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“Triumph The New Normal”

Legal Insider

Disability Law

A New Emerging Academic Discipline

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This short article explains the potential of disability law as a new academic area. It introduces the idea on how the law would influence the existing framework on disability studies. The relationship exists due to stigmatisation and discrimination facing people with disabilities. According to the World Health Organisation and World Bank 2011 World Report on Disability, almost 15% of the world's population are disabled. Disability studies are becoming crucial and vital disciplines in order to fulfil the knowledge gap, improve social policy and resolve legal quagmire facing the marginalised group. There are two main models penetrating the disability studies, and this dominated the discussion and arguments relating to law and policy-making process. The medical model, also known as individual/personal tragedy model, focuses on disabled people as those who need treatment, rehabilitation and prevention of being disabled. The next model, which shapes the relationship, is known as the social model. The social model observes the factor of environment and attitude as the reasons for discrimination faced by persons with disabilities. This model has significantly improved the lives of people with disabilities in terms of their social participation and involvement within all aspects of society. The social model has also significantly improved the understanding of disability studies, especially within the legal perspectives.

Law has a significant role in ensuring the provided legal framework gives better protection and remedy to address those concerned issues. Disability law challenges the concept of disability and how it related to society generally. According to Lawson (2020), disability law relates to the law's role in creating, perpetuating, resisting and contesting disablement. It signifies the importance of understanding social justice regarding how the social structure and system has caused disadvantages, marginalised and excluded people with disabilities. Kanter (2011) described the potential of disability studies to explain how society and law interact with different human experience. The concept of normalcy has challenged our assumption, to recognise and appreciate the value of differences amongst people. For example, people communicate through sign language, use a wheelchair, read using Braille and face mental health issues.

The relationship between disability and law has taken centre stage at the international level through the inception of UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities in 1993. It has become globally accepted with the adaptation of the first Human Rights Treaty in the 21st century, known as the UN Convention on the Rights of Persons with Disabilities (CRPD). The CRPD and its Optional Protocol has become a new dawn for disabled rights activists and groups who tirelessly laboured to promote the rights of Persons with Disabilities (known as PWD). This Convention, ratified on 13 December 2006, gave birth to a new comprehensive Human Rights Treaty, after sixteen years of negotiations and eight meetings with its various discussions and feedbacks from various organisations on the disabled.

The CRPD detailed obligation amongst its State Parties to amend, modify and enact new domestic legislation. In Malaysia, the Persons with Disabilities Act 2008 was enacted to recognise and protect the rights of people with disabilities. The Act itself has 46 sections divided into five parts including the preliminary section; National Council for PWD, the appointment of registrar general and registration for PWD, promotion and development for PWD, and a general part. The Act covers the registration, protection, development, treatment and rehabilitation of PWD. According to Section 2 of PWD Act 2008, persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments whose interaction with various barriers may hinder their full and effective participation in society.

There are two central institutions governing PWD affairs under the Act. The National Council for PWD (known as The Council), discussed under Part II of the Act, deals with the structure and membership of the Council from various organisations and ministries involvement, including representatives from the Woman, Family and Community Development Ministry, Education Ministry, Health Ministry, Transport Ministry, Finance Ministry, Human Resources Ministry, Attorney General's Chambers, Commercial Vehicle Licensing Board and also others with expertise regarding the problems and issues concerning PWD. The Council has various responsibilities including to oversee the implementation of national policy and national plan, make recommendations, co-ordinate, evaluate the impact of the policies and activities, and reform the laws that govern PWD. The Council has been assisted by Department for the Development of PWD who is responsible in registration and matters related to PWD.

The PWD Act 2008 has protected various rights including education, employment, access to general facilities and services, societal activities, health, rehabilitation and during the situation of risk and humanitarian emergencies. This Act also recognised the importance of persons with severe disabilities who is dependent on others for necessary daily activities. Despite all the various components and substances within the Act, the Act itself has its shortcoming in terms of enforcement mechanism and the lack of penalties in cases of discrimination facing PWD. The court also did not address much on the issues and concerns relating to PWD, where at this moment, there is no landmark case addressing the concerns and grievances facing the disabled community, unlike other vulnerable groups.

Disability studies and law have the potential to develop our law and legal system to be more inclusive towards treating PWD as part of the collective human experience. The role of the CRPD and PWD Act 2008 has a more significant impact on the increasing interest in disability law. There will be more in-depth studies and expansion of scholarship in different areas of laws including constitutional law, tort law, criminal law, family law, legal ethics and other relevant areas related to PWD. The initiative and development of a more cohesive disability law will be through the development of undergraduate and postgraduate modules which include publishing books, journals and organising conferences. This should continue to expand the scholarship. Therefore, much engagement, discussions and commitments of legal actors are crucial to developing more critical scholarship on disability law in the future.

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