

# Advancing Equality: A Comparative Analysis of Employment Rights for Disabled Individuals in Malaysia and Japan

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## ABSTRACT

This article provides a comparative legal analysis of employment rights for people with disabilities in Malaysia and Japan, focusing on the strengths and limitations of the legal frameworks in both countries. The study critically examines Malaysia's Persons with Disabilities Act 2008 and Japan's Law for Employment Promotion of Persons with Disabilities, highlighting the effectiveness of each in protecting the employment rights of individuals with disabilities. The analysis reveals that while Malaysia's legal framework aligns with international standards, enforcement and awareness remain inadequate. Japan's model, which includes a mandatory quota system and punitive measures, offers a more robust framework for ensuring the employment of disabled individuals. The research emphasises the need for Malaysia to introduce stricter enforcement mechanisms, greater societal awareness, and possible amendments to the Persons with Disabilities Act to enhance the protection of employment rights. Interviews with experts and individuals from the disabled community underscore the persistent discrimination and challenges faced in the workplace, reinforcing the need for reform and policy enhancements to achieve equal opportunities for people with disabilities.

**Keywords:** Employment rights, Disability law, Persons with Disabilities Act 2008, Quota system, Legal frameworks

## INTRODUCTION

The Persons with Disabilities Act 2008 (PWD Act) was enacted to provide for the registration, protection, rehabilitation, development, and well-being of individuals with disabilities. Section 2 of the Act defines "persons with disabilities" as those with long-term physical, mental, intellectual, or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society. Disability, visible or invisible, may manifest at birth, during childhood, throughout working years, or later in life. According to the World Health Organization (WHO), approximately 15% of the global population lives with disabilities, yet these individuals are often marginalised and overlooked, especially within displaced communities (World Health Organization, 2011). Despite Malaysia's Federal Constitution under Article 8, which grants equal treatment, persons with disabilities continue to face significant barriers, particularly in employment. The Universal Declaration of Human Rights (UDHR) echoes this sentiment under Article 2, emphasising equal rights without distinction (UDHR, 1948).

In Malaysia, the employment rights of disabled individuals remain a crucial area of concern. The PWD Act, the Federal Constitution, and the Employment Act 1955 provide the legal framework for these rights. However, despite these provisions, the disabled community does not fully enjoy equal rights, particularly in employment. As of June 2019, only 3,686 disabled persons were employed in the government sector, representing a mere 0.29% of the workforce (BERNAMA, 2020). While the PWD Act aligns with international standards like the UDHR, it lacks enforcement mechanisms and punitive provisions, limiting its effectiveness in protecting the employment rights of disabled persons. Advocates such as Datuk Ras Adiba Radzi have highlighted these deficiencies and called for immediate amendments to the Act, demanding

stronger enforcement measures and penalties for those who violate the rights of people with disabilities (Astro Awani, 2022).

In contrast, Japan's legal framework, governed by the Act on Employment Promotion Etc. of Persons with Disabilities (Law No. 123 of 1960), mandates employment quotas for disabled individuals and includes punitive measures to ensure compliance. This approach has made Japan more proactive in addressing employment inequality for disabled workers. The mandatory quotas, introduced in 1976, require companies to include a set percentage of workers with disabilities, ensuring better employment opportunities (Japan Law No. 123, 1960). This contrasts with Malaysia's voluntary "One Percent Policy," introduced by the Ministry of Women, Family and Community Development in 2008, which has not been effectively integrated into the legal framework (Borneo Post Online, 2021).

The research adopts Amartya Sen's (1999) Capability Approach as the theoretical framework, emphasising the need to move beyond formal legal provisions to ensure substantive freedoms and opportunities for disabled individuals. The theory highlights the importance of creating an enabling environment where legal rights can be translated into meaningful outcomes, such as equitable employment opportunities. By analysing Malaysia's Persons with Disabilities Act 2008 and Japan's Act on Employment Promotion of Persons with Disabilities through this lens, the study examines how societal attitudes, enforcement mechanisms and workplace accommodations serve as 'conversion factors' that influence the realisation of these rights.

## LITERATURE REVIEW

The research examines Malaysia's existing legal frameworks, focusing on the effectiveness of the PWD Act and its implementation within the employment sector. It further compares Malaysia's approach with Japan's more stringent legal protections. By identifying legislative gaps and shortcomings, the study offers recommendations to strengthen the protection of employment rights for disabled individuals in Malaysia, aligning them more closely with international standards.

