

LAW ON PERSONS WITH DISABILITY'S RIGHT IN VIETNAM NOWADAYS: REALITY AND SOLUTION TO IMPROVE

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Right of the disability is not the own consideration of country in individually. Respect and protect the right of the disability brings the meanings of morality, charity, and economy, society and justice as well. The content of the written analyzes the law in practice on the right of the disability in Vietnam nowadays on civilian, economy, politics, society and culture media; highlight the advantages, basic limitation and the reason of those advantages and limitations; Based on that, suggest some solutions to fulfill the law on rights of the disability in Vietnam currently.

Law on rights of the disability is not the independent law sector in the law system but it has close, integrated, relationship with other law sectors. That is system of common compulsory behavior regularities promulgated or approved by Government, it adjusts the social relations rising in the process of carrying out the basic rights of the disability on civilian, politics, economy, society and cultural fields.

Law on rights of persons with disability in Vietnam includes 5 basic contents. *Firstly*, regulate the responsibilities of Government agencies in caring, protecting to respect and guarantee rights of the disability. *Secondly*, recognize the juridical personality and promulgate the operational regulations of organizations of and for the disability. *Thirdly*, regulate rights of the disability following the group of rights on civilian, politics, economic, social and cultural

rights. *Fourthly*, adjust the activities of international cooperation, charity activities of the interior and exterior organizations for the aim of support the Vietnam's disability. *Fifthly*, regulations on reward and treating violations.

Those shows that rights of the disability will be guaranteed to implement with the full law system. However, guaranteeing the rights of the disability in Vietnam now is insufficient. Situation of the disability is discriminated, even slighted, abused, oblivion. There are a lot of reasons for the situation above; including, lack of full law system to create the foundation of respecting and guaranteeing right of the disability. So, it needs to fulfill the law of the disability's rights than ever to create the equal opportunities that the disability

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can contribute and receive as their rights.

I. Actual state about rights of Vietnam's disability currently

1. Rights of basic civilian, politics

Vietnam's Constitution and Law recognize and confirm the free democratic right on civilian, politics fields of the disability, including: *vote, self-nomination right; joining in managing the country and society; free to gather and create the group; equal in law...* Every action violating those rights will be treated seriously under the law.

Law on handicap in 1998 confirmed: *"State encourage, create the favor of equality in politics rights"* to the disability (Clause 1, Article 3). This regulation shows that, State not only respects but also encourage and do a favor for the disability so that they and use their civilian and politics right.

About the vote and self-nomination right: This is one of important politics rights, guarantees the vote and self-nomination rights for the disability; it means the State implements the ownership right of the disability. The vote, self-nomination of the disability was recognized in the Constitution of 1946, 1959, 1980, 1992, and concretized in law and under law documents.

About the free right to gather and create the group: To the disability, this right brings 1 special meaning, because when they gather in the organization of and for the disability, they have chance to exchange and improve the social acknowledgement; be more confident in life; especially they receive the

sympathy, sharing living working and studying experience from the people in the same situation; they can support each other both in material and mental; encourage themselves to make progress together and furthermore they help each other to understand their rights and obligations to raise their sympathetic voice, call on the responsibilities of State, family and society to them. State Law on handicap in 1998 confirmed: *"The handicap can establish, join, act in the social organizations, production, business associations of the disability under the law. Organization, personality is established, joined the disability's sponsor organization under the law"* (Article 7).

In fact, right to gather and create group of the disability is respected and guaranteed to deploy, Vietnam has 1 disability's organization established. The most symbolic is the foundation of The Vietnam Blind Association (in 1969). This is important event, in one hand it meets the deep desire of the visual disabilities (blind); on the other hand, *"is landmark that marks the great change in the blind's life. That is solving the blind's problem not on the base of patronizing, giving and considering the blind as the disability, handicap... but on the base of help the blind use their ability, study to improve standard, join producing, working and positively actively and equally join in the social and family life"* (1, pg.8). Now, the Blind Association has developed in 42/64 provinces with more than 54.000 members. Besides, we have to mention: The Production and business

Association of the disability, founded in 2003, expanded its organization in 32/64 provinces with 250 members works under the criterion of assisting the disability having the chance to approach and use their rights of labor and working(2, pg.2); Vietnam disability Sport Association; Sponsored Dioxin victims Association;...

The right to be equal in law: Principle: all citizens are equal in law is the basic principle of citizen's right and obligation institution. However, under the human right's hand, it can not understand the equality in law of every citizens under the machinery and hard meaning . Because, every people has their own characteristic of mental and material, different condition and situation of health, economy, the ability to reach to enjoy their rights, shoulder obligations. To the disability, they are easily in pain, they meet lot of hindrance in reaching and enjoying their rights; so, State should have responsibility to support, break the barrier, create the equal chance to the disability. Approaching and enjoying their own right create the fully meaningful equality.

