



LEGAL MILESTONES IN THE DISABILITY SECTOR: AN INTERNATIONAL STUDY ON EMPLOYMENT

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According to the United Nations Department of Economic and Social Affairs, “the employment to population ratio of persons with disabilities aged 15 and older is almost half that of persons without disabilities.”¹ Equitable access to employment provides all people the opportunity to reap both individual and social benefits by improving their health and wellbeing, supporting themselves financially, and contributing to the economy and society as a whole. However, efforts by various countries around the world to prohibit employment discrimination and to promote the employment of persons with disabilities (PWDs) continue to fall short of actually providing equitable access to employment to PWDs.

Significantly, the Convention on the Rights of Persons with Disabilities (CRPD), the first comprehensive international treaty to address disability rights, became one of the most quickly ratified international human rights treaties. The CRPD’s aim is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”² Article 27 of the CRPD promises that “State parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation,” yet PWDs continue to be underemployed.³ While the CRPD establishes an international standard for the treatment of the rights of PWDs, countries have demonstrated varied commitment to the CRPD’s purpose. Thus, to determine how countries have impacted the employment rates of PWDs, this paper answers the question, “How have legal milestones in the disability sector within different countries around the world affected employment rates of persons with disabilities?” by analyzing relevant legislation, court cases, and employment initiatives from 10 countries who have at least signed the CRPD. The ten countries are Australia, Brazil, Canada, China, Germany, India, Ireland, Japan, the United Kingdom, and the United States.

The ten countries are classified into three groups based on their commitment to the CRPD to analyze how their country’s progress in fulfilling the CRPD’s promise, “to promote the realization of the right to work,” may be affected by their legal obligations to do so. The first group focuses on the United States, a country that has only signed the CRPD. By failing to ratify the CRPD, the United States is not legally bound to the CRPD but is obligated to refrain, in good faith, from undermining the treaty’s purpose.

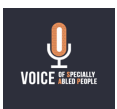


The second group focuses on Canada, China, India, Ireland, and Japan—countries that have ratified the CRPD. These countries are legally obligated to promote the purposes of the CRPD but do not provide access to the processes available through the Optional Protocol. The third group focuses on Australia, Brazil, Germany, and the United Kingdom—countries that have ratified both the CRPD and the Optional Protocol. These countries have the most significant commitment to the CRPD as they are both legally obligated to fulfill the CRPD and also held accountable by the processes available through the Optional Protocol.

For the first group, this research provides an analysis of the United States, a country that is not legally obligated to fulfill the promises of the CRPD. While the U.S. has proven to be a world leader in the disability sector with the passage of the Americans with Disabilities Act (ADA) in 1990, the U.S. is still the only major nation to have not yet ratified the CRPD. With the recent thirtieth anniversary of the ADA, this research reminds us that the legislation has been “almost irrelevant for helping millions of disabled people to gain employment” as there are persisting disparities in employment and earnings between PWDs and non-PWDs.⁴ The research indicates the ineffectiveness of the United States’ efforts towards increasing employment rates for PWDs, demonstrating a need for greater commitment to disability rights.

For the countries that had ratified the CRPD (China, India, Ireland, and Japan), this research finds that a country’s ratification of the CRPD does not solve the employment disparity for PWDs. The research shows that (1) the use of employment quotas for PWDs, specifically within government bodies, is a primary tool to increase the employment rates of PWDs, but are often ineffective, (2) the process of certification and recertification to qualify for employment quotas acts as a barrier to employment, and (3) pervasive cultural stigma continues to limit PWDs from accessing employment and performing adequately in the workplace. Also, there was a significant lack of published accurate data available concerning PWDs in the labor force.

For the countries that had ratified both the CRPD and the Optional Protocol (Australia, Brazil, Canada, Germany, and the United Kingdom), this research finds that there has been an insignificant impact on employment rates of PWDs despite these countries’ highest level of commitment to the CRPD and relatively broad and comprehensive set of measures to promote employment of PWDs. Based on these countries’ efforts, this research determines that it is important to (1) institute a specific disability anti-discrimination legislation rather than a general one, (2) implement support systems, such as disability ombudspersons, to advocate on behalf of PWDs, (3) properly implement and enforce quota systems with financial incentives, coupled with a greater cultural understanding of PWDs, and (4) require reasonable adjustments in all employment processes and provide subsidies for these adjustments to promote access to employment and reduce adverse effect or indirect discrimination.



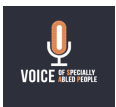
Finally, based on the comparative analysis, this research provides ten policy recommendations for all to “safeguard and promote the realization of the right to work,” including governments, employers, and other decision-makers. These recommendations include: (1) expand the definition and understanding of disability, (2) implement specific disability anti-discrimination statutes in addition to any general anti-discrimination statutes, (3) spread awareness of disability to combat ignorance, stigma, and prejudices, (4) ensure opportunities for PWDs and disability rights organizations to be involved in implementing initiatives, (5) enforce effective sanctions for quota systems, (6) implement tax credits or reimbursement incentives, (7) guarantee an accessible and expansive recruitment process, (8) create hiring and retention policies with diversity, equity, and inclusion statements, (9) require reasonable accommodations, and (10) provide access to education and training for employment preparation.

¹ United Nations Department for Social and Economic Affairs, Disability and Development Report: Realizing the Sustainable Development Goals by, for and with Persons with Disabilities (New York, NY: United Nations, 2019): 10.

² Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, United Nations Treaty Series, vol. 2515, No. 44910, p. 3, available from <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/44910/Part/I-44910-080000028017bf87.pdf>.

³ Convention on the Rights of Persons with Disabilities.

⁴ Samuel R. Bagenstos, “The Future of Disability Law,” Yale Law Journal 114, no. 1 (2004): 1-83.



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ACKNOWLEDGEMENTS

We thank Manushri Desai and Anusha Singh, VOSAP Research Internship coordinators, for their continuous support and guidance throughout the course of the research project. We thank Pranav Desai, founder of VOSAP, for his expertise in the disability sector and invaluable insights for our work.

WHY THIS MATTERS TO VOSAP

VOSAP has been advocating for legal reforms, policy advocacy for Specially Abled People (SAP) in India, especially for increased employment opportunities for SAP (Persons with Disabilities). This research project is an international extension of VOSAP's advocacy with nations as the 10 recommendations developed through this issue brief can help deconstruct additional barriers to employment for SAP (PwD) and offer an opportunity for this untapped pool of resources to contribute in the workplace to live with dignity and also contribute to economic expansion.

ABOUT VOICE OF SPECIALLY ABLED PEOPLE INC.

The Voice of Specially Abled People (VOSAP) is a global advocacy organization built on the principles of Empowerment of Specially Abled People. In Special Consultative Status with UN ECOSOC, VOSAP is working to create an Inclusive and Accessible world by accelerating implementation of UN Sustainable Development Goals (SDGs) and goals of UN CRPD (Convention on the Rights of Persons with Disabilities) treaty. The organization has created the VOSAP Mobile App through which volunteers can take a pledge to volunteer and rate the accessibility of public places, creating a crowdsourcing platform to aggregate demand for accessibility.

