

PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES IN MYANMAR

Khin Mar Lar¹, Tin Lay Thwe, Myo Ma Ma and Hnin Hnin Nge

Abstract

In Myanmar, the Right of Persons with Disabilities Law was enacted in 5th Jun 2015 and the Rule on the Right of Persons with Disabilities in 2017. In order to fully participate in community by disabled persons living in Myanmar, the public buildings, transportation and telecommunication should be adapted and changed into the most reasonable accommodation for the disabled persons within a period of five years after this Law was enacted. Moreover, the State should instruct the relevant Ministries to train teacher and educational staffs systematically about the educational techniques and materials for the educational rights of the disabled persons like normal children depending on their learning scale without discrimination and neglect. And also the health information related to the disabled persons should be widely disseminated to protect the disability. Furthermore, this Law of Myanmar was enacted that the employers who appointed the specified proportionate number of disabled employees set by National Committee have tax free allowance. However, the number of disabled employees to be appointed was not mentioned. All the facts above including the appointment member of the disabled employment of disabled persons lives, communication and protection for the obstacles in the society.

Introduction

The Republic of the Union of Myanmar signed the Convention on the Rights of Persons with Disabilities in December 7, 2011, for the protection of rights of disabled persons. In Myanmar, for protection and safeguarding the right to education, health service, participation in political and civil, employment opportunity and registration of disabled persons, the Pyidaungsu Hluttaw enacted the Right of Persons with Disabilities Law in 5th June 2015 and Rule on the Right of Persons with Disabilities in 27 December 2017. According to this Law and Rule, good relationship between disabled and non-disabled and peaceful society for disabled persons appeared. By enacting Law and Rule relating to rights of disabled persons in Myanmar, the standard of living, raising moral standard including barrier free environment and participation in society of the disabled persons can be protected and implemented effectively.

Materials and Methods

- studying on Laws relating to Disabled Persons
- rights given under Laws relating to Disabled Persons
- studying on reasonable accommodation for disabled persons

Findings

Although Law and rule relating to the Right of Disabled Persons in Myanmar enacted there are many weaknesses in the implementation of the medical treatment, educational sectors, employment component and social participation component. If the requirements fulfill to ensure

¹ Dr, Associate Professors, Department of Law, Taungoo University.

by relevant ministries and the government, it will be appropriated and better for their development of the disabled.

1. Disabled Persons

People may be caused the long-term physical, mental, intellectual or sensory impairments because of the various situations.

According to Article-1 of the Convention on the Rights of Persons with Disabilities, Persons with disabilities includes those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

In Myanmar, Persons with Disabilities (disabled persons) means a person who suffers long-term the physical, visual, utterance, hearing, intellectual, mental, intelligent, one or more sensory impairment by birth or not.¹

Dr. U Tha Moe, Senior Medical Officer of a hospital for persons with disabilities defines them as follows;²

A disability is any restriction or loss of ability to perform an activity in the manner or within the range considered normal for a human being as a result of impairment. Impairment is any loss or abnormality of psychological, physiological or anatomical structure or function. A handicap is a disadvantage for a given individual, resulting from an impairment or disability, which limits or prevents the fulfillment of a role that is normal (depending upon age, sex, and social and cultural factors), for that individual.

There are two kinds of disabilities such as physical and mental disabilities. Physical disabilities include deaf-blind, hearing, physical, speech or language and vision disabilities. Mental disabilities include intellectual or developmental, learning and mental health disabilities.

The disabled persons feel always discrimination, exclusion and denial from participation in society including housing, employment, transport, cultural life and access to public services. And then, the disabled persons do not have full enjoyment their human rights because they will not get access to reasonable accommodation.

In Article-2 of the CRPD provided that Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

Discrimination means the distinction, exclusion not to be participated in a society, and restriction of participation that are hindered recognition and equal enjoyment as others in politics, economics, social, education, health, culture, public affairs and any other field on the basis of disability.³

¹ Section 2(a) of the Rights of Persons with Disabilities Law, 2015.

² Japan International Cooperation Agency Planning and Evaluation Department, Union of Myanmar, Country Profile on Disability, March-2002, p.5.

³ Section 2(e) of the Right of Persons with Disabilities Law, 2015.

There are three types of discrimination such as direct discrimination, indirect discrimination and the denial of reasonable accommodation.

