

November 2022

This edition of the JSA Employment monthly newsletter discusses diversity and inclusivity at workplaces in India. Additionally, we also touch upon some of the recent interesting judicial precedents spread across several employment legislations.

## **Diversity and inclusivity at workplace in India**

### **Need for collection of diversity and inclusivity data**

With the view to build an equitable, diverse and inclusive workplace for all, organizations worldwide have implemented several equality, diversity and inclusivity programmes. Diversity at workplace means recognising, respecting and celebrating differences of employees from various backgrounds, demographics and mindsets. Inclusivity is creating an environment at workplace where everyone feels valued and can express their views and opinions without judgment or fear of repudiation.

To create a workplace which is equitable, diverse and inclusive, organisations collect and use diversity and inclusivity data (“**D&I Data**”), which allows them to understand existing biases and issues at workplace, prepare and implement effective policies to achieve workplace equality, diversity and inclusivity, and assess where they stand in terms of effectiveness of these policies. D&I Data largely includes information on employees or candidates to be hired, indicating their gender, sexual orientation, race, ethnicity, caste, disability and health conditions, socio-economic condition, language(s) spoken, demographic information, etc.

### **Discrimination risks surrounding D&I Data**

Indian employers have traditionally collected information relating to gender, race, caste and disabilities. To create and facilitate inclusive work environments, organisations and employers presently are collecting D&I Data. While collecting this information, employers should be aware that such ‘sensitive personal’ information when shared by employees, may also be perceived by them to be applied by the employer in a discriminatory nature. Perceptions by employees that the D&I Data could be used in an arbitrary manner during employee engagement, hiring, workforce management and appraisals would have to be considered. Further, collection and use of D&I Data may also result in data privacy risks and/or legal claims, if not done in a diligent manner.

For employers to implement diversity and inclusivity in their work zones, it would be imperative, first, to create a culture through governance, training, and sensitization.

## Policy and corporate governance measures

To start, the employer's policies and benefits should be structured in a gender agnostic manner with well-thought-out human resource ("HR") guidelines, in sync with existing laws. These need to funnel down the chain of command — from management to managers to co-workers. Case studies and experiences covering people with specific gender orientation, abilities and other special characteristics would have to be studied and maintained by the HR team. It is also essential for employers to engage the services of qualified counsellors and if required, therapists, to enable discussions and training programs with the work force.

The effectiveness of any policy is best tested on ground; and therefore, employers would be required to apply and adopt innovative protocols and processes leading to successful implementation. Something as simple as the provision of separate washrooms for transgenders would have to be considered. Similarly, dealing with disciplinary and workplace harassment issues would have to be considered and dealt with higher sensitivity, especially given the lack of adequate laws governing this space. In the absence of legal recognition of same sex marriage currently, employers would have to be careful while updating name and details of nominees in statutory filings.

## In theory vs practice

Having said the above, we have seen some real time examples where diversity and inclusion have been implemented in the true sense. A large online marketplace in India, has a programme designed to enable managers to lead teams with diverse employees. Additionally, among many affinity groups, this group is focused on the LGBTQIA+ community. This affinity group brings LGBTQIA+ employees, associates, and allies together to discuss and share experiences across the globe.

Another large consumer goods company offers insurance coverage to include same-sex and live-in partners, including gender reaffirmation surgery, redefined maternity/paternity leaves for same-sex couples and setting up infrastructure like gender-neutral washrooms.

As we expect the law makers in India to 'catch up' and proactively provide legislative frameworks which is not only progressive but also implementable and practical, it would be good to bear in mind that a few of our current legislations provide a very broad framework of implementing equitable measures in a workplace. These include: (a) the Equal Remuneration Act, 1976 which provides that men and women, when employed for similar roles should not be discriminated in matters relating to recruitment, remuneration and promotions; (b) The Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, broadly speaking, prevents the discrimination against a person belonging to a schedule tribe or a schedule for any reason during his/her employment; (c) The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination against any transgender person in any matter relating to employment; (d) The Industrial Disputes Act, 1947 provides that partiality towards a particular set of workers regardless of merit would be an unfair labour practice punishable with imprisonment or fine or both; (e) The Information Technology Act, 2000 ("IT Act") which, under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal data or Information) Rules ("RSP Rules"), 2011, makes it imperative for organisations collecting personal information pertaining to gender, sexual orientation, disability, and health to be compliant with the IT Act and the RSP Rules in order to respect data privacy rights of individuals and mitigate risks or threats of a cyber-security incident.

Organisations should be more empowered in implementing accessible hiring practices, and promoting inclusive working environment, ensuring pay equity, focused hiring programmes that realize diversity and inclusion, creating internal networks towards improving infrastructure, building awareness, creating a safer environment for employees with special needs. Organizations may implement clear internal policies that outline the support provided to various groups of employees. Further, organizations may conduct workshops to sensitives employees towards various groups at workplace and conduct regular employee surveys and trainings

We will most definitely see many more giga bytes of data and related coverage being dedicated to this very sensitive, yet important discussion in the days to come. It would be good for organisations to jump on this bandwagon of change

to build: (i) consensus; (ii) defined practices; and (iii) precedents, which will also form an integral part of corporate social responsibility finally leading to meaning legislation in this space.

