

**SEXUAL MISCONDUCT AT WORKPLACE AND INDIAN
CORPORATE AND SECURITIES LAW: EXPLORING
CORPORATE DISCLOSURES OF SEXUAL HARASSMENT
CASES BY INDIAN COMPANIES IN #METOO ERA**

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The #MeToo movement in India has reignited the debate on the role of companies as employers to prevent and address instances of sexual misconduct against their employees, and ensure their safety at workplaces. This paper examines the recent changes to India's corporate and securities law to incorporate provisions mandating compliance with workplace anti-sexual harassment law by companies. We also discuss how Indian companies' and securities' law requires disclosure of compliance with Indian sexual harassment law. We have examined sections on sexual harassment related disclosures in companies' Directors' Annual Reports to demonstrate their compliance with the Indian workplace sexual harassment law.

Our analysis reveals that many companies 'claimed' to have formulated workplace-based anti-sexual harassment policies and constituted an internal complaint committee (ICC). However, there are significant lacunae in companies' reporting on several important aspects related to preventive workplace-related sexual harassment policy enforcement and practices, including measures taken towards gender sensitization and awareness creation and, composition and functioning of the internal committees. In this regard, companies are either providing ambiguous, vague and defensive explanations or too insufficient or no information at all. Our findings also point out that corporate policies on sexual harassment still remains largely 'women-centric' for a significant number of companies. Many companies are yet to make their

policies gender-neutral by recognising workplace-based sexual harassment as an offence which does not necessarily mean as ‘men the perpetrators’ and ‘women the victims.’ We conclude by determining how the law may be improvised to increase accountability of the companies to report on their anti-sexual harassment policies and working of the Internal Complaints Committee (ICC).

I INTRODUCTION

The year 2018 marks as an inflection point in the recognition of the women’s rights against workplace sexual misconduct and harassment in India. This was largely credited to the efforts made by Bollywood actress, Ms. Tanushree Dutta. During a series of media appearances in 2018, she filed a case against her co-star, Mr. Nana Patekar, a veteran Marathi and Hindi film actor, for sexually abusing her while shooting a song sequence for the film, ‘Horn *Okkk Please*’, ten years ago, in 2008.¹

Eventually, the case against Mr. Nana Patekar was ‘closed’ by the Police due to ‘lack of sufficient evidence’ against him.² While it continues to remain a mystery whether or not Mr. Patekar did *really* sexually abuse Ms. Tanushree Dutta, as she alleged, her case is significantly known, in her own words, “to usher the

¹ ‘Tanushree Dutta says she was sexually abused by an actor, asserts Me Too will never reach Bollywood’ *The Hindustan Times* (online, 25 Sep 2018) <<https://www.hindustantimes.com/bollywood/tanushree-dutta-says-she-was-sexually-abused-by-an-actor-asserts-me-too-will-never-reach-bollywood/story-JHHnf3nUljYrOFdzrbBZCO.html>>; Outlook Web Bureau, ‘Tanushree Dutta, Torchbearer Of India’s #MeToo, Invited To Harvard University’ *Outlook India* (online, 10 Feb 2019) <<https://www.outlookindia.com/website/story/india-news-tanushree-dutta-torchbearer-of-indias-metoo-invited-to-harvard-university/325220>> India Today Web Desk, ‘Tanushree Dutta vs Nana Patekar sexual harassment case: Two witnesses say actors were several feet apart’ *India Today* (online, 20 June 2019) <<https://www.indiatoday.in/movies/celebrities/story/tanushree-dutta-vs-nana-patekar-sexual-harassment-case-two-witnesses-say-actors-were-several-feet-apart-1552582-2019-06-20?>>>

² Press Trust of India, ‘No Evidence to Prosecute Nana Patekar in Tanushree Dutta Molestation Case: Mumbai Police’ *Live Law* (online, 14 Jun 2019) <<https://www.livelaw.in/news-updates/no-evidence-to-prosecute-nana-patekar-in-tanushree-dutta-molestation-case-mumbai-police-145650>>

#MeTooIndia Movement.”³ Her case is also widely known to have also inspired other victims to tell their personal stories of sexual harassment and assault, who are suffering in silence. Within months, many more women raised their voices against workplace sexual abuse, including filing cases or allegations against prominent public figures. These names include Parliamentarian and former Minister of State and Editor, Mr. Mobasher Jawed (“MJ”) Akbar⁴, prominent actors Alok Nath⁵ and Rajat Kapoor⁶, and directors Vikas Bahl,⁷ Subhash Ghai⁸ and Sajid Khan.⁹

Refuting the allegations, journalist and parliamentarian, Mr. M J Akbar filed a defamation suit against Ms. Priya Ramani, who had raised them against him.¹⁰ On

³ Press Trust of India, ‘#MeToo row: Tanushree Dutta urges Bollywood to boycott Ganesh Acharya after fresh allegations surface’ *Economic Times* (online, 30 Jan 2020) <https://economictimes.indiatimes.com/magazines/panache/metoo-row-tanushree-dutta-urges-bollywood-to-boycott-ganesh-acharya-after-fresh-allegations-surface/articleshow/73764488.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst>

⁴ ‘MeToo: Here's what 11 women journalists have accused MJ Akbar of’ *India Today* (online, 14 October 2018) <<https://www.indiatoday.in/india/story/metoo-here-s-what-11-women-journalists-have-accused-mj-akbar-of-1367684-2018-10-14>>

⁵ India Today News Desk, ‘#MeToo: Mumbai police likely to close the rape case against Alok Nath. Here's why’ *India Today* (online, 11 August 2019) <<https://www.indiatoday.in/television/top-stories/story/-metoo-mumbai-police-likely-to-close-the-rape-case-against-alo-nath-here-s-why-1579781-2019-08-11>>

⁶ ‘#MeToo: Rajat Kapoor apologises on Twitter after 2 women bring up 2007 sexual harassment’ *The Economic Times* (online, 9 October 2019) <<https://economictimes.indiatimes.com/magazines/panache/metoo-rajat-kapoor-apologises-on-twitter-after-2-women-bring-up-2007-sexual-harassment/articleshow/66117859.cms>>

⁷ ‘#MeToo: VikasBahl cleared of sexual harassment charges, back as director of Hrithik's next film’ *The Economic Times* (online, 1 Jun 2019) <https://economictimes.indiatimes.com/magazines/panache/metoo-vikas-bahl-cleared-of-sexualharassment-charges-back-as-director-of-hrithiks-next-film/articleshow/69606792.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst>

⁸ ‘MeToo movement: Filmmaker Subhash Ghai accused of drugging, raping woman’ *The Hindustan Times* (online, 11 Oct 2018) <<https://www.hindustantimes.com/bollywood/metoo-movement-director-subhash-ghai-accused-of-drugging-raping-woman/story-V9ygp9IcXbgzDuNhi5v9AO.html>>