Employment rights for disabled individuals in Malaysia and Japan highlight significant legal frameworks and enforcement mechanisms disparities. The International Labour Organization (ILO) defines employment broadly as any person who has worked for pay or profit for at least one hour during a given week, including those temporarily absent for reasons such as sick or maternity leave (ILO, 2020). While this definition applies universally, it fails to account for the systemic barriers faced by disabled individuals, especially in Malaysia and Japan.

In Malaysia, the Employment Act 1955 outlines general protections for workers, but it does not directly address the unique challenges faced by disabled individuals in the workplace. The Persons with Disabilities (PWD) Act 2008, while ostensibly aligned with international standards like the United Nations Convention on the Rights of Persons with Disabilities (CRPD), remains largely a policy document with minimal enforcement mechanisms (Shafie et al., 2020). Section 29(1) of the PWD Act stipulates that disabled individuals should have equal employment opportunities, yet this provision lacks enforcement, rendering it ineffective. Without punitive measures for non-compliance, disabled individuals remain marginalised in the workforce. Unlike Japan, Malaysia's employment framework lacks a quota system, limiting disabled individuals' access to employment (Yaakob et al., 2021).

Conversely, Japan's Act on Employment Promotion of Persons with Disabilities (Law No. 123 of 1960) provides a more robust legal structure by mandating a quota system, which requires employers to hire a certain percentage of disabled workers. Introduced in 1976, this quota system ensures employers are accountable for hiring and accommodating disabled workers. Financial penalties for non-compliance reinforce this obligation, making Japan's legal framework one of the more progressive in Asia regarding employment rights for disabled persons (Tanaka & Yoshizawa, 2021). In addition to the quota, Japan's law provides clear guidelines for workplace accommodations, ensuring that disabled individuals receive the necessary support to perform their jobs effectively.

The CRPD defines disability as physical, mental, intellectual, or sensory impairments that hinder an

individual's full participation in society. While Malaysia's PWD Act and Japan's Disabled Person's Fundamental Law recognise this definition, the legal protections differ significantly. Malaysia's PWD Act lacks binding enforcement mechanisms, leaving disabled workers vulnerable to discrimination. In contrast, Japan's legal framework requires reasonable accommodations and provides legal recourse for disabled workers facing workplace discrimination (Tanaka & Yoshizawa, 2021).

Equality in employment, as guaranteed by Article 8 of Malaysia's Federal Constitution, promises equal protection under the law, yet this protection often does not extend to disabled individuals. Disabled workers in Malaysia face discrimination in hiring, wages, and career advancement opportunities. Despite constitutional guarantees, the absence of specific legal provisions addressing discrimination against disabled workers exacerbates these challenges. Furthermore, a lack of comprehensive workplace accommodations further undermines equality in employment for disabled individuals (Shafie et al., 2020).

By contrast, Japan's legal framework explicitly mandates workplace accommodations for disabled workers, ensuring they have the same opportunities for skill development and career progression as non-disabled employees (Tanaka & Yoshizawa, 2021). Japan's stringent legal requirements demonstrate how laws can foster an inclusive work environment where disabled individuals can contribute meaningfully. The comparative analysis highlights the gaps in Malaysia's legal framework, where policies remain non-binding and lack the enforcement necessary to protect disabled workers.

For disabled individuals, equality in employment requires more than just access to jobs; it also necessitates inclusive work environments where reasonable accommodations are made and discrimination is actively prevented. Employers must proactively ensure disabled workers are provided with support, such as accessible workspaces and flexible working arrangements. Japan's legal framework ensures these measures are implemented, whereas in Malaysia, such support is often at the discretion of individual employers (Yaakob et al., 2021).

Human resource departments are crucial in fostering inclusive workplaces for disabled employees. They must ensure that disabled workers feel supported, not only through accommodations but also by addressing any concerns or issues. However, without legal obligations requiring such support, many Malaysian employers may not prioritise the needs of disabled workers. In contrast, Japan's legal framework mandates that employers actively support disabled workers, creating a legally enforced inclusive culture (Tanaka & Yoshizawa, 2021).

The principle of non-discrimination in employment is a cornerstone of international human rights law, including the CRPD, yet its implementation varies between Malaysia and Japan. Malaysia's reliance on non-binding policies like the One Percent Policy, which aims to increase disabled representation in the workforce, has proven ineffective without enforcement mechanisms. In comparison, Japan's quota system, backed by legal penalties for non-compliance, demonstrates how enforceable legal frameworks can lead to tangible changes in the employment of disabled individuals (Hirano & Tanaka, 2022).

