The bridge to a safer tomorrow
Employers’ responsibility toward protecting women at the workplace
She walks down the hallway in a relatively crowded office. A few feet away, a couple of supervisors have gathered for their tea-break and start passing lewd remarks as she passes, aware that she may be able to hear them. It is evident they intend her to hear their comments and they wait to see the reaction on her face. Not too long ago, she may have fled the office; today, she has evaluated the odds and decided that she needs to deal with this.

**What choice does she have?**
Corporate dynamics have seen significant transformation over the last decade. Traditionally, a male-dominated arena, there have been an increasing number of women stepping out of their homes and joining the workplace. The benefits of inclusivity have been echoing through boardrooms, substantiated by a plethora of studies aimed at demonstrating its positive impact on enhancement of corporate performance.

In 2012, EY reviewed 22,000 audits, our member firms were performing in four countries on three continents. It found that gender-balanced teams were much more successful than those which predominantly comprised either men or women. It was also seen that such teams witness enhanced returns. Such findings have led to organisations increasing their focus on fostering a holistic and gender-neutral environment through flexible policies.

However, problems relating to sexual harassment at the workplace have not stopped, despite the fact that women are excelling in all fields in a multicultural environment and there is intense media scrutiny in the corporate world today. Therefore, there is an urgent need for companies to address this growing challenge effectively and take suitable measures to protect the interests of their women employees.

All working women have the right to a safe work environment. There are clauses in the Constitution of India providing guidance on this. There are also multiple laws, including old, amended and new statutes, which place the onus for this on employers. Many leading organisations have devised policies, based on relevant provisions in the Vishaka Guidelines, to deter sexual harassment at the workplace. These policies, however, need to be revisited, keeping in mind the changing legislative and regulatory scenario in the country.

In earlier days, the relevant laws applicable in this space left much room for organisations to interpret the provisions they incorporated in their policies to combat sexual harassment. It was seen that a number of them shied away from detailing concrete measures to combat the issue. There was also an inadequate understanding of such issues, given the sensitive nature of the subject. The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter referred to as the Act), which received the President's assent in April 2013 and was notified on 9 December 2013, is a landmark step taken by the Indian Parliament. The Criminal Law Amendment related to sections 354A, 354B, 354C and 354D of the Indian Penal Code and further strengthens the Act.

The Act aims to provide women protection against sexual harassment as well as prevent and ensure redressal of complaints of sexual harassment (and for connected matters) at the workplace. The provisions of the Act aim to protect the interest of all women employees and drive adoption of good governance practices in organisations.
What is sexual harassment?

Sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

i. Physical contact or advances; or
ii. A demand or request for sexual favours; or
iii. Making sexually coloured remarks; or
iv. Showing pornography; or
v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

Who is an aggrieved woman?

“Aggrieved woman” means

i. In relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent
ii. In relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house

Where is it applicable?

Workplace includes

i. Any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a cooperation or a co-operative society;
ii. Any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, industrial, health services or financial activities including production, supply, sale, distribution or service;
iii. Hospitals or nursing homes;
iv. Any sports institute, stadium, sports complex or competition or games venue, whether residential or not, used for training, sports or other activities relating thereto;
v. Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such a journey;
vi. A dwelling place or a house
What are the responsibilities of the employer for implementing the provisions of the Act?

**Employers are responsible for implementing the Act in their organisations by:**

► Providing a safe working environment
► Constituting Internal Complaints Committees (ICCs)
► Displaying penal consequences of Sexual Harassment (SH) at a conspicuous place/places at the workplace, including:
  ► Penal consequences of sexual harassment
  ► Members of the ICC and their contact details
  ► Grievance redressal mechanisms
► Organising awareness programmes for employees
► Treating sexual harassment as a misconduct under their service rules
► Initiating action against such misconduct
► Helping aggrieved women employees file a complaint under the Indian Penal Code (IPC) or any other law, if required
► Initiating action under the IPC or any other law against the perpetrator

**Employer’s responsibility to ICC:**

► Organising orientation programmes for members of the ICC
► Conducting capacity and skill-enhancement programs for members of the ICC
► Providing required help to the ICC to deal with such complaints and conduct inquiries
► Helping to secure attendance of respondents and witnesses before the ICC
► Making required information available to the ICC
► Monitoring timely submission of reports by the ICC

