

An Overview of the Rights of Paralyzed Children

Homayoun Mafi¹, Mahdi Rahmani²

¹Associate Professor at the Faculty of Law and Political Sciences, Mazandaran University

².PhD student of privet law; Mazandaran University

ABSTRACT

The Convention on the Rights of the Child is the most renowned document in protecting the rights of children which the Islamic Republic of Iran has also ratified. What we discuss here is that what the basis for the rights of the paralyzed children is and how the regulations of the conventions regarding the paralyzed children have been reflected in our laws. It's evident that investigating the status of the rights of paralyzed children in international documents and domestic laws makes it clear that how much practical the laws regarding the rights of paralyzed children are. The protection of paralyzed people's rights has been emphasized in the laws of Islamic Republic of Iran which we take into consideration in this article. In order for the paralyzed people to enjoy the facilities and benefits available in the society and have equal rights with the other people, the observation of the principle of equality demands that governments and social organizations allocate more considerable and proportionate budget for the paralyzed people. Since the paralyzed children have some rights and are not liable to obligations, if they impose damage on themselves or others, then the governments will be responsible for compensating the damages as a result of failing to adhere to the principle of equality.

KEYWORDS: children's rights, paralyzed children, The Convention on the Rights of Persons with Disabilities, Convention on the Rights of the Child.

INTRODUCTION

In the 7th article of his letter written to Malik al-Ashtar, Imam Ali (PBUH) states, "Allah, Allah [O, Malik al-Ashtar! I warn you as the senior administrator of the society], as to the paralyzed and bedridden; for the sake of the Almighty God, be the protector of the right which He has stipulated for this community. Allocate a certain portion of the government treasury and the grains of the lands which you take over as the spoils of wars of Islam to the paralyzed and the downtrodden, always be cautious about their problems and never turn your back to them. (Nahjul Balagha, Malik al-Ashtar covenant, article 7).

The paralyzed people are a group of the society which need attention, and among them, the paralyzed children need more attention as a result of incapability in fulfilling their own rights. Verily, if such a viewpoint is spread through the human societies, and if the comfort, well-being and physical and mental health of the paralyzed children is taken into consideration as a priority, we will have a more beautiful world; a world in which the raised children are so mature that take seriously the childhood.

Since every individual has certain rights and responsibilities, the question is that "what are the legal conditions of the paralyzed people?" do the paralyzed children have equal rights with the rest of children? Have the international regulations been reflected in the domestic laws?

In the present article, we explicate the concepts of "right," "child" and "paralysis" from different perspectives and then investigate the rights of paralyzed children in the article 23 of the Convention on the Rights of the Child and the article 7 of The Convention on the Rights of Persons with Disabilities with a special attention to the relevant articles in the Islamic Republic of Iran Constitution. Finally, we review the right of compulsory and free education which has a special importance in the international documents and regulations as one of the most fundamental and essential rights of this incapable and secluded group of people.

1- The concept of right

Lexically, the word "right" has been used to denote various meanings, including trueness, demonstrability, veracity, appropriate, pertinent issue, certainty after doubt, circumspection, bribery, dominance, property, the Holy Quran, hostility, portion and benefit, a verdict in accordance with reality and in this sense is referred to sayings, notions, religions and religious denominations since they include statements and beliefs and opposed to it is invalidity (Ibn Manzour, 1984, v. 10: p. 49; Aljawhari, 1978, v. 40: p. 1460-1461; Alfirouzabadi, 1991, v. 3: p. 322-323; Al-Raqeb Al-Isfahani, 1941: p. 25). The word "right" has different applications in different philosophical, juristic, legal and political fields. Here, we mean the juristic, legal and political denotation of the word, that is, a certain advantage or benefit that is allocated to someone or something.

The word right has been repeated in the Holy Quran 227 times, and above all of them, there's the holy spirit of the Almighty God Who has introduced Himself as the righteous, saying that "That is because Allah is the Truth (right)."

It is evident that right is not confined to a specific part of the life, but it includes different areas of the life including the moral and legal relations of the individual with the family and society and also the comprehensive political relationships of the individuals with each other, the rulers and the international level. However, accurately specifying the representations of the word "right" in the inclusive fields mentioned above is dependent on solving different issues surrounding it; issues such as the meaning of right and its essence, the origins of the right, those who validate the rights and the correspondence between right and responsibility. It can be certainly asserted that without solving these essential and basic issues, many discussions pertaining to the concept of "right" in political science, morality and law will not lead to a concrete answer. These essential issues are today discussed in a new scientific field known as the "philosophy of right."

