



Laws on the Disabled in Various Foreign Countries

Argentina • Belgium • Brazil
Canada • People's Republic of China
Republic of China (Taiwan) • France • Germany
Greece • India • Iran • Israel • Italy • Japan • Malaysia
Mexico • Netherlands • Sweden • Thailand
Turkey • United Kingdom

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COMPARATIVE SUMMARY

Introduction

This study consists of twenty-one separate country reports, written for Argentina, Belgium, Brazil, Canada, the People's Republic of China (PRC), the Republic of China on Taiwan (ROC), France, Germany, Greece, India, Iran, Israel, Italy, Japan, Malaysia, Mexico, the Netherlands, Sweden, Thailand, Turkey, and the United Kingdom, accompanied by a comparative summary. The countries were chosen on the basis of available expertise, and with the expectation that the end result would give a representative picture of current policies and laws relating to the mentally and physically handicapped of the world. Thus, the completed study includes some countries where awareness of the special position of disabled persons has long existed. It also includes countries that are representative of the middle ground, where there has been only fairly recently a stronger perception of these needs. Finally, some of the country reports are on nations where the handicapped are not yet perceived as being in need, not just of assistance but, more significantly, of special protection against the many forms of discrimination.

It is clear that both developed and developing countries, through a variety of measures, are all making praiseworthy efforts to advance the cause of the disabled, demonstrating a growing awareness of this segment of their populations. Nevertheless, it cannot be disputed that the interests of disabled or handicapped persons have not always been given high priority in the political process that eventually results in a country passing laws and putting administrative policies and practices into place. 1981, designated the International Year of Disabled Persons, marked for some countries the beginning of a more comprehensive and better coordinated program of legislation in this area.

International Encouragement

Efforts have been made on the international level since the decade of the 1970s. In 1971, the United Nations General Assembly adopted the Declaration of Rights of the Mentally Retarded, formulating recommendations for each country to incorporate into their national laws. The General Assembly in 1975 adopted the Declaration on the Rights of Disabled Persons, recommending that all relevant international organizations and agencies include in their programs provisions to ensure the effective implementation of the rights and principles contained in this Declaration. The year 1981 was proclaimed the International Year of Disabled Persons. The General Assembly, continuing its policy of making attention to the disabled a high priority, designated 1983-1992 the Decade of Disabled Persons, and a World Programme of Action for its implementation was proposed.

Several of the countries surveyed have followed up the international initiatives. Greece, for example, has incorporated into its law on vocational rehabilitation and employment for disabled persons the ILO Convention on this subject. Japan, on the basis of the World Programme of Action, adopted its own long-term plan of action calling for the prevention of

disability, rehabilitation, and equal opportunity for disabled persons. Turkey, after endorsing both the International Year of Disabled Persons and the Decade of Disabled Persons, has intensified its activities to protect the disabled. The PRC, with its one billion inhabitants, has accepted the U.N. World Programme as well as the 1983 Convention concerning Vocational Rehabilitation and Employment (Disabled Persons).

Scope of Methodology

A number of the countries in the survey view the position of the disabled from the **human rights** point of view, as disadvantaged persons who may be discriminated against and thus should be protected from discrimination. A number of countries have incorporated this principle in their constitutions, for example, Brazil, Canada, Germany, India, Italy, and Thailand. On the issue of making discrimination against the disabled illegal, as the United States is endeavoring to do through the American with Disabilities Act (ADA) of 1990, it can be seen that other countries have tried to extend this protection to their disabled through constitutional provisions. In the case of Italy, for example, the Constitution guarantees equality for all persons, without distinction not only of sex, race and so on, but also on the basis of social and personal conditions. The Indian Constitution guarantees non-discrimination for the mentally handicapped and the physically disabled. The Constitution of the Netherlands, while it does not expressly name being handicapped as an illegal grounds for discrimination, states that discrimination on any grounds whatsoever is not permitted. Brazil is another country that has made protection of the handicapped a constitutional mandate. In fact, the Brazilian Constitution is quite detailed and specific in its focus on the disabled. The mentally retarded and disadvantaged are also given constitutional guarantees of equality or non-discrimination. The PRC achieves the same goal through the special 1991 law and a State Council Circular on its implementation.

The provision of **special financial assistance and benefits and privileges** to the disabled has been addressed in the form of constitutional provisions or separate laws. Many of the countries surveyed consider the provision of assistance to the disabled worthy of being a constitutional obligation. Thus, Germany imposes this upon its government by means of a constitutional guarantee of equality and social welfare, and the constitutional mandate is implemented by means of a variety of programs and statutory entitlements. This can also be said of Greece, whose 1985 Constitution stipulates that the State take special care of people with incurable physical or mental disabilities. The Turkish Constitution contains special provisions for the protection and assistance of persons with disabilities. All of these countries appear to realize the importance of raising people's consciousness of the problems of the handicapped and changing the attitudes of normal people towards the disabled.

Special measures to rehabilitate the disabled and to provide them with **employment** opportunities are for the most part taken by means of specific laws, both on the national and the provincial level. However, the Indian Constitution directs the State to make provision for the right of the disabled to employment. Some countries appear to be motivated towards legislating on the rights and privileges of the handicapped because of labor concerns. Industrialized countries such as the United Kingdom, Japan, Germany, Sweden, and France, for example, take

very seriously the plight of the disabled and the handicapped and their being ensured the right to work.

There are also a number of countries that deal with the issues of the handicapped from the point of view of **social welfare**, such as Belgium, Israel, Malaysia, and the United Kingdom. Sweden is noteworthy in this respect, because the special benefits extended to the disabled in other countries as part of the social welfare system are in Sweden available as a matter of right.

Some of the countries have as the main policy underlying their legislation the **integration** or re-integration of both the mentally and the physically disabled into society. To this end, much more emphasis is put upon the rehabilitation of the handicapped and on ensuring that they may receive the necessary educational and employment opportunities, funds, and special facilities. The main focus of German policy in this area is the full integration of the handicapped into society. French law clearly states that the integration of disabled persons in the educational system and in professional and social life is a national obligation. Indeed, in France, Japan, the Netherlands, and Sweden, government policy towards the disabled is based on the goal of rehabilitation in order to enable such persons to become self-supporting human beings making a contribution to the development of the whole society. In Sweden, disabled persons are part of a strong movement, visible at both the local and the national level, which is very active in working for the interests of their members. Other countries, not so advanced in this regard, continue to espouse the traditional view of the handicapped as merely persons who are in need of state or private support on which they depend, with much of this support being supplied by private institutions or by the family or the community.

Affirmative Laws

Prohibiting discrimination

As noted earlier, some countries have imposed an explicit prohibition on discrimination against the handicapped, such as that found in the Indian and Brazilian constitutions. The constitutions of some other countries, in outlawing discrimination on any grounds whatsoever without specifically naming disabilities as a ground, nevertheless could be considered to fall under the heading of affirming non-discrimination. Other countries ban such discrimination, not in their constitutions, but in specific laws, as does the ROC.

Although in the U.S. the ADA makes it illegal to discriminate in employment against a qualified individual with a disability, as well as to discriminate against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications, the disabled of other countries in the world do not, for the most part, benefit from such extensive protection. Brazil's Constitution is noteworthy in this respect, inasmuch as it prohibits employers from discriminating against the handicapped in either hiring or salary standards. Canada's Charter of Rights and Freedoms guarantees individuals the right to equal protection and equal benefit of the law, in particular without discrimination based on mental or physical disability. The Welfare Law of the ROC outlaws discriminatory practices in

employment and education. Germany's constitutional equal protection clause protects the disabled against discrimination. Japan has three major laws aimed at protecting the disabled from being discriminated against as well as providing them with extra benefits and privileges. The Indian Constitution contains a guarantee of non-discrimination and special privileges for the mentally handicapped. The Constitution of Italy extends protection to disabled people with disabilities, prohibiting discrimination on the grounds of "social and personal conditions." The Constitution of the Netherlands prohibits discrimination on any grounds whatsoever.

At the same time, it should be noted that although anti-discrimination laws may be in existence, the enforcement of these provisions may not always receive high priority. Sometimes, as with Germany, the feeling is that the social and occupational needs of the disabled are well taken care of, but their civil rights may not be getting adequate protection.

Providing Special Benefits and Privileges

It is in this area of legislation relating to the disabled that the most varied and numerous laws can be found. To cite just a few examples, the United Kingdom has passed laws mandating special services for disabled persons, such as the provision of special parking facilities, sanitary conveniences, access to buildings, special seating, and the like. Belgian law similarly provides that handicapped children receive special education and that buildings be made handicapped-friendly.

Preferential treatment is given to the disabled under the laws of several countries. Under ROC law, government offices, public schools, and public enterprises must hire one disabled person for every fifty employees. The disabled are also given preference in the PRC with respect to employment at both the central and the local level. The Employment Equity Act of Canada requires employers doing business with the Federal government to implement plans to eliminate practices that have been proved to be barriers to employment of disabled persons. Under Argentine law, at least four percent of the staff of national governmental agencies, government corporations and municipalities must be disabled persons, and at least 1% must be hired from among the blind. Similar quotas are imposed by Greek law, with 5% of competitive positions in the public sector to be filled from the disabled, without competition. The disabled of Argentina also enjoy tax exemptions and tax incentives designed to compensate them for disadvantages caused by their incapacities. Similarly, French law provides for the waiver of certain taxes and dues. Mexico has enacted legislation aimed at making medical establishments more accessible to the disabled. India and Israel also have laws giving preferential treatment to the disabled.

The ROC and Malaysia both deal with the question of disabled persons in the contexts of criminal law and criminal procedure, in order to protect mentally disabled from criminal responsibility and affording them certain rights in being tried for criminal actions.

Meeting Educational Needs

The educational needs of the disabled are addressed by such measures as a Swedish law that gives handicapped children preference in getting into pre-school and a French law affirming

the right of all disabled persons to vocational training and special educational needs. Belgium has several laws on special and integrated education for both mentally and physically handicapped children. In the PRC, handicapped children receive free scholarships and special education. Brazil similarly provides free education to the disabled. In Germany, an excellent system of special schools for handicapped children has been established. Argentina doubles educational allowances for the parents of handicapped students of elementary and high schools and colleges.

Providing Employment Opportunities

Germany's Law on the Severely Disabled has as its most important feature an affirmative action program for the employment of such persons. Belgium has set up a National Fund for the Rehabilitation of the Handicapped, under the Ministry of Labor, to work towards the employability of the handicapped in various ways. The Belgian National Employment System places retrained persons into a wide spectrum of positions. Japan, under its Law Promoting the Employment of Disabled Persons, imposes quotas for the hiring of disabled persons, and a Japanese government agency collects funds from those employers who cannot meet the quotas. Mexico's Law on Health calls for the provision of work training for the disabled.

Providing Financial Assistance

Many countries have passed laws for the provision by the State of financial and other kinds of assistance to the mentally and physically handicapped in the form of social welfare. Such assistance may be given for their rehabilitation and for ensuring them other rights such as the right to education, employment, housing, etc. Examples can be found in the laws of Israel, which provide a variety of monetary and other benefits. Israel provides even more benefits to certain groups from among the disabled, such as war veterans, victims of anti-Jewish actions, and accident victims. Iran provides special financial assistance and other benefits to its disabled war veterans. The PRC has passed a special law to provide benefits for those who become handicapped in the service of the State, which includes wounded and handicapped servicemen. Greece also at one time put great emphasis on the protection of war veterans and war victims, although recently it has turned its attention to improving the position of handicapped people in society. Iran is very much concerned with assisting its war veterans.

Disabled persons in general receive many forms of financial assistance under the laws of the countries covered in this survey. Mexico, through a law on social assistance, has a national system under which the handicapped form a distinct category of individuals in need and makes numerous kinds of help available to them.

Under the social security or workmen's compensation laws of various countries, including Argentina, Brazil, Germany, Greece, India, Iran, Israel, Malaysia, Mexico, the Netherlands, the PRC, and the ROC, the disabled are entitled to pensions, subsidies, and other forms of monetary compensation.

Providing Medical and Health-Related Assistance

Many of the laws that have already been cited could also be put under this heading, since the provision of health care and other forms of assistance are also included together with financial and practical forms of assistance. Specifically, medical care and services, which in most cases include rehabilitation services, are available to the disabled in all the countries surveyed. The country reports can be consulted for detailed information on what type of assistance is provided under this heading.

Negative Laws

Making Disability a Disqualification

Many countries regard mental and physical handicaps as being disqualifications in one way or another. The Malaysian Constitution states that handicapped people are disqualified from being elected to legislative bodies. Other Malaysian laws prohibit mentally disabled persons from being witnesses in legal proceedings, or from entering into contracts. Turkish law may, under certain circumstances, prevent a person of unsound mind from marrying. In a number of countries, unsoundness of mind is a valid ground for the other party getting a divorce.

Greek law stipulates that people with permanent physical or mental illness that renders them unable to take care of themselves and to administer their property may be pronounced absolutely incapable of entering into any juridical act upon the petition of a relative or spouse or of a public prosecutor. Under Greek law, a mentally handicapped person under judicial interdiction is prohibited from entering into a legal act, which would include purchasing or transferring property.

Mentally handicapped persons, under the laws of Iran, are incapable of entering into contracts or owning property and financial interests. The same restriction on the right to contract is to be found in the laws of Brazil. In Germany, where one might expect sensitivity against discrimination towards the disabled, vestiges of such discrimination were still to be found up to 1990, but such stigmatizing provisions have since been eliminated and replaced with a system under which persons are no longer declared incompetent; even with a guardian or caretaker being appointed as a legal representative, the disabled person retains many rights of self-determination. France has similar laws under which a legal act, such as a contract, that is performed by a mentally disabled person can be nullified on the ground that such a person is legally incapacitated.

Conclusion

From the individual reports, one can see that the disabled of many countries enjoy the protection and benefit of sizeable bodies of health and social legislation. But what is immediately evident is the sharp distinction that can be drawn between the situation of mentally

or physically disabled persons in the developed countries of the world and the plight of similarly handicapped persons in the lesser-developed countries where they are regarded in the traditional context of being unfortunate objects of help and charity. However, there is hope to be drawn from the trend that can be observed in many countries, where comprehensive systems of laws for the protection of the disabled have been put into place and where new laws and policies are working to eliminate the long-standing cultural prejudice against such persons.

On the whole, in spite of the efforts made by many countries to eradicate discrimination towards the mentally and physically handicapped persons of the world, much still needs to be done to ameliorate their plight. Keeping in mind that the problems of the disabled are so interrelated that dealing with any one aspect is bound to affect everything else, the comparative study nevertheless reveals that the rights of the disabled are coming to be recognized. The recognition may be in the form of national policy declarations and instruments such as constitutions, plans for action, and the institutional framework. The initiatives in the area of handicapped persons are being accomplished not only at the highest governmental levels, but also on constituent state or provincial levels and, in some cases, by nongovernmental agencies.

The type of legislative approach to the concept of attaining equality for the disabled varies. Some countries have promulgated a special law on the subject; others deal with different issues by passing laws piecemeal. The laws may treat the disabled as a whole or deal separately with specific categories of disabled persons. The main themes, however, appear to be (1) measures aimed at eliminating discrimination or social prejudice against the disabled, (2) measures to facilitate their reintegration and full participation in social and professional life, (3) measures to prevent disability, and (4) measures that will provide financial support for disabled persons.

The reports show a wide range of success and constraints in the advancement of equal rights and due consideration for the disabled around the world, indicating that there is still a long way to go before the handicapped of all countries can be assured of a greater awareness on the part of their fellow citizens of their needs and their hopes. Only then can the gap between various countries be eliminated and all persons be truly equal in the enjoyment of their human rights.

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ARGENTINA

I. Introduction

Although the National Constitution¹ does not include any specific provision on the protection of the disabled, several of its general principles have been interpreted to include such protection. Those principles are: the promotion of general welfare of the Nation in general² and of the provinces in particular,³ comprehensive assistance to everyone through social security benefits and the protection of workers' rights.⁴ In addition, as explained below, special laws for the treatment and protection of the disabled have been passed not only for their rehabilitation and incorporation to the work force but to improve their quality of life.

The provincial constitutions have also incorporated the protection, prevention, assistance and rehabilitation of the disabled in their texts. This is the case for Cordoba, San Juan, La Rioja, Santiago del Estero, Catamarca, Tierra del Fuego, Rio Negro, Salta y Jujuy.⁵

In the International field, the United Nations General Assembly Resolution No. 2856 of December 20, 1971, has adopted the Declaration of Rights of the Mentally Retarded which was unanimously adopted by all the member countries, including Argentina. Even though this instrument is not a legally binding one, it formulates recommendations for each country to adopt in their national laws.⁶

II. Affirmative Laws

In the light of these principles, a comprehensive system for the protection of the disabled was enacted by Law No. 22431/81 and its regulatory Decree No. 498/83.⁷

The Law guarantees disabled people medical assistance, education and social security benefits. It also provides them with tax exemptions and tax incentives to compensate them

¹ *Constitucion de la Nacion Argentina* (Buenos Aires, Imprenta del Congreso de la Nacion, 1987).

² *Id.* Preamble.

³ *Id.* art. 67, para. 16.

⁴ *Id.* art. 14 bis.

⁵ B. Chirinos, *La Seguridad Social y La Argentina* 29 (Buenos Aires, Ad. Hoc, 1991).

⁶ J. Hervada and J. Zumaquero, *Textos Internacionales de Derechos Humanos I 1776-1976*, 650 (Pamplona, Ediciones Universidad de Navarra, 1992).

⁷ Law No. 22431 of Mar. 16, 1981, in *Boletin Oficial* (B.O.) Mar. 20, 1981, and regulated by Decree No. 498 of Mar. 1, 1983, B.O. Mar. 4, 1983.

for any disadvantage caused by their incapacities. Legislators intend to provide them the same opportunities a normal and healthy person has so they may be fully productive.⁸

Under Argentine law, any person whose family, social, educational and labor integration is affected by a permanent or prolonged functional disturbance, either physical or mental, considering his or her age and social status, is considered disabled under the General Law for the Protection of the Disabled.⁹

The government, through the Secretary of Public Health, will assess the degree of disability of qualifying individuals and indicate appropriate rehabilitation programs, work and professional training. It will also provide loans and subsidies to support labor or intellectual activities, personal, family and social orientation as well as the type of work suitable for the individual.¹⁰

The Ministry of Public Welfare is the enforcement authority. It will provide information on problems and conflicts caused by disabilities. The Ministry will render financial and technical support to the provinces and non-profit private institutions which are devoted to helping the disabled.¹¹

Special programs for the treatment of the disabled have to be established in all public hospitals. The Therapeutic Protected Workshops (*Talleres Protegidos Terapeuticos*) within a health provider unit and the Protected Workshops of Production (*Talleres Protegidos de Produccion*)¹² within the jurisdiction of nonprofit organizations are promoted for the rehabilitation, training and integration of the disabled into the work force.¹³

The National Government, its agencies, government corporations and municipalities are required to hire suitable disabled people at least at a minimum rate of 4% of their staff. At least 1% must be blind.¹⁴ People hired under these provisions will have the same labor rights and obligations as other workers.¹⁵ Private employers that hire disabled are granted a special deduction on income tax equal to 70% of the salaries of each disabled employee.¹⁶ The new Law on Promotion of Employment¹⁷ also includes specific provisions for the promotion of the employment of the handicapped and disabled with tax and financial incentives.

⁸ *Supra* note 7, art. 1.

⁹ *Id.* note 5.

¹⁰ *Id.* art. 3.

¹¹ *Id.* art. 5.

¹² Law No. 24147 of Oct. 21, 1992, B.O. Oct. 27, 1992.

¹³ *Supra* note 7, art. 6.

¹⁴ *Id.* art. 8.

¹⁵ *Id.* art. 10.

¹⁶ *Supra* note 7, art. 23.

¹⁷ Law No. 24018 of Dec, 5, 1991, B.O. Dec. 17, 1991, arts. 42 & 86-89.

The disabled also have a priority right to exploit small businesses in public premises owned by the Federal Government or a municipality.¹⁸ The Law also provides special rules for social security benefits by including specialized rehabilitation medical services in such benefits.¹⁹ Educational allowance for elementary, high school and college is doubled in the case of parents of disabled children.²⁰ Public transportation and public buildings must provide special facilities for the disabled.²¹

III. Discriminatory Laws

Discrimination means a failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.²² According to this concept, it is not proper to characterize laws that *restrict* or *adjust* the general regulation of marriage, employment, property ownership and education of disabled people as discriminatory. With the disabled, the differential treatment is based on a reasonable distinction in their physical or mental incapacity. Therefore, in such a case it is more appropriate to use the term *different treatment* of the disabled rather than *discriminatory* to refer to the subject of protecting the disabled.

Once said, legal capacity of individuals and restrictions placed upon them are regulated under the provisions of the Argentine Civil Code.²³ In the area of marriage, the Code prevents people deprived temporary or permanently of their reasoning faculties of the right to marry. The same rule applies to those deaf mutes not capable of expressing themselves in writing or in any other unequivocal way. The transfer of property ownership as well as other contracts and transactions made by deaf mutes not capable of expressing themselves in writing or in any other unequivocal way have to be performed through legal representatives or curators.²⁴

Both employment and education of the disabled are regulated by the General Law for the Protection of the Disabled as well as labor and social security laws as referred to under its paragraph II.

The National Immigration Law²⁵ also prohibits the immigration under any type of visa of people mentally insane or suffering of a psychopathic personality in such a way that his or her family and social lives may be seriously affected.

¹⁸ *Supra* note 7, art. 11.

¹⁹ *Id.* art. 15.

²⁰ *Id.* art. 14 bis.

²¹ *Id.* art. 20.

²² *Black's Law Dictionary* (1968).

²³ *Codigo Civil* (Buenos Aires, Zavalia, 1991), arts. 166 inc., 8 & 9.

²⁴ *Id.* Titles 10 for the insane and incapacitated and Title 11 for deaf-mutes.

²⁵ Decree No. 1434 of Aug. 31, 1987, B.O. Sept. 17, 1987, art. 22.

IV. Conclusion

Disability is not only an individual problem but a socio-cultural phenomenon that has to be understood as a concern of society. Historically, the disabled have been treated as something *to hide* from so-called *normal society*.²⁶ Fortunately, this concept is no longer true. Legislation for the protection and rehabilitation of the disabled has done much to improve their status in society. But adequate education and information must be provided to the entire population before all problems related to the hiring, teaching and employing the disabled are eradicated.

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²⁶ L. Panatano, *La Discapacidad como Problema Social* (Eudeba, 1987).

BELGIUM

I. Introduction

Belgium has attempted to improve the life of the handicapped for many years. The result is a number of measures dealing with social assistance to persons under disability and assistance making them employable despite their disabilities. The authorities have also thought of them in connection with the building codes. Special measures have been taken to make buildings friendly to the handicapped. In connection with education, they have provided for special education for handicapped children. Disabilities in the area of marriage, disposition of property and the like are treated as incapacities and are dealt with in the appropriate legal codes.

II. Affirmative Laws

Social assistance to the disabled is dealt with by the Law of February 27, 1987, on Allowances to the Handicapped and by the Royal Decrees of July 6, 1987, and of March 5, 1990 (IV), on the same topic made thereunder, all as amended.²⁷ There are three kinds of allowances: supplemental income, integration, and aid to senior citizens. The supplemental income allowance is paid to persons between 21 and 65 years of age whose earning capacity is reduced below one-third capacity of a healthy person due to their physical or mental condition. The allowance of integration is paid to persons between 21 and 65 years of age who lack or have a reduced ability to care for themselves. The allowance to senior citizens is paid to persons aged 65 years of age and older who lack or have a reduced ability to care for themselves. Allowances are made by the Ministry of Social Security upon an enquiry into the income of the applicant and medically established evidence of the disability. The supplement of income allowance amounts to 133,055 francs (1US\$ equals about 35 francs) per year to an applicant who lives with other persons, to 199,565 francs to an applicant who lives alone, and to 266,089 francs to an individual with dependents. The annual amount of the allowance of integration and that provided to senior citizens depends on the ability of the applicant to take care of himself and ranges from 27,378 francs to persons with a moderate disability to 217,378 to those with a full disability in the case of the allowance of integration, and from 144,715 francs to 289,430 francs in the case of the allowance to senior citizens. The amounts are indexed and increase with the increase of the cost of living.

Assistance to the disabled to make them employable despite their disabilities is dealt with by the Law of April 16, 1963, on the Social Rehabilitation of the Handicapped, and by the Royal Decree of July 5, 1963, on the same topic, both as amended.²⁸ The handicapped are those whose employability is effectively reduced due to at least 30% of physical or 20%

²⁷ J. Servais & E. Mechelynck, *comps.*, 4 *Les Codes Belges* 122/4-15 (Bruxelles, Bruylant, 1992).

²⁸ *Id.* at 99-112.

of mental disability. The program is provided by the National Fund for the Rehabilitation of the Handicapped established at the Ministry of Labor. The Fund has broad authority to work toward the employability of the handicapped by improving their health by medical treatment, creating centers for rehabilitation, providing for the reeducation and training of the handicapped in new areas of work and for their support during the training period. The Fund also subsidizes employers who employ the handicapped. The retrained persons are placed by the National Employment System into enterprises of a wide spectrum of work, industrial, commercial, agricultural, public administration, etc. Enterprises and organizations that employ at least 20 people are bound to accept retrained handicapped persons. The actual number to be accepted by an enterprise is determined by the National Employment Office in view of feasibility and convenience. The Fund may also subsidize the handicapped employee in his new employment.

Buildings are to be made friendly to the handicapped by provision of the Law of July 17, 1975, on the Access of Handicapped to Buildings Accessible to the Public.²⁹ Building permits concerning buildings accessible to the public are issued after the proper authority is satisfied that they conform to requirements making them accessible to the handicapped. The same rule applies to such buildings under reconstruction. Buildings accessible to the handicapped without the aid of others must display the international sign of accessibility by the handicapped.

The education of handicapped children is governed by the Law of July 6, 1970, on Special and Integrated Education and the Royal Decree of June 28, 1978, made thereunder, both as amended; a Decree of the Executive of the French Community of May 13, 1991; a Decree of the Council of the Flemish Community of June 25, 1992; and a Decree of the Council of the German Community of June 1, 1992, on the same topic.³⁰ The measures provide for education in special institutions or integrate handicapped students in the normal educational system. Primary and secondary education is provided to the handicapped who suffer from retardation or physical deficiencies and similar deficiencies in eyesight, hearing, etc., or sickness. Children and adolescents between 3 and 21 years of age are admitted in the program, but children below 3 and persons over 21 may participate by permission of the authorities. The program is administered by the Ministry of Education and the Consultative Commissions on Special Education and is subsidized by the government.

Disabilities in the area of marriage and disposition of property are dealt with in the Civil Code. As to marriage, a physical disability does not prevent a person from entering a marriage; however, a mental disability affects the capacity to give consent and disqualifies the individual from entering into a marriage.³¹ A mentally incompetent person is placed

²⁹ 3 *Les Codes Belges*, *supra* note 1, at 723.

³⁰ *Id.* at 256-257.

³¹ *Civil Code*, art. 146: There is no marriage when there is no consent [*supra* note 1, 1 *Les Codes Belges* 39].

under guardianship.³² He is considered a minor as to person and property, and his legal status is governed by the laws on the guardianship of minors.³³

III. Discriminatory Laws

Belgian law attempts to improve the condition of the handicapped, and all measures are made for their protection. There are no discriminatory laws.

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³² *Civil Code*, arts. 488*bis*-515 [*id.* at 61-61/2].

³³ *Civil Code*, arts. 389-487*octies* [*id.* at 55-61].

BRAZIL

I. Introduction

Brazil has made the protection of the handicapped an issue deserving of constitutional treatment. The 1988 Constitution includes appropriate provisions, and its focus is rather specific to the point of detailing its basic elements. Thus, the provisions address disabilities according to both categories and the context within which the protection is intended. A perusal of the related passages indicates that concern for the disabled is based on the principle of equality under the law. Their protection may be viewed as an effort to compensate the handicapped so that their access to the exercise of rights guaranteed by the Constitution is equal to that of other citizens.

II. Affirmative Laws

A number of provisions focus on the disabled. The Constitution states, among other things, that employers may not discriminate against the handicapped in either hiring or salary standards.³⁴

The national charter has also fostered the development of programs of professional specialization focused on preventing physical, sensorial or mental disability, and caring for those affected by such disabilities is a duty of the government. This includes programs to socially integrate affected adolescents by means of training them not only to qualify for a job but also to enable their adequate social interaction. The same provision states that they must be given access to goods and collective services. It is expected that the latter will be achieved by eliminating architectural obstacles and human prejudices. The laws also provide for the construction of buildings and public transportation vehicles standards so that the handicapped will be guaranteed adequate access.³⁵

Under the heading of Social Assistance, the charter provides that this service will be rendered, regardless of an individual's contribution to the social security system. The purpose of the law, among others, is to rehabilitate the handicapped. They are entitled to a minimum monthly salary provided they produce evidence of an inability to support themselves and/or their families.³⁶ The elderly, not necessarily considered handicapped, are also given special constitutional protection.³⁷

³⁴ *Constituicao* (Brasilia, Republica Federativa do Brasil, Centro Grafico do Senado Federal, 1988). See also *Diario Oficial* (D. O.), Oct. 5, 1988, art. 5, para. XLI; art. 7, para. XXXI.

