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A GUIDE TO BUILDING INCLUSIVE WORKPLACES FOR PEOPLE WITH DISABILITIES

UNGENDER ADVISORY
2020

ABOUT UNGENDER

Ungender Legal Advisory is a diversity and inclusion laws advisory firm – working on bridging the gender and inclusion divide at workplaces.

We believe that workplaces have a long way to go before they become “inclusive” for all the existing and prospective genders interacting as their internal and external stakeholders. However, this is a journey that has begun for a lot of companies and some are just beginning to walk the path. We partner with the companies and its leaders to help them reach inclusion.

Our dedicated efforts towards this have resulted in niche advisory on compliance and implementation of the Maternity Benefits Act, 1961, SexualHarassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and other diversity based laws such as the Rights of Persons with Disabilities Act, 2016 and the Transgender Persons (Protection of Rights) Act, 2019.

We believe that solutions, like their problems, exist in the form of an ecosystem. And we need to address it together as much as possible. While majority of our work in the six years has been in private sector and workplaces, we have accumulated advisory expertise on different on-ground, mass level implementation with State and District level of government. Our collective intelligence is an output of working with over 300 companies directly, educating over 10,000 companies leaders, 250+ case investigations, and sensitizing over a lakh individuals on diversity and inclusive laws.

In addition to the above, we believe in extracting data-based insights on the on-ground activities/realities of workplaces to in turn, shape the future activities within a workplace, in the industry as benchmarks, or in the legal ecosystem.

As a part of our learning and development efforts, we are happy to share our knowledge in the public domain for the benefit of all stakeholders. For this, we have a dedicated section on our website on blogs, legal updates and handbooks on diversity and inclusion laws. Additionally, we will also bring various industry insights, through the gender lens, for you, as a stakeholder, decision maker, and an advocate of inclusion and equity to build inclusive workplaces of future.

Disclaimer

This Handbook is a copyright of Ungender Legal advisory. The Handbook has been designed to provide basic information about The Rights of Persons with Disabilities Act, 2016 read along rules and schemes framed thereunder and is in no manner construed to be professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this Handbook, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this Handbook.

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For any help or assistance please email us on contact@ungender.in or visit us at www.ungender.in

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CONTACT US

For the past six years, Ungender and the team behind it, has built its expertise in the laws that impact workplaces and the genders engaging with them.

Our insights are produced in the form of simplified handbooks like the one you are accessing right now where we simplify the complicated laws and their mandates for the stakeholders.

Our additional insights come out in the form of industry reports where we combine laws, data, and gender together to provide the nuanced reality of specific sectors.

To have access to the reports, write to us on contact@ungender.in

To seek our advisory on workplace gender laws matters, write to us on

contact@ungender.in

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I. INTRODUCTION

Over 600 million people, i.e. around 10% of the world's population, have a disability of one form or another. Furthermore, developing countries comprise of around two thirds of the disabled population of the world. Only 2% of children with disabilities in the developing countries receive any education or rehabilitation [1]. The 2001 census of India revealed that over 21 million people in India are suffering from one or the other kind of disability. This is equivalent to 2.1% of the population. Among the total disabled in the country, 12.6 million are males and 9.3 million are females [2]. The numbers indicating their level of education an employment rate is dismal to say the least. Among persons with disabilities (PwDs) of age 15 years and above, only 19.3% have the obtained higher education [3].

Furthermore, recently studies have indicated that only 34 lakh of the about 1.34 crore PwDs in the employable age have a job in India. That is an unemployment rate of more than 70% [4]. These numbers indicate the extent of exclusion PwDs face from mainstream society.

However, increasingly through strategic action by civil society agents and litigation, there is a recognition that PwDs encounter several obstacles due to sensitivity and attitudinal barriers. The discourse previously was centred around correcting the impairment and rehabilitating the individual to make them 'fit in'. However, it is now recognised that disability is not a deviation and what needs fixing is the systems and structures of the society to allow equal access and full participation. This was the aim and objective behind enacting the Rights of Persons with Disabilities Act 2016 (RPWD Act).

Any act can only be as successful as its implementation; hence, this Handbook is an endeavour to provide information to HR managers and Legal Heads of companies to ensure compliance with the RPWD Act.

It is relevant to note that compliance is not meant to be viewed through the narrow lens of evading legal complaints against companies but to ensure that the true spirit of the law is realized. To ensure the same, sensitization of employees along with adoption of creative measures to ensure inclusion is imperative.

