

PREVENTING WORKPLACE SEXUAL HARASSMENT

A SIMPLE INTRODUCTION

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A Letter to Business Leaders, CEOs and HR heads

November 29, 2016

As part of an outreach initiative of the 2016 Prajnya 16 Days Campaign against Gender Violence, I am calling on you to promote gender equality in your organisations through better compliance with the Vishakha Guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

This, most simply, entails every organisation having:

1. A policy on workplace sexual harassment prevention and redressal, that is made known to all employees;
2. An Internal Complaints Committee;
3. Training and awareness programmes across the company, reaching all employees and leaders.

This year, during this special time set aside across the world to promote measures to eliminate gender-based violence, do review your company's track record, make a time-bound plan for better compliance and commit publicly to this important objective.

Thank you for your attention!

Swarna Rajagopalan

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This letter is part of "The Letterbox Resistance," an outreach programme of the 2016 Prajnya 16 Days Campaign against Gender Violence. You are invited to join in this activity, from wherever you are. If you would like, we invite you to share a scanned copy of your letter with us.

Reading the workplace sexual harassment law

December 6, 2016

Indian CEOs and HR Heads, you've been reading about the no-longer-so-new workplace sexual harassment law and know that compliance is mandatory. (It's been mandatory since 1997 but we have only been taking this seriously in the last few years--never mind!) But you run a small organisation, do not have a legal department, are not a lawyer and would not know how to begin to understand what is required.

There are now hundreds of resources online, but I would suggest you begin with the very short and very elegantly written Vishakha Guidelines. In these landmark Guidelines, the Supreme Court related workplace sexual harassment to the right to equality and stated clearly that it was the responsibility of

employers to safeguard this right. It also very clearly defined workplace sexual harassment and provided prevention guidelines--including the policy, committee and awareness training that remain a part of the law.

Read the Guidelines first because you will then clearly understand the spirit and purpose of the Workplace Sexual Harassment law and rules. This far more complicated (and according to feminists, problematic) document essentially sets out detailed definitions and procedures for the same Guidelines. The verbosity of the law makes implementation more challenging partly by obscuring the conceptual clarity of the Vishakha Guidelines. You are left wondering whether the law is about protecting women, settling disputes or avoiding litigation.

The law seems to lend force to the guidelines by creating a reporting schedule and penalties for non-compliance. However, more than three years after the passage of the law and rules, it is not clear in most places how these are to be implemented.

The point here is that if anxiety about how complicated compliance with the law might be has kept you from acting, start today by reading the Vishakha Guidelines. Then work your way to full compliance in letter and spirit from there. It's not that hard!

Writing a workplace sexual harassment prevention policy that matters

December 12, 2016

To put a workplace sexual harassment prevention policy together, you will go out and try to read other people's policies and most of them will put you off and so you will end up putting off the task of formulating your company's policy to the next quarter... which never comes, of course. Why bother?

Most companies put a policy together because the law requires them to. There are now reporting requirements and the penalties for non-compliance create an imperative. These penalties are a fine in the first year and then loss of licence. If you employ a large number of women, you probably want to be known as a safe workplace for them. But a policy put together solely to meet legal requirements is hardly going to create the kind of workplace where sexual harassment is unthinkable--even if it states that there will be 'zero tolerance.' Compliance is an important but superficial reason to draft a prevention of workplace sexual harassment policy. You tick off the box on your checklist and move on in every way.

When Human Resources and Legal Departments collaborate on the policy-writing project, above all they are thinking about preventing loss to the

company (of time, of resources, of reputation), about preventing lawsuits and about avoiding sexual harassment complaints. Sometimes, because we are all products of the patriarchal society that has always sanctioned sexual harassment, companies are also looking for ways to protect male employees from workplace sexual harassment charges. But, of course, this is not the point at all. What the Vishakha Guidelines clearly established was that the right of women to a safe workplace was a dimension of the right to equality. A workplace sexual harassment prevention policy must first and last be about preventing workplace sexual harassment. Any other objective makes it a self-defeating policy.