⁹ ‘Yet again, Sajid Khan accused of sexual harassment’ *The Tribune* (online, 20 Jan 2021) <<https://www.tribuneindia.com/news/entertainment/yet-again-sajid-khan-accused-of-sexual-harassment-201119>>

¹⁰ ‘Akbar Vs Ramani: Timeline of Defamation Case’ *India Today* (online, 17 Feb 2021) <<https://indianexpress.com/article/india/metoo-timeline-defamation-case-priya-ramani-mj-akbar-7192604/>>

17 February 2021, in the case of *MJ Akbar v. Priya Ramani*, a three-judge bench of the Delhi High Court delivered a 90-page judgment that acquitted her from the defamation charges levied by Akbar against her.¹¹ The judgment is widely hailed as a ‘historic milestone’ in the #MeTooIndia movement.¹² The court’s observation that: ‘a woman has a right to put her grievance at a platform of her choice even after decades’ recognises the right of woman to raise her voice against her perpetrators even after many years of the alleged incident.¹³ This *dictum* significantly recognises that victims, in most cases, women, often take months and, maybe, even years after the incident to ‘come out’ and voice themselves on various platforms, let alone filing a lawsuit against her alleged harasser.¹⁴

These stories renewed the debate on the safety of women at workplaces and the need to address instances of sexual victimisation at places of employment in India. It was not long when the focus shifted to treatment of sexual harassment cases by corporates in India, and consequently, their duties as employers to ensure safer and more conducive working conditions for women at their offices. The Indian sexual harassment law is primarily governed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“The POSH Act” or “The Act”)¹⁵, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (referred to as the “POSH Law”). The Act

¹¹ *Mobashar Jawed Akbar v. Priya Ramani* Criminal Complaint No. 05/2019 (Full judgment available at <<https://indiankanoon.org/doc/52182353/>>; ‘Full text: Priya Ramani acquitted in MJ Akbar defamation case; FP report cited in verdict’ *First Post* (online, 17 Feb 2021) <<https://www.firstpost.com/india/priya-ramani-acquitted-in-mj-akbar-defamation-case-judge-cites-fp-report-in-91-page-verdict-read-full-text-9315581.html>>

¹² ‘#MeToo: Delhi Court Acquits Priya Ramani in M.J. Akbar Criminal Defamation Case’ *The Wire* (online, 17 Feb 2021) <<https://thewire.in/law/delhi-court-acquits-priya-ramani-in-m-j-akbar-criminal-defamation-case>>;

¹³ Aditi, ‘MJ Akbar v. Priya Ramani: Two years, three judges and a 90-page judgement’ *Bar and Bench* (online, 17 Feb 2021) <<https://www.barandbench.com/news/litigation/mj-akbar-priya-ramani-two-years-three-judges-and-90-page-judgement>>

¹⁴ Anand Mohan J, ‘#MeToo: Delhi court acquits Priya Ramani in criminal defamation case filed by MJ Akbar’ *The Indian Express* (online, 18 Feb 2021) <<https://indianexpress.com/article/india/metoo-delhi-court-acquits-priya-ramani-in-criminal-defamation-case-filed-by-mj-akbar-7192384/>>

¹⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Ind)

also gives effect to India's commitments under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) ratified on 25 June, 1993.¹⁶ In wake of the #MetooIndia movement and recognising that there is a greater need for corporates to comply with the Indian sexual harassment law, India's corporate and securities law, was amended to enhance reporting requirements for companies on their compliance with the POSH Act. In this regard, the 2018 Amendment to The Companies (Accounts) Rules, 2014, supplementary to The Companies Act, 2013, is of importance. The amendment is significant as it attempts to link duties and liabilities of companies to prevent and address cases of sexual harassment under the POSH Act with other non-financial disclosures mandatory under corporate law. With insertion of this provision, it is now as much important for any company to report on its compliance with the POSH Act as it is to provide its profit and loss statement. Under the Indian securities law, the Securities and Exchange Board of India's (SEBI)'s business responsibility reporting (BRR) guidelines for top 1000 listed entities also deserve attention. They further enhance the accountability and transparency requirements of companies by mandating a higher threshold of disclosing this company-related information to their shareholders and stakeholders. These provisions have raised important questions for scholars and practitioners of Indian corporate and securities law that the existing academic literature is yet to address. As the literature review section (Section I) of the paper reveals, while there is vast academic literature on focusing on the practical implications, including analysis on limitations and shortcomings of the POSH law, studies exploring the interrelationship between corporate law and the incorporation of preventive workplace sexual harassment regulations within the contours and domains of corporate regulations in India are lacking. This paper focuses on compliance of workplace sexual-harassment related provisions under Indian companies and securities law, based on an empirical analysis of companies' sexual-harassment

¹⁶ Ibid

related disclosures contained within their directors' annual reports. Specifically, sections devoted to sexual-harassment related disclosures, inbuilt within directors' annual reports for the financial year 2019-20 for a selected sample of companies' listed under the National Stock Exchange (NSE) have been analysed. With this focus, this paper also adds to the broader narrative of the lacunae within the disclosure and reporting requirements on enhancing the liabilities of the companies to prevent and address sexual harassment under India's corporate and securities regulations.

This study primarily finds that majority of companies from the sample have disclosed to have prepared a corporate-level policy, as required under the POSH law. As also required under the POSH law, companies, reportedly, have constituted an Internal Complaints Committee (ICC) to adjudicate and dispose of incidents related to sexual misconduct reported at their workplaces. However, companies lack in disclosing qualitative information, with sufficient detail, on many important aspects related to prevention and resolution of reported cases of workplace sexual harassment. These include disclosures related to measures taken by companies to spread awareness on their own anti-sexual harassment policies; number of training, awareness and gender sensitization programs organised at their office locations and, the composition and functioning their internal committees.. In this regard, many companies have either not disclosed particular information or have often used ambiguous, defensive and vague disclosures. In particular, the findings indicate strong inclinations of companies' demonstrating a traditional and conservative outlook towards workplace-oriented sexual harassment. This is evident from the language of some of the companies' anti-sexual harassment policies to treat sexual harassment as a largely 'women-centric' issue, where men are the usual perpetrators and women are victims. Many companies still have a long way to go to make their policies more 'gender-neutral.' In this regard, we also highlight some of the important lacunae in the drafting and construction of the POSH law which considers workplace sexual harassment as an offence against women alone, and its inherent lack of gender neutrality. We also

emphasis on the law's lack of any jurisprudential and policy-based justification to encourage companies to resolve workplace sexual harassment complaints by conciliation. During 2019-20 financial year, many companies reported extremely low number of workplace-sexual harassment complaints filed with their internal committees. In this regard, by reconnecting the findings of the paper with existing literature, we have offered some explanations and reasons. We have also suggested several policy-based and legislative amendments to strengthen the Indian companies' and securities' law to enhance the liabilities of companies to comply with the POSH law.