In the contemporary age, the human being is in practice merely seeking to fulfill his material and mundane needs through believing in humanism and completely adhering to it. He has accepted that secularism should be the pivot of the majority of theoretical and practical perceptions, so he intends to construct his world the way he likes.

The penetration of secularism in different aspects of the life of contemporary man has caused that the human being consider himself the owner of his own soul and the whole living creatures of the universe; therefore, he considers himself rightful in the course of decision-makings throughout his life and also in dominating the system of the universe. In other words, humanism posits that each human being is entitled to determining his own way of life. The self-determined man decides freely and according to his own will that which food he should consume, which beverage he should drink, which garment he should wear and even choose his own way of dying at will.

According to this worldview, man is the only holder of rights in his life, and does not have any responsibilities. This viewpoint explicitly holds that no responsibility should be assumed, because the age of obligations has come to an end and the new age is the age of rights. In other words, the modern man is simply after fulfilling his own rights to the full, and does not consider himself accountable before any creature, and even the Creator. The point in the connection of such an approach with legality is that he only accepts those responsibilities which he has stipulated himself, and merely for the sake of meeting his own interests.

Opposed to this materialistic approach, we have the celestial and revitalizing thought of Islam which through the wise divine foresight has foreseen rights for the human being to help him reach the true perfection and nearness to God as well as protecting and improving the social life.

The Islamic teachings are not unilateral and don't merely emphasize on human rights without demanding responsibilities for them; rather, according to Islamic teachings, some responsibilities have been laid down for the people along with the rights which have been specified for them.

In the Islamic thought, claiming rights resisting the violators of the rights and opposing oppression is a value and a source of dignity. From the other hand, the religious leaders have insisted that every individual is obliged to pay the others their rights. Even if this is dependent on retaliation, he should not refrain from sacrificing his body organs and properties. Such a responsibility shows the importance Islam gives to the others' rights.

With an Islamic view, it will be revealed that how the issue of rights and claiming rights has gone through massive deviations in the contemporary world, including raising unfounded rights in the human societies and disregarding the correspondence between right and responsibility. Escaping from such a deviation demands the explication of the concept of right in a congregation and exchange of ideas between Islamic and non-Islamic scholars.

2- The concept of child

The definition of the childhood period is one of the important and remarkable issues in dealing with children affairs, the reason being that different organizations and laws have proposed diverse definitions of the childhood period and this proposition of different definitions and criteria has made it essentially problematic to devise plans and programs for this group not only in Iran and less-developed societies, but also in the developed countries.

In Persian language, the word "child" has been associated with such words as little, minor, a boy or girl who has not reached maturity, kid, a little boy or girl (Moeen Dictionary, entry of "child").

Conventionally, childhood starts from infancy and continues until reaching the legal age. Conventionally, the interlude between infancy and adolescence is called childhood. Law scholars and jurists have embarked on defining the childhood period because of the particular impacts it has on specifying the rights and responsibilities.

Identifying the "child" depends on the domestic laws of each country and this causes some problems in the process of law-making for this group of people. Colloquially, "minor" is referred to those who have not reached physical and mental maturity to live a communal, social life (Taheri, 1997, vol. 1: p. 124). If the minor reaches the level of recognition and discernment prior to maturity, he is called discerning minor (Langeroodi, 2002, vol. 3: p. 2352).

Therefore, a certain period of man's life is dedicated to childhood, even though a precise threshold has not been stipulated for it from a conventional, legal and judicial viewpoint, because environmental, hereditary and nutritional conditions influence it. However, with the emergence of one of the abovementioned states, the man quits the childhood status and gets connected to adolescence and youth.

2-1- The concept of child in Islamic jurisprudence

In the Holy Quran and jurisprudence texts, words such as minor (Tifl), infant (Sabi) and little (Saqir) are equivalent to the word "child." The other word is "Morahiq," because Morahiq is defined as "someone who is near to maturity."

In jurisprudence books, certain criteria and symptoms have been mentioned for the end of childhood and reaching the threshold of adulthood. Unless these symptoms and criteria are realized, the individual will be considered as a child. According to the popular verdict of Islamic scholars, among the numerous symptoms and developments which take place concurrent with leaving the childhood and reaching adulthood, some symptoms which are permanent and dominant have been mentioned as the signs of maturity, such as changes in appearance, nocturnal emission, the growth of underarm hair, etc.

