



Specific learning disabilities and higher education: The Indian scenario and a comparative analysis

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Abstract

Learning is in itself an institute of life. The impact of disability, physical or otherwise, on daily activities is profound. In 2016, the Indian law on disabilities became more inclusive by broadening the categories of disabled persons and widened the rights of persons with disabilities. In the Rights of Persons with Disabilities Act 2016, besides revising the benefits for physically disabled persons, the recognition of equal rights to persons with Specific Learning Disabilities (SLDs) is historic. The paper, set in the context of higher education, explains the concessions and accommodations provided under the current legislative scheme for SLDs and explores how different jurisdictions have addressed SLDs. Secondly, to realise how the rights provided by these legislations are to be operationalised in higher education institutions; this step assumes significance because neither students with SLDs have access to trained personnel, nor the accommodations in the higher education has been well-articulated. The findings of the comparative study and understanding of the Indian legislative framework suggest measures to how higher educational institutions are to be made more accessible to SLDs.

Keywords Specific learning disabilities (SLDs) · Disability law · Comparative study · Higher education

1 Introduction

The Indian Constitution guarantees to every individual the right to equality including equality before the law, non-discrimination and equality of opportunities, and the overarching right to life and dignity as fundamental rights under Part III. In the context of disability rights, it is an implication that hurdles, physical or otherwise,

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faced by the disabled should not hinder opportunities, let alone render individuals ineligible.¹ From the perspective of the state, disability rights also mean that disability is acknowledged as a facet of one's self and that it is a necessity that the state now recognises and works on certain accommodations for persons with disabilities to better allocate and utilise human resources.

Although there are different facets of life where persons with disabilities could be supported and where accommodations could be possibly given impetus, this work focuses on the aspect of education, particularly, higher education in the context of disability rights and accommodations provided thereof. While disability induced by physical structures and obstruction are dealt with universally without regard to the particular field of life, certain disabilities crop up solely in the field of learning. These disabilities pertain to engaging in intellectual activities at different age levels, and different levels of maturity.² Working with these disabilities becomes all the more important in the context of the Indian Constitution's right to 'free and compulsory education to all children of the age of six to fourteen years...' under Article 21A. Although the Parliament has enacted the Right of Children to Free and Compulsory Education Act 2009³ pursuant to the said article, for addressing the issues affecting persons with disabilities, the Parliament has in 2016, which also to give effect to the UN Convention on the Rights of Persons with Disabilities, enacted the Rights of Persons with Disabilities Act 2016 (The Indian RPWD Act).⁴ The Indian RPWD Act ushered a new beginning for persons with disabilities by conferring responsibility upon the appropriate governments to take effective measures to ensure that *divyangjan*⁵ enjoy their rights equally with others. Let us look at the scheme of the Indian RPWD Act to understand the measures adopted to guarantee better living to disable persons.

2 Scheme of the Indian RPWD Act

The Indian RPWD Act has been considered as bringing in a new model of governance for the disabled. Literature indicates that the Indian RPWD Act takes into account social factors that the disabled are likely to face in its 'medical-social model' of governance unlike the erstwhile Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act 1995, which was completely

¹ See Anna Lawson and Angharad E Beckett, 'The Social and Human Rights Models of Disability: Towards a Complementarity Thesis' (2021) 25(2) *The International Journal of Human Rights* 348.

² Charlene Andolina, 'Syntactic Maturity and Vocabulary Richness of Learning Disabled Children at Four Age Levels' (1980) 13(7) *Journal of Learning Disabilities* 27. The work explains and contrasts the changes observed in learning trends of learning disabled students and their peers.

³ The Right of Children to Free and Compulsory Education Act 2009, Act No. 35 of 2009.

⁴ The Rights of Persons with Disabilities Act 2016, Act No. 49 of 2016. (The Indian RPWD Act).

⁵ The word in Hindi refers to the 'specially-abled' and is an attempt at reducing the social stigma around persons with disabilities. The Gazette Notification of the Indian RPWD Act, in its Hindi version, uses the said word in lieu of 'person with disability.' In the contemporary context of SLDs and mental health as well, the word is retained for its use known from the Indian RPWD Act.

based on the medical model.⁶ The Indian RPWD Act and its role in disability rights has been articulated thus by the Supreme Court:

Part III of our Constitution does not explicitly include persons with disabilities within its protective fold. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled. The [Indian RPWD Act] seeks to operationalize and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its ethos of inclusion and acceptance.⁷

The Indian RPWD Act at its base is centred around the ‘person with a disability’ (further classification of this broadest definition is discussed in the next section) and provides rights and entitlements in different fields of life such as education and healthcare. In Chapters XI–XIII, the Indian RPWD Act sets up three different institutions for the enforcement and implementation of its provisions. Under Chapter XI, Central and State Advisory Boards are policy and advisory bodies that function at their respective levels on disability matters; while the state governments have been empowered to constitute and suitably empower district-level committees on disability matters.⁸ Chief Commissioner and State Commissioner for persons with disabilities appointed under this legislation supplement the functioning of the advisory boards and ensure proper implementation of the Indian RPWD Act.⁹ Further, special courts in every district are designated for speedy trials of offenses (including atrocities, fraudulent availing of benefit meant for a person with benchmark disability) under Chapter XIII.¹⁰

The normative character of the legislation stems from the disability rights listed in Chapters II and III. The rights enshrined here are crystallised both from the international convention that was sought to be implemented, and also from different facets of Fundamental Rights under the Indian Constitution.¹¹ The scheme of this legislation is further explored in subsequent sections of this work as the focus shifts from disability in general to the particular challenges that crop up in working with SLDs.

3 SLDs & the Indian RPWD Act

The Indian RPWD Act uses ‘specified disabilities’ as disabilities as prescribed in the Schedule of the Act.¹² Entry 2 of the Schedule mentions specific learning disabilities and autism spectrum disorder as two kinds of intellectual disabilities. Certification

⁶ Abhilash Balakrishnan et al., ‘The Rights of Persons with Disabilities Act 2016: Mental Health Implications’ (2019) 41(2) *Indian Journal of Psychological Medicine* 119, 120–121.

⁷ *Vikash Kumar v Union Public Service Commission* (2021) 5 SCC 370 [32].

⁸ The Indian RPWD Act ss 60–73.

⁹ *Ibid.* ss 74–83.

¹⁰ *Ibid.* ss 84, 85.

¹¹ India signed the United Nations Convention on the Rights of Person with Disabilities (UNCRPD) and subsequently ratified the same on October 1 2007.

