

A Study of Employment Rights of Disabled in India

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Abstract

Disability can be defined as an inability of an individual to perform certain day-to-day activities (activity restrictions) and interact with the individuals around them (participation restrictions) due to impairment of body or mind. The employment and workplace protection rights of individuals with a disability are very important because of the discrimination at the workplace leading to poor self-esteem for the disabled. This paper emphasises the problems associated with disabled people in India and also provides a brief overview of the legal laws and rights implemented by the government of India concerning employment and workplace for the welfare and development of disabled citizens across the country

Key words: Disability, discrimination, workplace, legal laws and employment rights

Introduction

Concept of Disability

Disability can be defined as an inability of an individual to perform certain day-to-day activities (activity restrictions) and interact with the individuals around them (participation restrictions) due to impairment of body or mind. According to World Health Organisation, approximately one billion people in the world are suffering from a disability. Disability is understood in many different ways by different individuals and therefore the concept is much broader than it seems to be.¹ Disability, a term in itself means inefficiency or the lack of efficiency that could be in terms of physical state or mental state though many people showed positive outlooks and attitudes towards life and hence, proved themselves as intellectuals with different abilities thus calling disabled differently-abled persons.

WHO has categorised disability into different categories. These are as follows:-

Physical Disability- Physical disability is an inability of an individual to perform certain tasks which are directly related to physical characteristics and potential.

Intellectual Disability- In this kind, individuals suffer from problems related to intellectuality which thereby leads to difficulty considering communicating and learning things.

Visual Disability- Visual disability is an inability of individuals to see usual things with clear means.

Hearing Disability- It is a kind of disability which arises due to hearing impairment due to damage to the inner ear.

Neurological Disability- Neurological disability is related to problems in the nervous system.

Psychiatric Disability- It is defined as a type of disability which is related to mental impairment.

¹ Gupta, B., Arora, R. (2020). Rights and Entitlements of Persons with Disabilities in India: An Evaluation. *Journal of Human Rights Law and Practice*, 3(1), 21-33.

The employment and workplace protection rights of individuals with a disability are very important because of the discrimination at the workplace leading to poor self-esteem for the disabled. The principle of non-discrimination considers the fact that everyone enjoys all the confined human rights irrespective of age, gender, caste and most importantly the context of disability. The primary responsibility to protect the human rights of the disabled at the workplace lies with the government therefore this paper considers basic laws and rights implemented by the government specifically for people with disability most precisely employment rights.

There are few pieces of literature related to the underlying field of the disabled and their rights. Below are the abstract of the pieces of kinds of literature studied for this research study:-

Mohit, Pillai and Rungta (2006) in their research report considers the various aspects of disability along with the double disadvantage associated with women, reproductive rights, poverty and Juvenile Justice System. They also took into account the various environmental hazards and the disability issue.

On the other hand, **Gupta and Arora (2020)** analyzed secondary data available for new legislation for the disability and examined carefully their rights. They also tried to highlight the issues and challenges associated with the proper implementation of the rights. Similarly, **Bhattacharya (2014)** in his research paper provided a detailed picture of the laws related to disability in India and how these laws contributed to the legal development of disabled persons in India.

Significance of the Study and Research Gap

As per the census of India 2011, there are around 26.8 million people with disabilities constituting around 2.21% of the population. They are continued to be treated as second-class citizens and therefore segregation and discrimination are not shocking for them rather they act as a norm. These people are faced with many barriers; these barriers are in terms of the differentiated attitude of people as they view them as an object of charity. They are also sometimes treated as inferior in the workplace; therefore there is a need to properly analyse the laws and rights of these citizens as implemented by the government at the workplace.

According to the previous works of literature studied and the gaps found therein, the following are the objectives framed for this study:-

- i) To analyse the problems associated with the disabled in India.
- ii) To highlight the legal laws and rights implemented by the government of India for disabled citizens' employment opportunities.

Framework of Disability²

The International Classification of Functioning, Disability and Health (ICF) is a framework under World Health Organisation. ICF has classified disability in both the context of health as well as environmental factors. The framework consists of two parts which include Functioning and Disability factors and Contextual factors.

The Functioning and Disability factors include body functioning and activity/participation. On the other hand, contextual factors include environmental and personal factors. Figure 1 shows the entire framework including all the factors.

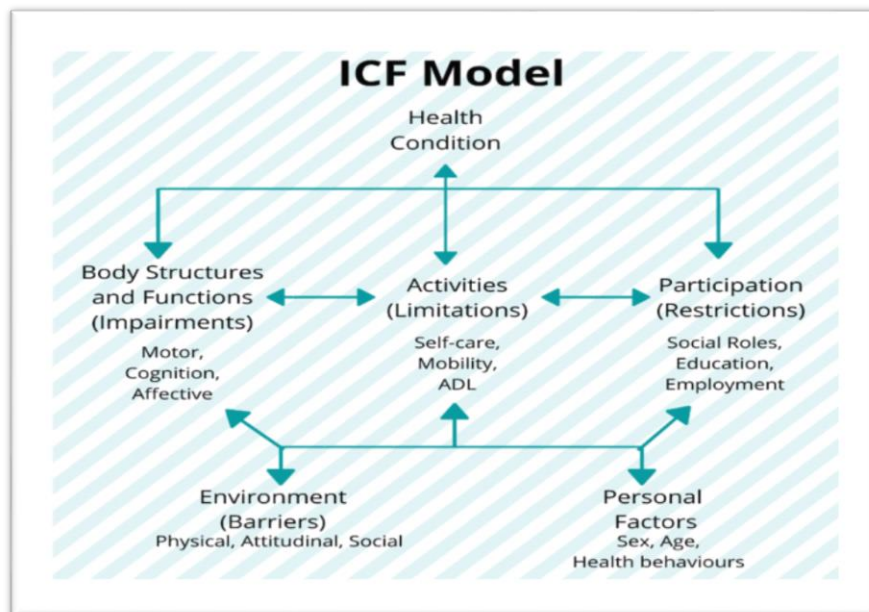


Figure 1- ICF model of disability

Source- ResearchGate

² Rudnick, A. (2017). The Medical versus The Social Model of Disability: False Dichotomy. Internet, 2(6), 1-2.

