

MOVING BEYOND COMPLIANCE

Inclusion of Persons with Disabilities in Business



This paper focuses specifically on the gaps and recommendations to strengthen inclusiveness of Persons with Disabilities in the Corporate Sector

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ABOUT OXFAM INDIA

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ABOUT NCPEDP

National Centre for Promotion of Employment for Disabled People (NCPEDP) is a cross-disability, non-profit organization, working as an interface between the Government, Industry, International Agencies, and the Voluntary Sector towards empowerment of persons with disabilities.

INTRODUCTION AND BACKGROUND

The National Voluntary Guidelines on Social, Environment and Economic Responsibilities of Business (NVGs) of 2011 were developed by the Ministry of Corporate Affairs to urge companies in India to act responsibly, respect human rights, and, strengthen social inclusion within the country. A corresponding business responsibility report (BRR) framework was also designed to help companies report on their achievements viz. a. viz. the nine NVG principles. In 2012, the Securities Exchange Board of India (SEBI) made it mandatory for the top 500 companies listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) to publish an annual Business Responsibility Report (BRR) based on the NVGs. In 2018 the Government of India published an updated draft of the NVGs and BRRs.

The primary purpose of this paper is to prepare draft recommendations for the Ministry of Corporate Affairs and the Security and Exchange Board of India to strengthen the proposed NVGs and Business Responsibility Report (BRR) framework from the perspective of persons with disabilities (PWDs). The paper articulates the challenges faced by people with disabilities viz. a. viz. employment in private sector companies. Gaps, expectations and recommendations – as conveyed by primary stakeholders and other stakeholders in the disability sector – are highlighted so as to serve as inputs for policy makers for better inclusion of persons with disabilities in the corporate sector.

Methodology

The researchers gathered primary data on the challenges and discrimination faced by persons with disabilities with regard to employment in the corporate sector. This was done through personal interviews with 11 PWDs and 7 organisations working on disability. The interviews were conducted in February 2019. In keeping with the request expressed by majority of the interviewees, their names, places of employment and other details have been kept confidential. The interviewees were from geographical areas including Delhi NCR, Karnataka, Telangana, Maharashtra and Tamil Nadu. Secondary data on discrimination in the form of reports, studies, handbooks and other publications of disability experts and activists have also been reviewed and analyzed. The researchers made a doctrinal study of the domestic and international legal framework governing the rights of persons with disabilities and the duties and responsibilities of corporate employers. The draft NVGs of 2018 and the BRR framework were critically analyzed accordingly.

II. Key Issues

The key issues have been looked at from two different lenses: challenges in seeking employment, and during employment. While the challenges in these two categories have been looked at exhaustively, a bird's eye view was taken to understand the kind of disabilities that occur due to workplace accidents.

Challenges in seeking employment

Various impediments even at this preliminary stage have the consequence of excluding PWDs from getting employed in the corporate sector. They include:

- **Low literacy levels:** Literacy levels are low among children of all categories of disability. According to the World Bank, illiteracy is 52% among the disabled – as against 35% in the general population.¹ Many schools are not equipped to cater to the requirements of children with disabilities in terms of infrastructure, accessibility and availability of special instructors. Even in states with good educational indicators and high overall enrolments, a significant share of out – of – school children are those with disabilities.
- **Lack of access to skills and technology:** Young PWDs are often left out of skill development opportunities, particularly in the field of information technology.² NGOs working on PWD placement expressed that there are vacancies in companies but not enough PWDs with adequate skills to make the fit.
- **Ignorance, Misinformation, and Prejudice:** Societal ignorance and prejudice on the capabilities of PWDs lead to them being seen as unproductive. There is a lack of understanding both on the scope of the talent available, and the potential benefits. Many companies have misconceptions about the cost versus the return on investment of disability inclusion.³
- **Access to information on job opportunities:** In most cases, it is the collaborative effort of companies and disability NGOs that results in recruitment of PWDs. Job fairs are often held as part of recruitment drives. In geographical areas where such collaborations are absent, PWDs can be left out of the process entirely. Vocational Rehabilitation Centres (VRCs), which have been set up by the Government to evaluate the capabilities of disabled clients and sponsor candidates to potential employers, often have obsolete data and are not able to provide reliable information to companies who seek to employ PWDs. VRCs are also known to facilitate access to only lower rung jobs.
- **Inadvertent exclusion:** Sometimes companies exclude not by design, but unknowingly. This happens when they mechanically resort to recruitment processes that block out persons with disabilities. For example, when companies reject resumes solely on the ground of qualifications (rather than looking more closely at skills and capabilities), the result is exclusion. PWDs in India often have no access to top mainstream universities, but they can acquire the necessary skills from other sources e.g. dedicated NGOs. But qualifications – driven recruitment processes ignore this reality.

