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DIVERSITY, EQUITY & INCLUSION

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Diversity, Equity, and Inclusion

India is presently the fifth-largest economy in the world and is predicted to become the third largest economy in 2027 (Financial Year 2028 for India). The growth of the Indian economy is attributable to various factors such as untapped markets, geopolitical situation and favorable policies and initiatives of the Indian Government. However, it is India's young and aspirational population, which makes 'human resources' an integral building block of India's economic growth. With the increasing importance of human resources, we see the emergence of new types of employment and the relationship between employers and employees (permanent and temporary). Another important aspect that fuels growth for businesses and the economy is 'sustainability'. In this section, we look at the intersection of sustainability and human resources through the lens of DEI - diversity, equity, and inclusion, and India's efforts towards promoting and achieving DEI goals and the impact of technology in achieving DEI. We have also covered some legal and practical issues faced by employees and employers while implementing DEI at their workplaces.

What is 'Sustainability'?

Sustainability reflects how an organization manages its environmental, social and governance (ESG) impact to create long-term value for its stakeholders, i.e., customers, investors, regulators, suppliers, etc. According to PWC's Global Investor Survey 2023, sustainability considerations in strategic decision-making and risk management by a company has emerged as an important investment decision-making factor. Investors are also keen to understand a company's sustainability plans vis-à-vis their business model, and the capital allocation to achieve these goals. Evidently, sustainability has transformed from a mere ESG compliance exercise to a strategic priority for businesses.

What does 'S' in ESG stand for?

The 'S' in ESG stands for 'social aspects', which includes how a company treats and manages social factors, i.e., people within and outside the organization. The fundamental social metrics include DEI, employee benefits, labour policies, etc.

Introduction to DEI

Simply put, DEI refers to the core value of an organization to include and fairly treat individuals from all walks of life, including people of different genders, races, ethnicities, religions, ages, physical abilities, and sexual orientations. Companies around the globe have been progressively implementing DEI strategies within their organization, pursuant to various factors such as: (a) global activism movements and campaigns for gender equality, racial justice, LGBTQIA+ rights; (b) stakeholder expectation; (c) investor focus on ESG metrics; (d) competitive advantage; etc. Data has shown a correlative relationship between business performance and diversity, which can be attributed to greater access to talent and increased employee engagement.

While the estimate for closing the global gender gap prior to the Covid-19 pandemic was 99.5 years, the World Economic Forum's Global Gender Gap report 2023 estimates it will take a whopping 131 years to achieve full gender parity at the current pace.¹ On the other hand, it is challenging to systematically estimate global gaps for LGBTQIA+ and disability inclusion with the limited data available.

What DEI looks like in India?

According to the World Economic Forum's Future of Jobs 2023 report, approximately 61% of the surveyed organizations in India expect the global trend of application of ESG standards to transform business and employment. Also, with respect to business practices, 28% organizations opted for more DEI programs and policies, and 24% organizations sided with offering more remote and hybrid work opportunities within countries.¹

According to EY's Humans at the Centre of Sustainability Transformation 2023 report, Business Responsibility and Sustainability Reporting (**BRSR**) in India by 1,040 listed companies evidence the strategic focus on DEI, robust training initiatives, and comprehensive employee support programs.² Yet, the data on gender diversity and inclusion of differently abled is grim.³ Women only constitute 23% of the permanent employees, with highest gender diversity in the IT and consumer services sectors at 34% each. India has been ranked 127th of 146 countries on the World Economic Forum's Global Gender Gap Index (**WEF Index**) in 2023⁴. The WEF Index gives such a dismal ranking mainly due to the significant gap in economic participation and opportunity for women and decline in the share of women in senior positions and technical roles.

