

External Members on Internal Committees Redressing Workplace Sexual Harassment Complaints: Necessity or Obligation?

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Abstract

Media reports and research conducted by various organizations in recent years have shown the extent of prevalence of workplace sexual harassment across industries in India. Despite a decade having passed since the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 ('2013 Act') was legislated, the Supreme Court recently expressed its displeasure on the poor implementation of its provisions and issued directions to ensure strict implementation. However, is this implementation necessary only to achieve compliance? A key aspect of this legislation that requires consideration is the inclusion of an External Member on the Internal Committee ("IC") constituted to inquire into workplace sexual harassment complaints. Although an External Member on the IC is mandated for compliance, the Rules made under the 2013 Act require only the Presiding Officer and two "members" of the IC for quorum, creating a loophole for organizations to dispense with the attendance of their External Member in inquiries. This article discusses, from a practitioner's perspective, the role of External Members in inquiries. Based on case-law and the author's decade-long professional experience working on such cases, the intention of lawmakers when necessitating the inclusion of an unbiased and experienced member on the IC, is explored.

Keywords: POSH (prevention of sexual harassment), internal committee, external member, principles of natural justice, POSH compliance

INTRODUCTION

Sexual harassment at the workplace has been a highly discussed subject in India over the past few years, especially since the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (2013 Act). Despite the framework set-forth by the Supreme Court through the Vishaka Guidelines, it was not until the Nirbhaya Rape case in 2012 and resulting public outrage that wide-spread discussions arose on the need for change in the laws relating to the protection of women in our society [1]. Legislation of the 2013 Act and the inclusion of S.354A to the Indian Penal Code 1860 (which criminalizes behaviors amounting to sexual harassment) were the resultant mechanisms created to combat sexual harassment in India.

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The 2013 Act followed by the rules made thereunder (2013 Rules) were enacted with the intention of ensuring that employers [2] took the responsibility of providing a safe work environment for women, free from sexual harassment, and applies to acts and behavior of a sexual nature at the workplace if not welcome to the recipient [3]. Physical, verbal, and non-verbal sexual harassment by direct or indirect means are all covered under this law. Although Employers cannot be blamed for the

behavior indulged in by their employees, ignoring the issue is a blind alley. Having said that, enactment of a law is neither enough to reduce the number of incidents of sexual harassment, nor can it increase the frequency with which complaints are filed unless organizations ensure that they comply with this law on paper and in spirit [4].

Many organizations comply with this law only to avoid penaltiesⁱ, rather than to combat workplace sexual harassment [5]. The poor implementation of provisions under the 2013 Act has been recently noted by the Supreme Court in *Aureliano Fernandes v State of Goa* [6], wherein it was noted that it is “disquieting” to see this “sorry state of affairs” and urged the Centre and State governments to take affirmative action to ensure effective implementation.

Although much discourse is needed to understand how this law can be implemented effectively, this article focuses on an aspect that could help in ensuring that justice is served through the constitution of a functional and effective Internal Committee (IC). To ensure that principles of natural justice are followed, s.4(2)(c) of the 2013 Act requires that an External Member (someone from an NGO or association committed to the cause of women, or someone familiar with issues relating to sexual harassment), be included on the IC. Unfortunately, due to the ambiguity in the language of the law, organizations are able to nominate an External Member on the IC, but dispense with their attendance in inquiry proceedings, thereby rendering the intention of law makers of having a neutral, unbiased, and experienced member to assist in these inquiries, null and void.

The importance of an External Member’s presence during an inquiry was discussed at length by the Parliamentary Standing Committee on the Protection of Women Against Sexual Harassment at Workplace Bill, 2010 (239th Report) [7], and has subsequently been reiterated in several cases that are explored in this article. Yet the importance of an External Member on this Committee and their role in the inquiry process does not appear to not have received as much attention as is warranted [8]. This article explores the role and necessity of External Members in inquiries based on case-law and the author’s decade-long professional experience working on such cases.