Challenges during employment

- **Lack of effective integration processes:** In the absence of an effective integration process, people with disabilities often feel shunned by their co-workers. This is because co-workers come with their own prejudices and the actual attributes of PWDs are often overshadowed by their perceived shortcomings. It is not enough for the company leadership to be inclusive, or even for the company to have inclusive policies and procedures. The message has to percolate at all levels. Employing PWDs means that their colleagues and people around them have to be made ready. Mindsets have to be changed. This requires constant work and a continuous process.
- **Development Plateau and Lack of Career Advancement:** Employees with disabilities frequently reach a development plateau where they are rendered unable to undertake more complex assignments and responsibilities. They suffer what is known as the 'lost opportunities effect', whereby improvement opportunities are lost due to the absence of critical feedback for performance improvement⁴. PWDs are commonly found doing the same kind of work for many years, and often only entry level jobs. This often occurs due to the misperception that PWDs cannot manage more difficult roles. Sometimes, out of a misplaced sense of pity or lack of confidence in the PWD, managers/supervisors do not give PWDs responsibilities that are necessary for their career growth and development. Sometimes ground managers merely retain the PWD as that is the company policy, but get the work done by another.
- **Redundancy due to lack of skilling:** If the company does not invest in the skilling of employees with disabilities, it is likely that at some point technological progress will render their present skill sets redundant. In one case dozens of PWDs were trained and hired to do data entry work. While this was successful for a while, the subsequent availability of more advanced systems rendered this particular task redundant, with the consequence that many PWDs lost their jobs as they were not capacitated to do other tasks.
- **Ineffective redress mechanisms:** In most companies, grievance redress/liaison officers are appointed on an ad hoc basis. They often barely understand disability and are not skilled enough to take appropriate action. This completely undermines the effectiveness of the redress mechanism. Effective redress mechanisms do not limit the focus to only punishing wrongdoers, but also seek to remedy the situation. Merely punishing an errant employer will not solve the problem when the challenge is at a deeper level requiring building a more inclusive culture.
- **Inadequate job identification process and inappropriate assignment of work:** The system of job identification is sometimes arbitrary. Very often companies restrict themselves to only three categories of disability (locomotor, visual and hearing), ignoring the remaining disabilities. Mental disabilities are particularly excluded. Sometimes job identification is done mechanically, and limited to the lowest rungs of employment. Inappropriate assignment of work can aggravate disabilities and also lead to job loss.