Through the research on the actual situation of Vietnam law's regulations on basic civilian, politics of the disability now, we can get some remarks as below:

Firstly, Vietnam's Constitution and Law recognizes and confirms the basically free democratic rights in civilian, politics field of the disability. All violation actions will be treated seriously under the law.

Secondly, the regulations of civilian,

politics for the disability are the common rules, have principle, so the application has not brought the high effectiveness. In fact, it is lack the specific regulations on civilian, politics field for the disability themselves. The State Law on the disability in 1998, is the document with highest legal effective in guaranteeing to implement the disability's right, but there was only common rules in Chapter I, Clause 1, article 3: "State encourages, creates favor for the disability... joining the social activities"; in Clause 7, about the right to join activities in social organizations, production and business association and rights to join, establish the social donor associations. So, we can see the Law is lack the specific rules on right to join in management the country, voting, self-nomination; equality in law; keeping secret in private life, freedom of speech, newspaper rights; informed right; complain and accuse right; not curtailed his life right; protected marriage and family right..., are the key civilian, politics rights, they are not easily invaded, especially the disability. Lack of specific regulations on these rights is one of reasons for limitation the disability in enjoying the election self-nomination right; not reaching the information including the law policy information to the disability; not know how to claim; meet a lot of trouble when get the marriage right;...

2. Some basically cultural, social and economic rights

The disability's basically economic, social and cultural rights are recognized in Constitution and Law, including:

health care and alternative right; labor and working rights; studying right; enjoying the cultural value, reaching the public construction and integrating the community...

About the health care and functional alternative right: Constitution and Law of Vietnam recognize this right group, it was showed most clearly in State Law's rules on the disability in 1998, Social insurance Law in 2006; the concerning documents issued by Ministry of Health. Besides the documents regulating the health care and functional alternative of the disability, State also focuses on issuing documents about policies to the health officers who care the disability, policy to socialization the care mission to the disability; policy to prevent labor wound, accident, food poisoning – the problems concerning to human health are one of reasons for disability.

In fact, Vietnam gets achievements on guaranteeing the right of healthcare and functional alternative for the disability. The health sector implemented to do functional alternative, found the system from center to small branch orthopedics, functional alternative department, for the disability through nationwide. Now, nearly 100% hospital in central level, about 90% general hospital in provincial level have the functional alternative department; 46/64 provinces, cities with 215 districts, towns, and 2.420 communes, wards have deployed the health care and functional alternative programs for the disability; trained 74,1% families with the disability about the functional alternative method; more than 10 thousand of the disability have

been supplied the support vehicles like: wheelchairs, trolley, amputation legs and arms. Thousands of children have orthopedic surgery, support functional alternative in operation, mental, blind; some health sectors initially deploy the programs of preventing and discovering the newly-born children's signs of disability (3).

About labor and working rights: In one side, guaranteeing the labor and working right, creating the confidence in live, self-arising, self-affirmation, limiting the social discrimination, gaining income to spend for own live, creating the material foundation for approaching and enjoying other rights; in the other hand, working will help the disability practice themselves and recover full function to enjoy and contribute. Labor and working of all citizens including the disability are regulated in Constitution in 1959, Constitution in 1980, and continued to reconfirm in Constitution in 1992; specialized in Labor law in 1994, Amendment, supplementary law in 2002, 2006 and the guide documents; especially in the State law on the disability in 1998. System of above documents creates the legal base to guarantee the labor and working right of the disability.

In recent years, Government has took care in guiding the Ministries, department, section founding vocational schools, job centers, short-term job training programs, making priority for the labor as the disability. Two vocational schools of Labor – Invalids and Society Ministry attract training for more than one thousand of the disability

annually. System of job centers attract average about 10 thousand of the disability studying every year. Only the production and business Association of the disability has 57 in 250 basics being granted the certification of job training; annually, creates job for 60% trainees. The National target programs on education and training in 2005 support the fee of 11,5 billion VND, in 2006 this number is 18,5 billion VND, in 2007 nearly 20 billion VND to train in short term for the disability. Now there are more than 400 production base in nationwide with more than 20 thousand of labor being the disability. The Blind Association on its own manages 147 gathered production base with 40 thousand labor. The Central and Local job support Fund gives 40 billion VND to the production business bases of the disability for fund raiser; Only Blind Association managed, used 33,1 billion VND from this fund and gave fund to 10 thousand of disability to create job. According to the research of Labor – Invalids and society Ministry in 2005, there are 64,86% households with the disability receiving the donor policy to develop business, 91,26% of these households are decreased tax, supported preferred credit, support production (4, pg.33).

