

LEGALFOXES LAW TIMES

EDUCATIONAL RIGHTS OF PERSONS WITH LEARNING DISABILITIES¹

INTRODUCTION

India is a nation that have a legacy which can be traced back to centuries where the gurukul system was followed where the student learned under the guidance of the guru for long years which a long process that molds the physical and mental abilities of the student to the best. As the time progressed in the colonial era the system of schooling gained more importance as a result of which schooling system was set up by the britishers. various schools and universities were set up to develop the education sector of India under the colonial rule. Post-independence the Indian government focused more on structuring education and increasing the educational access to every citizen regardless of caste creed or sex. Under the first minister for education Maulana Abdul Kalam Azad established the University Education Commission (1948–1949), the Secondary Education Commission (1952–1953), University Grants Commission and the Kothari Commission (1964–66) which advocated compulsory education till the age of 14 which also outlined the 3 languages formula in order to make necessary changes and to modernize the Indian education sector.

In 1961 National Council of Educational Research and Training (NCERT) was formed by the union government as an autonomous body to formulate educational policies. By 1986 Rajiv Gandhi introduced a new policy which emphasized more on the development of backward classes of the society and operation blackboard was implemented in this period to increase primary schools in our nation. In 1992 the education policy was revamped by the Narasimha Rao Government which proposed “common minimum program” and by 2020 new education policy was proposed with various suggestions

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Apart from all these the government introduced various schemes such as

- National Programme for Education of Girls at Elementary Level (NPEGEL),
- Rashtriya Madhyamik Shiksha Abhiyan (RMSA) for development of secondary education, launched in 2009
- Saakshar Bharat (Saakshar Bharat/Adult Education) to create a literate society through a variety of teaching learning programmes for non-literate and neo-literate of 15 years and above
- Rashtriya Uchchar Shiksha Abhiyan (RUSA) for development of higher education, launched in 2013
- Samagra Shiksha Abhiyan (SSA) - overarching programme for the school education to ensure equitable learning outcomes
- Inclusive Education for the Disabled at Secondary Stage (IEDSS), District Primary Education Program (DPEP) - launched in 1994 as a major initiative to revitalize the primary education system and to achieve the objective of universalization of primary education.

Apart from all these Right to Education (RTE) - Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right.

Even after implementing various provisions to promote growth of education almost 40% of the students drop out of schools before the completion of their primary education. One of the main reasons for high dropout rate is the lack of a holistic education that caters to the needs of every child. Even after implementing dedicated educational policies all these years a vital part of education was neglected or ignored by various governments for long period. A substantial proportion of children in India suffer from various types of Learning Disabilities (LD). Which is not yet addressed in any of the above mentioned policies or schemes by various government a majority of children with learning disabilities remain undetected in India due to different reasons including lack of awareness about the incidence and prevalence of LD, confusing regulations on the provision of accommodation for such children in schools and the medium of instruction.

LEARNING DISABILITIES (LDS)

According to the rights of persons with disabilities act, 2016“specific learning disabilities” is defined as a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;

Learning disabilities may be defined as that a learning disability is a disorder in one or more basic psychological processes that may manifest itself as an imperfect ability in certain areas of learning, such as reading, written expression, or mathematics. in short it can express as an umbrella terms which covers various types of learning disabilities in broad sense they can be termed as Learning disabilities may manifest as difficulty:

- (1) processing information by visual and auditory, means, which may impact upon reading, spelling, writing, and understanding or using language,
- (2) prioritizing, organizing, doing mathematics, and following instructions
- (3) storing or retrieving information from short- or long-term memory
- (4) using spoken language, and
- (5) clumsiness or difficulty with handwriting.

But they are not any kind of emotional disturbances, intellectual disabilities or sensory impairments. This situation can be diagnosed through psychoeducational or neuropsychological evaluation.