METHOD

For this article, a doctrinal study was conducted through a black letter analysis of the evolution of the law relating to sexual harassment in India, along with a consideration of the intentions behind changes made to this law over time. This has been achieved by reviewing literature, case law, statutory reform and parliamentary discussions.

In order to gather information relating to the prevalence of sexual harassment at the workplace, research conducted by the Indian National Bar Association (INBA) and publicly available information regarding listed companies in India were considered. Researchers like Anagha Sarpodar [9] and Sumyata Pandey [10] have explored the importance of External Members and experts in Internal inquiries. Their contribution to this discussion has also been relied upon. Additionally, the author’s own experience of being an External Member on nearly 350 inquiries, as well as that of her colleagues at SASHA (Support Against Sexual Harassment) who have completed over 1,700 inquiries in over 10 years, has provided the information and experience relied upon in this article. Case-law discussing the need for External Members has also been analyzed to understand the judicial interpretation of legal provisions under the 2013 Act.

Evolution of Sexual Harassment Legislation in India

The journey of this law began in 1992 with the case of Bhanwari Devi, who, in the course of her work as a *Sathin* appointed by the State of Rajasthan attempted to convince a family to stop the marriage of their 1-year-old daughter. As a consequence of her interference, Bhanwari Devi was brutally raped by the girl’s family and faced further harassment from local authorities when she tried to file a complaint. Based on this incident a Public Interest Litigation (PIL) filed by women’s rights groups before the Supreme Court led to the case of *Vishaka v State of Rajasthan* [11], and resulted in the

recognition of sexual harassment at the workplace as a human rights violation. Following the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the Supreme Court framed the *Vishaka* Guidelines, which would have to be mandatorily followed by all private and public sector organizations, until enactment of appropriate legislation.

Since the legislation of the 2013 Act, being “Vishaka Compliant” is not enough. For compliance under the 2013 Act and Rules, every organization must, for each location having more than 10 employees (irrespective of gender):

1. *Set up an IC* and display the constitution of the IC and their contact details at conspicuous locations [12].
2. *Formulate an anti-sexual harassment policy* and ensure that this policy is disseminated widely, by placing it on the organization’s website [13].
3. *Conduct orientation and capacity and skill building sessions for the IC* who are empowered as a quasi-civil judicial body, with powers to summon and enforce the attendance of any person in an inquiry, record testimonies under oath, and require the discovery and production of any document as evidence. The employer is required to act upon the IC’s recommendations within sixty days and such findings and recommendations can only be appealed against in a court of appropriate jurisdiction.
4. *Organize sensitization programs for all other employees* on issues relating to sexual harassment [14]. These awareness sessions help employees distinguish between different forms of harassment, understand procedures for filing complaints and also the repercussions of filing false or malicious complaints.
5. *Submit Annual Report* as per the 2013 Act and Rules with details of training and awareness sessions conducted, information regarding the number of sexual harassment complaints received by the IC and preventive measures undertaken by the employer in a calendar yearⁱⁱ.
6. *Approach the Local Committee (LC) or police department* where the respondent is a third party (not an employee) of the organization.

The 2013 Act requires mandatory compliance from all organizations (government, public, or private) [15], because non-compliance can lead to incidents of workplace sexual harassment going unchecked and victims choosing the only way out: moving jobs, while the perpetrator enjoys their status quo [16].

Despite this robust mechanism, even today, a decade after this law was enforced, several incorrect perceptions exist with respect to this subject, resulting in ineffective implementation of the law [17]. Furthermore, although there has been a distinct growth in consciousness on sexual harassment especially after the #MeToo movement and more recently, the allegations made against the Chief of the Wrestling Federation of India, organizations still do not take this issue seriously believing that such issues do not exist in their “close-knit” professional community. In actuality, sexual harassment is a universal problem, unrestricted by financial or social status or the type of industry. According to an INBA report in 2017 [18], 78% of women face sexual harassment at the workplace; however, as a result of these misconceptions and poor implementation of the law the number of complaints registered with Nifty [19], SheBox [20], and even the National Commission of Women [21], is still low.