However, even in the law provisions there are a lot of inadequacies, they create the barrier for deploying labor, working right of the disability, for example: rule on the working time is 7 hours for the disability; rules on the health condition when registering working; etc...

Studying right (education right): "It can

be said that the education right is the priority to implement the human right" (6, pg.150). Education right of the disability was recognized in Constitution and Law, especially in the chapter III "Going to school for the disability" of State law in 1998, created socialization the education duty for the disability, created better conditions that help the disability use their studying right.

State took care of the favor regulation to the teachers for the disability, for example Government gave the Decree number 61/2006/NĐ-CP on date 20/6/2006 that regulated the favor allowance to the teachers in special schools. Especially, State also cared of the teaching staff for the disability children, for example special education department in Hanoi National University of Education are allowed to open the training section, creating the legal base for training giving certificate, diploma for teachers in special education. According to the statistic of Ministry of Education and Training, until now there are 105 special schools; 2.500 high schools educating the disability; 4 universities of education open the special education section; 3 colleges of education create section of special education to train the teacher with bachelor and college of education on disability. More than 700 teachers are trained with college level of integration education and more than 10 thousand of kid-school and junior school are improved integration teaching knowledge, skill for the different disability children. In 2005, there are 230 thousand in 1 million of the

disability children going to school, approximately 24,22%. The Vietnam Blind Association hold for 21 thousands of the Blind studying Braille letters. Ministry of Culture and Information experimented 2 reading rooms for the disability in the library of general department in Hồ Chí Minh city and Hanoi's library(5, pg.2).

However, there are some problems not being recognized specifically, for example regulations on studying programs, documents, textbooks, teachers of language, symbol, writing ... without these conditions the disability will be in trouble of implementing their own studying right.

The right of enjoying the cultural value, reaching the public constructions and integrating in community: The disability have loss in implementing culture and integration into community rights because they get the limitations more than anyone by the disability of mental and material. Rights to enjoy the cultural value, approach the environment and integrate into community of the disability are taken care, respected and protected by the State; are recognized in Constitution and Law. In those documents, it should be considered the Technique and science Law in 2000, Construction Law in 2004, Road traffic Law, Information and Technology Law,... State law on the disability in 1998 had chapter V including 3 clauses (from Clause 24 to 26) regulating *the cultural, exercise, sports and using the public construction activities of the disability*

The law regulations are put in practice

in life and make a lot of achievements. Some of big constructions in city being built in recent years are designed to help the disability reach the advantages such as: Nội Bài airport, Mỹ Đình Sport union, Ethnic museum, Tràng Tiễn Trade center, pavement in Hội An old quarters... Some old construction were transformed and had policies to improve that helps the disability reach the improvement construction of Bến Thành Opera House in Hochiminh city, etc... *experiment of free the bus fare for invalids and the handicap* have been deployed in big cities like Hanoi and Hochiminh cities. Railroad section has guided to decrease 10% of fare for invalid and disability students.

In recent years, State has supported fund for Blind Association Center to produce the Braille letters, speaking books, hold the popular art festival in all levels, open forum for the disability showing their aptitude, playing and entertainment. Culture-Information section, Exercise, Sports Committee cooperate with the concerned agencies to build the programs for serving culture, arts, exercise, sports; this will create more favor for the disability joining. Vietnam Broadcaster has the programs with letters running in morning greeting program (VTV1) and collective news program at 10.00 pm (VTV2) for the deaf.

On exercise, sports, the whole country has 35/61 provinces, cities founding exercise, sports clubs for the disability joining and practicing. Annually, Exercise, Sports Committee cooperates with Disability Sport Association to

organize the sports festival of competition for the disability. On the great holiday, Martyr Invalid day, some localities held competitions and gave awards to the good competitor as the disability. The Vietnam's disability have competed the sports games for the disability in ASEAN area and the world, got the high achievements, like the Asia-Pacific Sports festival for the disability.

Through researching the regulations of law on economic, social and cultural rights we can get some remarks as below:

Firstly, basically economic, social and cultural rights of the disability are remarked and more perfect in Constitution and Law; this creates the legal base for the disability reaching and enjoying their rights.

Secondly, law on economic, social and cultural rights in one hand have shown the Party's point of view in developing society – economy, creating basic conditions to every citizens including the disability to enjoy their own rights and contribute to society.

