

Let's talk about sexual harassment in the workplace

The new law on sexual harassment took effect nine months ago—but companies are still coming to grips with it



Hindustan Power has put up posters on its zero-tolerance policy in the office, outside the cafeteria, and on the landings. Photographs by Priyanka Parashar/Mint

Dozens of questions ricocheted around the roomful of people managers at a session on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

At the session organized in May in the National Capital Region by the Centre for Transforming India (CFTI), a not-for-profit trust, HR managers had a host of questions. For instance, should a company stop its internal investigation if a victim files a police complaint? What are the rules on protecting women in the “extended workplace”, like office taxis and business trips? They asked if the rules could be extended to help someone of the third gender, or even men. And they were puzzled about what to do if an accusation was found to be false—how would they then restore reputations and work relationships?

The new sexual harassment law, which borrows heavily from the 17-year-old Vishaka guidelines, came into effect nine months ago, but human resource (HR) managers and company executives are still working out the details of its implementation in their corporate offices, regional and zonal units, as well as factory outposts.

The new law covers everything from unwelcome physical contact or advances, and seeking sexual favours, to sexually coloured remarks, showing pornography, and any verbal or non-verbal “conduct of sexual nature”. Organizations, including home offices and non-governmental organizations (NGOs), are required to form an internal complaints committee (ICC) to receive written complaints, investigate them and give their recommendations to the employer.

In “India’s New Law On Prohibition Of Sexual Harassment At The Workplace”, an article published in March in *The Chamber’s Journal*, Veena Gopalakrishnan and Vikram Shroff of the law firm Nishith Desai Associates explain the timeline: The ICC should send a copy of the complaint to the respondent within a week, and the respondent is expected to file his reply within 10 working days. The ICC must investigate and close the case within 90 days, and issue a report based on its findings in another 10 days. “The employer is required to act on the recommendations of the committee within 60 days,” they write.

Currently, only women may file a written complaint (six copies), and they must do so within three months of the incident, attaching supporting documents and the names and address of witnesses.

Poor awareness of the law is a problem, according to the CFTI and NGOs working in the area of gender equality. CFTI chief trustee Pankaj Sharma says that of the 50 Indian companies whose policies he has reviewed, most seem to be outsourcing the development of their internal policy framework on harassment to legal firms, or simply superimposing the Act on to their people policy without quite understanding it. “The biggest challenge being faced by Indian corporates is understanding the domain itself and establishing a comprehensive system for its implementation,” says Sharma, who divides his time between the US and New Delhi.

The 13-page Act describes in some detail the composition of the ICC, the procedure for filing the complaint, the punishment in case guilt is established, and the organization of sensitization programmes in offices. But some lawyers are now pointing out that the road map isn’t complete.

According to senior lawyer Indira Jaising, “The gaps are too many.” In an email interview, Jaising, who became India’s first woman additional solicitor general in 2009, says: “The procedure for conducting the enquiry is not set out. It is essential to screen the woman from the person against whom she has complained and not confront her with him in cross-examination; the questions he wishes to ask can be given to the

committee (ICC), which will ask the questions.”

The news site *Firstpost* recently reported that Jaising has again sought justice in a sexual harassment case, this time for a woman district judge who complained that a Madhya Pradesh high court judge had been making unwelcome overtures, asking her to come alone to his house.

A question of understanding

“It’s a can of worms that most HR managers don’t even want to open,” says Amitabh Kumar of the New Delhi-based NGO Centre for Social Research (CSR). “Our Gender Training Institute offers a sensitization programme for corporates, and in our interactions we find most of the smaller companies don’t know about the Act,” says Kumar.

CSR, along with the US’ Ford Foundation and content firm Rainmaker, launched a free massive open online course in July. The two-week course is open to anyone seeking a basic understanding of what the law says, as well as some tips on how to comply with it. It is available on [MyLaw.net](#).

Kumar says the course includes information on the local complaints committee framework organized at the district level by the government, which companies can also access as a stopgap measure till they put together their own committee, headed by a senior woman executive, and with at least 50% female representation.

Seeking clarity

But even in cases where companies have organized their ICC committees and put their policies down on paper at least, some confusion persists.