DEI efforts in India by Indian companies

Companies in India have been proactively implementing inclusive benefits for employees to attract and retain a diverse workforce. These benefits beyond the tried-and-traditional include pet adoption leave, menstrual leave, medical assistance directed towards mental health, fertility / adoption assistance, assistance in setting up remote offices, etc. Companies have started including programmes for their employees who require focused benefits. For instance, Accenture introduced medical benefits covering gender reassignment surgery for LGBTQIA+ employees and their partners; Procter & Gamble (*P&G*) introduced a programme for early preventive care and treatment for employees' children who have specific disabilities or special needs.⁵

Indian companies are also increasingly focussing on creating employment opportunities and actively promoting inclusivity for LGBTQIA+. With a focus on attracting and hiring more transgender individuals, companies are conducting targeted recruitment drives, implementing gender-neutral policies and providing gender-neutral facilities such as accessibility of washrooms to all employees regardless of their gender identity and ensuring non-disclosure of gender identity under application forms and other onboarding documents.⁶

Tata Steel launched its initiative aiming at transforming its workforce with 25% diverse employees by 2025, covering a wide variety of diversity dimensions including gender, LGBTQIA+, disability, caste, much before 2023. In 2022, Tata Steel launched LGBTQIA+ focused recruitment model called 'Queerious', and aimed to hire more through this model in the year 2023.⁷ Axis Bank has set a goal of having 30% women in its workforce by 2027.⁸ To further its DEI initiatives, the bank has put in place an inclusive hiring policy, imbibed inclusivity training in its induction programs, introduced policies and programmes to ensure gender inclusivity, as well as ensured accessibility for differently abled person in its infrastructure.⁹

Regulatory efforts promoting DEI in India

Not only the Indian private sector is setting trends in DEI-focused hiring and practices, but the government is also introducing measures focused on gender diversity and welfare of differently abled persons. The Tamil Nadu government, for instance, entered into a memorandum of understanding with the fast-moving consumer goods company Godrej Consumer Products Ltd., under which Godrej will hire 50% women and 5% LGBTQIA+ individuals and differently abled persons in its newly set up manufacturing unit in Tamil Nadu. The Tamil Nadu government also notified the Transgender Persons (Protection of Rights) Rules, 2022 for furthering the welfare and protection of rights of transgender persons.

The central government picked up the DEI baton and amended the Rights of Persons with Disabilities Rules 2017, to incorporate the standard for public buildings as specified in the Harmonised Guidelines and Standards for Universal Accessibility in India, 2021, in the existing rules of accessibility, wherein every establishment is required to comply with certain standards relating to physical environment, transport and communication technology.

Next in line, the Haryana government revised conditions for women to work at night under the Punjab Shop and Commercial Establishments Act, 1958. It imposed conditions for the employer to ensure the safety of such women employees. For instance, detailed conditions relating to security of female employees have been extended for night shifts from 8 PM to 6 AM.

Speaking of women safety, the government and the courts in India have been emphasising on the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH**)

Act), the legislation aimed at protecting women at the workplace. On 12 May 2023, the Supreme Court issued directions for better enforcement of POSH Act in the case of *Aureliano Fernandes v. State of Goa and Others*. The Supreme Court expressed concern on the serious lapses in the enforcement of the POSH Act, where various establishments have still not constituted the internal committee (IC) as required under the POSH Act, and if constituted, many a time the unprepared IC conducts an ill-considered inquiry. The Supreme Court issued directions such as taking immediate and effective steps by management / employers to orient the IC on their duties and the manner of conducting an inquiry; educating women employees about the provisions of the POSH Act.

Technology advances the DEI movement

Remote work has now become mainstream and integral to the manner in which many organizations operate globally. To a large extent, this can be credited to technology –better internet connectivity, the advent of powerful digital tools that enable collaboration, cloud computing, and a shift in workplace culture.

In the 1990's Hollywood hit 'Jerry Maguire', we see Rod Tidwell tell his agent "*Show me the money*". It appears that this is no longer the sole mantra for all to get employed. According to Randstad Employer Brand Research report 2023, 'work-life balance' ranks second in the top priorities for employees globally, and has emerged as the top priority for employees in India, at par with the monetary benefits of the job. Buffer's 2023 State of Remote Work report¹⁰ states that 91% of the respondents preferred remote work. In the Randstad Employer Brand Research report, work-life balance has been identified as the main reason for employees leaving their current jobs and looking for employers offering better non-monetary benefits. Remote-work or hybrid-work models are likely to promote DEI by allowing access to employment for persons with disabilities, women who are involved in the role of a caregiver, persons situated in tier-II or tier-III cities, or even urban areas, with lower employment opportunities.