³⁵ *Id.* art. 227, § 1, ¶ II, & § 2.

³⁶ *Id.* art. 203, ¶¶ IV & V.

³⁷ *Id.* art. 230.

A search for implementing legislation of the preceding principles revealed that at least nineteen legislative instruments have been passed on this subject.³⁸ Some of the more relevant items are: Decree No. 458 of February 27, 1992, on Tax Exemptions on Industrialized Products in the Acquisition of Vehicles by Handicapped Persons; Decree No. 129 of May 22, 1991, ratifying the International Labor Organization's Convention on Professional Rehabilitation and Employment of Handicapped Persons; Decree No. 98822 of January 12, 1990, regulating the organization and function of the National Coordinating Agency for the Integration of Handicapped Persons; complementary Law No. 53 of December 19, 1986, on Exemption from Taxes on the Sale of Motor Vehicles Destined for the Use of Paraplegics and/or Persons with Physical Defects Who Are Unable to Operate Standard Models; Constitutional Amendment No. 12 of October 17, 1978, which guarantees that the condition of handicapped persons will be improved socially and economically through special and free education, assistance, rehabilitation and participation in the social and economic life of the nation.

The statutes and regulations on social security include numerous provisions that protect disabled workers and/or their disabled dependents.³⁹

III. Discriminatory Laws

There is no legislation on record that may be labeled *intentionally discriminatory*. What may be found are laws and regulations that fail to consider the handicapped or disadvantaged. Such laws are discriminatory only by default.

In this context, it seems important to consider that *protection* may mean different things depending on the circumstances. Thus, individuals affected by mental disorders, for example, or by reason of age are protected with absolute or relative incapacity to make contracts due to their inability to discern between beneficial and harmful transactions. This creates a restriction on the right to contract on the one hand and a protection against potential abuse on the other. Depending on the circumstances, there are a number of activities that fall under contractual categories that may require the intervention of a legitimate *guardian* or a *curator*.⁴⁰

³⁸ *International Legal Database*. Law Library of Congress. See *Appendix*.

³⁹ CAMPANHOLE Organization, *Legislacao de Previdencia Social* (Sao Paulo, Editora Atlas S. A., 1992. See, for instance, Law No. 8212 of July 24, 1991; and Decree No. 356 of Dec. 7, 1991; Law No. 8213 of July 24, 1991; and Decree No. 357 of Dec. 7, 1991.

⁴⁰ J. de Oliveira, *comp.*, *Codigo Civil* [C. Civ.] (41st ed. Sao Paulo, Editora Saraiva, 1991), arts. 2-8, & 84. See also, Decree No. 24,559 of July 3, 1934, on the Protection of the Person and Property of the Mentally Ill [*id.* Supplemental Legislation, pp. 276-278].

In regard to marriage, the Brazilian Civil Code prescribes that persons who for whatever reason are incapable of consenting or unequivocally expressing their consent may not enter into a marriage contract.⁴¹

IV. Conclusion

The above references to relevant statutory sources on the subject indicate that Brazil has a rather well developed set of legal standards for the protection of handicapped persons. Implementation and enforcement frequently, to a reasonable degree, depend on those resources allocated to such an end.

Reportedly, benefits granted to the social security system are financed by the contributing workers, their employers and the government. As stated above, the Constitution grants protection to the handicapped whether or not they contribute to the social security system. Other benefits are directly funded by national budget allocations, notwithstanding those benefits provided by numerous private nonprofit charitable organizations. However, the fact that Brazil has been experiencing serious economic difficulties for a number of years makes any assessment of the effectiveness of the enforcement of its laws problematic.

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⁴¹ C. Civ., art. 183, ¶ IX.

CANADA

I. Introduction

Canada has both federal and provincial laws pertaining to persons with disabilities. Federal employment laws apply to persons employed by the federal government, federal contracts, and those economic sectors regulated by federal legislation, such as banking, broadcasting, and interprovincial transportation. Most employment contracts in the private sector are governed by provincial legislation. The federal government shoulders most of the burden of providing direct financial assistance to disabled persons.

As a general rule, Canada's largest provinces have taken the lead in enacting legislation pertaining to persons with disabilities. The relevant laws of Ontario, Quebec, and British Columbia tend to be the broadest and are the subjects of the most developed bodies of case law, but the basic provisions of all ten provinces' laws are similar.

Concern for the rights of the disabled has been growing in Canada. Organizations that represent groups of disabled persons are very active. By ruling in favor of those organizations on many occasions, Canadian courts have often promoted interests of the disabled.

II. Affirmative Laws

Constitutional Provisions

Since 1985, section 15(1) of the Canadian Charter of Rights and Freedoms has provided that "[e]very individual...has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on...mental or physical disability."⁴² An exception to this "equality clause" provides that it does not preclude affirmative action programs.⁴³ Laws found to offend section 15(1) may be struck down for being unconstitutional, but the Supreme Court of Canada has not yet developed a body of case law interpreting this provision with respect to the rights of the disabled. However, there have been indications that the Court may be influenced by United States precedents.⁴⁴

Federal and provincial laws that have been found to be unconstitutional can be reenacted by being declared to operate notwithstanding the Canadian Charter of Rights and Freedoms. However, only the Government of Quebec has resorted to this device in the past

⁴² Constitution Act, 1982, R.S.C. No. 44 (App. 1985).

⁴³ *Id.* §15(2).

⁴⁴ W. Tarnopolsky, *Equality Rights in the Canadian Charter of Rights and Freedoms*, (1983) C.B.R. 242, at 255.

and it seems unlikely that any federal or provincial government would "save" a law found to discriminate against disabled persons.

Human Rights Legislation

Parliament and the legislatures of all ten of the provinces have enacted human rights laws. All of Canada's human rights laws generally prohibit discrimination against physically and mentally disabled persons. Human rights commissions and human rights tribunals have been established to investigate complaints and adjudicate cases in which discrimination in employment, the availability of facilities, or the supply of goods or a service have been alleged. Bona fide occupational requirements can be set up as a defense by employers. Plans for adapting facilities to meet the needs of the disabled can be submitted to the commissions for approval. Providers can also defend actions taken with respect to the supply of goods or a service on the ground that they were taken in compliance with guidelines issued by a commission. Such guidelines are usually sanctioned by the courts.

Canada's human rights laws tend to define the term "disability" quite broadly. For example, the Canadian Human Rights Act states that it "means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug."⁴⁵

Other Laws

In 1986, the federal government enacted the Employment Equity Act.⁴⁶ This statute requires employers who do business with the federal government to implement plans to eliminate practices that have proven to be barriers to the employment of disabled persons.⁴⁷ The Employment Equity Act's stated goal is to "achieve a degree of representation in the various positions of employment...that is at least proportionate to their representation in the workforce or appropriate segment of the workforce."⁴⁸

Ontario's New Democratic Government has introduced a bill to create an Ontario Employment Equity Act.⁴⁹ This bill would require private sector employers with fifty or more employees to provide plans setting out how they intend to ensure that their workforces have a representation of disabled persons that mirrors their proportion to the working-age population in the community. Organizations representing many employers have opposed this proposal on the grounds that it will establish quotas, but the Government has stated that the enactment of an Employment Equity Act is one of its highest priorities.

⁴⁵ R.S.C. ch. H-6, §25 (1985).

⁴⁶ R.S.C. ch. 23 (2nd Supp. 1986).

⁴⁷ *Id.* §4.

⁴⁸ *Id.*

⁴⁹ Bill 79.

IV. Discriminatory Laws

Canada does not have laws that are designed to discriminate against disabled persons in employment, marriage, owning property, or education. However, there are many outstanding issues regarding the extent to which the extant laws recognize the rights and needs of the physically and mentally disabled.

V. Conclusion

It would appear that the major issue respecting the disabled that Canadian legislators will face in the near future will be the degree to which their ability to obtain and keep employment should be promoted through employment equity legislation. Developments in Ontario are being followed closely throughout the rest of the country. On the judicial front, the major issue is apt to be how broadly the rights of the disabled under the human rights laws should be interpreted.

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THE PEOPLE'S REPUBLIC OF CHINA

I. Introduction

Based on a 1987 estimate, China has roughly 51 million disabled people, about five percent of the population; 1.4 million are unable to work and have no means of support.⁵⁰ Traditionally, there has been strong prejudice in Chinese culture against the handicapped, especially in rural areas where old superstitions that disability is a mark of punishment for wrongs committed by ancestors may still hold sway.⁵¹ The current regime seems to give more prominence to the plight of the handicapped than did previous governments, perhaps because the son of the behind-the-scenes paramount leader Deng Xiaoping is himself disabled and has championed the cause. It is chiefly since 1991, however, with the coming into force of a special law, that the movement for greater understanding of and help for the handicapped has gained momentum.

The State Council Circular on Thoroughly Implementing the "Law of the PRC for the Protection of Handicapped People," issued on May 6, 1991,⁵² notes that among different social groups, the handicapped have the most difficulty in overcoming problems. In general, it states, the majority of the handicapped are either illiterate or semi-literate, most have not received the necessary health care, those who can work have had trouble finding jobs, and the jobs of those who are employed are not stable, so that they have encountered various degrees of prejudice and discrimination in society. In line with China's overall effort to develop, the government wants to improve the lot of the disabled. The new law was adopted to emphasize the importance of elevating people's consciousness in regard to the problems of the handicapped and to set a standard for how citizens should behave towards them.

Another indication of the government's commitment to protect the rights of the handicapped is the fact that its White Paper on Human Rights,⁵³ issued in November 1991, has a chapter on the disabled. The White Paper provides examples of laws and regulations or special provisions of laws that guarantee the disabled's rights. It describes organizations and special programs and policies for the disabled. The latter include a five-year work program for people with disability (*see next paragraph*), Several Viewpoints on Developing Education for People with Disability (*see below*), and the Program for Implementation of Three Rehabilitation Projects for People with Disability. It also notes China's participation in international efforts to assist the handicapped--specifically, acceptance of the U.N. World Program of Action Concerning Disabled Persons in 1982 and of the 1983 International Labor

⁵⁰ Information Office of the State Council, "Human Rights in China," *Beijing Review* 39, 41 (Nov. 4-10, 1991).

⁵¹ James L. Tyson, "China Seeks To Uproot Prejudice Against Disabled," *The Christian Science Monitor*, Feb. 13, 1991, at 6. The article also mentions that it was not until 1993 that a ban on handicapped students taking national college entrance exams was revoked.

⁵² *See Zhongguo falü nianjian 1992* [Law Yearbook of China 1992] 292-294 (Beijing, 1992).

⁵³ *Supra* note 1, at 39-42.

Conference Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons) in 1987.

The Outline of the Eighth Five-Year Plan for the Undertakings of China's Disabled Persons (1991-1995)⁵⁴ reviews some of the results of the preceding five-year work outline for the disabled. Then it sets forth the aims and guiding principles of the new plan and describes its key tasks in the eight areas of rehabilitation, education, employment, welfare, special aids and apparatus, cultural life, social environment, and enhancement of the legal system.

II. Affirmative Laws and Regulations

1. The Constitution of the People's Republic of China of 1982

The Constitution states that "All citizens of the People's Republic of China are equal before the law" and that "Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law."⁵⁵ More specifically in regard to the disabled, it states:

Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill or disabled. The state develops social insurance, social relief and medical and health services that are required for citizens to enjoy this right.

The state and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel.

The state and society help make arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens.⁵⁶

⁵⁴ See the Circular of the State Council for Approving and Transmitting the Outline of the Eighth Five-Year Plan for the Undertakings of China's Disabled Persons, of Dec. 29, 1991, in *Zhongguo falü nianjian*, *supra* note 5, at 340-344. The prefatory remarks to the Outline state that it was drawn up by the State Planning Commission and 16 ministries, in accordance with the Ten Year Program of National Economic and Social Development and the Outline of the Eighth Five-Year Plan.

⁵⁵ Art. 33, ¶2,3. 1 *The Laws of the People's Republic of China (1979-1982)* 12 (Beijing, 1987) [hereinafter LPRC]. The Constitution was promulgated for implementation on Dec. 4, 1982.

⁵⁶ Art. 45, *id.* at 14.

2. The Law of the PRC for the Protection of Handicapped People [Law on the Handicapped]

The Law on the Handicapped, adopted on December 28, 1990, and effective as of May 15, 1991, states in its "General Principles" that it is based on the Constitution and aims at "protecting the legitimate rights and interests of handicapped people, developing service for handicapped people, and safeguarding their full participation in social life on an equal footing so that they can share our society's material and cultural achievements" (art. 1).⁵⁷ It defines the handicapped as "people whose psychological, physiological, or physically [sic] constitution or functions are lost or are not normal and who are completely or partially unable to engage in certain activities in a normal manner" and says that they include "those handicapped in sight, hearing, speaking, or working with limbs; those intellectually or mentally handicapped; those handicapped in many ways; or those with other deformities."⁵⁸ Handicapped people enjoy the same rights as other citizens and are not to be "discriminated against, humiliated, or have their rights infringed upon" (art. 3). Other chapters of the Law deal with rehabilitation, education, employment, cultural life, welfare services, "the environment," legal liabilities, and supplementary provisions. The legal supporters of the handicapped are to take care of the handicapped and torture or desertion of the handicapped is prohibited (art. 9).

Among the special benefits or privileges mentioned in the law are the following. In general, "special protection, preferential treatment, and support" is to be given to those who become handicapped in the service of the state. This includes, for example, wounded and handicapped servicemen and persons who become handicapped in the performance of public duty (art. 5).

The state is to provide free scholarships to handicapped children who receive compulsory education (compulsory education is nine-year tuition-free schooling, in primary school and junior middle school) and will reduce or exempt their payment of miscellaneous fees depending on their circumstances (art. 18). They are also to be educated in ordinary or special ways, depending on their capabilities, and more flexibility in curricula, materials, etc., will be used for students who receive special education (art. 19 (2,3)). Various educational units are to provide handicapped children with preschool education (art. 23). The state is to wipe out illiteracy among the handicapped, provide job training, train special education teachers, and support research on braille and special materials and equipment for the handicapped (arts. 24-26).

Preferential measures and protective measures are to be adopted in regard to employment of the disabled, at both the central and the local level (art. 28). Handicapped

⁵⁷ For the English translation, *see* Xinhua (in Chinese), Dec. 29, 1990, as translated in Foreign Broadcast Information Service, *Daily Report: China*, Jan. 4, 1991, at 22.

⁵⁸ Art. 2, ¶¶1 & 2, *id.* The third paragraph says that "The State Council shall set the criteria for what constitutes a handicap."

welfare institutions, sanatoriums, massage centers, and other welfare institutions are to be established to provide work for the handicapped (art. 29). It may be noted that in rural areas, those unable to work and without any means of support are protected under the "five-guarantee" system--guarantees of food, clothing, housing, medical treatment, and burial expenses--or live in welfare homes; those in urban areas are given regular relief or live in group homes.⁵⁹ Government departments are to encourage and assist the handicapped to open businesses collectively or individually on a voluntary basis (art. 31); in rural areas, local governments and organizations are to organize and assist them to engage in various forms of productive labor (art. 32). Enterprises and other units that provide welfare services to the handicapped, as well as independent handicapped workers, are to enjoy reduced or exempted taxes and state support in the areas of production, technical skills, work areas, and so on (art. 33, ¶1). Local governments and the relevant departments are to determine the types of products the handicapped can produce and assign the handicapped's welfare enterprises to produce the products on a priority basis; gradually, the enterprises will be designated to monopolize the production of certain goods (art. 33, ¶2). [It may be noted that this clause could have a potentially discriminatory effect, in that the state has discretionary power over what is produced; conversely, it might discriminate against non-handicapped producers.] In handing down recruiting and hiring quotas, the government departments concerned are to set aside a certain quota for handicapped persons (art. 33, ¶3). The handicapped who apply for independent business licenses are to be issued operating licenses on a priority basis and given preferential treatment in terms of work sites and credit (art. 33, ¶4). Work units with handicapped workers are to provide them with on-the-job training to improve their work skills and technical proficiency (art. 35).

To enrich the cultural life of the handicapped, the state and society are to: reflect their lives in the various media, organize and support writing and publication of Braille and audio materials for the blind and reading materials for the deaf and mentally retarded and use sign language on television programs and subtitles on some movie and TV films, hold special art performances and sports meets, and so on (art. 38). Welfare is also provided to those in need. There is to be relief for the handicapped who are unable to work or who have no statutory supporter or means of support and welfare centers and homes are to be set up by all levels of government (arts. 41, 43). Public service organizations are supposed to give priority and subsidized services to the handicapped. Their personal items may be carried free of charge on public transportation. The blind may ride public buses, trams, subways, and ferries in the city without charge and their reading material and mail may be mailed without charge. County and township governments are to reduce the amount of voluntary labor of the rural handicapped or exempt them from it, depending on the circumstances (art. 44). To increase awareness of the handicapped, the third Sunday of May is designated as national "Help-the-Handicapped Day" (art. 48).

The State Council circular on implementing the Law on the Handicapped, noted above, elaborates on some of the law's provisions. The Law on the Handicapped is to prevail over all existing laws that might be in conflict with it. The costs for carrying out help for the

⁵⁹ The White Paper on Human Rights, *supra* note 1, at 41.

handicapped are to be included in government budgets and provinces are to coordinate their efforts. All levels of government are to carry out the Five Year Work Plan for People With Disability (mentioned above) and every government organ in every region must include work on the handicapped in conformity with this plan. Associations for the handicapped are to be established. Preference in employment should be given to the disabled, they should have special training to run businesses, and local governments should set aside job quotas for the disabled. Improved access to urban streets and buildings should be made.

2. Criminal Code

The Criminal Code stipulates that the mentally ill will be exempt from criminal responsibility when unable to recognize or control their own criminal conduct and that any deaf-mute or blind person who commits a criminal act may have punishment mitigated or waived.⁶⁰

3. Civil Laws

The General Principles of the Civil Code indicate that mentally ill persons who cannot account for or who cannot fully account for their own conduct are to be represented by a guardian in matters beyond their capacity.⁶¹ Under the Law of Succession, there are protections for successors and for dependents of the deceased who are unable to work and who have special financial problems or no source of income.⁶²

4. Education

The Compulsory Education Law of the PRC provides that local governments are to establish special schools or classes for blind, deaf-mute, or retarded children and adolescents.⁶³ Xinjiang Province has reportedly drawn up a number of regulations and preferential policies to help the disabled, one of which calls for a reduction in or exemption from tuition fees.⁶⁴

Some Views on Special Education Issued by the State Education Commission, State Planning Commission, Ministry of Civil Affairs, Ministry of Finance, Ministry of Personnel,

⁶⁰ Arts. 15, 16. The Law was adopted on July 1, 1979, promulgated on July 6, 1979, and effective as of Jan. 1, 1980. For the text in English, *see* 1 LPRC at 87-192.

⁶¹ Arts. 13 & 14, of the General Principles of the Civil Law of the People's Republic of China, Adopted on Apr. 12, 1986, and effective as of Jan. 1, 1987. The categories of guardians for the mentally ill are set forth in art. 17. *See* 2 LPRC (1983-1986) at 227-228.

⁶² Arts. 13 & 14, Law of Succession of the PRC, adopted on Apr. 10, 1985, and effective as of Oct. 1, 1985. For the text in English, *see id.* at 169-175.

⁶³ Art. 9. The Law was adopted on Apr. 12, 1986, and effective as of July 1, 1986. For the text in English, *see* 2 LPRC at 250-253.

⁶⁴ "Xinjiang Extends Hand to Handicapped," Xinhua, Aug. 10, 1993, as carried in NEXIS (Currnt file).

Ministry of Labor, Ministry of Health, and Chinese Disabled Persons' Association (May 4, 1989)⁶⁵ notes that despite the significant progress made in special education for handicapped youth over the past decade, only less than six percent of such children received a proper education. The document called not only for special schools to be set up but also for regular schools to admit handicapped children. Middle schools, schools of higher learning, and technical schools should also make plans to admit the children. It noted that the 1988 eighth five-year work plan for the handicapped said that different ways to admit blind and deaf children should be found and the percentage of those receiving a proper education should be raised from less than six percent to ten percent for the blind and fifteen percent for the deaf, that the admission rate for the retarded should be raised, and that in areas where there are better economic conditions, in the last year of the plan the school admission rate of the blind, deaf, or slightly retarded children should be not less than seventy percent. By the year 2000, the document stated, it is expected that in less developed areas the admission rate for handicapped children should reach about fifty percent. The government units in charge of education at all levels should bear the primary responsibility for overseeing the improvements and work closely with other units. Other sections of the document deal with methods to increase funding, training of teachers, improvement of teachers' salaries, preparation of special teaching material, and increasing scientific research.

5. Electoral Law

Under the electoral law,⁶⁶ those unable to write their vote may entrust others to write it for them (art. 33). However, it may be noted that those who are mentally ill and incapable of exercising electoral rights will not be included in the roll of voters upon determination by an election committee (art. 23, ¶2).⁶⁷

6. Regulations on the Elderly

Most provinces have enacted laws to protect the elderly that contain provisions on the handicapped. For example, according to Fujian Province law, a disabled senior citizen (over 60) is to be accorded more welfare benefits than other old persons.

⁶⁵ *Zhonghua renmin gongheguo falü quanshu (zengbu ben)* [Collection of the Laws of the People's Republic of China (Supplement)] 225-229 (Changchun, Jilin People's Press, 1990).

⁶⁶ The Election Law of the National People's Congress and Local People's Congresses of the People's Republic of China, as amended and adopted on Dec. 2, 1986. *See* 2 LPRC (1983-1986) at 313-327 (Beijing, 1987).

⁶⁷ Appraisal of those who cannot participate in the electoral process must be made by a hospital or other competent unit and approved by the appropriate election committee, according to the White Paper on Human Rights, *supra* note 1, at 39.

7. Preferential Treatment for Veterans

Regulations Giving Preferential Treatment to Servicemen⁶⁸ covers disabled military personnel who became disabled because of war, because of other service to the government, or because of illness. Their family members are covered as well. The disabled servicemen are to be given all sorts of preferential treatment, including free medical care, equipment, artificial limbs, priority in buying tickets for public transportation and at reduced prices, and priority in employment, admission to schools, securing loans, and housing. In seeking admission to schools, if there should be any physical requirement it is to be waived or relaxed for disabled military personnel, and the admission standards are to be lowered. Their family members are also given special preference in schooling.

The Notice of the Ministry of Civil Affairs and Ministry of Finance Concerning the Adjustment of the Standard of Pensions for Revolutionary Disabled Personnel⁶⁹ divides the disabled into different levels of disability. The amount of payment is different according to the disability level and according to whether the person became disabled in war or in other kinds of government service.

8. Tax Exemption

According to the White Paper on Human Rights, special tax measures for the handicapped have been adopted. They include the Circular on Tax Exemption for Private Businesses Run by Disabled People, the Circular on Tax Exemption for Social Welfare Production Units, and reduction of or exemption from customs duties for special goods and equipment for the disabled.⁷⁰ It is reported that in Jilin Province, two-thirds of the city and county governments are now implementing preferential policies for its 1.43 million handicapped, including exemption from 8.35 million yuan in various taxes in 1992.⁷¹

⁶⁸ Adopted June 28, 1988, effective Aug. 1, 1988. *Zhongguo falü quanshu* 1605-1608 (Changchun, Jilin People's Press, 1989).

⁶⁹ *Supra* note 16, at 621.

⁷⁰ *Supra* note 1, at 39, 41.

⁷¹ "Handicapped People in Jilin Live Well," Xinhua, May 18, 1993, as carried in NEXIS (Currnt file). The handicapped were also granted five million yuan in loans in 1992 and handicapped peasants were excused from 2.1 million days of conscripted service work.

9. Family Planning

In 1989, a regulation for Hainan was announced that increased the number of types of residents there who would be allowed to have two children (provided their first child was a girl), in exception to the national one-child policy. Among the new groups accorded the second child privilege were "certain disabled servicemen and certain other disabled persons."⁷²

10. Insurance

In the city of Wuhan, the handicapped began to enjoy preferential insurance policies, available against old age, property loss, accidents and vehicle damage, that went into effect in early August 1993. The handicapped and their family members are to pay somewhat lower insurance payments than the general public, and examination procedures involved in taking out policies are simplified. The policies will also be available to welfare enterprises and institutions that employ the disabled.⁷³

III. Discriminatory (or Potentially Discriminatory) Laws and Regulations

The Code of Civil Procedure has provisions on ascertaining, upon application by close relatives or other interested parties, a citizen's incapacity and on restricting a citizen's capacity for civil action (arts. 170-173).⁷⁴ Under the Law of Succession, Persons with no capacity or with limited capacity may not act as witness of a will, and wills made by such persons will be void (arts. 18, 22, respectively).

In late 1988, the government of Gansu Province adopted the "Regulations Prohibiting Reproduction by the Mentally Retarded," China's first local item of legislation on eugenics.⁷⁵ To be considered mentally retarded, a person must have 1) congenital retardation caused by such factors as genetics, marriage of close relatives, or parental exposure to an external agent of damage, 2) moderate or severe mental retardation indicated by an IQ of less than 49, and 3) behavioral handicaps in language, thinking, memory, and orientation.⁷⁶ If it is unclear whether a person should be considered mentally retarded under the Regulations, a hospital is

⁷² 3:10 *China Law and Practice* 20 (Dec. 11, 1989).

⁷³ "Preferential Insurance for Handicapped Provided," Xinhua, Aug. 21, 1993, as carried in NEXIS (Currnt file).

⁷⁴ See The Code of Civil Procedure of the People's Republic of China, adopted and promulgated on Apr. 9, 1991, Xinhua (in Chinese), Apr. 13, 1991, as translated in FBIS, June 14, 1991, at 105.

⁷⁵ Qu Weiyang, "Eugenic Law Consistent with China's Population Control Policy," 4 *Liaowang* [Outlook] 14-15 (Jan. 23, 1989), as translated in FBIS, May 3, 1989, at 32.

⁷⁶ Art. 2, as described in *id.* at 33.

to be designated to make an examination.⁷⁷ The Regulations ban reproduction by the mentally retarded, who must be sterilized before being allowed to marry. If both partners are mentally retarded, only the woman is to be sterilized; if only one party is mentally retarded, he or she alone is to be sterilized. Persons who married before the Regulations took effect must also be sterilized if they have not been sterilized or still have reproductive capability.⁷⁸ The county governments are to bear the cost of examinations, diagnoses, and sterilization. Since the mentally retarded are considered legally incapable of civil conduct, it is the departments concerned (e.g., the marriage registration agency) who are deemed to have broken the law and held liable when the mentally retarded are not prevented from reproducing, from marrying before being sterilized, or from fraudulently registering for marriage.⁷⁹

IV. Conclusion

The implementation of the Law on the Handicapped, the issuance of the White Paper on Human Rights, the review of the results of the Outline of the Five-Year Plan for the Undertakings of China's Disabled Persons⁸⁰ and the implementation of a new five-year plan, and the enactment by local governments of many and various measures to help the handicapped show China's determination to make improvements in an aspect of Chinese society that for various reasons has been neglected in the past. In addition, a working committee for coordinating policy formulation, regulations, and planning for the handicapped has recently been established under the State Council, with Peng Peiyun (the Minister of Family Planning) as chairwoman.⁸¹ The government has also pledged to spend several million dollars on a program to eliminate iodine deficiency diseases, which can cause mental retardation, by the year 2000.⁸² One possible countertrend might be noted, however. It was reported in May 1993 that some Chinese experts are proposing that, in an effort to improve the quality of the population instead of just emphasizing controlling population growth, intellectuals should be allowed to have a second child and "the illiterate, semi-literate, and handicapped" should be strictly prevented from having a second child and stopped from having a third.⁸³ Concern has arisen because the urban population and

⁷⁷ Art. 7, *id.*

⁷⁸ *Supra* note 10, at 33.

⁷⁹ Art. 9, *id.*

⁸⁰ To be conducted by the State Council's Coordination Committee for the Work of the Disabled on Oct. 5, 1993. Xinhua (in Chinese), Sept. 28, 1993, as carried in FBIS, Sept. 29, 1993, at 15.

⁸¹ Xinhua (in English), Oct. 3, 1993, as carried in FBIS, Oct. 5, 1993, at 31.

