



Creating a safe work environment  
Best practices to deal with sexual  
harassment at the work place  
A Deloitte India survey report

March 2016





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# Introduction

As women enter the work force in larger numbers, their safety at the workplace has been a much debated issue in recent times. While several organizations have taken measures towards ensuring physical safety of their women employees, such as providing safe transportation, accommodating, flexible working hours etc., there is work to be done in providing a mentally safe and secure environment within the office premises. To understand the efforts undertaken by organizations in this regard, Deloitte Forensic practice in India launched a short survey, which received responses from 52 Legal and HR Heads.

With the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“the Prevention of Sexual Harassment Act” or “the POSH Act”), we have observed significant activity among corporates to put in place measures to comply with the POSH Act. However, given the complexity of the requirements for compliance under the POSH Act and also keeping in view the spirit of the POSH Act, it may perhaps be useful to review the organization’s compliance processes periodically. For instance, around 71 percent of respondents to our survey identified ‘making information available on their company’s intranet/ HR portal’ as the most preferred way to spread awareness about sexual harassment and preventive behaviors. While such a policy needs to be documented, sexual harassment can manifest itself in myriad forms. Given the complexity of first determining what, if at all, constitutes sexual harassment, organizations can help employees identify these issues through training programs and consequently also stay compliant with the POSH Act, as indicated by around 52 percent of respondents.

An important aspect of the POSH Act pertains to submitting complaints in writing to the Internal Complaints Committee (“ICC”) for enquiries to formally commence. Only

approximately 69 percent of respondents indicated that they communicated this aspect to employees. Around 60 percent of respondents said they encouraged aggrieved women to report sexual harassment issues to other women in senior management positions, or their managers (54 percent) or via whistleblowing channels (50 percent) – While this may be a way to help to deal with the challenge, there is also a need to align such efforts with the requirements under the POSH Act where such complaints are to be made to the Internal Complaints Committee (‘ICC’) for redressal.

In case of investigation of complaints, a majority of respondents said that all complaints underwent a formal enquiry process led by the ICC and supported by external parties such as lawyers (54 percent), psychologists (46 percent) and forensic experts (19 percent). However, there can be improvements in the manner in which complaints are currently monitored and resolved by the ICC. Complaints are tracked manually either by ICC members (54 percent) or by the Head of Legal and Compliance (38 per cent) at each location, which may result in delays. Considering the POSH Act has mandated resolution of complaints within 90 days of filing the complaint, adopting a web based case management system may bring in efficiencies in the monitoring and resolution process (only approximately 13 percent of respondents indicated that they had such a system).

Post the resolution process if the complainant was not satisfied, around 29 per cent of respondents said they either offered a transfer to another department or left her to choose her own course of action. It therefore may be worthwhile for organizations to consider not just the requirements of the law but to also review their processes of handling cases of alleged sexual harassment at work places.

As today's work environment evolves and professionals get more aspirational, there are certain unanticipated responsibilities that employers are likely to face pertaining to sexual harassment, such as those listed below.

<p><b>Moving towards a less formal work culture</b> - Employees are increasingly encouraged to dress casually and office spaces are also re-designed to encourage more innovation and close collaboration in keeping with business demands. As a result the distinction between colleagues and friends has blurred and professionals continue to stay in touch post work hours.</p>	<p><b>Inordinate focus on creating diverse teams</b> – With corporates pushing for diversity in the workforce, many leaders may not fully understand the implications of managing such teams or respecting the diverse backgrounds that team members come from. Not knowing how to deal with gender diversity can also create conditions that may foster sexual harassment.</p>
<p><b>Easy access to technology and social media at work</b> may inadvertently lead to blurring of lines between friends and colleagues. Content that may otherwise be restricted for circulation among friends, may find its way to colleagues, causing discomfort. Coupled with limited online safety policies at the work place, such content can also be misused by unknown parties.</p>	<p><b>Rising number of women professionals</b> – Recognizing the value that women professionals bring to their roles can be a challenge for some employees. Changing employee mindsets under such circumstances requires more than policy level initiatives to ensure that women feel safe in such an environment.</p>

Preventing sexual harassment at the workplace should involve all levels of employees and stakeholders to understand what constitutes sexual harassment. Most importantly it requires the employer to act, before a problem occurs to prevent, prohibit and redress such incidents. Organizations need to understand that preventing sexual harassment should not be about merely complying with regulations, but also about managing the social and reputational damage to the company that follows when such incidents occur.