- **Inadequate workplace accessibility:** Sometimes companies claim to have accessible workplaces, when at best this is only partially true. Companies that have elevators which are not designed for independent use by the visually impaired are only partially accessible. Companies that hire hearing impaired persons but have no sign language interpreters are not really accessible. Employing PWDs but then not providing them with required assistive technologies reduces workplace accessibility. A company that had accessible work stations but an inaccessible cafeteria meant that its employee in a wheelchair had to have his meals in a corner outside the main cafeteria.
- **Lack of earmarked budget/willingness to invest in PWD related technology:** It is quite common for employees with disabilities to experience delays in procurement of assistive software. The excuse often given is lack of budget. Sometimes absence of a sign language interpreter is explained away as not being in the budget. Many companies hesitate to hire visually impaired youth as their budgets do not permit spending on the Jaws software, which helps the blind use computers.
- **Limiting inclusion to corporate social responsibility (CSR) component:** Many companies hire a few PWDs or fund some training as a part of corporate social responsibility (CSR). Companies need to have robust inclusion policies underlined within their core business strategy
- **Negative attitudes** toward employees with disabilities can lead to serious negative consequences. Negative attitudes stem from ignorance, misunderstanding, stereotyping, pity, and fear. Where these are not stemmed by adequate training and other processes, they can manifest in discrimination and harassment, and even outright bullying.
- **Challenges in socializing:** PWDs can experience social isolation if they are consistently left out by their peers. This may occur due to lack of knowledge on inclusive socializing. A non – disabled colleague, not knowing whether it is better to ask about the disability or ignore it, may decide to avoid the situation altogether by not interacting with the PWD. It also does not help when a PWD is known only for their disability, and not as a person. If a PWD is referred to only by their disability label, it is unlikely they will seek further social interaction.
- **Misplaced Sense of Perpetual Indebtedness:** PWDs are often so grateful just to be employed that they seek little beyond that. They may be reluctant to actively pursue career development or voice instances of discrimination. This attitude belies a sense of inadequacy which impedes better socialization with peers.
- **Transport/Mobility** is a recurring challenge. Some companies arrange for pick – up and drop facilities, but many do not. This adds to the financial burden of PWDs as public transport is not accessible in most parts of India.

Disabilities acquired during employment

There is no centralized agency in India to examine occupational injuries. Workers are exposed to many hazards resulting in musculoskeletal injuries. Occupational deaths are listed under general medical conditions and the underlying causes are not documented and reported. Hence, the precise extent of occupational injuries is difficult to establish.⁵

Different industries, owing to their using a diversified range of raw materials and processes, predispose workers to a variety of risks of differing severity. According to the Directorate General of Factory Advice Service (DGFASLI), the incidence of accidents has declined over the years, from 65.59 per 1,000 persons in 1980 to 2.41 in 2006, and 0.90 in 2011.

Occupational injuries constitute approximately 10% of total deaths due to injuries and 20%–25% of all injuries. Across studies, the highest number of injuries occurs among men and in the economically productive age group of 21–49 years. In India, 25%–30% of injuries occur in those 16–20 years of age, 30%–45% in those 21–35 years of age and about 30% in those 36–49 years of age.

III. POLICY FRAMEWORK

The UNCRPD

India ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2007. The UNCRPD marked a major shift away from the traditional perspective on disability towards a rights-based model. Article 27 of the UNCRPD recognizes the right of persons with disabilities “to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.”⁶

ILO CODE OF PRACTICE ON MANAGING DISABILITY IN THE WORKPLACE

Under this code of 2001, companies should have disability management strategies providing for recruiting jobseekers with disabilities, equal opportunity for employees with disabilities, and job retention of employees who acquire a disability.⁷ They should ensure that job vacancies are publicized in a format which is accessible to people with different , and that PWDs are not discriminated at work.

RIGHTS OF PEOPLE WITH DISABILITIES ACT 2016 (RPWD ACT 2016)

The Rights of Persons with Disabilities Act (2016) (RPWD Act) recognizes 21 categories of disabilities. Some of the provisions relevant to this paper are:

- Companies must have an Equal Opportunity Policy containing details of the facilities for disabled employees

- Companies having more than 20 employees must appoint a liaison officer to oversee the recruitment of disabled persons and make the necessary provisions and facilities for such employees
- Companies should identify posts/vacancies that would be suitable for PWDs
- The head of the company must ensure that no disabled person is discriminated
- Companies should make efforts to provide additional facilities to the disabled e.g. training facilities, assistive devices, barrier free accessibility, special leave etc.
- All establishments must ensure that the building, physical environment, transport, information and communication technology adhere to the accessibility norms formulated by the government

The RPWD Act does not have a provision corresponding to Section 20 (which protects government employees who acquire disabilities) applicable to the private sector.