⁸² "Vow To Eliminate Iodine Deficiency Diseases," *China Daily*, June 21, 1993, at 3. The article states that some 425 million people are at risk and that most of the mentally disabled people in China are victims of the deficiency.

⁸³ "Eugenics: Experts Advocate Second Child for Intellectuals," Zhongguo Tongxun News Agency (Hong Kong, in Chinese), Apr. 11, 1993, as carried in BBC, *Summary of World Broadcasts*, May 11, 1993, at FE/1685/B2, in NEXIS (Currnt file).

intellectuals in particular have only one child or even no children, whereas rural couples might have several more than the number allowed, perpetuating a cycle of poverty. The relevant administrative departments may pursue further research on the experts' suggestions.

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REPUBLIC OF CHINA (TAIWAN)

Republic of China law, now in effect in Taiwan, deals with the question of disabled individuals in several contexts, including the Criminal Code and the Civil Code, as well as a Welfare Law for the Handicapped and Disabled. As of July 1992, there were 220,000 registered disabled individuals in Taiwan.⁸⁴ The Ministry of the Interior has stated that the greatest obstacle in the way of full employment for many of them is the lack of education. According to 1989 data, 43% of those categorized as handicapped had no formal education and only 8% had finished high school. It was not until 1988 that the joint university entrance examination ended a ban on allowing those with *diseases or disabilities* to take the examination. The approach taken in Taiwan to remedy the situation seems to be two-fold: On the one hand, educational institutions and such private welfare organizations as the Eden Welfare Foundation are working to make educational institutions more open and training programs more available; and, on the other hand, there are legal requirements that enterprises now hire the handicapped.⁸⁵

Welfare Law for the Handicapped and Disabled

Promulgated in revised form on January 24, 1990,⁸⁶ this Law outlines the basic protection extended to handicapped individuals. Its scope includes those disabled by mental as well as physical handicaps, and it outlaws discriminatory practices in employment and education. The Law establishes an annual survey of the disabled and a census every ten years, together with a registration system that provides the basis for a broad range of welfare services, including job training and placement, subsidies based on economic need for health aids such as wheelchairs, and rehabilitation programs.

In response to concern about past employment discrimination, this Law requires every level of government office, public school, and public enterprise to hire at least one disabled person for every 50 employees. Each private enterprise must hire one disabled person for every 100 employees. Fines may be imposed in the amount of US\$513 per month for each disabled person not hired. The money, which to date has totally over US\$132 million,⁸⁷ is paid into special accounts. In Taipei City, it is the Special Account for Handicapped Welfare set up by the municipal government.⁸⁸ These non-compliance fines are used to modify workplaces to make them more accessible, as well as to underwrite the salaries of disabled workers in the initial, probationary period and to cover up to half of the salary of any additional disabled workers hired above the requirements of the Law.

⁸⁴ *Republic of China Yearbook 1993* 377 (Taipei, Government Information Office, 1993).

⁸⁵ "New Law Brings Gains for Disabled Workers," *Free China Journal* (Aug. 20, 1993), at 7.

⁸⁶ Chinese text available in *Hsin pien liu fa tsan chao fa ling p'an chieh ch'üan shu* 1056-1058 (Taipei, Wunan Books, 1991).

⁸⁷ *Supra* note 2.

⁸⁸ *Supra* note 1, at 378-379.

From January 1990 on, all new buildings open to the public were required by the Law to have facilities for the handicapped in order to obtain the appropriate permits. Older buildings are to gradually add improvements; the Law gives them five years in which to do so.

Criminal Code

The Criminal Code of the Republic of China⁸⁹ discusses the nature of and limits on criminal responsibility in its Chapter II. It specifies in article 19 that an act committed by a person who is insane is not punishable, and one committed by a person of lowered mental capacity is subject to reduced punishment. The Code thus protects individuals with some mental disabilities from suffering the same consequences for certain acts as those without these types of disabilities. In addition, article 20 states that there may also be a reduction of punishment for persons who are deaf mutes. Other types of disabilities are not singled out for protection from full criminal responsibility in this manner.

Civil Code

The Civil Code of the Republic of China touches on the status of the disabled in two places. It states in article 14⁹⁰ that for anyone who is unconscious or of diminished mental capacity to the point where he or she can not manage affairs, the court may interdict legal capacity upon the application of the individual involved, a spouse, two near relatives, or the public prosecutor. In addition, Book IV of the Code,⁹¹ concerning family relations, states in article 976 that a party to a betrothal may resolve the agreement to marry in a number of cases, one of which is if the other party becomes permanently disabled.

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⁸⁹ Promulgated Jan. 1, 1935, effective from July 1, 1935, as amended Dec. 26, 1969. English and Chinese texts available in *2 Major Laws of the Republic of China on Taiwan* 1019-1135 (Tainan, Magnificent Publishing Co., 1991).

⁹⁰ Book of General Principles, promulgated May 23, 1929, effective from Oct. 10, 1929, as amended Jan. 4, 1982. English and Chinese texts available: *id.* v. 1, at 49-86.

⁹¹ Promulgated Dec. 26, 1930, effective from May 5, 1931, as amended June 3, 1985. *Id.* at 293-335.

FRANCE

I. Introduction

French law defines a disabled person as being any person whose ability to get and to keep a job is effectively reduced by an insufficiency in or a diminution of physical or mental capabilities.⁹² Classification of a person as disabled must be recognized by the Technical Commission of Orientation and Professional Reclassification, which has offices in France in all the regions at the *Departement* level.⁹³

Disability is covered in four different areas of affirmative laws:

1. Accidents at work;
2. Veterans and war victims;
3. Disability that is covered by social security;
4. General disability provisions, Law No. 75-534 of June 30, 1975.⁹⁴

The last-mentioned law, with its far-reaching scope, tries to help disabled people fit into society by providing them with the right to education, work, and leisure, regardless of their original disability.

⁹² *Code du travail*, art. L323-10, p. 391 (Paris, Dalloz, 1992).

⁹³ Art. L323-11, *id.* at 392.

⁹⁴ Journal Officiel [J.O.], July 1, 1975, p. 6596.

II. Affirmative Laws

There are several affirmative measures that have been adopted in favor of disabled people, which are as follows:

1. The right to health care necessitated by their condition, according to articles 42 and 43-1 of Law No. 75-534. If the disabled person cannot pay his medical fees, they are paid by Social Aid.⁹⁵

2. The right to a special education. This right goes beyond the normal right to education for minors because of the extra expenses needed for specialized schools and instructors that can provide medical and educational services. The disabled person does not have to share in the payment for such specialized education, including the cost of transportation to the specialized schools.⁹⁶

3. The right to vocational training. The expenses in this area are paid by Social Security.⁹⁷

4. The right to work. The right to work means that the disabled person is entitled to have a job that is compatible with his disability. This right is achieved by making it mandatory for the private as well as the public sector to hire disabled people, by giving them priority for certain jobs, or even by reserving certain jobs for them. Disabled people also benefit from the creation of enterprises that use "protected labor" and by the subsidies granted by the government to entities employing disabled persons, according to Law No. 87-517 of July 10, 1987.⁹⁸

5. The right to housing. This right also includes personal aid to adapt housing to the needs of disabled people, for those who work as well as those who cannot work, and for those who need a third person to help them. Moving expenses are covered as well.⁹⁹

6. The right to special accommodation. This right is granted to people who temporarily or indefinitely are unable to manage to go home and live by themselves, but who can manage with the help occasionally provided by a third person. The special accommodation in caring for disabled people constitutes a big step forward from the traditional mode of care provided by an asylum or a refuge.¹⁰⁰

⁹⁵ *Id.* at 6601.

⁹⁶ *Supra* note 3, at 6597.

⁹⁷ Colloque ADEP: Handicap et droit 79, Centre Technique National d'Etudes et de Recherches sur les Handicaps et les Inadaptations, Vanves, 1983.

⁹⁸ J.O., July 12, 1987, p. 6822.

⁹⁹ *Supra* note 6, at 77.

¹⁰⁰ *Id.* at 78.

7. The right to compensation for extra expenses. This right arises from the condition of being disabled and in need of reimbursement of expenses for artificial limbs, wheelchairs, and electric wheelchairs.¹⁰¹

8. The waiver of payment of certain taxes and dues, such as taxes on cars, television sets, or on the employment of a helper.¹⁰²

9. The right to participate in social life. This right means that all the facilities needed for a disabled person to be a full member of the national community are made available. This includes special means that allow the disabled person to move about,¹⁰³ access to public buildings, housing, and transportation, as well as the right to park in areas forbidden to the general public. The disabled person is entitled to enhanced communication by means of adapted telecommunication equipment. The right to participate in social life also means encouragement of the disabled to take part in spare-time activities and to have vacations. Encouraging disabled persons to participate in political life includes the right to vote by mail for those who have difficulty in going to the polls.

For further details on French legislation on behalf of disabled persons, please see the appendix to this report.¹⁰⁴

¹⁰¹ *Id.* at 79.

¹⁰² *Id.*

¹⁰³ *Supra* note 3, at 6603.

¹⁰⁴ A. Morel, "France," *Is the Law Fair to the Disabled? A European Survey* 79-102 (Copenhagen, World Health Organization, 1990).

III. Discriminatory Laws

The discriminatory laws are intended to shield the mentally disabled from measures applicable to everyone else that could be harmful to their interests, including the safeguarding of property, if these measures were to be applied indiscriminately. Thus, a legal act such as a contract that is performed by a mentally disabled person who is legally incapacitated can be nullified.¹⁰⁵

A legally incapacitated person cannot marry without the consent of the father and mother or the family council. The advice of the physician taking care of the mentally disabled must be obtained.¹⁰⁶

A request for divorce by a legally incapacitated person can only be granted by his guardian.¹⁰⁷

A spouse can request a divorce if the mental faculties of the other spouse have been so altered in the last six years that there is no possible reasonable chance that they can share a common life in the future.¹⁰⁸

A mentally incapable person cannot be an organ donor because he cannot legally give his consent.¹⁰⁹

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¹⁰⁵ *Guide juridique*, Dalloz, Vol. III, Incapables majeurs 292-2 (Paris, Dalloz, 1992).

¹⁰⁶ *Id.* at 292-3.

¹⁰⁷ *Id.*

¹⁰⁸ *Supra* note 14.

¹⁰⁹ *Id.*

GERMANY

I. Introduction

In Germany, assistance for the disabled is a constitutional obligation, imposed upon government by guarantees of equality and social welfare in the West German Constitution of 1949¹¹⁰ that became applicable to all of Germany in 1990.¹¹¹ In West Germany, where current German disability law and policy was developed, the constitutional mandate has been implemented through a variety of programs and entitlements that are rooted in nineteenth century social traditions and post World War I veterans' preferences.¹¹²

The main focus of the German policy toward the disabled is their full integration into society. Therefore, much emphasis is placed on their employment through affirmative programs, training, and rehabilitation. In fact, the only comprehensive statute on the disabled deals with their integration into the work place. Other protective provisions are scattered throughout federal and state law. On the basis of these, the disabled are given a high level of assistance that is tailored to the needs of each individual case.¹¹³

On the whole, Germany helps the disabled by granting them various social payments and services and by making them employable. Outside of the work place, the disabled are not protected against discrimination by specific legislation. Instead, reliance on the the equal protection clause of the Constitution is deemed to be sufficient.

¹¹⁰ Grundgesetz für die Bundesrepublik Deutschland, May 23, 1949, *Bundesgesetzblatt* [BGBl., Official Law Gazette of the Federal Republic of Germany], p. 1.

¹¹¹ This report describes West German law which since the German unification in 1990 has become applicable for East Germany.

¹¹² K. Jung, *Schwerbehindertengesetz* 3 (München, 1987).

¹¹³ W. Thust, *Recht der Behinderten* 21 (Weinheim, 1989).

II. Major Affirmative Laws

A. The Federal Level

The Social Code

The Social Code is an as yet uncompleted codification of all social laws. Its Title I¹¹⁴ contains a catalog of social entitlements and the guiding principles for their administration. These broad provisions apply to all laws dealing with social matters.

For the disabled, section 10 of Title I guarantees that anyone with a physical, mental or emotional disability and anyone at risk of becoming disabled is entitled to the assistance he or she may need to

avert, eliminate, improve, prevent any deterioration in or mitigate the consequences of such a disability; and

guarantee him or her a place in society, in particular in a work environment appropriate to his or her inclinations and capabilities.¹¹⁵

Section 29 of Title I spells out in some detail the types of assistance to which the disabled are entitled. With regard to medical services, for instance, the catalog of entitlements includes medical and dental treatment, drugs, medical devices, orthopedic devices, occupational therapy and stress testing. Equally detailed entitlements are listed in the areas of social and occupational integration. These various social services and forms of assistance are granted by a variety of organizations, including the social insurance carriers and the welfare agencies under the laws described below.

The Law on the Severely Disabled

The Law on the Severely Disabled¹¹⁶ has a long history that goes back to the 1920s, when work had to be found for disabled veterans. Since then the law has been reformed repeatedly to implement more comprehensive and enlightened policies. Since 1974, the law has applied to anyone with a disability of at least 50%, and, upon application, also to those with a disability of at least 30%. The most important feature of the law is an affirmative action program for the employment of the disabled. In addition, the law provides free public transportation for the disabled.

¹¹⁴ Sozialgesetzbuch--Allgemeiner Teil [SGB I] Dec. 11, 1975, BGBl. I, p. 3015, as amended.

¹¹⁵ As translated in World Health Organization, *Is the Law Fair to the Disabled?* 114 (Copenhagen, 1990).

¹¹⁶ Schwerbehindertengesetz, repromulgated Aug. 26, 1986, BGBl. I, p. 1550.

The work-related provisions of the law apply to all employers who employ more than sixteen persons. These employers are required to fill 6% of their vacancies with severely disabled persons (50% or 30% disability) or pay a fine of 150 *Deutsche Mark* (DM, approx. U.S.\$ 100) per month for each unfilled vacancy.

Compliance with the law varies. Private employers often prefer to pay the fine, the proceeds of which are used by a federal foundation for various rehabilitation programs for the disabled. In the civil service of the states and the Federation, however, the statutory requirements are generally met. The Federal government regularly reports to Parliament on the status of compliance.¹¹⁷

Once employed, disabled persons enjoy many privileges that enable them to hold on to their jobs. Thus, the employer has a special duty of loyalty toward them and must assign them work that fully utilizes their abilities and grants them career development opportunities. In analogy to the German works council system, the disabled have elected representatives to protect their interests. Disabled persons also have special protections against dismissal and an additional week of vacation.

For the disabled who cannot, despite various adjustments, function in a regular work environment, special places of employment are provided and these are subsidized by government through various measures, including preferential treatment in procurement contracts.

Social Insurance Laws

Benefits and services for the disabled are provided under the social old age pension laws,¹¹⁸ the health insurance laws,¹¹⁹ the law on the promotion of employment,¹²⁰ the law on disabled veterans,¹²¹ and the law on the compensation of holocaust victims.¹²² In 1974, the Rehabilitation Adaptation Law¹²³ was passed to facilitate cooperation between these various insurance carriers and other organizations involved in helping the disabled. Section 1 of the law makes the rehabilitation of the disabled the guiding principle of all the social payments and services provided, yet disability pensions are paid when necessary.

¹¹⁷ Bericht der Bundesregierung, July 31, 1992, *Bundestag. Drucksache* [BT] 12/3149.

¹¹⁸ Renten Anpassungsgesetz 1992, Dec. 18, 1989, BGBl. I, p. 2261.

¹¹⁹ Sozialgesetzbuch V, Dec. 20, 1988, BGBl. I, p. 2477.

¹²⁰ Arbeitsförderungsgesetz, June 25, 1969, BGBl. I, p. 582.

¹²¹ Bundesversorgungsgesetz, repromulgated Jan. 21, 1982, BGBl. I, p. 21.

¹²² Bundesentschädigungsgesetz, repromulgated June 29, 1956, BGBl. I, p. 559, as amended.

¹²³ Gesetz über die Angleichung der Leistungen zur Rehabilitation, Aug. 7, 1974, BGBl. I, p. 1881, as amended.

The Federal Social Assistance Law

Welfare payments and services are granted on the basis of the Federal Social Assistance Act.¹²⁴ These benefits are granted on a subsidiary basis, to the extent that other entitlements are not sufficient. The law is implemented by public and private organizations at the Federal, state and municipal levels on the basis of many regulations, state laws, and guidelines.

For the disabled, this law provides a variety of benefits aimed at facilitating integration and the prevention of disabilities. These benefits include medical services, institutional care, occupational training, assistance with education at all levels, housing, transportation, etc. Assistance is granted indefinitely, for as long a particular benefit is justifiable.¹²⁵ Special help is provided for the blind: adults are entitled to a monthly stipend of 750 DM per month, but they must be willing to accept employment and any necessary training.¹²⁶

B. Other Affirmative Laws and Programs

In addition to the above described federal laws, the states have also enacted many protective provisions in the areas of their legislative competence, particularly with regard to education and housing. Yet even in these areas there is close cooperation among Federal, state, and municipal programs.

With regard to housing, a federal housing subsidy law¹²⁷ provides special incentives for the construction of housing suitable for the disabled. In addition, the building codes of the states provide certain standards for housing for the disabled, and also access requirements for public facilities. The latter, however, leave room for some exceptions.¹²⁸ Requirements are frequently stated in industry standards. These are established by private associations under considerable governmental influence, yet there is a divergence of opinion on their efficacy and general application. Whereas the Federal government has reported that these standards are continuously being improved and applied widely in the public and private sectors,¹²⁹ a large group of parliamentarians has only recently criticized that much remains to be done to make access requirements applicable to facilities open to the public, and this lack of enforceable standards makes it difficult for the disabled to travel.¹³⁰

¹²⁴ Bundessozialhilfegesetz, repromulgated Jan. 10, 1991, BGBl. I, p. 94.

¹²⁵ *Supra* note 15, §§ 39-47.

¹²⁶ *Supra* note 15, § 67.

¹²⁷ Zweites Wohnungsbaugesetz, repromulgated Aug. 14, 1990, BGBl. I, p. 1731, § 25.

¹²⁸ E.g., in Baden-Württemberg, Landesbauordnung, § 42, Landesbauordnungsausführungsverordnung, § 10, ¶ 2, both reprinted in V. Hornung, *Baugesetzbuch/Landesbauordnung Baden Württemberg* (Stuttgart, 1990).

¹²⁹ Unterrichtung, May 2, 1989, BT 11/4455.

¹³⁰ Grosse Anfrage, Nov. 5, 1992, BT 3649.

In the realm of education, an excellent system of schools for special children has been provided, yet in recent years emphasis has shifted to provide interaction with the regular schools so as to promote integration. At the university level, framework provisions of federal law as well as state laws promote enrollment of the disabled.¹³¹

To improve the attitude of the public toward the disabled, public relations efforts are undertaken at various levels, with some reliance on the media. Among these is a report on the status of the disabled that the executive branch of the Federal government must furnish to Parliament once during every legislative period, that is, every four years.¹³²

III. Discriminatory Laws

After the atrocities committed against the infirm, retarded, and insane during the Nazi era, it could be expected that post-war Germany would develop some sensitivity against discrimination of the disabled. In fact, it is difficult to find discriminatory laws. Yet some vestiges of discrimination remained in the legal system until 1990, in the provisions on incompetency proceedings and guardianship over incompetent adults.¹³³

Prior to 1990, incompetency proceedings could be initiated against the mentally ill, the feeble-minded, drug addicts, alcoholics, and the spendthrift. The reform of 1990¹³⁴ eliminated these inflexible and stigmatizing institutions and replaced them with a system under which the aged and mentally disabled are provided only with the amount of care and assistance that is needed in each particular case. Under the new provisions, persons are no longer declared incompetent; even if a caretaker is appointed as a legal representative, the disabled person retains many rights of self-determination. In particular, the disabled person cannot be restricted from making a will and from expressing his intent to get married. Yet, the civil registrar can deny to perform the marriage ceremony if the person is obviously not in a condition to understand what he or she is doing. Ultimately, the courts would decide if a person is capable of getting married; in 1989, a court upheld the right of the retarded to get married.¹³⁵

According to some, the reform of incompetency law is flawed in that it does not totally ban sterilization of persons who are not competent to make this decision themselves.¹³⁶ Yet the new Civil Code provisions contain many safeguards to ensure that sterilizations can only be carried out in very serious cases, when it could be expected that the

¹³¹ World Health Organization, *supra* note 6, at 131.

¹³² Unterrichtung, *supra* note 20.

¹³³ Civil Code, §§ 104 & 114, as in effect before 1990.

¹³⁴ Betreuungsgesetz, Sept. 12, 1990, BGBl. I, p. 2002.

¹³⁵ Decision of Amtsgericht Rottweil, Nov. 15, 1989, 37 *Zeitschrift für das gesamte Familienrecht* [FamRZ] 626 (1990).

¹³⁶ D. Schwab, "Das neue Betreuungsrecht," 37 *FamRZ* 686 (1990).

mentally disabled woman would become pregnant and when this also would endanger her life.¹³⁷

In 1980, a court decision was issued that gave advocates of the disabled much cause for concern, even though it was not based on discriminatory laws. The court awarded damages against a travel agency for faulty performance of a contract for the sojourn of a group of travellers in a resort hotel. Among the deficiencies giving rise to damages was the presence in the hotel of a group of twenty-five disabled persons, some of whom were mentally disabled. The award was granted because in at least one instance the conduct of the disabled (a tantrum) was actually disturbing to the other travellers. Yet it was also said that, in the case of particularly sensitive persons, the sight of certain disabilities might interfere with the enjoyment of a vacation.¹³⁸ The decision has never been overruled,¹³⁹ but it has been extensively criticized.¹⁴⁰

Some also find it discriminatory that the German assistance to the disabled is to some extent based on measures other than compelling statutes. For instance, building standards for granting access to the disabled are largely contained in broad provisions of the building codes of the states. More detail is provided in industrial standards. Adherence to the latter, however, has not been made compulsory by Federal law. This has been pointed out as a flaw by a group of parliamentarians, who asked the executive branch for measures on how to make vacation trips more accessible to the disabled.¹⁴¹ Certainly, by American standards, the lack of a right of access law in Germany could be viewed as a deficiency.

¹³⁷ Civil Code, § 1905, as reformed by Betreuungsgesetz, *supra* note 24.

¹³⁸ Decision of Landesgericht Frankfurt of Feb. 25, 1980, 34 *Neue Juristische Wochenschrift* 1169 (1980).

¹³⁹ O. Palandt, *Bürgerliches Gesetzbuch* 724 (München, 1992).

¹⁴⁰ H. Scholler, *Beiträge zum Behinderten- und Rehabilitationsrecht* 99 (Regensburg, 1986).

¹⁴¹ Grosse Anfrage, *supra* note 21.

IV. Conclusion

On the whole, the German framework of laws stresses social services and employability in dealing with the disabled. Assistance is granted on an individual basis by a variety of organizations that are part of the tight social net that ensure the quality of life for all Germans. To a large extent, this system relies on cooperation between governmental agencies at the municipal, Federal, and state level and private organizations. The assistance granted is generous indeed, and it focuses in particular on medical services, education, employment, housing, and transportation. Likewise, the measures undertaken to keep the disabled employed are exemplary.

Whereas these social and occupational needs of the disabled are well taken care of in Germany, opinions might differ on whether their civil rights are adequately protected. The lack of Federal provisions on the right of access to public facilities could be viewed as a shortcoming, especially when compared with American standards. Yet in the area of private law, with the 1990 abolition of incompetency proceedings, Germany has enacted a path-breaking reform.

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GREECE

I. Introduction

The Constitution that was adopted in 1985 is considered more socially oriented than the previous constitutions. It includes exclusive provisions for the protection of family, motherhood, childhood and youth, the weak and the poor members of society. People who suffer from incurable physical or mental disabilities are entitled to the special care of the State.¹⁴² The health care of citizens in general, and especially the well-being of the youth, the elderly and the disabled, is the State's responsibility.¹⁴³

Whereas the previous emphasis has been on the protection of war veterans and war victims, during the last ten to fifteen years a dramatic change has occurred towards paying more attention and consideration to handicapped people in society.¹⁴⁴ Even though the traditional assistance is still granted to war victims in the form of subsidies, greater emphasis is placed on vocational training, rehabilitation and reintegration of the handicapped into society. This change is also reflected in the terms used for handicapped people in the various legislative measures. For instance, Law 1648/1986 uses the term *people with special needs* instead of disabled; that is, "people whose prospects of finding and retaining a job are minimal due to a physical or mental impairment." This Law has been directly influenced by ILO Convention No. 159 Concerning Vocational Rehabilitation and Employment (Disabled Persons), which Greece implemented in 1985.¹⁴⁵ Art. 1 of the Convention states:

...the term *disabled person* means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment.

¹⁴² Art. 21, ¶¶1 and 2. A. Dervenagas, *To Syntagma tes Hellados* [The Constitution of Greece] 135 (Athens, 1976).

¹⁴³ *Id.* art. 21, ¶4.

¹⁴⁴ Ch. Goutos, "*Eidike Prostasia ton Atomon me Eidikes Anagkes, ton Polemiston, ton Syggenon tous*" [Exclusive Protection of People with Special Needs, War Veterans, etc.] 48:1159 *Deltion Ergatikes Nomothesias* [Bulletin of Labor Legislation] 658 (1992).

¹⁴⁵ *2 International Labour Convention and Recommendations 1919-1991*, 1278 (Geneva, ILO, 1992).

In Greece, there are a number of special institutions funded by the State which are designed to enable the handicapped to participate socially in the community and ease their integration or reintegration.¹⁴⁶ The services provided by these institutions include:

- health care in clinics or hospitals;
- rehabilitation and social integration or reintegration; and
- vocational training and placement in positions suited to the needs of the individual.¹⁴⁷

However, the majority of these institutions are concentrated in large urban areas. This fact leaves those handicapped people in rural areas without access to institutional assistance.¹⁴⁸

II. Affirmative Laws

Law 1648/1986 on the Protection of War Veterans, War Victims and People with Special Needs¹⁴⁹

As the title indicates, this law protects of two categories of people: war veterans and victims and people with special needs. The Law covers those individuals with special needs aged 15-65 who have limited capacity for employment due to physical or mental illnesses, provided that these people are registered in the list of unemployed handicapped persons of the Organization for Employment of the Workforce. This limited capacity has been established by Law 2026/1992 (which amends Law 1648/1986) as 40% disability, which must be certified by an opinion of an expert (head of a clinic or hospital).¹⁵⁰ In addition, the Law also extends its protection to the parents or brothers or sisters of handicapped people with grave physical or mental illness, who have a 67% disability.¹⁵¹

¹⁴⁶ S. Perrakes and G. Leksouriotes, *Europaikos Koinonikos Choros kai Koinotikos Koinonikos Chartes* [European Social Charter and Community Social Charter] 104 (Athens, 1990).

¹⁴⁷ E. Thomopoulos, *To Kratos Pronoias* [The Welfare State] 227 (Athens, 1990).

¹⁴⁸ H. Symeonidou, "Greece," Commission of the European Communities, *Family Policies in the EEC* 152 (1990).

¹⁴⁹ P. Raptarchis, 15 *Diarkes Kodix Nomothesias* [Continuous Compilation of Laws] 195 (Athens, looseleaf).

¹⁵⁰ *Supra* note 3, at 450.

¹⁵¹ Art. 2, ¶3, Law 1648/1986.

Under Law 1648/1986, private enterprises that meet certain criteria, as well as the public sector, are obliged to hire people with special needs under the following conditions:

1) Private Sector

Foreign or national enterprises or enterprises for the public benefit that employ more than fifty persons are obliged to hire a certain percentage of people with special needs (3%). This must even be done in the absence of any vacant positions.¹⁵² The same companies are obliged to hire as telephone operators, at up to 80% of such positions, the blind graduates of schools of telephone operators. The above employers are obliged to notify, on an annual basis, the Organization for Employment of the Workforce with regard to the composition of the work force employed and any vacant positions.

If there is an age limit with regard to hiring, employers are obliged to extend the limit by ten years in the case of applicants who are individuals with special needs.

The Law provides for certain incentives to employers in general who hire people with special needs. These employers may receive from the Organization for Employment of the Workforce certain compensation for any remuneration paid to their handicapped employees or for any expenses incurred for making office adjustments to facilitate the working conditions of these people.¹⁵³ Employers also may receive awards for their involvement with the handicapped.¹⁵⁴

2) Public Sector

The public sector is obliged to fill competitive vacant positions from among people with special needs, without a competition. The quota is 5%. The applicants must be 21-45 years old, qualified, able to perform the job as determined by an examining health committee, and registered with the Organization for Employment of the Workforce.

