

2 Outlining the Amended Act

The Amended Act (Act number 90 of fiscal year 2011)” is outlined by the following. Refer to Diagram 3.

(1) Purpose (Regarding Article 1 of the Act)

In order to realize policy regarding persons with disabilities in keeping with the CRPD - the Act amended from the perspective of clarifying policy, stipulating how to define persons with disabilities in CRPD and society which Japan should aim for.

As a rule, the main objectives of the act are to ensure that persons with disabilities are able to receive the necessary support they need, while at the same time encourage their active participation in society in any and all fields, at their own discretion, without discrimination so that they may ultimately enjoy a cohesive society along with their neighbors.

(2) Defining (Regarding Article 2 of the Act)

According to a passage of the CRPD Article 1, “Persons with disabilities includes those who have impairments which in interaction with various barriers may hinder their full and effective participation in a society on an equal level with others”.

Furthermore, reasonable accommodation is defined according to a passage in Article 2 of the same convention, stating that persons with disabilities may participate in society on an equal footing with other members of society by helping remove barriers that would otherwise prevent them from doing so.”

The reforms were set in light of intentions of the law as defined above.

1. Persons with Disabilities

Before the amendment was set, barriers to participation on the behalf of persons with disabilities were viewed as only due to the imparities that the persons with disabilities had and the definition of persons with disabilities is individuals whose daily life or social life is subsequently and continuously limited due to the disability. Now however due to the reforms, difficulties incurred in the

life styles of persons with disabilities derives from not only impairments but also facing various barriers in a society, “Society Model.” As such, the definition of persons with disabilities came to be defined as, “Individuals who have impairments and whose daily life or social life is subsequently and continuously limited due to impairments and social barriers” (Article 2 Section 1.)

According to the pre-amendments of a person with disabilities, the area of concern was: a person with a physical, intellectual or mental disability. However, afterwards, this came to include persons experiencing developmental disabilities and diseases. As such, a person with disabilities came to be: a person with physical, intractable developmental and other disabilities related to the body and/or mind. Also, under the new definition, the person with disabilities is considered to be in a continuous, definite and or cyclical very limiting condition.

In 1993, the definition of persons with disabilities the Persons with Disabilities Act: limb related disabilities, visual disabilities, hearing disabilities, balance coordination disabilities, voice and also language function disabilities, heart related disabilities, respiratory disabilities, other organ related functional disabilities, mental loss. In fiscal 2010, “mental retardation,” and “mental retard” were amended into, “intellectual disability;” as well physical and other psychological disabilities were included from the perspective of regarding, “disability” as widely as possible.

2. Societal Barriers

In light of the, “Society Model,” previously mentioned in number 1 of the above section, this section will cover the societal barriers to causing limitations in the daily lives or social lives of persons with disabilities. These barriers are incurred by things, systems, habits, ideas etc. as defined by Article 2 Section 2.

(3) Fundamental Principles (Regarding Article 3 to 5)

(1) Article 3 through 5 lays out a standard set of guidelines for how to realize a society in which persons with disabilities can live and function cohesively with their peers, regardless of their particular disability. Furthermore, in the pre-reforms Article 3, the fundamental ideals were laid out. However, this content has been pulled to the fundamental principles section.

1. Regional Society Coexistence (Article 3)

The mandate to establish and secure opportunities for persons with disabilities to actively participate in any and all fields regardless of said disability in a cohesive society, as directed by the pre-reforms (Article 3 Section 1) shall be maintained. Additionally, the new additions- reforming regional societies to be more cohesive (Article 3 Section 2), Securing the opportunity to choose communication method (Article 3 Section 3) - was also stipulated.

Furthermore, in regards to all persons with disabilities, as well as ensuring the opportunity to choose the means by which to be understood, provisions have been put in place to ensure that they may also have the opportunity to choose from different information acquisition methods and choose different methods to use that information (Article 3 Section 3). Moreover, according this section, as an example of, "Methods by which to be understood," one such example would be: Language (including sign language).

2. The prohibition of discrimination (Article 4)

In the pre-reforms act, it was mandated that persons with disabilities may not be discriminated against due to their disabilities (Article 4 Item 1). This shall be maintained, as well the promotion of measures for the removal of societal barriers (Article 4 Item 2). Furthermore, the national government should work to spread enlightenment and information regarding the discrimination of persons with disabilities (Article 4 Item 3).

In regards to the prohibition of discrimination, in the Convention of Rights of Persons with Disabilities it states: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human and fundamental freedoms. The former shall be the basis for the treatment of persons with disabilities. Beyond that, all forms of discrimination based on the disabilities of persons with disabilities shall be banned and rejected (Article 2 of the Treaty.)

In light of the Convention of Rights of Persons with Disabilities, in order that persons with disabilities are not discriminated against (in order that there is no

break with Article 4 Item 1), and that societal barriers to persons with disabilities (barriers to the daily maintenance of life by persons with disabilities are incurred by things, systems, habits, ideas etc.) be removed. Provisions must be set in place to remove said barriers in the event that in the past, the burden of such was not too excessive (Article 4 Item 2.)

Regarding the meaning of “reasonable treatment” in more specific terms, under the Committee for Reforms of the Persons with Disabilities System, the Prohibition of Discrimination Meeting was opened; at which, deliberations were taking place regarding how to legally ban discrimination for persons with disabilities. However, because the deliberations were still taking place at the time of the decree of the reforms proposal, the exact meaning of, “reasonable treatment” has yet to be clearly defined. On the other hand, there is a lot on the subject of ways of thinking about reasonable treatment, in the Persons with Disabilities Human Rights Treaty in Article 4 Item 1 and Item 2.

