

BEFORE THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI  
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

Writ Petition (Civil) No. \_\_\_\_\_ of 2017

**In the matter of a Public Interest Litigation:-**

Vidhi Centre for Legal Policy,

A-313, First Floor, Defence Colony,

Ground Floor,

New Delhi- 110024

Petitioner

Versus

1. Union of India,

Through Ministry of Human Resources Development,

Shastri Bhawan,

New Delhi – 110001

2. Ministry of Social Justice and Empowerment,

Shastri Bhawan,

New Delhi – 110001

Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF  
INDIA FILED AS A PUBLIC INTEREST LITIGATION IN THE MATTER  
OF ENSURING THE RIGHT TO EDUCATION OF CHILDREN WITH  
DISABILITIES UNDER ARTICLE 21A OF THE CONSTITUTION OF  
INDIA.**

TO

THE HON'BLE CHIEF OF JUSTICE  
AND THE OTHER HON'BLE  
JUSTICES OF THE HON'BLE HIGH  
COURT OF DELHI, AT NEW DELHI.

**THE HUMBLE PETITION OF THE PETITIONER ABOVE-NAMED  
MOST RESPECTFULLY SHOWETH:-**

1. The Petitioner is filing the present petition as a public interest litigation *pro bono publico*. The Petitioner's sole purpose in filing the present petition is to safeguard the rights and interest of children with disabilities vis-à-vis their right to education under Article 21A of the Constitution of India. The Petition has not been filed for self-gain or for gain of any other person/institution/body. It is submitted that the present petition raises substantial questions of public interest which deserve the consideration of this Hon'ble Court. A copy of the Board Resolution dated 24.10.2017 authorizing Ms. Dhvani Mehta, Senior Resident Fellow to file the present petition is annexed hereto and marked as **Annexure P/1**.
2. The present Petition is filed after conducting research on materials in the public domain and, as such, the present Petition is on the basis of such material described in more detail in the paragraphs below.
3. The present Petition is being filed for the benefit of children with disabilities who are unable to access this Hon'ble Court on account of lack of resources. The Petitioner has preferred the present petition under Article 226 of the Constitution of India seeking directions to the Government of India to fulfil its mandate towards children with disabilities in terms of the Right to Education Act, 2009 (hereinafter referred to as the "RTE Act") read with the Rights of Persons With

Disabilities Act, 2016 (hereinafter referred to as the “RPWD Act”). It is the contention of the Petitioner that India, having ratified the United Nation Convention on Rights of Persons with Disabilities (hereinafter referred to as the “UN Convention”), is under an obligation to make ‘inclusive education’ effective in all schools in the country. However, the non-specification of special academic and infrastructural parameters required by Children with Disabilities amounts to rendering their right to education under Article 21A of the Constitution ineffectual. The Petitioner places reliance on the following submissions to seek the intervention of this Hon’ble Court:-

- (a) ‘Inclusive education’ is a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted.
- (b) The right to education of children with disabilities makes it the Government’s obligation to ensure that schools provide the requisite facilities to meet the learning needs of different types of students with disabilities. Some such facilities include data collection, teacher training, access to school buildings, and the provision of additional learning materials and support.
- (c) The non-inclusion of norms and standards specific to children with disabilities in the RTE Act results in a situation where schools which are required to obtain recognition under the Act, are under no obligation to ensure that such facilities are provided by them to children with disabilities.
- (d) The quota of seats reserved in the RTE Act for children with disabilities in a neighbourhood school of choice is wasted if such a school has no specific facilities for such children. In addition, there is no remedy available to such

children since no norms and standards have been laid down under the RTE Act which can be enforced by way of utilizing the enforcement mechanisms under that Act.

A copy of the RTE Act is attached hereto and marked as **Annexure P/2**. A copy of the RPWD Act is attached hereto and marked as **Annexure P/3**.

4. The reliefs sought in the present petition do not affect any persons other than the Respondents impleaded herein. It is submitted that to the knowledge of the Petitioner, no other persons/bodies/institutions are likely to be affected by the orders sought in the present petition.
5. The Petitioner/Vidhi Centre for Legal Policy is an independent think-tank doing legal research and assisting government in making better laws. The Petitioner is a not-for-profit company limited by guarantee, registered under Section 25 of the Companies Act, 1956, having its registered office in A-313, First Floor, Defence Colony, New Delhi 110024. The Petitioner has been engaged in researching existing education policies with a specific focus on rights of children with disabilities. The Petitioner has the means to pay the costs, if any, imposed by this Hon'ble Court and undertakes to pay such costs if imposed.
6. The Petitioner has not filed any other Public Interest Litigation or similar Petition before this Hon'ble Court or before any other Court on the present cause of action.
7. Respondent No. 1 is the Union of India represented through the Ministry of Human Resource Development, which is the nodal ministry for implementation of the RTE Act.
8. Respondent No. 2 is the Ministry of Social Justice and Empowerment which is the nodal ministry for implementation of the RPWD Act.

