

Legal Measures for Inclusive Society

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<Abstract>

Inclusion is interpreted as 'Integration', but its meaning is little different when inclusion means acceptance or highlights integration. An Australian inclusion act was revised from a service act but the act just accepts the rights of choice. For full participation and inclusion, legal grounds ensuring more macroscopic human rights and participation should be introduced. Followings are conditions to take all legal measures.

1. Inclusion in the CRPD

Some countries interpret 'Inclusion' as 'magnanimity' or 'embrace' and 'engagement', while some interpret it as 'combine' and 'integrate'. Korea is in the latter countries. The former emphasizes acceptance and the latter emphasizes integration.

In the preamble, the CRPD says that 'CRPD is for inclusive and integrate society to protect and promote the rights and dignity of persons with disabilities'. Also the article 3 of the CRPD mentions full and effective social participation and inclusion; article 16 mentions re-inclusion away from abuse;

article 19 describes all measures should be taken for living independently and being included in the community; and inclusion is mentioned in the article 24 'Education', article 26 'Rehabilitation' and article 27 'Employment'. The CRPD says that inclusion should be guaranteed in all area of life at all level for full and equal participation.

Inclusion in education requires to create environment ensuring individualized education service to educate persons with disabilities in a general school not a special school setting. Inclusion in employment includes equal treatment, anti-discrimination and training in competitive job market. Inclusion in the community requires deinstitutionalization and full participation in political, social, cultural and economic life.

To realize these goals, which measures will be taken in the Korean legal context?

2. Disability Inclusion Act in Australia

The Disability Inclusion Act of New South Wales, Australia pursues inclusive society and ensures the rights of service choice of persons with disabilities in order to overcome the limits of the Disability Services Act. The contents of the Disability Inclusion Act include declaring equal rights of persons with disabilities; establishing action plan for inclusion; expanding the rights of service choice through financial assistance; ensuring the rights of service accessibility; and conducting mandatory disability abuse reporting system.

3. Legal measures for inclusive society in Korea

In education, inclusive education is pursuing but separate education is still being conducted; In employment, a disability quota system is implemented to hire persons with disabilities in a competitive job market and the government offers incentive to a company who hires persons with disabilities, while levies penalty when not-hired the disabled. But the government exempts minimum wage application to vocational rehabilitation facilities; Deinstitutionalization policy is implemented in living institutions but still the government accepts institutions as a service option; although the government conducts a personal assistance service, eradicates a disability grading system and provides services using community resources through comprehensive research, the rights of service choice and participation in the community of persons with disabilities are still not enough; disability awareness raising education for the public has been mandatory but the system still is in the introduction stage; a cultural voucher system and small financial assistance system are being implemented to make sure cultural rights of low-income persons with disabilities, but more efforts should be done to improve convenient facilities and accessibility; and government's policies for persons with disabilities are conducting just for anti-poverty or to reduce economic burden for low-income persons with disabilities.

4. Necessary additional legal measures for inclusive society

1) Introducing disability sensitive budget system

This system is to evaluate the impact of policy carried out with budgets of central and local governments on persons with disabilities. There are some budgets which provide no benefits on the disabled. For example, when installed a pedestrian overpass without an elevator, this budget will not

have any impact on persons with disabilities. To solve the problem in this case, additional budget allocation should be required. If a support policy to tackle poverty for low-income people would not help to narrow poverty gap of persons with disabilities, additional policy and budget must be required to solve poverty issue of persons with disabilities. While some countries introduce a gender sensitive budget, still no country to introduce a disability sensitive budget.

2) Conducting Direct payment / Cash payment systems

This system is to provide service with cash instead goods for persons with disabilities so as that they can purchase services what they want to use. For the system, a supporting agency is necessary to limit usage areas and for financial reporting after collecting service's receipt. And also need a tool to evaluate how much cash could be given for a person with disability. And persons with disabilities would be given the rights to choice whether they can choose goods or cash for service.

