

Development, Disability and Law

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Introduction

The United Nations has announced that there are more than half a billion disabled people around the world who have some sort of disability and that an estimated 400 million live in the developing countries. However, with priority being given to economic growth, the issue of the disabled people has not arisen much in policymaking. Traditionally, the developing countries of Asia have treated social welfare as a social program for eliminating mass poverty. But because most of the resources were put into economic development, they have not made much progress in establishing and expanding social security or social welfare systems¹. This can be well understood from the proposals during the current Asian economic crisis, which pointed out the urgent need to construct social safety nets in these Countries. Under these circumstances, the issues concerning the disabled people, that is, the rights and welfare of the disabled people have rarely been addressed. In this sense, the disabled people face double or triple barriers in the process of development. This report will summarize how the issue of the disabled people has been taken up in the international community and how it has developed in Asia, and propose a discussion on the possibility to include the issue of the disabled people as one of the issues of social development and the law.

I. Formation of Social Laws and Disability

After World War II, with the recognition that poverty and deprivation were caused by the international society and the political, economic, and social mechanisms of individual countries, the world began to accord the proper respect to the right to life and began to pay attention to social security, social welfare, and the required institutions. Japan on its part together with the civil rights, the Constitution included a clear

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provision on "social rights" relating to the guarantee of the right to life to workers and the socially disadvantaged people².

Under a totally free economy, the strong become increasingly stronger and the weak, that is, the workers, elderly, and disabled people, are liable to be driven into a state of poverty. To prevent this from occurring, modern capitalism seeks to achieve practical equality and real security rather than abstract principles of freedom and equality. That is, the socially disadvantaged seek realization of the right of life and the right of a decent living as their "Right", while the power of the strong, that is, the capitalists and business, is restricted in some ways.

As a result, governments have adopted legislation and policies restricting one of the pillars of the market economy, the principle of freedom of contract, in order to ensure real equality. This has been done through the introduction of "social laws". Before that, many social issues, including the issue of the disabled people, were either left untouched or treated as a matter for charity. With the introduction of the social laws, however, rights and the principle of freedom of contract have been modified for assuring the right to life through the social security laws, social welfare laws, etc³.

Japan had also changed from treating social security and social welfare as a charitable and remedial natures, to treating it as "essential", and has guaranteed the provision of economic and human services for those ends. The government is providing these institutionally. For the disabled people, at the present time, the era has arrived of comprehensive services predicated on respect for the human rights of the beneficiaries, i.e., the disabled people, and enabling them to lead independent lives⁴.

Welfare for the disabled people is important in the sense that the disabled people have the right to liberty and the pursuit of happiness. The disabled people are entitled to the same human rights in all areas of activity enjoyed by general citizens such as education, labor, and culture, not only life and basic daily needs such as food, clothing, and shelter⁵. When welfare of the disabled people is left to the individuals or families, life itself is sometimes threatened and no consideration is given to the peripheral issues of their lives and activities as citizens. Therefore, while the individual effort of the disabled people and the cooperation of their families are necessary for the

¹ Katsuhide Tani (ed.), *International Welfare in the Present Age – an Approach to Asia*, Chuo Hoki, 1991, p.156.

² Susumu Sato, *Social Security and Social Welfare Law*, Seishin Shobo, 1990, p.7.

³ *Ibid.*, pp.14-16.

⁴ *Ibid.*, pp.26-27.

⁵ Yasuko Ichibangase & Susumu Sato (eds.), *Welfare and Human Rights of the Disabled People*, Koseikan, 1987,

disabled people to achieve independence and the pursuit of happiness, there are limits to this. Institutional guarantees by the government and action by society as a whole become necessary. And what is important in the process of developing these institutions are the initiative of the disabled people⁶.

II. Development in International Community

The basic ideas behind welfare for the disabled people, rooted in the human rights of the disabled people, are influenced by trends in the UN and other parts of the international community.

The UN passed the Universal Declaration of Human Rights in 1948 in which it stated that all people are born free and equal in respect and rights. The content of the declaration was embodied in legally binding international conventions such as the 1966 “International Convention on Economic, Social, and Culture Rights” and the “International Convention on Civil and Political Rights”. Neither of these has clear, direct provisions on the disabled people, but each calls for the equality of all people and the guarantee of widespread human rights and therefore is naturally interpreted as including the disabled people⁷.

The UN also adopts declarations of human rights specifically covering the promotion of the human rights of the socially disadvantaged. For the disabled people, it adopted a Declaration on the Rights of the Mentally Retarded in 1971 and a Declaration on the Rights of the Disabled Persons in 1975. In the Declaration on the Rights of the Disabled Persons, it set down definitions of the disabled people, guarantees of the human rights of the disabled people, enjoyment of civil rights and political rights of the disabled people, the guarantee of the right to various services for promoting social integration, economic and social guarantees, and the right to work, which clarified the rights of the disabled people as human rights. It called upon member countries to establish legal and administrative systems meeting the diverse needs of the disabled people to enable them to enjoy a standard of living and right to living equal to non-disabled citizens based on the principle of encouraging their maximum independence⁸.