Thirdly, law on economic, social and cultural rights are not perfect yet. Although this is the group of rights that was regulated specifically with the largest quantity in State law on the disability in 1998 (including 4 chapters: II, III, IV, V with 17 Clauses), it is still lack the regulations in receiving the condition of working, being paid equally for the same valued jobs; equal opportunities for people in being promoted; right of receiving the social safety. The regulations in economic, social and cultural rights are affected by

the human's mind about the disability under the side of social donor, not grasping the overview thoroughly of considering that beside the support, donor demands, the disability also have the development demand, self-confirmation their own position equally to other members in society trong x· héi.

3. The advantages, limitations of law on rights of the disability now and causes

Advantages: Vietnam Communist Party and Socialist Republic of Vietnam always take care and do favor for the disability so that they can use the basic human's rights. Those care are institutionalized in law's regulations. In common, law on the Vietnam disability's rights, is firstly created in regulations, principles on the disability's right in the International Convention on the human's right, that Vietnam is member; inherit, develop, supplement and change on the way of making it more perfect; and take notice of the regulations in mechanisms to guarantee the disability's rights.

To achieve the advantages above, firstly we should recognize the renewal of thought, acknowledgement of Vietnam Communist Party, orientation for the renewal of thought and mind of the legislators; then the renewal of the whole society's and the disability's themselves acknowledgement about the position of the disability in society.

The disadvantages: In general, the law on the disability's right is *not highly stable*. About the performance, there are only the documents under the law, so the legal value is comparatively low. About the content, there is still lack of

regulations with sanctions; there are a lot of regulations creating the barriers for reaching and enjoying the disability's right; there are many regulation with common principle, target or content without the detailed and specific regulations, so it's difficult to use and apply. Now in Vietnam there is still no *Law on rights of persons with disability*... These disadvantages created barrier to prevent the disability from reaching and enjoying under their own rights.

Reasons for those disadvantages are: *Firstly*, acknowledgement of society, the legislation agencies, the disability themselves about the right and the law of right for the disability is still inadequate; the theoretical problems about the law of the disability's right are not researched basically and systematically; it is slow to summarize, evaluate totally and scientifically. *Secondly*, the supplementary and changing normative law documents about the disability's right are the situation solution, mechanism of managing country on respect and guaranteeing the disability's right is not unite, still separated, dispersed and divided between every sections.

II. Point of view and solution to improve the law on persons with disability's right in Vietnam nowadays

Improving law on the disability's right in current situation is objective, urgent demand; it comes from: the demand of keeping and improving the national moral tradition, respect and guarantee the right and chance to be equal of the disability; demand of promoting the

law's role in guaranteeing the disability's right; demand of being suitable with international law in integration and development trend now; demand of building the legitimated Socialist Republic of Vietnam ; demand of recovering the disadvantages of law on the disability's right in Vietnam nowadays; and being suitable with the disability's situation in the development and integration trend; aims to create the legal foundation to guarantee the better disability's right, to contribute to stabilize society, to raise prestige of the Vietnam Communist Party and Socialist Republic of Vietnam in the international community.

Improving the law on person with disability should aim to institutionalize policies of the Vietnam Communist Party and Socialist Republic of Vietnam to support the disability recover their trouble, be equal in chance and condition of developing; on the base of right acknowledgement the position of the disability in society to promote the disability's role in community and society; to guarantee the comprehensive, overall, united, suitable, feasible, appropriate features; on the base of improve the building and using law mechanism and guarantee the inheritance, choice to receive, and being compatible with the international law on the disability.

With the demand of improvement both content and performance of law on the disability's right in Vietnam now, we suggest some specific solution as below:

- + Check, systematize usually the currently legal documents concerning to the disability's right;
- + Hold researching, summary, remark the realistic situation about law on persons with disability through practice;
- + Survey, classify the disability in nationwide in order to have the exact figures about the disability, the figures with the important meaning that help the policy and law makers build and improve the policies, law, adjust on time, guarantee the right of the disability being used effectively, practically, suitable with specific objects in the principle of being equal in chance and indiscrimination;
- + Enhancement to international integration in the legislation of the disability's rights to study experience, fully use the force resource for researching, building and applying the law.

In conclusion, from the demand of respecting and guaranteeing the disability's rights, the completion of law become the objective demand to meet the life's requests, create the stably, clearly, comfortably legal environment, break the barriers for the disability approaching and enjoying; highly rise the disability's position, create the conditions so the disability can contribute and enjoy. However, this is not the job in short time, it's duty for a long time, complex and sensitive, requesting the focus attempts, union and

the cooperation between the legislative, executive and judicial agencies; the attempts of the disability themselves, of interior effort and the international cooperation on the base of equality, volunteer, and respect the national independence and sovereignty rights.

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