In addition, the public sector is obliged to fill vacant positions, such as night guards, cleaning personnel, gardeners, etc., with people who have special needs, provided that the degree of physical or mental impairment is such that it allows them to perform the necessary tasks. The Law also provides that these individuals are entitled to a five-day increase of their annual vacation leave.¹⁵⁵

¹⁵² Art. 2, *supra* note 10.

¹⁵³ Art. 5, Law 1648/1986.

¹⁵⁴ Employers do not look favorably upon the prospect of hiring people with special needs. *Supra* note 7, at 152.

¹⁵⁵ Art. 5, ¶3.

Law 1836/1989 on the Advancement of Employment and Vocational Training¹⁵⁶

The Law includes a special section on the training of individuals with special needs and provides for the establishment of a coordinating committee by the Ministry of Employment, which is responsible for the vocational training and rehabilitation of people with special needs. This committee includes under its auspices all the institutions operating in Greece that aim to promote the integration of people with special needs into the mainstream of society.

Law 1854/1951 on Social Insurance (as amended) and Law 1902/1990 to Regulate Pensions and Related Matters

A disability pension is granted after assessment of the extent of a disability. A percentage of disability of between 50% and 67% provides only a reduced pension, while a full pension is granted to those who are disabled beyond the 67%.¹⁵⁷

Law 1483/1984 on the Protection of People with Family Responsibilities and Amending and Improving Certain Labor Laws

Parents of handicapped children are entitled to a reduction of their working hours by one hour to enable them to devote more time to the special needs of their children.¹⁵⁸

Other Measures

State subsidies provide for both institutional care and care for those people with special needs who are not institutionalized.¹⁵⁹ These subsidies perform a twofold task: first is financial assistance to defray the increased cost associated with the home care of a handicapped child or an adult; second, they provide an incentive for the family to care for the handicapped at home instead of choosing institutionalization. The State, however, ceases to grant these subsidies once the handicapped individual finds employment.¹⁶⁰

¹⁵⁶ *Proothese tes Apascholeses kai tes Epagelmatikes Katartises and Alles Diatakse is.* Raptarchis, *supra* note 8, at 30,05.

¹⁵⁷ Raptarchis, *id.* vol. 29, at 90,657().

¹⁵⁸ Art. 8. *Id.*, vol. 15(3), at 282,50(a).

¹⁵⁹ 700 (pt. B) *Ephemeris tes Kyverneseos tes Hellenikes Demokratias* 5940 [Official Gazette of the Greek Republic] (Sept. 18, 1989).

¹⁶⁰ Symeonidou, *supra* note 7, at 152.

Relevant International and European Community Legislation

In addition to the above laws, Greece is bound by article 15 of the European Social Charter on the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement.¹⁶¹ Greece also ratified the International Labor Convention No. 159 Concerning Vocational Rehabilitation and Employment (Disabled Persons) by the passage of Law 1556/85.¹⁶²

At the European Community level, a measure undertaken in order to improve the working conditions of handicapped people and to encourage their integration is the adoption of the HELIOS Community program. The first program, "HELIOS I," was in operation from 1988 to 1991.¹⁶³ It was extended by the "HELIOS II" program until the end of 1996.¹⁶⁴ The paramount objective of the HELIOS program is to develop a Community approach to ameliorate the quality of life of handicapped people and to enable them to become more socially integrated.

In 1991, the Commission submitted a proposal for a Council Directive to improve the mobility and the safe transport to work of workers with reduced mobility.¹⁶⁵ This proposal is under the Commission's Action Program for the implementation of the Community Charter, which contains special provisions on the protection of handicapped people.¹⁶⁶

Article 26 of the Community Charter deals with the rights of disabled people. It states that they are entitled to additional measures such as vocational training, ergonomics, accessibility, mobility, housing, etc., to improve their social and professional integration.

Regulation No. 1028/79 frees the handicapped from common customs duties for articles intended for the use of the handicapped.

¹⁶¹ The European Social Charter was signed in 1961 and entered into force in 1965 in respect of the five member states of the Council of Europe. Greece ratified the Charter by Law 1426/1983.

¹⁶² *Supra* note 4, at 1278.

¹⁶³ Decision 88/231/EEC, *Official Journal of the European Communities* [hereinafter O.J.] L105 1988.

¹⁶⁴ Decision 93/136/EEC, O.J. L56 1993.

¹⁶⁵ O.J. C68, 1991, and as amended in O.J. C15, 1992.

¹⁶⁶ The Community Charter of the Fundamental Rights of Workers was signed in December 1989 by eleven of the twelve Member States of the European Community, with the exception of Great Britain.

III. Discriminatory Laws

According to article 34 of the Greek Civil Code, "every natural person is capable of being the subject of rights and duties." However, this capacity is distinguished from the capacity to enter into legal acts. Thus, while all natural persons, handicapped or not, have rights and are subject to duties, not all of them are capable of entering into legal acts.

Handicapped people have either limited capacity to enter into legal acts or no capacity at all, depending on the degree of physical or mental impairment. Those with permanent physical or mental illnesses that render them unable to take care of themselves and administer their property are absolutely incapable of entering into any juridical act. Such persons are under the status of judicial interdiction.¹⁶⁷ This status is pronounced by the court following a petition of a relative or the spouse or the public prosecutor. The petition must be accompanied by an opinion of a council composed of the closest relatives as to the need of the judicial interdiction.¹⁶⁸ Any attempted legal acts, even if beneficial to the individual, are absolutely null and void.

People with a mental illness that does not preclude the use of reason are under the supervision of a judicial adviser.¹⁶⁹ These persons are generally capable of entering into juridical acts, with the exception of those enumerated in article 1707, for which the consent of the judicial adviser is necessary. Those acts exhaustively enumerated in article 1707 are the following:¹⁷⁰

- appearing in court;
- collecting money and giving receipts;
- borrowing;
- disposing of immovables belonging to him or of real rights on the immovable of another;
- selling government bonds or shares or bonds of joint stock companies;
- giving guarantees; and
- accepting or renouncing an inheritance or legacy.

¹⁶⁷ Art. 128 of the General Principles of the Greek Civil Code. C. Taliadoros, *The Greek Civil Code* 17 (1982).

¹⁶⁸ *Id.* art. 1689.

¹⁶⁹ I. Karakatsanis, *Astikos Kodikas kai Eisagogikos Nomos* [Civil Code and Introductory Law] 1705 (Athens, 1987).

¹⁷⁰ *Id.* at 331.

A few examples of how these restrictions on the capacity of a handicapped person to enter into legal acts apply in different aspects of life are described below.

- Marriage: According to the law on marriage, a person who does not have the capacity to enter a legal act may not contract a marriage. Handicapped people placed under judicial supervision may marry if the adviser consents.¹⁷¹
- Divorce: Before 1983, mental illness was a ground for divorce. The law was amended and this is no longer the case. However, the healthy spouse may claim that mental illness contributed to the irretrievable breakdown of the marriage.¹⁷²
- Capacity to make a will: Judicially interdicted persons and those who, due to mental illness, lack the use of reason are incapable of making a will.¹⁷³ Persons deemed incapable of making certain kinds of wills are those who cannot read or write and who therefore cannot prepare holographic wills.¹⁷⁴ Mute people are unable to make public wills.¹⁷⁵
- Transfer of ownership of immovable property: The law requires an agreement between the owner and the acquirer, which should be incorporated in a notarial document.¹⁷⁶ Therefore, a handicapped person who is deprived of the capacity to sign an agreement is prohibited from purchasing or transferring property, even if such a transfer would be lucrative for him.

¹⁷¹ Art. 1351 of the Greek Civil Code. Karakatsanis, *supra* note 28, at 275.

¹⁷² *Id.* at 288.

¹⁷³ Art. 1719, Law on Inheritance, *id.* at 334-335.

¹⁷⁴ *Id.* art. 1721.

¹⁷⁵ *Id.* art. 1724.

¹⁷⁶ Art. 1033, Law on Property, *id.* at 224.

IV. Conclusion

Even though Greece has made considerable progress in the areas of vocational guidance, training, rehabilitation, and the employment of people with special needs, there is still a great need for improvement in other areas, such as education, housing, access to more public institutions, and access to transportation and buildings. In addition, even though the state provides some incentives to employers, this sector needs to be more sensitized and motivated in hiring people with special needs.

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INDIA

I. Introduction

A growing social awareness, coupled with a feeling and desire to improve the lot of handicapped in society, has helped India tackle the situation of the disadvantaged. The disabled are considered to have a constitutional claim for suitable employment, special facilities for education and rehabilitation so that their undeserved afflictions might be neutralized. In recognition of the problem, the legislators have protected the rights of the handicapped in the Constitution. The State is concerned with obtaining justice, equality and dignity. This concern is also applied to the mentally retarded segment of the community.¹⁷⁷ Therefore, a guarantee of nondiscrimination and a provision for the reservation of positions and education for the mentally handicapped are also found in the Constitution.

The rehabilitation of the physically handicapped has involved a coordinated and planned humane approach. In recent years, the Government has taken interest in special programs for their education, training, employment, economic assistance, travel, health and medical care, etc. These programs have been in the form of concessions and partial waivers, reservations and priority treatment. Such are extended to the handicapped through executive instructions and orders. These orders have the force of law until the government makes rules under the constitutional provisions in regard to government employees or by law in regard to the private sector.¹⁷⁸

II. Affirmative Laws

Constitution

The Constitution directs the State to make effective provision for securing the right to work for the disabled.¹⁷⁹ Equality provisions for all, including the mentally retarded and the disadvantaged, are found in Articles 15(4) and 16(4) of the *Constitution*. Moreover, there is a constitutional obligation to accomplish the goals of a welfare state based on social justice. Further, the "Preamble" to the *Constitution* reinforces such provisions by promoting the welfare of the people by securing and protecting the social order as effectively as possible. Thus, a comprehensive backing of the individual rights, including those of the handicapped,

¹⁷⁷ V. Krishan Iyer, "Social Justice and Handicapped Humans," *The Academy Law Review* 20 (1981).

¹⁷⁸ India Const., art. 309.

¹⁷⁹ *Id.* art. 41.

is worked out in the *Constitution*. Some legislative framework may also be found in the implementation of social policy.

Hindu law

In uncodified Hindu law, applicable for about 90% of the population, those born blind, insane, and wanting of a limb, were formerly not entitled to any share of an inheritance. The philosophy underlying this principle was the inability of such a person to manage property. It was stated that if a person could not manage his property, it should be protected by others. This position was corrected by the Hindu Inheritance (Removal of Disabilities) Act, 1928.¹⁸⁰ Under this Act, no person, other than a congenital lunatic or idiot, was excluded from inheritance on the grounds of any disease, deformity or mental defect.

The position of the handicapped was improved even further when the Hindu Succession Act, 1956,¹⁸¹ provided that no person shall be disqualified from an inheritance on the grounds of any disease, defect or deformity. The present provisions eliminate almost all those grounds that would impose an exclusion from an inheritance.

Labor laws

The Minimum Wages Act, 1948, fixed the lowest level of wages for certain industries.¹⁸² It provides for no distinction in wages payable to employees either with or without handicaps.

The Workmen's Compensation Act, 1923, imposes an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment.¹⁸³ Compensation is provided for temporary as well as permanent disabilities and also for partial or total disabilities.¹⁸⁴

The Apprentices Act, 1961, regulates employment conditions and training facilities of apprentices.¹⁸⁵ The rules make provisions for relaxation of the physical standards for the handicapped¹⁸⁶ in the following manner:

¹⁸⁰ No. 12 of 1928.

¹⁸¹ No. 30 of 1956.

¹⁸² No. 11 of 1948.

¹⁸³ No. 7 of 1923.

¹⁸⁴ *Id.* § 4.

¹⁸⁵ No. 52 of 1961.

...Without prejudice to the generality of the foregoing provision, where a physically handicapped person registered at any employment exchange, is declared by the medical Board...to be physically fit for being engaged as an apprentice in any of the designated trades under the Apprentices Act, 1961, he may be engaged as an apprentice in that trade.

Executive Instructions

Physically handicapped persons are accorded partial waivers by Employment Exchanges against Federal Government vacancies. The Ministry of Home Affairs has ordered the reservation of 1% of the vacancies for the blind, the deaf and the orthopedically handicapped with an overall ceiling of 3% for Group "C" and "D" positions in the Government and in comparable positions in the Government of India public sector contracts.¹⁸⁷ Where a sufficient number of persons belonging to a given handicapped category is not available, the unfilled vacancies will be carried forward to the following year.

The instructions also exempt handicapped candidates from typing qualifications for appointments to clerical posts. The Government also has instructed that certain work, such as the recaning of chairs, be entrusted to the blind as much as possible. And, for instance, if the volume of work demands a full-time position in the recaning of chairs, the position shall be given exclusively to a blind person. Moreover, a relaxation of five years in the upper age limit has been allowed for the hiring of the blind, deaf, mute and orthopedically handicapped persons. In a special case, the age limit may be relaxed up to ten years. The Indian Railways grants the handicapped and their attendants fare concessions for travel to and from hospitals and training institutions.¹⁸⁸

The Union Department of Social Welfare has scholarship programs for the physically handicapped. These programs award scholarships for general education from high school to technical training and college. To stimulate employers to provide employment for the disabled, a scheme national awards exists for outstanding employers in the private sector.

¹⁸⁶ The Apprenticeship Rules, 1962, Rule 4.

¹⁸⁷ D. Rama Mani, *The Physically Handicapped in India Policy and Programme* 61 (1988).

¹⁸⁸ *Id.* at 66.

III. Discriminatory Laws

Two acts passed during the colonial era which may be considered discriminatory to the disabled remain in force. They have probably gone unnoticed, for they have not been repealed or constitutionally challenged. The first is the Lepers Act, 1898. It does not allow a leper to sell any drugs or clothing intended for human use.¹⁸⁹ If a local authority bars him, a leper cannot wash clothes or draw water from a public well. He cannot drive, conduct or ride a public carriage, or engage in a trade prohibited to him. A violation of the law is punishable with a fine. The second is the Lunacy Act, 1912. It defines a *lunatic* as an idiot or a person of an unsound mind.¹⁹⁰ A police officer may arrest such an individual, if the officer believes he would be dangerous by reason of his lunacy. A magistrate may authorize the detention of such a person for a period not exceeding ten days. Examination by a medical officer who may issue a certificate of lunacy may also be required. In any case, such detention may not exceed a total period of thirty days.

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¹⁸⁹ No. 3 of 1898, § 9.

¹⁹⁰ No. 4 of 1912, § 2(5).

IRAN

I. Introduction

Historically, attention to disabled persons was first afforded to those who suffered from insanity. The first asylum was established in Tehran in 1920. It was financed and operated by the municipality. Then, according to the 1928 Civil Code, which is based on Islamic principles, insane persons were required to have a guardian in order to protect them financially and legally.

The second category of disabled to be protected was the visually impaired. Early in this century, their number increased dramatically each year due to the spread of trachoma, small pox, and other eye diseases. It was not until 1930 that the government was able to bring trachoma and smallpox under control and thus stop the spiralling number of the blind. Attention to the blind was always considered a moral duty of individuals rather than the government. Helping the blind found a prominent place in the works of famous poets and writers, and protecting them was thus considered the duty of every individual. The first schools for the blind were opened in Tehran and Isfahan early in the 1930s. Both were financed mostly by private funds.

Then came the question of attending to the deaf and dumb. Here again the first school was opened in Tehran by a private citizen with some donations from charitable persons.

The 1978 Revolution and the Iran-Iraq War were major factors behind a number of laws creating special privileges and benefits for those who became disabled during both the Revolution and the War.

The Constitution and disabled persons

The Constitution of the Islamic Republic of Iran of December 1979 provides that the government must provide benefits from social security, health care services, and medical care and treatment for disabled persons.¹⁹¹

Categories of disabled persons

The laws pertaining to persons with mental or physical disabilities may be divided into the following groups:

¹⁹¹ Art. 29. Islamic Propagation Organization, *The Constitution of the Islamic Republic of Iran* 38 (Tehran, 1990).

- laws based on the principle of protecting the rights of mentally or physically disabled persons;
- laws or practices that may be considered as discriminatory against such persons; and
- laws that provide disabled persons with certain benefits and privileges.

II. Laws Intended To Protect the Disabled

Age and insanity (Civil Law)

The Civil Code of Iran, which is based on Islamic principles and jurisprudence, provides that the following persons are considered disabled and are forbidden to enter into any contract or take possession of their property and financial interests:¹⁹²

- minors;
- immature persons; and
- the insane.

The age of maturity is set at fifteen for boys and nine for girls.

Management of the property and financial interests of the immature or insane persons is the responsibility of either the natural and mandatory guardian (father or grandfather) or court-appointed guardian. Marriage is not allowed until the girl or the boy have reached the age of maturity as stated above.

Age limitation for job and overnight work (Labor Law)

- Children under the age of 12 are not allowed to work, not even for training purposes (article 16 of SS Law).
- Persons under the age of eighteen are not allowed to work at night.¹⁹³

¹⁹² G. R. Ashrafi, *comp.*, *Majmuahi Qavanini Assassi-Madani* [Compilation of Constitution and Civil Laws] 248 (Tehran, 1992).

¹⁹³ M. Vatani, *Majmuahi Kamili Qavanin va Muqarrarati Kar va Ta'mini Ijtima'i* [Complete Compilation of Labor and Social Insurance Laws and Regulations] 5, 6 (Tehran, 1986).

- The employment of children under the age of 14 at night or for strenuous agricultural jobs is prohibited.¹⁹⁴

Assignment of difficult jobs to the disabled prohibited

According to the Social Security Law, disabled persons must be assigned to jobs commensurate with their physical abilities. If a disabled persons gets involved in an accident as a result of being assigned to a job disproportionate to his physical ability or his health has deteriorated, he will be entitled to social security benefits. The cost of such benefits is the responsibility of the employer.¹⁹⁵

Criminal

According to the Islamic Criminal Code of Iran of January 1992,¹⁹⁶ children who have not reached the age of maturity are free from criminal responsibility. Insanity also absolves persons from criminal responsibility.

The Social Security Law prohibits the assignment of overtime work to persons under 16 years of age (art. 12).

III. Discriminatory Laws and Practices

Mental or physical disability, a cause for the cancellation of marriage

Iranian civil law provides that the insanity of either party to a marriage is a cause for demanding cancellation of the marriage by the other party to the marriage contract. The law also provides for the cancellation of a marriage by either party for a physical disability of the other party. The disability of the husband for any one of the following defects gives the wife the right to cancel the marriage contract at any time:

- castration;
- impotency;
- the amputation of the genital organ; or

¹⁹⁴ *Id.* at 64.

¹⁹⁵ *Supra* note 16, at 295.

¹⁹⁶ *Qanuni Mujazati Islami* [Islamic Penal Law], *Official Gazette of the Islamic Republic of Iran*, No. 13640, Tehran, Jan. 1992.

- insanity.

The disability of the wife due to one of the following defects gives the husband the right to cancel the marriage contract if such a disability existed at the time of marriage and he was unaware of it:¹⁹⁷

- black leprosy;
- leprosy;
- the connection of the vaginal and anal passages;
- a total handicap;
- blindness in both eyes; or
- insanity.

IV. Disability Privileges

Civil Servants

- If a government employee becomes disabled and handicapped in the performance of his/her duties, he/she will be entitled to receive full salary.¹⁹⁸
- If a civil servant becomes incapacitated or disabled as a result of an accident he/she is entitled to receive a monthly compensation not exceeding the average of his/her salary.
- The handicapped or disabled children and grandchildren of a deceased civil servant are entitled to an annuity for life.
- The incapacitated or disabled husband of a deceased wife, if he was a dependent of his wife before her death, is entitled to her full pension.

¹⁹⁷ S. A. Shayegn, *Hoquqi Madani Iran* [Civil Law of Iran] 268-272 (Tehran, 1937).

¹⁹⁸ A. Tarazandeh, *comp., Majmuahi Kamili Qavanini Istikhdami Kishvari* [Complete Compilation of the Civil Service Employment Laws] 62 (Tehran, 1982).

Disability as a result of war

Persons who became disabled because of participation in the 1978 Revolution or Iran-Iraq war are entitled to a compensatory annuity. Such persons and their families benefit from the Social Security medical facilities.¹⁹⁹ Also, according to a law of September 1, 1993, those persons who migrated from war zones during the Iran-Iraq War and returned and were disabled as a result of the explosion of mines and other explosives left by war, are entitled to the same full annuity as those who were disabled in the war itself.²⁰⁰

V. Social Security

The Social Security Act of 1975, as amended, provides for the protection of mentally and physically disabled persons. The Law makes a distinction between a total and a partial disability. A total disability applies to a person covered by Social Insurance who has lost 60% or more of his ability to work or is unable to earn more than one-third of his/her previous income. A partially disabled person is one who has lost between 33 and 66% of his/her ability to work or can earn only a part of his/her previous income. Benefits for those covered by social security include:

- a lump sum compensation for the loss of a limb;
- an annuity commensurate with the total or partial loss of income; but it shall not exceed 100% of the wage or salary he/she earned before the disability occurred;
- rehabilitation assistance through vocational institutions for disabled persons; and
- free medical and pharmaceutical services as provided by social security for disabled persons and their family members including father and mother over the ages of 60 and 55 respectively.

Tuberculosis

According to the Law on the Protection of Employees and Workers of January 1955, all government and bank employees and workers who are diagnosed by the Ministry of Health to have contracted tuberculosis shall be exempt from service. They will be paid their

¹⁹⁹ *Majmuahi Qavanini Sali 1358* [Compilation of the Laws for the Year 1358 (1979-80)] 258-259 (Tehran, 1980); A. Yahya'i, *Majmuahi Qavanini Sali 1357-1358* [Compilation of Laws for the Years 1978-1979] 107 (Tehran, 1979); M. Vatani, *Majmuah'i Kamili Qavanin va Muqarrati Kar va Ta'mini Ijtima'i* [Compilation of Labor Laws and Regulations] 354 (Tehran, 1986).

²⁰⁰ *Keyhan* No. 14854, Sept. 1, 1993, Tehran, at 22.

full salary and benefits during the treatment period. Such patients are exempt from service so long as they have not been fully cured.²⁰¹

Jobs for disabled persons

The Social Security Organization is under an obligation to provide rehabilitation treatment and employment for those disabled persons who are covered by social security programs. This must be commensurate with their abilities. Such services are provided through vocational institutions for disabled persons.²⁰²

VI. The Rehabilitation Institution

According to the Formation of Rehabilitation Institution Act of January 1968 and its Constitution of April 1968, the Institution was established with an independent juristic personality and with the responsibility to:

- provide the necessary facilities for treatment, vocational training and education of disabled persons and the coordination of every kind of activity conducted to improve the life and employment of the disabled persons;
- provide guidance and direction for various organizations engaged in helping disabled persons and, if necessary, offer technical and financial assistance to such organizations;
- support disabled persons financially to create production cooperatives and help such cooperatives to operate successfully;
- conduct research on the problems of the disabled persons and adopt scientific and practical methods for offering them medical treatment and proper education, and make use of such studies in other organizations engaged in helping the disabled;
- boost the morale of those who have lost part of their physical or mental abilities and are unable to use their potential efficiently; and
- establish a rehabilitation center for medical treatment, vocational training and provide the disabled with the possibility of returning to social activities.

Since the Institution is financed mostly by the government and partly by donations from domestic and foreign sources, all its services are offered free.

²⁰¹ Vatani, *supra* note 2, at 31.

²⁰² *Id.* at 284.

According to article 22 of the Act, government operated or related industries are under a legal obligation to allocate a minimum of 1% of their job opportunities to disabled persons who have received vocational training in any one of the various rehabilitation centers.²⁰³

Through the Labor Law of 1990, for the first time in the history of Iranian law the government is under an obligation to prepare recreational facilities for disabled workers in working areas. According to this law, the government must see that necessary architectural changes to provide access are made in places where disabled workers are employed (art. 119).

The Institution for the Protection of Blind Persons was established in 1931. Its objective is to provide educational, vocational and recreational facilities for the blind. The Institution for Protection of Deaf and Dumb Persons was established during the same period. Its purpose is to provide educational and vocational facilities for deaf and dumb persons.

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²⁰³ H. Zandi, *Majmuahi Qavanin va Muqarrati Pizishgee va Daroo'ee* [Compilations of Medical and Pharmaceutical Laws and Regulations] 67, 370-372 (Tehran, 1972).

ISRAEL

I. Introduction

The Basic Law: Human Dignity and Freedom²⁰⁴ provides that "[t]he life, body or dignity of any person shall not be violated."²⁰⁵ Furthermore, "[e]very person is entitled to protection of his life, body and dignity."²⁰⁶ Therefore, the disabled have the same rights to human dignity and freedom as other members of society. Human rights, however, are not absolute, but relative in nature.²⁰⁷ The right to human dignity and freedom may be infringed by "a statute that befits the values of the State of Israel and is directed towards a worthy purpose and then only to an extent that does not exceed what is necessary."²⁰⁸ Certain laws providing for the treatment of the mentally sick and mentally handicapped allow for restricting the freedom of the disabled. The law further provides for limiting the legal capacity of such people under specific circumstances. It may be argued that these laws do not contradict the Basic Law: Human Dignity and Freedom if they are directed towards a worthy purpose, such as the protection of society or of the individual person who has a disability.

Israel's population of disabled people includes people with physical as well as mental disabilities. Some are disabled from birth, some are survivors of the holocaust, many are victims of car accidents, and about 61,000 are war veterans.²⁰⁹ The law provides a variety of monetary benefits to the disabled including special pensions, free special education (general

²⁰⁴ 1391 *Sefer Hachukim* [Book of Laws-Official Gazette] 150 (Mar. 25, 1992). By virtue of the Harrari Resolution of 1950, the Israeli Parliament (*Knesset*) agreed that the Israeli constitution would be made up of separate chapters, each one called a Basic Law. The Supreme Court held in various cases in the past that each basic law by itself did not grant any constitutional power of striking down contradictory legislation. It is believed that the passing of Basic Law: Human Dignity and Freedom, *id.*, as well as of Basic Law: Freedom of Occupation, 1387 *Sefer Hachukim*, 114 (Mar. 12, 1992), is the beginning of a constitutional revolution which grants the Supreme Court as a constitutional court the power of striking down legislation of the Parliament. See A. Barak, *Hamahapecha Hachukatit: Zchuyot Yesod Miganot* [The Constitutional Revolution: Protected Basic Rights]. A pre-publication draft was made available to author of this report by Justice Barak and is available in Hebrew in LL NEA.

²⁰⁵ *Id.*, § 2.

²⁰⁶ *Id.*, § 4.

²⁰⁷ As is apparent in a situation where two different human rights conflict.

²⁰⁸ *Supra* note 1, § 8.

²⁰⁹ United Press International 1993, Apr. 25, 1993, Sunday, BC cycle.

or vocational), medical treatment, employment benefits, etc. The law guarantees the honorable survival of all disabled people. It provides, however, special additional benefits to certain groups of the disabled, such as war veterans, victims of Nazi persecution, victims of anti-Jewish and anti-Zionist actions, and victims of road accidents.²¹⁰

II. Affirmative Laws

General benefits

Israeli law contains a very elaborate system of monetary benefits for people with disabilities. All Israeli residents above eighteen years of age are entitled to assurance of income, in case of a physical inability.²¹¹ The eligibility for such entitlement is only when the physical impairment lasts more than thirty days and is for a period of six months at most.²¹²

Every *indigent person* is entitled to a maintenance pension.²¹³ An *indigent person* is defined as "a person who, according to tests prescribed by regulations, is in need of relief by reason of his age, the state of his health or a mental or physical defect or for some other reason." The disabled person is, therefore, entitled to regular maintenance payments when it is proved that the physical impairment affects his ability to work or to take care of his or his dependents' affairs.²¹⁴ There is extensive subsidiary legislation in the area of welfare. It includes specific issues relating to treatment of the needy, supervision of institutions for mentally disabled people, institutions for the elderly, institutions for the mentally disabled, etc.²¹⁵

All Israeli workers including housewives (optional coverage) and new immigrants²¹⁶ are insured with the National Insurance fund. Certain coverage applies also to volunteers.²¹⁷

²¹⁰ Road Accident Victims Compensation Law, 5735-1975, as amended, 29 *Laws of the State of Israel* [hereinafter LSI] 311 (5735-1974/75).

²¹¹ Assurance of Income Law, 5741-1980, as amended, sec. 2, 35 LSI 28 (5741-1980/81).

²¹² Assurance of Income Regulations (Rules of Eligibility and Performance) 5742-1982, 6 *Dinim* [Laws] 3905 (1991-).

²¹³ Welfare Services Law, 5718-1958, 12 LSI 120 (5718-1957/58).

²¹⁴ Welfare Authorities Regulations (Eligibility Tests) 5730-1970, 31 *Dinim* 12421 (1991-).

²¹⁵ See 3 HBY [Legislation in the State of Israel, hereinafter HBY] 2383-2408 (1988-).