Problems Associated with Disabled at Workplace

There are numerous problems faced by people with disabilities in the workplace. At the very initial stage, these people are discriminated against and therefore lack proper employment opportunities. At the workplace, the disabled are treated as inferior and hence the environment is not accessible to them, negative attitudes of people towards them is one of the biggest reason for making their condition worse. They are socially excluded from the environment which also thereby leads to the loss of income due to poor performance and unfortunately poverty knocking on the door.

It has also been found in the NSS 76th round that around 57.9% of the individuals lack job opportunities after facing the problem of disability in the rural area and similarly around 54.8% of the people faced the loss of work in the urban area. The loss of a job clearly shows the element of discrimination in the workplace.

Legal Rights and Laws Related to Disabled and Employment Opportunities³

The government of India has enacted various provisions and laws for the welfare of disabled citizens in the workplace and even for job opportunities available to them since the primary responsibility for the empowerment of the disabled lies with the government.

Persons with Disabilities (PWD) Act, 1995

The Persons with Disabilities (PWD) Act, of 1995 came into force on 7th February 1997. This act is a major step ahead in the field of giving equal rights and opportunities to disabled citizens. The main provisions covered under the act include employment, education, prevention and early detection of disability, social security, non-discrimination and manpower development.

The employment provision under the Persons with Disabilities Act, 1995 includes 3% of reservation in government employment opportunities therein 1% of the relaxation

³ Mohit, A., Pillai, M., Rungta, P. (2006). Rights of the Disabled, National Human Rights Commission.

each for persons suffering from blindness, hearing impairment, and Locomotor Disabilities.

There will be special schemes which will include training of persons with disabilities and relaxation of the age limit.

Most importantly, employees cannot be fired or demoted if they catch disabilities during the period of service and therefore cannot be denied promotions.

Rights of Persons with Disabilities (RPWD) Act, 2016⁴

The government of India has made significant changes to the Persons with **Disabilities Act, of 1995** and replaced it with the **Rights of Persons with Disabilities (RPWD) Act, of 2016**. India became the seventh nation to approve and sanction the United Nations Convention on the Rights of Persons with disabilities in 2007 and finally, the legislation was implemented in 2016. The new enactment has tried to cover all the possible gaps associated with the Persons with **Disabilities (PWD) Act, 1995⁵**. The next section of the paper will cover all the changes made in the new act.

Major Changes and RPWD Act, 2016

The government of India has recognised benchmark disability as 40% or more. The new legislation has tried to cover 21 types of disability as compared to the PWD Act, of 1995 which has only considered seven categories of disability. The RPWD Act has covered every part of the country including Jammu and Kashmir along with both private as well as public institutions. **The RPWD Act, 2016** covers a total of 17 chapters and 102 sections therein Chapter IV includes the various provisions that are related to employment as well as skill development whereas Chapter VI includes provisions for reservations. The provisions related to the employment of the disabled are mentioned below:-

- A. **Section 19** involves the major programs which are related to self-employment and vocational training

⁴ Akansha. (2020). Rights of Disabled People in India. Available at <https://indianlawportal.co.in/rights-of-disabled-people-at-work> (last visited on 10/12/2022)

⁵ Bhattacharya, R. (2014). Disability Laws in India: A Study. International Journal of Research, 1(4), 99-115.

- Provision related to the availability of loans at low rates for self-employment
 - Proper involvement of the Disabled in training programs
 - Support by the government in various welfare schemes
 - Market links for disabled intellectuals
- B. **Section 20** considers Non-discrimination in employment and workplace
- Provision related to a healthy environment for employees having disabilities
 - Restrictions on denying promotions of disabled at the workplace
 - Prohibition of reduction in employees' rank and treating unequal in the case of individuals found disabled during the period of service.
- C. **Sections 23** of the chapter include the appointment of the office for the redress of complaints of the disabled if any and maintaining a suitable register of complaints.
- D. **Section 21** considers equal opportunity policy in case of registration with the Chief
- E. **Section 22** considers proper maintenance of records of the employment PWD with employment exchange.

The persons having a disability greater than the recognised benchmark disability and provides 4% of the reservation in each group of posts which was previously 3% in the PWD Act, of 1995. It has also been mentioned that in the event of vacant positions, the vacancy needs to be carried forward in the future recruitment year.

Concluding Remarks and Further Scope

Considering the perspective of human rights, disabled people should be equally treated as persons with non-disability. The constitution of India has addressed the needs of people with disabilities up to some extent through various legislations passed as mentioned in the present research study. The constitution ensures freedom, justice as well as dignity for individuals with a disability but has not explicitly mentioned the rights. But, despite the various provisions and acts, disabled people still feel discriminated that could be attributed to various factors. Therefore, there is a need to change the mindset of people in society for the healthy development of the nation including disabled people in India.

The study can be carried forward by considering the rights and laws implemented by the government of India in every context and not specific to the employment category

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