¹² The Indian RPWD Act, The Schedule entries 1–6.

for these disabilities, the procedure, and the certifying authority for specified disabilities have been laid out in Chapter X of the Indian RPWD Act. Subsequently, the Indian RPWD Act classifies persons with disabilities into 3 categories: a person with benchmark disability, a person with a disability, and a person with a disability having high support needs.¹³ The first category includes persons who have specified disabilities of not less than 40 percent and are certified as such. The second category of person with a disability is the broadest class under the Act which includes persons with disability (physical or otherwise); disability that ‘hinder[s] his full and effective participation in society equally with others.’¹⁴ The second and the third categories differ on the support requirement of the individual from the society.

The work by Balakrishnan et al. also elaborates on the implementation of the Indian RPWD Act in the Indian context and the early detection of SLDs.¹⁵ A prime cause of concern in the implementation of the Indian RPWD Act has been the lack of trained medical personnel who can identify, diagnose, and certify an SLD. In this regard, the authors write:

Another significant concern is that, in a populous country like India, where the prevalence of SLD varies from 3% to 10%, the number of people who have SLD and reservations for them would be in millions. As the professionals who assess SLD, that is, clinical psychologists with adequate training, are limited in our country, the implementation of this section of the Act requires policy-level changes.¹⁶

Thus, concerning SLDs, there is a strong infrastructural requirement to identify and address many problems faced by the disabled. Social inclusion¹⁷ and equality being the ultimate aim of this legislation, it is imperative that with this legislation as a means, workforces and the general public are sensitised to the special needs of the disabled individual. Further, SLDs in particular are seen as a distinct class of disability, different from physical disabilities, which require strategic interventions for upliftment.¹⁸ SLDs would thus need special attention in the discourse on disability rights.

¹³ The Indian RPWD Act s 2(r) ‘person with benchmark disability’ means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority; The Indian RPWD Act s 2(s) ‘person with disability’ means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others; The Indian RPWD Act s 2(t) ‘person with disability having high support needs’ means a person with benchmark disability certified under clause (a) of sub-section (2) of Section 58 who needs high support.

¹⁴ The Indian RPWD Act s 2(s).

¹⁵ Balakrishnan et al., ‘The Rights of Persons with Disabilities Act 2016’ (n 6).

¹⁶ Ibid. 123.

¹⁷ Srikala Naraian and Poonam Natarajan, ‘Negotiating Normalcy with Peers in Contexts of Inclusion: Perceptions of Youth with Disabilities in India’ (2013) 60(2) *International Journal of Disability, Development and Education* 146.

¹⁸ See Suresh Bada Math et al., ‘The Rights of Persons with Disability Act, 2016: Challenges and Opportunities’ (2019) 61(10) *Indian Journal of Psychiatry* 809.

4 SLDs and higher education

As the Indian adult literacy rate (percentage of people aged 15 and above) changed by a factor of 1.82 from 40.76% in 1981 to 74.3% in 2018,¹⁹ it is implied that a greater number of individuals have come into the fold of higher education and higher educational institutions in the country than in the decades earlier. It is in this regard that being able to provide an empathetic and cordial workspace for students with SLDs assumes significance. Although there are a myriad number of cases from the Indian courts on disability rights, not many of them are focused on SLDs or their need for infrastructure. Before moving to the comparative study in the next section, the following paragraphs look at the role of courts and their impact on SLDs and disability rights in the higher education sector.

In *Pramod Arora v. Hon'ble Lt Governor of Delhi*,²⁰ the 2013 Order of the Government of NCT of Delhi was challenged in the Delhi High Court. The impugned Order had equated to unequal groups of individual students, namely children belonging to disadvantaged groups and children with disabilities. The Order in question had deprived children with disabilities of their right to education as the children from disadvantaged groups were nonetheless benefiting from affirmative action under Article 15 of the Constitution. It was also ruled by the Court that as a subsequent action, the Order had served to restrict any special treatment that schools could employ to admit children with disabilities. Hence, by virtue of the classification equating disabled persons with other disadvantaged groups, the 2013 Order was illegal.

The Supreme Court in one of the most protracted Public Interest Litigations, had on 04 December 2017, in the case of *Rajneesh Kumar Pandey v. Union of India*,²¹ started monitoring the progress made by the State of Uttar Pradesh regarding its initiative that promoted special schools for children with disabilities, including children with specific learning disabilities. To this end, the Court had nominated a two-member committee to file a report on the situation of such schools in Uttar Pradesh. The writ petition had initially prayed for mandamus from the Court to impart compulsory education to all children including children with disabilities.²²

These two cases point out two crucial aspects of disability rights. First, that in light of the design of the Constitution and the statutory scheme on education and disability, affirmative action (reservation of positions for the disabled) can be considered to be the first step taken in the course of one's education. Second, that concerning SLDs, there is a recognised necessity to provide a specially-abled distinct environment, equipped with necessary infrastructural means for the teaching-learning processes to thrive. The special environment needed in this regard is over and beyond the one that is necessitated to truly achieve the meaning of 'inclusive

¹⁹ 'India' (*UNESCO Institute for Statistics*, 10 April 2021). uis.unesco.org/en/country/in. Accessed 29 September 2021. Data as of September 2020.

²⁰ *Pramod Arora v Hon'ble Lt Governor of Delhi* (2014) SCC OnLine Del 1402.

²¹ *Rajneesh Kumar Pandey v Union of India* W P (C) 132/2016. [Order dated 4 December 2017].

²² *Ibid.* [Order dated 8 March 2016].

education’ in light of historical and socio-political factors that influence education (including higher education) in the country.²³ It is a matter of fact that the focus to develop support system for SLDs in higher education is still a non-starter. There is a need to bring in institutional and structural changes in higher educational institutions to realise the goal of inclusive education as envisaged in the Indian RPWD Act.

5 Comparative study

It is desirable to look at the other jurisdictions to plan the strategy and to frame implementable plan to give effect to the spirit of the Indian RPWD Act. This section compares the provisions of selected jurisdictions to strengthen the positioning of SLDs in the legal landscape related to the disabled. It examines the questions including the definitional aspects—symptoms and diagnosis of SLD, and how different institutions play a role in identifying and operationalising disability rights, particularly in higher educational institutions.

5.1 Definition of the SLD: Indicators/symptoms

The United States’ (US) legislations work in two aspects. The first one is based on school-level education and is encapsulated in Title 20, Chapter 33 of the US Code—‘Education of Individuals with Disabilities.’²⁴ Here, the definition of a ‘Child with Disability’ indicates the cause of disability (including a specific learning disability or a physical disability) and a necessity for special education by reason thereof.²⁵ But the education contemplated for such children with disabilities, termed as ‘Free Appropriate Public Education,’ has been defined inclusively as ‘an appropriate pre-school, elementary school, or secondary school education in the State involved.’²⁶

The second is based on the non-discrimination of individuals with disabilities, which is covered by the Americans with Disabilities Act of 1990 (ADA).²⁷ Here the broad-based definition focuses on one’s limitations from carrying out major life activities.²⁸ As the definition is based on the limitations from carrying out major life activities, such as ‘learning, reading, concentrating, thinking, communicating, and working’, it is much broader and goes beyond any specific diagnosis of a disability, including a specific learning disability of an individual.²⁹ It can also be considered as an extension of Title 20 as individuals who have been diagnosed with certain

²³ Nidhi Singal, ‘Inclusive Education in India: International Concept, National Interpretation’ (2006) 53(3) *International Journal of Disability, Development and Education* 351.