SPECIFIC LEARNING DISABILITIES

According to Individuals with Disabilities Education Act (IDEA) USA,“Specific Learning Disability (SLD) means a disorder in one or moreof the psychological process involved in understanding or in usinglanguages, spoken or written, which may manifest itself in an imperfectability to listen, think, speak, read, write, spell or to do

mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include children who are having learning problems which are primarily the result of visual, hearing, or motor handicaps; of mental retardation, of emotional disturbance or of environmental, cultural or economic disadvantages.”

TYPES OF LEARNING DISABILITIES

Learning disabilities can be categorized

- Learning disabilities in reading - (dyslexia)
- Learning disabilities in math- (dyscalculia)
- Learning disabilities in writing- (dysgraphia)
- Learning disabilities in motor skills- (dyspraxia)
- Learning disabilities in language - (aphasia/dysphasia)

Auditory and visual processing problems:

- Auditory processing disorder
- Visual processing disorder



1. Dyslexia

“OUR MISSION YOUR SUCCESS”

Dyslexia is the most common form of all learning disabilities. It is a language-based disability in which a person has trouble understanding words, sentences, or paragraphs. People with dyslexia often have problems with processing or understanding what they read or hear. Many dyslexic people are notably talented in arts and music; 3-D visual perception; athletic and mechanical ability.

2. Dyscalculia

Dyscalculia is a life-long learning disability that affects the ability to grasp and solve math concepts. There are many different types of math disability and these can affect people differently at different stages of a person’s life. People with dyscalculia often have difficulty manipulating numbers in their head and

remembering steps in formulas and equations. Just like dyslexia, people with dyscalculia can be taught to achieve success.

3. Dysgraphia

Dysgraphia is a writing disability where people find it hard to form letters and write within a defined space. Many people with dysgraphia possess handwriting that is uneven and inconsistent. Many are able to write legibly but do so very slowly or very small. Typically, people with dysgraphia are unable to visualize letters and do not possess the ability to remember the motor patterns of letters and writing requires a large amount of energy and time.

4. Dyspraxia

Dyspraxia is a disorder that affects the development of motor skills. People with dyspraxia have trouble planning and executing fine motor tasks, which can range from waving goodbye to getting dressed. Dyspraxia is a life-long disorder with no cure, but options are available for helping to improve a person's ability to function and be independent. Dyspraxia is not a learning disability, but it commonly coexists with other learning disabilities that can affect learning ability.

5. Attention deficit hyperactivity disorder (ADHD)

ADHD is a disorder that causes people to lose focus on tasks very easily. ADHD has two main types, with a third being a combination of the two. Hyperactive-Impulsive ADHD is distinguished by the persons excessive amount of activity. This may include constant fidgeting, non-stop talking, problems with doing quiet activities, trouble controlling their temper, and more. Inattentive ADHD causes people to not put the needed attention into a required task. People with inattentive ADHD may struggle with paying attention to instruction, daydream a lot, process information slowly, become bored easily, and be very poorly organized. ADHD is not a learning disability, but can cause people to struggle with learning and is commonly linked to other learning disabilities.

6. Auditory processing disorder

Professionals may refer to the ability to hear well as "auditory processing skills" or "receptive language." The ability to hear things correctly greatly impacts the ability to read, write and spell. An inability to distinguish subtle differences in

sound, or hearing sounds at the wrong speed make it difficult to sound out words and understand the basic concepts of reading and writing.

7. Visual processing disorder

Problems in visual perception include missing subtle differences in shapes, reversing letters or numbers, skipping words, skipping lines, misperceiving depth or distance, or having problems with eye-hand coordination. Professionals may refer to the work of the eyes as “visual processing.” Visual perception can affect gross and fine motor skills, reading comprehension, and math.

8. Non-Verbal Learning Disabilities

This is a disorder which is usually characterized by a significant discrepancy between higher verbal skills and weaker motor, visual spatial and social skills. Typically, an individual with NLD (or NVLD) has trouble interpreting nonverbal cues like facial expressions or body language, and may have poor coordination.