This comparison between Malaysia and Japan illustrates the critical role that enforceable legal frameworks play in protecting employment rights for disabled individuals. While both countries recognise these rights, Japan's approach provides a more comprehensive and enforceable protection system, mainly through its quota system and mandatory workplace accommodations. Malaysia's legal framework, by contrast, lacks the necessary enforcement to ensure that disabled individuals receive equal treatment in employment. The analysis underscores the need for Malaysia to strengthen its legal framework to include binding obligations for employers and to ensure that disabled workers have the same opportunities and protections as their non-disabled counterparts.

### **Current Status of Disabled Persons**

The status of disabled individuals in employment remains a significant issue across various jurisdictions, including Malaysia and Japan. Studies indicate that scepticism towards people with disabilities persists among employers. Botha et al. (2020) conducted a study involving 283 public sector managers, which revealed that

many managers perceived disabled employees as lacking in communication, social, and technical skills compared to their non-disabled peers. Similarly, research by Marzo Campos et al. (2020) highlighted that societal ignorance regarding disabilities often leads to social exclusion and diminished self-esteem among disabled individuals. These findings underscore the continuing inequality disabled individuals face in the workplace, where they are often viewed as inferior.

At the international level, the Universal Declaration of Human Rights (UDHR) advocates for equality, explicitly stating in Article 7 that no one should face discrimination. Faruqi (2008) reinforced this by asserting that all individuals are entitled to equal treatment and protection under the law. This principle is echoed in Malaysia's Federal Constitution, particularly Article 8, which guarantees equality before the law. Despite this, disabled individuals in Malaysia do not enjoy the same protections as others. Employment discrimination against disabled individuals remains widespread, and many continue to be marginalised in the workforce.

The employment rights of disabled individuals are broadly defined as the right to be treated fairly and without discrimination in the workplace. Legal frameworks have been introduced in Malaysia and Japan to support these rights. The UDHR's Article 23 affirms that every person has the right to work and receive equal pay for equal work without discrimination. Malaysia's legal framework includes the Employment Act 1955 and the Persons with Disabilities Act (PWD) 2008. However, these laws lack robust mechanisms to protect disabled individuals, especially regarding employment.

The Employment Act 1955 in Malaysia, introduced during British colonisation, aims to regulate the employer-employee relationship. However, there are significant gaps, particularly in addressing discrimination. Despite global attention on gender-based discrimination, the plight of disabled individuals in employment has received less attention. The PWD Act 2008 was introduced to align Malaysia's laws with the United Nations Convention on the Rights of Persons with Disabilities (CRPD). While it provides some protection, such as Section 29, which emphasises equal employment opportunities for people with disabilities, the Act lacks enforcement mechanisms. There are no punitive provisions to ensure compliance, making it ineffective in safeguarding the employment rights of disabled individuals. Moreover, the One Percent Policy, which allocates 1% of public sector jobs to disabled individuals, remains under-implemented, with only a tiny fraction of the disabled population employed in the public sector (Gafoor, 2019).

In Japan, the Act on Employment Promotion of Persons with Disabilities provides a more structured and enforceable framework. The quota system, introduced in 1976, mandates employers hire a specific percentage of disabled workers. The quota system has proven effective, imposing financial penalties on employers who fail to meet the quota. Japan's approach is proactive, with laws regularly updated to ensure that the needs of disabled individuals are met. For instance, Section 14(2) of the Act requires the employment quota to be reviewed and adjusted every five years based on population changes, ensuring disabled individuals are not left behind in the workforce.

Japan's Employment Countermeasures Law (1966) further supports disabled individuals by mandating vocational rehabilitation and job security measures. Articles 63 to 67 provide punitive provisions for non-compliance, illustrating Japan's commitment to enforcing disabled employment rights. In contrast, Malaysia's laws lack similar punitive measures, which reduces their effectiveness. Japan's legal framework demonstrates the importance of enforceable legal mechanisms in promoting equality and protecting the rights of disabled workers.

Overall, while both Malaysia and Japan have taken steps to address the employment rights of disabled individuals, Malaysia's framework remains inadequate. The lack of punitive provisions and effective enforcement mechanisms in the PWD Act and Employment Act 1955 has allowed discrimination to persist. In contrast, Japan's quota system and regular updates to its laws ensure that disabled individuals are integrated into the workforce and receive the protections they deserve. The comparison between these two countries highlights the importance of enforceable legal frameworks in ensuring that the employment rights of disabled individuals are respected.