General and incorrect perceptions about workplace sexual harassment are that it is rare, that behavior must be overt and direct, include physical acts, and most erroneously [22], that the complainant must submit supporting evidence to file such a complaint [23]. Additionally, although s.9, 2013 Act allows an “aggrieved woman” [24], to file a written complaint against such behavior, it does not define the gender of the respondent [25], and accordingly, it has been held that persons of the same gender can also hurt the modesty or dignity of a woman, hence complaints against the same gender are maintainable under this law [26]. Unfortunately, such cases are often laughed off and not taken seriously by employers, who fail to understand the impact that encouraging such culture and ignoring such incidents have on their employees.

Complaints of sexual harassment at the workplace are not always a result of severely distressing sexually explicit behavior. Inappropriate jokes, use of vulgar language, and repetitive romantic advances, which are common occurrences in offices, are rarely addressed by the IC since organizations do not consider this to be sexual harassment even though it is covered under the legal definition.

As per s.2(n) sexual harassment can include acts or behaviors like physical contact and advances, demands or requests for sexual favors, making sexually colored remarks, showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. Any implied or explicit promise of preferential/detrimental treatment in employment, or threat about her present or future employment status and creation of a hostile work environment in relation to the behaviors listed in s.2(n) are also considered as sexual harassment at the workplace [27].

This definition is broad, so as to include all express or implied behaviors that are found to be objectionable from the complainant's perspective [28], as long as these acts or behaviors have a "sexual tone" [29]. Therefore, a supervisor commenting on the complainant's dress and outfits, suggesting that he would make work difficult for her if she was not good to him, or speaking in a manner that was considered to be offensive to her dignity and chastity, and so on, would amount to the creation of a hostile work environment [30].

Composition of an IC

Under s.4(1) of the 2013 Act, the employer is responsible for constituting an IC to deal with complaints of workplace sexual harassment. The purpose of setting up this committee was to provide a group of individuals, who were trained to handle such complaints [31], power and independence to inquire into such incidents without interference from the employer. This has been done by providing the IC powers of a civil court for enforcing attendance and examination of witnesses [32]. Furthermore, the employer is duty-bound to implement the IC's recommendations and the organization would not need to conduct any further inquiry after the IC's process was concluded [33].

Although the IC has limited powers of a civil court, the IC's jurisdiction is restricted to cases involving sexual harassment by an employee [34], in relation to their workplace. S.2(o) defines workplace as *"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."* This definition applies to a variety of workplaces and educational institutions including government departments, corporations and cooperative societies, private sector organizations, societies, trusts, NGOs, hospitals or other medical facilities, sports institutes, stadium, sports complexes, competition or games venue, and so forth. With the changes that occurred during the pandemic, moving from a traditional work environment to work from home, and now hybrid work modes that have been adopted by several organizations, this definition has been expanded to include digital platforms used for communication between employees from different geographical locations even outside of work hours [35].

This law has gone beyond organized workplaces, to include protection for women working as domestic or daily wages workers. In such cases, the 2013 Act requires the government to appoint Local Committees (LC) in all districts to handle complaints of sexual harassment against respondents falling under the definition of employer [36], or filed by persons working in the unorganized sector [37]. The requirement of LCs was included in the Act at the behest of the National Advisory Council, some state governments and several stakeholders who wanted to ensure that domestic workers (who constitute 30% of the workforce in the unorganized sector), received protection under the 2013 Act [38].

Despite objections raised by the Ministry of Women and Child Development regarding the practicality of implementing such provisions, the Parliamentary Standing Committee on Human Resource Development believed that the proactive role played by NGOs if included on the LC, would ensure implementation [39]. A similar thought process resulted in the mandate to include a person from

an NGO or a person having adequate prior experience in dealing with issues of sexual harassment on ICs as an External Member.