#### **FACTUAL BACKGROUND**

9. In a recent CAG report on expenditure by Govt. of NCTD for the year ending on 31<sup>st</sup> March 2016, the figures for children with disabilities and the expenditure made on their facilities showed a dismal picture. Some significant findings are below:

- (a) During the years 2010-16, a provision of Rs. 27.20 crore was made for inclusive education of Children with Special Needs which included activities like enrolment drive, awareness and assessment camp, provision of aid appliances and trainings of general teachers on autism and multiple disabilities. Against a target of 1,12,952, only 99,519 Children with Special Needs received any benefit while out of the allocation of Rs. 27.20 crore, Rs. 12.93 crore (48 per cent) remained unutilized.
- (b) In the years 2014-15 and 2015-16, out of a total of 12959 children with disabilities, almost 5801 children did not have a facility for transportation to school. 0.73% of the funds approved for providing transportation to children with disabilities remained unutilized.
- (c) From the years 2011-12 to 2015-16, out of the 1,45,142 seats which should have been utilized by children belonging to weaker sections and disadvantaged groups, only 90,262 children belonging to such groups were admitted and 54,880 seats (38 per cent) were not filled by those children.
- (d) Out of 2,777 government schools, 319 schools were without ramps up to 2015-16.

A copy of the aforesaid CAG report is annexed hereto and marked as **Annexure P/4**.

10. As per the World Disability Report prepared in 2011, in India, the share of disabled children not enrolled in school is more than five times the national rate,

even in the more prosperous states. In Karnataka, the best-performing major state, almost one quarter of children with disabilities were out of school, and in poorer such states as Madhya Pradesh and Assam, more than half. While the best-performing districts in India had high enrolment rates for children without disabilities – close to or above 90%, school attendance rates of children with disabilities never exceeded 74% in urban areas or 66% in rural. It further suggested that since most special education facilities are in urban areas, so the participation of children with disabilities in rural areas could be much worse than the aggregated data imply. A copy of the relevant extracts of the World Disability Report published in 2011 is attached hereto and marked as **Annexure P/5**.

11. In a Report prepared by the RTE Forum on the “Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Five (2014-15)” published in March 2015, the lack of initiative to include children with disabilities has been dealt with. The Report observes that

*“....Many parents continue to report that children with disabilities are asked to come to school only on the days that special educators visit. Further, they are excluded from participating in many aspects of school life (like accessing library and midday meal with other children, participating in games, etc. and children with intellectual disabilities are often ignored). In case the children are asked to attend only the days the special educators visit the school, the data collected from 300 schools reveal that most of them attend school once in a month which is equal to denying their right to education. Only in 15% schools special counsellor visits once in a week (See the Table No. 5). In short the refusal to take responsibility of a child who is acknowledged as disadvantaged under the RTE Act still continues.”*

A copy of the “Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Five (2014-15)” is annexed hereto and marked as **Annexure P/6**.

12. There have been several instances over the years where schools have denied admission to children with disabilities based on non-availability of infrastructure and teaching standards. Some such news incidents are attached hereto and marked as **Annexure P/7**.

### **EXISTING LEGAL FRAMEWORK**

13. On 01.04.2010, the RTE Act came into force, which is the enabling legislation for the fundamental right to education enshrined under Article 21A of the Constitution. The Right of Children to Free and Compulsory Education Rules, 2010 (hereinafter referred to as the “RTE Rules”) came into force on 09.04.2010. The RTE Act is based on the premise that it is the State’s responsibility to provide free and compulsory education to all children from the ages of 6 to 14 years. The structure of the RTE Act is such that it provides for duties of the Appropriate Government to ensure that there is a sufficient number of schools in the neighbourhood which provide quality education. Apart from the norms and standards laid down in the provisions of the RTE Act, the Appropriate Government is empowered to frame rules in this regard as well as formulate policy on the necessary aspects of ensuring quality education for students in schools owned, established and controlled by it. A copy of the RTE Rules are attached hereto and marked as **Annexure P/8**.
14. The Appropriate Government is also required to ensure that the standards laid down are met by other schools such as unaided and aided private schools. To this extent, the RTE Act makes the grant of recognition to private schools contingent

on their compliance with the prescribed norms and standards. In terms of Sections 18 and 19 of the RTE Act, all schools are required to meet the conditions laid down in Schedule I of the RTE Act read with Rule 15 of the RTE Rules in order to get recognized. In case of non-compliance by the school, there is a provision for derecognition under Section 19(3) of the RTE Act.