(4) Fundamental Policy (Article 10 of the Act)

Before the reforms, policy was determined based on the age and condition of the disabilities of the person with disabilities. Now after the reforms however, sex and life-style conditions must be taken into account as well (Article 10 Item 1).

In order to establish and enforce policies regarding persons with disabilities, the support needs may vary greatly depending upon the sex of persons with disabilities. As such, it is necessary to meet each of their needs. Also, there is a need to change the culture of persons with disabilities treatment as such that differences in gender and age, symptoms of the disabilities and other such attributes are not only considered. It is also necessary to recognize general life-style differences in family structures, occupation and the communication methods the person with disabilities uses on a daily basis.

For the phase of changes to the system, efforts must be made to ensure that persons with disabilities may be able to choose and decide at will, be able to participate proactively in any field; also it is imperative that in the event of creation of policies related to persons with disabilities, the opinions of private organizations that deal with persons with disabilities and organizations run by persons with disabilities are heard and respected (Article 10 Item 2.)

(5) Persons with Disabilities Independence and Societal Participation Support Fundamental Policies

In keeping with the general reforms, alongside changing established guidelines regarding healing care and nursing care (Article 14), and Education (Article 16), also to nurturing care (Article 17), emergency and crime prevention (Article 26), protection of persons with disabilities as consumers (Article 27), Treating during Voting (Article 28), treatment during judiciary procedures (Article 29) and others have been changed.

In light of the viewpoint that in the event of a person with a disability being the victim of a crime or disaster, the effects would be considerably worse for them than for others, as a way to prevent that; also from the view point of ensuring that persons with disabilities feel safe and secure at all times so that they may maintain regular life styles, it is necessary to respond to persons with disabilities differently depending on their sex, age, condition of disability and life-style. As such, in order to prevent emergencies and crime, the necessary policies have been drafted by the lower house of the National Diet. This article was written in light of the Great East Japan Disaster.

(6) The Committee for the Creation of National Policy Regarding Persons with Disabilities (Article 32 of the Act)

In the Convention of Rights of Persons with Disabilities it states parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present convention. When designating or establishing such a mechanism, states parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights. (Article 33, Item 2). In light of this, fundamental programs and the condition of enforcement of related policies shall be monitored. If necessary, the Persons with Disabilities Policy Committee (Central Persons with Disabilities Reform Committee Exhibit) that is in charge of advising the various ministers shall be reopened at the Cabinet (Article 32, Items 1 and 2).

Moreover, the word monitor in this context is used more generally in a positive light to highlight the need for proactive involvement in grasping the condition of

the progressing state of affairs of the policies and content of the programs related to topic in terms their time measured success or lack thereof.

(7) Coalition government institutes at sub-national municipalities (Article 36 of the Act).

According to Convention of Rights of Persons with Disabilities, in the case of the establishment of regional monitoring institutions, the signing nation's acts and policies shall be followed. The true aim of the treaty is to align national policies with the ideals of the convention. From this perspective, in regards to Japan, it is even more pertinent that such regional monitoring organizations are established in order to secure that, persons with disabilities policy is being enacted in municipalities across the nation. As well, due to dispatch of Regional Persons with Disabilities Reform Committees, such monitoring institutions will also monitor them as well (Article 36)

(8) The Period of Enforcement of Reforms to the Persons with Disabilities Act

The actual day of the enforcement of the reform of the act was on August 5th 2011. However, such provisions were extended to within one year of the date of enforcement of the act (May 21st 2012) for the Persons with Disabilities National Policy Committee and the other institutions that dealt with deliberations and the coalition government committee institute.

(9) Deliberations

A. In the event that the said act is left in effect in the nation for a period of three years, deliberations will be held on the effects of the reforms to the Persons with Disabilities Act. Measures shall be made according to the findings of such deliberations.

B. Deliberations must take place in light of the condition of policies aimed at ensuring that persons with disabilities may receive the necessary support to participate in society in the varying regions throughout the nation and enjoy independent lives. Furthermore, health and welfare institutions and medical

institutions alike must link together to form a general support system for persons with disabilities.

(10) Incidental Deliberations

In the completion of the legislative reforms, at both levels of the National Diet, provisions had to be made in an array of areas. As such, incidental deliberations about this followed.

3 . Convention on the Rights of Persons with Disabilities and related matters

One of the important factors of the above mentioned considerations about the reform of domestic systems on persons with disabilities is the adoption of the Convention on the Rights of Persons with Disabilities (CRPD) in the United Nations.

The Resolution at the 56th General Assembly of the United Nations decided to establish an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. After holding eight sessions, the 61st General Assembly adopted the CRPD in December 2006.

The CRPD was opened for signing on 30th March 2007 and entered into force in May 2008. Japan signed this Convention in September 2007 and has since been working toward the conclusion of the Convention as soon as possible.

4. Policy Assessments

Assessments of persons with disabilities as discussed previously, the headquarters was placed in the National Cabinet. Under its administration, a committee on reforms centering around persons with disabilities. As well, system reforms and deliberations have been carried out with maximum efforts. As such deliberations, the, “First Deliberation Hearings” and the, “Second Deliberation Hearings” have taken place. Proposals have been made in light of the policies up until now regarding persons with disabilities.