In accordance with s.4(2) a minimum of four members must be appointed on an IC, including a Presiding Officer who must be a woman employed at a senior level at the Organization; minimum two persons having experience/knowledge/commitment to women's causes, or similar legal matters; and one External Member. Although the employer can decide to have a larger IC, at least one half of the members so nominated must be women [40], and can hold office for a maximum period of three years from the date of their nomination [41].

The 2013 Rules require the IC to conduct inquiries as per the principles of natural justice [42]. This, in turn, requires the members of the IC to be fair and unbiased. All members of the IC must be impartial, which means that neither should they have any personal knowledge or interest in the case, nor be connected to the case in any manner. In order to ensure that neutrality is observed in inquiry proceedings, members of the IC should not have conflict with any of the parties involved [43]. Therefore, although it is not mandatory to do so [44], where the respondent is a senior or influential member of the organization, it would be beneficial if the employer appoints an *ad hoc* committee headed by a presiding officer who is senior in rank and status to the respondent and any members who are junior to, or in a position to be influenced by the complainant or respondent should be substituted on the IC by others of senior rank and status [45]. This could help avoid any difficulty in diligently carrying out the responsibilities bestowed on the Presiding Officer/members of the IC against superiors and ensure that there is no undue pressure or influence from senior levels [46].

While the law has adequately considered these difficulties, an important question that arises is whether it is possible for employees of an organization, who are answerable to their employer, to be completely fair and unbiased in cases involving their colleagues? These biases do not just affect the end result of an inquiry but can affect the manner in which IC members speak to, or question parties during the inquiry process. This can also affect the manner in which evidence is considered, and how statements made by witnesses are perceived. Some of the worst comments that IC members can make are that they know the respondent well and find it hard to believe that he could do something like this, inform the complainant that she must have misunderstood the situation or ask if she had done anything to encourage such behavior.

In addition to biases that could arise due to their relationship with the employer or even the employees involved in the inquiry, IC members could also have biases, or pre-conceived notions stemming from sociocultural and educational backgrounds. These could be unconscious biases based on gender stereotypes, sexual orientation, cultural or religious stereotypes, and so on. While changing these pre-conceived notions is difficult, it is important to recognize them, and to not allow them to color the actions and recommendations of the IC. This is also a consideration taken into account when specifying that the External Member should not just be any person who is not employed with the organization, but someone who is independent and a subject matter expert, who can guide the other IC members on how to handle such cases.

Much thought and discussion went into the composition of this IC. The *Vishaka* guidelines had expressed the need for a special committee led by a female employee, and the inclusion of an external expert to ensure balanced outcomes based on informed processes [47]. Furthermore, the criteria for the selection of each IC member was discussed at length in the Rajya Sabha prior to passing the 2010 Bill. During this discussion it was expressed that although it was not necessary that only women were capable of arbitrating complaints of sexual harassment, given the nature of such complaints, aggrieved women may be more comfortable approaching a woman at a senior level to share their experiences [48]. Hence, it was agreed that the Presiding Officer would be a woman. Additionally, a senior woman employee would not be easily influenced either by the employer themselves, or by a respondent in a senior

position. In order to ensure this independence, the *provisos* to s.4(2)(a) allow for the Presiding Officer to be appointed from other offices, administrative units, or even other organizations of the same employer in case where a particular workplace does not have a woman employee suitable for this position.

The criteria of internal members being “committed to the cause of women” [49], or having legal knowledge or experience in social work was included to ensure that utmost sensitivity and care would be shown towards a victim of sexual harassment [50]. Having said that, it was also noted that in order to cater to differences in industries, organizations, and their employees, these criteria would be kept flexible [51].