²⁴ 20 USC Ch 33: Education of Individuals with Disabilities.

²⁵ *Ibid.* s 1401 (3)(A).

²⁶ *Ibid.* s 1401 (9)(c).

²⁷ Americans with Disabilities Act 1990, 42 USC Ch 126 s 12101 et seq.

²⁸ *Ibid.* s 12102 (1), (2).

²⁹ *Ibid.* s 12102 (2)(A).

learning disabilities as a ‘child’³⁰ would grow up to avail such non-discriminatory measures when their condition is medically determined to be a permanent ailment or non-curable.³¹ A similar non-exclusionary measure could be found in Title 29 for Federal grants and programs.³²

The broader requirement based on the theme of physical or mental impairment for an individual to avail benefits under the ADA or under Title 29 can be inferred from the legislative history of the ADA:

1. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
2. any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disability.³³

Similar to the definition in the case of the US’ ADA regime, the British statute, the Equality Act 2010, defines disability on the basis of the person having a physical or mental impairment and its ‘substantial and long-term adverse effect ... to carry out normal day-to-day activities.’³⁴ Schedule 1 of The Equality Act while allowing for regulations to prescribe an impairment to be or not to be a disability, provides a broad outline of the meaning of phrases in Section 6(1) including long-term, substantially adverse effects.³⁵ The Act or its extant regulations do not contain provisions specific to specific learning disabilities.

As opposed to the US and the United Kingdom (UK), there is no extant definition of disability—physical or intellectual—in Singaporean law. Discrimination law too is based on remedies in common law or employment law (wrongful dismissal). There is no standard laid down in any statute to determine the extent of disability in a person. Singaporean statutes on education—the Education Act (enacted 1957, revised 1985) and the Compulsory Education Act (enacted 2000, revised 2001) do not deal with disabled children either.³⁶

The most prominent definition of disability is found in the First Enabling Masterplan (EMP 1) 2007-2011, which defined persons with disabilities as ‘those whose

³⁰ Defined in Section 8 of Title 1 of the USC to mean a child born alive at any stage of development.

³¹ 20 USC s 1414 on evaluations, eligibility determinations, individualised education programs, and educational placements of children with disabilities; 20 USC ss 1431-1444 on eligibility, authorisation, and allocation of funds for infants with disabilities.

³² 29 USC s 794 (a).

³³ House of Representatives Report No. 485, 101st Congress, 2nd Session, part 2 (1990), 50; House of Representatives Report No. 485, 101st Congress, 2nd Session, part 3 (1990) 27; Senate Report No. 116, 101st Congress, 1st Session (1989) 21-22. Also see 29 Code of Federal Regulations (CFR) s 1630.2 (h) (1-2) (1998) which contains a similar definition.

³⁴ The Equality Act 2010, c 15 (UK) s 6(1) (The Equality Act).

³⁵ *Ibid.* Schedule 1.

³⁶ The Education Act, Original Enactment: Ordinance 45 of 1957 (Singapore); The Compulsory Education Act, Original Enactment: Act 27 of 2000 (Singapore).

prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory and intellectual and developmental impairments.’³⁷ Subsequently, the Enabling Masterplan Steering Committee endorsed a definition of ‘disability’ that is based on one’s inability to secure, retain places, and advance in education due to physical or intellectual disabilities.³⁸ The Enabling Masterplan 2007-11 acknowledges a standard of IQ of 70 and below in an individual as an intellectual disability.³⁹

Finally, the definition in United Arab Emirates (UAE) is on a medical condition of being disabled (physical, mental, sensational) such that the individual is not able to satisfy ‘ordinary requirements in the conditions of people without special needs.’⁴⁰ A crucial enabling feature of Federal Law No. 29 of 2006 is the POD card (Person of Determination card) issued by the Ministry of Social Affairs. The Ministry’s website requires medical proof of the existence of disability in the person. No specific standards have been provided either in the statute or in any regulations regarding certification of the disability.

5.2 Institutional responsibility and statutory mandate

In the US, basic requirements that need to be satisfied by individuals suffering from learning disabilities are laid down by Congress and there is no further authority that presents such definitions. Congress, however, under Section 749 has mandated the heads of each Executive agency to ‘promulgate such regulations as may be necessary to carry out the amendments to this section.’⁴¹

Further, Equal Employment Opportunity Commission (EEOC), an agency created by the Civil Rights Act of 1964 to enforce workplace non-discrimination has provided a compliance manual for the enforcement of non-discrimination against disabled individuals.⁴² The EEOC manual is also considered a persuasive authority by the courts in many cases.⁴³ Given the broader language used by the statutes and the absence of a clear-cut mechanism, medical or regulatory, for an individual to establish their disability to avail certain rights granted to such individuals, courts

³⁷ Ministry of Social and Family Development, *First Enabling Masterplan (EMP 1) 2007–2011*. <https://www.msf.gov.sg/policies/Disabilities-and-Special-Needs/Pages/EM%201.pdf>. Accessed 6 September 2021. Ch 1.

³⁸ *Definition Of ‘Disability’ For Social Policies*. (Ministry of Social and Family Development, 8 July 2019). <https://www.msf.gov.sg/media-room/Pages/Definition-of-‘Disability’-for-Social-Policies.aspx>. Accessed April 10, 2021.

³⁹ Ministry of Social and Family Development, *First Enabling Masterplan* (n 37).

⁴⁰ Federal Law No. 29 of 2006 (UAE), art 1 (Federal Law No. 29).

⁴¹ 29 USC s 794 (a).

⁴² 42 USC s 2000e-4.

⁴³ See e.g., *McGuinness v New Mexico School of Medicine* 170 F 3d 974, 977-78 (10th Circuit 1998); *Price v National Board of Medical Examiners* 966 F Supp 419, 425-26 (S D W Va 1997).

have in many cases developed mechanisms such as the 3-step analysis to determine if a person is disabled under the ADA regime.⁴⁴

In UK's Equality Act, sub-para (1) of paragraph 12 of Schedule 1 provides that adjudicating bodies in their determination whether a person is disabled or not 'must take account of such guidance as it thinks is relevant.'⁴⁵ There is no statutory mandate on any institution to provide for a consistent set of symptoms of a disability for its diagnosis. Legal adjudication ascertaining a disability in a person is to be made by courts taking into account any guidance available and any further guidance as available to the courts under paragraph 12 of Schedule 1.