15. In the RTE Act, there is a clear and categorical inclusion of children with disabilities. The original Act under Section 3 provided that a “child suffering from disability” as defined under Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 shall have the right to pursue free and compulsory elementary education, which would be in accordance with the provisions of Chapter V of the said Act. The RTE Act was amended in 2012 to include the definition of a “child with disability” under Section 2 (ee) of the RTE Act, which now states as under:

*“2. Definitions.—In this Act, unless the context otherwise requires,—*

*.....*

*(ee) “child with disability” includes,—*

*(A) a child with “disability” as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);*

*(B) a child, being a person with disability as defined in clause (j) of Section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);*

(C) *a child with “severe disability” as defined in clause (o) of Section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).*

16. While Section 3 of the RTE Act was also correspondingly amended, the right to free and compulsory education of children with disabilities continued to remain in accordance with Chapter V of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is noteworthy that said Act now stands repealed by the RPWD Act, however there is no reference in the RTE Act to any provision of the RPWD Act. A copy of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is attached hereto and marked as **Annexure P/9**.
17. From a bare reading of the provisions of the RTE Act and the RTE Rules, it would appear that there is a clear commitment to ensure that there should be no discrimination, lack of access or segregation as far as children with disabilities are concerned. Section 12(1)(c) creates an obligation on all aided and unaided private schools (except minority schools) and special category schools to ensure that at least twenty-five percent of students admitted shall be children belonging to weaker section and disadvantaged group in the neighbourhood. The category of “a child belonging to disadvantaged group” includes a child with disability. Furthermore, Sections 8(c) and 9(c) of the RTE Act make it the duty of the Appropriate Government and Local Authority to ensure that there is no discrimination faced by children with disabilities. Even under Rule 6(7) and (8) of the RTE Rules, the Appropriate Government and Local Authority are required to ensure that access of children with disabilities to schools is not hindered. Rule 9 of the RTE Rules makes the Appropriate Government and Local Authority

responsible for mapping of children with disabilities for the purpose of access, while Rule 11 prohibits schools from segregating children with disabilities.

18. All the provisions discussed above cater to access; however, access is not sufficient to ensure that children with disabilities are getting quality education. It is noteworthy that the RTE Act elaborately details the norms and standards which all schools (Government and aided & unaided private) are required to conform to as well as the obligations of the Appropriate Government and local authorities in this regard. However, admittedly children with disabilities have different needs from other children and there is a need for all schools to cater to them in order to meet the goal of education for all. The schooling of children with disabilities in mainstream schools is called 'inclusive education', which does not merely refer to access but also quality of education.
19. The principle of 'inclusive education' was adopted on 13.12.2006 by the United Nations under the United Nation Convention on Rights of Persons with Disabilities (hereinafter referred to as "UN Convention"). India ratified the UN Convention on 01.10.2007. Article 24 of the UN Convention provides that State parties will ensure the provision of an inclusive education system at all levels, for realizing the right to education and on the basis of equal opportunity. This obligation includes access to education as well as reasonable accommodation of the individual's requirements and individualized support measures within the general education system. This provision recognizes that these measures must be directed to enable persons with disability to realize their fullest potential, and to further effective participation in civil society. The General Comment No. 4 (2016) of the Committee on Rights of Persons with Disabilities on Article 24 (hereinafter referred to as "General Comment") elaborates on the right to inclusive education. Among other suggestions, it recommends the adoption of the Universal Design of

Learning. These are a set of principles which aim to create adaptable learning environments. It recognizes that each student learns in a unique manner and involves developing flexible ways to learn, maintaining high expectations for all students, while allowing multiple ways to meet expectations; focusing on educational outcomes for all, including those with disabilities. This involves suitable modifications to curricula and replacement of standardized assessments with flexible assessments that recognize individual progress. The General Comment further recognizes that daily interaction with other students including siblings of children with disabilities is an essential element of inclusive education. A copy of the General Comment is attached hereto and marked as **Annexure P/10**.

20. In order to satisfy the commitment made under the UN Convention, provisions related to ‘inclusive education’ ought to have been included under the RTE Act. However, by only ensuring access to mainstream schools without clearly specifying norms and standards for inclusion, individualized support and reasonable accommodation, the RTE Act is merely paying lip service to the concept of ‘inclusive education’. It is clear from the inclusion of children with disabilities in the twenty-five percent quota reserved for children belonging to disadvantaged groups and weaker sections that it is the RTE Act which would also govern the education of children with disabilities. However, there are no provisions which lay down the standards that need to be complied with to ensure that the goal of inclusive education is met.
21. Some of the provisions in the RTE Act and RTE Rules which are woefully inadequate for children with disabilities are listed in the table below:

<b>Provisions</b>	<b>Inadequacy</b>
Sections 8 and 9 of	They lay down the duties of the Appropriate Government and

<p>the RTE Act</p>	<p>Local Authority, which <i>inter alia</i> includes</p> <ul style="list-style-type: none"> <li>(i) the provision of infrastructure, including school building, teaching staff and learning equipment;</li> <li>(ii) ensuring compliance with standards and norms specified in Schedule I; and</li> <li>(iii) the provision training facility for teachers.</li> </ul> <p><i>There are however no distinct provisions for infrastructure, teacher training or norms and standards to meet the distinct needs of children with disabilities.</i></p>
<p>Sections 18 and 19 of the RTE Act read with Rules 15 and 16 of the RTE Rules</p>	<p>They provide the need for all schools (other than those owned by Government or Local Authority) to obtain a certificate of recognition in order to operate. The certificate is to be issued on compliance with the prescribed norms and standards. Recognition can be withdrawn in case of non-compliance.</p> <p><i>The norms and standards make no reference to infrastructure, special educators and other facilities which would cater to the needs of children with disabilities. As such, recognition can be granted irrespective of whether such schools have any such facilities and they are not subject to derecognition for non-compliance.</i></p>
<p>Section 29 of the RTE Act read with Rule 8 and 23 of the RTE Rules</p>	<p>This provides for the academic authority to lay down the curriculum and evaluation procedure based on the prescribed principles.</p> <p><i>There is no mention of the specialised curriculum and training that ought to be</i></p>

