replaces-viklang-116052400973_1.html (Last visited on November 10, 2023).

ate the disability stereotype by focusing on deficiency and is also considered to be patronising in nature.²⁸ Problematic terminologies that were used under the earlier 1995 Act, such as ‘mental retardness’ or ‘mentally ill’ were removed under the RPwD. However, these terms are still being utilised today. Most prominently, the National Trust Act carries the term ‘mental retardness’ in the title while many special schools and institutions that are granted aid continue to use these terms in their name. Therefore, it is imperative that appropriate language is inserted through amendments and that the definitions are standardised.²⁹

Further, at present, government assistance and outreach to persons with disabilities is severely limited. The NSSO survey reveals that the percentage of persons with disabilities who receive aid from the government was 21.8 percent, and another 1.8 percent received aid from non-governmental organisations.³⁰ Persons with disabilities face hurdles even while obtaining disability certificates due to the bureaucratic processes as it is a highly technical process and involves medical examinations by the certifying authorities.³¹ Further, the newly added disabilities under the RPwD have limited enrolment due to lack of awareness.³² The government proposes a unique disability card project to create a national database and ensure better reach of benefits for persons with disabilities which includes financial assistance for education. To ensure effective implementation of the project, there should be efforts towards reaching the further marginalised populations within the disability groups, including the rural population, backward and economically weaker sections that report higher prevalence of disabilities.³³

A major lacuna is that the intersectionality of disability with other forms of marginalisation such as caste, tribe, gender, ethnicities, and poverty does not find mention in any of the legal or policy frameworks on education of children with disabilities. Only equal rights of women and girl children, and not other genders, are mentioned in RPwD through limited provisions. The NEP encompasses all forms of marginality under SDGs but completely omits to focus on the intersectionality. Though it mentions aspirational districts and low-income households within the ambit of SDGs, it does not identify the specific situation of children

²⁸ Asha Hans & Kalpana Kannabiran, *INDIA SOCIAL DEVELOPMENT REPORT 2016: DISABILITY RIGHTS PERSPECTIVES*, Ch. I (Oxford University Press, 2016).

²⁹ See also M. Karpagam & Prannv Dhawan, *I Pleaded to Junk ‘Divyang’ from Govt Records but Madras HC Quashed it, Ignoring SC Verdicts*, THE PRINT, June 22, 2021, available at <https://the-print.in/opinion/i-pleaded-to-junk-divyang-from-govt-records-but-madras-hc-quashed-it-ignoring-sc-verdicts/681973/> (Last visited on November 10, 2023).

³⁰ Ministry of Statistics and Programme Implementation, *supra* note 21.

³¹ The Rights of Persons with Disabilities Rules, 2017, Rr. 7 & 18; Nitin Gupta et al., *Learning Disability Certification in India: Quo Vadis*, Vol. 18(4), JOURNAL OF INDIAN ASSOCIATION FOR CHILD AND ADOLESCENT MENTAL HEALTH, 267-269 (2023); N.N. Mishra et al., *Disability Certificates in India: A Challenge to Health Privacy*, Vol. 9(1), INDIAN J. MED ETHICS, 43-45 (2012).

³² NCPEDP, *National Education Policy: Opportunities and Challenges*, 2021, available at https://ncpedp.org/wp-content/uploads/2021/10/WHITE-PAPER_FINAL-1.pdf. (Last visited on September 16, 2023).

³³ Sweta Pattnaik et al., *Prevalence, Pattern and Determinants of Disabilities in India: Insights from NFHS-5 (2019-2021)*, Vol. 11, FRONTIERS IN PUBLIC HEALTH, 1-11 (2023).

with disabilities within the group. Lastly, there is no discussion on the vulnerabilities of children affected by armed conflict or natural disasters in any of these documents, situations that are known to exacerbate disabilities amongst adults and children.³⁴

III. EARLY CHILDHOOD INTERVENTIONS (ZERO TO SIX YEARS)

The SDG Target 4.2 seeks to ensure quality early childhood development, care and pre-primary education to all girls and boys by 2030. One year of preschool education, free of cost, is a fundamental right in various countries in compliance with the UN Convention on Rights of the Child.³⁵ Under the Indian Constitution, 1950, through the 2002 amendment, provision for early childhood care and education till age of six is incorporated only as a fundamental duty of the citizens under Article 51A. §11 of the RTE Act further lays down that the appropriate government should provide for free pre-school education to prepare children above age of three for elementary education and to provide early childhood care in education till the age of six. Further, the SSA aims for a zero rejection policy to ensure universal elementary education.

However, to ensure that all children are school ready, children from vulnerable populations need to be supported in early childhood development. In India, there are around 20.42 lakh children with disabilities in the age group of zero to six years that constitute 29.3 percent of the total children with disabilities. Among this age-group we see a learning crisis as three-fourth of under five-year-old children with disabilities are reported to be out of school.³⁶ Thus, India performs poorly on the SDG indicator 4.2.2 that is “participation rate in organised learning one year before the official primary school entry age”. The NSSO data reveals that for children with disabilities only 10.1 percent of PwDs ever attended any pre-school programme and for the age group of three to six years only 28.6 percent were enrolled in school, and 3.5 percent in segregated schools, which are glaringly low numbers.³⁷

³⁴ UNITED NATIONS COMMITTEE ON RIGHTS OF PERSONS WITH DISABILITIES, *Concluding Observations on the Initial Report of India: Committee on Rights of Persons with Disabilities*, October 29, 2019, available at <https://digitallibrary.un.org/record/3848327?ln=en> (Last visited on November 10, 2023).

³⁵ UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD, *General Comment No. 7 for Implementation of Child Rights in Early Childhood*, September 20, 2006, available at <https://www.refworld.org/docid/460bc5a62.html> (Last visited on November 10, 2023).

³⁶ UNESCO, *supra* note 5.

³⁷ See Soumya Vinayan & Sajid, *Mapping Barriers in Accessing Education for Persons with Disabilities in India*, TWO-DAY INTERNATIONAL VIRTUAL CONFERENCE ON RETHINKING DISABILITY ACROSS DISCIPLINES: NEW DIRECTIONS AND EMERGING TRENDS—VISH, 1-10 (VIT-AP University, 2023) (draft paper, on file with the author).