The definitional standards of the Singaporean disability law, as discussed in section 5.1 above, are not laid down by a specific institution but by a Steering Committee of the Enabling Masterplan that reports to the Ministry of Social and Family Development. No specific agency or institution has been enabled to consistently define standards of intellectual disabilities in the country.

In the UAE, under Article 11 of Federal Law No. 29 of 2006, 'the Specialised Committee for Health and Rehabilitation Services for People with Special Needs' had been established to undertake a holistic approach on the diagnosis, special needs, medical necessities behind special needs, providing manpower for training and rehabilitation of the person with disabilities.⁴⁶

5.3 Governance models to implement the spirit of the law

The US law bases its applicability to educational institutions on their receipt of Federal funding to their programs.⁴⁷ Institutes receiving Federal funding are barred from discriminating against otherwise able students in the course of their academic functioning. With respect to higher education, the regulations framed by the Department of Education come into play.⁴⁸ These regulations in sub-part 'E' deal with the post-secondary education of disabled students. Concessions such as 'changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted', provisions for auxiliary aids to disabled students in educational programs are dealt with in paragraphs (b) and (d) of Section 44 of part 104 of the title.⁴⁹ These regulations have been framed under the Rehabilitation Act of 1973.⁵⁰

Further, literature on higher education and its measures aiding individuals with disabilities also indicate that there is a harmonising effect between ADA regime and

⁴⁴ *Bragdon v Abbott* 524 US 624 (1998).

⁴⁵ The Equality Act Schedule 1, para 12, sub-para (1).

⁴⁶ Federal Law No. 29 art 11.

⁴⁷ 42 USC Ch 21, sub-chapters V and VI.

⁴⁸ 34 CFR Part 104 (2000).

⁴⁹ *Ibid.* Part 104.44 (b), (d) (2000).

⁵⁰ 29 USC s 794.

the regulations framed under the Rehabilitation Act of 1973.⁵¹ Literature specific to specific learning disabilities and sports activities in higher education have also advocated for a unified approach to students being availed concessionary means, while the ascertainment of disability in an individual has been largely based on the legal tests laid down by the courts apart from any medical certification available in each case,⁵² while other works have specifically dealt with disabilities in a specific sector of higher education.⁵³

The Equality Act of the UK in its Sections 11 and 19 provide for direct and indirect discrimination respectively.⁵⁴ These two sections along with Section 6 of the Act provide the backbone for special provisions as regards Higher Education and any institutional arrangements made in this regard. Further, Section 91(9) of the Act imposes a duty to adjust the responsible body of a higher education institution in its dealing with disabled students—in regard to their admission, conferring a qualification (and such other actions that indicate entry or exit from the institution). Provisions, such as Section 92, in a similar spirit are made applicable to the courses offered by higher education institutions.

An interesting feature of the Equality Act in respect of educational institutions is that there is a duty on the responsible body of the institution to not put disabled students at a ‘substantial disadvantage’ and make reasonable adjustments as and when a disadvantage presents itself—pointing to an anticipatory nature of the disadvantage that a disabled student might face at the institution.⁵⁵

The civil court machinery has jurisdiction over contravention of provisions of this Act with respect to education. Remedies, therefore, can either be granted in a proceeding in tort or on a claim of judicial review in accordance with the provisions of Part 9 of the Act.⁵⁶ On the other hand, there are tribunals set up for remedies to be sought in respect of employment matters.

In Singapore, the institutional arrangement is a free-to-act approach wherein civil society machinery and individual educational institutions can act to provide better

⁵¹ Laura F Rothstein, ‘Higher Education and the Future of Disability Policy’ (2000) 52(1) *Alabama Law Review* 241.

⁵² Susan M Denbo, ‘Disability Lessons in Higher Education: Accommodating Learning-Disabled Students and Student-Athletes under the Rehabilitation Act and the Americans with Disabilities Act’ (2003) 41(1) *American Business Law Journal* 145.

⁵³ See Laura F Rothstein, ‘Students Staff and Faculty with Disabilities: Current Issues for Colleges and Universities’ (1991) 17(4) *Journal of College and University Law*, 471; Donald Stone, ‘The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study’ (1996) 44(3) *University of Kansas Law Review* 567; Bonnie Poitras Tucker, ‘Application of the Americans with Disabilities Act (ADA) and Section 504 to Colleges and Universities: An Overview and Discussion of Special Issues Relating to Students’ (1996) 23(1) *Journal of College and University Law* 1.

⁵⁴ The Equality Act ss 11, 19.

⁵⁵ *Ibid.* s 20(3), (4), (5). Section 20 of the Equality Act 2010 mandates that institutes be responsible for 3 requirements that might cause a substantial disadvantage: provision, criterion, or practice (in academic institutions this broad requirement might manifest in respect of any additional teaching that might be necessary for a specially disabled student); physical feature; substantial disadvantage ‘but for the provision of an auxiliary aid.’

⁵⁶ *Ibid.* Part 9.

services to their students with disabilities. Prominent institutions like the National University of Singapore⁵⁷ or the Singapore Management University⁵⁸ have a dedicated page for disability support and how to avail of such support. Such institutions also make appropriate accommodations in an academic environment for disabled students based on sufficient disclosures from the student.

In the UAE, under Article 13 of Federal Law No. 29 of 2006, the Ministry of Education and the Ministry of Higher Education and Scientific Research are mandated to take appropriate measures in designing curriculum and course pedagogy to ensure full participation of students with special needs.⁵⁹ Finally, under Article 36 of Federal Law No. 29 of 2006, non-governmental organisations dealing with the rehabilitation or education of persons with disabilities need to obtain a license from the Ministry of Social Affairs.

A notable deviation in the governance model for disabilities could be seen in Greece, where the disability governance model targets to secure the future of the student with disability apart from rendering immediate learning support. The disability law in Greece is based on societal support structures for certain target groups including individuals with SLDs. Law 4485/2017 establishes one such kind of support structure for students. This includes transitionary counselling for students moving from secondary to higher education and support for students facing difficulties with studies. Further, members of the faculty of a higher education institution would be allotted advisory roles on a rotational basis. To support the general mental health policy of the state, psychological counselling has to be provided to students free of cost and also to sensitise the educational community towards learning disabilities and mental health.⁶⁰

Another significant provision in Greek law is the validation of non-formal/informal learning outcomes. Under the law 3879/2010, vocational training, apprenticeship, and general adult education were decentralised; in this context, regulatory authorities are attempting to develop modular training and education that would aid both social inclusion and skill development of individuals from target groups.⁶¹

In a primary and secondary school setting, the law 3699/2008 provides for 2 levels of additional support apart from mainstream classes (which include students with mild difficulties in the learning process). The first level of support is provided by parallel aid from special educators who provide support according to the student's needs. The second level of support is in a completely special educational setting that

⁵⁷ 'Resources for Students: Academic Support, Non-Academic Support, Community and Peer Support' (*National University of Singapore*). <https://nus.edu.sg/osa/student-services/student-accessibility-unit/resources-for-students/>. Accessed 12 October 2021.