INTERNATIONAL LEGAL FRAMEWORK

The UN Committee on Economic, Social and Cultural Rights (hereinafter “UNCESCR”), discrimination towards persons with disabilities means “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights² in addition to this the UN Committee on the Rights of the Child (hereinafter “UNCRC”) has stated in General Comment No. 5 that States are required to take active steps in identifying groups of children whose rights demand special measures for their recognition and realization Committee further stated that to this end, that state parties should include disability as an explicit ground of prohibition on discrimination within national laws, provide effective and readily accessible remedies for violations of rights of children with disabilities and their parents, and conduct awareness

²UNCESCR general comment No. 5, at para. 15

and educational campaigns to prevent de facto discrimination against children with disabilities³

In the context of children with disabilities, several provisions of the CRC come into focus. Article 23 states that every child with a disability should enjoy a “full and decent life” in such conditions that ensures the child’s dignity, promote the child’s self-reliance and facilitate the child’s active participation in the community.⁴ While Art.23 does not describe what constitutes a mental or physical disability, the UNCESCR relies on the approach taken from the 1993 UN Standard Rules on the Equalization of Opportunities for PWDs in defining ‘disability’. It states that: “The term “disability” summarizes a great number of different functional limitations occurring in any population...People may be disabled by physical, intellectual, or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.”⁵

MEASURES ADOPTED BY OTHER NATIONS

Here the paper examines the policies adopted by various nations in order to promote the access of education and to improve the situation of persons with learning disabilities

1) UNITED KINGDOM

Over 1.2 million people in England have a learning disability. The Government and NHS England are working to reduce health inequalities for people with a learning disability and have established national programmes to improve treatment and outcomes. The Government’s Mandate to the NHS 2018-19 set an objective for the NHS to close the health gap between people with mental health problems, learning disabilities and autism and the population as a whole. Government introduced plans like

- ✓ NHS Long Term Plan (published in January 2019)

³ UNCRC General Comment 9, at para. 9

⁴ Sharon Detrick “A Commentary on the United Nations Convention on the Rights of the Child”, Martinus Nijhoff Publishers 1999 at p.377. Article 23(1) CRC 1989 reads: “States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.”

⁵ UN GA Declaration on the Rights of Disabled Persons in 9 Dec 1975 through Res. 3447(XXX) at para.1

Which aims to recognize learning disability and autism as clinical priority areas which is also committed to increase annual checkup people with learning disabilities. The government also introduced mandatory training on learning disabilities for social workers, educational institutions and health care workers

- ✓ The Special Educational Needs and Disability Act (2001) amended Part 4 of the Disability Discrimination Act in England, Wales, and Scotland, and the Special Educational Needs and Disability Order of 2005 prevented discrimination against students or prospective students with disabilities in Northern Ireland
- ✓ National Learning Disability Mortality Review Programme (LeDeR) to review and learn from deaths of people with a learning disability with the aim of improving services, care and support nationally. The third annual report was published in May 2019, which found that in a large number of cases, people received poor standards of healthcare which significantly impacted on their well-being or directly contributed to their death. The report made twelve recommendations for the education, and health and care systems
- ✓ Increasing the number of people with learning disabilities in work
In November 2017 the government set out its strategy on how it intends to get a million more people with disabilities into employment by 2027 in the Improving lives: the future of work, health and disability White Paper. The strategy is partly based on supporting people with disabilities and long-term health conditions to find work, but also to provide investment to support these people to stay in work.
- ✓ CANADA
Although Canada does not have national legislation in place that provides access to special education for individuals with disabilities, the Canadian Charter of Rights and Freedoms (1982),

an anti-discrimination bill, ensures that the civil rights of individuals with disabilities are protected. In addition, each Canadian province has policies in place that ensure the right to free public education for individuals with disabilities. Early identification of LD is supported in each province. Typically, when a classroom teacher identifies a struggling student, the pre-referral process is initiated. This process includes systematic observation and evaluation of the student's challenges and strengths in both learning and behavior and an analysis of instruction to rule out inadequate instruction