II LITERATURE REVIEW, GAPS AND SIGNIFICANCE OF THE STUDY

The POSH law has been subject of much debate and discussion, particularly within the academic domain of socio-legal and feminist studies from an Indian context. Internationally, legal debates that present analysis of the role of corporate law in the enforcement of a workplace-based sexual harassment law began to gain momentum after the #MeToo era.¹⁷ For example, in *Sexual Harassment and Corporate Law*, the authors examined the role of corporate and securities law in regulating and remedying workplace sexual misconduct in a post-#MeToo movement phase which shook corporate America.¹⁸ This article concluded that corporate and securities law can publicize the scope and severity of sexual harassment, incentivize proactive and productive interventions by corporate fiduciaries, and punish individuals and entities that commit, conceal, and abet sexual misconduct in the workplace.¹⁹ However, these debates are yet to take a concrete shape in the Indian context.²⁰ Studies on workplace sexual harassment and role of law in the Indian context have explored the experiences of women on

¹⁷ Claire Hill, '#MeToo and the Convergence of CSR and Profit Maximization' (2019) 69(4) *Case Western Reserve Law Review* 895, 897.

¹⁸ Daniel Hemel and Dorothy S Lund, 'Sexual Harassment and Corporate Law' (2018) 118(6) *Columbia Law Review* 1583-1680.

¹⁹Ibid 1678

²⁰ Sanjana Pegu, 'MeToo in India: Building Revolutions from Solidarities' (2019) 46(2) *Decision* 151-168 <<https://doi.org/10.1007/s40622-019-00212-x>>

processes followed by organisations when their personal spaces and dignity are violated.²¹ Some significant studies have pointed out, *inter alia*, that organisational support for women in the event of sexual harassment ranges from sheer unwillingness to provide support to upholding the rights and dignity of women as a priority.²² Studies in the Indian context also suggest that reporting of workplace sexual harassment by women to their organisations is driven by several socio-cultural factors since Indian society was and still remains deeply patriarchal. Therefore, men have and continue to occupy naturally dominating positions at workplaces. Similar experiences have also been reported in the case of Australian organisations, where, despite having an anti-discrimination law, sexual harassment remains underreported at workplaces in Australia.²³ This comprehensive literature review suggests that there is ample literature on organisational and psychological experiences of Indian women, driven by socio-cultural factors, who have faced sexually-abrasive behaviour at their workplaces. However, expansive studies on the exploring linkages between companies' or securities law for better enforceability of anti-sexual harassment law in Indian context are lacking. In this regard, this study takes stock of some of the recent changes to the Indian companies' and securities' law which have raised corporate obligations to comply with workplace-based sexual harassment law. In particular, this study examines corporate-level disclosures related to companies' perceived and reported compliance with workplace-based sexual harassment law in India. Hence, this study's novel perspective to explore the issue of enforceability of the

²¹Punam Sehgal and Aastha Dang, 'Sexual Harassment at Workplace Experiences of Women Managers and Organisations' (2017) 52(22) *Economic and Political Weekly* 49-571.

²² Ibid 54; see Anangha Sapotdar, 'Sexual Harassment of Women: Reflections on the Private Sector' (2013) 48(40) *Economic and Political Weekly* 18-19, 22-23; Rahul Sambaraju, "I Would Have Taken This to My Grave, Like Most Women": Reporting Sexual Harassment during the #MeToo movement in India' (2020) 76(3) *Journal of Social Issues* 603-631; see also Yugantar Education Society, *A Research Study on the Nature, Incidence, Extent and Impact of Sexual Harassment of Women at Work Place in the State of Maharashtra* (Report) <http://ncwapps.nic.in/pdfReports/A_Study_on_Impact_Of_SH_At_Work_Place_In_Maharashtra.pdf>

²³Therese MacDermott, 'The Under-reporting of Sexual harassment in Australian Workplaces: Are Organisational Processes falling Short?' (2020) *Legal Studies* (forthcoming) 1-17

Indian workplace-based sexual harassment law, using a unique methodological approach makes it a ‘one-of-its-kind’ attempt. With this approach, it also effectively extends existing socio-legal studies on the implementation and enforcement of the Indian anti-sexual harassment law by companies. Therefore, this paper makes a significant and useful contribution to the legal discourses on an interlinking of corporate regulations and sexual harassment law in India. This study also contributes to the broader socio-legal and corporate legal debates on the issue of liability of companies to comply and disclosure their state of compliance with the workplace-sexual harassment law in India.

III ADDRESSING SEXUAL MISCONDUCT UNDER INDIA’S POSH ACT LINKING CORPORATE AND SECURITIES LAW

As Part II of the paper revealed, legal and socio-legal studies exploring companies’ compliance with the POSH law in light of their obligations under Indian companies’ and securities’ regulations are lacking. This section takes stock of the duties and liabilities of companies as an ‘employer’ under the POSH law, and its interlinking provisions under Indian company law and securities regulations.

A *The POSH Act and Rules: An Overview*

The POSH law is a revolutionary anti-discrimination law in number of ways. It has defined several legally-significant terms, including, ‘sexual harassment’²⁴, ‘employer’²⁵ and ‘workplace.’²⁶ Significantly, the POSH Act envisages companies to constitute an internal complaint committee (ICC)-presided over by a senior woman employee-to resolve any complaints related to workplace sexual harassment. Furthermore, the Act and its Rules obligate companies to formulate and effectively implement corporate policies to prevent and address workplace sexual misconduct.²⁷ Additionally, under the law, companies are required to

²⁴ *The Sexual Harassment of Women at Workplace Act 2013*, s 2(n)

²⁵ *Ibid* s 2(g).

²⁶ *Ibid* s 2(o)

²⁷ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013* (Ind) r 14.; *The Sexual Harassment of Women at Workplace Act 2013* s 4.

perform certain other incidental duties. These include organising workshops and awareness programmes at regular intervals for sensitising their employees with the provisions of the Act.²⁸ Furthermore, companies should display the penal consequences of the law at conspicuous places at their workplaces.²⁹ Companies should also facilitate the process to be followed by the Internal Committee for dealing with sexual-harassment related complaints.³⁰ Companies are also required to consider workplace-based sexual harassment as a ‘misconduct’ under their service rules.³¹ If companies fail to constitute an Internal Complaints Committee (ICC) or contravene any of the provisions of the Act, shall be liable to pay a fine of INR 50,000.³²

B *Internal Complaints Committee (ICC) under POSH Act*

The internal complaints committee (ICC) should consist of at least two employee members, who are ‘committed to the cause of women, or those who have experience in social work or legal knowledge’³³, as ‘internal members’ of the committee. ‘External members’ of the committee consist of representatives from an NGO or association ‘committed to the cause of women or familiar with the issues relating to sexual harassment.’³⁴ The POSH Rules further clarify that ‘persons’ ‘familiar with issues relating to sexual harassment’ shall be those ‘who have expertise or at least 5 years of experience in addressing cases of workplace sexual harassment’ or ‘persons familiar with labour, service, civil or criminal law.’³⁵

In wake of the #MeToo Movement, the Companies Act, 2013, and SEBI’s corporate governance-related guidelines incorporated several provisions linking

²⁸*The Sexual Harassment of Women at Workplace Rules 2013* r 13 (b), (d).