	<i>developed by the academic authority to cater to children with disabilities.</i>
Schedule I of the RTE Act read with Form I of the RTE Rules	<p>This provides the norms and standards to be complied with by private schools seeking recognition.</p> <p><i>Other than the requirement for the school building to have a barrier free access, there are no norms and standards related to children with disabilities. As such, there is no compulsion for any school to have any facilities for children with disabilities.</i></p>

22. Instead of introducing the concept of ‘inclusive education’ in the RTE Act, some changes were sought to be introduced in the law governing rights of persons with disabilities. The RPWD Act was enacted to repeal the previously existing legislation on disabilities. The concept of “inclusive education” was introduced in the RPWD Act and is defined in Section 2 (m) as “a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.” Section 16 provides for the duty of the appropriate government and local authority to “.... *endeavour that institutions aided or recognized by it*” provide inclusive education. This includes admission without discrimination, accessible buildings and infrastructure, ‘reasonable accommodation’ according to individual requirements, appropriate communication for blind and deaf students, early detection of learning disabilities etc. In addition, the appropriate government and local authority themselves are required to undertake certain measures under Section 17 such as survey of children with disabilities among school-going children, revision of curriculum and examination systems, provision of assistive technology etc.

23. Sections 16 and 17 of the RPWD clearly cast a duty on the appropriate government to ensure that the right of children with disabilities to inclusive education is implemented effectively. Till date the only policy which has been formulated in this regard is the National Policy for Persons with Disabilities, 2006 which was in existence prior to the enactment of the RPWD Act, however this policy deals with the concept of inclusive education at a superficial level. A copy of the National Policy for Persons with Disabilities is attached hereto and marked as **Annexure P/11**.
24. The National Policy for Persons with Disabilities makes the Ministry of Social Justice and Empowerment (hereinafter referred to as “MSJE”) as the nodal ministry for the implementation of the policy. It is important to note that while the Ministry of Human Resource Development (hereinafter referred to as “MHRD”) makes policies, issues guidelines, lays norms and standards for any matter related to education at the primary, middle school or high school level, when it comes to education of children with disabilities, this power is vested in the MSJE. This mindset that the education of children with disabilities is different from education of other children defeats the purpose of ‘inclusive education’. Further, this division reflects the cultural perception that children with disabilities are in need of welfare rather than equality of opportunity, which tends to further segregate children with disabilities.
25. Some effort has been made in the past to consider the right of children with disabilities to inclusive education in schools. Sarva Shiksha Abhiyan was one such attempt made in 2001-02, which recognized the need for inclusive education for Children with Special Needs, including children with disabilities. The underlying basis of the Sarva Shiksha Abhiyan was to develop full potentiality of each child

with a disability by emphasizing on ending all forms of discrimination and promoting effective participation of all. In March 2011, Sarva Shiksha Abhiyan was revamped to align it with the RTE Act. In the revamped version, Sarva Shiksha Abhiyan sees inclusion in terms of physical access, social access and quality of access. It covers the following dimensions of inclusive education:-

- (a) Identification/mapping CWSN as an integral part of the micro-planning and household surveys;
- (b) Assessment of CWSN for mapping of needs;
- (c) Every CWSN to be placed in the neighbourhood schools, with needed support services;
- (d) All children requiring assistive devices to be provided with aids and appliances;
- (e) Architectural barriers in schools to be removed for easy access and to promote inclusion of CWSN;
- (f) Specific accommodations to be made like availability and upgrading of aids and assistive devices according to individual needs, technological support;
- (g) Intensive teacher training to be undertaken to sensitise regular teachers on effective classroom management of children with special needs;
- (h) Especially trained special educators to be appointed, particularly for teaching special skills to CWSN;
- (i) Same curriculum to be followed for children with and without special needs, but with minor adaptations;
- (j) Special schools to become resource centres for inclusive education;

- (k) Parents of children with disabilities to receive counseling and training;
- (l) Various programmes and curricular and cocurricular activities to be designed for peer sensitisation; and
- (m) Expenditure upto Rs. 3000/- per disabled child to be incurred in a financial year to meet the special learning needs of CWSN.