Thus far, the government's focus has largely been on screening, detection, and interventions to identify and manage (birth defects, diseases, deficiencies, development delays and other disabilities) through Early Intervention Centres that provide community outreach under the National Health Mission.³⁸ Today one has a more nuanced understanding that the disabilities are a result of myriad social, psychological and economic factors, including poverty, discrimination and violence. Thus, the orientation of the program has shifted from a medical perspective to a more social model. Children with disabilities are hidden from view and denied a regular life due to social stigmas, financial barriers and lack of knowledge. To bridge the gap, the government aims to step-in, and provide holistic edu-care as it recognises that zero to six years is a critical age, not just for health interventions but for socialisation, psychosocial development, interaction and readiness for school learning too.

Under the NEP pre-school education is envisioned through four models: Anganwadi Centres ('AWCs'), pre-primary sections of the schools, co-locating AWCs in schools and standalone pre-schools. However, at present the government provides for the education of children with disabilities only through AWCs that are run under the Early Childhood Care and Education Program of the Ministry of Women and Child. The Ministry's Integrated Child Development Services Scheme ('ICDS') that is implemented through the AWCs is being broadened to provide comprehensive health check-ups, referral, immunisation, nutrition, and pre-school education, for children up to the age of six years. Under the policy, the AWCs workers are to be trained for teaching in a proposed six month to a yearlong course. The AWCs are subsequently, to be linked to the nearest government pre-primary schools, and to run a preparatory class of Balvatika (class one at age).

Thus far, AWC workers have been widely deployed for early screening and interventions of children with disabilities. However, their competency in facilitating education generally, and education for children with disabilities specifically, is still unknown. While, in some districts or cities that already excel in education parameters, AWCs workers were trained to integrate and teach children with disabilities starting from 2015.³⁹ Studies from other districts across the country reveal that AWCs continue to be ill equipped to facilitate classroom studies for children with disabilities due to continuing lack of supporting devices, training, support from special educators and accessibility barriers.⁴⁰ Digital education is

³⁸ Under the Rashtriya Bal Suraksha Karyakram, between 2014 and 2020, screening of forty-five crore children, identification of fourteen lakh children and interventions in three lakh cases occurred.

³⁹ Rajesh B. Nair, *Scheme to Enrol Children with Special Needs in Anganwadis*, THE HINDU September 4, 2015, available at <https://www.thehindu.com/news/cities/Thiruvananthapuram/scheme-to-enrol-children-with-special-needs-in-anganwadis/article7614437.ece> (Last visited on November 10, 2023).

⁴⁰ See Tapan Kumar Basantia & Jahangir Hussain Alom, *Rehabilitation Mechanisms for Special Group Children: A Study of Anganwadi Centres Under Integrated Child Development Services Projects*, Vol. 7(18), JOURNAL FOR CRITICAL REVIEWS (2020) (discussing an instance similar to Assam).

being introduced by the State or municipalities to provide quality education in rural areas and for economically vulnerable communities. For example, the Smart Anganwadi Program in Vadodara city for AWCs and Pahal Program by State of Uttar Pradesh for schools, but the specific needs of children with disabilities when delivering education through digital medium and compliance with web content accessibility guidelines has not been deliberated upon.⁴¹

Separately, the scope for Early Intervention Centres (presently, in more than ninety-two districts) under the National Health Mission is being furthered by the Department of Empowerment of Persons with Disabilities ('DEPwD') to facilitate comprehensive cross-disability units across the country that will serve as therapy, family education and training, preparatory schools and paediatric centres. These centres are to have two special educators with one for intellectual disability and second for any other disability with preference for cross disability experience. A pilot study for children with benchmark disabilities in need for high support has been carried out in seven national institutes. In these studies, in terms of developing the learning skills, it was observed that trans-disciplinary teamwork by therapists for children with multiple disabilities results in better skill development and the education received through virtual reality is a tremendous aid in creating real world simulations for the children.⁴²

Such models that are studied and adopted by these specialised centres for better edu-care, removal of accessibility barriers, improved pedagogy, amongst others, should serve as community standard for education of children with disabilities. These should be adapted by the MoE and incorporated in the integrated AWCs and pre-schools. The department aims to set up twenty-eight specialised centres by the end of 2025 and 2026 and the draft NPDP envisages establishing a Disability Intervention Centres in every district. Further, under the National Trust Act, the Disha Scheme, which provides financial assistance to 115-day care centres for children age zero to ten years that have one of the four disabilities under the said legislation, has been running since 2015. The centres are mandated to have permanent special educators, therapists, counsellors, caregivers, and caretakers.

However, it should be noted that both the Early Intervention Centres and centres supported by Disha Scheme move towards segregated learning, that should be avoided unless necessitated based on the needs of the individual child. Integrated learning should be facilitated, wherever possible to prevent early segregation. For those children who, at present, receive education only through these government and government-supported centres, provision should also be made

⁴¹ W3C, *Web Content Accessibility Guidelines (WCAG) 2.1*, September 21, 2023, available at <https://www.w3.org/TR/WCAG21/> (Last visited on October 25, 2023).

⁴² Disability Affairs, *Setting Up Cross-Disability Early Intervention Centers at National Institutes and Composite Regional Centres under DEPwD Policy*, 2016, available at https://disabilityaffairs.gov.in/upload/621492a6085d7SIPDA_sub-scheme-CDEICs%20final%208%2022%2022.pdf (Last visited on September 16, 2023).

for basic health and nutrition by extending the reach of the mid-day meal scheme programmes run under ICDS by the MoE.

Despite these early efforts, at present the programmes and services in operation for early childhood education and development are far from adequate to meet the SDG Goals in education. Further, for most children with disabilities below six years, pre-school education services are largely non-existent and inaccessible, while the private ones are costly and urban-centric. At present, most AWCs, though playing a role in detection and interventions for children with disabilities, are unequipped to ensure integrated learning goals. In the absence of adequate provisions and support for healthcare and education, abandonment of infants and children with disabilities is a common occurrence which leads to their institutionalisation in the government institutions.