### A brief background to the POSH Act

In December 2012, the Government of India started focusing on updating the laws protecting women's safety in India. A part of these efforts concentrated on updating our laws to finally replace the Vishaka Guidelines, which until that point was the main legal protection that women employees across India had against sexual harassment at the workplace.

The Vishaka Guidelines were formulated by the Supreme Court of India in the landmark public interest litigation, *Vishaka vs The State of Rajasthan*, in 1997<sup>1</sup>. As part of the Supreme Court judgment, the guidelines had the force of law but were never implemented uniformly across the country, and the Supreme Court itself looked at them as a temporary measure until a permanent legislation was enacted<sup>2</sup>.

Sixteen years later, sexual harassment at the work place was finally made a crime under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 ). The POSH Act mandates that an employer create a safe workplace environment for every female employee and has a number of clauses that every employer has to mandatorily comply with, including training and sensitization of employees, formation of ICC and strict penalties for violations.

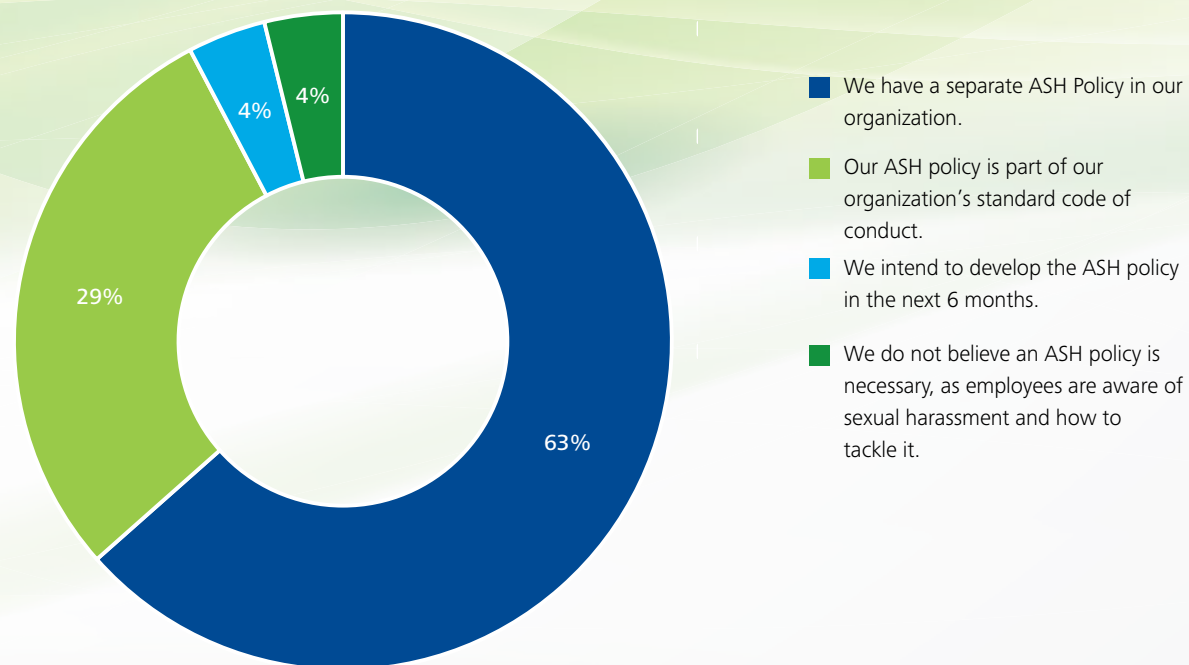
<sup>1</sup> Source: <http://indiankanoon.org/doc/1031794/>