**Employer’s responsibility to the Government:**

► Ensuring timely inquiry and submission of reports by the ICC
► Filing the annual report to the District Officer including information about cases filed and disposed under this Act
► Furnishing additional information requested by Government
► Enabling inspection of information, records and other documents required by the Government
The intense effort put into building a brand can be easily undone in today’s constantly connected world. Ignorance and complacency toward sexual harassment is no longer condoned, but condemned in the strongest terms. This makes it necessary for organizations to implement a robust redressal process, as any lapses could have the employee resort to alternate media to ensure the complaint is heard. This has become truer with the proliferation of access to various new age media channels.

Organisations consider each aspect of their business forays before making decisions and should implement the frameworks for internal processes with the same rigorous mind-set. The Act ensures that a thorough and stringent mechanism is established by detailing robust measures that are both proactive and reactive. While its primary objective is to deter sexual harassment of women, it also helps to mitigate risks that could tarnish the image of a company to a significant extent.

Benefits derived from enforcement of robust SH-prevention measures:

- Builds employees’ trust and confidence (including that of male personnel)
- Reduces organisation’s liability (including, but not limited to, regulatory and reputational liability) in covering up instances of SH, including involvement of top management in such cases
- Boosts morale of employees and thereby drives their enhanced performance
Overcoming challenges in implementation:

The success of the Act will lie in its implementation and enforcement. While it mandates a methodology to combat instances of SH, every company needs to internalise these guidelines and draft policies in the context of the conditions in which it operates. It is necessary for an organisation to bring in the right expertise at this juncture, since this initial planning is ultimately reflected in the success of the SH policy/mechanism it adopts. If this is not implemented meticulously, even a single incident may be enough to bring disrepute to the organisation.

The Act states that an organisation with more than 10 employees is mandated to comply with the Act and establish an ICC to investigate all complaints related to sexual harassment.
**Case study**

**Instance 1:** A female manager in a company filed a case of sexual harassment against her reporting manager and the country head. Given the seniority of the accused, the matter was stalled and there was no visible reprimanding action taken by the organisation. She was dissatisfied with the redressal offered, resigned from the company and simultaneously filed an FIR with the police.

**Impact:** attrition, demoralised employees, tarnished reputation of the management as well as the company.

**Instance 2:** A female manager in a company filed a case of sexual harassment against her reporting manager. The organization’s ICC decided to outsource the investigation to a third party to ensure an unbiased assessment.

**Immediate action taken by management**
- Asked allegedly guilty employee to stay away from workplace of aggrieved employee
- Changed reporting manager of the aggrieved employee
- Provided the aggrieved employee with a confidential counsellor
- Conducted a preliminary internal investigation
- Offered the aggrieved employee help in filing an FIR with the police

**Details that emerged due to the investigations of a third-party investigator**
- Complainant felt comfortable in sharing information with third-party investigator.
- A written complaint listing the complainant’s allegations was filed.
- Interviews were conducted with the aggrieved and allegedly guilty employees as well as with other co-workers who had any knowledge of the incident.
- Technology such as computer forensics was used to analyse imaged data files (deleted, hidden, etc.), SMS and emails exchanged between the computer of the aggrieved employee and the alleged guilty employee/employees.
- All the interviews and evidence (with their inference) collected were collated.

**Resolution**
- The global head of the organisation discussed the findings of the investigation with the complainant.
- Co-workers indicated that certain colleagues discussed her age, clothing, make-up, etc.
- Disciplinary action was taken against the allegedly accused employee.
- The complainant eventually agreed to accept an apology from the accused and a commitment from the company that her supervisor would not be promoted for the next three years.
- The complainant then withdrew her FIR.
Investigation Process

Bringing technology to the table
Use of technology to determine facts, obtainable through electronic data, such as CCTV recording, hard disk/mobile imaging, email conversations, attendance logs, etc. can be critical in investigating such claims. It is usually the most reliable source of information that provides evidence to support claims. Technology holds significant potential, since it enables a timeline to be drawn and can help to establish inconsistencies in information revealed by individuals.

Moreover, management needs to ensure that the ICC is equipped to utilise these platforms whenever required and is able to take into account technological revelations in its inquiry.

