

Sexual Harassment Committee - Time For A Change!

by Vikram Shroff 09-02-2017

India's new sexual harassment law is now three years old. And that should serve as a reminder to start the process to change the members of your Internal Complaints Committee (ICC).

India's Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (Sexual Harassment Act) was notified in December 2013. The law has been a catalyst in creating greater awareness of the issue of sexual harassment at the workplace. It has also given huge confidence to female employees to report any adverse incidents. Progressive employers on their part have gone to great lengths to implement the law, not just in form but also in spirit.

The Sexual Harassment Act requires the employer to constitute an ICC at every office location having a minimum of 10 employees. The law prescribes the details on how the members of the ICC need to be nominated by the employer based on their seniority, experience and familiarity with issues relating to sexual harassment.

The law allows the Presiding Officer and other members of the ICC to hold office for up to 3 years. Assuming most employers set up their ICC in or after December 2013, as per the Sexual Harassment Act, its time they initiate the process of replacing the members of their ICC.

Accordingly, in the next couple of months, employers should identify and start training the new members. The training should be in terms of the provisions of law, requirements of the employer's anti-harassment policy and charter, investigation process and timelines, manner of collecting and documenting evidence, ways of examining the parties (including witnesses), drafting the report and its conclusion, types of penalties that may be levied, etc. Employers should also focus on helping their new members develop soft skills in terms of dealing with the complainant and the respondent. To the extent the existing ICC has undergone a training programme, a similar initiative should also be extended to the new members. Subject to complying with confidentiality obligations, the employer may also request the existing ICC to include the new members as 'observers' in some of the ongoing matters being investigated by the ICC, as part of their training.

But this change is unlikely to be an easy process. While some employers and their ICCs are still getting familiar with the requirements of the Sexual Harassment Act, its already time to change the members. In a way, the process followed by employers in December 2013 will need to be repeated.

Some of the questions that are likely to arise while implementing the change are:

- a. Does the employer need to change the entire ICC at one go or gradually, especially to retain continuity?
- b. Can the employer extend the term of an existing member of the ICC to another 3 years?
- c. What happens if the employer is unable to identify an appropriate Presiding Officer of the ICC, given the importance of such a role?
- d. Does the employer also need to change the external member on the ICC who may be appointed from a non-governmental organisation or association committed to the cause of women?
- e. What happens to complaints that are being investigated by the existing ICC and likely to continue for some more time?
- f. What if another complaint is received in relation to a matter that has been previously investigated and closed by

the existing ICC? g. Can there be two ICCs constituted in parallel - the current ICC to complete investigations relating to existing complaints while the other for any new complaints?

h. How will the new ICC prepare the annual report if they are not familiar with the previous complaints?

All answers may not be easily available at this stage. There may also be a need to consider some of these questions on a case-by-case basis given the sensitivities involved. At the end of the day, while taking any decision, employers must ensure that the intent and principles of the Sexual Harassment Act are adhered to and the interest of women remains secured at all times. Incidentally, the guidelines issued by the Supreme Court of India in 1997 in the case of *Vishaka v. State of Rajasthan* did not prescribe such a three year period and hence these questions did not arise previously.

The Bombay High Court has recently ruled that it would not interfere with an order of punishment passed by the ICC in relation to a sexual harassment complaint, unless the order is shockingly disproportionate . This judgment reaffirms the importance and powers of the ICC that is required to be formed under the Sexual Harassment Act. Given the sensitivities surrounding sexual harassment allegations, it is important that the ICC is trained to deal with such cases in a fair, proper and dispassionate manner and based on the principles of natural justice. It is also necessary for the ICC to ensure that it completes the investigation and issues its order within the time frame set under the law.

This judgment also clarifies the already enshrined principles of judicial restraint by the courts. The interference of the courts should be limited to ensuring that there are no procedural irregularities or violations of principles of natural justice. Once the ICC has adequately and appropriately addressed a complaint of sexual harassment, it is not open to the courts to look into the merits of the matter.

This time though, employers are not alone - the government, on its part, faces similar issues and questions as mentioned above. Members of the Local Complaints Committee set by up the District Officers in each district, are also subjected to the same timeline of 3 years.

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Vidya Akhave v. Union of India and Ors. (Writ Petition 796 of 2015)

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