✓ CHINA

Article 18 of the Law on the Protection of Persons with Disabilities was passed in 1990; this statute specifically emphasized that the state shall provide free education to all students with disabilities. Thereafter, educational institutions from preschool through high school were required to provide education to all students with disabilities, and education for students with disabilities became a part of mainstream schools. In 1994, the Regulations on Education for Persons with Disabilities Act (Chinese State Council, 1994) was passed. This act emphasized nine years of compulsory education for students with visual impairments, hearing and speech impairments, physical disabilities, intellectual disability, and psychiatric disability, however, it failed to specify the educational services required for students with autism and learning disabilities

Definition and identification of LD. Though specific diagnostic criteria for dyslexia exists in Hong Kong, mainland China currently has neither a definition of LD nor any means of identifying individuals with LD. In Hong Kong, dyslexia are diagnosed

using a 3-pronged approach: average or above average intelligence (i.e., $IQ > 85$), a discrepancy of one standard deviation between the literacy composite scores and the IQ score, and at least one other

cognitive composite score that is discrepant from the respective age mean in reading and writing.

✓ NETHERLANDS

Earlier laws governing education for all students in the Netherlands include the Primary Education Act (1981 & 1998), the Special Education Interim Act (1985), and the Law on the Expertise Centers. In the last 10 years, the emphasis was on increased integration of students with special needs in mainstream settings and the associated reduction in the number of students enrolled in special schools. Two provisions of educational law in the Netherlands provide language directly related to dyslexia. Specifically, the Law on Secondary Education provides funding for remedial support and the statutory order on final exams provides accommodations such as extended completion time although these provisions within the law are interpreted differently depending on the school.

INDIAN STATES AND LEARNING DISABILITY POLICIES

According to the rights of persons with disabilities act, 2016 section 16 mandates that the respective governments should provide inclusive education to the children with disabilities, section 16(vi) explains that to detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them. Also, under section 34 which explains about the reservation which is provided by the government includes the persons with learning disability which should be 1%.

Apart from these there are no explicit provisions or a unified national policy to address the concerns relating to the persons with specific learning disabilities. There are various policies adopted by various state governments which are as follows:

Maharashtra

The state board of Maharashtra recognize certification of students with LDs only from 3 hospitals – Lokmanya Tilak Municipal Medical College, Mumbai Sion Hospital and Nair Hospital. The KEM Hospital in Mumbai also certifies children having LD or from the Government Surgeon

General in Mumbai. Maharashtra Government has provided concessions for children with LD from class I to XII. However, in the absence of a National Policy for LDs, many schools in Mumbai have been reluctant to follow these guidelines. There is a general feeling amongst those in the education sector that these concessions will dilute the standards of achievement and create difficulties with parents of other children. According to an article published in 2006, in Times of India, cases have been cited where children with LD have been denied concessions at examinations. In response to the parent's petitions, the Mumbai High Court directed all schools in Maharashtra to abide by the guidelines for students with LD.

Karnataka

The Karnataka Government states that candidates with SLDs need to be certified from the National Institute of Mental Health and NeuroSciences (NIMHANS), Bangalore, St John's Hospital, Bangalore or All-India Institute of Speech and Hearing, Mysore. The certification can be signed by any psychiatrist working in a government hospital or any clinical psychologist with M.Phil. Degree or can be attested by a government doctor but the doctor should not be below the rank of a district surgeon. The National Institute of Mental Health and Neurosciences (NIMHANS), Bangalore has developed an index to assess children with SLDs. There are two levels of this index. They are Level I for children of 5-7 years and Level II for children of 8-12 years. The index consists of the following tests:

- a. Attention Test (Number cancellation)
- b. Visuo-motor skills (the Bender Gestalt test and the Developmental test of Visuo-Motor integration)
- c. Auditory and Visual Processing (discrimination and memory)
- d. Reading, writing, spelling and comprehension
- e. Speech and Language including Auditory behavior and Verbal expressions
- f. Arithmetic Tests

KERALA

Till 2016, a SLD certificate with a LD assessment and IQ assessment report from a psychiatrist who held a rank above of Assistant Surgeon in any Government Hospital was valid in Kerala. The report needed to specify the deficit (dysgraphia/dyscalculia/dyslexia) and be countersigned by the DEO. The request for an assessment and later submission for provisions must be made by the school principal. Due to some discrepancies, this system is being reviewed this year.

