

Legal Protection for the Rights of Persons with Disability in International Law

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Abstract: The introduction of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) sets up the starting point for the protection of the rights of persons with disabilities in the International Human Rights Law (IHRL) system. Nevertheless, as the largest definable disadvantaged group on the planet, quandaries still exist for States and the public sector in general to eliminate the discrimination and invasion of disability rights in society. Currently, even though there has been significant progress in recognizing and protecting disabled people's rights, discrimination, access to justice and legal remedies, and the ineffective application of international treaties are still common phenomena in various social aspects. This paper aims to analyze the problems and weaknesses in the current international disability law and propose recommendations to strengthen the protection of disability rights both in peacetime and during armed conflict pursuant to International Humanitarian Law (IHL). In addition, this paper will further examine several state practices – even though many nations have established policies and measures to protect disability rights, potentials for further improvement remain, such as the enactment and monitoring of comprehensive disability rights legislation as well as the popularization of knowledge. To achieve the ideal result, governments, civil society groups, individuals, and the international community shall actively cooperate to effectively safeguard the rights of persons with disabilities, proposing initiatives founded on a thorough and inclusive knowledge of disability rights, dedication to eradicating prejudice, advancing equality of opportunity, and ensuring that everyone has access to the justice and remedies.

Keywords: disability rights, International Human Rights Law, discrimination, access to justice and remedies

1. Introduction

Human rights have for long been a denomination used to protect the rights of the disadvantaged and marginalized, whose history has only recently seen the advancement of the right advocacy for disabled people, whereas the actual application of disability rights under IHRL still poses significant challenges to the issues at hand [1]. To ameliorate the status quo, the international community constructed a comprehensive framework of IHRL instruments for the defense and advancement of such individuals' rights [2].

Persons with disabilities naturally fall under the realm of protection set forth in the International Bill of Human Rights established by United Nations, including the CRPD which places tremendous emphasis on the subjectivity and intersectionality of disability rights in its provisions. As the most comprehensive international treaty on disability rights [3] drafted by the subject themselves, CRPD promulgates the set of rights and requires States Parties to take corresponding measures to ensure the enjoyment of rights for their citizens [4]. The CRPD obliges signatories to actively intervene by establishing new domestic laws and the reexamination of the current legal system.

Nevertheless, over a decade passed after the initiation of the Convention, despite its social significance, a variety of obstacles still exist with regard to policy implementation and convention monitoring, including deficiency in the knowledge and understanding of disability rights, a lack of political determination worldwide to in effect execute the treaty, and scarcity of resources available, exacerbated by the pandemic, to assure its implementation. All difficulties mentioned above have to some extent prevented the CRPD from being fully implemented [5, 6].

Another fundamental challenge faced by these disabled individuals is the lack of adequate protection against discrimination [3]. Even though the CRPD affirms that they impairments innately enjoy the right to equality and shall be treated without discrimination, systematic prejudice still prevails [4], which can be attributed to ineffective legislative protection against discrimination and lingering unfavorable attitudes towards disabled citizens in society.

Additionally, access to justice and remedy-seeking are severely hampered for disabled citizens [5], derived partially from the inaccessibility of legal institutions and processes and the dearth of competent legal representation and assistance [6]. Further, many persons with disabilities have faced considerable obstacles while trying to obtain a quality education, employment opportunities, healthcare, and other necessities to fully exercise their rights.

Despite the existence of tremendous progress in recognizing the rights of people with disabilities, there is still substantial room to ensure that these rights are effectively protected. The global community must actively build cooperation to advance and defend their rights, as well as make sure that disabled citizens' own voices are heard.

2. Problems and Ambiguities in International Disability Law

International disability law, as a relatively new and fast-growing topic of IHRL, serves as both a precursor advocating for disability rights and an emerging field where certain questions can arise regarding the rights of people who lived with impairments. It may, oftentimes, fraught with problems and ambiguities that need to be addressed to further the recognition of rights and correction of past injustices, including the ambiguity in the definition of disability, inconsistency in the interpretation of right to independent living, and lack of access to justice, remedies, and absence of political willingness to advance the rights of this marginalized group.

2.1. Lack of Clarity in the Definition of Disability

One constant issue of debate regarding the ambiguities of CRPD is the definition of disability – the concept has been defined in a manner to include multifarious impairments for the disabled, such as physical, mental, intellectual, and sensory impairments whose interactions may generate various barriers and thus hinder their effective participation in society as equal as others [4].