⁵⁸ 'Disability Services' (*Singapore Management University*). <https://www.smu.edu.sg/campus-life/disability-services>. Accessed 10 April 2021.

⁵⁹ Federal Law No. 29 art 13.

⁶⁰ Law 4485/2017 (Greece) art 8, 13, 34. The said provisions elaborate on the mandatory internal regulatory mechanisms to be provided by higher educational institutions, followed by the measures to be taken by institutions for the benefit of students with disabilities.

⁶¹ 'Validation of Non-formal and Informal Learning' (*European Commission*). https://eacea.ec.europa.eu/national-policies/eurydice/content/validation-non-formal-and-informal-learning-32_en. Accessed 10 April 2021.

could be a common or a specialised programme up to 15 hours a week with a well-trained team.⁶²

On the technological aids, the law leaves it for the higher educational institutions to take appropriate measures. But for primary and secondary education, the Ministry of Education and Religious Affairs provides appropriate aids such as Braille technology, computers, etc upon a recommendation from the Centres for Educational and Counselling Support (KESY).⁶³

5.4 A closer look at the statutory regime in the US

US Federal law provides for the allocation of funds and the nature of their use by the recipient educational agencies. These funds are to be utilised for special education and any auxiliary necessities therein. The process of identifying children with disabilities begins with an individual evaluation (IE).⁶⁴

IE can be requested by the parent or child or state educational agency of a local educational agency. The IE is a determination if the child is a ‘child with a disability’ and determine the individualised educational needs of the child.⁶⁵ The IE begins with explicit parental consent for the child being evaluated.⁶⁶ The statute further clarifies that a parental request for special services for the child is not the same as parental consent to the IE.⁶⁷ Section 1414 in its substantial safeguards pre-empts sole use of any racial biases, lack of English language proficiency in determining the outcome of the IE.⁶⁸

Once the evaluation is complete and the child is put through an individualised education plan, an evaluation has to be made before determining that the child is no longer with a disability.⁶⁹ During the course of the education, there is in existence an IEP (Individualised Education Plan) Team consisting of parents of the child, a full-time teacher, a specialised teacher, a representative of the local educational agency.⁷⁰

Since the whole procedure is for children with disabilities, parental consent has been made a huge part of it right from the stage of detection of the disability to the education of the child. It is in this regard, the parental consent and involvement of the parents, that the procedural due process is built around. Section 1415 in its procedural safeguards focusses on the following aspects:

⁶² ‘Country Information for Greece-Legislation and Policy’ (*European Agency for Special Needs and Inclusive Education*). <https://www.european-agency.org/country-information/greece/legislation-and-policy>. Accessed 10 April 2021.

⁶³ Law 4547/2008 (Greece) art 4-7.

⁶⁴ 20 USC s 1414(a).

⁶⁵ *Ibid.* s 1414(a)(B).

⁶⁶ *Ibid.* s 1414(a).

⁶⁷ *Ibid.*

⁶⁸ *Ibid.* s 1414.

⁶⁹ *Ibid.* s 1414(c)(5).

⁷⁰ *Ibid.* s 1414(d)(1)(B).

- a means for parents to be in the loop throughout the process: in this context, parents of the child are involved, and procedural safeguards deal with notice, contents of the notice, and parental access to information on the child's records.⁷¹
- where parents of the child are not known or where the child is a ward of the state: in this context, appropriate steps need to be taken to locate the parents of the child or where the child is a ward of the state, the appropriate decision has to be taken by the concerned surrogate appointed by a judge.⁷²

From the perspective of the parent concerned, apart from granting or refusing consent to specific proceedings pertaining to the child, the parent can opt for a mediation where there is a dispute or present a complaint on any matter relating to the identification, evaluation, or educational placement of the child.⁷³

Finally, an interesting provision regarding the interaction between the parents and the school authorities is Section 1415(e)(2)(B) which allows the concerned parent of the child to meet a local educational agency or a state agency when the parent refuses to opt for mediation proceedings.⁷⁴

The above procedure laid down in the IDEA regime is perhaps the most influential of all the three statutes concerned. Regulations promulgated by the Department of Education under Section 504 of the Rehabilitation Act of 1973, in their section on Procedural Safeguards provide that '[c]ompliance with the procedural safeguards of Section 615 of the Education of the Handicapped Act is one means of meeting this requirement.'⁷⁵ Section 615 of the Education of the Handicapped Act was amended by the IDEA regime in 1990 whereby the said section would correspond to Section 1415 discussed above.⁷⁶

This notwithstanding, since the procedure here does not follow the one laid down in the IDEA regime, grievances under Section 504 are dealt with as they start from a reference to the concerned authority of the school by the parent and they progress further along the court system to be resolved.⁷⁷

Finally, Section 794a also provides that the remedies available for non-discrimination in the Civil Rights Act 1964 in 42 United States Code (USC) Section 2000e–16 would apply to disputes raised under Section 504 of the Rehabilitation Act of 1973, wherein the Equal Employment Opportunity Commission is tasked with enforcing the spirit of non-discrimination.⁷⁸

The Americans with Disabilities Act 1990 (ADA) regime is another broad legislation that aims for non-discrimination in general matters of life such as transport, employment, public services, and services operated by private entities. Hence, in the context of education, institutes have adopted a means of dispute resolution internally

⁷¹ *Ibid.* s 1415(b)(1).

⁷² *Ibid.* s 1415(b)(2).

⁷³ *Ibid.* s 1415(b)(5) and (b)(6).

⁷⁴ *Ibid.* s 1415(e)(2)(B).

⁷⁵ 34 CFR s 104.36.

⁷⁶ The provision currently available as 20 USC s 1415, as amended by Public Law 101-476.

⁷⁷ See 29 USC Ch 16: Vocational Rehabilitation and other Rehabilitation Services.

⁷⁸ *Ibid.* s 794a.

with a designated ADA coordinator who is to be notified of the grievance, from where the dispute would progress to the court system if not resolved.⁷⁹ Nonetheless, specific sub-chapters of ADA have provided for a dispute resolution akin to that in 29 USC Section 794a.⁸⁰ These provisions would trace back to the Civil Rights Act 1964 discussed above.