However, employers have been facing certain challenges, especially in the IT and ITeS establishments in India. Owing to concerns over security of the information and data shared by the clients, and potential moonlighting by the employees, the IT companies in India have been attempting to impose the work-from-office model.¹¹

Big shift towards gig hiring

Technology has also fuelled the growth of the gig economy, and increased opportunities for gig workers. In the 2023 report of the World Bank Group on 'Working Without Borders: The Promise and Peril of Online Gig Work', it is estimated that the number of global online gig workers ranges from 154 million to 435 million, and the 'gig economy' accounts for up to 12% of the global labour market. Companies in India have showcased an upward trend in hiring of gig-workers rather than full-time employees. This increase has been dramatic in several industries, including manufacturing, FMCG, professional services, healthcare.¹² This can be attributed to the various advantages that gig hiring provides to the employers, such as low costs, as employers are not required to provide social security benefits to gig workers, and ease of termination of services.

The gig economy is not only creating job opportunities, but also promoting diversity and inclusivity. The virtual and often temporary nature of gig work benefits groups such as women, youth, and differently abled people. It is supporting inclusion of such people who face mobility constraints in the offline labour market.

India has recognised the rapid growth of the gig economy as well as the challenges that may be faced by the gig-workers and the employers. The central government had introduced the Code on Social Security, 2020, which recognised gig-workers and platform-workers and allowed social security benefits such as putting in place social security schemes relating to life and disability cover, accident insurance, health and maternity benefits, old age protection, etc., and mandatory contribution by the employer to the social security fund for gig-workers. The Code on Social Security, 2020, however, has not been notified yet. Apart from the issues faced by the gig-workers for recognition and adequate social protection, the gig-economy also poses challenges for the employers, such as ambiguity in treatment of gig-workers and potential increase in labour costs, which in turn may adversely affect the prospects of the concerned business (*read more [here](#)*).

On 12 September 2023, the Rajasthan state government introduced a legislation aimed at the recognition and protection of gig-workers, called the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023. The legislation covers provisions in relation to registration of all gig workers, aggregators and primary employers; contributions to the social security fund for the workers; provision of social security benefits to workers such as accident and health insurance, maternity benefits, gratuity, pension, EPF, ESIC; grievance redressal mechanism for the workers, and heavy penalties for aggregators and employers for non-compliance. The Rajasthan Government has also promised an allocation of INR 2 billion (~USD 24 million) to the Gig Workers Security & Welfare Fund.

Moonlighting concerns of employers

While on one hand, remote or online nature of jobs facilitate ‘gig-work’ and enable temporary workers to undertake multiple jobs at the same time, the remote nature of jobs poses concerns for employers in case of full-time or permanent employees. Employers are facing the issue of ‘moonlighting’ by employees working remotely. Moonlighting may also be referred to as ‘dual employment’, which is the practice of engaging in a second employment alongside the primary employment. IT companies have frowned upon such practice, leading to mass termination of employees, for instance, Wipro had fired over 300 employees for working for companies in the same niche, while being employed with Wipro.¹³

The Indian law does not define or explain moonlighting or dual employment. However, a few legislations do regulate this to a certain extent. The Factories Act, 1948, and certain state shops and establishments legislations (such as those applicable to Haryana and Delhi) impose restrictions on working hours in the context of dual employment. The Factories Act, 1948, restricts an employer from requiring or allowing a worker to work in the factory on any day on which they have already been working in another factory. The state shops and establishments legislations as mentioned above provide that an employer may not engage an employee to work beyond the prescribed working hour limits across their employment with different establishments.¹⁴ In India, the position is that dual employment is permitted, if such dual employment is contractually permitted, or is being undertaken with the prior consent of the employer.¹⁵

Moonlighting raises serious concerns for employers by exposing them to business risks such as a conflict of interest, breach of confidentiality or proprietary information, competition, solicitation of co-employees or vendors, compromise of intellectual properties, as well as attrition. On these concerns, the regulators and courts in India have taken a pro-employer stance to some extent by recognising reasonable non-compete restrictions during the employment period, and contractual protection of confidentiality of information and intellectual property of an employer.¹⁶

However, to prevent moonlighting, companies may specifically prohibit the practice of dual employment in the employment contracts. Companies may draft the exclusivity clauses in the employment agreements in a manner where it expressly prohibits the employee from engaging in any employment / consultancy / advisory arrangement with any other company, irrespective of the working hours. It should further state that the breach of the exclusivity provision would amount to misconduct, and the employer would have the right to take appropriate action against such an employee.

