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**Afsaneh Ataee**

Law Department, Najafabad  
Branch, Islamic Azad  
University, Najafabad, Iran

**Dr. Valiollah Noori**

Law Department, Shahr-e  
Kord Branch, Islamic Azad  
University, Shahr-e Kord, Iran

**Dr. Pourkhaghan**

Law Department, Shahr-e  
Kord Branch, Islamic Azad  
University, Shahr-e Kord, Iran

**Correspondence**

**Afsaneh Ataee**

Law Department, Najafabad  
Branch, Islamic Azad  
University, Najafabad, Iran

## Legal protect of the deaf in international documents and the Iranian legal system

**Afsaneh Ataee, Dr. Valiollah Noori and Dr. Pourkhaghan**

### Abstract

**Background and Aim:** This article seeks to examine the rights of deaf and hard of hearing people in international documents and domestic law of Iran. In this review, the supports in the mentioned documents are discussed and the weaknesses, strengths, objections, and challenges in the laws are analyzed and examined.

Lack of access to community facilities will lead to the marginalization of deaf people. Access to community facilities is an important factor that creates equal opportunities and realizes the rights of deaf people.

**Method:** This paper has a comparative approach and uses the descriptive-analytical method to examine the support available in international documents. It also addresses the supports provided for in Iranian domestic laws and regulations, as well as the obstacles to support these individuals.

**Result:** Iran's accession to the Contract on the Rights of Persons with Disabilities, the International Covenant on Cultural, Social, Economic and Children's Rights, is one of the salient points of these protection laws. By implementing Iran's domestic and international obligations regarding the rights of the deaf, it is concluded that the Comprehensive Law and its executive regulations have been adopted several years before accession to the Contract on the Disability, but they cover most of the concepts of the Contract on Education.

**Conclusion:** According to the Senate and the convention, no significant legal action was taken and the program did not address the deaf directly. The lack of an effective mechanism for laws protecting the rights of persons with disabilities is an institutional and structural obstacle to the realization of the rights of persons with disabilities, especially the deaf.

**Keywords:** Disability, deaf, hard of hearing, human rights, international law, rules Iran, Low hearing loss

### Introduction

We live in an era that the dignity of all human beings, regardless of their physical differences, is one of the most fundamental principles of human rights. Moreover, the rights of the world's most vulnerable people, including children, women, minorities and the disabled, have been addressed and various international instruments have been adopted in support of these individuals. Therefore, paying attention to the rights of the deaf and hard of hearing, while protecting the rights of people with disabilities, does not seem far-fetched. It should be mentioned that in the present age one billion people live with disabilities <sup>[1]</sup>.

These people are entitled to enjoy all economic, social, cultural, civil, and political rights based on the principle of the dignity of all human beings and the principle of equality. This has been stated in the Universal Declaration of Human Rights and the Covenants (Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights). It is up to all the governments of the world to enable these people to enjoy their inalienable rights without any discrimination regarding their disability, and to enable them to enjoy inalienable rights even by using "positive discrimination" <sup>[2]</sup>.

Iran's accession to the Contract on the Rights of Persons with Disabilities, the International Covenant on Cultural, Social, Economic and Children's Rights, is one of the salient points of these protection laws. By implementing Iran's domestic and international obligations regarding the rights of the deaf, it concluded that the Comprehensive Law and its executive regulations adopted several years before accession to the Contract on the Disability, but they cover most of the concepts of the Contract on Education. However, there are cases in the laws and regulations of the Islamic Republic of Iran that has not referred to it. For example, Article 24 (3:A-C) of the contract on the rights of deaf <sup>[1]</sup> which is one of the most appropriate

methods to facilitate the learning of sign language in the deaf, and this issue is less common in Iran which deals with the issue of facilitating the learning of sign language for deaf persons as one of the most appropriate methods and this issue is less observed in Iran <sup>[2]</sup>.

Therefore, the international human rights institutions, especially the United Nations, have taken important steps to further the rights of these people and to promote the rights of these people as much as possible. These include the Declaration on the Rights of Persons with Disabilities, the Global Action Plan for Persons with Disabilities, and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, and finally, the Contract on the Rights of Persons with Disabilities and its Optional Protocol in 2006. The success of this contract was huge, and this document was accepted and modeled as the basis and inspiration for all countries regarding legislation on the rights of people with disabilities <sup>[3]</sup>. Fortunately, our country has not been inattentive to this process and has become a member of this contract. Moreover, Iran has itself enacted a comprehensive law for the protection of the disabled, which is very promising and reflects the Iranian legislator's attention and to the rights of the disabled, including the rights of the deaf and hard of hearing <sup>[3]</sup>.