²⁹ *The Sexual Harassment of Women at Workplace Act 2013* s 19(b); *Ibid* r 13 (e).

³⁰ *Ibid* s 19(d)-(g), s 19(f)

³¹ *Ibid* s 19(i)

³² *Ibid* s 26

³³ *Ibid* s 4(b)

³⁴ *Ibid* s 4(c)

³⁵ *The Sexual Harassment of Women at Workplace Rules 2013* r 4 (a), (b).

the POSH law to strengthen their compliance and enforcement by Indian companies.

1 The Companies Act, 2013 and its Related Rules

The Companies (Accounts) Rules, 2014, appended to the Companies Act, 2013, was amended in 2018 to provide enhanced disclosure-related responsibilities of companies for complying with the POSH law.³⁶ According to the amendment, companies are required to produce a statement that they have complied with the provisions relating to constitution of Internal Complaints Committee (ICC) under the POSH Act, 2013. Additionally, Companies Act also outlines that directors have a fiduciary duty to act in the ‘best interests’ of their employees.³⁷ In this regard, providing a safe and conducive working environment to their employees forms one of most fundamental functions for any company. Hence, ‘best interests’ of employees can be promoted if companies ensure safer and harassment-free working environments. Therefore, provision of a harassment-free environment at organisational workplaces may be linked to directors’ duties under Companies Act, 2013.

2 SEBI Regulations and Guidelines: Linking Compliance of POSH Act with sustainability

Under SEBI’s Listing Regulations, top 1000 listed entities³⁸ are required to append a Business Responsibility Report (BRR) to disclose their activities from an ‘environmental, social and governance perspective.’³⁹ Thus, listed entities are required to report their sustainability-driven activities, as per the format given

³⁶*Companies (Accounts) Amendment Rules 2018* (Ind) s 2(i).

³⁷*The Companies Act 2013* (Ind), s 166(2).

³⁸*Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2019* (Ind) <https://www.sebi.gov.in/legal/regulations/dec-2019/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2019_45511.html>

³⁹*Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015* (Ind) Reg 34(2)(f); ‘Securities and Exchange Board of India, ‘Format for Business Responsibility Reporting’ Circular No CIR/CFD/CMD/10/2015, 4 November 2015) <https://www.sebi.gov.in/sebi_data/attachdocs/1446638214636.pdf>*see*

under Annexure I of the BBR framework. Under this reporting format, Principle 3.7 requires listed companies to disclose ‘number of complaints relating to sexual harassment received in the last financial year and pending as on end of the financial year.’⁴⁰ This disclosure requirement is in line with the POSH Act which also requires employers to disclose the number of complaints filed and disposed during the year in the annual report of the company.⁴¹ In this regard, SEBI’s listing regulations’ BRR framework links obligations under the POSH Act to the sustainability and ESG parameters of companies. The BRR framework shall soon be replaced with the enhanced sustainability reporting Format-The Business Responsibility and Sustainability Report (BRSR)-applicable mandatorily to top 1000 listed entities from FY 2022-23.⁴² *Prima facie*, the BRSR also requires enhanced social-related disclosures, including measures taken by companies for gender diversity.

IV METHODOLOGY

In order to examine nature of companies’ disclosures to demonstrate their compliance with statutory requirements under the POSH Law, aligned with the Companies (Accounts) Rules, 2014 and SEBI’s regulations, an empirical-based, descriptive content analysis of Annual Reports (ARs) of 200 listed companies were used.⁴³ The study aimed to analyse compliance with workplace sexual harassment-related disclosures, which apply, at the time of writing of this paper, to top 1000 National Stock Exchange (NSE) listed companies. Therefore, for the purposes of this study, top 1000 listed companies formed the sample universe. The list of top 1000 (large and mid-cap) listed companies was obtained from the

⁴⁰ Ibid

⁴¹ *The Sexual Harassment of Women at Workplace Act 2013* s 22.

⁴² Securities and Exchange Board of India’, *SEBI issues Circular on “Business Responsibility and Sustainability Reporting by Listed Entities”* (Press Release No. 18/2021) <https://www.sebi.gov.in/media/press-releases/may-2021/sebi-issues-circular-on-business-responsibility-and-sustainability-reporting-by-listed-entities-_50097.html>

⁴³ Ulla H Graneheim and BeritLundman, ‘Qualitative Content Analysis in Nursing Research: Concepts, Procedures and Measures to Achieve Trustworthiness’ (2004) 24(2) *Nurse Education Today* 105, 110

website of the NSE.⁴⁴ To establish the sample size, *systematic random sampling* technique⁴⁵ was used. Systematic random sampling was used to keep the sample homogenous and obtain as many unbiased results as possible. In addition, since the population size was too large for a comprehensive analysis based on the coding scheme, systematic random sampling technique was most appropriate to arrive at a more manageable sample, without the need for any prior knowledge of the universe. A sample of top 200 (*one-fifth* of the total) listed companies was then obtained from this universe. For calculation of the systematic sample, the following formula was used:

$$K = N (\text{The Sample Population}) / n (= \text{the size of the sample}),$$

where N = the sample population size, n = desired sample size, and K = sampling interval.

In the above formula, N=1000 NSE listed companies upon which the SEBI Regulations apply; n=200, which is the desired sample size. Based on the use of the above formula, the sampling interval deduced was 5. Hence, every fifth (1/5) company out of the total 1000 companies was randomly selected to arrive at the sample size of 200 companies. The focus of the study is on the descriptive examination of the sexual harassment-related reports, as disclosed by companies-provided as 'explanations' to their compliance with the POSH law. Directors' Annual Reports published by companies provide significant financial and non-financial information to their shareholders and stakeholders.⁴⁶ Hence, corporate reporting was considered to be an important source to understand and examine

⁴⁴ National Stock Exchange of India (Webpage)

<https://www1.nseindia.com/products/content/equities/indices/nifty_200.htm>

⁴⁵ Anita S Acharya, 'Sampling: The Why and How of It' (2013) 4(2) *Indian Journal of Medical Specialities* 330, 331.

⁴⁶ Association of Chartered Certified Accountants, *Tenets of Good Corporate Reporting* (Report, 2018) 4 < file:///C:/Users/Sunil/Downloads/pi-tenets-good-corporate-reporting.pdf >

companies' compliance with the POSH Act. For this descriptive examination *inductive content analysis technique* was used.⁴⁷

After preparation of the sample, each of the companies' Annual Reports or Board's reports for the Financial Year (FY) 2019-20 was downloaded from their official websites.