It was indeed an impressive attempt made by the CRPD to resort to a definition in which it is not the impairments but rather the subsequent interactions generated from the disability that led to the rise of the problems, not limiting the definition on medical grounds. Yet, while the concept is considered along with the policy implementation and legislative supervision, the definition in the

CRPD seems to be overly broad and vague, leading to a possibility of lack of consistency in the application of disability rights provisions [2], which can undermine its effectiveness.

2.2. The Right to Live in the Community

Article 19 of the CRPD states the right of persons with disabilities to live in the community chosen by their own as well as communal inclusion [4]. Nevertheless, while attempting to interpret and implement this right from the light of national government, deficiency in clarity and consistency still hampers the actual implementation from policy and legislative levels. Till the present day, for persons with mental disabilities, constant requirements existed to force this marginalized group to be grounded in the asylum and special institutions specifically created to “care” for them. In spite of the repetitive emphases in the CRPD on their rights to freely decide where and with whom to live, substantial risks still arise for those forced to move out of their homes involuntarily [5].

2.3. The Right to Liberty and Security

Another significant obstacle lies in the substantial absence of an explicit governmental prohibition and supervision on potential acts of violation of both domestic laws and CRPD. Article 14 of the CRPD protects the right to liberty and security for all people with impairments, yet it still fails to include a mandatory prohibition on the involuntary treatment and detention, especially for people who are mentally when confronting forceful institutionalization. The CRPD constantly obliges States Parties to make concerted efforts in the furtherance of disability rights enjoyment and advocacy, but a number of cases reveal that the scarcity of resources to support the implementation of these obligations still occurs in societal dimensions [3,4]. The reason lies partly in the lack of political will to allocate sufficient resources to disability rights and to ensure their effective implementation.

2.4. Access to Justice

The capacity to access the courts and the judicial system, as well as the freedom to participate in the legal process as witnesses, complainants, or victims, are both essential elements of all legal systems founded on the rule of law [3]. People with disabilities may encounter considerable obstacles when trying to obtain justice and seek redress for rights breaches under the present legal systems in place in the majority of nations.

A significant portion of the difficulties in access to justice derived in part from the deficiency in the accessibility of legal procedures and institutions, and the scarcity of appropriate legal representation and support. Although legal procedures *per se* are not inaccessible to persons with disabilities, still they may be confronted with barriers to accessing the appropriate legal representation and information.

State practices can further reflect the barriers faced by disabled people while attempting to seek justice. In Brazil, despite the existence of the Brazilian Statute of Persons with Disabilities [8], disabled individuals continue to face significant barriers in accessing justice and seeking remedies for violations of their rights, due in part to the lack of accessibility of legal procedures and institutions, as well as the lack of legal capacity to represent themselves in front of the judicial system.

2.5. Lack of Political Will

A number of responsibilities are outlined in the CRPD for States Parties, including the duty to defend and advance disability rights, take the necessary measures to ensure the enjoyment of these rights, and guarantee their equitable participation in all facets of life [4]. One of the biggest barriers to the implementation of international disability law is a lack of political will to support these rights, which

may take many forms, including States' failure to allocate adequate resources for the implementation of disability rights provisions or their failure to enforce current laws and policies with relevant effects.

In India, despite the existence of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [9], persons with disabilities continue to face significant barriers in accessing their rights, including barriers in accessing education, employment, health care and other essential services. The deficiency in political determination to implement the provisions of the Act, and the scarcity of resources for its implementation further exacerbate the problem.

3. Suggestions and Scopes for Improvement

3.1. Adequate Implementation of the CRPD

One of the primary areas that requires improvement is the CRPD's implementation. By giving sufficient financing for the CRPD's implementation and ensuring that the treaty is incorporated into national law, states may take significant action to resolve this [6]. The National Disability Strategy 2010-2020 in Australia offers a thorough framework for the national implementation of the CRPD. To ensure that the rights of Australians with disabilities are safeguarded, the strategy outlines several specific actions, such as the National Disability Insurance Scheme, provision of relevant support, and the development of inclusive policies and programs that foster their autonomy and freedom of choice [10].

In order to remedy the lack of knowledge and comprehension of disability rights in state activities, comprehensive education and awareness-raising efforts aiming at educating the general public and decision-makers about the rights of individuals with disabilities must also come into effect.

3.2. Strengthening Anti-Discrimination Laws

Anti-discrimination legislation needs to be strengthened as another important area for change. In spite of CRPD's repetitive affirmation on disabled people's right to equality and non-discrimination, the status quo is hardly ideal [3]. States shall act decisively to enhance anti-discrimination legislation and ensure that they are strictly enforced to remedy this marginalized group's disadvantage.

The Americans with Disabilities Act (ADA) protects against discrimination based on disability and has received public praise for its stringent enforcement procedures [6]. The Act further stipulates that the discrimination is forbidden in all spheres of life, including employment, housing, and reasonable accommodations.

In terms of anti-discrimination legislation, the heated debate regarding the treatment of this marginalized group also prevails among scholars. Shall they be treated in a similar way compared to their counterparts without disabilities, or treated differently? If the latter has been chosen, and the special treatment of disabled people may further deteriorate their social status and can hardly improve the protection of their rights due to an extra emphasis on their identity with the possibility of stigmatization. Although the debate is philosophical in nature, it has a direct impact on the policy and legal aspects of the advocacy.

3.3. Improving Political Will to Implement Disability Rights

It is possible to increase the political will to enact disability rights provisions by fostering a better understanding of its importance, elevating the political priority of these rights, and working with significant decision-makers to advance their rights. The achievement of the goals further requires the creation of policies that promote the inclusion of individuals with disabilities in all spheres of life. Adequate human and financial resources should be also made available, not to mention programs for these disabled people.

Disability-friendly institutions and legal procedures should be provided as much as possible and suitable legal counsel and assistance shall also be taken into consideration [2], which encompasses training legal practitioners in disability rights and the creation of legal aid programs as well as the provision of accessible information and communication technologies. For example, in India, the Rights of Persons with Disabilities Act, 2016 offers a thorough framework for the protection of disabled people's rights. In order to guarantee that they have access to justice and an effective remedy for violations of their rights, the Act contains provisions for the appointment of disability rights advocates and the creation of tribunals.

3.4. Removing Barriers to Improve Access to Justice and Essential Services

Access to the necessary legal system is one of the primary issues that disabled people deal with. The CRPD calls on States to adopt necessary measures to guarantee that legal processes are accessible to disabled people and preserve such individuals' rights to access justice on an equal basis with others [11]. Yet in reality, many such people encounter significant obstacles when attempting to access legal processes and institutions, such as insufficient courtroom accessibility, deficiency in sign language interpretation, and the scarcity of legal counsel and aid.

States Parties must act swiftly to remove the obstacles that disabled people confront in order to resolve these issues. The provision of suitable legal counsel and support, guaranteeing the accessibility and inclusivity of fundamental services, and ensuring legal institutions and processes are only a few examples of what is meant by this. States Parties shall also take steps to address the underlying issues that lead to discrimination against disabled people, encourage inclusive behaviors, and encourage positive attitudes.

4. Legal Protection for Disability Rights under International Humanitarian Law

IHL defines the principles, guidance, and different actors' statuses under armed conflicts, which aims to safeguard civilians and the vulnerable and to reduce the harm that war causes to people and civilian property [12]. Disability-related individuals also are protected under IHL since they are regarded to be a particularly vulnerable population during armed conflict. Article 4 of the Third Geneva Convention generally mandates that people arrested in armed conflict shall be treated humanely and are exempt from all forms of violence, inhumane treatment, and punishment [13], which also encompasses disabled people and aligns with the principles upheld in the CRPD.

Additional Protocol II offers additional rights for disabled individuals during non-international armed situations in addition to the third Geneva Convention. The civilian population, including those with disabilities, must be treated humanely and must be shielded from acts of violence, cruel treatment, and punishment, according to Protocol II's Article 5 [12].

IHL mandates that all essential measures be taken to safeguard the safety and well-being of disabled individuals, further requiring State Parties to take into account their special needs, such as medical and rehabilitation services. IHL provisions also provide general minimum protections for disabled individuals in times of armed conflict, which is intended to avoid abuse, brutal treatment, and punishment.

5. Ambiguities and Problems under IHL for Disability Rights Protection

While IHL provides for the protection of persons who are not participating in the hostilities, including persons with disabilities, ambiguities and problems exist in the implementation and enforcement of disability rights protection under IHL [14].

The definition of what qualifies as a disability is one of the main areas of uncertainty in IHL regarding the protection of disability rights. IHL's vague definition of disability might cause

misunderstandings and uneven application of its rules [13]. Additional Protocol II refers to disabled people as “persons who are likely to require particular protection”, although it is still unclear exactly what qualifies as a disability. This ambiguity may lead to the treatment of people with disabilities differently during military situations.

Another issue that affects persons with disabilities in dangerous settings is a lack of safety from abuse and violence. They are commonly the targets of abuse, especially sexual violence, because of their vulnerability and the false belief that they are unable to defend themselves.

Lack of protection from abuse and violence is another problem that affects people with impairments in violent situations. Due to their fragility and apparent incapacity to protect themselves, disabled persons are frequently the targets of abuse, including sexual violence [12]. Even though IHL guarantees the safety of everyone who is not taking part in hostilities, including those with disabilities, it is nevertheless difficult to put these principles into effect. The third Geneva Convention further stipulates, under Article 30, that confinement for prisoners of war will be valid and legitimate, without clarifications regarding prisoners of war who may have psychological disorders constituting psychological impairments. Due to the dual application of IHRL and IHL, CRPD can apply even under armed conflict. Yet the provision of Article 30 of the third Geneva Convention may form a contradiction since CRPD prohibits the involuntary confinement of persons with disabilities and the protection of the choices and autonomy of disabled people.

In addition to the dilemmas and obstacles faced by those who are disabled in armed conflict, IHL laws face difficulties in actual application. It is usually challenging to implement IHL criteria due to a lack of money, a lack of political will, the incapacity of international organizations and national actors to monitor the execution of IHL rules, among other issues [15]. The International Committee of the Red Cross (ICRC) in particular has reported that despite the provisions of IHL regarding the protection of people with disabilities in armed conflicts, violations of their rights, such as physical and sexual abuse, arbitrary detention, and forced displacement, continue to occur [16].

It is imperative that IHL laws are applied and upheld, as well as to make the concept of disability under IHL clear, in order to resolve the uncertainties and issues that people with disabilities encounter during armed conflicts [17]. States and international organizations must place a high priority on ensuring that individuals with disabilities are protected from violence and abuse during armed conflict as well as have access to the proper sort of care and assistance [18].

6. Suggestions for Improvement

Along with ensuring their complete involvement in peace processes, such as DDR programs (disarmament, demobilization, and reintegration), the international community shall also endeavor to encourage disabled people's full engagement in peace processes. The following recommendations can be made to strengthen how individuals with disabilities are protected under IHL.

In the outset, IHL laws ought to be read and put into practice in a way that considers the unique requirements and rights of people with disabilities. To guarantee that the rights of people with disabilities are appropriately safeguarded, this may need clarifying current IHL regulations and developing new advice.

Second, governments and the public sector as a whole need to focus more on ensuring that people with disabilities in armed conflict may obtain humanitarian relief and support, including the provision of appropriate accommodations. This can entail actions like the supply of easily accessible housing, food, water, and medical care [18, 19].

IHL should also offer greater protection against the exploitation and abuse of people with disabilities, including those who might be sexually assaulted or forced into armed groups. This may necessitate the creation of new legal safeguards and the implementation of efficient monitoring mechanisms to guarantee their protection.

Finally, the rights of people with disabilities can be maintained and upheld in armed conflict by including an effective monitoring system within IHL. This can entail the development of efficient complaint and settlement processes, independent monitoring organizations, and frameworks for effective accountability.

These recommendations for increasing the protection of disability rights under IHL should be taken into consideration by authorities, international organizations, and non-governmental organizations when developing their policies and procedures. States should also create and implement national action plans to guarantee the protection of disability rights in armed conflict, including these provisions in their plans for military and humanitarian aid.

7. Conclusion

Protecting the rights of those with disabilities is a fundamental challenge for IHRL. Despite significant advancements in the recognition of disability rights, the real-life implementation of legislation in place to support this group still remains a challenging task. The reasons for the phenomenon lie in many contributing factors. A lack of awareness and understanding of disability rights serves as the root cause of the problem at hand, with an exacerbating factor of insufficient political will to implement the treaty and a dearth of funding to ensure its implementation. The absence of adequate protection against discrimination further limits the development of disability rights under IHRL.

Even yet, it is still important to reiterate that there is a growing awareness of the need to uphold the rights of those with disabilities and solve the challenges they face. The international community must keep working together to support the disadvantaged. The aggregation of the knowledge and understanding of disability rights entails the increment in political will to implement the CRPD, provision of sufficient resources to enable its implementation, removal of barriers to accessing justice and the supply of essential services.

The limits and ambiguities in international disability legislation must be addressed so as to ensure the production of an effective safety-net for the rights of disabled citizens, including the accomplishment of a combination of legal and policy measures, such as the creation of clear and effective legal frameworks, the provision of inclusive and accessible educational, employment, and health care services, and the encouragement of favorable attitudes and understanding of disability rights. The guarantees of rights require respect and safeguarding for everyone founded upon the cooperation of the entire international community, creating a society where disabled individuals can be respected by all.

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