The eligibility criteria for an External Member were that they would either have legal knowledge or were associated with an NGO or association committed to the cause of women [52], such that they would be people or organizations “who had done outstanding work for women and were sensitive to the concerns of women” [53], and would play a vital role in creating awareness about this legislation [54]. Although reservations were expressed about this criteria by stakeholders who believed that such persons would have an inherent bias against men [55], it was decided that the purpose of involving an External Member on the IC was to bring in an outside perspective, ensuring objectivity in the IC’s decision-making and to prevent undue influence and pressure from senior levels of the organization [56]. It is clear from the discussion amongst lawmakers and stakeholders who were provided an opportunity to consider this criteria that the intention of involving a third-party, with experience in handling such issues and a legal background was to assist the IC in conducting a fair and just inquiry without fear of repercussion from their employers.

Both the *Vishaka* Guidelines and the 2013 Act mandated the need for an External Member for similar reasons. Yet, a major flaw in the 2013 Rules has resulted in a loophole that organizations can use to exclude the External Member on their ICs from inquiry proceedings and still be considered to have complied with the 2013 Act if they have an External Member on their IC. According to Rule 7(7) of the 2013 Rules, a minimum of three members including the Presiding Officer must be present for a valid IC proceeding. As this requirement does not specify the presence of the External Member for quorum, the purpose of mandating an External Member on the IC is lost. Furthermore, since an inquiry can be terminated if the complainant or respondent fails to appear for three consecutive hearings convened by the Presiding Officer [57], organizations can claim that necessary steps were followed before terminating an inquiry. Although the Rules require that this can be done only if a party does not appear “without sufficient cause,” without specifying the criteria to establish “sufficient cause,” the IC is given wide discretion when arriving at this decision.

In order to implement the intention and judicial interpretation of this law, it is essential to include the External Member in each proceeding. Furthermore, for the recommendation of the IC to be considered fair, even if a decision is not unanimous, dissenting views should be considered and recorded in the inquiry report, and the order of the IC should be reasoned. Unfortunately, research has shown that most organizations appoint External Members for the sake of compliance and even when External Members are included in such proceedings, they are neither well versed with the law nor are they assertive enough to circumvent the employer’s influence [58].

Judicial Precedents

In order to clarify the importance of External Members on ICs, courts of law in India have discussed the eligibility criteria of External Members in addition to explaining their role in inquiries. Some of these landmark judgements have been discussed below:

Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University (Bombay HC 2014)

This case is considered a landmark judgement that analyzed multiple aspects of the 2013 Act, including the definitions of aggrieved woman, employee, employer, and workplace. The Court also looked into the composition of the IC and its functioning, in addition to the preparation of inquiry reports.

In this case, multiple women employees working as Assistant Professors raised allegations of sexual harassment against the Principal of the University, following which they were all transferred. After inquiries were conducted by the IC, two separate inquiry reports were submitted: one by the Presiding Officer and the other by three members of the IC (including External Member). After explaining that the members of the IC do not act as individuals, but as a collective unit and must submit findings based on deliberations and consultation with each other, the Court proceeded to explain the role of an External Member on the IC.

The Court stated that the importance of an NGO Member on the IC need not be emphasized, as they are an independent and impartial person who will command respect from the influential management. It was further stated that the External Member must make efforts to co-ordinate working of various IC members, must ensure that the provisions of law are respected and implemented, and must strive to ensure that healthy and comfortable atmosphere prevails or is restored at the concerned workplace [59].

Punjab and Sind Bank and Ors. v Durgesh Kuwar (SC, 2020)

In this case, a female employee had alleged that her zonal manager had attempted to initiate a personal relationship with her and her complaint against him was met with a transfer order, which required her to move to a position that was below her present rank and class. Although an IC was set up to inquire into these allegations, the complainant chose not to participate in the inquiry as she believed that members of the IC were biased. The Presiding Officer of this committee was the wife of the general manager of the bank who had been involved in the complainant's transfer, and the External Member was a lawyer on the Bank's panel.

When looking into the constitution of this IC the Supreme Court noted that the purpose of having an External Member on the IC is to ensure the presence of an independent person who can aid, advise and assist the IC, and to obviate institutional bias [60]. It was held that this was "a significant facet which goes to the root of the constitution" of the IC, and therefore the panel lawyer of the bank where the complainant and respondent were employed could not be considered to fulfil the criteria of an External Member.