However, studies show that institutionalisation puts persons and children with disabilities at great risk of abuse and mistreatment.⁴³ Scientific research suggests that the most severe risk is in case of early childhood institutionalisation where separation from immediate caregivers can negatively affect brain development and have severe life-long consequences on a child's well-being.⁴⁴ Therefore, increasingly there is a realisation for the need to shift towards child centric approach which requires that children be respected in their own right and nurtured within their own family environment.⁴⁵ In India under §36 of the Juvenile (Justice and Care and Protection) Act, 2015, there is a mandate for the institutionalisation of children in need of care, if there is a failure of placing them in families. However, to make a paradigm shift towards deinstitutionalisation of infants and children, various legal measures need be guaranteed such as family appropriate support, assistance programs and equal importance to adoption of infant and young children with disabilities. There should be specific impetus towards ensuring prevention of institutionalisation during early childhood years which are the most crucial age for development.⁴⁶

⁴³ Kriti Sharma, *Custody, Conflict, and Psycho-social Wellbeing* in SOCIAL DEVELOPMENT REPORT, 199-218 (2016).

⁴⁴ Georgette Mulheir, *Deinstitutionalisation – A Human Rights Priority for Children with Disabilities*, Vol. 9, THE EQUAL RIGHTS REVIEW, 117-137 (2012).

⁴⁵ UNITED NATIONS COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES, *General Comment No. 7 (2005): Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev.1, September 20, 2006, available at <https://www.refworld.org/docid/460bc5a62.html> (Last visited on November 17, 2023).

⁴⁶ REACHING AND INVESTING IN CHILDREN AT THE MARGINS: SUMMARY OF A JOINT WORKSHOP BY THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE; OPEN SOCIETY FOUNDATIONS; AND THE INTERNATIONAL STEP BY STEP ASSOCIATION (ISSA), Ch. III (Washington (DC), National Academies Press, 2017) (for instance, in Serbia, institutionalisation of children under three is banned).

IV. SCHOOL GOING YEARS (SEVEN TO FOURTEEN YEARS)

Under the new education structure under the NEP, after three years of *anganwadis* (or equivalent pre-schools) there should be a continuous education till secondary level. Part IV(A) explores the present systems of education recognised in India and the extent of incorporation of inclusive education for children with disabilities in these school systems to ensure equal and continuous access to education for children with disabilities. The three identified SDGs means that include creation of learning environment, providing for quality educators and learning support (though the SDG target is limited to scholarships) can ensure discrimination free environment that can help achieve continuous education for children with disabilities. Therefore, in Part IV(B) and IV(C) we interpret what these rights entail for children with disabilities and suggest possible measures needed to fulfil these rights and obligations.

A. THE THREE SCHOOLING SYSTEMS: A MOVE TOWARDS INCLUSIVE EDUCATION?

SDG 4.a. states that educational facilities should be upgraded to a level where they are safe, non-violent, inclusive and provide an effective learning environment for all children. This is in line with Article 24 of the UNCRPD that aims at an inclusive education system. Inclusive education is a fundamentally different approach to education that aims to create an environment and curriculum that values and caters to all children, understanding that all (not some) children are different and have different needs.⁴⁷ §2(m) of RPwD defines inclusive education as a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.

Inclusive education is different from the earlier concept to ‘main-stream’ or ‘integrate’ education where children with disabilities were forced to adapt themselves to the already existent school curriculum and structures. Post-independence initiatives of the government were focused on integrated education for children with disabilities, through common and neighbourhood schools or special schools.⁴⁸ The RPwD Act, in line with the UNCRPD, for the first time provided for inclusive education under §2(m). The needs should be met through support,⁴⁹ and reasonable accommodation,⁵⁰ of the individual child, and creation

⁴⁷ Paula Frederica Hunt, *Inclusive Education: Children with Disabilities*, UNESCO, 2020, available at <https://unesdoc.unesco.org/ark:/48223/pf0000373662> (Last visited on November 22, 2023).

⁴⁸ THE KOTHARI COMMISSION, *Report of the Education Commission* (June 29, 1966), the Integrated Education for Disabled Children program of 1974, and the National Policy of Education of 1986 and 1992 provide for integration.

⁴⁹ The Right to Persons with Disabilities Act, 2016, §16(iv).

⁵⁰ *Id.*, §16(iii).

of barrier free learning environment based on universal design. Towards this end, the State needs to facilitate a process of continued and proactive commitment to eliminate culture, policy and practices of schools that create barriers. Accordingly, the State is required to implement systematic reforms and modifications in content, teaching methods, approaches, structures, and strategies in education.⁵¹

In line with this approach, the NEP and the draft NPPD aim to incorporate inclusive education. However, it should be noted that these policies envision two other school systems – special schools and home-based schools – for ‘severe or multiple disabilities’ that fall outside the purview of the MoE. Special schools are public or private schools that cater only to educating children with a particular disability.⁵² In the last decade, the number of special schools have doubled to 27,675 (2018-19) and a majority of them are residential, however, forming a miniscule percentage (1.78 percent) of all schools and mainly providing primary education.⁵³ Only 516 special schools are supported through grants in aid by the DEPwD.⁵⁴ Most schools are run informally as they are outside the purview of the RTE Act and are not connected to the board of education. Central or State aid to these schools is not guaranteed and interruptions in education due to lack of funds severely hampers the education of children.⁵⁵

In effect, the standard of education in special schools is compromised and students receive completely segregated education. §17(e) of RPwD requires that adequate number of resource centres should be established to support educational institutions at all levels of school education. In line with policies of other countries and requirement under §17(e), we suggest that the special schools should *first* be given recognition as educational institutions, and *second*, be developed as resource centres that can educate, create awareness, develop age and disability appropriate materials, train and guide not just the students but parents, general teachers and other community members.⁵⁶ The special schools should definitely not become a place for abandonment and permanent institutionalisation of children with disabilities, as is commonly seen, for instance, in cases of residential special schools for deaf-blind children.