The jurists have defined childhood in proportion to the importance of discussions. Imam Khomeini (PBUH) writes in Tahrir, "minor is someone who has not reached the threshold of maturity. This person will be prohibited from possessing his properties." He then continues, "even if he is perfectly discerning and grown-up and his possession of properties takes place in the most advantageous and proper way (Mousavi al-Khomeini, 1987, vol. 2: p. 12). Such a person is considered to be a child in the view of the jurists.

In his book "The Islamic Jurisprudence and its Reasons," Dr. Wahba Zuhayli writes, "childhood is a period which everybody experiences. Its start is marked with the moment of birth and its end is once the maturity has been reached." He continues, "Hanafi and Maliki scholars have said that the minor is either discerning or un-discerning, and the un-discerning is the one who has not spent 7 years of age. Discerning is the child who has spent a complete 7 years of age, because our prophet (PBUH) has said that make your children familiar with prayers when they reached 7 years of age" (Zuhayli, 1997, vol. 6: p. 4467).

2-2- The concept of children rights in Iran

According to the paragraph 1 of the article 1210 of Iran's Civil Code, "the age of maturity for the boys is the complete 15 lunar years and for the girls is the complete 9 lunar years." In the paragraph 1 of article 49 of Islamic Penal Code, it has been specified that, "by child, we mean someone who has not reached the threshold of religious maturity. According to the paragraph 1 of the article 1210 of the Civil Code, religious maturity for the boys happens when they reach complete 15 lunar years and for the girls when they reach complete 9 lunar years of age."

From a legal viewpoint, the term child or minor is referred to a person who has not reached, in terms of age, to the sufficient physical and mental maturity for living. Since the actual life of the child starts with his birth, so the childhood period starts with birth, as well (Agha Beiglouei et al, 2001: 13).

The term "children rights" also denotes the rights which the child is entitled to or deprived of, as a result of being a minor; therefore, those parts of the laws which have nothing to do with the age of people and are implemented on everybody either minor or adult, cannot be considered as belonging to the limits of children rights.

2-3- The concept of children rights in international conventions and documents

In its article 1, the Convention on the Rights of the Child¹ defines children by emphasizing that, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

In this definition, the end of childhood has been clarified but there's no allusion to the beginning of the childhood (Habibi, 2006: p. 32). Perhaps it may be said that this is evident and the beginning of childhood is marked by the moment of birth; however, some people have refuted this belief, saying that "this perception is not acceptable from the viewpoint of Islam, because according to the Shiite jurisprudence, the beginning of childhood is marked by the moment of conception." (Habibi, 2006: p. 33) However, it seems that this interpretation of Islam can be subject to criticism, because Islam has never referred to the period from conception to birth as "childhood." Although Islam has offered special support to this period step by step, it hasn't called it childhood but has referred to it as "fetus." Different Quranic² verses and jurisprudence books attest to this claim. On the basis of this article, the following points can be taken into consideration:

- 1- This article of the Convention has merely defined the children from its predominant viewpoint and has not talked of it in a general and limitless term, so it should not be generalized more than this.
- 2- The aforementioned article has some deficiencies and gaps, including that it has not clarified whether the child mentioned will be protected by the Convention since the birth date or prior to that or not; something which could have been very effective and preclude diverse and contradictory interpretations.
- 3- The article 1 of the Convention on the Rights of the Child posits that the word child can be referred to a person only if the exception mentioned, that is, "unless under the law applicable to the child" is not existent. Therefore, this criterion will have flexibility according to different laws and can adapt itself to the different laws of various countries.

¹ Convention on the Rights of the Child ,UN GA /Res. No. 44/25,20 November 1989

² Al-Haj / 5; Al-Mu'minin / 14; Ghafir / 67; Al-Qiyamah / 37-38

As a result, although some international documents and conventions have tried to protect and further improve the rights of the children or at least claim to be doing so, what should have been clarified at the first place was the precise definition of the word "child" which unfortunately has not been done in an accurate manner.

3- The concept of paralysis

Due to the diversity and miscellany of physical and mental disabilities, providing an inclusive definition of paralysis and disability is extremely difficult, if not impossible. Furthermore, paralysis is a state with different degrees and levels. Actually, the question is that how much affected with physical and mental disability should an individual be in order to be called a paralyzed person and therefore subject to rights, cures and special protections? Moreover, given the inability and in critical cases, disability of the mentally paralyzed people to conventionally deal with the legal affairs associated with them, this becomes excessively difficult. In the following parts, we will be defining paralysis in the Convention on the Rights of Persons with Disabilities, different types of paralysis and disability and the backgrounds of paralysis.