26. Sarva Siksha Abhiyan is a comprehensive scheme on the policies that the State intends to implement in order to achieve the goal of education for all, however, it recognizes that it is vehicle for implementation of the RTE Act. There is no clarity on the implementability on the parts which have no corresponding reference under the RTE Act such as inclusive education for children with disabilities. It is important to note that the Sarva Shiksha Abhiyan is merely a framework for implementation which provides a broad outline of approaches and implementation strategies, within which States can frame more detailed guidelines, however, in the absence of such an initiative by the States, there is a possibility that none of the proposed strategies will come into effect. To this purpose, there is also financial disbursement from the Centre to the States, however, again, there is no accountability on how the money received is being utilized. The Sarva Shiksha Abhiyan does not lay down any enforcement mechanisms under which an aggrieved child can take recourse to seek the implementation of the norms and standards laid down therein.
27. This is completely different from the RTE Act, where under Section 31, any person having any grievance relating to the right of a child can make a complaint to the National Commission for Protection of Child Rights and the State Commissions for Protection of Child Rights (hereinafter referred together as “Commissions”). When a complaint is made under Section 31 of the RTE Act, the Commissions may examine issues of access, as well as whether the norms and

standards prescribed under Schedule I are being met. However, since these norms and standards do not take into account the distinct needs of children with disabilities, a complaint under this provision is meaningless for such children.

28. It is evident from the aforesaid discussion that there are clear gaps in the RTE Act and RPWD Act as far as inclusive education for children with disabilities are concerned. The only coherent and comprehensive policy in this regard is the SSA, which is merely a framework for implementation and creates no binding rights and obligations. The RTE Act allows for implementation of its provisions through the Commissions, but whether the same monitoring provisions can be put to use for implementation of norms and standards under the SSA is not clear. Similarly, the RPWD Act does not create a proper enforcement mechanism for implementation of the right to inclusive education. In such a situation there is no remedy available for children with disabilities to complain against schools for non-provision of facilities which would cater to their needs.
29. In such a situation, the only remedy available to children with disabilities is to approach this Hon'ble Court by invoking their fundamental right under Article 21A of the Constitution of India. This concern is best evidenced by the rising number of petitions before this Hon'ble Court regarding education of children with disabilities. Some of the cases where this question has arisen are listed below:
- (a) In the cases of *Ramesh Negi v. Government of NCT of Delhi & Ors.* [W.P. (C) 5949/2015, 02.09.2015] and *Araav Porwal v. the Mother International School* [W.P. (C)-9024/2011, 30.04.2012] filed before this Hon'ble Court, prayers were made seeking redressal against denial of admission to children with disabilities by unaided schools within the 25% of seats reserved for children from economically weaker sections and disadvantaged groups under Section 12(1)(c) of the RTE Act.

- (b) In *Social Jurist v. Government of NCT of Delhi* reported as 163(2009) DLT 489, in order dated 19.02.2009, this Hon'ble Court was constrained to constitute an advisory and monitoring committee to look into the issue of disability education. It was further directed that the Government implement NCERT's recommendations on education for children with disability including provision of ramps for access to schools, special educators in schools where disabled children are already present and mapping to identify children with special needs. However, bearing in mind the constitution of a committee for implementation of RTE, this Hon'ble Court disposed of the petition and left it open for the petitioners to approach this Court in subsequent writ petitions. The Report of the Committee on Development of a Policy Framework for Implementation of the Right of Children to Free and Compulsory Education ACT 2009 in Schools in the NCT of Delhi subsequently recommended that the Delhi Right of Children to Free and Compulsory Education Rules provide for inclusive education of children with disability in a common classroom. However, subsequently, the Rules that were notified merely provided for inclusion as per the provisions of the RTE Act, thereby failing to provide for the concept of a common classroom or for the parameters of inclusive education.
- (c) In *Social Jurist v. Government of NCT of Delhi* reported as (2012) ILR 6 Delhi 308, this Hon'ble Court further directed all aided and unaided recognized schools to provide for special educators, barrier-free access and special aids. It further directed the government of NCT of Delhi to undertake derecognition in case of non-compliance. To the knowledge of the Petitioner, no steps have been taken for derecognition of schools on account of non-compliance.

- (d) In *Pramod Arora v. Hon'ble Lt. Gov of Delhi* [W.P.(C) 1225/2014, 03.04.2014], this Hon'ble Court issued directions for ensuring admissions for children with special needs through a Nodal agency under the Department of Education, GNCT which was to be responsible for *inter alia*
- (i) processing of all applications pertaining to admission of CWSN;
  - (ii) keeping a record (including a digital record) of all applicants and institutions, and collating statistics at the end of every admissions cycle;
  - (iii) prescribing a uniform mechanism and guidelines for the certification of CWSN by authorized persons;
  - (iv) liaising with institutions to ensure smooth functioning of the process for admission of CWSN to such institutions, if such admission is regulated by Section 12 of the RTE Act;
  - (v) intimating the Chief Commissioner of Persons with Disabilities, and the Principal Secretary, Directorate of Education if, at any point during the admissions cycle, any CWSN is unable to be placed in a school catering to his or her special needs; and
  - (vi) putting in place counselling facilities for parents and guardians and a complaints mechanism and a mobile helpline to provide assistance.

