

Universality of Human Rights and The Rights of Persons with Disabilities: From Theory to National Legal Practice

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Abstract

This article provides a comprehensive theoretical and practical analysis of the rights of persons with disabilities based on the concepts of human dignity and the universality of human rights. The dominance of the medical model in the historical development of human rights theory is critically assessed, revealing its restrictive impact on the legal subjectivity of persons with disabilities. The study substantiates the role of the social state concept, the principle of non-discrimination, and the doctrine of reasonable accommodation as key mechanisms for ensuring substantive equality.

Keywords: Human rights, human dignity, persons with disabilities, social state, non-discrimination, reasonable accommodation, universality, national legal system.

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1. Introduction

The concept of human rights, as the foundational basis for building a law-governed state and civil society, rests upon the principles of human dignity, equality, and universality. However, the practical realization of these principles is inextricably linked to the extent to which human rights are being secured in relation to persons with disabilities in particular. The historical development of human rights theory on the basis of a model predicated upon an individual of "average" physical capacity led to the marginalization of the legal status of persons with disabilities, giving rise to theoretical and practical contradictions with the universal nature of human rights. From this standpoint, the principal objective of this study is to provide a comprehensive analysis of the disability question — moving it beyond the framework of medical or social problems — as an independent legal

phenomenon grounded in human dignity, and to reveal, from a scholarly perspective, the convergences and divergences between international standards and the national legal system.

Human rights constitute the central idea of the concept of the law-governed state and civil society. The essence of human rights is embodied in the principles of the inviolability, equality, and universality of human dignity, and these principles must be applied equally to all social groups in society, including persons with disabilities. It is precisely the degree to which the rights of persons with disabilities are secured that permits an assessment of the genuine effectiveness of the human rights system.

Historically, human rights theory was developed over a long period on the basis of a model of the "average," physically healthy, and socially active individual. As a

result, persons with disabilities were left outside this model, and their legal status remained incompletely formed. This situation cast serious doubt upon the universal nature of human rights.

In the earliest legal studies, the disability question was examined primarily from a medical perspective. In this context, disability was interpreted as a defect, disease, or functional limitation of the human organism. Within this approach, the person with a disability was perceived not as an active participant in social life but as an object requiring treatment or care. This sharply limited their legal subjectivity within the human rights system.

The Russian scholar E. N. Yakovleva, in criticizing this situation, emphasizes that the medical model led to the diminution of human rights in substance, since it depicted the person with a disability not as a subject capable of independent decision-making but as a person in constant need of assistance.¹ Indeed, the dominance of the medical model created systemic barriers — contrary to the principle of human dignity — to the participation of persons with disabilities in social and political life.

The idea of the universal nature of human rights is one of the most important achievements of contemporary legal thought. However, this universality has not always been guaranteed in practice. The application of human rights to persons with physical, mental, or sensory limitations has historically been complex and contradictory. In our view, the human rights system is most acutely tested in relation to this category of persons, since securing the rights of persons with disabilities demands of the state not merely legal declarations but real institutional, social, and cultural changes.

The history of human rights demonstrates that early conceptions of rights were premised upon a model of the "independent," "self-sufficient," and "socially active" individual. Consequently, persons with disabilities who did not conform to this model were left outside legal protection. This situation manifested as a form of latent discrimination within human rights theory. It is our view that it is precisely for this reason that at a later stage of development of human rights scholarship, the concept of "justice that takes account of difference" was formed — rather than "equality that negates difference."

The role of international law in the formation of this concept has been immeasurable. In particular, following the consequences of the Second World War, the protection of human dignity became a priority issue for

the international community. However, in early international human rights instruments, specific norms relating to persons with disabilities were virtually absent. This demonstrates that the claims to the universality of human rights were not fully realized in practice.

In analyzing this situation, we may note that until the end of the twentieth century, the rights of persons with disabilities had not been formed as an independent institution in international law; they were protected only indirectly within the framework of general human rights norms. In our view, such indirect protection was insufficient to meet the real needs of persons with disabilities. Although the general norms of human rights were formally applicable to all, their practical implementation for persons with disabilities was in many cases attended by additional obstacles. It thus became apparent that the approach of "same rules — same results" is ineffective in the area of human rights protection.

The shift in attitude towards disability in human rights theory is connected, first and foremost, with the deepening of the concept of human dignity. Human dignity is defined not by physical or intellectual capacity but is recognized as the inalienable worth of every human being. The scholar T. A. Lykhina assesses human dignity as the fundamental basis for ensuring the rights of persons with disabilities in international law, and notes that this very concept constitutes the ideological foundation of the norms of the Convention.²

In our view, the concept of human dignity must serve not merely a declaratory function in the protection of persons with disabilities, but must also be the decisive criterion in law-enforcement practice. For it is this concept that performs a guiding function in shaping the social and legal policy of the state.

From this standpoint, the analysis of the reforms being carried out in the Republic of Uzbekistan in the sphere of human rights is of particular scholarly significance. Although the Constitution of the Republic of Uzbekistan recognizes the individual, their life, freedom, honor, and dignity as the supreme value, the question of the practical application of this principle in relation to persons with disabilities requires comprehensive analysis. In our view, it is precisely here that the divergences and contradictions between human rights theory and national legal practice are most clearly manifested.