Based on the statutory requirements under the POSH law for companies on disclosing information related to prevention of sexual harassment at their workplaces, a list of themes or codes was prepared: (1) A company-level policy on the prevention and redressal of complaints against sexual harassment of women (2) Constitution of an Internal Complaints Committee (ICC) (3) Number of complaints filed with the ICC in the 2019-20 financial year (4) Number of complaints disposed of by ICC in 2019-20 financial year (5) Number of complaints pending before the ICC in 2019-20 financial year Information related to theme (1) was derived from the companies' Annual Reports (AR) or Corporate Governance reports, published on the companies' website either as part of the Director's Annual Report or linked to the Board's report. Companies' corporate governance reports are usually placed separately under various tabs used on their website, such as Investor relations' or 'statutory disclosures.'. On the other hand, information related to codes (2) to (5) was derived from the companies' Business Responsibility Reports (BRR) to comply with SEBI's guidelines. BRRs are published by companies separately on their websites or appended with the Directors' annual reports. After the themes were created, deductive, descriptive-based thematic content analysis technique was used to analyse the data. With the use of this deductive content analysis method, several sub-themes or codes were also obtained. This description-based, in-depth content analysis technique facilitated qualitative examination of companies' disclosures to demonstrate their

⁴⁷Phillipp Mayring, 'Qualitative Content Analysis: Theoretical Background and Procedures' in Angelika Bikner-Ahsbals, Christine Knipping and Norma Presmeg (eds), *Approaches to Qualitative Research in Mathematics Education: Examples of Methodology and Methods* (Springer, 2015) 366.

compliance with the POSH law. After identifying and organising information from the companies' reports based on these codes, a comprehensive data analysis was undertaken. While this study uses a fairly large sample –size to examine companies' disclosures to assess their state of compliance with Indian workplace sexual harassment law, this study relies essentially on self-reported companies' statutory disclosures. This, thus, formed one of the basic limitations of the source of data used in the study. The next sections present theme-wise descriptive content analysis done on the companies' disclosures on prevention and redressal of complaints related to sexual harassment at their workplaces.

V FINDINGS AND DISCUSSION

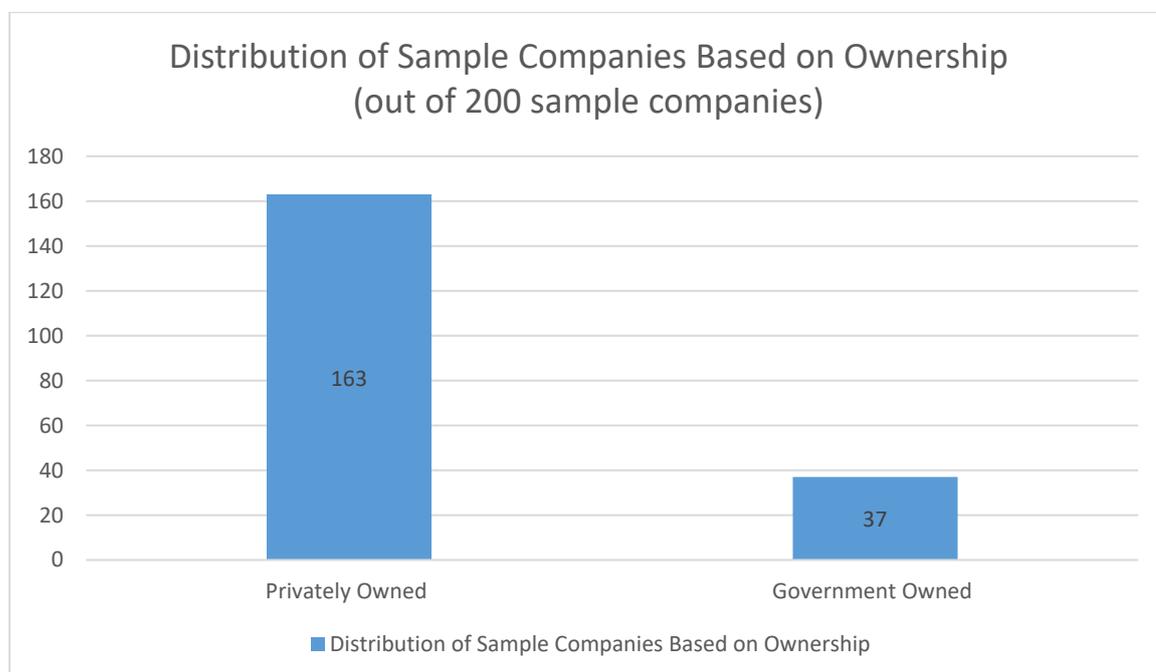
Companies are required to provide two levels of disclosures: On the first level, companies must comply with the Companies (Accounts) Rules, 2014. These Rules require companies to disclose the number of complaints received and the number of complaints disposed of and remained pending by the ICC for the financial year under assessment.⁴⁸ These requirements apply on all companies-public, privately-owned and even foreign companies, governed by the Companies Act, 2013 or its predecessor 1956 Act. At the second level, under the SEBI's regulations, which apply on listed entities, companies must provide information on Board-level policies for the prevention and redressal of complaints related to sexual harassment, formation of a company-level internal complaints committee, the number of complaints received by the ICC and the number of complaints pending for the financial year. Hence, there is some overlap between the statutory requirements under the Companies Act, 2013 and the SEBI's regulations. Thus, for better organisation and representation of data, as well as to avoid any confusion or overlapping, we have examined the state of companies' compliance with the disclosure requirements demonstrate their implementation of the POSH law under the Companies (Accounts) Rules, 2014 along with the SEBI's listing regulations.

⁴⁸*Companies (Accounts) Amendment Rules 2018* (Ind) s 2(i)

1 Sample Size Demographics

The sample size of companies used for this study consisted of various types of companies. Based on the ownership structure of the companies that formed the sample size, both privately-owned⁴⁹ and government-owned⁵⁰ companies were included in the sample. Figure 1 pictorially represents distribution of private and government-owned companies within the sample size. Figure 2 demonstrates industrial sector-wise distribution within the sample companies.