Direct discrimination is when someone is treated unfairly because of their sex, race, etc as listed on the previous page, compared to someone else who does not have that characteristic, in the same or similar circumstances.¹

According to Section-11(1) of the Anti-Discrimination Act, 1991 of the Queensland, indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term-

- (a) with which a person with an attribute does not or is not able to comply; and
- (b) with which a higher proportion of people without the attribute comply or are able to comply; and
- (c) that is not reasonable.

To eliminate discrimination, countries shall take the provision of reasonable accommodation which is defined in Article-2 of the CRPD. Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired. The disabled persons must feel surely a lot of discriminations in society and environments.

2. Rights to Medical Service

Medical Service is very important for all human being but disabled persons are frequently denied access to the kind of care for their physical, mental and emotional disabilities. Disabled persons need to be able to access health right on an equal with non-disabled persons.

Health care services for all children, including children with disabilities, are accessed through township hospitals, station hospitals, rural health centers, and sub-rural health centers, but separate health care services for children with disabilities are not available at township level. Health concerns of all children, including children with disabilities, are part of the Ministry of Health's (MoH) five-year strategic plan. The MoH provides a range of services, including rehabilitation, while especially services are provided in some hospitals.²

The families of disabled persons in both urban and rural locations should have access to health checks and education during the pre-natal, natal and post-natal periods. There is no universally accepted system for disability diagnosis, however, both national and international approaches to classification exist and are practiced in many countries in Asia. Singapore and Thailand have particularly strong systems for diagnosis and training of medical personnel. Healthcare providers need to receive more specialized training on maternity care, as well as

¹ Board of New South Wales, "Discrimination and the Anti-Discrimination", Discrimination factsheet, Reprinted May, 2014, p.2.

² Unicef, Situation analysis of children with disabilities in Myanmar, 2016, p. 45.

on children with disabilities. Mothers and care-givers need awareness training on hygiene and medical care, health promotion training and home-based intervention training.¹

States Parties shall provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons.²

The Ministry of Health shall carry out laying down the plans that ensure a minimum of disability prevalence rate at pregnant woman and infants, children, women and elder person and determining the duties and functions by forming the disability degree classification body by responsible persons from the relevant Ministries and organizations, experts from disabled organizations for examining, evaluating the category of disability and degree of disability in accordance with the guidance of the National Committee.³

In Myanmar, some hospital or rehabilitation centers for disabled persons have opened. But the medical system to base diagnosis of disability within the pre-natal, natal and post-natal period is weak it to develop in Myanmar. The most mothers from the Myanmar have need to access health education and information because of disability is not public-health problem.

3. Rights to Educational Service

The education is of the utmost important for PWDs in creating the foundation for social skill, academic skills, economic skills, independent living and vocational training. There are few educational institutions for the disabled in Myanmar able to offer components of this range of education, those that do exist being located in Yangon. Additionally, the national education system is not, on the whole, inclusive for disabled students, and presents many difficulties and obstacles to those PWDs who attempt to access mainstream education. Consequently, the majority of PWDs in other areas of country, where the only other alternatives are limited adaptive community education, have little access to either formal or informal education. But even where PWDs have geographical access to institutions and special schools, many families who believe in the value of education (51%) for PWDs still cannot access it as they are unable to support the expensive school fees, accommodation and transportation fees. In fact, the high expense of most special schools means that many PWDs rarely attend higher education, which is contributed to by scarcity of scholarships. Consequently, the education of many children with disability depends on their family's economic status.⁴

PWDs face many barriers to access education mainstreaming system such as ignorance of the community, poverty and remoteness. While some of these barriers are linked to their disability, others are simply the result of social prejudices. Because of these barriers, one third of the PWDs are illiterate in Myanmar. In this condition, as people without a formal education, they have access, if any, only to unskilled jobs and low income.⁵

¹ Salai Vanni Bowi, *Understanding the Challenges of Disability in Myanmar*, 2012, p-28.

² Article 25 (b) of the Convention on the Rights of Persons with Disabilities, 2008.

³ Section 27(b) and (c) of the Right of Persons with Disabilities Law, 2015.

⁴ Salai Vanni Bowi, *Understanding the Challenges of Disability in Myanmar*, 2012, p-18

⁵ <http://www.ukessay.com/essay/education-and-people-with-disabilities-in-myanmar-education-essay.php>.

According to Section 20 of the Right of Persons with Disabilities Law stipulates accessible education to disabled students not only from government schools but also private and non-government owned schools.