## RESEARCH METHODOLOGY

The research adopts the doctrinal legal methodology by focusing on the systematic analysis of legal principles, statutes and judicial decisions governing the employment rights of disabled individuals both in Malaysia and Japan. This approach provides a comparative analysis through primary legal texts, such as Malaysia's Person with Disabilities Act 2008 and Japan's Act on Employment Promotion of Persons with Disabilities, to evaluate their effectiveness in ensuring equal employment opportunities. Using this method, critical analysis could be conducted on the framework in light of international conventions like the United Nations Convention on the Rights of Persons with Disabilities (CPRD), identifying the legislative gaps and enforcement challenges.

## FINDINGS

The research reveals that the issue of employment rights for disabled individuals remains a critical challenge in both Malaysia and Japan. In Malaysia, policymakers, specifically the Ministry of Women, Family and Community Development, as well as organisations advocating for people with disabilities, stand to benefit most from research that outlines measures to ensure equal employment opportunities. By comparing Malaysia's legal framework with Japan's, it is evident that Japan has implemented more robust policies to protect disabled individuals' rights in employment, including mandatory quotas and punitive provisions, unlike Malaysia's non-enforceable policies.

At the international level, the Convention on the Rights of Persons with Disabilities (CRPD) is an essential legal instrument that emphasises equal employment rights for disabled persons, explicitly prohibiting discrimination in hiring, advancement, and working conditions. As a signatory to the CRPD, Malaysia must incorporate these principles into its domestic laws, as evidenced by the Persons with Disabilities Act (PWD Act) of 2008. Section 29 of the PWD Act guarantees access to employment for disabled persons on equal terms as non-disabled individuals. However, the effectiveness of this provision remains highly debatable. While the inclusion of Section 29 signifies Malaysia's effort to align with international standards, the enforcement of this section is inadequate, as evidenced by legal cases such as *Shaffarizan Bin Mohamad v Tan Sri Zulkarnaen Bin Haji Awang & Ors* [2018] MLJU 1968. In this case, the appellant failed to qualify as disabled under the PWD Act because he had not registered with the National Council for Persons with Disabilities. This case highlights that legal recognition of disability in Malaysia depends on bureaucratic procedures, which often leave unregistered disabled individuals without protection.

One of the key challenges in Malaysia's legal framework is the lack of automatic registration for disabled persons. Unlike Japan, which implements progressive policies like mandatory employment quotas for disabled individuals under the Law for Employment Promotion, etc. of the Disabled (Law No. 123 of 1960), Malaysia relies on a system that requires disabled individuals to register voluntarily. Despite the non-mandatory nature of registration, failing to register effectively excludes disabled persons from legal protections under the PWD Act. Furthermore, Japan's legislation mandates a quota system, including financial incentives and penalty provisions. Section 26 of Japan's Employment Act outlines the collection of levies for employing physically disabled individuals, while Section 18 provides adjustment allowances to employers who hire disabled persons. These initiatives ensure that disabled individuals are integrated into the workforce, a practice Malaysia has yet to adopt fully.

The introduction of Malaysia's One Percent Policy, which mandates a 1% employment quota for disabled persons in the public sector, has faced significant challenges in its implementation. While this policy is a positive step, it remains ineffective due to poor enforcement and a lack of awareness. As of 2021, only 0.4% of public sector employees were disabled, far below the intended target. Senator Datuk Ras Adiba Radzi and other advocates have called for stronger enforcement measures and a more inclusive approach to ensure disabled individuals benefit from this policy. Professor Dr Roslinda, during an interview, emphasised that the lack of enforcement by government authorities is a significant barrier to the success of the One Percent Policy. Despite this policy, many disabled individuals continue to face barriers to employment due to discriminatory practices, as evidenced by interviews conducted with disabled individuals who shared their experiences of being overlooked or dismissed by employers.

The experiences of these individuals highlight the ongoing discrimination that disabled persons face in Malaysia. For instance, one interviewee, a former employee in the food and beverage industry, recounted how he was dismissed after suffering a physical injury. Despite his three years of service, his employer refused to rehire him, citing a lack of available positions. This pattern of discrimination underscores the need for Malaysia to adopt a more comprehensive legal framework that includes punitive measures for employers who discriminate against disabled workers. In contrast, Japan's legal framework, which includes punitive provisions in its employment laws, holds employers accountable and encourages compliance with quotas and non-discriminatory practices.