I just said compliance was not a good enough reason and that protecting the company was the wrong goal. You want to know why you should bother--what would be a good enough approach to this rather tedious task? After all, at the end of the day, most policies have to cover the same ground.

Policies--any policies--are ultimately more than text. They express values, they offer vision, they point to preferred ways of getting to the vision and they constitute a commitment to which organisations can be held accountable. When company leaders choose to draft a policy because they are committed to gender equality and gender justice, the resulting policy asserts much more than 'zero-tolerance' towards sexual harassment. In quality, in content and in scope, it commits management and staff to building a work culture that is inclusive, democratic and fair. When companies have such a work culture, the likelihood of sexual harassment--which is after all power-play--is greatly diminished. This is what ultimately protects the company's resources from an endless series of complaints or from acquiring a reputation as an unsafe workplace.

So even as you think about putting together your organisation's policy, reflect on your own understanding of gender politics in our society and in your workplace. Think about your values--do you think equality is desirable, unrealistic, overrated or unfair--and unpack your own prejudices. Don't just talk to lawyers and NGOs. Understand how different people experience the workplace. Understand why the policy is needed. The process of writing a policy begins within and the words on a page are simply the final product. Unshakable conviction lends the same words an altogether different force. Do the hard work upfront, and write yourself a policy that is genuinely meaningful.

Just a statutory requirement?

December 27, 2016

Today I met a government officer--doesn't matter who, where or why. In the course of our conversation, the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* came up. I suggested he check on the state of compliance in his organisation. He nodded without interest and then said to me, in that mansplaining-meets-governmental-authority tone, "Frankly, it's just a statutory requirement."

Well, yes. Like the laws his department enforces.

He went on, as if offering further justification for the general lack of interest, "In a place like ours, we already have our own redressal procedures anyway." I have to confess that in that moment, I was too dumbfounded to expound on the difference between vigilance over corruption or non-performance of duty and workplace sexual harassment. What might have I said, I have wondered since.

Might I have said, nastily, "Yes, it's a statutory requirement, like the ones you enforce, but you still enforce those, no?" Luckily, I didn't. That would have trivialized the question and reinforced his dismissive attitude.

Might I have quoted the Vishakha Guidelines and said, "It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required"? I might have drawn further firepower from Justice Verma's words in the judgment, "Each such incident results in violation of the fundamental rights of Gender Equality and the Right to Life and Liberty. It is a clear violation of the rights under Arts. 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victims fundamental right under Art. 19 (1)(g) to practice any profession or to carry out any occupation, trade or business. Such violations, therefore, attract the remedy under Art. 32 for the enforcement of these fundamental rights of women." In other words, this is not a statutory requirement that is redundant because of existing vigilance procedures, but a protection of constitutionally guaranteed fundamental rights.

Might I have said that existing vigilance procedures are unable to take into account the special nature of sexual harassment? That someone has to summon up

the courage to file a complaint. That this is a hard thing to talk about, and given the intricacy of relationships, even harder to talk about than whether you saw someone take a bribe. That the composition of the Complaints Committee has been mandated in a certain way for a reason--a woman complainant in a roomful of men in positions of authority is going to experience an exercise of power analogous to her experience of harassment.

Might I have said that taking steps to implement the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* signals to women employees that they are welcome in the organization--equal contributors, equal stakeholders and most important, equal citizens? This is especially important in organizations that are typically incapable of providing clean women's restrooms, I would say. You can tell women to adjust to that (though you shouldn't!) but can you tell them to adjust to groping or verbal abuse in order to keep their job? What that communicates is that a lecherous, abusive male employee is more important to the organisation than a woman employee.

Is the law perfect? It is not. That is a different argument leading to a different course of action than to say implementation is not important because it is "just a statutory requirement." Existing vigilance and redressal procedures do facilitate the implementation of the Workplace Sexual Harassment Protection law (because organizations which have them do not have to figure out procedure) but they are no substitute for a dedicated policy, committee and awareness programming which both the Guidelines and the Act require.