<sup>2</sup> <http://indiankanoon.org/doc/1031794/> - "HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women

# Understanding Sexual Harassment

Close to two years after the POSH Act came into force, organizations appear to have established anti-sexual harassment (ASH) policies. About 92 percent of our survey respondents said that they had ASH policies in place, of which approximately 62 percent indicated the presence of separate ASH policies, independent of the code of conduct, in their respective organizations. Only about 8 percent of the survey respondents stated that their organizations were yet to develop such a policy and about 4 percent believed that ASH policies were not necessary at all.

**Figure 1: Which of the following best describes your organization's Anti-Sexual Harassment (ASH) Policy?**



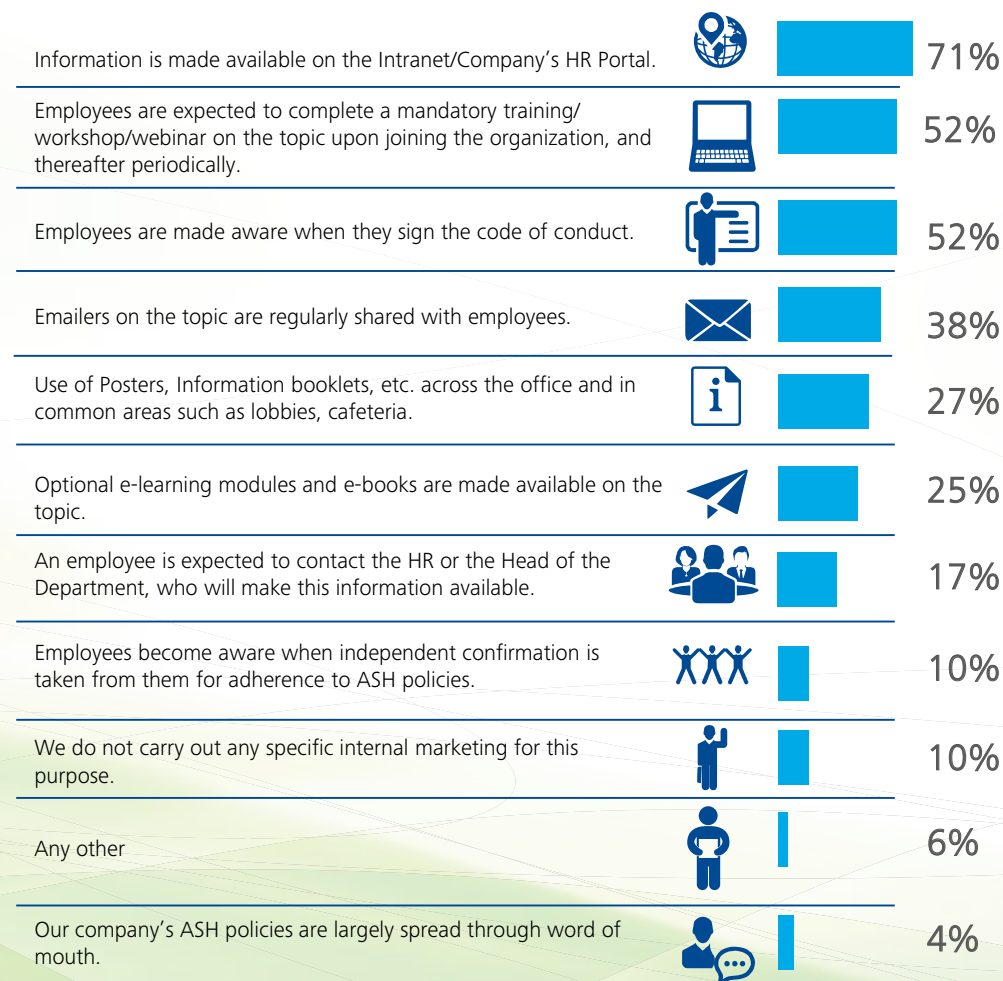
Organizations with an ASH policy in place indicated several ways to increase awareness about sexual harassment at workplace and behaviors to prevent it. The most preferred approaches included trainings and workshops (indicated by 52 percent of respondents), sending out regular newsletters (38 percent), using common areas of the office to share posters and information booklets on the subject (27 percent) and running e-learning programs (25 percent).