3-1- The Convention on the Rights of Persons with Disabilities³

In the article 1 of this Convention, what has been given importance was the definition of the term "persons with disabilities." On this basis, "persons with disabilities include those who cannot meet all or parts of their personal needs or normal social life as a result of connate or non-connate deficits in physical and psychological abilities."

The article 1 of the comprehensive law of protecting the paralyzed people, ratified on May 26, 2004 by Iran's Islamic Consultative Assembly (Parliament) gives a fairly precise definition (somehow similar to the abovementioned definition) in a paragraph longer than the original article: "in the present law, people with disabilities mean those who, with the confirmation of the medical commission of the State Welfare Organization of Iran have disorders in their health and general functioning as a result of a physical, mental or psychological damage or a combination of all, in such a way that their social and economic independence decreases."⁴

3-2- The definition of the Convention of the Rights of Persons with Disabilities

The article 1 of the Convention on the Rights of Persons with Disabilities has defined the concept of "persons with disabilities," though in passing. It seems that this general definition has been agreed upon by the international community, because reaching agreement and consensus on an international definition of this concept, like the rest of social concepts which are essentially contentious needs comprehensive, delicate and essential attention which is extremely difficult. At any rate, based upon this definition, "persons with disabilities include 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."

Consequently, it can be said that from a legal viewpoint, paralysis is referred to a physical or mental state which prevents the individual from normal and daily activities or creates serious impediments and limitations for such activities. It's evident that in physical paralysis, these activities include typical physical functions and mental functions in mental disabilities.

According to the article 1 of the aforementioned Convention, people with disabilities are those who for a long time have sustained physical, mental, intellectual and emotional damages and consequently may be delayed or obstructed in social, participatory interaction with others.

4- The rights of paralyzed children noted in the Convention on the Rights of the Child

Among the rights stipulated in the Convention on the Rights of the Child are the rights of paralyzed children which are noted in the article 23. We will further focus on the rights of the paralyzed children which are mentioned in this article.

- **The right of active participation in the society**

The paragraph 1 of the article 23 emphasizes that "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community."

Children with mental and physical disabilities are entitled to the right of a healthy and suitable life.

Given the particular conditions they have, the paralyzed children should be firstly engaged in the family environment and secondly in the society (educational environment) in activities and decision-makings like the normal children so that they reach this emotional and spiritual conclusion that their disability is not a failure and setback, but they can reach a self-determination by participating in daily affairs and capitalize on their other capabilities and talents to help with the improvement and progress of the society.

For instance, the father decides to buy a new car. He asks for the viewpoints of the family members to make the decision. It's recommended that he first turn to his disabled child and asks him his idea about the type, color, size and model of the automobile and takes into consideration if necessary.

³ Proclaimed in the UN General Assembly resolution 3447, ratified on December 9, 1975

⁴ Official newspaper, no. 17264 published on June 9, 2004

If this behavior is not followed in the family and the disabled child is not in a situation to have the feeling of responsibility, he will be isolated with time and finally will be suffering from a psychological disorder in addition to his disability and this will have detrimental consequences for the family and the society.

Based on what was mentioned earlier, it can be said that the realization of the active participation of the disabled child in the society is firstly hinged on the behavior and attitude of the family members and secondly on the instructors and practitioners in the educational environment.

- **The right of special protection**

The paragraph 2 is dedicated to a point that the governments announce that a disabled child has the special governmental protection right and suitable facilities should be provided for him or his parents and supervisors.

Human rights in the contemporary world are among the demands which the people expect the government to meet, and it requires that the government be committed to it, meaning that the disabled person is the rightful one and the government is obliged to fulfill it (Seyed Fatemi, 2008: p. 195).

According to the paragraph 4 of the article 5 of the Convention on the Rights of Persons with Disabilities, "special protective measures which are adopted to ensure the practical equality between the disabled persons are necessary." It means that the States Parties have accepted that given the principle of "citizens' equality," the commitments of the governments to the disabled people is like their commitment toward the rest of citizens in the society; so, this principle should be first and foremost applied to the paralyzed children. However, in some cases, to realize the principle of equality for the paralyzed children, more investment should be done, as compared to the investments for normal children.

- **The right of enjoying special protection**

The paragraph 3 of the article 23 emphasizes that the States Parties recognize the right of paralyzed and disabled children to enjoy special protection and will encourage and guarantee the provision of such protections in accordance with the conditions of the parents or the guardians of the child and in case that the resources are available.