EMPLOYEES STATE INSURANCE ACT, 1948

Companies have the option of registering under the Employees State Insurance Act (1948) for workers earning less than Rs. 21,000 pm. Under this law, the Employees State Insurance Corporation provides compensation in case of disability acquired due to injury in the workplace. In case of temporary disability, the rate payable is not less than 70% of daily wages. In case injury results in permanent loss of earning capacity, periodical payments are to be made for life. ESIC funds can also be used for rehabilitation and reemployment of such workers. Workers cannot be dismissed or reduced on account of the acquired disability.

EMPLOYEES COMPENSATION ACT, 1923

In the case of categories of employees listed under the Employees Compensation Act (1923) companies have to pay compensation for any disability acquired due to work related injuries. This list primarily includes factory workers and other blue collar workers. There is no right to re-employment.

The amount of compensation depends on:

- Nature and extent of injury:
- Age of the worker at the time of accident:
- Wages of the worker at the time of accident:

THE SHOPS & ESTABLISHMENT ACT

Each state has its own statute relating to shops and establishments. The specifics of the law differ from state to state, but the essential principles and provisions are similar. This law is relevant to the disability sector particularly with regard to white collar employees acquiring disability during work. Under this Act, in case of injuries, the compensation will be guided by the provisions of the Employees Compensation Act.

FACTORIES ACT, 1948

Every employer has to abide by certain safety precautionary measures so as to minimize the chances of an accident in the workplace e.g. fencing of machinery; adequate and well maintained hoists and lifts; strong and well maintained lifting machines, chains, ropes and lifting tackles; safety measures against fire; appointment of Safety Officer. For violation of such provisions, the employer can be punished with imprisonment for a term which may extend to 2 years, or with a fine which may extend to one lakh rupees, or with both.

NATIONAL VOLUNTARY GUIDELINES ON SOCIAL, ENVIRONMENT AND ECONOMIC RESPONSIBILITIES OF BUSINESS (NVGS)

In July 2011 the Ministry of Corporate Affairs came out with the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' (NVG) in recognition of the role of businesses in improving the quality of life and the significance and long-lasting impacts they have on people and the planet.

The NVGs recognize that ethical conduct in all its functions and processes is the cornerstone of responsible business. One of the core elements of NVGs is that businesses should provide and maintain equal opportunities at the time of recruitment as well as during the course of employment, irrespective of caste, creed, gender, race, religion, disability or sexual orientation. Businesses should provide facilities for the wellbeing of its employees including those with special needs. They should ensure timely payment of fair living wages to meet basic needs and economic security of the employees.

Recently, the revised version of the NVGs was published, which is more comprehensive and takes into account the significant changes that has taken place in India and globally, in the space of responsible business

III. RECOMMENDATIONS

The primary purpose of this paper is to prepare draft recommendations for the Ministry of Corporate Affairs and SEBI to strengthen the proposed NVGs and BRR framework from the perspective of persons with disabilities.

Recommendations for the Ministry of Corporate Affairs

Considering the many challenges faced by PWDs, the draft NVGs is still limited, particularly in the framing of the BRRs. The BRRs play a key role in getting companies to state on record their performance with regard to a broad parameter of human rights. The key principles in relation to inclusion of persons with disabilities in employment are Principle No. 3 (Businesses should respect and promote the well-being of all employees including those in the value chain) and Principle No. 5 (Businesses should respect and promote human rights).

Chapter 5 of the NVGs devotes itself to an updated BRR framework for disclosure and reporting by businesses. It reflects the connection between the Principles & Core Elements and the information sought in the Disclosure and Reporting Framework. Section C of the draft NVGs

deals with 'PRINCIPLE WISE PERFORMANCE DISCLOSURE'.