DELHI

Until a few years, Delhi Government allowed pediatricians, psychiatrists, clinical psychologists, special educators to provide certification. Currently, special educators and clinical psychiatrists have stopped certifying; they only assess and provide their assessment report to patients. The children are referred to the Institute of Human Behavioral and Allied Sciences (IHBAS). The Education department, NCT of Delhi have appointed special educators, who call themselves special teachers and there are a lot of confusing messages circulating regarding whose certification the various school boards would recognize for granting provisions. The Delhi High Court, recognizing dyslexia as a form of disability has ordered Delhi University to grant admission to dyslexic students under a 3% quota for people with disabilities. The Delhi Government has planned to test 35,000 students for learning disabilities, after 3.5 lakhs students out of 6.2 lakhs failed to read their textbooks in an assessment conducted by the government for classes VI to VIII during July 2016. Post the assessment, a campaign called 'Every Child can Read' was launched in November 2016. After the campaign, about 1 lakh students out of the 3.5 lakhs were able to read, but 35,000 students had showed no progress. So, the Delhi Government has planned to launch Project Smile, under which these 35,000 students will be tested for learning disabilities. The Government also intend to provide special assistance to these students. Noticing the efforts taken by these 4 states, in February 2005, the Goa Government introduced a novel scheme to promote education amongst students with special needs, slow learners and children with LD in the state. The families of the children with special needs are provided with financial benefits like transport, uniform allowance etc. Institutions are also given incentives to promote inclusion. Though this was a laudable initiative, the absence of guidelines has resulted in unfocused initiatives.

The Central Boards of Education have also recognized the existence of these types of disorders and have mandated certain types of certification for students with LDs. The ICSE council may

grant exemption from the study of a second language, to a candidate with special difficulty, provided the severity of the disorder. Such an exemption will be granted only on a recommendation sent by the head of the school and on provision of the necessary documents certified by a competent authority approved by the State/Central Government and acceptable to the Council. Similarly, the CBSE board provides for the head of the institution to issue a certificate of school-based evaluation covering the past 10 years' academic record

CONCESSIONS FOR STUDENTS WITH LDS

A few State Governments and the above-mentioned boards give concessions for the students with LDs in an effort to provide a holistic education.

The Maharashtra Board of Secondary & Higher Secondary Education provides (I) Extra time - 30 minutes for SSC and 1 hour for HSC students;

(ii) Exemption from second and third language (Hindi/Marathi) for HSC and SSC students respectively. Students may take a vocational subject instead;

(iii) Exemption from paper II in Mathematics (Algebra and Geometry) for SSC students;

(iv) Students may take a vocational subject of 75 marks in lieu of Mathematics Paper II; and (v) a writer may be provided as per the rules of the board. For students of class I to IX, the school may apply to the Deputy Director of Education through the Divisional Inspector for similar provisions. Maharashtra remains the only state where children with SLD are trained to take examinations, incorporating the provisions, from primary classes onwards. Similar provisions exist for students with LD attending schools affiliated to the ICSE and CBSE education board as shown below.

• ICSE – (I) Extra time - 15 minute/per hour or 25% of total time extra;

(ii) Exemption from second language: student need not take another subject in lieu;

(iii) Use of calculator in some cases for mathematics;

(iv) Question paper will be read out to the student; and

(v) Use of a writer, if required, as per the rules.

- CBSE

(I) Use of a writer as per the rules of the board;

(ii) Additional 1 hour for each paper; and

(iii) One compulsory language as against 2 in addition to any 4 of the following subjects:

mathematics, science, social science, another language, music, painting and home science.