DEI: Legal Landscape

While companies and governments are taking the efforts to promote and bolster DEI in the country to benefit both employees and employers, presently statistics on DEI implementation in India is at a nascent stage.

Anti-discrimination and inclusivity in employment lies at the very heart of the Indian constitution. Article 15 of the Constitution of India prohibits unfair treatment and discrimination of any person on the grounds of their religion, race, sex, caste, place of birth or any of them. Article 16 extends equality of opportunity and prevents discrimination in any public employment or office. There are several legislations in India which have been enacted keeping in mind the global momentum in the DEI movement. These laws include: (a) the Transgender Persons (Protection of Rights) Act, 2019 which prohibits discrimination against transgender persons in employment, and require all establishments put in place an equal opportunity policy for transgender individuals; (b) Rights of Persons with Disabilities Act, 2016 requires all establishments to have an equal opportunity policy

in place and also employers should provide reasonable accommodation to employees with disabilities, if possible; (c) Code on Wages, 2019 (yet to come into force) prescribes equal remuneration for same work for all employees irrespective of their ‘gender’; (d) Employees’ State Insurance Act, 1948 prohibits employers from terminating or impose disciplinary actions on employees receiving sickness, maternity, or disablement benefits under the Employees’ State Insurance Act, 1948.

There are specific legislations for the protection of the rights of women, and their safety, such as: (a) POSH Act for preventing sexual harassment against women at workplace; (b) Equal Remuneration Act, 1976, providing equality in remuneration, recruitment, promotions, training; (c) Maternity Benefit Act, 1961, extending maternity benefits and facilities to women; and (d) various state legislations enacted for the protection of women during night-shifts.

While companies and the government authorities are taking active efforts to promote DEI, there are still workplace laws that are women centric. For instance, the POSH Act is applicable to all organizations. As mentioned previously, there is particular focus on the proper implementation of the POSH Act, with the Supreme Court issuing directions in this regard. The POSH Act, however, excludes other genders from the sexual harassment at workplace. Unfortunately, not much attention is being paid by the legislators for extending such protection to the LGBTQIA+ individuals. In November 2023, in the case of *Binu Tamta and Anr. V. High Court of Delhi*¹⁷, the Supreme Court declined the plea to include LGBTQIA+ persons within the ambit of ‘aggrieved woman’ under the Gender Sensitization and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition, and Redressal) Regulations, 2013, formulated under the POSH Act. The Supreme Court declined the gender neutralization of the law, by stating that the POSH Act is intended to protect ‘women’ from sexual harassment at workplace, and such inclusion will dilute the purpose of the law.

Similarly, while companies are adopting more gender neutral and inclusive policies for maternity benefit, the Maternity Benefit Act, 1961 still excludes trans-men that may be giving birth.

Road ahead for DEI

Globally, businesses have recognized the importance of sustainability, especially on the parameter of diversity and inclusion in employment. The extensive efforts by Indian companies in furthering the DEI movement is noteworthy. Promoting DEI is not merely a compliance exercise, but it is strategically advantageous to the organizations by allowing them access to larger and diverse talent pools. The year 2024 may witness more companies formulating their recruitment strategy around DEI.

DEI remains a work in progress and does not come without its challenges. Companies are faced with legal issues of compliances and uncertainty in extending statutory benefits for such employees, practical issues of lack of proactive policies and catering to diverse needs of diverse individuals, and business risks such as moonlighting, confidentiality breach, etc. As of today, the legal landscape around DEI is focused on large and mid-sized companies. While it may be relatively easier for large and mid-sized companies to implement DEI initiatives, small companies are still focused on growth and profit-making, rather than DEI. For instance, the mass lays-offs in India amid the funding winter has focused on expenses / costs, rather than considerations around DEI. According to reports, the lay-offs disproportionately impact women, and 46% of the people laid-off were women.¹⁸ However, data suggests that startups in India have the potential to create 2 million new jobs for women by 2030.¹⁹ Smaller companies and start-ups can capitalize on the benefits of including DEI in its corporate strategy and gaining competitive advantage, by implementing practical measures such as reforming recruitment strategies, setting DEI targets, increasing safety at workplace and providing equal opportunity for all.