As a specific expression of these declarations of human rights, 1981 was

p.3.
⁶ *Ibid.*, pp.4-5.
⁷ *Ibid.*, p.159.

designated as the International Year of the Disabled Persons and the “World Programme of Action concerning Disabled Persons” was adopted in 1982 as a guideline for specific action based on this. The years 1983 to 1992 were designated the “International Decade of the Disabled” for promotion of this. “Full Participation and Equality” were made the themes of the International Decade of the Disabled and five targets were set. The final goal was the guarantee of the right of the disabled people for independence in daily living and participation in all fields of the economy, society, politics, etc. Each country was asked to take action in accordance with this. In this way, the international community started to treat the human rights of the disabled people as not just a mere idea, but as a social right by nature⁹. This had a tremendous effect on the member countries, in particular the developing countries.

The International Decade of the Disabled drew the attention of countries around the world to the issue of the disabled people. But the progress in the Asia-Pacific region was very slow that they were finally beginning to adopt measures concerning disability only at the end of the Decade. Recognizing that a second “Decade of the Disabled Persons” was necessary for building on and consolidating these gains, the ESCAP General Meeting adopted an “Asia-Pacific Decade of the Disabled” in 1992. Prior to this, ESCAP had adopted a “Strategy for Regional Social Development for 2000 and on”. This called for the improvement of the quality of life for all people in the ESCAP region through the complete eradication of poverty, the realization of equality, and the promotion of participation in society with priority given to the disabled people and other socially disadvantaged. Its action plan, “Agenda for Action for the Asia and Pacific Decade of the Disabled Persons”, identified national coordination, legislation, information, public awareness, accessibility and communication, education, training and employment, prevention of causes of disabilities, rehabilitation services, assistive devices, self-help organizations, and regional cooperation as areas of concern.

In the area of legislation, the action plan called for amendment or abolition of current laws having provisions restricting the disabled people, the establishment of basic laws relating to the protection of the rights of all disabled people, the establishment of laws aimed at prohibition of all types of discrimination of the disabled people and providing equal opportunity to the disabled people in education, training, employment, and rehabilitation, the establishment of laws for the elimination of all

⁸ *Ibid.*, p.175.

social and physical barriers to the disabled people, the establishment of laws for giving priority to individual support services for daily living rooted in regional communities, the explicit coverage of the disabled people by the social security system, the active use of UN guidelines in the establishment of laws for the disabled people, etc.

In 1993, Standard Rules on Equalization of Opportunities for Persons with Disabilities was adopted to guarantee the disabled people the exercise of their rights and fulfillment of their duties in the same way as other citizens. There is great importance in such Standard Rules. These are used for the precise delineation of the duties of governments in conventions on social rights. Further, acts violating basic principles such as equality or acts violating the UN standard provisions relating to equal opportunity for the disabled people are considered to constitute infringement of the human rights of the disabled people¹⁰.

In this way, recent international human rights documents take up the issue of the disabled people. There is a growing recognition of the need to guarantee and promote the human rights of the disabled people through the establishment of general laws, policies, and plans and the establishment of special laws, policies, and plans covering them.

III. Asia and the Law on Disability

The growing international recognition of the issue of the disabled people has created great pressure in all countries for the legislation and amendment of disability laws. There have been particularly fast developments in the Asian region since 1990. A major reason behind this was probably the effort on the part of the countries in the region to produce results before the final year of the "International Decade of the Disabled" and need for the host countries to show off their progress in the yearly conferences in the "Asia-Pacific Decade of the Disabled". Of course, the stage of economic development or democratization and the cultural background of the countries concerned such as their indigenous religions and traditions also proved to be plus and minus factors.

Disability laws are being developed through the amendment of existing constitutions and laws and the legislation of new laws. Matters relating to the disabled

⁹ *Ibid.*, pp.15-16.

¹⁰ *Final Report of the Special Rapporteur of the Commission for Social Development on Monitoring the Implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disability* (Second

people are being incorporated into general laws, and independent laws are being established for individual fields, and also comprehensive laws for the disabled people are being established. This report will briefly introduce the situation in China, South Korea, Thailand, and the Philippines -- all of which have established a comprehensive disability laws.

1. China

China established the Law of the People's Republic of China on the Protection of Disabled Persons in December 1990. The law is comprised of nine chapters and 54 articles covering general provisions, rehabilitation, education, employment, culture life, welfare, environment, legal liability, and supplementary provisions. The law is designed to guarantee the legitimate rights and interests of the disabled people, develop programs for them, promote the full and equal participation of the disabled people in social activities, and guarantee a fair share of the benefits of the material culture of society.

The disabled people enjoy rights equal to those of other citizens in the fields of politics, the economy, culture, and society and home life. The civil rights of the disabled people and respect for them as persons are protected under law. The national and local governments are responsible for disability programs. The central organization behind them is the China Disabled Persons Federation. The government and society offer various rehabilitation services. Disabled children have the right to ordinary education or special education. Employment for the disabled people is arranged by centralized employment in welfare companies or through a quota system based on mandatory rates of employment of the disabled people. Further, the government and society are obligated to set design standards for roads and buildings to make them accessible to the disabled people and create a barrier free environment. The concerned departments under the State Council and the local governments are responsible to formulate relevant regulations and local statutes to implement the law. The State Council established the Regulations on the Education of Persons with Disabilities in 1994. The Regulations on the Labor and Employment of Persons with Disabilities and regulation relating to rehabilitation of the Persons with Disabilities are currently being drafted.