Hence, the disputes under Section 504 and ADA start with a reference to the designated coordinator within the institution where the internal process for dispute resolution is decided by the specific institution and then move to the court system for appeals on the decision rendered through the internal process for dispute resolution (which could be an outcome of mediation or voluntary compliance).⁸¹

5.5 Summing-up

None of the jurisdictions probed indicate a specific means of diagnosing specific learning disabilities. The statutory framework would only require a medical confirmation of the disability before the rights conferred by it are availed. In a rare instance, Singapore has in one report from an Executive body, required an IQ of 70 or less for the individual's case to be considered an intellectual disability.⁸² Further, the report does not mention any specific test that needs to be used.

Institutional frameworks in the jurisdictions probed have been restricted to training and sensitising the workforce to interacting with the intellectually disabled and acting in a non-discriminatory manner. In the UAE, the Specialised Committee for Health and Rehabilitation Services for People with Special Needs has been established to look into matters starting from diagnosis to reasonable adjustments for persons with disabilities.⁸³ But no specific standards on the diagnosis of disabilities have been noted as being reported from the committee.⁸⁴

Further, except the UK, none of the jurisdictions probed have laid down a comprehensive account of the law providing accommodations to students with SLDs in higher education. Finally, all jurisdictions implement one form or another of reasonable adjustments for students with disabilities at primary and secondary levels of education. The model of Singapore stands out in this regard. The role of civil society organisations is immense in this jurisdiction, while willing actors in higher education take sufficient steps based on the individual case.

⁷⁹ 34 CFR s 104.7.

⁸⁰ On public services, see 42 USC s 12133; On public accommodations and services operated by private entities, see 42 USC s 12188.

⁸¹ 34 CFR Part 104.

⁸² Ministry of Social and Family Development, *First Enabling Masterplan* (n 37).

⁸³ Federal Law No. 29 art 11.

⁸⁴ *Ibid.* Although Article 11 empowers the committee to work on programs for early detection and diagnostics, the Committee has not yet provided any particular standards for determination of specific learning disabilities as was realised in Singapore. For reference to the Singaporean provisions, see Ministry of Social and Family Development, *First Enabling Masterplan* (n 37).

6 Operationalising the rights in India

6.1 On the detection of SLDs

The following three approaches have been noted:

1. Ability-Achievement Discrepancy (AAD) model is based on evaluation and comparison to identify the necessity of special learning needs.⁸⁵
2. Response To Intervention (RTI) approach evaluates certain reading, writing, and math skills early in school. This then approach provides support to struggling students. Subsequently, it identifies students based on their response to support provided.⁸⁶
3. Processing Deficit Approach is a broadly non-evaluative approach and is based on the strengths and weaknesses of the student. The teacher takes the measures necessary to compensate for the deficit/weakness of the student. In the case of students with SLDs, it could include alternative/individual steps before and/or after specific sessions of classroom teaching.⁸⁷

In the AAD and similar testing-discrepancy approaches to identifying and engaging with special learning needs in students, IQ testing is understood as an integral component. AAD and similar approaches are based on the instructional treatment being matched to aptitudes and cognitive processes of the student. This approach started with the research of Cronbach in the late 1950s.⁸⁸ On the other hand, empirical research hasn't been able to capture the essence of this theoretical paradigm in these two approaches. Many studies have failed to tie special learning needs identified through this method to concrete learning outcomes in students.⁸⁹

IQ testing scales (such as Wechsler Intelligence Scale for Children—WISC-IV) measure not merely intelligence but the strengths and weaknesses of students, as has been mentioned in their manuals. The reasoning behind empirical studies failing to identify SLDs has been tied to such IQ tests being verified against other standard tests that measure solely intelligence.⁹⁰ This indicates that the validity of IQ testing,

⁸⁵ See National Research Centre on Learning Disabilities, *SLD Identification Overview*. <https://files.eric.ed.gov/fulltext/ED543737.pdf>. Accessed 10 April 2021.

⁸⁶ *Ibid.* 2.

⁸⁷ *Ibid.* 2–4.

⁸⁸ Lee J Cronbach, 'The Two Disciplines of Scientific Psychology' (1957) 12(11) *American Psychologist* 671; Lee J Cronbach, 'Beyond the Two Disciplines of Scientific Psychology' (1975) 30(2) *American Psychologist* 116.

⁸⁹ F M Gresham, 'Responsiveness to Intervention: An Alternative Approach to the Identification of Learning Disabilities' in R Bradley, L Donaldson, and D Hallahan (eds) *Identification of Learning Disabilities: Research to Practice* (2002) 467; K A Kavale and S R Forness, 'Substance Over Style: A Quantitative Synthesis Assessing the Efficacy of Modality Testing and Teaching' (1987) 54(3) *Exceptional Children* 228.

⁹⁰ Albert F Restori, Gary S Katz, and Howard B Lee, 'A Critique of the IQ/Achievement Discrepancy Model for Identifying Specific Learning Disabilities' (2009) 5(4) *Europe's Journal of Psychology* 128, 136.

even when these tests in their manuals indicate that they measure supra-intelligence factors, is limited to measuring intelligence and not the actual strengths and weaknesses as is seen to be necessary.

On the other hand, a comparative international perspective shows that across a wide cross-section of countries, there is a medical requirement for the diagnosis of SLDs before the resources can be accessed. Countries, thus, involve specialised medical personnel and do not leave the diagnosis completely to the schools or educational institutions.⁹¹

It can be observed that classroom or educational institution-centred identification approaches primarily involve interaction with the student and identification of strengths and weaknesses (or deficits as is termed in the Processing Deficit Approach). The same is supposedly measured by specific IQ tests in students to focus on specific characteristics in subsequent classroom interactions although there is considerable literature pointing to the contrary. But in institutes where there is a dearth of resources to gauge an individual or engage with all the factors surrounding the student, faculty-student interactions could prove to be a great means to proceed from thereon. As we realise, there is a right granted to persons with disabilities to be provided with reservation and further reasonable assistance in educational institutions, operationalisation of such rights is discussed in the following section.

In the Indian case, Section 56 of the Indian RPWD Act empowers the central government for assessing specified disabilities.⁹² In pursuance of the same, the central government has notified ‘Guidelines for Assessment of Various Specified Disabilities’ dated 4 January 2018 (as amended on 9 December 2020).⁹³

The said guidelines in para 22.3 of the Annexure II provide that a team of paediatricians or psychiatrists and clinical or rehabilitation psychologists would be diagnosing the individual. Further, in para 22.4, the guidelines specify that the ‘National Institute for Mental Health and Neurosciences (NIMHANS) Battery shall be applied for a diagnostic test for SLD’ and that any person testing positive for NIMHANS Battery shall be a person with benchmark disability as defined under the Act.⁹⁴

⁹¹ National Council for Special Education, *Procedures used to Diagnose a Disability and to Assess Special Educational Needs: An International Review*. 133-150. https://ncse.ie/wp-content/uploads/2014/10/5_NCSE_Diag_Ass.pdf. Accessed 10 April 2021.