The Calcutta High Court also relied upon this decision when stating that the requirement of an External Member in inquiries was necessary in order to implement s.4 of the 2013 Act in letter and spirit, and to make the IC viable and independent [61].

Rashi v Union of India (Del HC, 2020)

In this case, allegations of sexual harassment were brought against the ex-Chairman of the Rehabilitation Council of India, and other staff members for making sexual advances against the petitioner and other female employees, in exchange for favors at the workplace. Although one of the aggrieved women voluntarily left the organization due to this behavior, the petitioner in this case was terminated after she raised a complaint against the respondent. When the petitioner raised a writ petition due to inaction on her complaint, an IC was set up. However, the members of the IC did not appear to be neutral since the presiding officer was the respondent's successor in the same post and two other members were from the department in which the respondent had previously been a senior officer.

In this case, while discussing the constitution and conduct of proceedings by IC, the Delhi High Court reiterated several broad principles that had previously been laid down by various High Courts and the Supreme Court including the requirement of impartial members on the IC. The Court believed that IC members who had previously worked under the respondent may not be able to conduct a fair and impartial inquiry. The Court also reiterated that objectivity and neutrality were essential factors in such inquiries, and therefore, members of the IC should not have conflict with any of the parties involved.

With regards to the need for an External Member, the Court held that such independent members are needed to assist the IC in a fair and impartial manner, and that such an independent person should

actually be someone external to the organization. This was to ensure that inquiry proceedings would lend confidence and assurance to the complainant and inspire the confidence of the Court. In this context, the Court reiterated the age-old aphorism that “Justice must not only be done but also be seen to be done” [62].

There are several other cases that have highlighted the importance of an External Member’s presence during inquiry proceedings. For example, in *X v Union of India* [63], it was held that including an External Member in inquiry proceedings would ensure application of mind when evaluating complainant’s statement. Also, the Court set aside the IC’s findings in a case in which the External Member was not a member of any non-governmental organization or association committed to the cause of women or a person familiar with the issues relating to sexual harassment [64].

Although the importance of the External Member’s role in inquiries has been discussed in several cases, organizations believe that their presence is not necessary in case the complainant opts to settle the matter through conciliation, believing it to be an informal mechanism of redressal.

The Role of External Member in Conciliations

There are two mechanisms provided under the 2013 Act to redress complaints of sexual harassment. A complaint of sexual harassment filed with the IC of an organization, or with the Local Committee can be dealt with either through an inquiry, or by way of conciliation. The 2013 Act provides the option of choosing the redressal mechanism to the complainant.

The reason for including this alternative dispute resolution according to the parliamentary standing committee was that “women’s sense of justice may be met through various ways” [65], which need not necessitate disciplinary action. In fact, sometimes an apology, an acknowledgement of guilt, or acknowledging the impact that one’s behavior had on another, would be sufficient to settle the matter in a way that would allow colleagues to continue working together, and move past the discomfort caused by inappropriate behavior. The true purpose of conciliation is therefore to settle the matter by allowing the complainant to set terms of settlement, while also providing her the right to approach the IC in future if those terms are breached [66]. This process has to be attempted before the inquiry is initiated [67].

Although the IC can only facilitate a settlement at the request of the complainant [68], it has been held that the IC must apply its mind before taking action on a complaint, and form an opinion on whether the complaint warrants a conciliation [69]. At the time of drafting this legislation, it was discussed that allowing for a conciliation after the inquiry was initiated would allow employers or respondents in an influential position to pressurize the complainant into settling the matter [70]. It is to avoid such scenarios that conciliation should be attempted in the presence of an External Member.

Even where such cases are resolved without an inquiry, certain processes must be followed, which only the IC is authorized to do. IC’s role in the conciliation process includes informing complainants about what both redressal processes entail and if the complainant seeks interim relief the IC must recommend to the employer to implement these interim measures. The IC must take the complainant’s terms to the respondent and explain to them what their options are—respondents also have the right to reject the terms and ask for an inquiry.