²¹⁶ Including those whose inability to make a living was caused before their arrival in Israel.

The National Insurance Law (Consolidated Version), 5728-1968, as amended,²¹⁸ provides the following benefits:

- a monthly pension for the disabled person and his dependents;
- professional or vocational rehabilitation for persons who have been injured at work or who have contracted an occupational disease and their families; and
- participation of the Welfare Authorities in providing a personal nurse or a cleaning lady for the disabled and his household.

Special pensions are available for professional training, maintenance and expenses for the spouse of a disabled person who is not capable of rehabilitation. There are also pensions for disabled children who require special assistance or who suffer from unusual impairments.

The Law also provides for disability insurance for all residents of Israel aged 18 to 60 or 65 years old.²¹⁹ Disabled men who are 65 years old or older and women of 60 or older who require assistance or supervision for daily activities are entitled to a special assistance pension.

Special benefits

Discharged soldiers

The Discharged Soldiers (Reinstatement in Employment) Law, 5709-1949, as amended,²²⁰ requires an employer to employ a relative of a permanent employee who has died in the military or become a war invalid, as long as the relative is suitable for the work at which that person was employed on the qualifying date or for any other employment available in the undertaking.

Priority in employment is granted to war invalids in certain places of work and occupations.²²¹ Furthermore, there is a requirement that every employer employing ten to twenty employees must employ at least one war invalid. Employers of more than twenty

²¹⁷ 2 HBY 1644- (1988-), ch. 9(2).

²¹⁸ 22 LSI 114 (5728-1967/68).

²¹⁹ *Supra* note 15, § 127(22).

²²⁰ 3 LSI 10 (5709-1949).

²²¹ *Id.*, ch. 6, at 17. *See also* Employment of Disabled War Veterans Regulations, 5711-1951, 2 HBY, 1063 (1988-).

workers must employ at least one war invalid for every twenty workers. A special permit from the authorized agency is required to fire a war invalid.

People who were injured during military service after independence of the State of Israel or during the British Mandate, while serving in the armies of Great Britain and Northern Ireland in response to the call of the National Institutions in the pre-independence period,²²² as well as victims of hostile actions by enemy forces,²²³ are entitled to certain benefits and pensions enumerated by law. The variety of such benefits bestowed on invalids and their relatives include free tuition for learning an occupation, life insurance, special unemployment pensions for invalids, free medical treatment, free transportation to and from the location where medical treatment is provided, etc.²²⁴

Special pensions for invalids of Nazi persecution

Special pensions as well as medical treatment is awarded to invalids of the Nazi persecution who, through the provisions of the Agreement between the State of Israel and the Federal Republic of Germany of 1952, would be entitled by reason of invalidity to a pension or other compensation from the Federal Republic of Germany.²²⁵ Such invalids are entitled to special pensions, free medical treatment and accessories, transportation to and from the location where the treatment is provided, reimbursement for expenses, legal fees and other expenses incurred for the purpose of obtaining a pension or compensation.

Special pensions for prisoners of Zion invalids and their families

A *prisoner of Zion* is defined as an Israeli citizen and a resident of Israel who was imprisoned or exiled six months or longer for Zionist activities in a country where such activity is prohibited, or for being Jewish, for the hostile relations of that country towards Israel, or for his activities before the independence of Israel for the establishment of the State.²²⁶ Prisoners of Zion who are recognized as invalids are entitled to the same pensions as invalids of Nazi persecution as well as to unemployment benefits, in addition to the pension paid under the Social Security Law.

²²² Invalids (Pensions and Rehabilitation) Law 5719-1959 (Consolidated Version), 13 LSI 315 (5719-1958/59).

²²³ Victims of Hostile Action (Pensions) Law, 5730-1970, 24 LSI 131 (5730-1969/70).

²²⁴ 3 HBY 2419- (1988-).

²²⁵ Invalids (Nazi Persecution) Law, 5717-1957, 11 LSI 111 (5717-1956/57).

²²⁶ Pensions for Prisoners of Zion and Their Families, 5752-1992, 3 HBY 2480 (1988-).

Compensation fund to road accident victims

The increased number of casualties from road accidents created a social and economic problem. The Road Accident Victims Compensation Fund was established by law in order to compensate any such victim entitled to compensation who is unable to claim compensation from an insurer for reasons enumerated by law.²²⁷

Education

Students who seem to have learning disabilities are entitled to a free medical or other examination to identify whether they are handicapped or have learning disabilities. If the results of the medical examination are that the student is indeed learning disabled, he is entitled to free education at a special institution.²²⁸

A 1988 law²²⁹ provides for special education for people with special disabilities. The objective of such special education is to advance the physical, mental and behavioral abilities of the disabled child, and to provide him with the knowledge and ability to be absorbed by the society and the work force.²³⁰

The law provides for free assessment and tuition at an institution for special education. The institution should prepare a special personal education program at the beginning of every school year for every child attending the institution. The law specifies the requirement of qualified teachers and others at the institutions.

Protection of human rights of the disabled

General protection for all handicapped people

People who by reason of invalidism, a mental defect, or old age are incapable of providing themselves with the necessities of life are defined by law as *protected people*.²³¹ Exploitation of a protected person by the person in charge of him is a criminal offense

²²⁷ Road Accident Victims Compensation Law, 5735-1975, 29 LSI 311 (5735-1974/75).

²²⁸ Mandatory Education and State Education (Registration) 5719-1959, ch. 3, on Registration of Students with Learning Disabilities and Invalidism, 3 HBY 2911.

²²⁹ Special Education Law, 5748-1988, 3 HBY 2930 (1988-).

²³⁰ *Id.*, § 2.

²³¹ Safety of Protected Persons Law, 5726-1966, as amended, 20 LSI 48 (5726-1965/66).

punishable by imprisonment or a fine. The law specifies ways for protection of the well-being of the protected person.²³²

The mentally ill

A 1991 law governs the treatment of the mentally handicapped.²³³ The law provides for specific procedures to be followed in case of hospitalization and outpatient treatment. The rights of the patient will not be violated or restricted other than by law.²³⁴ The law specifies that the primary purpose of hospitalization is for medical treatment and not for protection of the public or the person except as provided by this law.²³⁵ An inpatient is guaranteed treatment according to his mental and physical condition. The inpatient has a right to send and receive sealed letters and other mail, to receive guests at times determined by the administrator of the hospital, to maintain contact with other people outside the hospital, to possess personal items in reasonable amounts, and to wear personal clothing. The administrator of the institution may restrict the rights of the patient if and to the extent it is required for medical reasons, as long as the right of the patient to mail sealed letters to or maintain other contact with his lawyer, guardian, regional psychiatrist, the psychiatric regional commission, and the general attorney is not restricted.

The law requires the admitting physician to provide the patient with a form listing his rights and obligations. If the patient's medical condition does not allow the patient to fully comprehend, this fact will be noted in his file, and the content of the form will be explained to him upon improvement of his condition. A copy of this form should be prominently displayed in every psychiatric institution. A patient who commits himself will not be treated but with his consent. A patient who was forcefully committed will be treated according to his medical condition even if he objects to such treatment. Patients are entitled to the receipt of medical information on their status at the physician's discretion. Hospitalization of a patient does not affect his right to continue administering his assets, unless the hospital's administrator determines in writing that the patient is not capable of taking care of his affairs.

Subsidiary legislation regulates in detail the various procedures with regard to treatment, decisions of the psychiatric committees, release or transfer of a patient to another hospital, etc..

²³² *Id.*, ch. 3.

²³³ Treatment of the Mentally Handicapped Law, 5751-1991, 11 *Dinim* 7189 (1986-).

²³⁴ *Id.*, § 35.

²³⁵ On the right of the mentally ill to be heard before being committed, *see* D. Shnit, "Limitations on the Right of the Mentally Ill To Be Heard: Exception or Error?," 12 *Israel Yearbook on Human Rights* 195 (1982).

Mentally handicapped people

The law provides for certain rights and protection of the mentally handicapped.²³⁶ The Minister of Social Welfare is in charge of the services for such persons. The law provides for protection of the mentally handicapped in case of imprisonment.²³⁷ The state operates institutions for the mentally handicapped. A recent report released by Ora Namir, the Minister of Labor and Social Affairs, criticized those institutions. Among the proposals contained in the report are ones to enable the mentally handicapped to take affordable housing loans, to anchor their right to housing in law, etc.²³⁸

III. Laws Providing for Differential Treatment

Laws that provide for differential treatment of the disabled in Israel usually either protect the disabled or other people or the society from the negative consequences of the disability. The question whether these laws are *discriminatory* in nature should be analyzed according to an accepted test for discrimination.

Capacity for legal action

Every person is regarded by Israeli law as being capable of having rights and obligations "unless he has been deprived of this capacity or it has been restricted by Law or by the judgment of a court of law."²³⁹ The law further provides that:

...a person who, by reason of mental illness or a defect of mind, is incapable of looking after his affairs, may, upon application of his spouse or any of his relatives or upon application of the Attorney-General or his representative, and after such person or his representative has been heard, be declared by the Court to be legally incompetent.²⁴⁰

The declaration is revocable upon proof to the court that the declaration ought not to have been made or that the circumstances that led to its being made no longer exist.²⁴¹

²³⁶ Welfare (Treatment of Retarded Persons) Law, 5729-1969, 23 LSI 144 (5729-1968/69).

²³⁷ Secs. 19a-19d, 22 *Dinim* 14339 (1992-).

²³⁸ *The Jerusalem Post*, Aug. 3, 1993 (in Nexis).

²³⁹ Capacity and Guardianship Law, 5722-1962, §§ 1 & 2, 16 LSI 106 (5722-1961/62).

²⁴⁰ *Id.*, § 8, at 107.

²⁴¹ *Id.*, § 10.

Legal acts of a person declared as incompetent require the consent of his representative. Legal actions performed without such consent are voidable.²⁴²

Family law

The personal status law for Jews living in the State of Israel is Jewish law. Jewish law recognizes a divorce only when both spouses consent to it. No-fault divorce obtained with the consent of both parties is, therefore, legal. A court decree cannot terminate the marriage; it is the specific acts by the parties, performed with consent, that make a divorce valid. The court's role is to supervise that the procedure was properly followed, to avoid any doubt for the future. The court has jurisdiction, however, to rule against a spouse who does not consent to the divorce, if circumstances justify such a decision. The objective of such a decision is to convince the objecting spouse to consent and not to impose a divorce on the parties. The law authorizes the district court to impose imprisonment to compel a spouse to accept the divorce.²⁴³

When a spouse requests the court to compel the non-consenting spouse to consent to the divorce, he or she has to prove an acceptable ground for the request. Certain disabilities are recognized as grounds for compelling a spouse to divorce. Among them are disabilities that prevent a spouse from living with the other as man and wife. Such situations include contagious and dangerous diseases or disgusting diseases, bad breath, etc. It is disputable whether epilepsy entitles a spouse to request a divorce.²⁴⁴ Infertility of both spouses and impotence of the husband²⁴⁵ may be recognized as a ground for divorce. In cases where the wife is mentally sick and is not capable of giving a conscientious consent to a divorce, under very rare circumstances the husband would be permitted to marry another wife.

Personal status law applying to the Moslem community in Israel is Moslem law subject to legislation by the State. The causes for divorce on the husband's initiative, recognized by Israeli *Shari-a* courts,²⁴⁶ include barrenness of the wife or the absence of male issue.²⁴⁷ In the traditional view, the latter are not necessarily a ground for divorce since the

²⁴² *Id.*, § 5.

²⁴³ Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953, §§ 6, 7 LSI 139 (5713-1952/53).

²⁴⁴ B. Sharshevski, *Dine Mishpacha* (Family Law) 373 (3rd ed. 1984).

²⁴⁵ According to Jewish law, the husband is under an obligation to provide his wife with a marital relationship, not only for the purpose of procreation.

²⁴⁶ Moslem courts.

²⁴⁷ A. Layish, *Women and Islamic Law in a Non-Muslim State--A Study Based on Decisions of the Shari-a Courts in Israel* 125 (Jerusalem, 1975).

position may be remedied by taking a second wife without divorcing the first, unless the husband is unable to support two wives or is unwilling to do so for other reasons. In Israel, polygamy is prohibited, except when permitted by a final judgment of the competent religious court on either the disappearance of the spouse or the declaration of the spouse by the earlier marriage as unable, owing to mental illness, to agree on the dissolution or annulment of the marriage, or to take part in the proceedings.²⁴⁸ This limitation on polygamy is viewed as a major factor in increasing the number of divorces among Moslems in Israel and giving rise to the establishment of new grounds for divorce that focus on a disability of some kind.

IV. Conclusion

Israeli legislation includes a large system of financial, employment, education and other social benefits to all people with disabilities. The existence of such extensive legislation in this area reflects the ideology of Zionism, to afford a national home and a shelter to all Jews (healthy or sick) who wish to live in Israel, and the commitment to ensure equality of social and political rights to all the country's inhabitants, irrespective of religion, race or sex.²⁴⁹ Various waves of immigration to Israel included survivors of atrocities, persecution and other events. Wars and road and work-related accidents have left many Israelis disabled. The welfare laws are aimed at accommodating all these people.

Recent developments in the area of constitutional law, which bear significance for issues of human rights of people with disabilities, do not reflect a revolution in the content of these rights. The rights were recognized by the Supreme Court even before the coming into force of the recent basic laws. This was done by way of interpretation of statutory laws in light of the fundamental principles of a democratic society as pronounced in the State of Israel's Declaration of Independence. The major significance of the new developments, which Israeli scholars as well as politicians call a *revolution*, is in the normative value of the laws protecting human rights. Today, the Supreme Court has the power to strike down any legislation if it is found to be contradictory to these Basic Laws.

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²⁴⁸ Penal Law, 5737-1977, *Laws of the State of Israel*, Special Volume, *Penal Law*, 5737-1977, art. 8.

²⁴⁹ Declaration of the Establishment of the State of Israel, 1 LSI 3 (5708-1948).

ITALY

I. Introduction

Italian legislation has attempted to address the needs of people with disabilities for a long time. However, rather than developing a comprehensive act with general provisions applicable to the various categories of handicapped people, a vast body of laws, often old and of difficult interpretation, that sometimes overlap and that try to meet those needs in a piecemeal fashion, has been created. Precise definitions and an assessment of the scope of positive intervention in this field are still lacking.

Both mental and physical disabilities, whether acquired at birth or later on in life, are addressed in the law. Among the physical disabilities, those that may be the consequence of war-related activities as well as those that are work or service-related are included.²⁵⁰

II. Affirmative Laws

People with disabilities find protection against discrimination in article 3 of the Italian Constitution, which states that all citizens have equal social standing and are equal before the law, without distinction not only as to sex, race, language, religion, and political opinion, but also as to social and personal condition.²⁵¹ The Constitution, however, extends its protection of disabled people to other areas as well. Article 38 establishes that citizens unfit for work and without means of livelihood have a right to maintenance and social assistance, while workers are entitled to the provision and assurance of means adequate for their daily needs in the case of accident, sickness, disability, old age, or involuntary unemployment. In addition, the unfit and the disabled have the right to vocational instruction and training.²⁵²

Access to school and the right to education established in article 34 of the Constitution apply to handicapped people, too, as confirmed by a decision of the Constitutional Court. Such rights pertain not only to compulsory and free primary education, but also to attainment of the highest grades of education guaranteed to qualified and deserving pupils even when they lack the economic means.²⁵³

²⁵⁰ Palazzotto-Artali, *ed.*, *Handicappati e Società* 80 (Firenze, Sansoni, 1981).

²⁵¹ Crisafulli-Paladin, *Commentario breve alla Costituzione* 13 (Padova, CEDAM, 1990).

²⁵² *Id.* at 249.

²⁵³ *Id.* at 224.

As a consequence, national legislation provides people with disabilities financial support for specific needs, pensions, and medical assistance. It facilitates the young disabled's access to regular schools, or provides for special schools. It provides special work opportunities. Recourse to internment in appropriate institutions seems to be reserved only for extreme cases.

The laws that most deserve to be mentioned are as follows: Law No. 833 of 1978, instituting the national health service; Law No. 211 of 1989, amending previous legislation regulating pensions and special contributions to disabled persons; and Law No. 18 of 1980, granting a special indemnity to people affected by physical or mental disabilities that make it impossible for them to assume normal daily activities or that make perambulation impossible without constant assistance. This indemnity is granted even when the disabled person is capable of performing some work from which he derives income.

In the field of education, in addition to legislation instituting special schools for the blind and for deaf-mutes, Law No. 118 of 1971, among other things, provides for free transportation to school or to other courses and special assistance during school hours for those affected by more serious forms of handicap. It affirms that attendance at regular schools must take place whenever possible, but provides for the organization of classes in special assistance centers and in health institutions. It also exempts most disabled students from any school or university tuition.

Regarding work, Law No. 482 of 1968 sets general guidelines for compulsory hiring by the public administration and by private employers, applicable to all categories of disabled people.²⁵⁴ Law No. 113 of 1985, integrating previous legislation, regulates mandatory hiring of blind persons as telephone operators by both public and private employers. Similar legislation exists for the deaf-mute.

III. Discriminatory Laws

As a consequence of the constitutional provisions described above, there is no legislation deliberately discriminatory against people with disabilities, and any law of such a nature would not pass the screening of the Constitutional Court. However, provisions of the Italian legal system that limit certain activities of disabled persons are intended for their own protection and safety as well as for that of the community at large.

The Italian Civil Code, in Title XII on Mental Infirmity, Interdiction and Disability, lays down the procedure under which people affected by mental infirmity or by other conditions can be interdicted or declared disabled, since they are incapable of looking after themselves and need the appointment of a guardian to protect their interests. Furthermore,

²⁵⁴ National legislation is found in P. Pajardi, *comp.*, *Codice delle Invalidita Civili* (Milano, Pirola, 1990).

under the section dealing with marriage, it is established that no person interdicted for mental infirmity can contract a marriage, and if contracted, it may be challenged, according to article 119. Under article 120, a marriage may be contested by a spouse who proves that at the time of marriage he/she was for any reason, even if temporary, incapable of understanding or intent.²⁵⁵

There are no limitations regarding ownership of property, since the Constitution mandates that it be accessible to everyone.²⁵⁶

IV. Conclusion

A proposal for reorganization of all the various forms of assistance in favor of persons with disabilities has not materialized, since agreement on the costs of the new scheme could not be reached. On the other hand, it cannot be denied that finding the necessary funds in times of tight budgets is a difficult problem to solve, especially if one takes into consideration the increasing number of people who would benefit. Statistics show that this number increased by about 210%, from approximately 250% to 773% in the period between 1980 and 1987, while funds appropriated in the same period rose from 350 billion lire (US\$ 221,900,000) to 5,664 billion lire (US\$ 3.59 billion).²⁵⁷

These problems, in addition to the difficulties arising from a body of mostly old and uncoordinated laws, make global legislative revision even more urgent. Such overarching legislation would take into consideration the needs of people with disabilities in light of the changes Italian society has experienced in the last two decades.

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²⁵⁵ *I Codici Civile e di Procedura Civile* (Piacenza, La Tribuna, 1990).

²⁵⁶ *Supra* note 2, at 294.

²⁵⁷ *Provvidenze Legislative a Favore dei Mutilati ed Invalidi Civili, Ciechi Civili e Sordomuti* 8, 58 (Roma, Ministry of Interior, 1988).

JAPAN

I. Introduction

The present government policy toward disabled persons is based on the goal of rehabilitation enabling them to be regarded as self-supporting human beings making a contribution to the development of the whole society. This is a significant departure from the traditional view of the handicapped as weak and unproductive or even social failures in need of charitable support. The trend in social welfare service for rehabilitating the disabled--traditionally provided by specialized institutions--is now directed towards providing care in the home with community support.²⁵⁸

Moreover, on the basis of the World Program of Action Concerning Disabled Persons and the Proclamation of the Period 1983-1992 U.N. Decade of Disabled Persons, Japan adopted its own long-term plan of action. The plan calls for the prevention of disability, the rehabilitation of disabled persons, and the equalization of opportunities for them. The plan envisions the realization of the goals of their full participation in social life and their having an equal share in the improvement of living conditions.²⁵⁹

II. Affirmative Laws

There are three major laws intended to protect the disabled from being discriminated against as well as to provide extra benefits and privileges for them: the Fundamental Measures Law for the Welfare of Mentally and Physically Disabled Persons (Law No. 84),²⁶⁰ the Law Concerning the Welfare of Physically Disabled Persons (Law No. 283),²⁶¹ and the Law Concerning the Welfare of Feeble-Minded Persons (Law No. 37).²⁶² In addition, there are numerous separate laws protecting people with disabilities in the fields of health and medical insurance, education, vocation, employment, pension, taxation, and others.

Law No. 84 is a comprehensive law dealing with the responsibility of the national and local governments in respect of the prevention of mental and physical disabilities and with

²⁵⁸ *Shogai fukushi kiso shiryō shusei* [Compilation of Basic Materials Relating to the Welfare of Disabled Persons] 182-183 (Tokyo, Koseikan, 1985).

²⁵⁹ *Id.* at 184.

²⁶⁰ Law No. 84, May 21, 1970, as last amended by Law No. 93, 1986.

²⁶¹ Law No. 283, Dec. 26, 1949, as last amended by Law No. 67, 1992.

²⁶² Law No. 37, Mar. 31, 1960, as last amended by Law No. 58, 1990.

the basic welfare principles and policies regarding medical treatment, training, protection, education, employment, pension, etc.

Under Law No. 283, a fundamental law on the welfare of the physically disabled, any person over 18 years of age who is certified as a disabled person by a physician is issued a disabled person's certificate. The holder of the certificate is entitled to various benefits, such as transportation fare discounts, tax exemption or reduction, and other benefits under different laws. This law specifically allows the following benefits:

- (1) Medical examination and rehabilitation consultation. The Welfare Office, after consultation with a disabled person, recommends him to health service facilities for treatment or stay, or to the public employment security office, and provides guidance for other matters relating to rehabilitation.
- (2) Rehabilitative medical service. This service is provided for those whose disability is considered to have been cured. It is rendered in medical institutions designated by the Minister of Health and Welfare. The purpose of the service is to enable the disabled to restore or gain the ability to lead a normal daily life or to develop vocational skills.
- (3) Delivery or repair of prosthetic appliances. This service is entrusted to the manufacturers of such devices, who are to supply hearing aids, artificial limbs, wheelchairs, canes, and other appliances.
- (4) Dispatch of a home helper. A home helper is usually sent to the dwelling place of a severely disabled person in order to help him with meals, laundry, or the toilet, and to consult or guide him regarding the care necessary for daily life.
- (5) Rehabilitation Relief Facilities. Those who require special medical treatment, daily life training, or vocational training, and who are unable to receive such treatment at home may receive it in these facilities or be admitted to them. At present, there are seven such facilities.

The above welfare services are handled by welfare offices established at the municipal level, although the final responsibility for welfare services overall rests with the national government. The rehabilitation inquiry offices established at the provincial level offer advice on the medical, psychological, and vocational needs of the disabled.²⁶³

Feeble-minded persons and mentally disabled persons are separately governed by Law No. 37. In theory, the need to rehabilitate and assist the mentally disabled (including

²⁶³ *Kokumin horitsu hyakka daijiten* [National Law Encyclopedia] 545 (Tokyo, Gyosei, 1985).

the feeble-minded) and the physically disabled alike is viewed as the same, but the two categories of the disabled are treated differently in terms of the operation of the facilities, the technical methods used, and the conveniences offered. For this reason, the mentally disabled are not covered under Law No. 283.

Under the Law Promoting the Employment of Disabled Persons,²⁶⁴ employers are required to hire the disabled. The Employment Promotion Corporation, a government agency, will collect a certain amount of money from employers who cannot meet the employee hiring quota. The Corporation will use the accumulated funds to reimburse those employers who have met the quota for expenses they incurred in operating facilities for the use of disabled employees, with the exception of employers who have less than 300 employees. The hiring quota has been set at 1.6% of total employees for private employers and at 1.9% for government employers.²⁶⁵

III. Discriminatory Laws

Under the Mother and Child Health Care Law,²⁶⁶ a health manual that is provided by the government to expectant and nursing mothers is not issued in Braille. Therefore, a person with an optical disability is less well equipped to understand her own and her child's health needs. The Minimum Wage Law²⁶⁷ states that the minimum wage will not apply to "a person having very limited capacity because of a mental or physical disability." Under the National Public Service Law²⁶⁸ and the Local Public Service Law,²⁶⁹ any person in public service who has difficulty or is incompetent due to a mental or physical disability may be demoted or dismissed against his will. Under the Law Promoting the Employment of Disabled Persons, employers are not obligated to hire mentally disabled persons.²⁷⁰

Mentally disabled persons are excluded from the transportation discount for the disabled. The electromagnetic cooker, a daily necessity in Japanese life, is supplied by the

²⁶⁴ Law No. 123, July 25, 1970, as last amended by Law No. 68, 1992.

²⁶⁵ Arts. 9 & 10-2 of the Enforcement Order, Cabinet Order No. 292, Dec. 1, 1960, as last amended by Order No. 278.

²⁶⁶ Law No. 141, Aug. 18, 1965, as last amended by Law No. 79, 1991.

²⁶⁷ Art. 28, Law No. 261, Dec. 13, 1950, as last amended by Law No. 23, 1992.

²⁶⁸ Art. 8, Law No. 137, Apr. 15, 1959, as last amended by Law No. 67, 1991.

²⁶⁹ Art. 79, Law No. 120, Oct. 21, 1947, as last amended by Law No. 120, Oct. 21, 1947, as last amended by Law No. 79, 1991.

²⁷⁰ T. Yoshimoto, "Kokuren, shogaisha no junen" [The United Nations and Ten Years of the Disabled], 1012 *Jurisuto* 29 (Nov. 15, 1992).

government to persons with optical disability only, not to those suffering from cerebral palsy who are viewed by many to need it most. The cost of wheelchairs supplied to the disabled is subsidized by the government, but the expense of remodelling to meet the particular needs of a disabled person is not.²⁷¹

IV. Conclusion

The formulation of another long-term plan is under preparation as a sequel to the Proclamation of the Period 1983-1992 U.N. Decade of Disabled Persons. It has been suggested that the plan focus on the enactment of a comprehensive welfare law for the disabled, covering all disabled persons, as well as on the establishment of an independent government agency to oversee the welfare of the disabled. At the same time, it has been recommended that the Fundamental Measures Law Concerning the Welfare of Mentally and Physically Disabled Persons be drastically revised to include a new clause expressly stating that all discrimination against the disabled be banned and that the discriminatory laws outlined above should be abolished.²⁷²

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²⁷¹ *Id.*

²⁷² *Supra* note 13, at 31.

MALAYSIA

I. Introduction

Malaysia has laws relating to the mentally or physically handicapped (1) intended to protect them, when this would be against their interest, from being treated on a par with normal or unhandicapped persons and (2) providing them with special benefits or privileges. There are also laws that discriminate against the mentally handicapped by treating their mental unsoundness as a disqualification. For example, the mentally disabled are not qualified to serve as members of legislative bodies, and they are also disqualified from acting as witnesses and from entering into contracts. With respect to the physically handicapped, there is no such discrimination. The mentally handicapped are also disqualified in other particular areas.

The attitude underlying the legislation regarding the handicapped appears to be based on a compassionate principle, that of protecting those unfortunate enough to have mental or physical handicaps, and to compensate them as far as possible so as to make their position equal to those without such handicaps. Thus, although the Constitution does not expressly prohibit discrimination against the handicapped or disabled, the government does in practice strive to give them a measure of protection. Also, such legislation as exists is designed to safeguard the mentally disabled, as for example, by the laws relating to criminal procedures. Other laws such as the law on contracts and on marriage may have the effect of discriminating against the mentally disabled.

The Malaysian Constitution provides that all persons are equal before the law and entitled to the equal protection of the law.²⁷³ It forbids discrimination against citizens on the ground only of religion, race, descent, or place of birth in any law or in appointment to any office or employment under a public authority, or in the administration of any law relating to property or any trade, business, profession, vocation, or employment.²⁷⁴ However, discrimination against persons on the grounds that they are either mentally or physically disabled is not specifically prohibited.

II. Affirmative Laws

For the mentally handicapped, there is a lack of affirmative laws in that no legislation exists that is designed to prevent discrimination against persons disabled by unsoundness of mind.

²⁷³ Art. 8(1), *Federal Constitution* 4 (Kuala Lumpur, 1992).