2. South Korea

South Korea established the Law for the Welfare of the Physically and Mentally Disabled People in 1981, then completely revised it and changed its name as the Welfare Law for Persons with Disabilities in 1989. It again completely made a revision in 1999. The related laws were also revised according to its amendments. The 1977 Special Education Promotion Law was revised as the Special Education Law. Further, the 1990 Act Relating to Employment Promotion, etc., of the Handicapped was revised as the Law for the Promotion of Employment and Vocational Rehabilitation of the Disabled People. It is interesting to note that the hosting of the Seoul Olympics and the Paralympics in 1988 was the key factor to amending these laws, for example the Building Law was amended to require public facilities to be made barrier free.

The 1989 Welfare Law for Persons with Disabilities is comprised of eight chapters and 80 articles covering general provisions, research on basic measures, welfare measures, welfare institutions and organizations, rehabilitation assistant devices, manpower specialized in welfare for the disabled people, additional provisions, and penal provisions. The law is designed to guarantee a decent living and rights of the disabled people by clarifying the duties of the national and local governments, encouraging comprehensive measures for welfare for the disabled people by establishing programs for the prevention of disabilities, for medical treatment, education, vocational rehabilitation, improvement of the living environment etc. And for the disabled people, determining measures contributing to the independence, protection, assistance, and other facets for stabilization of their lives, and thereby to improve welfare and promote the participation of the disabled people in society. Further, it lays out the basic concept of welfare for the disabled people that is social integration through full participation and equality of the disabled people in society.

3. Thailand

Thailand established the Rehabilitation of Disabled Persons Act in 1991. The Act consists of 20 articles in all and calls for the provision of rehabilitation services such as medical treatment to the disabled people, the establishment of a fund for assisting the disabled people, improved access to buildings and transportation for the disabled people and other efforts to eliminate barriers, and employment of the disabled people in private companies. Ministers of Ministry of Interior, Education and Public Health are in charge of the enforcement of this Act. Various systems are being set up

under by Ministerial Regulations for implementing the Act. For example, Ministerial Regulation No.1 is on the Employment of Disabled Persons and the Contribution to the Fund for Rehabilitation of Disabled Person, which set out a quota system that requires the employers to hire 0.5% of the total workers. And the recent Ministerial Regulation No.4 identifies building, places, vehicles and public services that are required to have equipment to facilitate disabled persons access. Also, the regulation calls for a system requiring all disabled children to attend school, free rehabilitation, and free dispensing of artificial limbs etc.

4. The Philippines

The Philippines established the Act Providing for Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society and for other Purposes, also known as the “Magna Carta for Disabled Person”, in 1992. The law is comprised of 50 articles covering basic principles, social services such as employment, education, health, and assistance, telecommunications, accessibility, political and civil rights, discrimination on employment, on transportation, on the use of public accommodation and services, and final provisions. The Act is accompanied by a set of detailed Implementing Rules and Regulation of the Magna Carta for Disabled Persons.

It is said that the law is important in that it (1) clearly sets down the rights and privileges of the disabled people in various fields, (2) gives due recognition and support to the exercise of the political and civil rights including the right to organize and the right to demonstrate, and (3) clarifies situations where the disabled people are discriminated against in employment, transportation, and public facilities and prohibits such discrimination¹¹. As seen from the name of the law, it aims at the independence and social integration of the disabled people. There is also the Accessibility Law, which enhance the mobility of disabled people by requiring certain buildings, institutions, establishments, and public utilities to install facilities and other devices.

Conclusion

International conventions or policies of the international community can sometimes have a huge impact on domestic policies, but in practice the most effective

¹¹ Adela A. Kawano, “Present Situation of Disabled People in the Philippines (outline)”, *Fukushi Rodo*, No.60, 1993,

means for improving the position of the disabled people is to amend domestic law to incorporate the rights and interests of the disabled people¹². In this sense, along with the development of the international community, some of the Asian Countries have established the first stage, that is, the establishment of the basic framework laws. Of course their implementation, and the participation of the disabled people in that process are required for guaranteeing the true rights of the disabled people in real life. But the establishment of laws, even the very abstract ones, in the first stage gives ground for the Disabled People to utilize the law and legal system for their empowerment.

Although the issue concerning the disabled people is an important field in social development not much research have been done. Especially, the laws relating to disability need more development and further study. In this sense, there have been hopeful developments in this direction. Such as the World Bank preparing for analysis of the relationship between disabilities and poverty in the developing countries and the Asian Development Bank beginning its study on the treatment of the issue concerning the disabled people.

pp.43-44.

¹² Jeremy Cooper and Stuart Vernon, *Disability and the Law*, Jessica Kingsley Publishers, London, p. 57.