Where a conciliation is successful, the IC must document the terms of settlement and forward the same as recommendations to the Employer. However, in case it is not successful, the IC must initiate inquiry. Therefore, if the External Member was not present during conciliation, they will not be aware of the background of a particular case, and it is likely that the complainant and respondent who have already deposed before the IC would need to be summoned again for inquiry proceedings and repeat statements already made before a sub-set of the IC. Such situations can create a loss of faith in the system and re-victimize complainants who have already gone through traumatic events.

Recent reports have highlighted that women employees in the private sector are being forced to reach out to external agencies like the She-box since the ICs constituted by their employers either do not act on complaints promptly or lack perspective on sexual harassment and the procedure required to be followed under the 2013 Act [71]. While many organizations have established procedures for dealing with sexual harassment complaints, unless they comply with both the letter and spirit of this law, the 2013 Act will not be effective.

CONCLUSION

The 2013 Act mandates that government and private organizations redress complaints of sexual harassment at the workplace. It takes a lot of courage for an employee to raise her voice against a perpetrator who holds a powerful and influential position within the organization, and therefore, the 2013 Act was created with the intention of ensuring that every organization sets up internal mechanisms to deal with such complaints in a manner that is simpler and quicker than the judicial process. Non-compliance would result in penalties for the employer.

There is, however, a difference between law in theory and law in practice. It is arguable that the independence of IC members who are employed by the same authority that nominates them on the IC, is questionable. In the absence of a third party, independent and experienced External Member, employers cannot be prevented from interfering in the decisions taken by the IC, especially when respondents are important business resources. Unfortunately, as long as organizations are able to show in the annual report submitted to the District Officer that they have fulfilled the obligation of including an External Member on their IC, their practices are not questioned or looked into.

Although the intention of law-makers when including an External Member on the IC is clear, and the same has been reiterated by several High Courts and the Supreme Court of India, there is a need to amend the 2013 Rules to include the External Member on the IC's quorum in order to ensure that organizations do not misuse the ambiguity in the letter of the law as a loophole. In the meantime, it is the responsibility of each employer to make the best use of these provisions and protect their employees.

Like any young legislation, the 2013 Act also has flaws that will gradually be corrected through judicial and legislative interference. Since the Indian judicial system follows the principles of Common Law, court judgements are essential for the evolution of law and Internal and Local Committees rely on case law to interpret the 2013 Act and seek clarity on how to apply these legal provisions [72]. The situation is exacerbated when prohibitive judgements are passed that prevent parties to trials on workplace sexual harassment from disclosing any information relating to such trials, including the final order/judgment, without securing permission from the court [73].

Increasing awareness regarding the scope of the term "sexual harassment," ensuring that cases are handled expediently and correctly, and government initiatives to keep tabs on the functionality of Internal and Local Committees set up under the 2013 Act will assist in ensuring that this law is implemented in practice. What is of utmost importance is that employees do not suffer in silence [74].

Conflict of Interest

The author provides support services against sexual harassment in the capacity of an External Member on ICs, and to that extent, the argument that the presence of an External Member in every inquiry proceeding should be mandated may be construed as a conflict of interest. Having said that, the purpose of including an External Member on the IC has been explained in this article by analyzing the intention of lawmakers as well as judicial precedents. The author's point of view considers the perspective of vulnerable victims of workplace sexual harassment who deserve a fair and unbiased inquiry.

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ENDNOTE

- i. According to s.26, the employer is liable to pay a fine of up to Rs. 50,000, and in case of further non-compliance, a fine of up to Rs. 1,00,000. The law also provides for the possibility of cancellation of business licenses or governmental approvals. Negative publicity aside, this is not a risk any organization would like to take.
- ii. Each employer must submit an annual report to the District Officer as per s.21 and include in it the information required as per s.22 read with rule 14 of the 2013 Act and Rules