Under Article 24 of the Convention, State parties recognize the right to education of persons with disabilities. But, State Parties shall ensure that persons with disabilities are not excluded from the general education system on the basis of disability and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.

States Parties shall take appropriate measures to employ teachers, including teachers with disabilities who are qualified in sign language and to train professionals and staff who work at levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.¹

State Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, State Parties shall ensure that reasonable accommodation is provided to persons with disabilities.²

Under the above Articles of the Convention, State Parties shall ensure an inclusive education system and lifelong learning.

The National Committee on the Rights of Disabled Persons empowered to make arrangements for learning from the basic level education to the university level education and to teach all inclusive education systems by persons with disabilities.³

Moreover, the right to education of persons with disabilities stipulates in Chapter 13 of the Child Rights Law, 2019.

Mostly children with disabilities are still enrolled in special schools or institutions. According to the Ministry of Education report from 2010-11, “there were 801 disabled children in formal schools, 1450 children in special schools for the blind and the deaf, 30 disabled students in universities and colleges and 6 disabled students in master degree courses”.⁴

As a primary medium for online learning, the internet offers disabled students the convenience that comes with being educated. With computer-based learning and with online learning, disabled students gain easy access to all educational materials right at the comfort of their home. This online learning set-up significantly removes the hassle of physical exhaustion for mobile-impaired students, while also making life easier for the visually-impaired or hearing-impaired ones. This allows them to explore the world in a much freer environment, removing the discouragement of learning and enticing them to participate more actively instead.⁵

¹ Article 24 (4) of the Convention on the Rights of Persons with Disabilities, 2008.

² Article 24 (5) of the Convention on the Rights of Persons with Disabilities, 2008.

³ Section 21 and 22 of the Right of Persons with Disabilities Law, 2015.

⁴ Sida, Disability Rights in Myanmar, 2014, p-2.

⁵ <https://www.online-bachelor-degrees.com>.

It is recommended to develop training programs on disability, to increase skills and raising awareness of teacher to work effectively with PWDs, to initiate vocational training for PWDs and to establish educational institutions for disability.

To sum up, education is important for PWDs in creating the foundations for skill, training and living. Ignorance of the community, poverty and remoteness etc. are barriers to access education. Accessible education to disabled students is stipulated in Section 20 of the Right of Persons with Disabilities Law, 2015. Under Article 24 of the Convention on the Right of Persons with Disabilities guarantees the right to education of persons with disabilities, without discrimination and on an equal basis of others. Online learning offers disabled easy access to all educational materials right at the comfort of their home.

4. Right to Employment Component

The job opportunities are an important sector for disabled persons for their life. “Access to employment for persons with disabilities” and sets out obligations for employers provides in Chapter 10 of the Right of the Persons with Disabilities Law of Myanmar, 2015 imply with the Convention. Government, Organizations and Employers shall provide any job opportunities for disabled people.

According to Section 35 of the Right of Persons with Disabilities Law, 2015, the National Committee shall lay down, implement and supervise the policies and plans concerning the equal right to work for persons with disabilities as the others, creation of employment opportunities, nondiscrimination in employment process, prevention of forced labour, obtaining wages, salaries and benefits based on working capacity in accord with the existing law, enjoyment of the right to participate in the relevant labour organizations, enjoyment of the right to access the vocational educations, enabling to operate the self-employments, enjoyment the right to work in government departments, government organizations and private enterprises, accessibility in the workplace, taking measure of suitable accommodations or arrangements, and rehabilitation in coordination with relevant Union Ministries. And also National Committee shall carry out for enabling to conduct the private special vocational training schools with the government departments and government organizations for employment opportunities of persons with disabilities in coordination with relevant Union Ministries and shall coordinate with the relevant Union Ministries, Region or State Governments to submit for obtaining tax exemption, tax relief and right to import in accord with the existing tax law, rules, and procedure.