This Hon'ble Court in another petition *Justice for All v. Government of NCT of Delhi* being W.P.(C) 4034 of 2017, by order dated 16.10.2017, has directed the Government of NCT of Delhi to indicate steps taken in furtherance of the orders in *Pramod Arora's* case (*supra*), especially in reference to the change in disability legislation i.e. the RPWD Act.

It is noteworthy that all the aforesaid orders except for *Justice for All* (*supra*) were passed prior to the enactment of the RPWD Act which provides for 'inclusive

education' for children with disabilities. Copies of the aforesaid orders passed by this Hon'ble Court are attached hereto and marked as **Annexure P/12**.

30. The importance of giving effect to the UN Convention and the RPWD Act was recognized by this Hon'ble Court in the judgment dated 22.08.2017 passed in *Court on Its Own Motion v. Union of India & Ors.* reported as 2017 VII AD (Delhi) 43. This Hon'ble Court read the provisions of Section 16 of the RPWD Act harmoniously with other provisions of that Act and found that it could exercise discretion under Article 226 of the Constitution in order to grant appropriate relief and hold parties responsible for not complying with the provisions of the RPWD Act. The Court accordingly observed that:

*“It is the responsibility of every authority and person to facilitate the compliance with the Constitutional mandate ensuring social justice and equality to marginalized and that the spirit, intendment and purpose of the provisions of the Rights of Persons with Disabilities Act, 2016 are ensured. The University of Delhi cannot isolate itself from undertaking such enabling measures as would secure the rights of respondent no.4 in the present case which can only be by grant of an opportunity to participate in the entrance exam for the M.Phil (Sanskrit) course for the academic year 2017-18 just as all other candidates, including the other persons in the disabled category who were not obstructed, as the respondent no.4 and consideration for admission to the course as per merit. Therefore, in making such a direction, this court is only complying with the Constitutional mandate and ensuring equality and non-discrimination to a disabled person who is visually impaired and has been exposed to the most callous treatment because the respondents did not take effective steps as mandated under the Rights of Persons with Disabilities Act, 2016.”*

A copy of the judgement passed by this Hon'ble Court in *Court on Its Own Motion v. Union of India & Ors* (supra) is attached hereto and marked as **Annexure P/13**.

31. As such, the aforesaid case is a good example of the lack of enforceability provisions within the RPWD Act. To enforce the duty of educational institutions to provide inclusive education under Section 16 of this Act, petitioners will have no recourse but to approach this Hon'ble Court on a case-to-case basis, until the position of law within the RTE Act is clarified. It is submitted that the RTE Act is the primary mechanism for recognition of schools along with established enforcement procedures and therefore, inclusion of the requirements of the RPWD Act into the RTE Act would ensure that monitoring authorities can regulate compliance with both Acts.
32. In this regard, reference can be had to the laws and policies of other countries to assess the manner in which they are meeting their obligations under the UN Convention:
  - (a) In Australia, the Disability Discrimination Act, 1992 prohibits discrimination on the basis of disability including discrimination by educational providers and authorities. The scope of this law covers denial of admission, admission with terms or conditions, differential access to benefits provided by the institution as well as curricula or training courses which exclude the person with disability from participating. Disability Standards for Education, 2005 under this Act set out for the rights of students with disability along with legal obligations of education providers. These standards provide for opportunities on the same basis as students without disabilities, which includes the right to comparable access, services and facilities, and the right to participate in education and training,

unimpeded by discrimination, including on the basis of stereotyped beliefs about the abilities. This is overseen by the Australian Human Rights Commission which receives complaints regarding non-compliance. It may recommend conciliation or allow the parties to approach Federal Magistrates Court or the Federal Court of Australia.

- (b) In USA, the Individuals with Disabilities Act, 2004 provides for the right to free and appropriate education to all children with disabilities. This Act requires federal, state and district authorities to have a policy to ensure the least restrictive environment for children with disability. This provision extends to the creation of individualized education plans (IEP) for children with disability as well as necessary support for preparing them for independent living and employment. The Act provides for procedural safeguards which ensures parental consultation for IEP and complaints regarding non-compliance before the school authority. The IEP can also be the basis of civil action before Courts. Further, funding by the Federal Government to States is conditional on compliance of the Act; the States, in turn, ensure compliance by local authorities.
- (c) In Canada, the education policy differs from province to province. The policy in New Brunswick, for instance, has been considered one of the most innovative inclusive education models in the world by Zero Project 2016, a project that measures the implementation of the Convention on Rights of Persons with Disabilities. Since 2014, the Education Act for New Brunswick provides for a presumption of a common learning environment which is inclusive and responsive to individual needs, reasonable accommodation and designated responsibility to the Superintendent of the School District to ensure quality, inclusive education for all students in all

schools. The Act also repealed all references to dual education models or ‘special education programs’. The Act is implemented through District Education Councils. Common learning environment is defined as “an inclusive learning environment where instruction is designed to be delivered to students of the same age and of mixed ability in their neighbourhood school and used for the majority of the students’ regular instruction hours and that is responsive to the student’s individual needs as a learner. New Brunswick Education Policy 322 provides a comprehensive basis of inclusive education. The common learning environment may be varied only where the authority can demonstrate that the school’s capacity to ensure learning outcomes for the child is inadequate despite reasonable efforts and accommodation, as well as support from the Ministry and school district. The variation of common learning environment is time-bound and includes a plan for returning to the common learning environment and interim plans for inclusion in the social life of the school. This is, however, limited to the public education system and is supervised by the superintendent at the local level.