Fig.1: Distribution of Sample Companies Based on Ownership



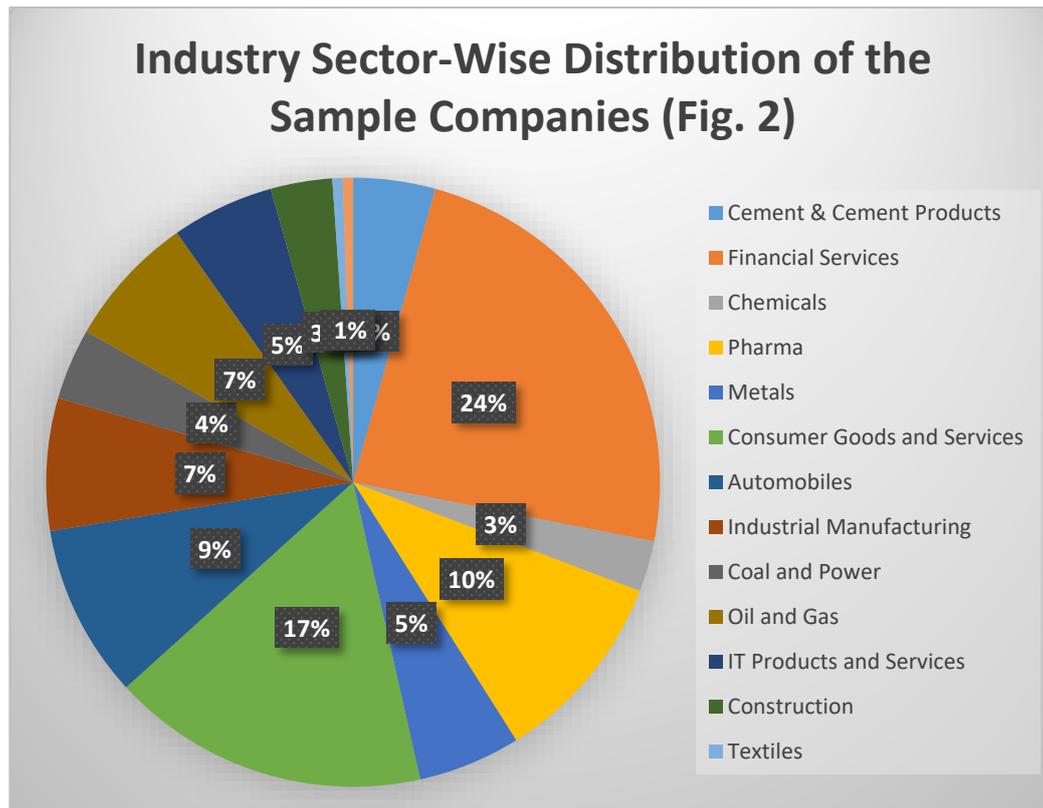
As may be seen from Figure 1, privately-owned companies (163 out of total 200 companies) formed the largest percentage (81.5%) of companies within the sample. On the other hand, government (either state or central) owned companies, with 37 out of total 200 companies, forms the rest of sample (18.5%). Hence, the number of privately-owned companies is much higher than the government-owned companies.

⁴⁹ *The Companies Act 2013*, s 2(68)

⁵⁰ *Ibid* s 2(45)

Each of the companies caters to different industrial sectors, hence, forms a highly heterogeneous sample. Figure 2 depicts the various industrial sectors to which the sample companies are aligned with and cater to:

Fig. 2: Industry Sector-Wise Distribution of the Sample Companies



As Figure 2 demonstrates, most companies (24%) in the sample are banks and financial institutions, and therefore, cater to the financial services sector. Banks and financial institutions sector is followed by companies catering to consumer goods and services sector (17%). 10% of total companies of the sample size cater to the pharmaceutical sector and 9% of the companies cater to the metals and metallurgy sector. Other sectors included in the sample are oil and gas, industrial manufacturing, automobiles, IT products and services, cement and related products, coal and power generation and chemical manufacturing sectors. Only one company each belonged to the Textiles (1%) and Media and Entertainment

sectors (1%). Therefore, there are wide variations in the industrial sectors catered to by the sample companies.

2 Company-Level Policy on Preventing Sexual Harassment and Redressal of Complaints

On a comprehensive analysis of Annual Reports (ARs) of 200 companies, information regarding framing of a company-level policy to prevent workplace sexual harassment and constitution of an Internal Complaints Committee (ICC) could be obtained for only 175 companies. Several companies (13 in total) have only disclosed the number of complaints received and disposed of by the ICC but no further disclosures could be found regarding formulation of a policy against sexual harassment as well as constitution of an internal complaints committee at their workplaces. Conversely, some companies (7 in total) have not disclosed the number of cases filed, disposed and pending by their respective ICCs-according to SEBI's BRR guidelines. Besides, some companies either had not yet published their ARs or they were not accessible (5 companies). Hence, information regarding compliance by companies with the mandate under POSH law under the Companies Act and SEBI's regulations could be obtained for only 175 out of 200 companies (87.5% of the total number of companies in the sample). The disclosures made by these 175 companies formed the basis for further analysis. For the sake of analysis, three main criteria may be developed based on the requirements of the POSH law: (i) Formulation and dissemination of Policy Against Sexual Harassment at Workplaces by companies (ii) Constitution of an Internal Complaints Committee (ICC) by companies for redressal of complaints related to sexual misconduct at workplaces (iii) Number of cases reported to the ICC, pending and disposed by ICC, at the end of the financial year, including reporting on cases which are pending for more than 90 days. In terms of creating a company-level anti-sexual harassment policy, several sub-criteria were used for further analysis: (i) Motivating factors for creation of an anti-sexual harassment policy and establishing an ICC for complaints redressal (ii) Policy Objectives and

its content or description (iii) Modes of Policy Dissemination amongst employees and creation of awareness on anti-sexual harassment practices (iv) number of training/awareness or sensitization programs organised in the year (v) locations for training/awareness programs conducted (vi) application of the policy to the company personnel and types of employees or other stakeholders, if any, participating in such training and awareness programs (vii) accessibility to the complete versions of the Policy. As was seen from the data given above, the number of companies disclosing on having a policy on prevention of sexual harassment and constitution of an ICC for redressal of complaints is fairly high (87.5%). However, as the following sections describe, companies providing in-depth and qualitative disclosures on several sub-criteria criteria, as designed above, remains fairly low:

A *Policy Creation and ICC Establishment Motivating Factors*

Based on the reporting by sample companies, as disclosed in their ARs, ensuring their compliance with the ‘letter and spirit’ of the POSH law constitutes the primary reason for formulating corporate-based anti-sexual harassment workplace policy (‘Policy’ for brevity) and establishing an Internal Committee (IC) for investigating and adjudicating complaints related to workplace sexual harassment.⁵¹ Beyond the statutory mandate, several companies have also disclosed that they strive to make themselves considered as equal opportunity employers.⁵² Other drivers of having a Policy, as disclosed by many (143 out of

⁵¹ See, eg, Aditya Birla Fashion and Retail, *Annual Report 2019-20: Tough Times Don’t Last, Tough Companies Do* (Report, 2020) 30 <http://www.abfirl.com/docs/investors/annual_reports/Annual_Report_2019-20.pdf>; Bata India, *Annual Report 2019-20: Walking with India Since 1931* 23 (Report, 2020) <https://www.bata.in/0/pdf/Bata_Annual_Report_2020_Merged.pdf>; AU Finance, *Annual Report 2019-2020* (Report, 2020) 143 <<https://www.aubank.in/assets/Digital/pdf/boardreport.pdf>>; Bharat Forge, *Annual Report 2019-20: Countering Challenges, Creating Long Term Value* (Report, 2020) 65 <https://www.bharatforge.com/assets/pdf/investor/annual_reports/2020/annual-report-2020.pdf>