Home based schools are where children learn from their own home and get certification by appearing for secondary and senior secondary school examinations conducted by the National Institute of Open Schooling that caters to

⁵¹ UNITED NATIONS COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES, *General Comment No. 4 (2016)*, Article 24: Right to Inclusive Education (September 2, 2016).

⁵² Nidhi Singal, *Education of Children with Disabilities in India*, UNESCO, 2009, available at <https://unesdoc.unesco.org/ark:/48223/pf0000186611> (Last visited on November 22, 2023).

⁵³ NCPEDP, *supra* note 32.

⁵⁴ *Id.*

⁵⁵ *Blind Peoples Association v. State of Gujarat*, R/Special Civil Application No. 21494 of 2019, decided on March 25, 2022 ¶¶19-20.

⁵⁶ European Agency for Special Needs and Inclusive Education, *Inclusive Education in Europe: Putting Theory into Practice*, January 18, 2013, available at <https://www.european-agency.org/sites/default/files/IC%20Researchers%20paper.pdf> (Last visited on September 16, 2023).

education for those out of school. The RPwD does not incorporate provision for home-based schools. However, it is provided for under the RTE Act for children with severe disabilities, under the NEP for ‘multiple and severe disabilities’ and in the NPDD draft for ‘children with intellectual disabilities’. In the year 2018-2019, under the SSA, the provision of home-based education covered 43,996 children with severe/multiple disabilities with an outlay of Rs 9.22 crores.⁵⁷

However, the definition, function and exactly who should this option should be applicable to is not clarified. There is no official process of enrolment with standards on required hours and days of instruction, minimum qualification of tutors, and assessment and examination criteria. Home-based education limits the exposure of the child. There also is no mention in the policies on incorporation of options for regular education, to the extent possible, through individualised support. Additionally, the NEP specifically mentions open and distance learning programs that can be used to train children with disabilities that are out of formal schools. The National Institute of Open Schooling annual report 2017-2018 states that 7,567 persons with disabilities were enrolled at the institute but the records show majority of the students to be male and with intellectual disabilities.⁵⁸ Therefore, efforts can be made towards expanding the outreach.

The government should study the present enrolment status in the three schooling systems, for each disability type, and enrolments should be quantified to bring cohesiveness. The inclusive schools should incorporate accommodations provided for in special schools, to ensure that the regular schools remain the most viable option. A process also needs to be put in place to help the families determine which school will best serve the interest of their child. At present, in absence of professional support, the onus is entirely on the parents. In the United States of America, there is a concept of ‘least restrictive environment’⁵⁹ wherein the burden is on the district board to ensure that the education in regular classrooms should be with the use of supplementary aids and services, and special classes and special schools should be utilised only when the nature and severity of the disability is such that education in the regular classes cannot be achieved satisfactorily. The test used is based on the following factors—

- i) Whether the school district made reasonable efforts to accommodate the child in a regular classroom;
- ii) What are the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and

⁵⁷ Shiksha, *supra* note 26.

⁵⁸ National Institute of Open Schooling, *Annual Report 2017-18*, May 28, 2019, available at <https://nios-cms.s3.ap-south-1.amazonaws.com/2020/Mar/30/xhWJbvRYf0zj47pcAuB8.pdf> (Last visited on September 16, 2023).

⁵⁹ The Individuals with Disabilities Education Act, 1975, §1412 (a)(5) (United States of America).

- iii) The possible negative effects of the inclusion of the child on the education of the other students in the class. In cases where the child is placed outside the regular classroom, the child is to be provided exposure to inclusive schools to the maximum extent appropriate.⁶⁰

The endeavour of the government should be along similar lines.

B. KEY TO INCLUSIVE EDUCATION: NON-DISCRIMINATION AND ACCESS TO QUALITY EDUCATORS

SDG Target 4.1 seeks to ensure complete free, equitable and quality primary and secondary education, leading to relevant and learning outcomes, for all children. The most fundamental criterion is the absence of discrimination towards a child with a disability. §16(i) RPwD states that schools shall admit children with disabilities without discrimination and provide education and other opportunities. Through RTE Act amendment of 2012, children with disabilities are included in the twenty five percent admission quota for the disadvantaged groups.⁶¹ Empirical studies prove that children who study in inclusive schools have better learning outcomes and affirmative action is pivotal in bringing this inclusivity to the schools.⁶² However, despite reservations, the seats reserved remain unutilised primarily due to continuing lack of confidence instilled in the parents on the ability of the schools to provide inclusive education when schools have not taken the onus to provide reasonable accommodation and required support.⁶³ Further, in some districts, children with disabilities, upon admission, receive completely segregated learning within the regular schools which negates the whole concept of inclusive education.⁶⁴ High Court cases showcase that even when children with disabilities apply, school administrators continue to refuse admission on the grounds of absence of special educators,⁶⁵ or absence of infrastructure.⁶⁶ These are reasonable accommodations schools are obligated to provide for children with disabilities under the RPwD and cannot be a ground for rejection.

⁶⁰ P. v. Newington Board of Education, 512 F Supp 2d 89 (D Conn 2007).

⁶¹ See also §§31 and 35 of Right of Children to Free and Compulsory Education Act, 2009, read with the rules.

⁶² Radhika Joshi, *Can Social Integration in Schools be Mandated: Evidence from the Right to Education Act in India*, Vol. 77, INTERNATIONAL JOURNAL OF EDUCATIONAL DEVELOPMENT, 1 (2020).

⁶³ *Delhi Private Schools Warned over Vacant Special Quota Seats*, HINDUSTAN TIMES, September 15, 2019, available at <https://www.hindustantimes.com/education/delhi-private-schools-warned-over-vacant-special-quota-seats/story-PTFopDYxyCwBv0GtmgdgBO.html> (Last visited October 25, 2023).

⁶⁴ Priyanka Rao et al., *Towards an Inclusive Education Framework in India*, May 29, 2020, available at https://vidhilegalpolicy.in/wp-content/uploads/2020/07/InclusiveEducationReport_29May2020.pdf (Last visited on September 16, 2023).

⁶⁵ *Child v. State of T.N.*, 2023 SCC OnLine Mad 1308.

⁶⁶ *Siddharth International Public School v. Motor Accident Claim Tribunal*, 2016 SCC OnLine Del 5272.