- (d) Costa Rica, a developing country, also has laws and policies to ensure inclusive education. Article 18 of the Equal Opportunity Law for Persons with Disabilities of 1996 provides that individuals with special educational needs should receive their education within the general education system, with assistive and instructional services. Costa Rica has also adopted a model called the Education Service Model to implement inclusive education. There are four components in this model:
  - (i) consulting teachers, who assist students with disabilities in mainstream classrooms;

- (ii) educational assistance teams, which are established at each school to make decisions regarding the educational needs of all children;
- (iii) mobile resource teams, consisting of an educational psychologist, a social worker, a general education teacher, and a special education teacher are responsible for the development of children with special needs; and
- (iv) resource centers, responsible for providing necessary support for special needs children.

### **QUESTIONS OF LAW**

33. The substantial questions of law of public importance arising in the facts and circumstances of the present case and which are sought to be raised before this Hon'ble Court are as under:-
- A. Whether the duty of the State under Article 21A to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine, is currently not being met as far as children with disabilities are concerned?
  - B. Whether the failure to provide for inclusive education under the RTE Act amounts to a violation of right to education of children with disabilities secured by Article 21A of the Constitution?
  - C. Whether the inability of the Government to make the RTE Act meaningful for children with disabilities by laying definitive norms and standards catering to their needs constitutes unequal treatment vis-a-vis other children in terms of Article 14 of the Constitution?
  - D. Whether the inability to enforce their right to education through the enforcement mechanisms created under the RTE Act, due to lack of appropriately defined

norms and standards, violates their right to equality insofar as other children can seek the enforcement of their specifically-defined rights by approaching the Commissions?

- E. Whether the State has an obligation to give effect to Article 24 of the Convention on Rights of Persons with Disabilities within the domestic law?

### **GROUND**

34. It is humbly submitted that in the facts and circumstances of the present case, this Hon'ble Court may be pleased to intervene on the following grounds:-
- A. That the non-inclusion of the concept of "inclusive education" in the RTE Act violates the fundamental right of children with disabilities enshrined in Article 21A of the Constitution of India insofar as the right to inclusive education is an integral part of right to education.
- B. That the inability of the Government to make the RTE Act meaningful for children with disabilities by laying definitive norms and standards catering to their needs deprives them of the protection guaranteed under the Constitution and places them at some disadvantage vis-a-vis other children.
- C. That the fact that neither the RTE Act, the RTE Rules nor any specific policy under the RTE Act lays down specific standards for children with disabilities means that that Government is not meeting its obligation towards them to ensure quality education in all schools.
- D. That the other way by which the Government ensures that certain standards are met by schools is by making the recognition of private schools subject to compliance of standards laid down in Schedule I of the RTE Act. As stated above, there is no provision in the RTE Act or its Schedule which caters to the needs of

children with disabilities, therefore there is no threat of derecognition for private schools if there are no facilities for children with disabilities. It is submitted that if the underlying basis of the RTE Act was to have punitive measures for cases of non-compliance, then that basis is defeated as far as facilities for children with disabilities are concerned.

- E. That the inclusion of children with disabilities under the RTE Act, with a special quota for them in private schools in terms of Section 12(1)(c) of the RTE Act, is merely tokenism since the RTE Act does not provide for adapting the learning environment to make inclusion meaningful. It is noteworthy that at present the RTE Act continues to make a reference to the definitions under the repealed Persons with Disabilities Act of 1995. The continued presence of the reference to the repealed Act in the RTE Act shows that there is no consideration being given to the concept of inclusive education espoused under the RPWD Act.
- F. That under the RPWD Act, the State and local authorities are only required *to endeavour to ensure that schools funded or recognized by them* follow norms of inclusive education listed thereunder. The fact that the relevant ministries under the RTE Act and RPWD Act are not the same shows the lack of coherence as far as compliance of standards for inclusive education is concerned. As such, it means that even if schools provide no facilities to cater to the needs of children with disabilities, the concerned government can take no punitive steps, since the power of derecognition is only under the RTE Act. In fact, there are no enforcement provisions under the RPWD Act, therefore there is neither any accountability nor any prejudice to schools if they do not comply with the standards laid down for inclusive education.
- G. That the institutions such as the NCPCR and SCPCRs, which can be used to seek implementation of the RTE Act cannot be invoked on behalf of children with

disabilities for ensuring that their neighbourhood schools provide facilities needed by them. Similarly, the RPWD Act does not create a proper enforcement mechanism for implementation of the right to inclusive education. In such a situation there is no remedy available for children with disabilities to complain against schools for non-provisions of facilities, apart from approaching this Hon'ble Court by invoking their fundamental right under Article 21A of the Constitution of India.