⁹² The Indian RPWD Act s 56.

⁹³ For the amendment made in 2020, see Ministry of Social Justice and Empowerment, *Guidelines for Assessment of Various Specified Disabilities* (9 December 2020). https://upload.indiacode.nic.in/showfile?actid=AC_CEN_25_54_00002_201649_1517807328299&type=notification&filename=amendment_guidelines__09.09.2020.pdf. Accessed 31 September 2021.

⁹⁴ Ministry of Social Justice and Empowerment, *Guidelines for the Purpose of Assessing the Extent of Specified Disability in a Person Included Under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)* (4 January 2018, as amended on 9 December 2020). Annexure II. https://upload.indiacode.nic.in/showfile?actid=AC_CEN_25_54_00002_201649_1517807328299&type=notification&filename=Guidelines%20notification_04.01.2018.pdf. Accessed 12 October 2021.

6.2 Outcomes from the comparative study

Indian law exhaustively provides for certification of disability in the 2017 rules.⁹⁵ But post-certification benefits of the disabled individual are at the mercy of the specific institution handing out a service.⁹⁶ Affirmative action such as reservation also does not ensure that a public institution is capable of treating disabled individuals with adequate training and sensitisation. Although there is a provision for oversight of research on disability by the Central Committee for Research on Disability formed under Section 6(2) of the Indian RPWD Act, no specific provisions have been noted in respect of Indian institutions or professionals dealing with persons with disabilities being trained or made capable of adapting their services to persons with disabilities.⁹⁷ In this regard, the following measures can be possibly adopted based on observations from other jurisdictions.

Educational institutions under the purview of central and state governments, which are by law required to reserve certain seats for the disabled, could be required to file a report with the appropriate government outlining the measures taken to aid students with intellectual disability. Measures including apparent changes made to the curriculum, marking scheme, etc. can be outlined by the responsible academic body of the educational institute. Observation drawn based on the Federal funding model of the US educational institutions, which may be adapted to a statutory requirement under the Indian law. Further, initiatives from different institutions with regard to changes made, could be made accessible to other institutions which can adapt the same to their circumstances.

Training and licensing manpower that interacts with the persons with disabilities could be undertaken. This would form part of both (1) a sensitisation drive for people involved in teaching, day-care, other civil society institutions and (2) acknowledging certain organisations as being disabled-friendly spaces by licensing them a certain tag for their trained manpower. These recommendations for implementation are based on the practices followed in Singapore and the UAE.

6.3 Operationalising the rights in India

In a society, different social forces act on an individual. In determining the educational performance and needs of a student, these forces need to be taken into account in two different environmental settings—home and school. Factors at play could include factual circumstances that cause stress, socio-economic factors, and supportive factors (contributed by individuals in one's support in overcoming any

⁹⁵ See Rights of Persons with Disabilities Rules 2017, Rule 14A.

⁹⁶ The law by laying down a framework for certification as an aspect of disability rights and also making it imperative for different institutions to provide appropriate benefit based on said certification, has created a dichotomy of recognition of eligibility of the benefit and grant of benefit.

⁹⁷ See the Indian RPWD Act s 6(2). There is no provision of a legislative instrument deals exclusively with sensitised and trained human resources.

situation).⁹⁸ This complex set of inter-dependent factors is taken into account in the interactionist/ecological model.⁹⁹ This model takes into account, not just the physical-organ-based impairment as a uni-dimensional factor for analysis but considers a wide array of social factors as well.¹⁰⁰

Going forward proposing an operational model for SLDs, the interactionist/ecological model is taken as a base model. In gauging and assessing the special educational needs, not all of the factors need to be considered but an appropriate subset could be taken into account.

As has been observed above, factors from two distinct environments—home and school need to be considered in effectively implementing the rights. Home factors in an individual manifest in the form of data or disclosures by an individual at the time of admission to an institute. These disclosures could be a self-declaration of a disability and further medical/psychiatric test data medically determining the disability in the individual. Further, school data could include observations from a possible faculty-student interaction (this is further elaborated below). These interactions could be an iterative set of observations on the progress of the student while going through the special education process. Based on these data, the model takes the following steps:

1. Pre-admission disclosures made by a prospective student. These disclosures include the disability status and a confirmation of the disability.
2. Admission: Either in general or under reservation granted under Section 32 of the Indian RPWD Act.¹⁰¹ The factum of admission could be considered a trigger point to start the evaluation procedures and build a roadmap for the new student in the institution. But as has been discussed in the Council for Science and Technology's report on the SLDs and their detection, access to resources for disabled students at schools and requirement of a prior diagnosis of the disability from a qualified medical professional 'creates a disjointed system, where the identification and support pathways are very different in school and beyond school.'¹⁰² This systemic flaw, specifically in India, is prominent as admissions for disabled

⁹⁸ Geoff Lindsay, 'Educational Psychology and the Effectiveness of Inclusive Education/Main-streaming' (2007) 77(1) *British Journal of Educational Psychology* 1, 9, 15-18.

⁹⁹ See A Llewellyn and K Hogan, 'The Use and Abuse of Models of Disability', (2000) 15(1) *Disability & Society* 157, for an overview of different models of disability including the transactional and ecological model.

¹⁰⁰ Aakash Johry and Ravi Poovaiha, 'Playfulness Through the Lens of Toy Design: A Study with Indian Preschool Children with Intellectual Disability' (2019) 8(3) *International Journal of Play* 255, 258-259. The dimensionality of playfulness in children with SLDs replicates more than a mere physical/organ impairment. Mere physical impairment in many senses is inadequate for working with SLDs.

¹⁰¹ The Indian RPWD Act s 32.

¹⁰² Council for Science and Technology, *Current Understanding, Support Systems, and Technology-led Interventions for Specific Learning Difficulties: Evidence Reviews Commissioned for Work by the Council for Science and Technology*, 23. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/926052/specific-learning-difficulties-spld-cst-report.pdf. Accessed 10 April 2021.

- students under a reserved seat require them to submit a medical diagnosis and certification of the disability.¹⁰³
3. Engagement between faculty members and the student: Although this would become a matter of classroom interaction, a ‘responsible body,’ consisting of certain members of the faculty, parent/guardian of the student, and a medical professional, could be considered as a nodal point of interaction for students with intellectual disability. This panel could play a major role in assessing the needs of the student, gauge strengths and weaknesses, implement a pedagogy specific to the student. The idea of a ‘responsible body’ has been borrowed from the UK law which holds a specific body in any institution responsible for granting reasonable adjustments to the disabled who are by law entitled to the same.¹⁰⁴
 4. A combination of engagement outcomes and admission data could be used to gauge the progress of the student. This could be an iterative process with regular, periodic engagement between the student and the responsible body to realise any possible obstacles in the short term. The responsible body would also be devising a teaching-learning plan for the individual student based on diverse data (disclosures and evaluations performed by the faculty members). Further, the responsible body could also recommend any necessary support resources for the individual in the process of learning.
 5. Award of degree and any further placement assistance.