The paralyzed, disabled children have the right of special protection, meaning that the governments should provide them with every kind of assistance possible. The quantity of the help depends on the needs of these children and their families or the people who take care of them. In other words, the children who are not able to move and walk need wheelchairs and other types of assistance. The children who are blind need Braille books and other instruments, such as books which are exclusively printed in Braille alphabet for the children. If possible, these assistances should be provided for free, but it also depends on those who take care of the disabled children. However, it should be noted that measures which should be adopted for the provision of such helps should be confined to the environment of the family and home so that the disabled children are not separated from the warm atmosphere of the family which may have different negative consequences.

- **The right of access to education**

Like the rest of children, the disabled children have the right of enjoying proper education. The paragraph 4 of the article 23 of the Convention on the Rights of the Child stipulates that with identifying the special needs of paralyzed children, the assistances specified in the paragraph 2 of the present article⁵ should be provided for free, if possible, and by taking into account the financial resources of the parents or the guardians of the child. Planning should be made so that the disabled child has an effective access to education, training, remedial and health services, rehabilitative services, preparation for employment and opportunities in such a way that he reaches the highest limits of social perfection and personal developments including cultural and spiritual development.

The governments should make sure that the paralyzed children will have the opportunity to enjoy education, healthcare, remedy and rehabilitation, preparation for job and opportunities for playing games.

- **The right of receiving rehabilitative services**

The paragraph 5 of the article 23 emphasizes that the States Parties, through international cooperation, will embark on exchanging information in regards to preventive healthcare, medical, physiological and practical treatment of the disabled children through disseminating and making available information regarding the rehabilitation methods, education and professional services with the objective of enabling the member states to improve their abilities and skills and expanding their experiences in these fields. In this regard, a special attention will be paid to the developing countries.

Rehabilitation can include measures for providing or retrieving functions, reviving a lacking performance or a restriction in function. Rehabilitation process does not include medical first aides. Rehabilitation includes a wide spectrum of activities and actions, from basic and general rehabilitation to purposeful activities, such as occupational and professional rehabilitation.

⁵ The paragraph 2 is dedicated to the issue that the governments announce that the paralyzed children have special governmental protection rights and as far as possible, proper facilities should be provided for them, their parents or guardians.

- **The right of employment**

As it's mentioned in the paragraph 3 of the article 23, planning should be done in such a way that the disabled, paralyzed children can have effective access to education, training, healthcare services, rehabilitative services, preparation for employment and recreation opportunities in such a way that paves the way for the children's realization of maximum social perfection and personal developments including his cultural and spiritual development.

As an important issue in the people's lives, employment has always concerned the members of the society. However, it should be noted that employment is actually more vital and necessary for the disabled people. As an essential right, employment has been recognized in the international level and the constitutional laws of different countries. As to the paralyzed people, it has been noted that the governments should actively support the realization of occupational rights of these people (Zarneshan, 2008: p. 256).

Unfortunately, occupation is one of the fundamental problems in Iran which has entangled the paralyzed people more than the others. These people, because of their special conditions, are not easily employed by the employers and despite their active participation in different political and social areas (either militarily or non-militarily), they are not paid due attention. In the article 28 of Islamic Republic of Iran's Constitution, it's expressed that "everyone has the right to choose any occupation he wishes, if it is not contrary to Islam and the public interests, and does not infringe the rights of others." The law explicitly obliges the government to "provide every citizen with the opportunity to work, and to create equal conditions for obtaining it" with due consideration of the need of society for different kinds of work.

Although the lawmaker has not expressively mentioned the paralyzed persons in this article and the rest of articles of the Constitution, it absolutely dismantles every kind of uncertainty with regards to the inclusion of these people by stating the law in the article.

Generally, in Iran, the situation arising from a tedious war has increased the number of people with disabilities. This is why during the past two decades, efforts has been made to provide people with disabilities with special support in the field of employment. Accordingly, the country's law on economic, social and cultural development has been put forward to ramp up social justice and equal opportunities for supporting the different groups of people including persons with disabilities, both economically and socially. Efforts have been made to provide these people with proper jobs and employment opportunities.

In the first development plan law, providing social justice in the light of meeting the needs and expanding socioeconomic sponsorship of the families of the disabled war veterans with an emphasis on improving their life quality, providing employment, etc. has been given due attention. The second development plan law has emphasized on providing the paralyzed people and disabled war veterans with employment opportunities with regards to their capabilities and talents.⁶ And the fourth development plan law has stressed the importance of increasing social supports through rehabilitating and empowering them to get access to proper occupational opportunities.⁷

Although the aforementioned arrangements are binding for all the public and state organizations as a legal necessity and obligation, there's no practical guarantee in this regard and we find in practice that some of the organizations violate this law.