Furthermore, Malaysia's PWD Act lacks effective remedies for addressing discrimination against disabled individuals. Sections 41 and 42 of the Act shield the government from liability, preventing legal action against the state for failing to protect disabled individuals' rights. This immunity undermines the effectiveness of the Act and leaves disabled individuals with limited recourse when their rights are violated. In contrast, Japan's laws provide a more balanced approach, offering protections for disabled individuals and accountability for employers and government entities. By repealing or amending Sections 41 and 42 of the PWD Act, Malaysia could improve access to justice for disabled individuals and ensure their employment rights are more effectively safeguarded.

Japan's quota system, financial incentives, and punitive measures provide a model Malaysia could emulate. Implementing similar policies, such as tax exemptions for employers who hire disabled individuals, would encourage compliance and improve the employment rate among disabled individuals in Malaysia. However, Malaysia and Japan's cultural and social differences must be considered. Japan's success in integrating disabled individuals into the workforce is partly due to its strong social support systems and inclusive infrastructure, which Malaysia lacks. As a result, implementing similar policies in Malaysia would require significant investments in infrastructure, public awareness, and social services to ensure that disabled individuals have the necessary support to participate fully in the workforce.

In conclusion, while Malaysia has made progress in enacting laws to protect disabled individuals' employment rights, the current legal framework remains insufficient. The lack of enforcement, combined with bureaucratic barriers to accessing legal recognition and protection, leaves many disabled individuals vulnerable to discrimination. By drawing lessons from Japan's comprehensive approach to disabled employment rights, Malaysia could strengthen its legal framework, improve enforcement, and provide more meaningful opportunities for disabled individuals to participate in the workforce.

## CONCLUSION

The research on employment rights for people with disabilities highlights a critical gap in Malaysia's legal and social landscape. While the government has introduced frameworks like the Persons with Disabilities Act (PWD Act) 2008 and policies such as the One Percent Policy, the enforcement issue remains a significant challenge. A recurring theme throughout this research is the lack of effective implementation of these laws and policies. While the legal frameworks exist, adequate enforcement mechanisms or societal awareness do not support them. The government's failure to enforce existing laws, combined with the absence of punitive provisions in the PWD Act, hinders the protection of the disabled community's employment rights.

One of the key findings of this research is that discrimination in the workplace, while not overtly rampant, persists due to the systemic lack of accountability for employers. Many interviewees suggest that the government should focus on awareness campaigns and education instead of punitive measures. This approach may encourage employers to be more inclusive and sensitive to the disabled's challenges, fostering a more supportive and equitable work environment. However, awareness efforts should not be limited to the government; civil society organisations, employers, and educational institutions should also play a role in promoting inclusivity.

The issue of educating society about disabled employment rights is crucial but underexplored in this research. Future studies must delve deeper into how education and awareness can shape public perception and contribute to reducing workplace discrimination. Legislative and executive bodies must prioritise this issue, as

government-led initiatives often drive societal change. Without widespread awareness, any legal reforms or policy changes may remain ineffective.

Additionally, this research does not address the role of trade unions in advocating for the rights of disabled workers. Trade unions could be instrumental in ensuring that disabled employees are treated fairly. However, the Industrial Relations Act and the broader labour movement in Malaysia and Japan are beyond the scope of this study. Future researchers should explore how trade unions can be leveraged to safeguard disabled workers' rights and how collective bargaining can address workplace discrimination.

In moving forward, several recommendations emerge from this research. First, the government should consider introducing punitive provisions in the PWD Act, holding employers accountable for discriminatory practices. Second, the automatic registration of persons with disabilities, akin to Malaysia's automatic voter registration system, should be considered to streamline access to services and protections for people with disabilities. Third, the government must invest in nationwide awareness campaigns to educate employers and the general public about the importance of inclusivity in the workforce. Lastly, a comprehensive review of existing policies, with particular attention to the enforcement mechanisms, is needed to ensure they are effectively implemented.

The study of employment rights for disabled persons is essential for improving their quality of life and contributing to Malaysia's socio-economic growth. Empowering people with disabilities to participate fully in the workforce can enhance productivity and foster a more inclusive society. While this research presents significant findings, it leaves room for further exploration, particularly in trade union involvement, policy enforcement, and public education. It is hoped that future research will continue to build on these findings, helping to shape a more just and equitable employment landscape for disabled persons in Malaysia and beyond.

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