For students with severe mental disorders, there have been developed certain education programs that focus on key aspects of interactions with the students and training of concerned individuals in teaching roles. In this regard, a model developed by Annapally et al. indicates that the validity of such a model would depend on two components: training the individual and caregiver, and changes and developments in the educational system as a whole.¹⁰⁵

A set process such as the approach for SLDs described above can be mandated for educational institutions to follow in cases where a student is admitted in general or specifically under horizontal reservation.

Incorporating such a protocol to be followed by educational institutions and the actors therein in a statute or a statutory instrument could give sanctity to the protection granted to the disabled by law. The same would become subject to judicial enforcement in case of any deviations therefrom.

¹⁰³ Refers to the requirement of certification as laid down in the Indian RPWD Act for the student to avail reservation in an educational institution. See The Indian RPWD Act ss 56-59.

¹⁰⁴ See e.g., The Equality Act s 91, lays down positive obligations of the responsible body of the higher education institute.

¹⁰⁵ Sadananda Reddy Annapally et al., ‘Development of a Supported Education Program for Students with Severe Mental Disorders in India’ (2020) 43(3) *Indian Journal of Psychological Medicine* 217.

6.4 SLD as an intellectual disability?

Indian law on disabilities, the Indian RPWD Act, defines ‘person with disability’ as ‘a person with long term physical, *mental, intellectual*, or sensory impairment which, in interaction with barriers, *hinders his full and effective participation in society equally with others.*’¹⁰⁶ Further, paragraph 2 of the Schedule of the Indian RPWD Act considers specific learning disabilities, a category of intellectual disability, ‘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.’¹⁰⁷ In this regard, to strongly distinguish SLDs from intellectual disability, it would be pertinent to realise the Singaporean standard of the individual having an IQ less than 70 to be classified as intellectually disabled.¹⁰⁸ Thus, specific learning disabilities have broadly to do with comprehension and abilities of an individual to perform certain tasks most of which are prominently visible in an academic-learning environment. This also squarely falls into the definition provided in section 2(s) of the Indian RPWD Act.

The sub-classification of specific learning disability as a kind of intellectual disability although stark in the Indian statutory context, across the world, terms of this nature broadly evolved in a bid to replace the term ‘mental retardation.’ Literature indicates that the following four phrases of this kind, each with a different origin, have been developed to replace the said term: ‘*intellectual disability*; *intellectual disability* (intellectual developmental disorder) (by the American Psychiatric Association); *intellectual developmental disorders* (by the World Health Organization); and *disorders of intellectual disability.*’¹⁰⁹

There has also been a debate about what it would mean to term conditions under intellectual and learning disabilities as ‘disorders.’ It is suggested that medically the term ‘disorder’ would mean that the condition exists inside of an individual leading to unwanted social consequences that would be regressive on this front.¹¹⁰ It is because of these reasons that even though certain terminology, such as the phrase ‘learning disorder,’ has been adopted by bodies like the WHO in the International Classification of Diseases, they have not been completely adopted in the member countries.¹¹¹

¹⁰⁶ See The Indian RPWD Act s 2(s). (Emphasis added).

¹⁰⁷ Ibid. Para 2 of the Schedule.

¹⁰⁸ Ministry of Social and Family Development, *Definition Of ‘Disability’ For Social Policies*. <https://www.msfd.gov.sg/media-room/Pages/Definition-of-‘Disability’-for-Social-Policies.aspx>. Accessed 10 April 2021; Ministry of Social and Family Development, *First Enabling Masterplan* (n 37).

¹⁰⁹ Adrian Higgins, ‘Intellectual Disability or Learning Disability? Let’s Talk Some More’ (2014) 1(2) *Research and Practice in Intellectual and Developmental Disabilities* 142, 145.

¹¹⁰ Ibid.

¹¹¹ See Varsha Vidyadharan and Harish M Tharayil, ‘Learning Disorder or Learning Disability: Time to Rethink’ (2019) 41(3) *Indian Journal of Psychological Medicine* 276.

7 Conclusion

Despite the uniformity brought in by the Indian RPWD Act, there remain certain aspects of disability rights that are addressed neither by the centre nor the states. Very few states have incorporated SLD-friendly educational methods up to pre-university educational institutions by law. The State of Delhi has effectuated Individualised Education Plan (IEP) and subsequent IEP review meeting between the guardians and special educators for the welfare of the child.¹¹² While disabled students seeking admissions to universities can avail reservations, there is no extant statutory mandate for universities to offer something similar to the IEP.

In listing out different specified disabilities, the legislation considers SLD as a sub-category of intellectual disability. This not only results in considering SLDs on par with other specified disabilities, but it also results in the restrictive understanding of the disabilities and related measures thereof. An unintended outcome of this has been that no particular measures could be prescribed for enhanced and friendly teaching-learning processes in higher educational institutions. Though the incorporation of SLDs does reflect a progressive approach in addressing different issues in the gamut of disabilities, there is a need to take the scientific road in addressing different measures that can be taken to enable persons with SLDs.

Hence, higher education institutions, which generally absorb students below 18 years of age would certainly need minimal SLD identification infrastructure including trained personnel to prima facie identify learning disabilities in an interactive classroom environment. Such cases, preliminarily identified, could be subsequently referred for a comprehensive medical diagnosis.

Finally, the 2020 Guidelines laid down by the central government refer to screening, diagnosis, diagnostic tools, and the medical authority to certify SLD and the validation of the certificate.¹¹³ The Guidelines spell out the responsibility of schools in the screening of the SLD. But it fails to extend the responsibility upon higher education institutions to cater to the needs of the disabled. Sensitised workforce capable of working with students with SLDs and accommodative measures for a better learning experience are still a necessity in the higher education landscape. Presence of such capabilities with universities is the need and mandate of a comprehensive disability law, despite the underlying assumption that any SLD would be detected at an earlier stage in primary and secondary levels of education with appropriate available at such institutions or local medical facilities.

Declarations

Conflict of interest The author has no conflict of interest to declare that are relevant to the content of this article.

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¹¹² Office of the Deputy Director of Education, *Instructions for Preparing Individualised Education Plan*, (Circular No F.150 /DDE(IEDSS)/Admn.Cell/2016-17/1125, 17 August 2016).

¹¹³ Ministry of Social Justice and Empowerment, *Guidelines for the Purpose of Assessing the Extent of Specified Disability in a Person Included Under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)* (n 94).