A recent circular from the Higher and Technical Education Board extends these provisions to technical institutions, non-agricultural and agricultural universities, effectively covering students in under-graduate and postgraduate courses. In the 29 States and 7 Union Territories in India, only these 5 states have taken an initiative to certify and diagnose learning disabilities. But considering the magnitude of students with LDs in India, the efforts by these states are negligible. A national policy must be framed by the Central Government and it should contain uniform guidelines for recognition and certification of these disorders. The assessment pattern that should be followed in schools should be the same. The guidelines should be common for all schools irrespective of the boards. Only when there are uniform methods, efforts will be taken by all other states.

FUTURE POLICY

The Government of India is committed to 'Education for All'. Inclusion is the key in India's current education policy. There have been various initiatives in the field of education such as DPEP, National Policy of Education even the new education policy of 2020 is mute and deaf about the rights of students with LD. The Government of India also launched Sarva Siksha Abhiyan for universalization of Primary Education but the objective cannot be achieved without including students with special needs including LD under primary education. For a proper inclusive education system, especially for LDs, the Government can take the following measures:

- Creating Awareness: Because of varied socio-cultural factors and multi lingual usage in India, the awareness on LDs is very low in India. Even those who know, especially the parents, see learning disability as a psychological problem and refuse to accept it. They don't wish to go to a 'mental hospital' for any reason. As a first step, the stigma on LDs should be removed. Resource manual on LDs should be circulated to all teachers and parents. LDs should not be treated as a

psychological issue. It is a defect in the information processing ability in the child. The resource manual should contain the steps for early recognition of LDs.

- ✓ There is a need to form a unified policy to regulate the current gaps relating to the children with LD. India is a nation where education for all exists as a fundamental right and a certain portion of students are often ignored, bullied and dropped out from basic education through such learning disabilities which lack awareness and proper regulation.
- ✓ There is a need to set up committees regulating to LD by respective education councils proper teaching guidelines should be delivered to teachers and educators which will help to identify students with learning disabilities, assessing the kind of disability the measures should be uniform for all States and boards. The commission will also look into the implementation of the guidelines and has the authority to provide incentives for institutions for better inclusion of these students. Studies have shown that as many as 33% of students with SLDs are gifted. It is interesting to note that many successful people like Walt Disney, Albert Einstein, and Winston Churchill etc., had SLDs. Therefore, with proper recognition, intervention and hard work these students can succeed
- ✓ Special schools can also be set up by the various State Governments that cater to the special needs of the students with learning difficulties. Special education with special teaching methods and a student – teacher ratio of 3:1 can be provided to give individual attention to these students

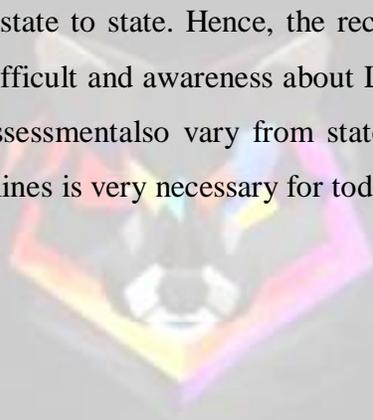
CONCLUSION

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more

than an animal. Right to Education Act (RTE) provided free and compulsory education to children in 2009 and enforced it as a fundamental right under Article 21-A.

The 86th amendment to the constitution of India in 2002, provided Right to Education as a fundamental right in part-III of the Constitution. Same amendment inserted Article 21A which made Right to Education a fundamental right for children between 6-14 years. The 86th amendment provided for a follow-up legislation for Right to Education Bill 2008 and finally Right to Education Act 2009.

There are a large number of students with LDs, particularly in India and most of them go undetected. India is a diverse country with varied socio-cultural backgrounds. The medium of instruction in schools varies from state to state. Hence, the recognition and identification of the students with LDs become very difficult and awareness about LDs is also very low in India. The guidelines for certification and assessment also vary from state to state. Therefore, a National Policy that provides uniform guidelines is very necessary for today.



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