3) Strengthening disability awareness raising

In Korea, disability awareness raising training in workspaces is mandatory and levy will be imposed when the training will not be conducted. Also a training to create a trainer is being conducted and students, public servants and employees should be received this training. On-line training is also available considering time and cost. Penalty will be imposed to an employer and a head of organization, not an individual.

Changing awareness of people is very important to policy for inclusion before allocating budget. Inclusive society can be established based on the environment without prejudice and discrimination.

4) Accessibility rights and Inclusion act

Accessibility is to establish environmental factors for an inclusive society. To ensure accessibility rights, expanding convenient facilities and accessibility to internet, mobile phone, consumer electronics and kiosk is guaranteed. In Korea, establishing convenient facilities in public buildings is mandatory but this policy is applied only for new buildings. Ensuring internet accessibility is still recommendation.

One of local district in Seoul City enacted an ordinance to establish a disability rights committee including persons with disabilities. And this committee must review a project plan regarding persons with disabilities before budget allocation and building construction. Persons with disabilities ask the government to establish a permanent disability policy coordination committee at the national level, but still not accepted. Therefore this local committee is difficult to make a policy for inclusion. However, with a rights ordinance, the local district takes specific measures such as remedy for rights violation, monitoring and review on inclusive policy.

5) Inclusive education

Physical inclusion may be noninterference. In an inclusive education, distribution and enough quantity of services which fulfill accessibility to facilities and service needs are very important. More human resources must be stationed to conduct an individualized education, and developing and distributing educational material and computerization of curriculum must be combined together in order to make sure customized education.

6) Inclusive employment

For inclusion of persons with severe disabilities, role of employment should be highlighted. Currently, persons with disabilities are working in simple low-paid jobs and even can't receive minimum wage in

sheltered workshop settings. Mandatory employment quota system for the disabled is being worked to a certain extent, but big companies are more likely not to abide by the system and the government develops simple works as the job for persons with disabilities. Support system is required to revitalize higher education and to create talented persons with disabilities. Also to narrow the gap of employment rate of the disabled, supported employment and workplace centered service are required. And other measures such as assistive devices, renovated working environment and personal assistance in the workplace need to be provided. The key of successful inclusive employment is in creating good environment and raising awareness, cultivating talented persons through training of persons with disabilities.

7) Inclusive community

Deinstitutionalization policy should be fully applied for persons with disabilities living in institutions to live independently in the community. Current institution based policy for persons with severe disabilities and mental disabilities should be changed to ensure equal treatment in the community through housing support, income compensation, advocacy and participation in the community. When ensured equal level of life, not considering persons with disabilities as the subject of charity, the community can become an inclusive society.

8) Full participation

To make sure eligibility for election of persons with disabilities in the national assembly and local government's council, a functional proportional representation system is required. In Korea, there was a time when we had as many as 7 lawmakers with disabilities, and now there are lawmakers with disabilities, but no disabled lawmaker from the proportional representation system. At the local government level, some persons with disabilities were elected as a council member by a preferential

nomination system. The rights to participate in the election can be guaranteed by ensuring accessibility and service together.

Disability culture must be acknowledged as a characteristic area and persons with disabilities must enjoy cultural rights for inclusive cultural life. With a voucher system to provide a ticket or a cultural support pilot project to reduce economic burden, full participation and inclusion of persons with disabilities in cultural life are difficult to be realized.

5. Conclusion

Inclusion is not control minority groups by majority groups in the society and also is not forcing toward the society of majority groups. Mutual recognition and acceptance are required. Inclusive society means that minority must be protected to enjoy their rights as a member of the society. Firstly prejudice and discrimination should be eradicated and we need to create good environment for all persons to live together. To this end, we continue to study and review effectiveness of support measures and its alternatives, not just carry out support measures. And also strong legal grounds should be established for inclusion. We must evaluate how much government budget and policy are enough to realize full participation and inclusion, and must be able to take additional measures if necessary. And more detail legal grounds should be introduced to change public awareness and to realize the rights.