Overall, the paralyzed children, as members of the society, should be given necessary opportunities for a multilateral development. Paralysis and disability is not a problem which the disabled people grapple with only; it's a challenge which all of us face.

5- The rights of paralyzed children as mentioned in the Convention on the Rights of Persons with Disabilities

- **The right of respecting the developable capacities of the disabled children**

One of the general principles proposed in the article 3 of the Convention is respecting the developable capacities of the children with disabilities and respecting the rights of children with disabilities to protect their identity.

- **The right of enjoying human rights and fundamental freedoms**

It's mentioned in the paragraph 1 of the article 7 of the Convention that "States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children."

- **Non-discrimination**

It's noted in the paragraph 2 of the article 7 that, "in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration."

Moreover, based on the paragraph 4 of the article 5, "specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention."

From the other hand, the paragraph 2 of the article 5 of this Convention holds that "States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds" (Yousefian, 2008: p. 212).

⁶ The law on second economic, social and cultural development plan, ratified on December 11, 1994

⁷ The law on fourth economic, social and cultural development plan, ratified on September 1, 2004

Having in mind the contradiction between the abovementioned articles, it can be said that positive protection of the persons with disabilities in order to compensate for inequalities is one of the manifest representations of inverse discrimination (Seyed Fatemi, 2008: p. 195). Because the States Parties have expressly accepted the rights of persons with disabilities according to the paragraph 2 of the article 7 and also admitted discrimination of the measures for the persons with disabilities, especially the paralyzed children. However, from the viewpoint of the Convention, discrimination should not be interpreted as unjustified. It should be also noted that the paragraph 2 of the article 5 encompasses the doctrinal principle of attestation to non-discrimination. Based on the paragraph 1 of the article 5, the States Parties have admitted that all the citizens are equal before the law; a principle which demands that the citizens equally enjoy the support and backing of the law. They've also accepted to forbid all kinds of discrimination.

Therefore, the doctrinal law of non-discrimination will have a dual identity in regards to the rights of the paralyzed and disabled people. From one hand, the refutation of the current discriminations and moving toward guaranteeing equal civil, political, cultural, social and economic opportunities and from the other hand, the procurement of positive sponsorship to equalize the opportunities (Seyed Fatemi, 2008: p. 196).

As a result, under normal circumstances and for the normal citizens, non-discrimination is a necessary and obligatory matter based on the principle of equality; however, it's indispensable in order to equalize the opportunities for the paralyzed people, especially the disabled and paralyzed children.

- **The freedom of speech and expression**

It's noted in the paragraph 3 of the article 7 that, "States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right."

- **The liberty of movement and nationality**

It's noted in the article 18 that, "children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents."

- **Respect for home and family**

As stipulated by the paragraph 3 of the article 23, "States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families."

It's also emphasized in the paragraph 4 of the article 23 that States Parties will ensure that by no means the disabled child will be separated from one or both of his parents on the basis of his disability and paralysis.

And finally, it's noted in the paragraph 5 of the article 23 that "States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting."

- **The right of participation in cultural life, recreation, leisure and sport**

The paragraph 5 of the article 30 emphasizes that the States Parties, with the intention of empowering the paralyzed children in order to have them equally participate in the recreational, leisure and sport activities, will adopt proper measures among which is guaranteeing the fact that children with disabilities will have access to games, recreation, sport and leisure activities including activities within the school system on an equal basis with the other children.

- **The right of education**

In the paragraph 2 of the article 24 of the Convention on the Rights of Persons with Disabilities, it's noted that "children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability."

According to the paragraph 3 of the article 24 of the Convention, "States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community." To this end, States Parties will adopt appropriate measures to guarantee that education is offered to the individuals, and especially children who are blind, deaf or blind-deaf, in the most appropriate languages, methods and communicative ways in the environments which increase the social and academic development to the best.

- ☒ **The right of education in Iran's Constitutional and ordinary laws**

The Islamic Republic of Iran's Constitution which is predicated on the principles and criteria of the noble faith of Islam, pays a great deal of attention to education and obliges the government to make plans for improving the level of education and raise public awareness. In the paragraph 3 of the article 3 of the Constitution, the government has been asked to provide "free education and physical training for everyone at all levels," and also work for "the facilitation and expansion of higher education." Elsewhere in the article 30, through emphasizing on free and public

education, it says that "the government must provide all citizens with free education up to secondary school, and must expand free higher education to the extent required by the country for attaining self-sufficiency."