This article deals with the issue of deaf people with a descriptive-analytical method by examining international documents in a brief overview of international human rights documents. In general, the rights of deaf people can be presumed in international human rights instruments with documents such as the Charter of the United Nations, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights due to the fact that deaf people are human. Moreover, the basis for enjoying the rights in these documents can be considered as the source of equality of human beings in the dignity of the rights and not based on discrimination on the basis of color, sex, race, etc. Given that these documents are for all members of humanity, so the deaf as part of people with disabilities will also enjoy the rights recognized in the documents in full <sup>[4]</sup>. International documents that specifically address the rights of people with disabilities, including the deaf, are: Contract on the Rights of the Child, Declaration of the Rights of Persons with Disabilities, Global Action Plan for Persons with Disabilities, Standard Rules and Equalization of Opportunities for Persons with Disabilities, Convention on the Rights of Persons with Disabilities and the Optional Protocol <sup>[4]</sup>.

The rules governing the rights of persons with disabilities, like all human rights rules, have evolved over time, from the policy of killing people with disabilities to the policy of taking care of them and, in the present age, the right to education and rehabilitation is considered for them. Advertising posters distributed by NGOs (Autonomous Organization for the Disabled) during the Preparatory Committee negotiations for the rest and the drafting of the Convention on the Rights of Persons with Disabilities sought to convince the policies of the representatives of the countries that deaf documents have been missing and neglected in the human rights system. The rights of the deaf were not explicitly recognized in any binding international human rights documents <sup>[6]</sup>. In Iran, until a few decades ago, attention to the affairs of the deaf and their social welfare were limited to religious forms, and welfare services were provided only in the form of religious duties such as paying

Khums <sup>[1]</sup> and Zakat <sup>[2]</sup>, etc. The public welfare of the people in our country had not been seriously pursued by the government and it does not have a long history. The establishment of organizations and institutions to provide welfare services to the people dates back to pre-revolutionary development programs. For the first time in development programs, a chapter entitled "Social Welfare Measures" was predicted. After that, based on the experiences gained from the previous program, the social welfare provision was predicted. In the next programs, the social welfare provision was predicted and presented more comprehensively and with various programs <sup>[6]</sup>.

The affairs of the deaf have been taken care by the Ministry of Welfare for several years before the revolution, through a number of institutions, some of which were mentioned and for some time after the revolution, the deputy of the Health and Welfare Ministry continued these activities, in the form of rehabilitation services offices, protective services and programs and budgets. After the Islamic revolution, with the approval of the constitution and in order to fulfill principles 21 and 29 of this law and with the efforts of many experts, the bill to form the country's welfare organization was approved on June 15, 1980 <sup>[7]</sup>.

### Method

This paper has a comparative approach and uses the descriptive-analytical method to examine the support available in international documents.

### The need for protective laws

Unfortunately, deaf and hard of hearing people, as members of the human family, have always been dealing with many problems. These difficulties are: wrong and incorrect conceptions of members of society towards their special situation, the absence of explicit or sometimes incomplete laws that cover all their rights and the lack of protective mechanisms to observe how their rights are realized. All these problems and obstacles, which we have briefly mentioned, are not issues that have arisen all at once. However, they have all been deeply rooted and institutionalized over time. Therefore, removing and overcoming these barriers cannot be solved quickly, but it is required to create a culture and the citizens of the society should correct and change their attitudes towards disability; moreover, comprehensive legislation should be enacted in all areas. In addition, it requires the efforts of all the people in the country, including all the citizens and the officials, so that the rights of these people would be exercised. It is worth mentioning that the support provided, both internationally and nationally, in protecting the rights of the deaf and hard of hearing still has a long way to go before achieving the desired perfection. There is a lack of comprehensive laws to address all economic, social, cultural, civil, and political rights of these individuals. These are among the most important mental, social and normative barriers that these people have always been struggling with <sup>[8]</sup>.

<sup>1</sup> Khums refers to the required religious obligation of any Muslims to pay one-fifth of their acquired wealth from certain sources toward specified causes.

<sup>2</sup> Zakat is an Islamic finance term referring to the obligation that an individual has to donate a certain proportion of wealth each year to charitable causes.

Supports in the international documents:

International documents that specifically address the rights of people with disabilities, including the deaf, include:

- WHO Global disability action plan <sup>[9]</sup>.
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities <sup>[10]</sup>.
- Declaration of the Rights of Persons with Disabilities <sup>[11]</sup>.
- Contract on the Rights of the Child <sup>[12]</sup>.
- Contract on the Rights of Persons with Disabilities and their Optional Protocol <sup>[12]</sup>.

### Supports in Iranian law

- Comprehensive law for the protection of the rights of the disabled <sup>[13]</sup>.
- Regulation on Inclusive (integrated) Education for Children
- Constitution: Article 20, Article 24, Article 28

### Article 20

#### Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

- a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

### Article 24

#### Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
  - a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
  - b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
  - c) Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
  - a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
  - b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which

- c) they live;
- c) Reasonable accommodation of the individual's requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
  - a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
  - b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
  - c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

### Article 28

#### Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
  - a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

- b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care;
- d) To ensure access by persons with disabilities to public housing programmes;
- e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Laws on the establishment of the welfare organization and the structure and duties of this organization

### Result

Absence of an efficient and effective mechanism as laws for promoting and protecting the rights of people with disabilities is an institutional and structural barrier to the realization of the rights of people with disabilities, especially the deaf and hard of hearing. What is important after the law-making stage in supporting deaf people and people with disabilities in general is the existence of effective and efficient protection mechanisms, and at the same time practical in line with the components of laws to protect people with disabilities. After enacting laws to protect deaf people and also people with disabilities in general, it is essential to have effective, efficient and practical protective mechanisms to enforce laws to protect the disabled. The existence of these mechanisms makes the protection of the disabled come into force. Therefore, what seems obligatory and rational to governments that are party to the Contract on the Rights of Persons with Disabilities is this: If they already have mechanisms to protect the rights of people with disabilities, they must pay attention to the principles in the Contract and they must strengthen its weaknesses and reinforce its strengths. These are some of the principles that can be proposed in the framework of institutional and structural barriers and solutions can be considered for it.