Once children are admitted to schools, §16 of the RPwD provides for early detection of learning disabilities⁶⁷ and for monitoring participation and progress.⁶⁸ However, the retention rates suggest a lack of systems in place to monitor and support children with disabilities. One of the identified SDG indicators (Target 4.1.2) is the completion rate in primary, lower and upper secondary education. On this scale, children with disabilities perform poorly. The NSSO 2018 survey data depicts that primary schools have the largest percentage of children with disabilities (forty eight percent), which drops to 22.46 percent at upper primary; and by secondary education, it reduces to 9.36 percent which is the sharpest drop compared to any other vulnerable group.⁶⁹ The SDG means of providing for quality educators, learning environment and learning support, as explored in the next section, can substantially reduce discrimination and facilitate retention of children with disabilities and need to be emphasised upon.

Under SDG 4.c, by 2030, States are mandated to substantially increase the supply of qualified teachers. Under §17 of RPwD the appropriate government must establish the adequate number of teacher training institutions,⁷⁰ train and employ trained teachers, including teachers with disabilities,⁷¹ and train professionals and staff.⁷² The SDG Indicator under 4.c.1 is the proportion of teachers with the minimum required qualifications, by education level. As per the present statistics, of the ninety-six lakh teachers in India, only about 1,40,087 are teachers with disabilities which showcases poor representation. Further, for the reported eighteen lakh children with disabilities, around 4.33 lakh general teachers are trained to teach children with disabilities as per the SSA. However, their disability or subject wise specialisation is not known.

In the case of special educators trained to provide specialised support to children with disabilities, while 1,20,781 special educators are registered only around 28,535 special educators are employed by the schools.⁷³ This was noted by the Supreme Court in *Rajneesh Kumar Pandey v. Union of India*,⁷⁴ wherein it held that one special educator should be available for every ten children with disabilities for Classes I to V and one for fifteen children for Classes VI to VIII, as per the norms under the RPwD and RTE Act and the accompanying rules, and also directed the government to implement these directions. As per these standards, the

⁶⁷ The Rights of Persons with Disabilities Act, 2016, §16(vi).

⁶⁸ *Id.*, §16(vii).

⁶⁹ Soumya Vinayan & Sivakumar Danyasi, *Mapping Disability in India: Gender Dimensions*, Online Conference on Enabling Equal Opportunity: Looking at India's Diversity through a Gender Lens, organised by Maulana Azad National Urdu University and Centre for Development Policy and Practice, Hyderabad on October 16, 2020 (on file with authors).

⁷⁰ The Rights of Persons with Disabilities Act, 2016, §17(b).

⁷¹ *Id.*, §17(c).

⁷² *Id.*, §17(d).

⁷³ *Rajneesh Kumar Pandey v. Union of India*, 2017 SCC OnLine SC 2077.

⁷⁴ *Id.*, ¶36.

present number of special teachers are grossly inadequate and various High Courts have taken cognizance of this matter.⁷⁵

Under the NEP, general educators are expected in the future to have secondary specialisation as special educators, during or after pre-service teacher preparation, through training courses, thus coalescing the two different categories of teachers. Presently, sensitisation programs are being run by the MoE for the general teachers that have a Bachelor of Education.⁷⁶ However, this cannot be equated with having a specialisation as the special teacher who obtains Bachelors in Special Education to cater to the needs of children with disabilities. While training the general teachers is important, the teaching system for children with disabilities cannot be envisioned without the support of special teachers and will result in poor outcomes. However, NEP is mute on the employment conditions of the special educators who are not being treated at par with the general teachers.

Globally, special educators work with regular teachers to facilitate learning for those in special need.⁷⁷ In India, special teachers are trained, and accreditation is carried out by the Rehabilitation Council of India. However, schools either do not have to hire special educators or employ them on an *ad hoc* basis. Under the SSA, special educators are expected to be posted at block level, and to function in an itinerant mode, covering schools with children with disabilities. Thus, they are unduly expected to teach students of different disabilities across grades, visiting different schools and homes to facilitate education. The idea that special teachers can be trained with disability-specific and for subject-specific resources and be employed as an integral and permanent part of the school has been explored to a limited extent. This is in cases if the already hired general teachers possesses that specialisation. Further, the position is unclear whether the Bachelors in Special Education degree could even be treated as equivalent to the general Bachelors in Education degree. The judiciary has taken differing positions on this.⁷⁸ Greater clarity is therefore required on the exact scope of employment

⁷⁵ Following the court's directions, the central schools appointed requisite special educators by November, 2022, on a permanent basis with rules incorporated for their employment, *see* Social Jurist, *A Civil Rights Group v. Kendriya Vidyalaya Sangathan*, 2022 SCC OnLine Del 4217; *See also* in *U.P. Vishesh Shikshak Assn. v. State of U.P.*, Misc Bench No. 5622/2010 decided on June 17, 2010 (cognizance of inadequate special educators in the State of Uttar Pradesh was taken).

⁷⁶ *See also* NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, India, 2020-2021 Census Data, *Child Rights Component in Teacher Training Curriculum*, October 30, 2022, available at https://ncpcr.gov.in/uploads/1661855544630de738e6bea_teacher-training-report.pdf (Last visited on September 16, 2023) (found that in eighty-nine percent of cases the needs for children with disabilities were being taught. Nistha is the training program by the Ministry of Education).

⁷⁷ GLOBAL EDUCATION MONITORING REPORT TEAM & INTERNATIONAL TASK FORCE ON TEACHERS FOR EDUCATION, *Inclusive Teaching: Preparing all Teachers to Teach all Students*, UNESCO, October 2020, available at <https://unesdoc.unesco.org/ark:/48223/pf0000374447> (Last visited on November 22, 2023).

⁷⁸ *See also* Sarthak Ghosh v. State of W.B., 2017 SCC OnLine Cal 150 (in this case the two degrees were treated as equivalent by the Kolkata High Court for employment in primary education, but a differentiation was maintained by the Tripura High Court for secondary education employment in *Sudipa Saha v. State of Tripura*, 2019 SCC OnLine Tri 65).

of special educators and the special educators should be sufficiently incentivised. Besides teachers, sensitisation of support staff in schools is critical to meet any needs of children with disabilities and the same should not be overlooked.

C. *SDG GOALS OF LEARNING ENVIRONMENT AND LEARNING SUPPORT*

There is a requirement for creating an appropriate learning environment for children with disabilities. The SDG indicator measures the proportion of schools offering basic services by the different types of service. The Unified District Information System for Education data tells us that in terms of infrastructure, merely 26.96 percent of schools have designed toilets for children with disabilities, and 49.72 percent of the schools have ramps for children with disabilities, while other facilities, such as functional tactile floors, correct lighting, and proper signage, are not considered.⁷⁹ The national institutes under DEPwD have guidelines for creating appropriate infrastructure, but the States have not mandated these guidelines for the schools. Under the SSA, assistive devices are being provided (a mere 65,596 children were covered by 2017-2018),⁸⁰ including books, transportation, escorts, therapeutic services, and special educators. These are to be provided free of cost for students with benchmark disabilities as defined under §16(viii) and §17(g) of the RPwD.

Further, there is financial assistance of INR 3,500 (with 200 more for the girl child with disabilities) to the schools per child. However, as per a report by Vidhi Legal, the majority of allocation is spent not on the specific needs of the child such as assistive devices or individual transportation but on special educators, helpers, resource materials, amongst other things, which are general measures schools should already have in place as a part of offering inclusive education.⁸¹ Further, there is great variance in each State on the financial assistance for infrastructure, assistive devices or other schemes and financial assistance programs.⁸² Thus far, due to a series of litigations against the central schools in the Supreme Court and the Delhi High Court, these facilities have been ensured for the schools

⁷⁹ MINISTRY OF EDUCATION, DEPARTMENT OF SCHOOL EDUCATION AND LITERACY, *Right to Education, Unified District Information System for Education Plus (UDISE+) 2021-2022*, November 4, 2022, available at https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/udise_21_22.pdf (Last visited on September 16, 2023).

⁸⁰ MINISTRY OF HUMAN RESOURCE DEVELOPMENT, *Teaching and Learning System for Disabled Students*, January 4, 2018, available at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=175308> (Last visited on November 10, 2023).

⁸¹ Rao, *supra* note 64, 23-26.

⁸² *Id.*

that fall under the purview of the central government,⁸³ but are limited in most other State or private schools with sporadic judicial or executive interventions.⁸⁴

Learning support and encouragement for a child with disabilities can be created by ensuring appropriate pedagogy, suitable evaluation methods and incentivisation through scholarships. In terms of pedagogy, NEP envisions synchronising curriculum while preparing the national curriculum framework, through consultation with the expert bodies, including national institutes under DEPwD. Since education should be imparted with the most appropriate means and modes as per §17(v) of the RPwD, the National Council for Educational Research and Training ('NCERT') has already formulated training modules and handbooks for teachers to work with children with disabilities. It has digitised the present class materials in audio form and in sign language. It also released inclusive learning materials through 'Barkha: A Reading Series for All', 'Comic Book Priya-the Accessibility Warrior' and the production of tactile map books for visually impaired students.⁸⁵

However, we suggest that, apart from the promotion of sustainable development required as per SDG 4.7, a revision of learning materials and lesson plans is required in order to provide a comprehensive roadmap to the general teachers to include children with vulnerable backgrounds. This would ease the burden on the general teachers who are not well-equipped to have the expertise and know-how to mould the lesson plans on their own. Further, the production of these materials in regional languages can help reach a greater number of students. As stated earlier, the efforts towards digital education should ensure accessibility for children with disabilities. The NPPD also suggests that sign language and close captions be included in all educational videos.⁸⁶

The NEP notes that Parikh, an assessment and certification agency, should create guidelines and tools for conducting assessment for children with learning disabilities. The NEP also emphasises on accountability of student learning based on learning outcomes through the National Achievement Survey. At present, though support during assessments, as recommended under §17(i) of RPwD is in place, the assessment criteria for children with learning disabilities are the same as for other children may produce poor learning outcomes and discourage

⁸³ See *Manish Lenka v. Union of India*, 2022 SCC OnLine Del 4403; *Rajneesh Kumar Pandey v. Union of India*, 2017 SCC OnLine SC 2077; *Social Jurist, A Civil Rights Group v. Kendriya Vidyalaya Sangathan*, 2022 SCC OnLine Del 4217.

⁸⁴ See also *Disabled Rights Group v. Union of India*, (2018) 2 SCC 397, and *Kamal Gupta v. State of Uttarakhand*, 2018 SCC OnLine Utt 677 (for positive obligations created by the courts).

⁸⁵ NCERT, *NCERT Initiatives for Inclusive and Accessible Education*, available at <https://ncert.nic.in/accessibility.php> (Last visited on November 22, 2023).

⁸⁶ *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled*, June 27, 2013, Treaty Doc. 114-6 (the Marrakesh Treaty was signed by India and aims to facilitate access to published works for persons with disabilities through national laws that permit the reproduction, distribution and making available of published work in accessible format which India should legislate on).

the children. Assessment methods, therefore, may need further diversification. Lastly, SDG 4.b requires that the countries ensure substantial expansion of scholarship. It should be noted that most government scholarships start from secondary education which is dealt with in the next part. Although considering a substantial drop rate in primary education, the NPPD suggests the expansion of scholarships to the primary level, specifically for those in need of financial support.

V. SECONDARY AND SENIOR SECONDARY EDUCATION (FIFTEEN AND ABOVE)

Completion of high school education is critical in gaining new skills, accessing university education, and obtaining employment opportunities. However, the proportion of children with disabilities in India who completed higher secondary is low at 9.6 percent, despite the provision for reservations. The 2013 NCERT study found only one out of every eighth child with disabilities who was enrolled in primary school, reached the higher secondary.⁸⁷ Among females, the proportion of women with disabilities who complete higher secondary education and above stood at 6.3 percent. This is only half of the proportion of men with disabilities (twelve percent), under the NSSO Survey.⁸⁸ One should keep in view that this is despite the five per cent reservation for benchmark disabilities under §32 of the RPwD and five years age relaxation for admission that is provided to bridge the gap from higher secondary to university education under the law.

To sustain education for children with disabilities up to secondary and higher secondary a major initiative has been provision for scholarships. In terms of financial assistance (SDG 4.b), the DEPwD, earlier had one scholarship titled, ‘The National Fellowship Scheme for Higher Education’. Since April 2014, however, several scholarships and financial assistance have been introduced for different levels of education: secondary, higher secondary, high performers, higher education, overseas scholarships, and free coaching services under one umbrella scheme titled, ‘Scholarships for Students with Disabilities’. This amalgamation enables surplus funds in one segment to be utilised for another.⁸⁹ The pre-matric (secondary) scholarships increased from 2,368 (2015-2016) to 10,812 (2022-2023) with an increase in allocation of INR 1.6 crores to INR 10.76 crores.⁹⁰ Under §16(h) of the RPwD there is a provision for scholarship with benchmark disability that have also been earmarked under the scholarship program with relaxation on performance expectation. Yet, a closer analysis of the budget does indicate substantial

⁸⁷ NCERT, *Evaluation of the Scheme IEDSS in India*, available at http://www.ncert.nic.in/departments/nie/degsn/pdf_files/fp3_13.pdf (Last visited on June 3, 2015).

⁸⁸ Vinayan & Danyasi, *supra* note 69.

⁸⁹ MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, DEPARTMENT OF EMPOWERMENT OF PERSONS WITH DISABILITIES, Rights of Persons with Disabilities, *Annual Report 2022-23 of Department of Empowerment of Persons with Disabilities*, Ch. VIII, Schemes of the Department, 157, available at <https://disabilityaffairs.gov.in/content/upload/uploadfiles/files/Annual%20report%2022-23%20Printed%20Final.pdf> (Last visited September 16, 2023).

⁹⁰ *Id.*, 243.

delays in the release of the grants by the Centre to the State governments⁹¹ and the underutilisation of scholarships meant for the disabled to the tune of around twenty five percent in 2019-2020 and 2020-2021.⁹²

Besides scholarships, under the RPwD, other provisions are made for those with benchmark disabilities and those in need of high support that can facilitate higher education. Specific legal rights of persons sustained through higher secondary include transportation facilities for those with high support needs,⁹³ learning materials, books and appropriate assistive devices up to age of eighteen for children with benchmark disabilities,⁹⁴ and provision for suitable modifications in the curriculum and examination system.⁹⁵ The DEPwD has issued detailed guidelines for conducting examinations for persons with and without benchmark disabilities that require assistance or enabling provisions.⁹⁶

However, there could be other barriers in place. For instance, there are limited options for secondary and higher secondary schools in comparison to primary schools which are more likely to be within the neighbourhood. This is because we have 11,96,265 primary schools across the country but just 1,50,452 secondary schools. Further, since in secondary and higher secondary there are assessments and promotions based on the performances and outcomes, for children with certain disabilities, poor performance and the attached psychological pressures may be discouraging. This is specifically seen in cases of learning, reading and mathematical difficulties or students with emotional, behavioural and intellectual disabilities.⁹⁷ Further, vulnerabilities such as poverty, health, gender, being a first-generation student, amongst others, can exacerbate the situation. Importantly, with senior classes, subject tutors might be required and special educators for advance subject classes are difficult to find whereas the general subject teachers have large class sizes for the subject expert to provide an individualised support. However, remarkably there are hardly any surveys or data collection to identify concerns of children with disabilities in secondary education.

Lastly, §18 of the RPwD deals with adult education to ensure options for lifelong learning for persons with disabilities. While there is a reference to

⁹¹ Protiva Kundu, *Inclusivity in School Education and the Budget*, Vol. 55(41), ECONOMIC AND POLITICAL WEEKLY, 34 (2020).

⁹² CBGA, *Walking the Tightrope: An Analysis of Union Budget 2023-24*, Table 5.4, 103, February, 2023, available at <https://www.cbgaindia.org/wp-content/uploads/2023/02/Walking-the-Tightrope-An-Analysis-of-Union-Budget-2023-24.pdf> (Last visited on September 16, 2023).

⁹³ The Rights of Persons with Disabilities Act, 2016, §16(viii).

⁹⁴ *Id.*, §17(g).

⁹⁵ *Id.*, §17(i).

⁹⁶ MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, DEPARTMENT OF PERSONS WITH DISABILITIES, Rights of Persons with Disabilities, *Office Memorandum*, available at https://disabilityaffairs.gov.in/upload/uploadfiles/files/Guidelines-29_08_2018.pdf (Last visited on September 16, 2023).

⁹⁷ Airi Hakkarainen & Leena Holopainen, *Learning Difficulties Challenge Secondary Education in Organizing Educational Support in SECONDARY EDUCATION: PERSPECTIVES, GLOBAL ISSUES AND CHALLENGES*, 197-215 (Nova Science Publishers, 2016).

open school for persons with disabilities in NEP, it does not create further specificities on adult education programs for persons with disabilities or deliberate on ways in which it can be made more accessible. NEP envisions the introduction of sign language as a subject in secondary education which is a welcome step. However, it requires standardisation of sign language and first introduction at primary school level to encourage inclusive education. NEP focuses on integrating students with vocational training (equivalent to secondary education) for higher education. These are in alignment with SDG targets 4.3 and 4.4 which focus on vocational training and skill development.