The paragraph 1 of the article 43 has also considered education as one of the essential needs of the human being, stating that one of the consequences of the resistance of the country's economy is providing proper education for everybody (Tohidi, 2006: p. 156).

According to the article 43, in order to help the nation reach economic self-sufficiency, eliminate poverty and destitution and meet the human needs in the process of development, the preservation of man's freedom will help the Islamic Republic of Iran's economy to stand on its own feet.

In the meantime, a special attention was given to the principle of education in this document, and its being accessible and free for everybody, not only in the primary education but up to high school has been taken into consideration. So, one of the essential responsibilities of the government with regards to the paragraph 3 of the article 3 of the Constitution is that it should provide free education and sports for everybody in all levels and facilitate higher education (Mehrpour, Hossein, 2008: p. 73).

In the ordinary laws and the law on the fourth development plan, the importance of education and its compulsoriness up to the end of secondary education has been given importance and this point has been emphasized that the government should provide the facilities proportionately and lay the groundwork for the realization of this plan until the end of the fourth development plan in the regions which the Ministry of Education announces. Moreover, in order to implement the paragraph "b" of the article 52 of the law on development plan, the educational coordination and supervision management has compiled the operational by-law of the paragraph "b" with the cooperation of relevant authorities, including the primary and secondary education. In this article, enjoying the facilities and appropriate educational environment has been emphasized. So, implementing the paragraph "b" of the aforementioned article is one of the important goals for educating the children who really need education in the country.

Using the term "for all" in the paragraph 3 of the article 3 and "for all people" in the article 30th, propels the mind to this though that the constitution attests to the right of education for all residents of the country and does not discriminate between the members of the society, even though each of these people enjoy this facility to different extents based on their merits and talents (Mehrpour, *ibid*: p. 73).

Furthermore, through investigating the domestic regulations of Iran, we will realize that the right of education has a prominent position in the Islamic Republic of Iran's Constitution. It demands that necessary measures be adopted in order to realize the prosperity and self-sufficiency of the nation and the country's independence in regards to the country's essential intellectual needs while the groundwork for the development of different educational fields is laid and due attention is paid to education and its necessity as a natural right. The reality is that the right of free and public education in the laws of Islamic Republic of Iran is underscored with an emphasis on the fundamental human rights. This important point has been historically paid attention by the noble faith of Islam and was recurrently mentioned in the Quranic verses and sayings by the Imams. On this basis, equality in the right of education in order to evade discrimination has a position which was mentioned in the regulations.

From the articles and paragraphs which are devoted to education in the Constitution, some points can be extracted that the Islamic government should pay due attention to:

1- In addition to free facilities and educational environment which should be provided by the government, the conditions should be made suitable so that nobody from any social stature be deprived of the blessing of knowledge and education because of poverty (Shabani, 2007: p. 86).

In order to help the impoverished layers who cannot afford to pay for the expenses of private schools, the government should provide the possibility of free education (Ghazi, 2006: p. 150).

2- Moreover, the government is responsible for providing the necessary educational environment, facilities, professors, laboratories, research sources, etc. for higher education students so that whoever has the merit for attaining higher degrees and obtaining special academic position can realize this goal and the government also should use the knowledge of these people for the self-sufficiency of the nation (Shabani, Ghassem, *ibid*: 86).

Guiding the people and rescuing them from ignorance and darkness is among the objectives of divine prophets. In different verses, the Holy Quran has named "education" and "awareness" the basis of inspiring Prophet Muhammad (PBUH) so that the opportunity for the creation of intellectual and powerful societies will be available. In his sublime teachings, Prophet Muhammad considers the quest for knowledge a vital and compulsory matter for everybody and gives a lot of importance to studentship in such a way that for achieving this goal, the difficulty of traversing long distances and staying outside homeland should be tolerated.

☒ Free and public education in the Universal Declaration of Human Rights

The paragraph 1 of the article 16 of the Declaration reads, "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages."

Elementary education is compulsory. Professional training should be expanded and higher education should be equally available to everybody so that all people can benefit from it corresponding to their own merits and talents. The paragraph 3 of the same article says, "Parents have a prior right to choose the kind of education that shall be given to their children."