Mumbai-based Deepak Deshpande, senior vice-president of HR at technology firm Netmagic, says the rules outlined by the Vishaka guidelines had been part of his company’s internal framework for years, so the sexual harassment Act was “not an eye-opener” for them. The company has uploaded the Act on the company intranet.

Deshpande is concerned, however, that the law asks companies to constitute the ICC for three years, and believes branch offices may not be able to find enough women in senior positions eventually to constitute the committees on rotation without repetition.

This is a common concern, as the Act does specify a three-year term for the ICC—an implication being that new members would have to be selected at the end of this period. Jaising clears the air on this: “Internal complaints committee members can be the same after three years, there is nothing to stop them in law. Moreover, they can have senior outsiders in the committee (where there aren’t enough women at top executive positions to people the committees) and put them as chairpersons.”

To Jaising, what is essential is that while making the selection, companies “ensure that the person chosen has a demonstrable commitment to non-discrimination against women. I have known companies to select women from political parties or *mahila morchas* or Rotary Club, etc., with no experience in addressing discrimination issues,” she says.

Zero tolerance

Deshpande, who is on the nine-member ICC committee in his organization, wishes that the Act had offered a clearer definition of sexual harassment.

He isn’t alone in his quandary. The definition of sexual harassment is linked to an extent with how a remark or gesture is perceived by a woman. “While blatantly asking someone out for coffee or to meet them outside the office are clear signs, sometimes a harmless comment like ‘I like your dress’ maybe misunderstood,” says Anthony Joseph, executive vice-president, global HR, Hinduja Global Solutions, Inc., a business process outsourcing firm.

Bangalore-based Joseph says the ICC at his company has received seven complaints in eight months. “In four of them the parties agreed there had been a misunderstanding.”

Joseph adds that most of the company’s employees are in their early 20s and he finds it useful to talk to them in small teams about what may constitute inappropriate behaviour, and redress.

“The best advice we can give to corporates is that they should make it clear that the company has zero tolerance of sexual harassment,” says Jaising.

Put it on a poster

New Delhi-based **Ranu Kulshrestha**, head of Hindustan Power’s corporate social responsibility unit and chairperson of the ICC, is trying to publicize what constitutes acceptable and unacceptable behaviour. On the intranet, outside the cafeteria and in employee-initiation programmes at the company’s corporate offices in Okhla, south Delhi, posters with bullet-point missives break down legalese into language that employees can relate to. The names and phone numbers of ICC members are mentioned clearly in breakout zones and on noticeboards around the office.

Kulshrestha says she also talks regularly to teams and employees about the Act. “New employees are an obvious choice, to take them through this policy among others and stress our zero tolerance towards sexual harassment to them.”

At the largely male-dominated plants, regional units and corporate offices of truck maker Ashok Leyland, HR executive director **Balachandar N.V.** says he has been designing posters in languages like Tamil.

For the new law applies also to what it calls the extended workplace, which includes office transport and business trips, as well as to contract labour, probationers and apprentices. Chennai-based Balachandar says his focus is on keeping the communication as straightforward as possible, to be able to reach out to employees across different backgrounds.

What you make of it

Kulshrestha says one thing that has helped her immensely is co-opting people whom most others in the office feel comfortable with. “You know, the ones who are great at water-cooler conversations.” By sensitizing and training these people in what constitutes sexual harassment, the company policy in dealing with it, and the steps to filing a formal complaint, she says you equip them to become the first line of defence, as it were.

Sexual harassment is not always blatant or obvious, she says—it may help if the woman has someone to just talk to, even if it’s just to figure out whether what she’s facing is indeed harassment. And while HR managers are always available, she says employees sometimes just feel more comfortable talking informally with another colleague.

Mumbai-based **Saba Adil**, head of talent at Aegon Religare Life Insurance, and one of the five ICC members in her office, says it can be tricky for someone in a regional office with a small team to make a written complaint. Adil says it’s up to the ICC representatives and the company as a whole to inculcate that trust in employees. “You just have to build that confidence in your employees to come and talk to you, no matter how high up the person who is making them feel uncomfortable.”