Implementing the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* in letter and spirit would be intrinsically important to any employers or organizational leaders who believe in the equality of all humans. To dismiss its intentions casually is to demonstrate lack of respect for other people and their most basic human rights. That's not just a violation of statute; it's a violation of humanity. Maybe I should have said that?

That missing "NGO member"

January 15, 2017

"Word of Caution for Companies - Beware of crooks i.e. companies doing end-to-end compliance???" who advertise that graduates can function as external members of Internal Committee by merely participating in a workshop and getting a certificate. Sexual Harassment of Women at Workplace (PPR) Act 2013 lays down clear profile of an external member

as a one who has at least five years of experience in field of social work or person familiar with law." This post by my friend Dr. Anagha Sarpotdar started my day, reminding me that I had wanted to write about this.

"We're having trouble finding an NGO member," I hear from time to time from people trying to set up Internal Complaints Committees in their organisations. I wonder why. The law, as Dr. Sarpotdar points out, offers two criteria--five years of social work or familiarity with law. There are hundreds of thousands of NGOs and lawyers in India. If ten percent of them are directly involved with gender issues and equality-related law, it should still be possible to constitute a committee with them. (Having said that, there is a case to be made for training others who meet the basic criteria but do not have a background working on gender issues.)

How do you locate them? Try typing "women's rights organisation" plus your location into any search engine. Then, go through their websites. Pick the one that seems most stable or credible to you and drop them an email. Someone from their organisation might serve but if not, they can surely help you identify someone else.

At Prajnaya, we have been developing a roster of qualified persons, mostly in the Chennai area, so that we can do these referrals. When companies reach out to us, we ask them four questions based on our own service experience:

1. *What is the size of the company - how many employees are there?* If it is a large company, the chances are the time commitment required is a large one.
2. *Is this specifically for one office? If there are any complaints, do you anticipate needing the committee members to travel out of town?* If the organisation has large offices in multiple locations, it makes sense to empanel a few members so at least one is able to serve on any case (from start to finish) and also so that people can serve locally, familiar with the local language.
3. *What language do the majority of your employees speak? Do committee members need to read/speak/understand English, Tamil, Hindi etc?* It is not enough for the outside member to just sit through the hearing, they must be able to follow along and read the testimonies. Language skills are vital.
4. *Do you prefer a lawyer?* This may be a good option for smaller companies that do not have their own legal department.

We then match and introduce people over email. What we have is still a small roster but as we see it, it is our job to bridge the gap between civil society and organisations trying to meet legal requirements. If our roster does not include people from a particular

location, we try and reach out to our network to see if we can find someone.

At the "NGO member" end, some cautionary notes rather like the one by Dr. Sarpotdar:

1. Being from an NGO does not mean a person is either gender sensitive (an unwritten requirement!) or familiar with this law (a legal requirement). It's worth doing some homework on both fronts before taking on this responsibility. Companies should ask around rather than cold-call and invite someone they don't know in order to get gender sensitive and aware members.
2. Going through a training cannot qualify you to become an outside ICC member, but if you are otherwise qualified, it can enhance your understanding of the issues and the law.
3. Sitting on a Committee is a responsibility, not a resume-builder. There is a 90-day limit to processing complaints and if you cannot give dates, you are responsible for the miscarriage of justice. For this reason, it is a responsibility to take on thoughtfully. If you think you are on too many Committees (this does happen!), stop, resign and find them a replacement.
4. Process and share learning but bear in mind that there is a commitment to confidentiality.

Finding that outside member need not be a stumbling block to compliance. Just reach out and ask! There are many of us committed to helping you with compliance and even more, building a workplace where gender equality is part of the culture.

And when you find that person, treat them with respect. They are sharing their time, energy and knowledge with you, mostly as a service with few rewards.