- H. That the State has a duty under Article 21A to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine, which is currently not being met as far as children with disabilities are concerned. The Hon'ble Supreme Court in *Bandhua Mukti Morchan v. Union of India* reported as (1997) 10 SCC 549 observed at para 11 that there was a need to take measures for inclusion of weaker sections in education in particular because of its importance in economic and political empowerment of the individual as well as social integration. Similar views were expressed by the Hon'ble Supreme Court, in *Ashok Kumar Thakur v. Union of India* reported as (2008) 6 SCC 1 [para 418-419], where it was observed that the right to education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. The Hon'ble Court, accordingly recognized that the right to free and compulsory education casts a duty with a wide ambit on the State, observing that:

*"...In order to achieve the constitutional goal of free and compulsory education, we have to appreciate the reality on the ground. A sizeable section of the country is still so poor that many parents are compelled to send their children to work. The State must carve out innovative policies to ensure that parents send their children to school. The Mid-Day Meal*

*Scheme will go a long way in achieving this goal. But, apart from Mid-Day Meals, the Government should provide financial help to extremely poor parents.*

*419. In addition to free education and/or other financial assistance, they should also be given books, uniforms and any other necessary benefits so that the object of Article 21A is achieved.”*

It is respectfully submitted that therefore, this duty is not only limited to the provision of schooling, but also extends to measures for eliminating barriers to access to education.

- I. That the omission of the State in formulating any policy for inclusive education or laying down norms and standards violates the protection granted by Article 14 of the Constitution of India to children with disabilities. In the present situation, children with disabilities can neither enjoy the full benefit of a meaningful education, nor do they have adequate mechanisms to get their right to meaningful education enforced. The underlying basis of the RTE Act is to ensure quality education for all children of the age 6 to 14 years, irrespective of their physical, social or economic background. It is the obligation of the State to ensure that this equally applicable to children with disabilities. Any discrimination or differential treatment on account of disability has been deprecated by all Indian courts. In the context of discrimination against persons with disabilities, the Hon’ble Supreme Court observed in *Amita v. Union of India & Anr.* reported as (2005) 13 SCC 721 that:

*“Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English*

*common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequal. Article 14 of the Constitution of India is both negative and positive right. Negative in the sense that no one can be discriminated against anybody and everyone should be treated as equals. The latter is the core and essence of right to equality and state has obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled as a human being.”*

- J. That not only does Article 14 prohibit the discrimination of persons with disabilities but also imposes a positive obligation on the State to ensure that they are brought in the mainstream. This was further elaborated in *Jeeja Ghosh v. Union of India* reported as (2016) 7 SCC 761 [para 39- 42] as follows:

*“In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying*

*discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights.”*

Therefore, the failure to include children with disabilities in mainstream education is in contravention of the positive duties under Article 14.

- K. That India being a State Party to the Convention on Rights of Persons with Disabilities which provides for ‘an inclusive education system at all levels’ in order to ensure right to education on the basis of non-discrimination and equal opportunity is bound to by the said obligation. The prescription for inclusive education must be read into Article 14 and Article 21A in consonance with the Supreme Court’s observation in *Vishakha v. State of Rajasthan*, reported as (1997) 6 SCC 241 [para 7], that “... any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.” Therefore, the guarantees of Article 24 of the UN Convention must be taken into consideration to give meaning to these provisions of the Constitution. The guarantees include free primary education, reasonable accommodation and individualized support measures for meaningful inclusion.
- L. That there is a need to harmonize the provisions of the RTE Act with the RPWD Act in order to ensure that the right to education of disabled children is not

abridged due to the lack of legislative clarity. “Inclusive education” needs to be read into the RTE Act, by way of requesting the government to fulfil its obligations under the RTE towards children with disabilities. Furthermore, RTE is a general law to ensure that children have access to free and compulsory education, while the RPWD Act is a special law that contains provisions on the education of children with disabilities. Given that both the statutes extend influence over the regulation of education, albeit to different degrees, there is a need to ensure that the provisions related to education under both the Acts are harmoniously read.

35. The Petitioner humbly prays to add/ amend or alter the above grounds. It is respectfully prayed that the submissions made hereinabove may also be treated as part of the Grounds.

**PRAYER**

36. In view of the aforesaid facts and circumstances and the interest of the justice it is most humbly and respectfully prayed that this Hon’ble Court may graciously be pleased to:
- (a) Issue directions to Respondent No. 1 to introduce norms and standards of inclusive education within the ambit of the RTE Act;
  - (b) Issue directions to Respondent No. 1 to ensure that requirements of ‘inclusive education’ are met by all schools and enforcement can be sought in case of non-compliance; and
  - (c) Pass such further orders as may be deemed fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

PETITIONER

THROUGH

Pallavi Mohan/Sanjana Srikumar

Advocates for the Petitioner

NEW DELHI

DATE: