

Protecting the human rights of persons with disabilities: Islamic perspective and Malaysian legal framework

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Abstract: Persons with disabilities are often discriminated against and marginalised from the mainstream development programmes in almost all societies. Being a disadvantaged group, they suffer from social exclusion, denied the basic rights and freedoms enjoyed by everyone else and being deprived of the opportunities to reach their potential. They have a long experience of being perceived as the recipients of welfare and charity rather than rights and respects. In Malaysia, persons with disabilities have been identified as one of the target groups in the National Welfare Policy 1990. The policy aims to uplift the potential and to provide equal opportunities to the disabled persons. Within the span of over thirty years after the endorsement of this policy, the governmental and non-governmental organisations continue to provide various programmes and services to cater for the special needs and interests of the disabled persons. In respect of legal protection provided to the disabled, the enforcement of the Persons with Disabilities Act 2008 seemed by many as particularly timely. This paper discusses the paradigm shift in the model of disability. It provides the statistics of persons with disabilities in Malaysia, highlights the existing policies, programmes and services available to this disadvantaged people and examines the relevant legislation that afford protection to the persons with disabilities in Malaysia.

Keywords: Disabled people, persons with disabilities Act 2008, United Nations Convention on Persons with Disabilities 2006, Malaysia, national welfare policy.

Introduction

Persons with disabilities remain as the world's largest minority and most disadvantaged group. The World Report on Disability 2011 estimated that 15 per cent of the world's population or more than one billion people live with some form

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of disability and that 80 per cent of such people lives in the developing countries (World Bank, 2011). Worldwide, one family in four has a member with a significant disability, and this ratio is growing (Grace, 2013). The number of persons with disabilities and functionally impaired people is expected to increase due to the process of population ageing. Generally, health impairment and incidence of disabilities increase with advancing age. Data indicate that in countries with life expectancies over 70 years, individuals spend an average of 8 years or 11.5 per cent of their lifespan, living with disabilities (United Nations, 2017).

Across the world, persons with disabilities have a long history of being discriminated against, and they continue to experience violations of their human rights in ways that are directly connected to their disabilities. The incidence of persons with disabilities being denied of their basic rights, marginalised and excluded from participation in the society is more noticeable and widespread in some of the less developed regions in the world. In some parts of Asia and Pacific region, they constitute the poorest of the poor.

Model of disability: A paradigm shift

Traditionally, persons with disabilities have been perceived as individuals who require support and protection from the society. Worst still, they are treated as objects of pity, victims of great misfortune and as a burden on their families and societies. The terms used to refer to the persons with disabilities such as wheelchair bound, crippled, spastic or mentally retarded are derogatory and portray negative images of the disabled, inevitably causing them to be stigmatised and shunned from their own communities. In the past, the issue of disability was predominantly discussed based on the welfare and medical model. This model focuses on the particular attributes of disabled persons with a view to fulfilling their needs and providing treatment in order to help them lead a socially acceptable life. This welfare and medical approach of disability somehow undermined human rights protections of the persons with disabilities.

Over the years, there has been a gradual change in addressing the issues of disability, a shift from treating the persons with disabilities from welfare and medical approach to human rights approach. The rights-based approach empowered them to claim their rights on an equal basis with other members of the society. Applying the rights-based approach, persons with disabilities are treated as legal subjects who are entitled to respect and full enjoyment of human rights. Similar to other citizens, they are endowed with the “inherent rights” which entitled them to an equitable share of the community’s resources.

The adoption of the United Nations Convention on Persons with Disabilities (CRPD) in 2006 represents a paradigm shift, a clear departure from a social welfare approach to a human rights-based understanding of disability. The CRPD promotes and protects the rights and dignity of the disabled persons, recognises their rights to enjoy human rights, rights to exercise their legal capacity, access to justice, and full enjoyment of liberty and security.

The changes brought about by the CRPD in adopting the human rights model of disability was acknowledged by the former UN High Commissioner for Human Rights, Rosemary Kayness, in which she stated that, "... the CRPD is regarded as having finally empowered the 'world's largest minority' to claim their rights, and participate in international and national affairs on an equal basis with others who have achieved specific treaty recognition and protection." (Kayness, 2008) This paradigm shift is indeed significant as it allows for the mainstreaming disability in every aspect of society and for individual nations to rethink their disability policies and practice in the areas of employment, education, housing, health, access to justice, cultural expression and communication. (Umeasiegu, 2013)

Islam's perspective on disabled people

The CRPD's human rights model of disability somewhat echoes Islam's emphasis on the dignity of every human being. Human dignity is the natural right of every individual as of the moment of birth and it is to be enjoyed in an absolute and unqualified sense. In this regards, the Qur'an is categorical: "And we have honoured the sons of Adam" (Qur'an, 17: 70). Hence, in Islam, there is no discrimination on the grounds of race, colour, languages or religion. Those who are disabled or not disabled are to be honoured, respected and treated equally. It is reported that on several occasions, a poor and blind Abdullah Ibn Makhtum acted as the governor of Madinah while the Prophet (SAW) was away on expeditions. The Prophet (SAW) praised the blind Abdullah for discharging his duties competently (Guvercin, 2008).

The principles of non-discrimination and equality as recognised in Islam are also enshrined in the Cairo Declaration on Human Rights in Islam 1990. Article One (a) of the said Declaration provides:

All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, languages, belief, sex, religion, political affiliation, social status or other considerations.

The true religion is the guarantee for enhancing such dignity along the path of human integrity.

The only criterion which distinguishes mankind in the eyes of Allah (SWT) is the level of *taqwā* (piety). The Qur'ān is explicit on this: "Verily, the most honourable of you with Allah is the most virtuous one" (Qur'ān, 49: 13).

Islam also enjoins the Muslims to show mutual respect towards fellow human beings, to value each other for what they are, and to accept their full participation in the society. An example of the application of the principle of inclusion is illustrated in the story of Julaybib, one of the companions of the Prophet (SAW). Despite his being shunned by the society because of his severe physical deformities, the Prophet (SAW) held him in high regard. When Julaybib died in a battle, the Prophet (SAW) laid Julaybib's body to rest praying for him saying: "O Allah he is from me and I am from Him" (*Ṣaḥīḥ Muslim*, Book. 31, No. 6045).

The Qur'ān also stresses the role of the individual and the society in taking care of the people with special needs. The first four caliphs did take care of the disabled people and they were followed by other rulers. Umayyad caliph, Walid ibn Abd Malik, has the distinction of establishing the first "care home" for the intellectually disabled individuals (Hiam Al-Aoufi, 2012)

Persons with disabilities in Malaysia and the government

Malaysia, like all other countries, has its share of people with disabilities. The number of the disabled persons registered with the Social Welfare Department, as of 30 September 2017, is shown in Table 1. The Social Welfare Department divided them into seven categories of disabilities. The division of disabilities helps the Social Welfare Department to plan and formulate appropriate programmes for those who suffer from physical, mental, sensory or learning impairment. These disabilities are significant enough to make a difference in their daily lives compared to a normal person.

One of the earliest initiatives taken by the government in improving the overall well-being of persons with disabilities was the formulation of the National Welfare Policy in 1990, whereby the disabled persons were included as one of the target groups. The policy aims to uplift the potential and to provide equal opportunities to the disabled persons so that they would not be left out in the development of the country. Moving on from here, a specific policy for persons with disabilities was formulated and endorsed in November 2007 together with its National Plan of Action. The policy acknowledges that a rights-based approach and protection is necessary to guarantee the interests and well-being of persons

with disabilities. It also emphasises equality and opportunities for the disabled persons to full participation in society. It gives priority to human rights values such as dignity, respect and freedom to enable the disabled to live independently. In addition, it also recognises that persons with disabilities are free from any physical, social, economic, cultural as well as attitudinal barriers. The policy laid down strategies which are divided into fifteen aspects such as advocacy, accessibility to facilities, transport services and information and communications technology, health services, rehabilitation programmes, access to education, employment opportunities, personal safety and social protection, capacity development, participation of society in programmes for persons with disabilities, housing, and development, advancement and empowerment of children and women with disabilities.

Table 1: The number of disable persons in Malaysia, 2017

No	Categories of Disabilities	As of 30 September 2017
1.	Learning Disabilities	154,062
2.	Physical Disabilities	154,512
3.	Hearing Disabilities	33,533
4.	Visual Disabilities	39,321
5.	Multiple Disabilities	20,599
6.	Mental	36,418
7.	Speech Disabilities	2,286
	TOTAL	440,731

Source: People with Disabilities (PWDs) Department, Social Welfare Department, Malaysia.

The first phase of the National Plan of Action for persons with disabilities which covered the period from 2007 to 2012 basically aimed to improve services to the disabled persons and enhance awareness and create a positive attitude to disability issue. It focused on the creation of a barrier-free environment, user-friendly transportation, and access to information, health services, education, employment and rehabilitation. However, there has been no review or evaluation of the progress of the first phase of this National Plan of Action (UNICEF Malaysia, 2014).

A year after the endorsement of the persons with disabilities policy, the Parliament passed Persons with Disabilities Act in December 2007 and it came into force on 7 July 2008. The enforcement of this Act is as part of Malaysia's obligation and commitment to introduce measures to promote the human rights of persons with disabilities as required under the UN Convention on Persons with Disabilities 2006. This Act which adopts the rights-based approach of disability aims to ensure that the rights, interests and welfare of persons with disabilities in

Malaysia are protected. The enforcement of this Act reflects the willingness of the Government to place disability issue into the country's mainstream agenda.

At the regional level, Malaysia has adopted and signed a number of treaties and declarations which promote and protect the human rights of the disabled persons. Two important declarations are worth mentioning: the Biwako Millennium Framework for Action 2002 and the Incheon Strategy in Asia and the Pacific 2012. The Biwako Millennium Framework for Action promotes a paradigm shift from a charity based approach to disability to a barrier-free inclusive and rights-based society.

Programmes and services for persons with disabilities in Malaysia

The plight of the disabled persons in Malaysia comes under the purview of a number of government ministries, national bodies as well as Non-Governmental Organisations (NGOs). Among the related government ministries which are the main stakeholders are the Department of Social Welfare of the Ministry of Women, Family and Community Development, Ministry of Education, Ministry of Health, Ministry of Transport, Ministry of Human Resource and Ministry of Housing.

The Department of Social Welfare which is under the purview of the Ministry of Women Family and Community Development provides a wide range of services to the disabled persons. The programmes and services provided include financial assistance, aid for artificial limbs, institutional care programmes and rehabilitation services. The financial assistance provided by the Social Welfare Department are in various forms namely, aid for assistive devices, disabled worker's allowance of RM 3,000.00 per month for those who earn below RM1,200.00 per month, launching grant of the maximum amount of RM 2,700.00 for the disabled who wants to start their own employment, special aid of RM 300.00 per month to the caregivers of the disabled and chronically ill who are bedridden, and special aid of RM 150.00 per month to the disabled who are unable to work. The Social Welfare Department also assists the disabled by providing artificial limbs, prostheses, hearing aids and wheelchairs. It also provides reimbursement of white canes and Braille machines. As for the institutional care, at present the Social Welfare Department managed 11 institutional care for the disabled situated in various parts of the country. Among the activities provided at this institutional care are pre-vocational education, informal academic classes, religious lessons, and sports and outdoor activities. Another service provided by the Social Welfare Department is the Community Based Rehabilitation Centres.

These centres are established as a one-stop centre providing services such as diagnosis, rehabilitation, treatment, special education and vocational training for persons with disabilities. The services are intended for disabled adult and children alike. As of July 2014, there were 508 centres with 20,000 trainees throughout the country. The disabled who participate in this programme are given monthly allowances of RM 150.00.

The Ministry of Education is responsible to formulate curricula and educational modules for special needs of disabled children. There are three different schooling options provided by the Ministry of Education. The first, which is the Special Education Schools are established for children with vision and hearing disabilities. The second type is the Special Education Integrated Programme. This programme is carried out in specific classes in normal primary and secondary school, as well as in the vocational secondary school. The third kind is the Inclusive Education Programmes, where children with disabilities are integrated into the mainstream classes.

The Ministry of Health is responsible to carry out growth and developmental assessment for early detection of disabilities among children aged 0-6 years. This programme is carried out at various health and community clinics throughout the country. The programme is aimed to help the improvement in the quality of life of the affected children and their family. One of the main objectives of the Ministry of Health is to provide an accessible and affordable health services to all citizens including persons with disabilities.

The Ministry of Human Resource is responsible to encourage and increase the participation of disabled persons in employment. The aim is to create job opportunities to include the disabled people in the workforce as much as possible. Towards this end, the ministry endorsed the 1% job opportunity in the public sector policy for the disabled. The objective of this policy is three folds, namely policy on 1%, (ii) job coach services which provides assistance to both the persons with disabilities and employer, to help disabled persons to get suitable job according to their eligibility, ability, skills and knowledge and to help them sustain their jobs at the workplace.

The role of the Ministry of Transportation on the other hand is to provide accessible public transportation by improving and enhancing the accessibility of buses and rail services.

Laws ensuring protections to persons with disabilities in Malaysia

In Malaysia, prior to the enforcement of PWD Act 2008, the available laws which afforded protection to the persons with disabilities is mainly based on welfare

approach such as provisions of social security benefits, welfare benefits and institutional care. The Employees' Social Security Act 1969 (ESS Act, 1969) which governs workers in the private sectors who earns less than RM 3000 a month, provides protection and compensation to the employees against accident or an occupational disease arising from his employment. There are two social insurance schemes under this Act, namely (1) Employment Insurance Scheme, and (2) Invalidity Pension Scheme.

The Employment Insurance Scheme provides coverage and protection for employees who suffer from employment injury or disease arises out of the employment or during the course of employment. It covers the employees who are injured while commuting to and from work and commuting in the course of work and while working (ESS Act 1969, Section 24). In addition, it covers workers who develop the occupational disease that result from exposure at work to various hazards (ESS Act 1969, Section 28). The benefits provided under this scheme include medical treatment (ESS Act 1969, Section 37), temporary or permanent disablement benefit, constant-attendance allowance (ESS Act 1969, Section 30) and facilities for physical and vocational rehabilitation (ESS Act 1969, Section 57).

The Invalidity Pension Scheme, on the other hand, provides benefits to an insured person who suffers from invalidity by reason of specific morbid condition or permanent nature either incurable or is likely not to be cured which results in the inability of earning. The types of benefits provided are invalidity pension, invalidity grant, constant attendance allowance and facilities for physical and vocational rehabilitation and dialysis.

Within the Malaysian constitutional framework, the disabled persons enjoy the fundamental liberties as enshrined in the Federal Constitution in just the same way the other citizens enjoy them (Federal Constitution, Part II). Among the rights guaranteed are right to life (Federal Constitution, Article 5), right to equality (Federal Constitution, Article 8), freedom of religion (Federal Constitution, Article 11), freedom of speech, assembly and association (Federal Constitution, Article 10) and right to education (Federal Constitution, Article 12). It is interesting to note that Articles 8(2) and 12 of the Federal Constitution provide that "there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth..." It has been argued that "disability" should be included as a basis for non-discrimination. This is pertinent as it will enhance the protection of the disabled persons so that they will not be discriminated against based on their disabilities.

Persons with disabilities (PWD) Act 2008

Malaysia enacted the PWD Act 2008 as part of her obligations under the UN Convention. The Act was drafted after taking into consideration all provisions under the UN Convention on RPWDs. The Act is divided into five parts with the total number of forty-six provisions. The preamble sets out the overall aims and objectives of the Act that is to give full recognition to the rights of the persons with disabilities. The Act acknowledges that persons with disabilities are entitled to equal opportunity, protection and assistance in all circumstances. The Act also guarantees them access to the physical, social, economic and cultural environment, health care, education, information and communication services in order to enable them to fully and effectively participate in society.

The Act adopts the UN Convention's definition of "persons with disabilities". Section 2, the interpretation section, defines "persons with disabilities" as 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. The provision, however, does not specify the period or duration of term "long-term". The Act does not include short-term impairment. Section 39 of the Act further explains that the term "persons with severe disabilities" refers to a person suffering from one or more disabilities and is dependent on others for basic living activities.

Part II of the Act provides for the establishment, membership and functions of the National Council for persons with disabilities. The Council is vested with wide-ranging powers in matters relating to persons with disabilities. The Council has the responsibility to oversee the implementation of the national policy and national plan of action relating to persons with disabilities. The Council is also empowered to make recommendations to the Government in matters relating to the support, care, protection, rehabilitation, development and wellbeing of the disabled persons. In addition, the Council is responsible to make recommendations to the Government for any changes to the existing law as well as to propose new laws in order to secure full and effective participation in society of persons with disabilities.

Section 21 of the Act deals with the registration of persons with disabilities and Section 25 concerns with the issuance of Persons with disability card. The purpose of registration is to collect data and statistics for the planning of services, rehabilitation programmes, prevention, training, education and early intervention. Part IV of the Act governs the provisions of a wide range of accessibility for the

promotion and development of the quality of life and well-being of persons with disabilities. Section 26 provides the disabled persons with the access to public facilities, amenities and services and buildings. Section 27 deals with the access to public transport facilities, while Section 28 details out the provision on access to education for the persons with disabilities. Access to employment is governed by Section 29. Persons with disabilities are also entitled to have access to information, communication and technology by virtue of Section 30. Persons with disabilities shall have the right to access to cultural life on an equal basis with persons without disabilities as guaranteed by Section 31 of the Act. The right to have access to cultural right extends to the right to enjoy cultural materials, television programmes, films, theatre, other places for cultural performances or services, as well as monuments and sites of national cultural importance. In addition to this right, the Council shall take appropriate measures to enable persons with disabilities to have the opportunities to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit but also for the enrichment of society. Section 26 of the Act mentions the access to recreation, leisure and sports guarantees to the disabled persons. However, this right is exercised subject to the existence or emergence of such situations that may endanger the safety of the disabled persons.

In the pursuit for the persons with disabilities to be fully included and participated in the society, the Council, the private healthcare service provider and NGOs shall take effective and appropriate measures to enable them to attain and maintain maximum independence, full physical, mental, social and vocational ability

Challenges and critiques

Despite the ratification of the CPWD and the enforcement of PWD Act 2008, there has not been much improvement in empowering the disabled to exercise their rights and enhancing their legal protections. The government has been criticised for failing to sign the Optional Protocol of the Convention. Failing to sign the Optional Protocol leaves the disabled persons with no mechanism to gain redress against rights violations, including by the Federal Government, from an international monitoring body. So far there has been no move from the government to respond to this demand, despite the urge from stakeholders such as SUHAKAM and other disable organisations. In addition, the government has also been criticised for making the reservation to Articles 15 and 18 of the Convention,

which relates to freedom from torture or cruel, inhuman or degrading treatment or punishment, and liberty of movement and nationality respectively.

As far as the PWD Act 2008 is concerned, one noticeable shortcoming is the non-existence of sanctions to be imposed against the government should they fail in their obligation to provide equal opportunities of access to the persons with disabilities, neither there is legal recourse available to the disabled persons to sue the government for failing to fulfil their obligations under the Act.

In term of access to public buildings and public transport, PWDs continue to face multiple barriers which limit their accessibility. There should be more environmental adaptations facilities such as ramps, grab bars and automated doors. In addition, there is also limited availability of the health care services for the disabled, especially for those who stay in the remote areas.

Conclusion

Persons with disabilities still remain as one of the marginalised groups in Malaysia despite the efforts and commitments of the government and other authorised bodies in enhancing the protection of their rights. In practice, the disabled are still being denied their basic rights and opportunities to be fully included in the society. It is not the personal disability of the disabled persons which impede them from enjoying their basic rights, rather it is due to the existence of the environmental, building and transportation barriers as well as the negative attitude of the members of the society towards the PWDs which actually limits the disabled from full enjoyment of their rights and advancement in life.

Further efforts must be carried out to ensure the full realisation of the rights of the PWDs. All interested parties must work together to eliminate discrimination against the disabled. Steps must also be taken to increase public awareness through mass education campaigns in order to remove the negative perception of the public towards the disabled. In addition, there must also be some efforts in empowering the disabled with the political will so that their voice can be heard in ensuring the full and equal enjoyment of all human rights. Hence, rights of the disabled must continue to remain as one of the main national agendas so that eventually they can fully enjoy the universal human rights afforded to those who are not disabled.

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