The concept of the social state occupies a special place

in human rights theory. The idea of the social state is not limited to mitigating economic inequality or providing material support to certain strata of the population. It denotes, above all, a comprehensive political-legal model directed at securing the dignity of every individual and at the realization of their rights and freedoms in the conditions of real life. In our view, the true substance of the social state may be most fully manifested in the state policy pursued in relation to persons with disabilities.

In the theory of the social state, the so-called "second generation" human rights — social and economic rights — are of central importance. The rights to education, healthcare, labour, and social protection are, for persons with disabilities, not merely additional benefits but a necessary condition for their full participation in the life of society. In this sense, the concept of the social state compels the human rights system to transition from formal equality to substantive equality.

The scholar A. P. Rakhimli, assessing the social state as the constitutional-legal foundation for securing the rights of persons with disabilities, holds that the active social obligations of the state are an integral part of human rights, and that the principle of the social state must not remain a mere political declaration but must acquire concrete institutional content in law-enforcement practice as well.³

According to our analysis, the concept of the social state excludes a neutral position on the part of the state in securing the rights of persons with disabilities. The state must not merely refrain from permitting violations of rights but is obliged to take positive measures for the purpose of creating equal opportunities for persons with disabilities. Otherwise, the idea of the social state risks becoming an empty declaration in substance.

It is at precisely this point that the principle of non-discrimination acquires special significance. Understanding non-discrimination solely as legal equality leads to a denial of the complexity of the human rights system. The opportunity for persons with disabilities to enjoy equal rights cannot in many cases be secured without specific legal and organizational measures. It is for this reason that in contemporary human rights doctrine the concepts of "positive discrimination" or "reasonable accommodation" have been formed.

In this regard, T. A. Lykhina, assessing reasonable accommodation as the practical mechanism of the non-

discrimination principle, emphasizes that the failure to apply it constitutes a peculiar form of latent discrimination. She writes that the failure on the part of the state and society to take the necessary accommodation measures leads to the exclusion of persons with disabilities not in legal but in practical terms.⁴

At this juncture, we must particularly emphasize that the issue of human rights and disability is not a narrow specialist problem confined to legal scholars. On the contrary, it reflects the legal consciousness of society, its system of values, and its attitude towards the individual. In our view, the success or failure in securing the rights of persons with disabilities reveals society's genuine attitude towards human dignity. It is precisely these factors that determine the degree of urgency of this problem. The necessity of a comprehensive analysis of the human rights of persons with disabilities from the perspective of international standards, universal human values, and the legal system of the Republic of Uzbekistan is emerging as a scholarly and practical need.

In the course of the research, the human-rights-based approach made it possible to understand the disability question not merely as a social or medical problem but as a legal phenomenon inextricably linked to the positive obligations of the state. In our view, this conceptual approach served as the principal methodological foundation determining the theoretical and practical significance of the question.

One of our important conclusions is that the rights of persons with disabilities within the human rights system are not a set of "secondary" or "special" rights deriving from general rights, but constitute an independent legal institution grounded in the principle of human dignity. Some scholars attempt to restrict these rights within the framework of the social-state concept, proposing to link them to the capacities of the state. Whilst partly disagreeing with this approach, we hold that rights grounded in human dignity must not be made conditional upon the economic or organizational capacities of the state.

Furthermore, although the Republic of Uzbekistan has formed a legislative base directed at securing the rights of persons with disabilities, its content from a human-rights-based perspective has not been fully disclosed. In particular, the institutions of reasonable accommodation, substantive equality, and non-discrimination are not sufficiently precise at the normative level. In our view,

this situation is causing serious difficulties in the practical application of the laws. Moreover, where the distribution of competences, coordination, and accountability among state bodies is insufficiently secured, even perfect legislation will not be effective. In our view, institutional fragmentation is one of the principal systemic problems in securing human rights.

At the same time, the role of the judiciary and legal protection mechanisms must be separately noted. The failure of courts to actively apply international standards on human rights in practice means that the rights of persons with disabilities remain within the framework of formal protection. It should additionally be emphasized that the protection of the rights of persons with disabilities acquires a sustainable character only when civil society institutions — and in particular organizations of persons with disabilities — participate fully in the processes of decision-making, monitoring, and evaluation, alongside the state.

Our final conclusion relates to the implementation process: the research demonstrated that the effectiveness of legislative and institutional reforms is directly linked to the mechanisms for introducing them into practice. In our view, without state programs, financial guarantees, and a monitoring and evaluation system, the protection of human rights remains declaratory in character. Some authors connect implementation exclusively with the activities of executive bodies; we disagree with this view and assess implementation as a multi-subject process.

Thus, an effective national model in the area of securing the rights of persons with disabilities must rely on the harmony of: a normative approach grounded in human dignity, institutional coordination, the active role of the judiciary, partnership with civil society, and effective implementation mechanisms. In our view, this approach affords the possibility of forming a scientifically grounded and practically significant national model for securing human rights in the Republic of Uzbekistan.

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