While the labour markets are going through a volatile period especially in the start-up space,²⁰ it is recommended that long term view is taken to build sustainability in the workplace especially with respect to human resources, as AI and technology will only supplement the performance of human resources and not make redundant human interventions in the near future. Further, sustainable practices will ensure that companies are able to capitalize on new opportunities and scale up businesses which will benefit the interest of all stakeholders.

ENDNOTES

- ¹ World Economic Forum, Future of Jobs 2023 (May 2023), access [here](#)
- ² EY, Humans at the Centre of Sustainability Transformation (December 2023), access [here](#)
- ³ EY, Humans at the Centre of Sustainability Transformation (December 2023), access [here](#)
- ⁴ World Economic Forum, Global Gender Gap Report 2023 (June 2023), access [here](#)
- ⁵ Economic Times, India Inc Tailors Benefits to What Employees Want (26 February 2023), access [here](#)
- ⁶ Economic Times, India Inc is Opening Up to Trans Rights: One Hiring at a Time (09 April 2023), access [here](#)
- ⁷ Economic Times, India Inc is Opening Up to Trans Rights: One Hiring at a Time (09 April 2023), access [here](#)
- ⁸ Axis Bank, Annual Report for the year 2022-2023, access [here](#)
- ⁹ Axis Bank, Annual Report for the year 2022-2023, access [here](#)
- ¹⁰ Buffer, State of Remote Work 2023, access [here](#)
- ¹¹ Economic Times, IT Companies Nudge Staff to Work From Office All Five Days (03 October 2023), access [here](#)
- ¹² Economic Times, India Inc Makes a Gig Shift in Hiring (23 July 2023), access [here](#)
- ¹³ IndiaToday, Wipro Fired 300 People for Moonlighting: How Did The Company Catch These Employees (12 October 2022), access [here](#)
- ¹⁴ Section 9 of Delhi Shops and Establishments Act, 1954; Section 7 of Punjab Shops and Commercial Establishments Act, 1958, (Haryana)
- ¹⁵ Manager, Pyarchand Kesarimal Ponwal Bidi Factory v. Omkar Laxman Thange and Ors., AIR 1970 SC 823 (Supreme Court); Government of Tamil Nadu v. Tamil Nadu Racecourse General Employees Union, 1993 I LLJ 977 Mad (Madras High Court)
- ¹⁶ Embee Software Private Limited v. Samir Kumar Shaw & Ors. (2012); FL Smidith Pvt. Ltd. v. M/s. Secan Invescast (India) Pvt. Ltd. (2013); Manipal Business Solutions Private Limited v. Aurigain Consultants Private Limited and Others (2022); Sudipta Banerjee and Ors. v. L.S. Davar & Company and Ors. (2022)
- ¹⁷ Binu Tamta & Anr v. High Court of Delhi & Ors, access [here](#) (Delhi High Court)
- ¹⁸ The Quint, Hiring & Firing Bias: Indian Women Have It Worse Than Men During Tech Layoffs (01 February 2023), access [here](#)
- ¹⁹ Act Grants, Women in Indian Start-up Ecosystem Report 2023 (October 2023), access [here](#)
- ²⁰ Economic Times, Startups Cut Over 28,000 Jobs in Jan-Sept 2023 (19 December 2023), access [here](#)

LEADERSHIP



SOUVIK GANGULY

MANAGING PARTNER & HEAD -
CORPORATE PRACTICE



DENI SHAH

PARTNER- INDIRECT TAX &
GLOBAL TRADE



VIDUSHI MAHESHWARI

PARTNER - DIRECT TAX



RENJITH NAIR

PARTNER - DISPUTES

CONTRIBUTORS

AKHIL RAMESH | BODHISATTWA MAJUMDER | KRISHNA NAIR
| PARIDHI RASTOGI | SHRISHTI MISHRA | SUMIT NANDY |
TANUJ MODI | VISHESH GUPTA

For any queries, please feel free to contact us at al@acuitylaw.co.in

ACUITY LAW

 506 Marathon Icon, Off Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400013, India

 +91 22 6666 7001

 al@acuitylaw.co.in