⁵² See, eg, Bharat Electronics, *Annual Report 2019-20* (Report, 2020) 10 <https://www.belop-india.in/Annual_Report_2019-20.pdf>; ICICI Bank, *Annual Report 2019-20: Understanding Needs, Evolving Solutions* (Report, 2020) 59 <<https://www.icicibank.com/aboutus/Annual-Reports/2019-20/ICICI-Bank-Annual-Report-FY2020.pdf>>

175) companies-to prevent and address workplace sexual harassment- is the companies own 'zero tolerance' towards any kind of abrasive, aggressive and intimidating practices, including sexual harassment-of any kind, be it physical, verbal or psychological.⁵³ In particular, several companies (62 out of 175) envision creating an environment that is committed to uphold and maintain dignity of every woman working in the company.⁵⁴

B Objectives of the Policy and Establishment of an ICC

Significant number of companies from the sample has disclosed the objectives of having a policy on workplace sexual harassment and establishment of a complaint redressal Internal Committee. Of companies that have disclosed the objectives of their policy, many companies have stated that the primary objective of their policy is to provide for a system of mechanisms for redressal of any complaints or grievances related to sexual harassment at their workplaces.⁵⁵ In general, companies have also put in place a policy on anti-sexual harassment practices to create a dignified and respectful environment. Companies seek to ensure a discrimination-free workplace-based on race, colour, gender, religion, political

⁵³ See, eg, Avenue Supermarkets, *Annual Report 2019-20: Good Products, Great Value* (Report, 2020) 38

<<https://api.dmartindia.com/corporate/content/file/v1/6/clW2bTVf5wyM4s2CKyU2KLRf/Annual%20Report%202019%20-%20and%20AGM%20Notice>>; Bandhan Bank, *Annual Report 2019-20: Nurturing Relationships Driving Efficiency, Creating Value* (Report, 2020) 59 <https://www.bandhanbank.com/sites/default/files/2021-01/Annual-Report-FY2019-20_BBL_0.pdf>; Bombay Burmah Trading, *155th Annual Report 2019-20: A Tradition of Trust* (Report, 2020) 20 <<https://bbtcl.com/wp-content/uploads/2020/07/BBTCL-AnnualReport2020.pdf>>; Colgate Palmolive, *Annual Report 2019-20: Smile and Get Started* (Report, 2020) 41 <<https://www.colgateinvestors.co.in/media/2449/colgate-ar-2019-20-full.pdf>>

⁵⁴ See, eg, City Union Bank, *Annual Report 2019-20* (Report, 2020) 24 <https://www.cityunionbank.com/downloads/CUB_ARFinal_2020_Final.pdf>; Emami, *Annual Report 2019-20: Challenging Times: Inspiring Responses* (Report, 2020) 98-99 <<http://www.emamilttd.in/images/annualreportpdf/20200825100100small460.pdf>>

⁵⁵ See, eg, Godrej Agrovet, *Annual Report 2019-20* (Report, 2020) 39 <<https://www.godrejagrovet.com/public/uploads/reports/2019-20/GodrejAgrovetLimited2020.pdf>>; Bharti Airtel, *Annual Report 2019-20* (Report, 2020) 128 <<https://www.airtel.in/airtel-annual-report-2019-20/img/pdf/boards-report.pdf>>; DLF, *Annual Report 2019-20* (Report, 2020) 28 <https://www.dlf.in/annual_docket/Annual_Report_2020.pdf>; Britannia Industries, *Annual Report 2019-20: Tomorrow will be a Good Day* (Report, 2020) 23 <http://britannia.co.in/pdfs/annual_report/Annual-Report-2019-20.pdf>

opinion, national extraction, social origin, sexual orientation or age⁵⁶, or ‘any other classification that has no bearing on the employees’ work output’⁵⁷-for all employees, in particular, women employees. Companies aim create a work environment conducive for women employees, where they are treated with dignity and respect.⁵⁸ Additionally, the Policy also facilitates establishment of appropriate channels for employees and other stakeholders to fearlessly report on any sexual misconduct, while protecting their right to privacy and to be heard.⁵⁹ A handful number of companies have also disclosed that anti-workplace sexual harassment policies also help to maintain adequate standards of employee conduct, while ensuring a non-discriminatory and harassment-free environment. Interestingly, some companies, for instance, GMR Infrastructure Ltd. and Prestige Estates Projects Ltd., noted that sexual harassment is a violation of the Right to Equality (Article 14) the Right to Life and Personal Liberty (Article 21) and other Fundamental Rights guaranteed under the Indian Constitution.’⁶⁰ Fig.3 demonstrates how companies reported on objectives to provide for a policy on prevention of workplace sexual harassment and establishment of an ICC at their offices, as drawn in on their sexual-harassment-related corporate disclosures.

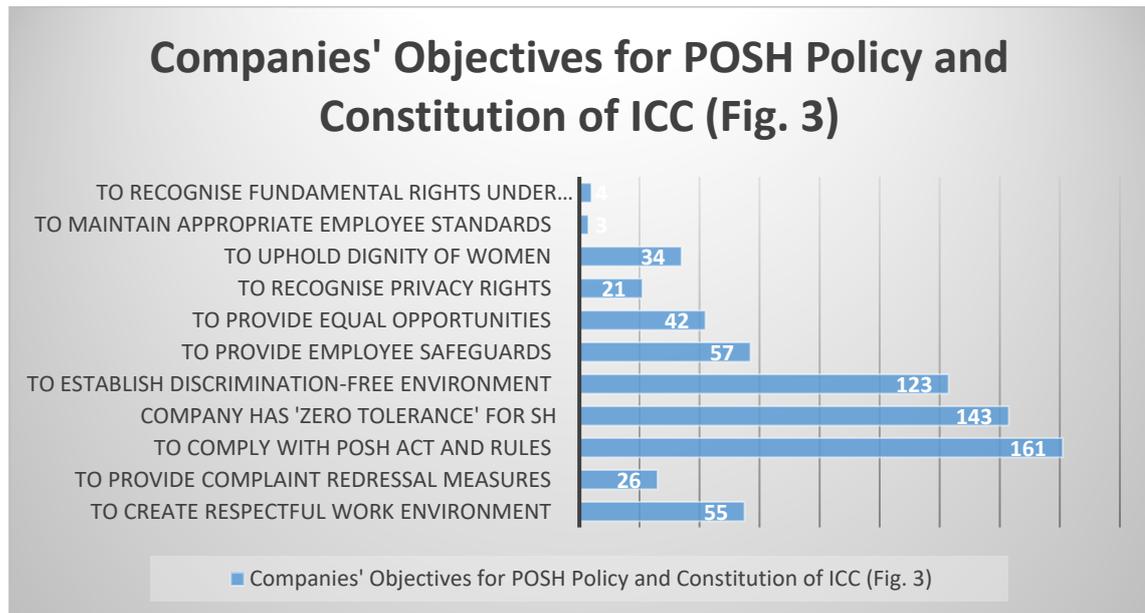
⁵⁶ See, eg, Dixon Technologies, *Annual Report 2019-20: Unfurling Possibilities* (Report, 2020) 44 <https://dixoninfo.com/json/dixon/annual-reports/Dixon%20AR%202019-20%2002%2009%202020_Final.pdf>; Castrol India, *Annual Report 2019-20: Making Tomorrow Better* (Report, 2020) 30 <https://www.castrol.com/content/dam/castrol/country-sites/en_in/india/castrol-india-limited-ar-2020.pdf>; Sun Pharmaceuticals, *Annual Report 2019-20: The Transformation Journey* (Report, 2020) 38 <<https://sunpharma.com/wp-content/uploads/2020/12/SunPharmaAR2019-20-1.pdf>>