## Case Law Ratios

### An employee's failure to make truthful declaration of antecedents in relation to suitability to a post is a valid ground for termination

The Supreme Court of India in the case of *Satish Chandra Yadav v. Union of India*<sup>1</sup> held that if it is found that an employee had suppressed material information or had made false statements in matters having a bearing on his fitness or suitability to a post, such employee may be terminated from service. The court further held that a candidate making truthful declaration of criminal antecedents, including acquittal in a criminal case is not automatically entitled for employment to a post. An employer has the liberty to consider and examine character, conduct and antecedents of an employee before determining such candidate's eligibility for appointment.

### Grievance Redressal Committees of start-ups and IT companies in Karnataka cannot decide on disputes relating to termination of employment

The Karnataka High Court in the case of *X v. Wipro Limited and Ors.*<sup>2</sup> clarified the powers of grievance redressal committees ("GRC") constituted by IT/ITeS and start-up companies under the Karnataka government notification dated January 25, 2014 ("Notification") for the purpose of redressal of complaints and grievances of employees. In the present case, an ex-employee challenged his termination from service on the ground that disciplinary enquiry relating to his termination ought to have been conducted by the GRC. The court dismissed such challenge and held that the as per the Notification, a GRC only has the power to address grievances of "existing employees" and does not have the power to entertain matters in relation to disciplinary action like termination.

### Award under Employee Compensation Act, 1923 to take into account whether is a causal relationship between the accident and employment in relation to the claim made

The Andhra Pradesh High Court in the case of *New India Assurance Company v. Smt. M. Lakshmi Ramateertham*<sup>3</sup> reiterated that the burden of proof rests on a workman to prove that an accident arose out of and in the course of employment. In the present case, the court setting aside the award of the commissioner on the ground that the jurisdictional fact of relationship between the accident and employment had not been recorded, held that an employer's liability to pay compensation to the employee only arises if the personal injury is caused to the employee by accident arising out of and in the course of employment.

### Information relating to employee performance qualifies as "personal information" under the Right to Information Act, 2006

The Jammu and Kashmir and Ladakh High Court in the case of *Kendriya Vidyalaya Sangathan & Ors. v. Central Information Commission*<sup>4</sup> reiterated that information relating to an employee's performance would qualify as "personal information" under the Right to Information Act, 2005 ("RTI Act"). In the present case, the court upheld the refusal by an organisation to share copies of complaints filed against an employee of the organisation, on the ground that the same being "personal information", falls within the permissible exemption from disclosure under the RTI Act.

<sup>1</sup> SLP (C) 20860/2019 (SC)

<sup>2</sup> WP 47550/2017 (Kar. HC)

<sup>3</sup> CMA No. 430/2010 (Andhra Pradesh HC)

<sup>4</sup> OWP No. 849/2017, IA No. 1/2017 (J&K&L HC)

It noted that the disclosure of such information has no relationship to any public activity or public interest and would cause unwarranted invasion of privacy of such employee.

## Provident fund contributions are payable by principal employer for employees of contractors unregistered under the Employee Provident Fund and Miscellaneous Provisions Act, 1952

The Kerala High Court in the case of *Sarabahi Institute of Science and Technology Uriakode Velland v. the Assistant Provident Fund Commissioner, Employee Provident Fund Organisation*<sup>5</sup>, held that if a contractor is not registered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (“**EPF Act**”), the liability to pay contributions under the EPF Act would fall on the principal employer. It further held that unless it is proved that the principal employer does not have effective appropriate control over the payment of salary and other benefits payable to employees, it would be liable to remit contributions under the EPF Act in respect of employees engaged through a contractor.

### Employment Practice

JSA has a team of experienced Employment Law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our Key areas of advice include (a) Advising on boardroom disputes including issues with directors, both executive and non-executive;(b) Providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance, (c) Providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals, (d) Advising on compliance and investigations, including creating Compliance Programs and Policy, Compliance Evaluation Assessment and Procedure Development and providing support for conducting internal investigations into alleged wrongful conduct, (e) Designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs, (f) Advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

---

<sup>5</sup> WP (C) 26789/2022 (Ker. HC)

**This Newsletter has been prepared by:**



**Gerald Manoharan**  
Partner



**Sonakshi Das**  
Senior Associate



**Manas Ingle**  
Senior Associate



**Sandhya Swaminathan**  
Associate



14 Practices and  
23 Ranked Lawyers



15 Practices and  
18 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



**IFLR1000 India Awards 2021**

10 Practices and  
34 Ranked Partners

Banking & Finance Team  
of the Year

Fintech Team of the Year

Restructuring & Insolvency  
Team of the Year



Among Top 7 Best Overall  
Law Firms in India and  
10 Ranked Practices

13 winning Deals in  
IBLJ Deals of the Year

6 A List Lawyers in  
IBLJ Top 100 Lawyer List



Banking & Financial Services  
Law Firm of the Year 2022

Dispute Resolution Law  
Firm of the Year 2022

Equity Market Deal of the  
Year (Premium) 2022

Energy Law Firm of the Year 2021



Ranked #1  
The Vahura Best Law Firms to  
Work Report, 2022

-----

Top 10 Best Law Firms for  
Women in 2022

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

---

[www.jsalaw.com](http://www.jsalaw.com)



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This newsletter is not an advertisement or any form of solicitation and should not be construed as such. This newsletter has been prepared for general information purposes only. Nothing in this newsletter constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this update disclaim all and any liability to any person who takes any decision based on this publication.

Copyright © 2022 JSA | all rights reserved