☒ **International Covenant on Economic, Social and Cultural Rights, and free education**

In 1976, Iran ratified the International Covenant on Economic, Social and Cultural Rights. The paragraph 2 of the article 13 of this Covenant points out to the free and public education and stipulates that:

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Having in mind these issues, it can be said that the right of free and public education is one of the fundamental rights of the citizens and both Iran's Constitution and other countries' constitutions testify to it on the basis of international agreements, and it can be said that there's a consensus on this matter. However, the availability of free and public education demands that it be accessible to everybody, including rural communities, tribal people and other social groups.

Besides being sufficient, education should be provided non-discriminatorily in terms of quantity and quality so that educational inequality will not take place.

The existence of nonprofit schools is inevitable as a result of time and place demands; however, since tuition fees are received for providing education and because of the higher quality of education in such schools, the principle of free and public education will be somehow violated.

From the other hand, it seems that Iran's Constitution has considered free and public education a right for the citizens, not their responsibility. Therefore, if the citizens intentionally or unintentionally fail to enjoy education, obligatory and pressuring rules will not be exercised.

In the viewpoint of the author, it is a deficiency in the modern society and it's necessary that practical guarantees, whether punitive measures or restrictions and other appropriate punishments be assumed by the lawmaker.

Conclusion

Iran joined the Convention on the Rights of the Child in 1994. The entire contents of the Convention, especially its articles 2 and 23 which specifically underline the rights of the paralyzed, disabled children are considered to be among the principles of the legal system of the country and are binding for the government. The fact that the article 23 is dedicated to the paralyzed children does not denote that these children are deprived of the other rights foreseen in the Convention, but as it can be inferred from the article 2 (prohibition of discrimination on the basis of disability), a paralyzed child should enjoy the whole rights and freedoms in the Convention on the Rights of the Child and no child may be deprived of all or parts of these rights either completely or partially.

Based on the rule of no compulsion and no conferment, every individual has both rights and responsibilities. From the other hand, there's a correspondence between right and responsibility. It was demonstrated in the present paper that the paralyzed children, without having any responsibility before the government, have certain rights. The rights of the paralyzed children are broader than the rights of normal children so that they may have rights on equal footings.

As to the comprehensive law of protecting people with disabilities, although this law has generally taken considerable steps to protect the rights of paralyzed people, in the educational rights of this group of people, necessary actions should be taken to adapt it with international standards. Moreover, historical background with regards to the laws which lead to major changes in previous regulations indicate that there's a difference between ratifying a law and operating it in a complete and precise way, and it seems that practical and operational mechanisms have not been foreseen in parallel to the rights and responsibilities stipulated in the comprehensive law.

In an international perspective, unfortunately none of the global documents have precisely and substantively investigated the educational rights of the disabled children and it seems that this has been assigned to the countries to take action in this regard based on the educational and financial capabilities. However, according to the paragraph 3 of the article 23 of the Convention on the Rights of the Child, programs should be designed "to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."

Therefore, contrary to the beliefs of some people and even some experts and specialists, in the long-run and large-scale planning, the objective of training and educating a disabled child should not be merely to enrich his leisure time and entertain him, but as the paragraph 3 of the article above stipulates, disabled children should get prepared for a secure future and personal, familial and social successes through accurate, principled and programmed education. Therefore, every sort of planning for the education of disabled children in our country should be accorded with these criteria and aimed at reaching the excellent objectives mentioned above.

Paying attention to the contents of Iran's comprehensive law of protecting the rights of paralyzed people makes it clear that this law has been mainly framed under the heavy influence of the social welfare thought and in the majority

of its articles, some rights have been foreseen for the paralyzed people without any mentioning of their equality to the other members of the society and prohibition of discrimination on the basis of disability and paralysis.

As it has been mentioned in the paragraph 2 of the article 5, the States Parties should declare as prohibited exercising every kind of discrimination on the basis of disability and guarantee that the disabled people equally and effectively enjoy legal protection. As a result, Iran's comprehensive law of protecting the rights of paralyzed people is seriously subject to criticism because of failing to declare as prohibited discrimination on the basis of disability and paralysis and leaving unnoticed legal measures which a disabled person who has fallen victim to discrimination can take to compensate for the damages he has sustained. Even giving reference to the prohibition of discrimination in the Constitution will not fill the gap appropriately.

The disabled and paralyzed children who are usually subject to discrimination and need special protection are by no means given attention in the law. This is while the Convention on the Rights of Persons with Disabilities has repeatedly emphasized on protecting this group of people and has dedicated the article 7 to the paralyzed children.

By juxtaposing the materials and contents in the present article, we reach a crystal clear conclusion which is the number of people with disabilities and their corresponding needs are increasingly growing.

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