### Discussion

These points are among the principles that can be proposed as institutional and structural barriers and solutions can be considered for them <sup>[14]</sup>.

- a) Countries parties to the Convention on the Rights of Persons with Disabilities should consider more central institutions to address issues related to the implementation of the Convention. Moreover, sufficient attention should be given to the establishment or design of a coordinated mechanism in order to facilitate the actions happening at different areas and levels regarding disability rights. Now these mechanisms themselves must be protected and supported by the government. The lack of a central institution for issues related to the implementation of the Contract is an (institutional/structural) obstacle to the realization of the rights of people with disabilities, including deaf and hard of hearing people. This situation, in practice, calls into question the existence of the Treaty <sup>[15]</sup>.
- b) Another important structural / institutional obstacle to the implementation of the rights of people with

disabilities is that the institution overseeing the implementation of laws for the protection of these people should not be the law enforcement officials who protect them.

Among other things, in the domestic law of our country, i.e., the comprehensive law for the protection of the rights of the disabled, unfortunately, a comprehensive and coherent mechanism for securing the rights has not been defined and, and only two articles have been provided. In a way, these two articles can be described as a supervisory mechanism <sup>[16]</sup>. The first one is Note 3 Article 2, which deals with adaptation. According to this article, the country's Welfare Organization is allowed to monitor the adaptation of government buildings and public places mentioned in the above article and request a report of their actions. The second one is Article 15 of the Comprehensive Law, which envisages the possibility of participation of the heads of the provincial welfare organizations in the meetings of the provincial planning and development council and their working groups as members. Moreover, the head of the country's welfare organization has been allowed to participate in the meetings of the Supreme Employment Council in order to provide the ground for the implementation of the provisions of the comprehensive law <sup>[17]</sup>.

According to the two above-mentioned articles, we realize that on the one hand, the Welfare Organization oversees the implementation of the provisions of Article 2 of the law, and on the other hand, according to Article 15, it must provide the ground for the implementation of the provisions of the comprehensive law. In fact, the implementation of many provisions of the comprehensive law is within the competence of the welfare organization. Therefore, how is it possible for of enforcement mechanism and regulatory mechanisms be the same in it and expect the provisions of the law to be implemented quickly and correctly by the society <sup>[18]</sup>.

If there are independent implementation mechanism and monitoring mechanism (in order to realize the rights of the disabled), there must be rules and regulations that predict the existence of these institutions; moreover, they must specify precisely and completely how these bodies (monitoring bodies and implementation bodies) can ensure the implementation of the Convention. For instance, if an organization refuses to provide the reports requested by the regulator or implementer, or does not take action to fulfill its obligations, what measures can be taken to ensure the implementation of the Contract? <sup>[20]</sup>.

One of the other institutional and structural barriers that can be mentioned is that in order for the rights of people with disabilities, including the deaf, to become more practical and effective, in addition to the existence of laws protecting the rights of individuals, governments must establish an independent institution to receive complaints from people with disabilities regarding the performance of monitoring and implementation bodies; such as the U.N. Committee on the Rights of Persons with Disabilities. The committee has powers such as appointing an investigation team or requesting interim measures, as well as a mechanism for receiving complaints from members about other members and following up correspondence with victims <sup>[21]</sup>. If governments can equip themselves with such mechanisms at the national level and allow people with disabilities to

complain about the performance of the observer and implementer of the Contract on the Rights of Persons with Disabilities, this would be a big step forward for countries to promote the rights of its disabled citizens. When the monitoring and implementation bodies are aware of the fact that their performance will always be criticized and evaluated by the disabled and the institution handling the complaints of the disabled, they always oblige themselves to implement the laws better and more accurately<sup>[12]</sup>.

### Conclusion

According to the above, we can conclude as a suitable solution for this institutional-structural problem that:

The national laws of different countries that have laws to protect the rights of people with disabilities must make a clear distinction between their implementation mechanism and their monitoring mechanism, since a law implementer himself cannot be a good judge and observer of the implementation of for his actions. An appropriate model for addressing the existing shortcoming can be found in Article 33 of the Treaty on the Rights of Persons with Disabilities. This article obliges the member states to make a clear distinction between the discussions of implementation from the issue of monitoring of the implementation of in paragraph 1. They also pay sufficient attention to the establishment or design of a coordination mechanism to facilitate actions that take place in different areas and levels of the rights of persons with disabilities.

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### Conflict of interest

The authors state that there was no conflict of interest.

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