²⁷⁴ *Id.*

However, there are provisions in a number of laws which are designed to protect the mentally disabled from having to suffer because of their mental condition. For example, section 84 of the Malaysian Penal Code grants exemption to acts done by a person of unsound mind, saying that "Nothing is an offence which is done by a person who, at the time of doing it, by reasons of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."²⁷⁵

Sections 342 through 352 of the Malaysian Criminal Procedure Code contain provisions designed to protect the interests of persons of unsound mind. Thus, section 342(i) of this Code stipulates that whenever a judge or magistrate has reasons to suspect that an accused person is of unsound mind and consequently incapable of making his defense, he must investigate the fact of such unsoundness.²⁷⁶ The section goes on to provide that if the officer is not satisfied that the person is capable of making his defense, he can have him detained for observation in a mental hospital, postpone the inquiry or trial, and remand him for a period of up to one month for observation in a mental hospital. The person will then be kept under observation either until the Medical Superintendent of the hospital certifies the state of mind of the person or asks for a further remand, which may extend to an additional two months.²⁷⁷

When an accused is found to be of unsound mind, the judge or magistrate may release him on security that he will be properly taken care of and will appear when required before the judicial officer. If the offense is not a bailable one, or if security cannot be given, the accused may be ordered to be confined in a mental hospital.²⁷⁸

Any finding in a case must state whether the accused committed the act or not, even if he is acquitted upon the ground that unsoundness of mind prevented him from knowing the nature of the act or that it was wrong or contrary to law.²⁷⁹ If he did commit the alleged act, then he may be confined in a mental hospital for a period at the discretion of the Ruler of the State concerned.²⁸⁰ The Code contains various provisions safeguarding persons of unsound mind even when they are confined in such a hospital. If he is certified to have become capable of defending himself, his trial may proceed. If medical certification is obtained that such person can be safely discharged without danger of his doing injury to himself or any other person, the Ruler may order him to be discharged. A relative or friend of such a person

²⁷⁵ *Penal Code* 39 (Kuala Lumpur, 1980).

²⁷⁶ *Criminal Procedure Code* 149 (Kuala Lumpur, 1982).

²⁷⁷ *Id.* at 150.

²⁷⁸ §344, *id.* at 150-151.

²⁷⁹ §347, *id.* at 151.

²⁸⁰ §348, *id.* at 151-152.

may make application for the person to be given over to his care or custody and, if he can give satisfactory security, will be allowed to do so.²⁸¹

For the physically disabled, the Evidence Act provides that a dumb witness, defined as a witness who is unable to speak, may give evidence in any other manner in which he can make it intelligible, as, for example, by writing or by signs, but the writing must be written and the signs made in open court.²⁸²

III. Discriminatory Laws

The Constitution prohibits persons who have been found or declared to be of unsound mind from being a member of either House of Parliament.²⁸³ The same disqualification applies to Legislative Assemblies of the constituent states of the Federation of Malaysia.²⁸⁴

Under section 11 of the Contracts Act,²⁸⁵ every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject. Persons of unsound mind are therefore under law incompetent to enter into contracts in Malaysia. Section 12 of the Act²⁸⁶ defines what is a sound mind for the purpose of contracting. A person is of sound mind if at the time when he makes the contract he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract at those times when he is of sound mind. However, a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

²⁸¹ §§349-351, *id.* at 152.

²⁸² *Supra* note 7, at 416.

²⁸³ Art. 48, *supra* note 1, at 31.

²⁸⁴ ¶6(1)(a), Eighth Schedule to the Federal Constitution, *supra* note 1, at 156.

²⁸⁵ Act 136 of the Laws of Malaysia, 8 *Golden's Federal Statutes* 241 (Kuala Lumpur, 1989).

²⁸⁶ *Id.*

A person of unsound mind may also be prevented from acting as a witness, according to section 118 of the Evidence Act.²⁸⁷ This provides that although normally all persons are competent to testify, the court may consider that they are prevented from understanding the questions put to them or from giving rational answers, due to tender years, old age, or disease of body or mind, in which case they will be held incompetent. A mentally disordered person or lunatic, according to the official explanation of this section of the Act, is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.²⁸⁸

Section 70 of the Law Reform (Marriage and Divorce) Act of 1976 lists as one of the grounds on which a marriage is held to be voidable that at the time of the marriage either party, though capable of giving a valid consent, was (whether continuously or intermittently) a mentally disordered person within the meaning of the Mental Disorders Ordinance of 1952, of such a kind or to such an extent as to be unfit for marriage.²⁸⁹ If the court finds the petitioner's case to be proved, a decree of nullity will be pronounced, according to section 73 of the same law.²⁹⁰

No discriminatory laws against the physically handicapped could be found.

IV. Laws Providing Special Benefits

The Employees' Social Security Act of 1969 is the most comprehensive legislation governing the status and rights of physically disabled persons.²⁹¹ It was passed to provide benefits to employees in case of their becoming invalids or suffering employment injury, including occupational diseases. Permanent disability, partial or total, is defined as being disablement of a permanent nature that reduces the earning capacity of an employee in every employment that he was able to undertake at the time of the accident resulting in the disablement.

A person qualifying for benefits under the Employees' Social Security Act is a person who is or was an employee in respect of whom contributions are or were payable under this

²⁸⁷ Act 56 of the Laws of Malaysia, 3 *Golden's Federal Statutes* 118 (Kuala Lumpur, 1988).

²⁸⁸ *Id.* at 416.

²⁸⁹ Act 164 of the Laws of Malaysia, 9 *Golden's Federal Statutes* 458-459 (Kuala Lumpur, 1989).

²⁹⁰ *Id.* at 460.

²⁹¹ Act 4 of the Laws of Malaysia, 1 *Golden's Federal Statutes* 44-128 (Kuala Lumpur, 1986).

Act and who is, by reason thereof, entitled to any of the benefits that the Act provides. Thus, under section 15, disability benefits are available to such a person suffering from disablement as the result of an employment injury sustained as an employee and certified to be such by a duly appointed medical board or other appropriate authority. Constant attendance allowances are also payable to the person receiving the disablement benefits for as long as he is so severely incapacitated or disabled as to constantly require the personal attendance of another person. Medical treatment for and attendance on such disabled persons will be paid under the heading of medical benefits.

Disability benefits are payable to employees both for temporary and permanent disabilities. The determination of disability is the task of a medical board constituted in accordance with regulations issued under the Employees' Social Security Act. Workmen who are disabled as a result of injury in the course of their employment may also be eligible to receive disability benefits, either for partial or for total disability as defined in it, under the provisions of the Workmen's Compensation Act.²⁹²

V. Conclusion

Malaysian laws seem more concerned with the physically handicapped than with those persons suffering from mental disabilities. Perhaps as a developing country with an economy that is only recently starting to become industrialized, Malaysia has been more aware of the needs of its labor force and of providing disability benefits for those injured to the point of temporary or permanent disability, while the needs of the mentally handicapped have not been perceived as pressing.

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²⁹² Act 273 of the Laws of Malaysia, *Government Gazette*, Act Supplement No. 14, 26 *Government Gazette* 10-11 (July 1, 1982).

MEXICO

I. Introduction

Mexico protects the handicapped in the Federal Constitution. Concern for their disadvantaged condition is specifically pointed out by providing that "...the social security law is of public interest and it shall include insurance against disability...and other forms of insurance for the protection and well-being of workers, peasants and non-salaried workers and other social sectors and their families."²⁹³

A comparable provision is also provided for the protection of the workers of the Powers of the Union and the Government of the Federal District.²⁹⁴ Other constitutional provisions, although they do not refer directly to the handicapped, provide for individual and social guarantees for every person. These include the right to equal protection of the law, employment, housing, education, health protection, etc. These guarantees cannot be restricted or suspended except in such cases and under such conditions as provided in the Constitution.²⁹⁵

II. Affirmative Laws

The Constitutional statement of the "right to health protection"²⁹⁶ has been interpreted to include personal health service (preventive, curative, and rehabilitative medical care) and general or public health service.²⁹⁷ Consistent with this constitutional guarantee, the General Law on Health,²⁹⁸ which regulates a citizen's right to health protection as guaranteed under the Federal Constitution, has significantly provided for the prevention of disabilities and cure and rehabilitation of the handicapped. It seeks to guarantee protection to those who, because of a physiological, psychosomatic, or psychological illness, are less able to achieve their full development and integration into society. To guarantee the implementation of those

²⁹³ *Constitución Política de los Estados Unidos Mexicanos* (86th ed. México, Editorial Porrúa, 1989), art. 123, §XXIX.

²⁹⁴ *Id.*, art. 123, §B §XI.

²⁹⁵ *Id.*, arts. 1-29.

²⁹⁶ *Id.*, art. 4.

²⁹⁷ Pan American Health Organization, World Health Organization, *The Right to Health in the Americas* 379 (Washington, D.C., Scientific Publication No. 509, 1989).

²⁹⁸ *Ley General de Salud*, Diario Oficial [D.O.], Feb. 7, 1984, in *Ley General de Salud* (5th ed. México, Editorial Porrúa, 1989).

services, the Law provides that a federal agency under the Ministry of Health, will be responsible for services relating to the prevention of a disability, rehabilitation of the disabled, and the uniformity of actions taken.²⁹⁹ Furthermore, the Law provides that those services of social assistance include work and professional training.

The Law on the National System of Social Assistance, which governs the objectives and procedures of a national system to render services established by the General Law on Health throughout the national territory, specifically identifies the handicapped as one of the categories of individuals in need, because their physical, mental and social conditions prevent them from developing fully.³⁰⁰ The implementing authority of the social assistance service for the handicapped is the National System for the Integral Development of the Family. The social assistance services rendered by this institution include: technical support to conduct educational programs to socially integrate the handicapped; work training; technical support for activities of social assistance performed by the states, other federal entities, the local governments, and non-profit organizations; the collection of all kinds of information and preparation of studies on issues concerning the handicapped; the operation of social assistance institutions to benefit the handicapped, the elderly, and abandoned children; and the performance of all kinds of activities directed to prevent disabilities and to provide rehabilitation to the handicapped.³⁰¹

For the purpose of Social Security benefits, a disability is considered to exist when the following conditions are met: where the insured person is prevented from earning, by means of employment that corresponds to his ability, training, and former employment, a wage of more than one-half of the usual wage earned in the same region by a healthy worker of similar ability who performs the same category of work and who has received similar vocational training.³⁰² An insured person suffering from disability is entitled to a temporary or permanent pension, to medical care, to a family allowance, and to a personal attendance benefit.³⁰³ If the worker becomes disabled but is still able to work, the employer has to give him work compatible with his aptitudes.³⁰⁴

²⁹⁹ *Supra* note 6, arts. 167-180.

³⁰⁰ Ley sobre el Sistema Nacional de Asistencia Social, D.O., Jan. 9, 1986.

³⁰¹ *Id.*, arts. 13-16.

³⁰² *Ley del Seguro Social* (6th ed. México, D.F., Editorial Pac., 1989), originally published in D.O., Mar. 12, 1973, art. 128.

³⁰³ *Id.*, art. 129.

³⁰⁴ *Ley Federal del Trabajo* (59th ed. México, D.F., Editorial Porrúa, 1989), art. 54.

The Regulation for the Assistance of the Handicapped of the Federal District was recently enacted.³⁰⁵ Although issued at the Federal District level, it covers many aspects of life that concern the disabled. It includes provisions on rights and privileges of the handicapped; on special seating for public performances; transportation requirements; public access to buildings and parking; educational programs; sports and social-cultural activities; promotions at work; special facilities at educational centers; libraries with materials in braille; sale of accessories and equipment for the handicapped, etc.³⁰⁶

Mexico has been prolific in enacting legislation dealing with the protection of the handicapped. Among the most relevant items are the following. The Technical Standard 345 of November 28, 1991 (*Diario Oficial*, Dec. 4, 1991) specifies the architectural requirements of medical establishments in the National Health System that will allow easier access for the handicapped; Executive Decree of July 29, 1988 (D.O., Aug. 15, 1988) creating the National Institute of Rehabilitation Medicine, attached to the Secretary of Health; Executive Decree of July 29, 1988 (D.O., Aug. 15, 1988) creating the National Institute of Human Communications, which has as one of its responsibilities to develop programs specializing in preventive and rehabilitative aspects of human communication; Law of the Institute of Insurance and Social Services of Government Workers (D.O., Mar. 27, 1992), which includes insurance for the handicapped; the Federal Law of Education (D.O., Nov. 29, 1973), etc. There are at least nine more federal legislative instruments dealing with the handicapped and many more in the thirty-one Mexican states.

III. Discriminatory Laws

A standard used in U.S. law to determine whether an improper government classification has been applied to a class or group of individuals is that it must serve important governmental objectives and must be substantially related to achieving those objectives. If we apply this standard to the available Mexican legislation on the handicapped, none of the legislation appears to violate it.³⁰⁷

The Civil Code of the Federal District stipulates that mentally incompetent individuals are to be placed under guardianship. A guardian or curator acts in behalf of the disabled in activities such as contracting; filing and defending against law suits; asserting authority over the mentally ill person's property and administering it; and in general, in all activities in which the individual assumes legal responsibilities. A physical disability cannot prevent an individual from getting married, but since a mental disability affects the capacity

³⁰⁵ *Reglamento para la atención de minusválidos en el Distrito Federal*, D.O., Feb. 16, 1990.

³⁰⁶ *Supra* note 13, Chs. II-IV.

³⁰⁷ S. Emmanuel, *Constitutional Law* 222 (7th. ed. New York, 1989).

to give rational consent, the mentally disabled as well as other handicapped persons who are unable to unambiguously express their consent are disqualified from entering into marriage.³⁰⁸ In these matters, the civil codes of the Mexican states have generally followed the lead of the Federal District.

These provisions of the Civil Code, although from a different legal system, are in harmony with one of the equal protection principles that sustain the Fourteenth Amendment of the American Constitution: "...equality can be denied when government *fails* to classify, with the result that its rules or programs do *not* distinguish between persons who, for equal protection purposes, should be regarded as differently situated..."³⁰⁹

IV. Conclusion

There are numerous Mexican legislative instruments furthering the rights and welfare of the handicapped. Mexican legislation has provided the handicapped with the right to receive appropriate treatment services, rehabilitation, special education, and training necessary for their social integration. The U.S. Supreme Court, in pronouncing an opinion upon a case involving a category of the handicapped in the United States, has remarked that

...such legislation that singles out the [handicapped] for special treatment reflects the real undeniable differences between the [handicapped] and others. That a civilized and decent society expects and approves such legislation indicates that governmental consideration of those differences in the vast majority of situations is not only legitimate but desirable....³¹⁰

Notwithstanding, doubts about the degree of compliance with and effective enforcement of the above-mentioned Mexican laws have been raised by the following finding:

...Educational campaigns directed to the public on elementary traffic and pedestrian courtesy toward the disabled, discount programs, employment opportunities and the creation and administrative facilities in institutes have not been completed.... [T]he health care system rehabilitation programs for the disabled are insufficient. Prosthetic devices and other aids and accessories for the disabled are not made available at reasonable prices.... Employment

³⁰⁸ *Código Civil para el Distrito Federal* (59th ed. México, D.F., Editorial Porrúa, 1991), arts. 23, 31, 1794, 1795, 1798, and First Book, Title IX, Chs. I, IV, XIV, XVI.

³⁰⁹ L.H. Tribe, *American Constitutional Law* 1438 (2nd. ed. New York, The Foundation Press, Inc., 1988).

³¹⁰ *City of Cleburne v. Cleburne Living Center*, U.S., 105 S. Ct. 3249 (1985).

opportunities are almost non-existent. Seldom are specially-designed spaces for the handicapped included in buildings, movie theaters and public bathrooms. Reserved parking spaces are very few and very far between....³¹¹

Additionally, history reveals that through ignorance and prejudice, the handicapped have been subjected to invidious discrimination, intolerance and even grotesque mistreatment.³¹² Therefore, there seems to be missing from Mexican legislation a forceful law outlawing discrimination. It has been suggested that this mandate should cover all forms of discrimination against the handicapped: obvious and covert, direct and indirect, and passive discriminatory practices, as well as particularly irrational negative attitudes towards the handicapped with immutable traits such as mental retardation, idiocy, mongolism, etc. In sum, the most obvious gaps in the provisions on the handicapped are the lack of major allocation of resources to benefit the handicapped, effective enforcement of the laws, and a strong and comprehensive anti-discrimination federal mandate.

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³¹¹ "Mexico's Disabled Lack All Types of Assistance," *Notimex, Mexican News Service* (Oct. 4, 1992) (in Nexis).

³¹² J.M.T. de Bresani, *Trabajo, Valoración e Invalidez* 31-50 (México, Secretaría del Trabajo y Previsión Social, 1983).

THE NETHERLANDS

I. Introduction

For many years, the goal of the government of the Netherlands has been to make life for persons with disabilities as independent as possible. The disabled are to become as much as possible a part of society and integrated as far as possible into the community in which they live. Everything is done to assist the disabled person to participate in society on the basis of their capabilities. Social services play a very important role in this area. The entire population is covered: young people, the family, single persons, the elderly and the disabled. Social service organizations operate in parishes, villages, suburban areas and towns. They also operate at regional and provincial levels throughout the country. They receive financial support from the government, especially the municipalities. It is the function of social work to help disabled people improve or re-establish their social links, and to enable them to participate in community life. In this process the social worker cooperates closely with other experts. The disabled are entitled to services generally available to the population as a whole. Also, special facilities may be made available where necessary. All of this is done to help the disabled person participate as much as possible in normal life. Disabled persons can also rely on social services provided by a large number of voluntary organizations.

II. Affirmative Legislation

The Netherlands does not have one specific law dealing with the rights of disabled persons, their care or rehabilitation. The Constitution³¹³ states in its article 1 that all persons in the Netherlands will be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex, or on any other grounds whatsoever, is not permitted. In order to ensure that disabled persons can become as much as possible full members of society, various ministries contribute to the policy towards the disabled in the Netherlands. Interministerial Steering Committees have been established. These consult regularly with the various umbrella organizations that cover organizations for both the physically and mentally handicapped in order to insure that their ideas and proposals are taken into consideration and to develop new policies and legislation.³¹⁴

As stated above, not one specific law deals with the needs of disabled persons. However, in order to integrate the many aspects of services provided for disabled persons, a large number of laws deal with a variety of disability issues.

³¹³ Constitution of the Kingdom of the Netherlands, Royal Decree of July 25, 1987, *Staatsblad* [Official Gazette of the Netherlands, Stb.], at 458.

³¹⁴ *The Kingdom of the Netherlands, Facts and Figures, Social Welfare* 12 (Ministry of Foreign Affairs, n.d.).

Under the General Disability Benefits Law,³¹⁵ the entire population of the Netherlands is insured irrespective of nationality or marital status. They qualify for measures to maintain, restore or improve their ability to work, for medical services and for measures to improve their living conditions. Measures under this law may include vocational training, adaptation of the workplace, refunds for the cost of special diets and transport. The Law is geared to the individual disabled person. The Health Insurance Law³¹⁶ covers wage earners and persons in a comparable position with an income not exceeding an annually fixed amount. It provides the right to medical care, hospital nursing and numerous other forms of treatment and provision. The Disability Insurance Law³¹⁷ is confined to wage earners. This law takes over where the Health Insurance Law leaves off. Under the Health Insurance Law, the criterion is whether the claimant is unfit for the work he was last performing; under the Disability Insurance Law, the criterion is whether the individual is unfit for any work considering his previous occupation, training etc. The Law on Exceptional Medical Expenses³¹⁸ covers the cost of special or long-term treatment or nursing. It applies in principle to all residents of the Netherlands. Services under this law are mainly limited to institutional treatment. The insured persons are entitled to medical attention, medicine, examination, treatment and nursing in recognized nursing institutions, institutions for the mentally handicapped, institutions for the deaf and hard of hearing, blind and partially sighted, rehabilitation centers and medical day nurseries. The Law also covers accommodations in day centers and hostels and the cost of domiciliary treatment by the Social Psychiatric Services.

Exceptional circumstances may exist, and one of the laws mentioned above may or may not apply to a person in need of assistance. In such a case the National Assistance Law³¹⁹ requires that the local authorities "grant assistance to any Dutch national living in or in danger of living in such circumstances that he does not have the means to support himself." Any national of the Netherlands without sufficient means to provide for his or her essential needs is granted assistance. This assistance consists of monetary payments commensurate with the applicant's circumstances and capabilities. It is further dependent on the degree of responsibility shown to provide for his or her subsistence. The assistance provided under this law is complementary to all other subsistence allowances and is provided as a last resort. This means, on the one hand, that assistance is provided to the extent that the applicant and his or her family members' own resources are insufficient to provide for essential needs; on the other hand, it serves as a safety net if and where the help provided under other legislation and schemes as discussed above is inadequate.

³¹⁵ Law of Dec. 11, 1975, Stb., at 674, as amended.

³¹⁶ Law of Oct. 15, 1964, Stb., at 392, as amended.

³¹⁷ Law of Feb. 28, 1966, Stb., at 84, as amended.

³¹⁸ Law of Dec. 14, 1967, Stb., at 655, as amended.

³¹⁹ Law of June 13, 1963, Stb., at 284, as amended.

The Law on Sheltered Employment³²⁰ is intended for persons who are capable of working but who are unable to find employment because of a disability or other specific personal factors. Sheltered employment offers these people social security in the form of suitable work which, as far as possible, takes account of each individual's personal qualities and potential. The work is aimed particularly at maintaining, restoring or improving the individual's ability to work. Eligibility for sheltered employment is limited to a specific group of people. The Law refers to "persons who are capable of working but for whom, primarily due to personal factors, the opportunity to perform work under normal conditions does not exist or does not exist at present." This law applies to people with a physical, mental or other handicap and the handicap is the reason they cannot find employment elsewhere.

The Law on the Employment of Handicapped Workers³²¹ is a good example of a law that has an affirmative effect on the employment of disabled persons. The aim of this law is to promote the participation of the disabled in a working situation. The main groups targeted are persons who receive a benefit as a result of incapacity to work or a disability pension, and handicapped employees for whom, in connection with their handicap, special arrangements have been made in order for them to work. Employers' organizations and employee organizations have the obligation, after consultation, to implement placement or reinstatement measures which result in the employment of one disabled person per twenty employees. Employers are compelled (if necessary by a special Factory Inspector) to adapt working methods, the environment, tools, etc., in order to accommodate disabled persons in their employment. An employer might be able to receive subsidies from the central government for measures to be implemented. Depending on the economic situation of the particular industry, the financial situation of the company, the size of the enterprise, the nature of the work, the supply and demand of the work force in a particular sector, an employer may be compelled to have a minimum and a maximum percentage of disabled persons in the work force. Fines and subsidy regulations are coupled to the quota obligations.

The Government of the Netherlands is also actively involved in a policy regarding the accessibility of buildings, public transport, roads and parking facilities. For example, in 1991 more than 5,000 public buildings were adorned with the International Invalid Access Symbol, the blue sign with the representation of a wheelchair.³²² Special telecommunications facilities and services are provided for the sensorially handicapped by the Post, Telegraph and Telephone Service. The Netherlands has developed a great diversity

³²⁰ Law of Nov. 23, 1967, Stb., at 687, as amended.

³²¹ Law of May 16, 1986, Stb., at 300, as amended.

³²² Marjo Van der Meulen, "Creative Answers for the Handicapped," 4 *Holland Horizon* 14 (No. 2, July 1992).

of schools for special education and secondary special education for a large number of different types of handicapped students.

Mentally handicapped persons who are of age and are unable to manage their affairs can be placed under guardianship by the courts.³²³ However, this status does not mean that the person under guardianship cannot own property or make decisions himself. His authority to make decisions is merely limited. In order to make a decision with respect to certain matters, such a person will need the cooperation of the guardian. The legal incapacity works with respect to different legal actions differently. For example, a person who is mentally disabled and under guardianship can only marry with the explicit permission of the county court.³²⁴ On the other hand, a person who is mentally disturbed and under guardianship and who makes a last will in a clear moment cannot make a valid will.³²⁵ The Law contains several provisions in which exceptions are made with respect to the legal inaction of the person under guardianship.

III. Conclusion

As can be observed, most social laws in the Netherlands can be applied to the physically as well as the mentally handicapped. Over the years, attempts have been made to make the life of disabled persons as independent as the circumstances allow. The goal of the government has been to make the disabled as much a part of society as possible, thereby taking away the social prejudices that exist in every society. In its efforts, the central government has worked closely with local authorities and voluntary organizations. However, after running up a significant national debt in the last few years, the government's goal has been to reduce the fiscal deficit. This will most likely cause lawmakers to take a look at the very generous social security system of the Netherlands, and a reform of the system is to be expected. Such a reform might eventually lead to cuts in benefits for the disabled.

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³²³ Civil Code of the Netherlands, Book 1, arts. 378-391.

³²⁴ *Supra* note 11, art. 38.

³²⁵ *Supra* note 11, Book 4, art. 944.

SWEDEN

I. Introduction

The goal of Swedish policy regarding the disabled is that they should be part of the community and live like others. The disabled should have the same opportunities to earn a living, have a good home, move about, and have meaningful jobs and leisure activities. The various authorities, local and central, are responsible for issues touching upon the disabled within their particular sphere of activities. In the fields of social welfare and medical care, the tradition of public care goes back as far as the sixteenth century, resulting in active engagement on the part of the government to carry out functions which in most other countries have been the task of charitable organizations.

Another factor of importance is the Swedish tradition of popular movements, which is also reflected in the existence of a strong movement of the disabled persons. There are over 1,000 local associations of disabled persons with about 400,000 members. At the national level, there are about 30 associations covering different disability groups. The majority of these groups cooperate within the National Associations of Disabled Persons, which has a central committee, a county committee in each county, and local committees in several municipalities.³²⁶

The associations of disabled persons in Sweden were not established by non-handicapped people for the protection of the disabled. They are associations founded by the disabled themselves for the protection of their own rights and interests. During the last few decades, these associations, both at local and national levels, have functioned as social policy pressure groups. Today, they participate closely in policy making and voice their views on the outcome of the laws that concern them. On its part, the government, in order to increase the opportunities for contact between the authorities and the organizations of the disabled, has set up a coordinating council for the disabled. The task of the council is to work for better living conditions for the disabled and to promote cooperation between the disabled and society as a whole.³²⁷

II. Scope and Extent of Services

Disability affects not only the disabled themselves but also the living conditions of their parents, spouses, children and other family members. Swedish policy makers take the view that the creation of special ventures just for disabled persons is to be avoided as far as possible. The concept of providing services for the disabled is interpreted as a task of integrating and normalizing, as much as possible, the living conditions of disabled persons. Activities in this field are meant to bring about full participation and equality to all members of the society.

³²⁶ *Fact Sheets on Sweden* 1 (The Swedish Institute, May 1986).

³²⁷ The State Handicapped Council, *Svensk Författningssamling* (SFS) 1988: 1094.

Since the needs of the disabled are many and varied, society must be active in many areas. Financial security, health care, education, housing, jobs, social insurance, travel and cultural enrichment are all constituent parts of establishing a society where the disabled are given the opportunity of full participation. Meaningful reforms have been achieved for each of these activities during the last two decades; and, government allocations, local and central, for the promotion of handicapped activities have increased tremendously.

The implementation of the laws at the local level in Sweden is the task of local authorities.³²⁸ Thus, it is the ultimate responsibility of county councils and municipalities to provide the actual services for disabled persons. The State agencies and their branches give general instructions on how the laws are to be implemented. They follow up the development of the laws and their effects on society. The State also subsidizes the local authorities for the care they provide for the disabled.³²⁹

Cooperation between adult education associations and the organizations of disabled persons has also led to increased opportunities for the disabled to take part in cultural activities. The training of interpreters for the deaf and the production of recorded books and braille for the visually handicapped as well as easy-to-read books for mentally disabled persons are also financed through such cooperation. The State subsidizes the publishing of newspapers for the visually impaired as well as theater for the deaf.

III. Legislation

Sweden does not have a general law aimed at securing the rights of disabled persons or in any other manner distinguishing them. But in accordance with efforts to integrate the various aspects of services provided for disabled persons, special paragraphs have been inserted in a variety of laws such as the Building Code, the Social Services Act, and the Social Insurance Act (*see below*). In other areas, it is considered self-evident that the laws should cover the disabled equally. There are also a number of laws that prescribe the provision of specific services to disabled people (*see below*). However, there is one exception to the rule of non-enactment of a general law concerning the disabled, and that is the Law for the Care and Protection of Mentally Disabled Persons (*see below*).

Housing

The objective of the Swedish housing policy is to provide the inhabitants with sound and well-planned dwellings at a reasonable cost. According to the introductory provisions of the Building Code,³³⁰ the purpose of the Law is, with due consideration to individual freedom, to promote the development of a good and equal social and living standard for the entire population

³²⁸ Local Government Law, SFS 1991: 900.

³²⁹ Regulation on State Subsidy to Handicapped and Old People, SFS 1991: 1516.

³³⁰ SFS 1987: 10.

today and for future generations. Chapter 3:7 of the Law prescribes that buildings that are used for housing, a workplace, or localities to which the public has access, must likewise be accessible to and meet the needs of persons with reduced mobility or orientational ability.