This section is aimed at helping businesses demonstrate their performance in integrating the Principles and Core Elements with key processes and decisions. The information sought is categorized as 'ESSENTIAL' and 'LEADERSHIP'. While the 'ESSENTIAL' level is expected from every business that has adopted these Guidelines, the 'LEADERSHIP' level is expected of businesses which aspire to progress to a higher level in their quest to be socially, environmentally and ethically responsible.

Principle 3: Businesses should respect and promote the well-being of all employees including those in the value chain

The relevant core elements of the principle are:

- *Businesses should ensure equal opportunities at the time of recruitment, during the course of employment separation without any discrimination (Core Element 2)*
- *Businesses should respect the right to freedom of association, participation of workers, collective bargaining, and provide access to appropriate grievance redressal mechanisms (Core Element 3)*
- *Businesses should provide a workplace environment that is safe, hygienic, and which upholds the dignity of the employees. Businesses should engage and consult with their employees on this provision and train them on a regular basis with emphasis on employees with special needs. (Core Element 7)*
- *Businesses should ensure continuous skill and competence upgrading of all employees by providing access to necessary learning opportunities, on an equal and non-discriminatory basis. They should promote career development through human resource interventions. (Core Element 8)*

Key recommendations regarding the BRR framework with respect to Principal 3

- A. *Question No. 1 under 'ESSENTIAL' asks: "How many complaints were received on cases arising out of discrimination in the last year? How many of the above complaints were pending resolution at end of the last year?"*

As shown in this paper, the presence of an effective redress mechanism with a trained and sensitized Grievance Redress Officer is critical to effectively address discrimination faced by persons with disabilities. A mere enumeration of cases of discrimination is not enough. The RPWD Act mandates that companies ensure that there is no discrimination against employees with disabilities. As such, the question "Do you have a trained and dedicated Grievance Redress Officer?" and "what steps were taken to redress proved cases of discrimination?" should be added to Q. 1.

- B. *Question No. 1 under 'LEADERSHIP' asks: "Which categories of employees (list up to 3) are supported by affirmative action, and has there been any change from last year?"*

Affirmative action is a set of positive steps that employers use to promote equal employment opportunities and to eliminate discrimination. In view of the provisions of the RPWD (e.g. equal opportunity policies, liaison officers, accessibility norms, etc.),

affirmative action is binding and not aspirational. Hence, the question must come under 'ESSENTIAL', not 'LEADERSHIP'.

- C. Question No. 10 under 'ESSENTIAL' asks "How many instances of the following occurred during the year: a. Accidents at the workplace? b. Fatalities caused? c. Disability caused?" Correspondingly, Q. 10 under 'LEADERSHIP' asks: "What is the number of accident affected persons integrated back into employment?"

What both these questions ignore is the critical aspect of rehabilitation and re – employment of persons acquiring disability in the workplace. Rather than use the term "accident affected", the term of "disability" is preferable as it is broad enough to cover persons affected by accidents, and also includes disabilities caused in the workplace that may not be accident – related (e.g. hearing impairment caused due to excessive noise, or internal injuries caused by excessive physical strain). As an accountability measure, it is useful to know not just whether accidents occurred at the workplace, but also the cause of the accident. As such, the question "what was the cause of the accident/s" should be added under 'ESSENTIAL'.

A further question should be added under 'ESSENTIAL': "Are there any cases of employees acquiring disability in the workplace? What steps were taken in such cases?" A question to be added under 'LEADERSHIP': "What steps were taken to rehabilitate/re–employ employees who have acquired disability (whether due to accident or otherwise)?"

- D. Question No. 11 under 'ESSENTIAL' asks: "What percentage of employees (all categories) were trained on health and safety issues and measures in the year?" Question No. 12 under 'ESSENTIAL' reads: "What percentage of employees was provided training and skill up gradation in the year?"

As this paper has articulated under 'challenges', PWDs are often left out of processes, trainings and skill up gradation. With both questions 11 and 12, disaggregated data should be provided to ensure that there is no such discrimination.

- E. One of the critical problems that beset employees with disabilities is that there is stagnation and no career development due to such factors as lack of critical feedback and non – assignment of tasks and responsibilities. Some companies have addressed this issue through career mapping and progression. There is no question in this regard in the BRR framework.