People with mild intellectual disabilities want to be able to communicate with their peers and to be part of the community. Yet, a lack of peer workshops or shelter workshops for PwDs will continue to make institutions attractive not just to child orphan PwDs and PwDs with moderate or severe disability, with or without families. Families of PwDs unable to benefit from livelihoods provision, such as those with intellectual disability and other moderate or severe disability, expressed a need for access to indirect livelihood support to reduce financial pressure to the families, enabling them to better support their disabled family member.¹

With respect to the Co-operative Sheltered Workshop and suitable employment for disabled persons, the employers shall employ persons with disabilities who are able to work based on the

¹ Salai Vanni Bawi, *Understanding the Challenges of Disability in Myanmar*, Internships Asia and Hussman Foundation, 2012, p.19.

type of work in appropriate job as quota specified by the National Committee , shall perform appropriate programmes for persons with disabilities including interviewing and employing based on capacity, enjoying the same wages and salaries and labour rights, promotion, job retention and obtaining the right of accessing free vocational education.¹

In Myanmar, the blind disabled persons created now Myanmar's Pronunciation System. It is a great job for disabled persons. At past, the blind disabled persons used computing with Jaws Software System in English. The Ministry of Social Welfare, Relief and Resettlement will support for disabled persons in new law and new system. The disabled persons should prepare their abilities.²

5. Rights to Social Participation Component

Many disabled people become lonely and have feelings of depression. They feel ostracized from their communities, with few people trying to help or encourage them.

Although some community members will acknowledge and assist disabled people, often the attention they receive is unwelcome, hurtful, or confined to looks and expressions of pity. Bullying is also a major factor facing disabled people in Myanmar, with name-calling and the disabled person are finding a source of amusement commonplace. Some families view their disabled child as a burden, a child that they cannot rely on, nor depend on in the future for income or opportunities. Although many families choose to keep their child and care for them as best they can, some families will go so far as to abandon their child disabled. Where cultural beliefs suggest that to have a disabled child is good luck, and a sign of prosperity for the family, the disabled child is not abandoned. They do not lead a normal life however, and are treated as differently from others in the community.³

In Myanmar, someone with disabilities might face discrimination on many levels, within their families and communities, both the regional level and the national level. Most disabled people suffer from some discrimination and exclusion, but the degree and severity often depends on the nature of their impairment and their varying personal situations. Disabled children and women are particularly vulnerable.⁴

The National Committee shall coordinate and implement to perform disability activities for ensuring accessibility of persons with disabilities at public places in cooperation with the relevant Union Ministries, Development Committees and Development Bodies, Region or State Governments, nongovernment organizations, private organizations and persons.⁵

According to Article 28 (1) of the Convention on the Rights of Persons with Disabilities, 2008, State Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

¹ Section 36 (b) and (d) of the Right of Persons with Disabilities Law ,2015.

² The Mandalay Daily Newspaper, Vol-19, No.13, p.15 (12, 12, 2015).

³ <http://rehmonnya.org/archives/106>.

⁴ Salai Vanni Bawi, Understanding the Challenges of Disability in Myanmar, Internships Asia and Hussman Foundation, 2012, p.7.

⁵ Section 28 of the Right of Persons with Disabilities Law, 2015.

Moreover, under Section 29 and 31 of the Right of Persons with Disabilities Law, the persons with disabilities who are eligible to vote under the Law shall have the right to vote a secret ballot for any Hluttaw and then the National Committee shall coordinate with the Union Election Commission to take appropriate measure in accord with the rules and procedures issued by this Law to facilitate for the person with disability in voting; and make appropriate measures to participate persons with disabilities in traditional and cultural events, entertainment programmes, sports trainings and competitions related to the public.

Conclusion

The disabled persons are entitled not only the rights to participate in the workplace, education, cultural and social security but also to get the basic needs, such as, accessibilities, personal mobility, habilitation and rehabilitation of disabled persons to live independently and fully participate in all aspects of life. In order to safeguard and protect the disabilities issues, Myanmar enacted the Right of Persons with Disabilities Law in 5 June 2015 and Rule on the Right of Persons with Disabilities in 27 December 2017. Although the Right of Persons with Disabilities Law of Myanmar enacted the medical service for disabled persons, there are many weaknesses in the implementation of the treatment facilities and dissemination of health information. In the educational sectors, teachers and educational staffs also have to need the special resources or training to teach the disabled students by their disabilities. So, the government should instruct the relevant Ministries to give the systemic training and instructions to teachers and educational staffs. The employment of disabled persons should be needed to have safe and comfortable workplace. Moreover, the relevant ministries should instruct the number of disabled employees to appoint in the employments. Although, the Ministry of Social Welfare, Relief and Resettlement cooperate and coordinate with respective ministries and Region and State government effectively carry on the implementation respect to the rights of disabled persons, the disabled persons faced with the barrier in their society and environment concerning transportation, telecommunication and health information knowledge in Myanmar. Therefore, it will be appropriated and better for their development of the disabled persons if the above matters fulfill to ensure by relevant ministries and the government.

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