[1] DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS DISABILITY, UNITED NATIONS. [HTTPS://WWW.UN.ORG/DEVELOPMENT/DESA/DISABILITIES/RESOURCES/FACTSHEET-ON-PERSONS-WITH-DISABILITIES.HTML](https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html).

[2] CENSUS OF INDIA, 2001 [HTTPS://CENSUSINDIA.GOV.IN/CENSUS_AND_YOU/DISABLED_POPULATION.ASPX](https://censusindia.gov.in/census_and_you/disabled_population.aspx).

[3] NSS REPORT NO. 583: PERSONS WITH DISABILITIES IN INDIA NSS 76TH ROUND. [HTTPS://PIB.GOV.IN/PRESSRELEASEPAGE.ASPX?PRID=1593253](https://pib.gov.in/pressreleasepage.aspx?PRID=1593253).

[4] PRACHI VERMA ET AL. INDIA INC HAS LONG WAY TO GO IN EMPLOYING DISABLED PEOPLE. THE ECONOMIC TIMES. [HTTPS://ECONOMICTIMES.INDIATIMES.COM/JOBS/INDIA-INC-HAS-LONG-WAY-TO-GO-IN-EMPLOYING-DISABLED-PEOPLE/ARTICLESHOW/72449585.CMS#:~:TEXT=ONLY%2034%20LAKH%20OF%20THE.RATE%20OF%20MORE%20THAN%2070%25](https://economictimes.indiatimes.com/jobs/india-inc-has-long-way-to-go-in-employing-disabled-people/articleshow/72449585.cms#:~:text=only%2034%20lakh%20of%20the,rate%20of%20more%20than%2070%25).

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II. MEANING & DEFINITION OF DISABILITY

Disabilities are myriad and complex in nature. The WHO has stated that disability is an “umbrella” term, covering impairments, activity limitations, and participation restrictions [5]. Further, it states that a disability cannot simply be classified as a health problem. It is a complex phenomenon, reflecting the interaction between features of a person’s body and features of the society in which he or she lives.

INTERNATIONAL DISCOURSE

The WHO in 1976, provided a three-fold definition of impairment, disability and handicap explaining that an impairment is any loss or abnormality of psychological, physiological or anatomical structure or function. Further, a disability is a restriction resulting from an impairment of the ability to perform an activity as would be normal for a human being. Further, a handicap is a disadvantage resulting from an impairment or a disability, which prevents an individual from fulfilling a role that is considered normal (depending on age, sex, social and cultural factors) [6].

The UNCRPD, a human rights Convention for people with disabilities, recognizes that disability is an “evolving concept”. It states that persons with disabilities include those who have long term physical, mental, intellectual, or sensory impairments which hinder their full and effective participation in society on an equal basis with others [7].

[5] WORLD HEALTH ORGANISATION, [HTTPS://WWW.WHO.INT/TOPICS/DISABILITIES/EN](https://www.who.int/topics/disabilities/en)

[6] ANURADHA MOHIT ET AL, RIGHTS OF THE DISABLED, NATIONAL HUMAN RIGHTS COMMISSION, [HTTPS://NHRC.NIC.IN/SITES/DEFAULT/FILES/DISABLEDRIGHTS.PDF](https://nhrc.nic.in/sites/default/files/disabledrights.pdf)

[7] DISABILITY IN THE WORKPLACE: COMPANY PRACTICES, INTERNATIONAL LABOUR ORGANISATION, [HTTPS://WWW.ILO.ORG/WCMSP5/GROUPS/PUBLIC/-/ED_EMP/-/IFP_SKILLS/DOCUMENTS/PUBLICATION/WCMS_150658.PDF](https://www.ilo.org/wcmsp5/groups/public/-/ed_emp/-/ifp_skills/documents/publication/wcms_150658.pdf)

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“The origin of the word 'handicap' is popularly believed to have derived from the phrase “cap in hand” referring to the medieval custom where the beggars would extend their cap to receive the handouts. It in fact is a derogatory term.”

DISCOURSE IN INDIA

Earlier, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 adopted a narrow a medical definition of disability and stated that a ‘disabled’ individual is a person suffering from not less than 40% of any disability as certified by a medical authority [8].

However, the said act was repealed and the RPWD Act was enacted in 2016.

This law defines a “person with disability” as a person with long term physical, mental, intellectual, or sensory impairment which prohibits them from interacting and participating with other individuals in society [9]. This wider definition is in consonance with the international discourse surrounding disability rights.

[8] SECTION 2(T), PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995.

[9] SECTION 2(S), RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016.