While adopting these interactive measures is commendable, it is important to note that a majority of organizations still preferred traditional one-way communication about sexual harassment issues. Around 71 percent of the survey respondents indicated that the most popular way of raising awareness about sexual harassment at the workplace was by making information pertaining to the POSH Act available on the company's intranet/HR portal. Around 52 percent said employees were made aware when they signed the code of conduct, upon joining the organization, perhaps as a line item in the document. Further around 17 percent indicated that the employee would have to contact the HR head or the respective Head of Department to seek information on sexual harassment.

This preference for traditional one-way communication channels over more participative discussions on sexual harassment issues may help organizations to comply with the POSH Act. Given the complexity of the topic including the challenges surrounding determination of what constitutes sexual harassment at work place, indicate that organizations may need to supplement these efforts by encouraging constructive discussions and looking at the issues in a holistic manner (including cultural aspects).

About 38 percent of respondents indicated that their organizations were dealing with the challenge of providing practical tips to identify possible instances of sexual harassment and prevent them. Another 40 percent indicated that they did not have sufficient information on what can constitute a malicious complaint and the penalties for such conduct.

**Figure2: How does your organization build awareness about sexual harassment at the work place and behaviors to prevent it?**



Note: the percentage of responses may not total to 100% as the respondents may have ticked more than one option that apply to their respective organization

Figure 3: Does your organization provide practical tips to employees to identify possible instances of sexual harassment and how to prevent it?

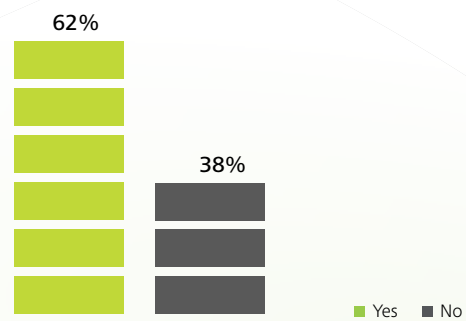
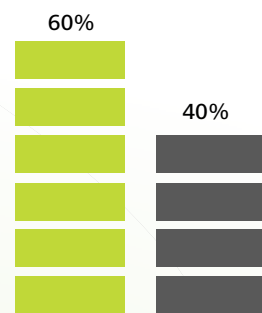


Figure 4: Does your organization deter employees from reporting false/ malicious complaints by making them aware of the penal action associated with such complaints?





# Deloitte Point of View

## Addressing ethical dilemmas around what kind of behavior constitutes sexual harassment

He: Hey, nice dress!

She: .... Thanks?

Does this seem like an acceptable exchange at a workplace, even if 'He' means it as just a compliment, without any ulterior motives? Perhaps.

Under the POSH Act, sexual harassment includes any one or more of the following "unwelcome acts or behavior" (whether directly or by implication) namely: (i) physical contact and advances; or (ii) a demand or request for sexual favors; or (iii) making sexually colored remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

While 'He' may share a good equation with certain female employees who would look at this as just a compliment, others may feel uncomfortable by such remarks and this exchange could therefore amount to sexual harassment.

In essence, what constitutes sexual harassment depends on what the aggrieved woman thinks of it. Any of the below statements could be considered sexual harassment, even if the man making the comment does so without the intention of making a female colleague uncomfortable.

- "You look very decked up today, that new lipstick color is a welcome change"
- "Would you like to go out for dinner sometime with me"
- "You and your team manager should hook up, you both will make a good couple"
- "You owe me for your promotion, you wouldn't have got where you are if it wasn't for me"
- "Check out this new MMS I found on the internet, you will be shocked to see it"

Apart from verbal conversations, emails forwarded containing offensive language, vulgar photos, or "non-veg" jokes are also indicators of sexual harassment, even if these are sent to a group of people including women, and not specifically to one female employee.



# Section 2

## Reporting Sexual Harassment

The POSH Act mandates companies to establish an ICC that is responsible for grievance redressal. The ICC is vested with significant powers and can recommend to the employer, on the request of the aggrieved woman, to transfer the respondent or the aggrieved woman herself to a different workplace or to grant her leave, over and above her entitlements, up to a period of three months. For the purpose of making an enquiry, the ICC also has the same powers as a Civil Court under the Code of Civil Procedure, 1908, including the power to summon and enforce the attendance of any person and examining him under oath and also requiring the discovery and production of documents relevant to the enquiry.

An aggrieved woman is required to file a written complaint with the ICC within 3 months from the date of the incident, following which the ICC may, only at the request of the complainant, take steps to settle the matter, provided no money is exchanged.

Our survey responses indicate that while a majority of the respondents have established an ICC, there appears to be little awareness about the complaints mechanism per se. For instance, about 69 percent of respondents indicated that sexual harassment complaints can be made in writing directly to the ICC, but around 50 percent also indicated that they can report such instances through the formal whistleblowing mechanism. A similar percentage of respondents also indicated that they can report it to their managers. Around 60 percent of respondents indicated that women employees could report complaints to any senior woman employee they are comfortable speaking to. While multiple channels may give the complainant flexibility to report the issue, it is important to note that unless a written complaint is filed with the ICC by the aggrieved woman within the allocated timelines (of within three months from the incident), it cannot be treated as a formal complaint under the POSH Act. This could perhaps explain the limited number of complaints that may reach the ICC in every organization.

The presence of a policy designed to deal with complaints of sexual harassment at the workplace is only one component of a larger strategy to manage the issue. The prime objective of organizations should be to change the behavior and attitudes of employees, which seeks to ensure the prevention/ deterrence of sexual harassment at workplace.

**Figure 5: Which of the following aspects constitute part of your organization's grievance redressal mechanism that allows employees to report allegations related to sexual harassment at the workplace?**



# Section 3

## Addressing sexual harassment grievances

The POSH Act has provided for ways to deal with sexual harassment, including a conciliation process at the behest of the aggrieved women. By empowering the ICC with the same powers as a civil court and also allowing for assistance from professionals during the enquiry, the POSH Act has placed a strong emphasis on investigation of complaints.

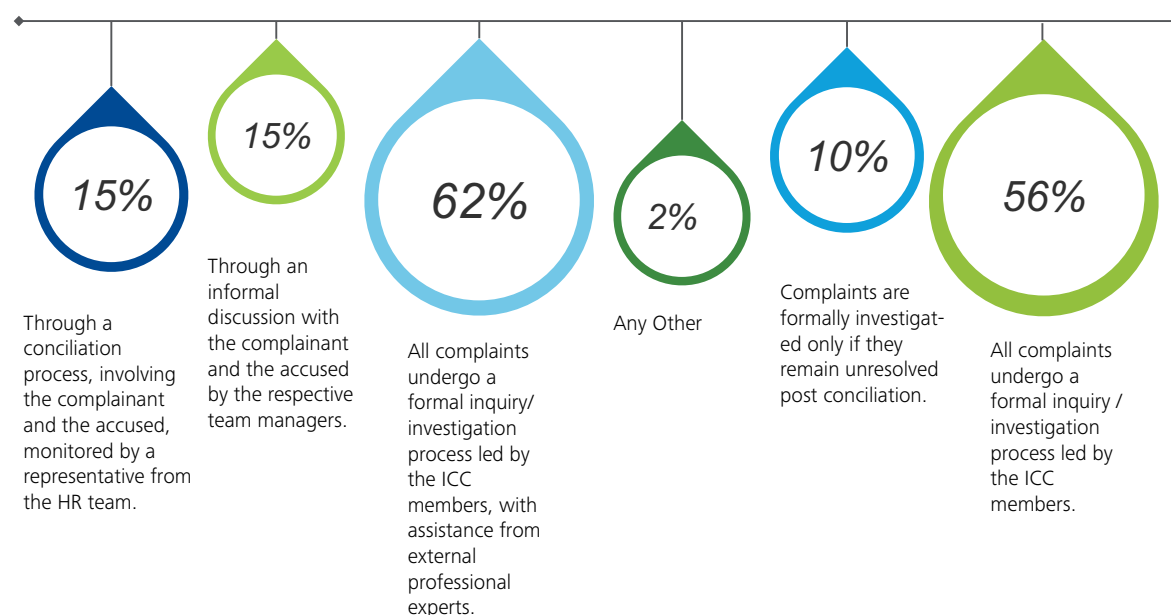
Around 15 percent of survey respondents indicated that complaints were dealt with by way of a conciliation process between the complainant and the accused.

Around 62 per cent of respondents stated that all complaints underwent a formal enquiry process led by the ICC members with the assistance of external professional experts, such as lawyers (54 percent) and psychologists (46 percent). Further, around 56 percent of respondents stated that all complaints were dealt with by way of a formal enquiry process led by the ICC members.

Another 15 percent around indicated that informal discussions were arranged with the aggrieved woman and the accused by their respective team managers. While in certain cases, this may be more appropriate as accusations can arise out of misunderstandings. However, no written complaint by an aggrieved woman should be dealt with in such a manner, unless explicitly requested by the aggrieved woman, as this would be in contravention of the POSH Act.

The POSH Act also provides the ICC 90 days to conclude their inquiry and share recommendations with company Head or the Board, failing which the complainant can take the matter up with a state level industrial tribunal. In case the ICC does not conclude its inquiry within 90 days, the organization can be fined upto Rs 50,000 for a first time offense. Subsequent offences of the same nature can result in fines of upto Rs 1 Lakh and/ or cancellation of the registration of the business.

Figure 6: How are allegations of sexual harassment in the workplace handled?



# Deloitte Point of View



## Support from Third Parties in Sexual Harassment Investigations

The POSH Act allows for organizations to engage external/ third party experts to assist on investigations into sexual harassment allegations. The most favored third party experts are lawyers, psychologists and forensic experts, as per our survey data.

Sexual harassment today could involve anything from lewd comments in person or repeated text messages, emails or phone calls. It could also involve inappropriate conversations or comments over the organization's instant messenger. In order to carry out a free and fair investigation, it is imperative that all evidence be taken into consideration and also that the individuals carrying out the investigation are not biased.

Engaging external lawyers or forensic experts can assist the ICC in carrying out a fair and independent investigation. Forensic experts bring the advantage of advanced forensic technology, which is capable of imaging any electronic devices submitted by the aggrieved woman and/ or respondent by performing independent reviews of documents such as e-mail, voicemail, instant messenger history from their company owned computers etc., through retrieving, collecting, identifying and preserving crucial evidence in a forensically sound manner that can be produced before the ICC and/or a Court of Law. Further, forensic experts can also help ascertain false/ malicious complaints by conducting business and market intelligence gathering by via social media searches and open source background checks of connected parties.

Besides helping organizations respond and handle cases of sexual harassment reported, forensic experts can also help organizations with preventive strategies such as:

- Establishing an internal policy to prohibit and prevent sexual harassment in line with the POSH Act
- Assisting in the establishment of an ICC with the optimum construct
- Conducting awareness sessions/ training programs for all employees to sensitize them to gender issues and make them aware of the POSH Act provisions
- Conducting workshops for all ICC members on the techniques for handling complaints with skill, fairness and sensitivity
- Assisting in establishing a formal grievance redressal mechanism, such as whistleblowing/ internal reporting for a robust case management system

Figure 7: In your opinion, which of the following external specialists can help your organization improve the effectiveness of the resolution process?



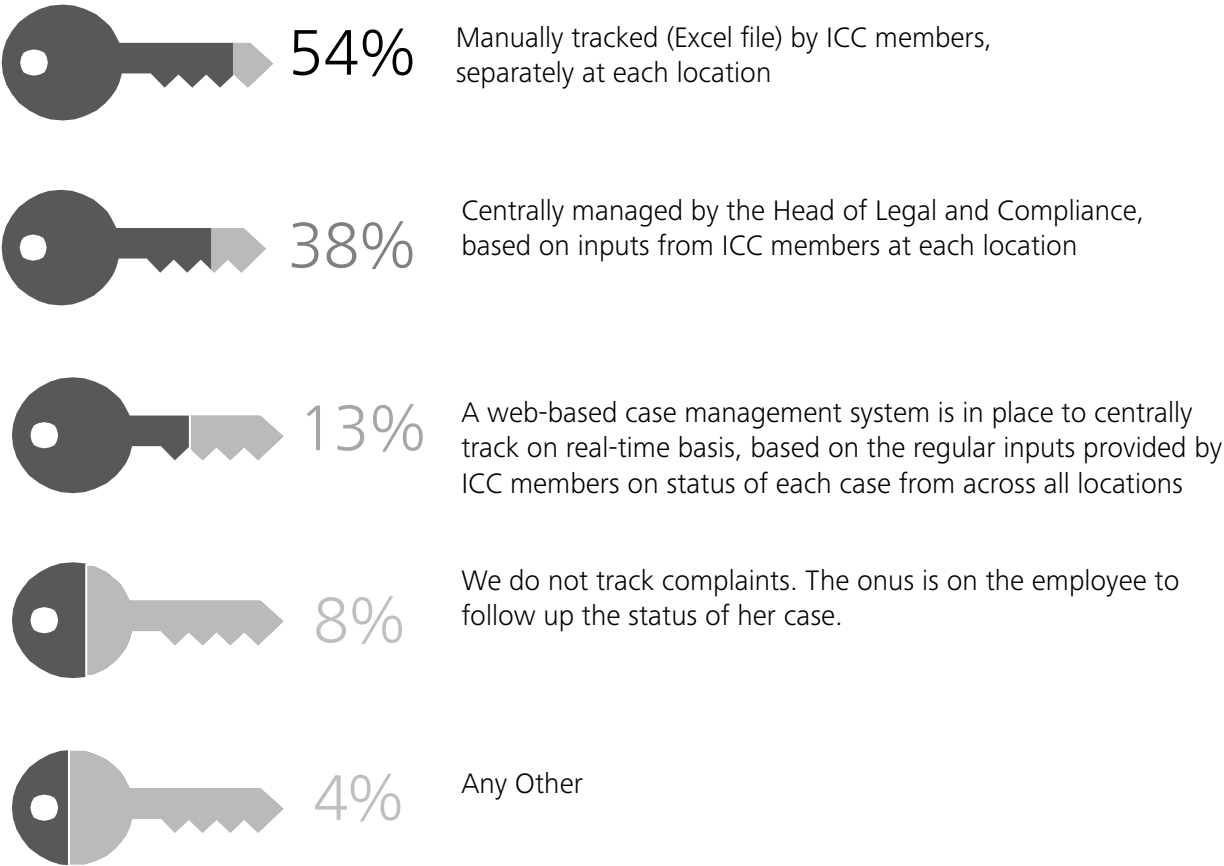


To better understand the pace of investigations, we asked survey respondents to indicate how sexual harassment complaints were tracked for their resolution. About 54 percent of respondents indicated that complaints were manually tracked by ICC members separately at each location, whereas another 38 percent approximately said they were centrally managed by the Head of Legal and Compliance, based on inputs from ICC members.

Given the sensitivity and urgency of the allegations involved, it would be ideal for organizations to establish a case management system, which would enable investigations to commence at the earliest and conclude within 90 days of receiving the complaint.

Globally, large organizations tend to use a web based case management system (only 13 percent of survey respondents indicated they followed this approach) to handle complaints. These systems can also help set up alerts and minimize time lost in coordinating views between the ICC members and documenting it, thus serving to maintain a repository of all cases of sexual harassment handled by ICC. Further, the case files can be presented as evidence in courts.

**Figure 8: How are allegations of sexual harassment at workplace tracked for their status and resolution?**



# Section 4

## Conclusion

The level of importance given to a sexual harassment case in corporate India remains a cause of concern. Around 69 percent of survey respondents indicated that post resolution by the ICC, a majority of the sexual harassment cases were documented and reported to the Head of HR, while around 35 percent indicated reporting them to either the Legal Head or the Managing Director. Although the POSH Act suggests that companies are to annually report the number of cases of sexual harassment filed and redressed only 21 percent of the respondents indicated that such cases were documented and reported to the board of their respective companies. We have observed that this trend is more applicable to domestic companies than multi-nationals.

With the new Companies Act 2013 making it mandatory for companies listed on the stock exchanges to appoint at least one woman director on the Board, this move might perhaps propel discussion at the Board level on issues of sexual harassment at the workplace.

In the eventual situation, where the complainant is not satisfied with the resolution provided by the organization, 71 percent of survey respondents indicated that they spent time explaining all the available options, including legal recourse and ensured their support to the complainant. However, 29 percent of survey respondents stated that either the complainant was offered a transfer to another department within the organization or was free to choose her next course of action. About 6 percent believed in tacitly encouraging the complainant to leave the organization.

**Figure 9: Post the ICC's resolution of sexual harassment complaints, the documented report is submitted to which of the following people?**

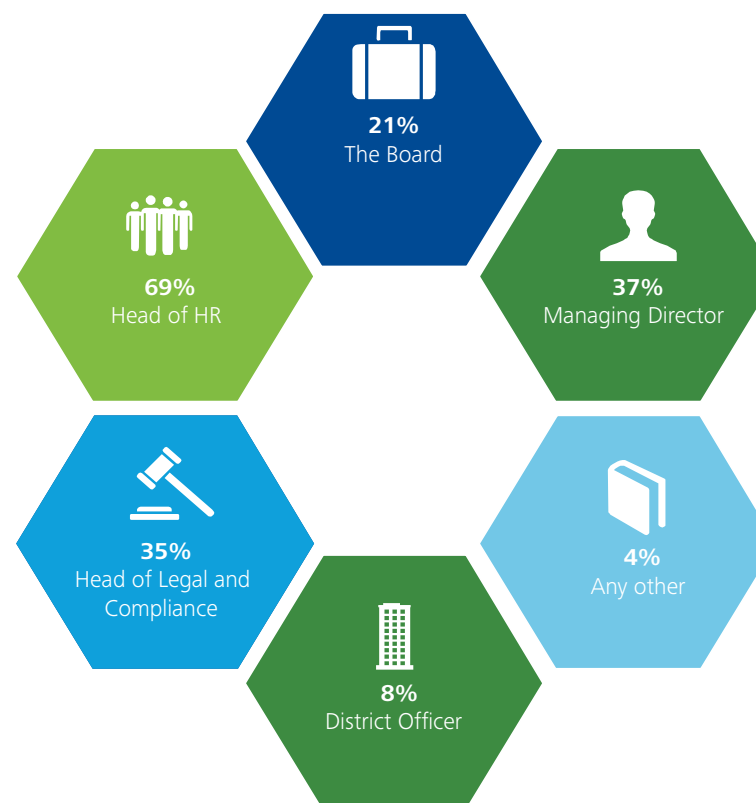


Figure 10: If the complainant is not satisfied with the resolution provided by the organization, what is the course of action followed by the organization?



In conclusion, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 is a very positive step for the protection of women from such type of crimes at the workplace. What is needed now is the implementation by organizations of a framework in its true spirit to prevent, prohibit and redress cases of sexual harassment at workplace in order to create a safe and a secure working environment.



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