Special measures are often required for those with more serious mobility disabilities and other severely disabled persons. To this end, the Regulation on the Housing Adjustment Subsidy³³¹ prescribes that the State should subsidize expenses involved in the adjustment of dwellings that are to be used by disabled persons. Accordingly, the owner of an apartment house or the holder of a condominium or a cooperative right is entitled to a State subsidy. If parents of a handicapped child do not live together and the child stays partly with one parent and partly with the other, both parents are entitled to a State subsidy to adjust their homes to the needs of the child. Even a person who regularly takes care of a disabled child is entitled to the State subsidy for the necessary adjustments to the home.

Moreover, in order to provide those with severe mobility disabilities and other severely disabled persons with good housing and adequate service, there are special service apartments with a home help service on call twenty-four hours a day. The municipalities are normally responsible for providing this service.

Health care

The Health and Medical Care Act³³² prescribes rules for the provision of health care and medical services for the entire population. The overall goal of the Law, which includes both preventive and curative measures, is the provision of good health care and medical services to everyone on an equal basis. Accordingly, the health care and medical services should be:

- of good quality and meet the patient's need for the security of care and treatment;
- readily accessible to all;
- founded on respect for the self-determination and integrity of the patient; and
- of a nature to promote good contact between the patient and health and medical personnel.

Furthermore, care and treatment must be designed and conducted, as far as possible, in consultation with the patient, who must be informed of his or her state of health and the treatment available.

The provision of health and medical care is the responsibility of the county councils, which are also obligated by law to meet the care requirement of the disabled. The councils have built up an organization consisting of vision and hearing centers where a number of hearing and

³³¹ SFS 1982: 639.

³³² SFS 1982: 763.

vision consultants, physiotherapists, prosthetists, orthotists and the like work for the habilitation of disabled children and rehabilitation of adults. Technical aids for the disabled are in principle free of charge. Even repair and maintenance of the aid are without cost to the disabled. The county councils are reimbursed for the technical aid service by the State.

Education

The Swedish School Law³³³ contains rules on the obligation of the local authorities to provide the means of education for children of school age, including various categories of disabled children. For those handicapped children who cannot participate in ordinary classes, special classes are arranged. There are also special schools for severely visually impaired and deaf children.

The local authorities must, in accordance with the provisions of the Social Services Act (*see below*), provide child care and pre-school education before the children reach school age. Accordingly, disabled children are to be given priority in obtaining a place in a pre-school. Moreover, according to the rules set out in the Regulation on Regional Cooperation for the Teaching of Handicapped Students,³³⁴ regional cooperation should be carried out between authorities in various counties in order to make all means of education accessible to disabled children of school age. The state provides special subsidies for such regional activities.³³⁵

At the university or college level, the disabled take part in the ordinary tuition. Special support for tuition and personal assistance during the work day are provided by the university or college of higher education. A disabled person is also entitled to attendant services for individual help in his everyday life at home. Attendant services are free of charge for disabled students. Such services are provided by the local authorities, and they are reimbursed by the State.

Employment

In the field of employment, several laws were enacted in the 1970s. The objective of these laws has been to secure and promote employment. The Swedish employment policy, which is employment for all, includes measures to facilitate disabled persons' employment opportunities on the open market and to create employment for those who do not obtain such employment.³³⁶ With regard to the workplace, in addition to the provisions in the Building

³³³ SFS 1985: 1100.

³³⁴ SFS 1984: 75.

³³⁵ SFS 1986: 542.

³³⁶ For instance, according to the provisions of a 1970 Law (SFS 1970: 663), the local authorities are empowered to create jobs for disabled persons.

Code,³³⁷ Chapter 2 of the Work Environment Act³³⁸ stipulates that the working conditions should be adjusted to the individual's mental and physical capabilities, which implies adaptation to the needs of individuals with various disabilities as well.

In order to ensure the employment of disabled persons, the labor market authorities have at their disposal a number of policy measures that aim to make it easier to obtain employment on the open market or to create alternative employment. These measures include vocational guidance, vocational training, and training on the open labor market, for which the State grants subsidies to the employers.

Transportation

For travel to and from work, special grants are available to disabled persons for the purchase of a private vehicle. This grant is also given to the parents of handicapped children to facilitate their means of communication.³³⁹ A special service has been established for the transportation of disabled persons who do not have their own means of transport. To render this service, municipalities use taxis or special vehicles in the case of the severely disabled. This service is subsidized by a State grant of 35%.

Moreover, in accordance with the Law on Adaptation of Collective Traffic,³⁴⁰ the authorities in charge of regulating and supervising public transportation are obligated to ensure that it is adapted to the needs of the disabled. However, the responsibility for adaptation measures rests upon the providers of the facilities.

Finally, special provisions have been made in order to encourage travel and to ensure the benefit of leisure time for the disabled. Accordingly, disabled persons may use transport services throughout Sweden by paying the equivalent of a second-class rail fare, whether they travel by air, car or bus. The remaining part of the fare is subsidized by the State.³⁴¹

Social services

Many elderly and disabled persons need help and services of various kinds in order to be able to live in their own home and to cope with everyday life. The municipalities are responsible for social services. These consist of several different types of activities and are adapted to the needs of the persons involved and local conditions. All municipalities have a home help service. This primarily includes domestic help with cleaning, food preparation, shopping, clothes care

³³⁷ *Supra* note 5.

³³⁸ SFS 1977: 1160.

³³⁹ Law on Motor Vehicle Grants to the Disabled, SFS 1988: 360.

³⁴⁰ SFS 1979: 558.

³⁴¹ *Supra* note 1, at 3.

and personal hygiene. Increasingly, the home help service also provides escort service, i.e., personal assistance with walks, visits to cultural institutions, and the like. The purpose is to break social and cultural isolation, which has always been a serious problem for the disabled.

Moreover, chiropody, hairdressing, a bath service, meal service, telephone service, gymnastics, recreational activities, a library service, laundry service and snow clearance are also available for the elderly and the disabled in most municipalities. For the home service, the state pays a subsidy to the municipalities.³⁴² The subsidy is partly a performance-related sum per year per employee within the home help service, and partly a standard sum per municipal inhabitant drawing an old-age pension or a disability pension. However, the fee for home help service is as a rule an income-related service.³⁴³

Financial assistance

In order to provide the disabled with a full sense of independence and self-determination, in addition to the services mentioned above and some educational grants for adults,³⁴⁴ depending on their personal condition, disabled persons receive various kinds of financial assistance to enable them to achieve to the extent possible the means necessary to maintain a normal life. The financial assistance can be in the form of special assistance under the Social Services Act and/or a disability pension received in accordance with the provisions of the Social Insurance Act.

Social Services Act

The provision of social services in each community is the responsibility of the local authority. The goal of the society's social services is to promote people's social and financial security on the basis of democracy and solidarity, to bring about equality in the living conditions and to take an active part in the life of the community. The social services must be based on the principles of respect for individual self-determination, human dignity and personal integrity.³⁴⁵ According to the provisions of section 6, every individual is entitled to financial assistance for his support if there are no other means to fulfill his needs.

Section 21 of the Law in particular addresses the needs of disabled persons. The social committees in each municipality must ensure that the people who, due to physical and mental disabilities, have difficulty in managing their daily lives are provided with the possibility of participating in the life of the community and living like others. The social committee should also ensure that the individual in need of assistance has a meaningful occupation and lives in a home that is adjusted to his specific needs.

³⁴² Regulation on State Subsidies to Home Services (SFS 1983: 944).

³⁴³ *Supra* note 1, at 2.

³⁴⁴ **See for instance**, the Regulation on Collective Application for Study Support by the Retiree and Handicapped Organizations (SFS 1986: 850).

³⁴⁵ Social Services Act (SFS 1980: 620), Sec. 1.

Social Insurance Act

The National Social Insurance Law³⁴⁶ covers both national health care and the comprehensive Swedish pension system. Within the pension scheme, a number of benefits are of special interest to the disabled. These are the disability pension, the supplementary pension for those who have had pensionable income for a certain number of years, the pension supplement for anyone with a low or no supplementary pension, the disability allowance, and the child-care allowance. Also, a special pension supplement is paid to the parents who take care of sick and handicapped children for a longer period of time.³⁴⁷ In principle, the disability pension is intended to provide basic economic security to those aged sixteen or over until the age of sixty-five, which is the normal pension age. The various kinds of allowances are granted to enable the recipients to meet the need for help and extra costs that a disability involves.

Mentally disabled persons

The above-stated services are provided equally for the physically and mentally disabled. However, regarding schooling, Chapter 3:19 of the School Law³⁴⁸ stipulates that at the end of the ten-year compulsory period of schooling, mentally disabled children should be provided with continued studies until the age of twenty-one in special schools, in conformity with the provisions of Chapter 7 of the Law, which contains rules on the founding of special schools for disabled children.

As was stated earlier, as an exception to the general rule, Sweden has a special law for the care of mentally disabled persons. The Law³⁴⁹ applies both to persons with childhood psychoses and those who, as the result of a brain injury in adult life, have sustained a significant and lasting mental disability. It is the responsibility of the county councils to provide the services prescribed by the Law. These services, which are meant to be of a special nature over and above services available to all inhabitants, are:

- counselling, personal care, and support of a special contact person;
- daily activities at day centers or other occupations for persons above school age who are not gainfully employed, or are not undergoing training or education;
- short stay away from home for the purpose of relieving relatives of the tasks of care and supervision and short-term supervision away from home for school children over twelve years of age;

³⁴⁶ SFS 1962: 381.

³⁴⁷ SFS 1990: 773.

³⁴⁸ *Supra* note 8.

³⁴⁹ Law on Special Care for the Mentally Handicapped, *et al.* (SFS 1985: 568).

- residence in foster homes or boarding homes for children and young people who need to live outside the parental home;
- group housing accommodations for adults who are unable to live independently; and
- recreational and cultural activities for those in boarding houses and group housing.

These services are provided free of charge. However, those persons who receive pensions or are employed and live in the facilities provided by the county council have to pay a reasonable amount of money for board. Such payment, however, should allow the disabled to keep a sufficient amount of money for their personal needs. Special instructions for such fees are issued by the government.

Finally, with respect to the questions of marriage and the right of property ownership, the law does not make any distinction between the disabled and other persons. However, concerning the mentally disabled persons, depending on the severity of the condition, the law provides for the appointment of a guardian or, if necessary, an administrator, in conformity with the provisions for guardianship as stipulated in Chapter 11 of the Parenthood Code.³⁵⁰

IV. Conclusion

As has already been observed, the task of providing services to disabled persons is the responsibility of the local authorities. Although local provision of services by the local authorities appears to be the best and most effective way of fulfilling the task, due to the lack of detailed instructions for the variety of services to be provided, they can vary from place to place. While there is a minimum standard to be maintained, the fact that the recipients of services are entitled to appeal the decisions of the local authorities means that there is the opportunity to establish judicial practice that in turn brings about further guarantees for the proper implementation of the respective laws. In fact, in a recent decision by the Supreme Administrative Court, a local authority was ordered to raise the amount of assistance awarded in conformity with the provisions of the Social Services Act.

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³⁵⁰ SFS 1990: 1526.

THAILAND

I. Introduction

The current Constitution of the Kingdom of Thailand, promulgated on December 9, 1991, stipulates that all persons are equal before the law and are equally entitled to the protection of the law. However, as a developing country with a successful free enterprise economic system, Thailand has been pressured for a long time by different workers' unions to develop legislation to protect specific rights of workers. The demands proposed by the workers' movement include amendment of the labor law and changes in minimum wages, employment benefits, and other welfare benefits in cases of injury, sickness, disability, maternity, and death. The pressure created, in different forms, by Thai workers has brought many positive results during the last few years. One important change is that for the first time, the protection of the rights of disabled people is considered a matter of State policy in Thailand and is recognized in the Constitution.³⁵¹ In accordance with article 81, the State has the duty to provide help and assistance to the aged and people with mental and physical disabilities so that they can have better lives.

II. Affirmative Laws

Even before the promulgation of the 1991 Constitution, Thailand had provisions in various laws concerning the protection of and benefits for handicapped people, whether their disabilities were of natural causes or related to employment. The following are important provisions found either in the Civil or Criminal Codes of Thailand or in individual laws such as the Gratuity and Pension Act, the first Social Security Act, B.E. 2533, which was signed on September 2, 1990, and the first Rehabilitation of Handicapped Persons Act of 1991.

The Social Security Act³⁵² has the purpose of ensuring security for employees, workers, and their relatives through the establishment of a Social Security Fund to give them financial support when they encounter specified difficulties. The Social Security Fund also covers maternity benefits, family allowances, retirement pensions, and unemployment benefits. Under this new Law, all Thai employees and workers will have protection and receive assistance in case of injury, sickness, disability, or death resulting from either their work or as a natural occurrence. The Law is administered by the Ministry of the Interior's Social Insurance Committee. In order to receive benefits, a person has to pay contributions to the Social Security Fund. This Law applies to every employer, business, and

³⁵¹ Foreign Broadcast Information Service, *Daily Report East Asia* (FBIS-EAS-92-023), Feb. 4, 1992, at 49-67. Also in *Official Gazette of Thailand*, special issue No. 108, Dec. 9, 1991, at 1-59.

³⁵² Social Security Act, B.E. 2533 (1990). 44:10-13,15 *Royal Thai Government Gazette* 75-109 (Apr. 10-30 & May 10-30, 1990).

organizations with over twenty employees. It is not, however, applied to government officials, regular employees of the central, provincial or local administration, to those working for Thai employers but stationed abroad, or to teachers and headmasters of private schools. Persons in these categories are governed by a different law.

Under the Social Security Act, a person is considered disabled if he or she loses an organ, loses the use of an organ of the body, or loses the normal condition of mind to the point that he or she cannot work. These conditions are to be determined in accordance with the criteria prescribed by a medical committee appointed by the Minister. A person insured by the Social Security Fund is entitled to disability benefits if he or she has contributed to the Fund for not less than ninety days within the period of fifteen months before becoming disabled. The benefits received include expenses for:

- medical examination;
- medical treatment;
- medicine and medical supplies;
- hospital fees;
- ambulance or transportation for the disabled person;
- physical and psychological therapy; and
- other related services.

Benefits for expenses for medical treatment should be determined in accordance with the rules and rates prescribed by the medical committee and approved by the Social Insurance Committee. In addition to cash benefits for the expenses listed above, the insured person is entitled to compensation for the loss of income at the rate of 50% of his or her wages for an additional fifteen years. The compensation for lost income will terminate or be reduced if the disabled person dies or is rehabilitated.

Apparently, if a worker chooses not to pay for social security, he or she is protected by regular Thai labor laws. In accordance with the Decree on Labor Protection issued by the Ministry of Interior in 1972,³⁵³ an employee who loses certain organs of the body during the performance of his work is entitled to receive 50% of his or her average monthly wages. The payment will be made in accordance with the degree of disability; the period of payment is prescribed by the Ministry of Interior but is not to exceed five years. If that employee continues to suffer from the loss of organs, the payment is to be 60% of his or her average

³⁵³ Labor Protection. 30 *Labour Laws of Thailand* (Bangkok, Office of the Juridical Welfare's Fund, 1980).

monthly wages for the period prescribed by the Ministry of Interior but not more than ten years.

The loss of use of certain parts of the body due to injury or illness shall be treated as the loss of an organ, but the indemnity shall be calculated proportionally, based on the specified period when the loss of that category of organs occurred. These conditions are determined by the Ministry of Interior. This protection only applies if the disability was work related.

Benefits for civil servants and soldiers in Thailand are governed by the Gratuity and Pension Act of 1951.³⁵⁴ Under this Law, civil and military officials will receive, in addition to ordinary pensions, special pensions and gratuities if they become infirm, handicapped, deaf, blind, or have other sicknesses caused by their work, unless the injury or illness was the result of gross negligence or fault on the part of the injured civil or military official himself. The exact amount of special pension is determined by the superior official, based on the circumstances of each case and the nature of the illness and resulting disability. Officials suffering from a disability are entitled to receive ordinary pensions as soon as they are officially declared disabled, regardless of their age and years of service.

However, the most important law that provides assistance to and protection of the rights of disabled people in Thailand is the Rehabilitation of Handicapped Persons Act of 1991.³⁵⁵ This Law has twenty articles and contains definitions and descriptions of the organization and functions of the Board for the Rehabilitation of the Disabled, as well as descriptions of various services and programs made available to the handicapped. The Board is responsible for managing the Fund reserved for the implementation of programs and services and for the administration and implementation of the Law in general, as well as controlling specific services and programs described in the Law. These programs and services are generally aimed at improving the abilities or skills of disabled persons through medical research and educational, social, and occupational training designed to give disabled persons a chance to earn a living and have a normal life in society.

A *disabled person* is defined under this Law as an individual who has a physical, intellectual, or mental defect or abnormality. These conditions will be determined based on criteria prescribed by separate ministerial regulations. A handicapped person who wishes to receive assistance under this Law has to submit an application for registration to the Central Registrar at the Office of the Board for the Rehabilitation of the Disabled or to the provincial registrar at the Provincial Social Welfare Office of the province where or she resides. The assistance for rehabilitation provided under this Law includes:

³⁵⁴ Gratuity and Pension Act, B.E. 2494 (1951). 130:183 *Royal Thai Government Gazette* (May 1, 1951).

³⁵⁵ Rehabilitation of Handicapped Persons Act, B.E. 2534 (1991). 45:25-27 *Royal Thai Government Gazette* 157-166 (Sept. 10-30, 1991).

- rehabilitation services such as medical treatment, cost of equipment for improving physical, mental, and psychological conditions or for improving capabilities of the disabled person;
- education and special training, depending on the suitability and circumstances of each individual, and in accordance with the national education plan of the country;
- advice and counseling connected with jobs and jobs training;
- creation of social activities and facilities (e.g. making buildings and working places accessible) and services needed for handicapped (e.g. transportation, other equipment which facilitates movement and performance); and
- legal services, etc.

Revenue tax incentives are provided for employers to hire the handicapped in the private sector and for owners of buildings to provide sites, vehicles, and other public services for the handicapped. Private business sectors follow a quota system to employ the handicapped. If an employer or owner of a place of business does not wish to hire handicapped workers in the required quota, he or she may instead apply to contribute money to the Fund for the Handicapped at the rate prescribed by ministerial regulations.

The Minister of Interior, the Minister of Education, and the Minister of Public Health are jointly in charge of the enforcement of this Law. The means of enforcement will be provided by ministerial regulations issued by these three ministries.

Criminal Responsibility

Under the 1956 Criminal Code of Thailand,³⁵⁶ a person with a defective mind, mental disease, or mental infirmity is not held responsible for an offense if, because of such defective conditions and infirmity, he or she is not able to appreciate the nature of the illegality of the offense or not able to control himself or herself at the time the offense was committed. The court also takes into account the degree of intelligence and the condition of the offender's mind when it decides on the severity of penalty given to this category of offenders in criminal cases.

³⁵⁶ *Criminal Code of Thailand 23-27* (Bangkok, Nitisani Bannkan, 1973).

III. Discriminatory Laws

There are provisions in various Thai laws regarding persons categorized as being *incompetent* and *quasi-incompetent* that may be perceived as discriminatory towards the disabled. The discrimination may be created by the effect of a particular provision and through the lack of specified criteria and procedures applied to determine *incompetency* and *quasi-incompetency* as they are defined in the Thai Civil and Commercial Code.

In the section on capacity of Book I of the Civil and Commercial Code of Thailand,³⁵⁷ article 29 stipulates that a person of unsound mind may be officially declared incompetent by the Court based on a petition made by a spouse, by his or her ascendants, descendants, guardian, or curator, or by the public prosecutor. Such a person must be placed under guardianship. Article 33 further states that if the cause of incompetency ceases to exist, the Court shall, on the application of the person himself or by any of the persons mentioned in article 29, revoke its ruling. A person who is not able to manage his or her own affairs because of physical or mental health or because of a habitual condition of intoxication may also be legally considered as quasi-incompetent and be placed under the supervision of a curator by the court upon a petition by any of the persons mentioned in article 29. A quasi-incompetent person must obtain the consent of his curator in order to exercise many rights, e.g. taking part in any transaction concerning personal or real property; accepting or giving gifts; accepting or renouncing an inheritance; or taking legal action, unless he petitions to the court for the removal of the curator. If the cause for the person to be declared quasi-incompetent ceases to exist, the procedures described in article 33 apply. Apparently, there is no special provision in the Thai Civil Procedure Code regarding the requirement of expert witnesses for these cases.

As for the matter of marriage, under Thai law on family contained in Book V of the Civil Code,³⁵⁸ an incompetent person cannot marry. Article 1463 states that if one of the spouses is declared incompetent or quasi-incompetent by the court, the other becomes the guardian or curator by operation of law. However, if there is a petition from any interested person or a public prosecutor, the court may, on substantial grounds, appoint another person as guardian or curator. Insanity and physical disability (depending on the level of severity) are both accepted as grounds for divorce. However, in these cases, the law has provisions concerning a requirement of proper maintenance by the other spouse.

There are many laws in Thailand, such as the Labor Relations Act (1975), the State Enterprises Staff Relations Act (1991), the Bangkok Metropolis Civil Service Act (1985), the Law on Primary Education (1980), and the Law on Limited Public Companies (1992), that have provision preventing incompetent or quasi-incompetent persons from serving as officers

³⁵⁷ Book I, *The Civil and Commercial Code of Thailand Book I-V with Amendments and Glossary* 6-7 (Bangkok, Nitisarn Bannkan, 1982).

³⁵⁸ Book V, *supra* note 7, at 318, 321, & 334.

in various committees or on the executive board, etc., or requiring the resignation of incompetent or quasi-incompetent persons from these positions. There are no provision concerning the definition of incompetent and quasi-incompetent in those individual laws, thus it may be assumed that these laws apply the same general standards and procedure described in the Civil and Commercial Code.

IV. Conclusion

In addition to the laws already promulgated, Thailand has other proposed laws and plans pushing toward the improvement of the population's social conditions in general, and there are policies and plans concentrating on the disabled in particular. For example, after the promulgation of the law on its social security system, the government's plan is to expand the program to cover nearly all Thai workers and self-employed persons. This system already covers benefits for disability, but there are also programs designed to deal specially with disabled people, e.g., a bill on social welfare, the new government 10-year education plan which includes programs on basic education for the disabled,³⁵⁹ and efforts from the government to promote society's awareness concerning disabled children.³⁶⁰

A committee was set up by the Ministry of Interior at the end of 1991 to draft the bill on social welfare. This bill has the goal of helping fourteen million Thai people nationwide who are classified as really poor and disabled. The Fund for social welfare will also cover children, women, the elderly and victims of natural disasters. If the bill is accepted, in the future there will be a national social welfare commission which will administer the social welfare funds and create other committees to promote non-government activities in order to carry out the bill's goal.³⁶¹

One further indication that Thailand is trying to develop a national social plan regarding assistance provided for the disabled is the fact that the Thai Crown Princess Maha Chakri Sirindhorn was awarded the Philippines's 1991 Ramon Magsaysay public service award based on her work for helping the poor and disabled.³⁶²

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³⁵⁹ Xinhua General News Service, Sept. 2, 1992 (in NEXIS).

³⁶⁰ Xinhua General News Service, Nov. 21, 1991 (in NEXIS).

³⁶¹ Xinhua General News Service, Oct. 1, 1991 (in LOOSEST/NEXIS).

³⁶² Reuter Library Report, July 9, 1991 (in NEXIS).

TURKEY

I. Introduction

Under the general principles of the Turkish Constitution,³⁶³ all citizens are equal under the law, without any discrimination. The State has the responsibility to provide the conditions for individuals to develop their material and moral existence. Everyone has the right to education and to work.³⁶⁴

Article 61 of the Constitution contains special provisions for the protection and assistance of disabled persons:

The State shall protect...disabled war veterans, and ensure that they enjoy a decent standard of living.

The State shall take measures to protect the disabled and secure their integration into community life.

To achieve these aims, the State shall establish the necessary organizations or facilities, or arrange for their establishment by other bodies.³⁶⁵

To implement the principles set forth in the Constitution, the State has established preventive and protective measures and assistance programs for disabled persons. Several special laws and provisions in over thirty different laws aim to fulfill the above requirements of the Constitution.

II. Affirmative Laws

Turkey endorsed 1981 as the International Year of Disabled Persons and 1983-1992 as the Decade of Disabled Persons. As a result, action to prevent disabilities has been intensified. To reduce accidents at the work place, better standards of work safety have been developed and guidelines have been laid down for preliminary and on-the-job training of workers. It has become a priority for health organizations to eliminate hazardous health

³⁶³ Law No. 2709 of Nov. 9, 1982, as amended, *in* F. Coker *and* F. Kazanci, *T.C. Kanunlari* [Laws of the Republic of Turkey] 136-136(58) (Ankara, 1967-).

³⁶⁴ Arts. 5, 10, 42, and 49, *id.* at 136(1), 136(2), 136(10) and 136(12), respectively.

³⁶⁵ *Id.* at 136(15).

conditions that may cause disabilities. To reduce traffic accidents, penalties and fines for traffic violations have been raised dramatically.³⁶⁶

The National Coordination Board for Protection of the Disabled is assigned by law to define the policy for the protection of disabled persons and to take measures to implement it. The Board must ensure that preventive and curative measures are taken for disabilities, that the disabled are provided with social, medical and occupational rehabilitation, and that they have access to economic resources and to employment opportunities. The Board must also promote cooperation among public, private and international organizations and institutions that assist the disabled.³⁶⁷ Furthermore, the Law on Associations requires the associations of the disabled to form four different federations for each category of disability, i.e., a federation of associations of the deaf, of the blind, of the orthopedically disabled, and of the mentally disabled. All these federations must form a confederation. Each federation will coordinate and monitor programs and activities of the member associations.³⁶⁸

Various laws make it possible for the National Board for Protection of the Disabled to implement its programs. The Law on Children Requiring Special Education provides for special schools for disabled children. In these schools, appropriate programs to suit the disabilities of the children are designed to improve their learning abilities. The Law also requires that special classes be created in the primary schools for disabled children to prevent their isolation from society.³⁶⁹ If the learning abilities of these children prevent them from continuing their education after primary school, they will be taught a trade compatible with their disability.³⁷⁰ The Social Services and Protection of Children Law provides for the establishment of special care and rehabilitation centers for the disabled to enable them to be self-sufficient. Both children and adults benefit from the services of these centers.³⁷¹ Furthermore, the Labor and Social Security Ministry is also responsible for the rehabilitation, training, and integration into social life of the disabled persons.³⁷²

The Labor Law provides for the employment of the disabled. Every employer who has fifty or more employees must allocate 2% of the jobs to the disabled. Jobs offered to

³⁶⁶ Law No. 3146 of Jan. 9, 1985, Law No. 1593 of Apr. 24, 1930, and Law No. 2918 of Oct. 1983, as amended, *supra* note 1, at 10421, 1521, and 9925, respectively.

³⁶⁷ Art. 27 of Law No. 3146, *id.* at 10427.

³⁶⁸ Arts. 34 & 88 of Law No. 2908 of Oct. 6, 1983, *id.* at 9889 and 9901, respectively.

³⁶⁹ Art.4, Law No. 2916 of Oct. 12, 1983, *id.* at 9920.

³⁷⁰ Art. 11, *id.* at 9922.

³⁷¹ Art. 9 of Law No. 2828 of May 24, 1983, *id.* at 9701.

³⁷² *Supra* note 5.

them must be compatible with their physical and mental qualifications and should not aggravate their disabilities. An employee who had to leave his/her job because of disability but who is later rehabilitated must be immediately hired by his/her former employer if there is a vacant position or when the first vacancy becomes available.³⁷³

After all the treatment and rehabilitation efforts, if the disability of a worker does not allow him/her to return to work, he receives a disability pension. The amount depends on whether the disability is work-related or not and on the worker's years of service. Those who have partially lost their ability to work receive a reduced pension. The amount of the pension is in proportion with the disability of the worker.³⁷⁴ The persons on disability have the same health benefits as working employees. Social Security covers all medical and rehabilitation treatments.³⁷⁵ The State Pension Fund Law provides the above-mentioned privileges for disabled government employees and veterans. The disabled war veterans receive more than the other disabled persons in their category.³⁷⁶ The disabled who are destitute and do not qualify for a pension receive government assistance in the form of monthly payments and also free health care services at State hospitals.³⁷⁷ The State and private associations provide facilities for the disabled who cannot take care of themselves because of their mental or physical condition.

The disabled also benefit from several tax exemptions. The Income Tax Law provides for a disability allowance that reduces income tax payments, and all disability pensions are tax exempt.³⁷⁸ Under the Customs Law, machinery, equipment, cars, medicine, etc., may be imported in the name of the disabled without payment of customs duties.³⁷⁹

The disabled war veterans enjoy further benefits. They share the revenue from cigarettes and alcohol taxes with the survivors of war veterans. All government and municipal transportation is free for them.