An appropriate approach
The new Act is a key enabler for organisations that seek to implement proactive measures to address cases of harassment at the workplace. It will also drive them to redefine their work policies and inculcate a sense of ethics among their employees. India Inc. needs to take a page out of Western books and adopt a “zero tolerance” policy toward sexual harassment. Furthermore, the establishment of ICCs, awareness programs, internal workshops and whistleblowing frameworks is critical for protecting women in a sometimes “hostile work environment.” In addition, organisations should engage in course correction exercises and manage investigations diligently.

An organisation’s primary focus needs to be on instilling a sense of confidence among its women employees so they can report SH incidents to the ICC without hesitation. Gender sensitisation to male employees should also play an important role in preventing sexual harassment of women employees. Moreover, what constitutes sexual harassment needs to be explained to all employees. Otherwise, there could be uncertainty among male employees, who may fear an innocent action (or word) may be misconstrued as harassment. However, misuse of provisions under the Act to file malicious complaints cannot be ruled out, especially when relationships turn sour. Recently, an organisation investigated two such cases that were reported after a discussion on poor performance. Such cases clearly undermine efforts made to protect women at the workplace. HR professionals are also of the opinion that frivolous or malicious complaints are on the rise and it is imperative to create awareness about the repercussions and penalties involved among all employees.

Malicious complaints
Accurate sifting of the complaints received is necessary for the mechanism to root out frivolous ones. Organizations have found this misuse to be a primary hindrance in efficient handling of complaints. An effective SH prevention framework should take into account the probability of receiving such complaints and clearly detail the action which should be taken against perpetrators. This plays an important role in curbing instances of misuse.

An allegation is malicious if:
► The complainant makes the complaint knowing it to be false or with malicious intent.
► The complainant or witnesses produce any forged or misleading documentation, or provide false evidence.

Action
► As specified in the guidelines against sexual harassment in the company’s policy

Conditions
► The malicious intent should be established as a result of the findings from the investigation conducted by the ICC
Setting up a Prevention of Sexual Harassment Framework

Thorough analysis and conceptualisation of a Sexual Harassment framework

► Discussions held with the HR / Legal Head to analyse the culture and pulse of the organisation
► Review / enhancement of the existing Sexual Harassment Policy with examples and FAQs, in correspondence with the nature of the industry
► Assurance of compliance with the Act
► Creation of a robust response plan for incidence response

Manage the committee/ Assist in setting up of the independent Internal Complaints Committee (ICC)

► Consultation on structure & members to set up an independent committee.
► Definition of the redressal process, awareness plan, etc.

Trainings

Internal Complaints Committee workshop

► Elaboration on the Act with examples
► Detailing of roles and responsibilities and legal aspects and procedures
► Guidance on appropriate action and investigative interviewing skills
► Highlighting of reporting and communication guidelines

Awareness and sensitization trainings for the Leadership team

► Definition of Sexual Harassment with examples
► Roles and responsibilities
► Overview of the complaints process
► Legal aspects and procedures

Gender Sensitization workshops
► Awareness and sensitization trainings for employees

Train the trainer sessions
Web based trainings

GAP Analysis and Reactive services

Gap Analysis

In the event that the client already has a policy, EY would:

► Identify the gaps as per Act
► Recommend global best practices
► Query resolution

Investigation

► We conduct investigations as per the guidelines under the Act and as per the principles of natural justice
► Consult with our panel of legal & procedural advisors such as law enforcement officials.

Next steps

With women-centric policies already in place in organisations, the next step for them is to ensure that they are equally ready to address such situations as and when they arise. Today, most companies are unprepared to deal with actual cases of sexual harassment and are uncertain about how they should undertake adequate and fair investigations into any such allegations. Needless to say, proactive preventive measures and policies will be vital for creation of a holistic environment, which is safe for women in corporate India.

It is your responsibility to give her this choice.
About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camac Street, 3rd Floor, Block C, Kolkata - 700016

© 2017 Ernst & Young LLP. Published in India.
All Rights Reserved.

EYN1411-125
ED None

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither Ernst & Young LLP nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

MAS

100+
years of excellence in professional services

EY refers to the global organization, and/or one or more of the independent member firms of Ernst & Young Global Limited