A question should be added to 'LEADERSHIP': "Is there career mapping of vulnerable groups e.g. PWDs? What percentage of employees with disabilities was promoted to the next level in the last 3 years?"

- F. A key challenge expressed was the isolation suffered by employees with disabilities. Ensuring support groups has also been seen to be a very successful counter to this. The BRR does not address this issue at all although Core Element 7 of Principle 3 speaks of addressing the needs of employees with special needs.

A question should be added under 'LEADERSHIP': "What

initiatives have been taken to ensure support groups especially for persons with disabilities?”

- G. Although Core Element 2 of Principle 3 states that “businesses should ensure equal opportunities at the time of recruitment, during the course of employment separation without any discrimination,” the BRR does not address the issue of inclusive employment, or reasonable accommodation that is necessary for inclusive employment. Inclusive employment is also a statutory requirement under the RPWD Act. The lack of accessibility workplaces, delays in providing assistive technologies and other required supports for such reasons as budget deficits, have been highlighted as frequently encountered challenges.

Two additional questions should be added under ‘ESSENTIAL’:

Question: “What measures have been taken to ensure inclusive employment? What percentage of your workforce comprises employees with disabilities? Is the attrition rate of employees with disabilities at par with other employees? Do you have an equal opportunity policy?”

Question: “What measures have been taken to ensure reasonable workplace accommodation to PWDs? Has an accessibility audit been conducted in the last 3 years? Is there budgetary allocation for accessibility and workplace adjustments catering to needs of employees with disabilities?”

Principle 5: Businesses should respect and promote human rights.

The relevant core element of this principle is:

The Governance Structure should ensure that the business understands the human rights content of the Constitution of India, relevant national laws and policies and the International Bill of Human Rights and appreciate that human rights are inherent, universal, inalienable, indivisible and interdependent in nature. (Core Element 1).

Key recommendations regarding the BRR framework with respect to Principal 5

- H. *Question No. 1 under ‘ESSENTIAL’ reads: “What percentage of employees have been provided training on human rights issues in the year?”*

As human rights is a very broad area that includes but goes well beyond the vulnerable groups listed in the NVGs, it is important to ensure that there is at least some training on these specific groups (including persons with disabilities). The question “What percentage of employees has been provided training on non – discrimination of vulnerable groups (e.g. persons with disabilities)?” should be added to Question No. 1.

Other Recommendations regarding the BRR Framework

- I. Addition of significant terms to be defined in Annexure C (which deals with ‘Suggested Description and Explanation of Terms’):
- Discrimination:** any distinction, exclusion, restriction based on any criterion (e.g. race, colour, descent or national or

ethnic origin, gender, disability, sexual orientation, gender identity, etc) which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

□ **Reasonable accommodation:** necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

- J. To update Annexure E Indian Laws & Principles (Indicative) by replacing the 1995 law on disability with the RPWD Act, 2016.

GLOSSARY

BRR	BUSINESS RESPONSIBILITY REPORT
BSE	BOMBAY STOCK EXCHANGE
CSR	CORPORATE SOCIAL RESPONSIBILITY
ESIC	EMPLOYEES STATE INSURANCE CORPORATION
FMCG	FAST MOVING CONSUMER GOODS
ILO	INTERNATIONAL LABOUR ORGANIZATION
IRBI	INDIA RESPONSIBLE BUSINESS INDEX
IT	INFORMATION TECHNOLOGY
NSE	NATIONAL STOCK EXCHANGE
NVGS	NATIONAL VOLUNTARY GUIDELINES ON SOCIAL, ENVIRONMENT AND ECONOMIC RESPONSIBILITIES OF BUSINESS
PWD	PERSON WITH DISABILITY
RPWD ACT	RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016
SEBI	SECURITY AND EXCHANGE BOARD OF INDIA
VRC	VOCATIONAL REHABILITATION CENTRE

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