The vertical mobility of vocational students is also addressed in the National Skills Qualifications Framework introduced in 2013. However, a quick look at the data revealed that only 1.4 percent of persons of age fifteen to fifty-nine years with disability had received formal vocational or technical training. The scenario was worse off in rural areas with less than one per cent (0.6 percent) who replied in the affirmative whereas it stood at 2.9 percent in urban areas.⁹⁸ At this stage, educational programs for sports, entrepreneurship, internships, immersions, and extra-curricular programs that are available for holistic development of a student should also be designed for children with disabilities but efforts remain limited. Interestingly, Centre for Disability Sports had been announced to be established under the budget of 2014-2015, but the Parliamentary Standing Committee on Social Justice and Empowerment found that out of five such centres to be established only two centres, namely, in Gwalior and Shillong may finally be set-up.⁹⁹

VI. CONCLUSION

To emphasise, for the achievement of SDG 4.2 dealing with pre-primary education, we suggest the incorporation of SDG 4.2.1 measure to track proportion of children between twenty-four to fifty-nine months who are developmentally on track in learning and psycho-social well-being. This is because the present focus is only on health. Cohesiveness is required in interventions on pre-primary education between various ministries, including the Ministry of Women and Child, MoE, the Ministry of Tribal Affairs and the Ministry of Family Welfare. Out of school disabled children impact the goal of universal literacy and numeracy (SDG 4.6) and pre-school measures are critical for bridging this gap for children with disabilities. Therefore, action and target plan, with appropriate budgetary allocations is required, to incorporate pre-primary inclusive education at AWCs which have primarily served, thus far, as care centres.

⁹⁸ MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, *supra* note 21, 43.

⁹⁹ STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT, *Thirty-Second Report*, 34, March 25, 2022, available at https://loksabhadocs.nic.in/lsscommittee/Social%20Justice%20&%20Empowerment/17_Social_Justice_And_Empowerment_32.pdf (Last visited on November 10, 2023).

The inclusive education target for schools (SDG 4.a) remains elusive, due to the inability to make a paradigm shift in this direction which has led to wide acceptance of non-inclusive education through special and home-based schools. We suggest the recognition of special schools and their expansion as resource centres wherein this while limited segregated learning is undertaken through a transparent criterion or method of assessment to render such special or home-based school as acceptable. There should, however, be provisions available in alternative systems to enable access to inclusive education to the greatest extent possible. The onus of providing inclusive education based on 'least restrictive environment' lies with the government, but the litigations depict non-accommodation and absence of effective learning environment in the schools (SDG 4.a). Towards this end, the need for appropriate learning environment, learning support and quality educators cannot be overlooked. The proposed policy measure towards primarily training general teachers to additionally become special educators instead of also creating a parallel support structure within the schools through qualified and well-paid special educators is not a judicious move and requires reconsideration.

At the secondary and higher secondary level, besides provisions for scholarships (SDG 4.b), there is an immediate requirement to study their specific concerns through reports and surveys to create possibilities for rightful interventions for those at high risk and to ensure retention of students. Though absent in the RTE Act, policies realise significance of expansion of vocational, open learning and adult learning programs (requirement of SDGs 4.3, 4.4, 4.5). For persons with disabilities, these can be critical in aiding individual development. However, the policies do not contemplate on specific requirements of persons with disabilities or formulate measures to ensure better outreach. There are research gaps on situation of children with disabilities in secondary schools, and on barriers for women, gender, and other vulnerable groups with disabilities. Since the specific concerns are not known, the government should develop methods to identify, document and disseminate research-based information to formulate best practices.

At present, even the 100 aspirational districts that are being targeted to achieve SDG Goals at the earliest, including in education, are not being measured for school readiness and integration of children with disabilities.¹⁰⁰ A fundamental hurdle is the absence of adequate budgeting to ensure education of children with disabilities. A study by the Centre for Budget and Governance Accountability, indicates that the allocation to the DePwD stands at 0.04 percent and for relevant departments in other ministries it stands at 0.008 percent of the GDP.¹⁰¹ In 2020-2021, a pandemic year that required high welfare outputs, the allo-

¹⁰⁰ MINISTRY OF HUMAN RESOURCE DEVELOPMENT, DEPARTMENT OF SCHOOL EDUCATION AND LITERACY, Right of Education, *Transformation of Aspirational Districts*, July 5, 2018, available at <http://103.7.128.246/web/images/booklet.pdf> (Last visited on September 16, 2023).

¹⁰¹ CBGA, *Walking the Tightrope: An Analysis of Union Budget 2023-24*, 10-102, February, 2023, available at <https://www.cbgaindia.org/wp-content/uploads/2023/02/Walking-the-Tightrope-An-Analysis-of-Union-Budget-2023-24.pdf> (Last visited on September 16, 2023); It should also be noted here that as per the UN Flagship Report on Disability and Development

cation of DEPwD stood originally at INR 1325 crores, revised to INR 900 crores, with the actual expenditure being INR 862 crores.¹⁰² For the SSA, the inclusive education component is unclear due to absence of disaggregated data (requirement of SDG 17). However, through calculations from the minutes of the project approval board, it is estimated to have declined from INR 1066.7 crores (2019-20) to INR 707.8 crores (2020-21).¹⁰³

The National Institute of Inclusive and Universal Design and Indian Sign Language Research and Training Centre have been mentioned in the budgets but while the Institution has not been established, the Centre received no allocations since 2020-2021.¹⁰⁴ At the Centre, the NPPD suggests a bridge coordination between education and other relevant ministries since MoE is the nodal agency that is entrusted with the implementation of inclusive education. However, at present, there is an absence of cohesiveness between different ministries and between the three tiers that is the Centre, State and local bodies.

To conclude, in order to achieve the education target of quality education under the SDGs, the government cannot afford to abandon the vulnerable populations. Any concerted efforts for providing education to children with disabilities require the allocation of an appropriate budget, the establishment of effective monitoring mechanisms, and a horizontal network across departments and a vertical network between Centre, State and local bodies that follows a bottom-up approach.

of 2019, it is evident from the data available from fifty-six countries (around 2014) that public expenditure on social programmes for disabled on an average was 1.34 percent of the gross domestic product and it varied from 0.001 percent of the gross domestic product in Indonesia to 4.73 percent in Denmark, see UNITED NATION DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *Disability and Development Report*, Figure II.134, 262, 2018, available at <https://social.un.org/publications/UN-Flagship-Report-Disability-Final.pdf> (Last visited on September 16, 2023).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ CBGA, *Budget in the Time of Pandemic: An Analysis of Union Budget 2021-22*, Figure 5.8, 68, February, 2021, available at <https://www.cbgaindia.org/wp-content/uploads/2021/02/Budget-in-the-Time-of-Pandemic-An-Analysis-of-Union-Budget-2021-22.pdf> (Last visited on September 16, 2023).