Awareness as prevention

February 14, 2017

Article VI.19(c) of the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 says it is an employer's duty to "organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the internal Committee in the manner as may be prescribed." This was also an element in the Vishakha Guidelines.

This makes perfect sense from the point of view of the Supreme Court judges who drafted the Guidelines --they were seeking to prevent sexual harassment from taking place in the workplace. It makes very little sense to most organisations which are just

seeking to comply with the law, check off a few boxes and maybe avoid law-suits.

Awareness programmes may in fact be the most critical component of your workplace sexual harassment prevention policy--apart from your zero-tolerance statement. They provide context for your policy and allow employees to learn what it is and why it is there. That way, it's not just another dead-letter document in their induction folder. They also take the legalese of your policy and turn it into practical ways to access justice. That is, if the purpose of the awareness programme is limited to creating a certain degree of legal literacy.

One of the great anxieties surrounding any discussion of gender-based violence is that measures to prevent and punish acts of violence may be used with malicious intent to victimise innocent men. This comes in large part from the habit in patriarchal societies of protecting men in all circumstances, but in some measure, it does come from the reality that many complaints end up dismissed as untenable. But most of these are not malicious. They fall into two categories. Some complaints are simply not sexual harassment complaints. They may entail genuine harassment or bullying. They may entail some other kind of conflict. But sometimes, unsure of where to seek redressal, the complainant approaches the only committee with a clearly established process --the Internal Complaints Committee. In other words, these are misfiled grievances.

To the second category, belong complaints that are not adequately substantiated. The complainant is unable to reconstruct the narrative of harassment in clear terms and the details of the incident(s) cannot be established. There are also no witnesses and no one to corroborate what the person has experienced. It is clear from the behaviour of the persons in question that something has happened but nothing can be established because there is not enough evidence.

When the awareness programmes are broader than legal literacy, both of these categories of complaints can be avoided and the time and resources of the Internal Complaints Committee (and the organisation) can be saved. But the most important reason to do a more broadly oriented awareness programme is to create optimal conditions to guarantee to employees their right to equality--to an equal chance at professional success and achievement, without fear or favour.

To this end, awareness programmes should be customised to cover the following:

1. An understanding of workplace sexual harassment (the issue)

2. Basic elements of legal literacy (relating especially to the rights of employees)
3. Introduction of the organisation's own policy, procedure and committee.

Ideally, every employee should be trained and an additional programme should be organised for the Internal Complaints Committee members, including the external member. When this is done, the entire organisation is literally on the same page with reference to recognising and resolving the programme of workplace sexual harassment.

Most organisations appear to see this legal requirement as onerous and annoying. Imagine having to spend time and money locating trainers, working out a training schedule, organising the logistics of their coming to train and of releasing employees from their assignments to attend the training! It really should be enough to write up a policy and stick it up somewhere, shouldn't it? Human Resources Departments bring varying levels of commitment to this process. For them, this is about avoiding penalties for non-compliance and avoiding litigation. The trainers they identify cater to those two anxieties explicitly.

Am I implying that not all trainers on this subject are equal? Absolutely. So look for the ones whose workplace sexual harassment work is anchored in the broader context of their work on gender equality, human rights and justice. Ask your NGO/ external committee member to find you a trainer.

If you are tempted to hire corporate trainers, engage with them to see what their perspective is. They should be able to go beyond thinking about protecting the company to helping the company protect, not just the person of the employee, but also their fundamental right to equality. They may speak the language of business school but they must promote the spirit of justice in their work. They should be able to place the prevention of workplace sexual harassment in the broader social and political context and communicate that understanding to your leadership and the entire team.

The bottomline is this: You can have a policy, a dream committee, excellent support for that committee, but unless you put awareness programmes in place, you are simply slapping plaster on a wound. Your goal should be to eliminate the problem at the root and that is only possible--through awareness programmes --when everyone shares a deep and common understanding of what that problem is.

**Questions about how to prevent
workplace sexual harassment
in your organisation?
Do get in touch!**

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