The Civil Code also provides for the protection of the mentally disabled. If a person does not have the capacity to enter legal transactions, acquire rights, and incur obligations, the court at his/her place of residence must appoint a guardian. The guardian acts under the

³⁷³ Art. 25 of Law 1475 of Aug. 1974, as amended, *supra* note 1, at 8226.

³⁷⁴ Arts. 52-58 of Law No. 506 of July 17, 1964, as amended, *id.* at 7251-7253.

³⁷⁵ Arts. 32-34, *id.* at 7248-7248(1).

³⁷⁶ Arts. 44-64 of Law No. 5434 of June 8, 1949, as amended, *id.* at 4210-4218.

³⁷⁷ Art. 1 of Law No. 2022 of July 1, 1976, *id.* at 8871.

³⁷⁸ Arts. 23 and 32 of Law No. 193 of Dec. 31, 1960, as amended, *id.* at 6393-6397.

³⁷⁹ Art. 8(14) of Law No. 1615 of July 19, 1972, as amended, *id.* at 8440.

supervision of the court and cannot enter certain transactions without its approval. A disabled person may be placed in an educational institution, hospital, or asylum only with the approval of the court. The guardian must give periodic reports to the court, which examines them, either approves or rejects them, and, if it finds it necessary, takes proper measures to safeguard the ward's interests.³⁸⁰

III. Discriminatory Laws

The Civil Code has some provisions that may be considered discriminatory. Persons of unsound mind cannot marry. If they do, the marriage will be null and void. Furthermore, insanity is one of the grounds for divorce when the mental condition of the spouse makes a shared life intolerable and, after three years, the condition is held by experts to be incurable.³⁸¹

IV. Conclusion

In the last ten years, several new laws have been enacted and many laws have been amended to ensure a better life for the disabled. Special schools and classes and rehabilitation centers for the disabled have considerably increased in number. The pensions for disabled private industry or government retirees have been raised and made tax-exempt to provide the disabled with a decent lifestyle. Destitute disabled persons are provided with financial assistance. It has become easier for the disabled to find employment because of the requirement of the Labor Law.

Although considerable progress has been made in protecting the disabled, all of the problems facing them are not yet solved. Measures have been taken to ensure accessibility of public buildings and public transportation, but they are far from complete. More special schools and rehabilitation centers are needed. The Government is continuing its efforts on behalf of the disabled to improve their living standards, rehabilitation, and integration into regular social life as much as its resources allow.

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³⁸⁰ Arts. 346-438 of Law No. 743 of Feb. 17, 1926, *supra* note 1, at 472-487.

³⁸¹ Arts. 112, 113, & 133, *id.* at 435-438.

UNITED KINGDOM³⁸²

I. Introduction

There are estimated to be approximately 6.5 million disabled people in the United Kingdom, and one in four households has a disabled member.³⁸³ As the population ages, the numbers are likely to increase substantially. Yet, the legislative approach to the rights and needs of this large segment of the population has been lacking in cohesiveness. Suffering from a long history of prejudice, superstition and persecution, disabled people have paid a price for the perceived negative implications of their physical impairments viewed by a world which places a premium on physical normality.³⁸⁴ Barnes quotes from Shakespeare's portrayal of *Richard III* as twisted in both mind and body and cast as a villain because of his deformity:

Cheated of feature by dissembling nature
Deformed, unfinished, sent before my time
Into this breathing world, scarce half made up,
And that so lamely and unfashionable
The dogs bark at me as I halt by them.

Although it cannot be gainsaid that disabled people have the same civil rights as other citizens, the UK's amorphous and unwritten constitutional framework certainly does not provide any guarantees of those rights. Thus, for example, the manager of a restaurant, swimming pool or theater can turn away a handicapped person without any recourse because there is no law to prevent such action.³⁸⁵ Despite this situation, "the Government is not convinced that the goal of integration and equality can be particularly advanced by any all-embracing or generalized law proclaiming the rights of disabled people."³⁸⁶ The needs of disabled persons are seen to be too varied and complex to allow the enactment of a single effective statute.

³⁸² The provisions discussed here generally apply to England and Wales only. However, laws in Scotland and Northern Ireland largely mirror the English statutes.

³⁸³ C. Barnes, "The Struggle for Equal Rights and Opportunities for Disabled People Within the United Kingdom," in Standing Advisory Commission on Human Rights, *Report For 1992 - 1993*, 268 (1993).

³⁸⁴ C. Barnes, *Disabled People In Britain and Discrimination* 12 (1991).

³⁸⁵ *Reuter*, Mar. 5, 1993 (in NEXIS).

³⁸⁶ G. Pinet, *Is the law fair to the disabled? A European Survey* 326 (World Health Organization, 1990).

Instead, a number of separate measures have been enacted in the areas of employment of the disabled, education, access, and health and welfare services.³⁸⁷ Modern legislation has also been enacted to provide safeguards for mentally disabled persons. A more recent example of legislation addressing a specific need is a statute authorizing physically disabled persons to be employed in giving instructions to motor vehicle drivers.³⁸⁸ Barnes characterizes these laws as "*ad hoc*, piecemeal and grossly inadequate."³⁸⁹

The government's unwillingness to provide a comprehensive charter ensuring the rights of disabled persons has been a matter for debate, particularly in the last decade or so. There have so far been twelve unsuccessful attempts to get anti-discrimination legislation, sponsored by members without the support of government, through Parliament, the latest being in July 1993. The bills would have outlawed discrimination against handicapped people at work and in public places. Before the debate on a bill started in February 1993, its sponsor presented a petition to the House and said "Disabled people must have a right to the same equality of opportunity in all aspects of their daily life as non-disabled people."³⁹⁰ Another sponsor sought for the disabled "not sympathy, but social fairness ... not expressions of compassion, but practical concern for their rights to become full citizens."³⁹¹

In May 1993, when the bills were resubmitted, an Early Day Motion in the House of Commons called upon the government "to accept that unfair discrimination against disabled people is morally indefensible; insist that what is morally indefensible should no longer be permissible."³⁹² In opposition to the measures, it has been stated that there would be no way to monitor the implementation of the legislation. "Such legislation could be an orgy for the lawyers - much of it on legal aid [public legal assistance for those unable to pay litigation costs]. I prefer the Government's step by step approach," one Member of Parliament said.³⁹³

³⁸⁷ Since the end of World War II, over 45 Acts of Parliament have included references to specific rights of physically disabled people. J. Cooper, *The Legal Rights Manual* 86 (1990).

³⁸⁸ Road Traffic (Driving Instructions by Disabled Persons) Act, 1993, ch. 31.

³⁸⁹ Barnes, *supra* note 3, at 4.

³⁹⁰ *Press Association Newsfile*, Feb. 26, 1993 (in NEXIS).

³⁹¹ *Id.*

³⁹² EDM 2264, 1992/93 in Parliamentary Information Online Service (POLIS).

³⁹³ *Press Association Newsfile*, Jan. 26, 1993 (in NEXIS).

II. Affirmative laws

The following legislation confers protection on disabled persons:

Disabled Persons (Employment) Act, 1944³⁹⁴

The Act, as stated in its preamble, is intended "to make further and better provision for enabling persons handicapped by disablement to secure employment, or work on their own account." A *disabled person* is defined as one who is substantially handicapped in obtaining suitable employment on account of injury, disease, or congenial deformity.³⁹⁵ A *disease* is construed as including a physical or mental condition arising from imperfect development of any organ.³⁹⁶ The Act set up a quota scheme requiring employers of 20 or more persons to allocate 3% of the jobs to disabled persons who had registered under the Act.³⁹⁷ The statute does not apply to government jobs or to the National Health Service, but they have voluntarily bound themselves to meet the quota. If employers do not comply with the requirements, proceedings may be brought with the consent of the Minister concerned for an offense under the Act.³⁹⁸

A company employing more than 250 persons is required to include a statement in its Directors Report describing the company's policy towards disabled employees.³⁹⁹ A recent assessment indicates that many employers have failed to meet the 3% quota of disabled employees.⁴⁰⁰ Only 11.2% of large and medium sized companies met the quota, compared with just over a third (35.4%) of small firms--many of them not subject to the quota--employed more than 3% disabled employees. In 1991, only 20.4% of employers met the quota requirement. Even the government has failed to meet the quota; according to civil service employment statistics, the overall percentage of employees registered as disabled is

³⁹⁴ 7 & 8 Geo. 6, ch. 10 ("1944 Act"), as amended by the Disabled Persons (Employment) Act, 1958, 6 & 7 Eliz. 2, ch. 33.

³⁹⁵ 1944 Act, §1(1).

³⁹⁶ *Id.* §1(2).

³⁹⁷ *Id.* §§ 6-10. The 3% quota was set by the Disabled Persons (Standard Percentage) Order 1946, SR&O 1946/1258.

³⁹⁸ *Id.* §19.

³⁹⁹ Companies Act, 1985, ch. 6, Sched. 7, Part III.

⁴⁰⁰ *Employment Gazette*, Feb. 1992.

only 1.5%.⁴⁰¹ In recent years, the government has taken no action against employers who did not meet the quota.⁴⁰² The Minister concerned has stated that "the Government favoured education and persuading employers to end discrimination in these areas."⁴⁰³

An alternative employment scheme, called the Sheltered Placement Scheme, is offered by a number of local (government) authorities (LA).⁴⁰⁴ Here, persons who are able to do a particular job, but at a much slower pace, are employed by a sponsor LA and then leased out to an employer who has suitable work. The employer pays for the work done, and the LA provides an additional amount.

The overall employment picture of disabled persons is dismal. Surveys by the Office of Population, Censuses and Surveys indicate that fewer than 31% of disabled people of working age are in paid employment, and they are paid far less on average than other people.⁴⁰⁵ The reasons for this pattern are believed to lie in discriminatory practices. In a recent review, it was concluded that "discriminatory attitudes and institutionalised practices which disproportionately disadvantage disabled people in employment are entrenched within the British labour market."⁴⁰⁶ This constitutes one of the major reasons for which many organizations for the disabled have called for legislation, comparable to that on race and sex discrimination, to prohibit discrimination on grounds of disability.

Concern with the underemployment of disabled people has been expressed at the highest level. An industry group, The Employers Forum on Disability, has issued a ten-point agenda on disability, which according to Prime Minister John Major, will send "a clear message of opportunity and fairness to people with disabilities - backed by the implementation of good employment practices. I will be commending the principles to my Cabinet colleagues."⁴⁰⁷

⁴⁰¹ *Press Association Newsfile*, Mar. 31, 1993 (in NEXIS).

⁴⁰² "UK: Disabled by Prejudice," *Reuter Textline*, Jan. 2, 1993 (in NEXIS). Until 1990, there were only ten prosecutions under the Act. Cooper, *supra* note 6, at 94.

⁴⁰³ *Press Association Newsfile*, Mar. 31, 1993 (in NEXIS).

⁴⁰⁴ Cooper, *supra* note 6, at 96.

⁴⁰⁵ "Positive Action on Disability: Three Case Studies," *Equal Opportunities Review*, 11 (May/June 1992).

⁴⁰⁶ *Id.*

⁴⁰⁷ *Equal Opportunities Review* 9 (Mar./Apr. 1992).

Chronically Sick and Disabled Persons Act, 1970⁴⁰⁸

This Act places a statutory duty on LA to maintain a register of the number of disabled persons in its area. Anyone qualifying as a *disabled* person, as defined, can ask to be put on the register. Although registration is not mandatory in order to receive services, the information "is clearly administratively useful in organizing and prioritizing limited resources."⁴⁰⁹

Under section 2 of the Act, an LA must assess the needs of each disabled person for receiving the following services:

- practical assistance in the home;
- obtaining a television or radio, and assistance in using the local library;
- assistance in travelling to educational and recreational facilities and day centers where activities are held;
- assistance in the adaptation of the home, designed for safety, comfort or convenience;
- facilitating the taking of vacations;
- provision of meals at home or in a day center; and
- use of a telephone and any special equipment necessary to enable the use of the telephone.

Each LA must periodically publish information as to the services that are provided to disabled persons.

Sections 4 to 6 of the Act require appropriate sanitary conveniences and parking facilities to be made available for disabled persons in facilities to which the public is admitted. Sanitary conveniences must also be provided for disabled persons in factories, offices, shops and railway premises. A 1976 amendment extended the provisions to places of employment.⁴¹⁰

Access for the handicapped is also provided in regulations issued under the Building Act, 1984. The Building Regulations 1991, Part M, requires "reasonable provision" to be

⁴⁰⁸ Ch. 44.

⁴⁰⁹ Cooper, *supra* note 6, at 87.

⁴¹⁰ Chronically Sick and Disabled Persons (Amendment) Act, 1976, ch. 49.

made for disabled people to gain access to and use of buildings (other than dwellings), sanitary conveniences, and audience or spectator seating, if any.⁴¹¹ Barnes points out a number of problems with these regulations.⁴¹² Many public buildings are accessible to the handicapped at the main entrance only. For example, in hotels, access arrangements may be made in the reception area around the foyer. Nor do developers have to make existing structures more accessible. Moreover, Part M is intended to apply only to those who have difficulty in walking; it does not cover the needs of those with visual or hearing impairments.

Disabled patrons of hotels and restaurants, particularly American visitors prompted by the Americans With Disabilities Act, 1990, have recently started suing in the UK. The U.S. legislation is seen as having a wide-ranging effect. An official of the Royal College of Art's Design Age Unit states that the law is "prompting people not to just switch off when the words *disability* or *elderly* are mentioned."⁴¹³

Mental Health Act, 1983

This statute, a consolidation of previous scattered measures, along with a Code of Practice (draft), sets out a number of legal rights of those who are considered to have a mental disability. The Code begins with an important statement of principle:

Mentally disordered people should be treated with the same respect for their dignity, personal needs, religious and philosophical beliefs, and accorded the same choices as other people.⁴¹⁴

A mentally disordered person may be compulsorily detained as a patient in a mental institution. The Act allows detention for up to 72 hours in cases of emergency, for up to 28 days for purposes of assessment, and for up to 6 months for assessment and treatment. Such persons may also be sent to high-security special hospitals by order of a criminal court or on transfer from a prison. To ensure that the rights of the mentally disordered are protected, the managers of the institutions in which they are detained must provide the following information to them, orally and in writing, with a copy to be supplied to the patient's nearest relative:

- the legal provisions under which they are detained;

⁴¹¹ 1991 S.I. No. 2768.

⁴¹² Barnes, *supra* note 3, at 173.

⁴¹³ *Reuter Textline*, Sept. 3, 1993 (in NEXIS).

⁴¹⁴ Cooper, *supra* note 6, at 136.

- their right to apply to a Mental Health Review Tribunal;⁴¹⁵
- how to obtain a discharge;
- their right to refuse consent to certain types of treatment;⁴¹⁶
- the role of the Mental Health Act Commission;⁴¹⁷
- the Mental Health Act Code of Practice; and
- their rights concerning any censorship of their correspondence.⁴¹⁸

The Code of Practice states that "detained patients do not necessarily need physical security. This is only needed for a small number."⁴¹⁹ It also provides that physical restraint of patients must be used only in accordance with written hospital procedure, recorded in detail each time and reviewed in the context of a planned program of care. The Code also provides detailed guidelines on the use of seclusion.

The vast majority of the resident population of mental institutions consists of voluntary patients who are in the same position as patients in a general hospital. Their consent must be obtained for administering any form of treatment. Voluntary patients are free to leave the mental institution whenever they wish, the Code of Practice requiring that such patients be informed of this right. Voluntary patients also come within the purview of the Mental Health Act Commission.

⁴¹⁵ Each health authority region establishes a tribunal to deal with applications and references by and in respect of patients who are liable to be detained or subject to guardianship. *Id.* §65(1). The tribunal may direct the discharge of a patient detained for assessment if satisfied that he is not suffering from mental disorder or that his detention is not justified in the interests of his own safety or health or for the protection of other persons. *Id.* §72. For a discussion of a recent court case on the effect of a discharge of a patient by a tribunal, see F. Morris, "Detaining Mental Patients," 137 *New Law Journal* 682 (1993).

⁴¹⁶ For patients detained for more than 72 hours, capacity to consent to treatment is assessed in relation to particular treatments. Under the Code, the detained patient must consent to psychosurgery, sex hormone implants and electro-convulsive therapy.

⁴¹⁷ The Commission is entrusted with providing general protection for detained patients, including a duty to visit and interview detained patients and to investigate their complaints. *Id.* §§121(2)(b), 120(1),(4)].

⁴¹⁸ *Id.* §132.

⁴¹⁹ Cooper, *supra* note 6, at 139.

Various provisions are also made for social services to be provided to mentally disordered people by the LA. Their functions fall into the following broad categories:

- to provide residential accommodation for those aged 18 or over who need care or attention;
- to provide occupational, recreational and other services;
- to set up a register and provide home adaptations and other facilities;
- to provide treatment for the prevention, care and after-care of illness; and
- to perform various functions such as acting as guardian or appointing others to so act, to appoint and provide services of social workers, visiting patients in hospitals, making reports to hospitals, etc.⁴²⁰

A mentally disordered patient of sixteen years and above may be placed under guardianship for a six-month period, renewable for a similar period, with further extensions for one year at a time.⁴²¹ Application for guardianship may be made on grounds that the mental disorder is of a type which warrants the action and that it is necessary for the welfare of the patient or for the protection of other persons. The application must be backed by the written recommendation of two medical practitioners giving reasons for their opinions. When accepted, the guardian acquires the authority to require the patient to reside at a particular place (not being a mental institution) and to attend at places and times specified for medical treatment, training or education.

The affairs of a mentally disordered person may also be taken care of under a power of attorney⁴²² and by the Court of Protection, an office within the High Court of Judicature.

The fact that a person suffers from a mental disorder within the meaning of the 1983 Act and can be detained and subject to guardianship does not itself, however, affect his legal capacity in both civil and criminal law. Such lack of capacity is determined by a court or jury, based on certain presumptions. At common law, every person is presumed to have mental capacity until the contrary is proved. In civil proceedings, the rationality of an act and the manner in which it is done is regarded as strong evidence that it was carried out by a person with legal capacity, even though that person may be liable to be detained for mental

⁴²⁰ For citations to the various statutory provisions, see 30 *Halsbury's Laws of England; Mental Health* (reissue) ¶1224, *et seq* (4th ed. 1992).

⁴²¹ Mental Health Act, 1983, §7 *et seq*.

⁴²² Enduring Power of Attorney Act, 1985, ch. 29.

disorder.⁴²³ In criminal cases, the defense must prove insanity on the balance of probabilities. The defense is not established by showing merely that the accused suffers from a disease of the mind or is mentally defective.⁴²⁴

The issue of legal capacity of mentally disordered persons is currently under review in both England and Scotland. In April 1993, the Law Commission of England and Wales issued a consultation paper, *Mentally Handicapped Adults and Decision-Making*. The report makes proposals for defining the legal rights and obligations of caregivers, mental incapacity and, in particular, fluctuating incapacity and how to deal with disputes and difficulties.

More recently, the Scottish Law Commission issued a discussion paper *Mentally Disabled and Vulnerable People: Public Authority Powers*. The paper proposes changes in and clarification of the powers available to LA and the police to enable them to help those who are or may be mentally disordered or vulnerable.

Disabled Persons Act, 1981⁴²⁵

This statute serves multiple purposes with regard to the needs of disabled persons:

Section 1 places a duty on highway authorities carrying out works on streets that may impede the mobility of disabled or blind persons to execute the work in a manner that gives regard to the needs of such persons. Such regard must be given in the placement of lamp posts, traffic signs, and other permanent street obstructions. The authorities must also consider the desirability of providing ramps for the use of the handicapped. Any opening in the street must be properly protected for the benefit of blind persons.

Under section 2, local planning authorities, when granting planning permission, are required to draw the attention of the permit seeker to the provisions of the Chronically Sick and Disabled Persons Act, 1970, for the benefit of disabled persons.

Section 7 requires signs to be placed outside public buildings indicating that access and other facilities are available for the disabled.

⁴²³ *Halsbury's*, *supra* note 39, at ¶1388.

⁴²⁴ *Id.* vol. 11(1) ¶¶32-33.

⁴²⁵ Ch. 43.

Education Act, 1981⁴²⁶

This enactment followed the recommendation of a committee that the education of disabled children should be conceived in terms of *special education needs*, calling for *special educational provision*, rather than under defined categories of handicap. Under this approach, a much larger number of children are identifiable as being in need of special education than those who fall within specific categories of handicap. Thus, section 1 identifies a child to have special education needs if he has a *learning difficulty*. This is defined to be "a significantly greater difficulty in learning than the majority of children at his age" or one who has a disability that prevents or hinders him from making use of educational facilities generally provided in schools.

Section 2 places a general duty on local education authorities (LEA) that children with special educational needs be educated, as far as is practicable, along with other children in ordinary schools. Under section 3, however, if the LEA is satisfied that it would be inappropriate for the special educational needs of a particular child to be met in an ordinary school, it may, after consulting the child's parents, arrange for the needs of the child to be met otherwise than in a school.

In assessing the special educational needs of a child, the LEA must notify the child's parents and give them the opportunity of making representations. After an assessment is made, the parents may appeal the denial of special services to the Secretary of State, who can, if he thinks fit, direct the LEA to reconsider their decision. Under the Education (Special Education Needs) Regulations 1983,⁴²⁷ in making assessments as to special education needs, the LEA are required to seek medical, psychological, educational and other advice.

The issue of special education is presently awaiting consideration in Parliament. According to press reports, the Spastics Society warned a committee of the House of Commons that special education for disabled children is in crisis.⁴²⁸ Research showed that the children had to wait longer than the recommended six months for an assessment of their needs and a statement of an action plan to be provided by the LEA. The Society complained that the assessment and the action plan were drawn up by the same authority, so the statements were too often written with a knowledge of the resources available rather than the needs of the child. The Society believed that the enactment of a new bill provided the opportunity to ensure that disabled children and their families received better help and services. It recommended that: the assessment of needs of disabled children be completed within six months; money be set aside and protected to fund each disabled child's education;

⁴²⁶ Ch. 60.

⁴²⁷ S.I. 1983, No. 29, as amended.

⁴²⁸ *Press Association Newsfile*, Jan. 26, 1993 (in NEXIS).

an independent inspectorate be created; and the full involvement of parents, by appointing an independent facilitator to guide them through the legislative maze, be allowed. According to the government, the bill gives landmark rights to children with special educational needs and their parents.

Disabled Persons (Services, Consultation and Representation) Act, 1986⁴²⁹

The preamble to this statute declares its purpose is "to provide for the improvement of the effectiveness of, and the co-ordination of resources in, the provision of services for people with mental or physical handicap and for people with mental illness."

Section 1 makes provision for the issuance of regulations for the appointment of persons to act as the authorized representatives of disabled persons. The regulations may provide for the appointment in such capacity of the parent of a disabled person or one who has parental responsibility. The representative is entitled to so act before an LA in connection with the provision of services under the welfare regulations applicable to disabled persons. If requested, the LA must supply any information to the representative, and make available for inspection any documents relating to those services.

Section 3 requires an LA, when assessing a disabled person's need for welfare services, to allow the disabled person or his representative to make representations concerning the need for such service. It also gives the disabled person the right to obtain a statement from the authority explaining the basis on which an assessment of services is made, including an explanation why a particular need identified by the disabled person cannot be met.

Section 4 relates to the planning of services for children with special education needs who are assessed as being disabled. An LEA must assess whether a child is or is not a disabled person in his fifteenth year. If found to be disabled, the LEA must notify the social services department of the date when the child will cease to receive full-time education. The social services department will then carry out an assessment of the child's needs.

Section 7, applying to patients who are under hospital treatment for a mental disorder for six months or more, requires that notification of a patient's discharge be made by the hospital to the LA of the area in which the person will reside. If the person is under nineteen years of age, the LEA must be notified. Both the LA and the LEA are required to cooperate in assessing the patient's need for services for which they are responsible.

The following additional points may also be made:

- if an LA fails to assess the needs of a disabled person, a court order may be obtained;

⁴²⁹ Ch. 33.

- if a disabled person is receiving substantial assistance from a care giver at home, the latter's views must be taken into account, including the extent of the person's willingness and ability in assessing the disabled person's needs. This is intended to promote genuine shared care between informal care givers and social services; and
- the LA must inform a disabled person of all the relevant services he may obtain, including those provided by voluntary bodies.

Special financial benefits

Disabled persons, as others who have provided contributions towards national insurance, are entitled to receive payments for sickness or invalidity benefits. A system of income support payments is maintained. There are also special benefits payable for a disability. These are not based on insurance contributions. Some of these special benefits are:

- benefits for industrial disease or injury;
- war disablement pensions;
- attendance allowance;
- mobility allowance;
- severe disablement allowance; and
- invalid care allowance.⁴³⁰

Until recently, cash payments from an Independent Living Fund were paid to disabled persons to enable them to stay in their own homes. A new law, the Disability (Grants) Act, 1993, has set up two new funds: the Independent Living Extension Fund for those receiving payments from the old fund and the Independent Living Fund 1993 for new claimants.⁴³¹ The new legislation has been criticized as reduced finances are available for the funds and greater responsibility is placed on the LA. Since the LA are not legally allowed to make cash payments, the claimants can expect only services up to a certain amount. It is claimed that as

⁴³⁰ Details of the system may be found in House of Commons Library Research Division, "Background Paper No. 249," *The Disablement Benefits System* (1990).

⁴³¹ *Press Association Newsfile*, Mar. 15, 1993 (in NEXIS). Since a copy of the Act has not yet been received, the final shape of the legislation is not known.

home care can cost more than the cash benefits that will be allowed, many disabled persons will be forced to leave their homes.⁴³²

Under the Transport Act, 1985,⁴³³ section 95, blind persons and those suffering from any disability or injury impairing their ability to walk are eligible to receive travel concessions under schemes set up by the LA. Under section 125 of the statute, a Disabled Persons Transport Advisory Committee is appointed to advise the Secretary of State for Transport on the transport needs of persons with disabilities. The section requires that, as far as possible, at least half the committee members be disabled persons. As plans for the privatization of the state-run British Rail are progressing, the government has given assurances that the legislation will protect the right of disabled persons to travel at a concession rate.⁴³⁴

In July 1993, regulations submitted for approval by Parliament under social security legislation include a special concession for loans taken out by disabled people for adapting their homes.⁴³⁵

III. Discriminatory laws

No overtly discriminatory laws have been found but, as was discussed above, the problem in the UK is that of piecemeal legislation. This means that there are "inevitably gaps, inconsistencies and sector-specific deficiencies in the law."⁴³⁶

IV. Conclusion

There are numerous laws furthering the rights of the disabled person in the United Kingdom. Until the 1970s, by common consent, the UK led the world in laws making life better for disabled people.⁴³⁷ What is now stated to be missing, however, is a *banner* or

⁴³² *Sunday Telegraph*, Mar. 14, 1993 (in NEXIS).

⁴³³ Ch. 67.

⁴³⁴ *Financial Times*, May 19, 1993 (in NEXIS).

⁴³⁵ *Press Association Newsfile*, July 13, 1993 (in NEXIS).

⁴³⁶ Barnes, *supra* note 2, at 262. The Commission was referring to the protective legislation in Northern Ireland, but, as stated, the laws there largely mirror those on the mainland.

⁴³⁷ *The Times*, Mar. 25, 1993 (in NEXIS), as stated by the sponsor of the bill on civil rights for disabled persons.

headline law outlawing discrimination outright in order to "plug the gaps, iron out the inconsistencies and correct the flaws in existing provisions."⁴³⁸ More particularly:

What disabled people are demanding is a comprehensive anti-discrimination mandate which will provide a firm legislative framework for the introduction of policies which will: first, bring about a non-disabling accessible environment; and, second, send a clear signal throughout society that unfair discrimination against disabled people on whatever grounds and in whatever context is no longer acceptable. The type of legislation already in place in America, Canada and several other western democracies....⁴³⁹

However, even if success in getting the proposed legislation through Parliament is achieved, as Barnes, himself disabled, has observed, there is:

[A] particularly pervasive and comprehensive form of institutional discrimination which operates both in society generally and in the state, and is supported by history and culture. It incorporates the extreme forms of prejudice and intolerance usually associated with individual or direct discrimination, as well as the more covert and unconscious attitudes which contribute to and maintain indirect and/or passive discriminatory practices within contemporary organisations.⁴⁴⁰

Because of these underpinnings, Barnes continues, the changes of policy thus far introduced for the benefit of disabled persons have resulted in transforming discrimination "into more subtle and less obvious forms."⁴⁴¹

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⁴³⁸ *Id.* at 261-262.

⁴³⁹ Barnes, *supra* note 2, at 258.

⁴⁴⁰ Barnes, *supra* note 3, at 3.

⁴⁴¹ Barnes, *supra* note 3, at 26.