⁵⁷ Infosys, *Annual Report 2019-20: Navigate Your Next* (Report, 2020) 40 <<https://www.infosys.com/investors/reports-filings/annual-report/annual/documents/infosys-ar-20.pdf>>

⁵⁸ See, eg, GAIL India, *Annual Report 2019-20: #Energizing Possibilities* (Report, 2020) 27 <<https://www.gailonline.com/pdf/InvestorsZone/AnnualReports/AnnualReport2019-20.pdf>>;

⁵⁹ See, eg, Biocon (n 57) 174.

⁶⁰ GMR Infrastructure, *24th Annual Report 2019-20: Resolve, Resilience, Reform* (Report, 2020) 82 <<https://investor.gmrgroup.in/pdf/Annual%20Report%202019-20/1.%20GIL%20Annual%20Report%202020.pdf>>; Prestige Estates Projects, *Annual Report 2019-20: The Consistent Growth Story* (Report, 2020) 102 <https://www.prestigeconstructions.com/admin/uploads/investors/financial-performance/2019/annual/PEPL_AR1920.pdf>



C Measures to Create Awareness on Sexual Harassment, Company Policy and Working of the ICC

The number of companies disclosing on steps taken to create awareness on the perils of workplace sexual harassment and their policies on sexual harassment is not significant (42 out of 175 companies). Employees and other stakeholders are trained to prevent workplace through workshops, face-to-face interactions, and e-learning modules. These training sessions are aimed to highlight the key provisions of the POSH law, duties of the companies as employers, the companies' complaints redressal mechanisms, actions that may be taken for any malicious complaints, and various misconceptions about sexual harassment. Often, these modules also disclose names and contact details of the members of the ICC. Similarly, organising Q&A sessions and open-house sessions and workshops and distribution of e-articles, emails and other kinds of reference material are also some of the various types of supplementary measures taken by companies against workplace sexual harassment. Compulsory completion of modules related to sexual harassment during induction programs for newly-inducted employees, trainees or interns and 'refresher courses' are also some of other methods used by companies to make employees aware of practices against workplace sexual

harassment. Interestingly, few companies have also, reportedly, used several innovative techniques to create awareness on workplace sexual harassment and the law. For example, Tata Steel Ltd⁶¹ reported to have used snippets or short to create awareness. Regional theatre, short films, quizzes, games has been used by Titan Company Ltd., for creating awareness on policy and practices against workplace sexual harassment and misconduct.⁶²

D *Number of Awareness/Gender Sensitization Programs Organised*

Under the law, companies are required to provide vital information on the number and kind of training, awareness and ‘sensitization programs’ in their corporate disclosures. However, most companies have not provided detailed information. Companies that have provided some information on the steps taken by them to sensitize employees and other stakeholders on sexual harassment have restricted their disclosures to furnishing broad statements, such as ‘awareness campaigns are conducted at all units’, ‘employees are sensitized from time to time in matters connected with sexual harassment’, ‘in-house trainings are provided’, ‘company educates its employees...on what may constitute sexual harassment’, ‘training and awareness programs are conducted frequently’ or ‘at regular intervals.’ Only few (13 companies) companies have disclosed either the number of training and awareness programs that were organised during the financial year under review or the number of stakeholders covered and sensitised by these programs. Notably, companies such as Axis Bank Ltd.⁶³, BHEL Ltd.⁶⁴, Infosys Ltd.⁶⁵ and Titan Company Ltd.⁶⁶ are some of the companies that have disclosed information related to number of training programs organised by them. For example, BHEL Ltd. has

⁶¹ Tata Steel, *Integrated Annual Accounts and Report 2019-20* (Report, 2020) 98 <<https://www.tatasteel.com/media/12381/tata-steel-ir.pdf>>

⁶² Titan Company, *36th Annual Report 2019-20* (Report, 2020) 64 <https://www.titancompany.in/sites/default/files/Annual_Report_2019_20.pdf>

⁶³ Axis Bank, *Annual Report 2019-20: Experience Open* (Report, 2020) 55 <https://www.axisbank.com/annual-reports/2019-2020/pdf/Axis_Bank_AR20.pdf>

⁶⁴ Bharat Heavy Electricals Limited (n 66).

⁶⁵ Infosys (n 62).

⁶⁶ Titan Company (n 68).

disclosed to have conducted 37 workshops or training programs during the 2019-20 financial year. Similarly, Hero MotoCorp Ltd. disclosed to have organised ‘over 200 sessions’ which were attended by ‘over 5000 employees including workmen.’⁶⁷ Hindustan Petroleum Corporation Ltd. (HPCL), revealed to have organised 23 workshops across all units during the 2019-20 financial year.⁶⁸ Indian Railway Catering and Tourism Corporation Ltd. (IRCTC)-a leading public sector company-disclosed to have organised 45 workshops and training sessions in 2019-20 financial year.⁶⁹

On the other hand, few companies (5 companies) have only disclosed the number of employees or stakeholders ‘who received training on prevention of sexual harassment at workplace.’ For example, Escorts Ltd. disclosed to have provided training to 1156 employees on preventive practices on sexual harassment and misconduct at workplaces.⁷⁰

E *Locations for Organisation of Awareness and Training Programs*

Few companies disclosed the locations for organising training, awareness and gender sensitisation programs. Generally, the training and awareness programs are conducted all registered offices and units (manufacturing, warehouses, retail outlets), including R&D set-ups, if any or all company locations or the Head offices and regional offices, depending upon the industrial sector of the company.

F *To Whom Does the Policy and ICC Process Apply?*

Limited number of companies reported company-level workplace sexual Harassment policy on at (or ‘POSH Policy’) applies to all employees, whether

⁶⁷ Hero Moto Corp., *Annual Report 2019-20* (Report, 2020) 79 <https://www.heromotocorp.com/en-in/digital-annual-report-2019-20/pdf/HeroMotoCorp_AR%202019-20.pdf>

⁶⁸ Hindustan Petroleum Corporation, *68th Annual Report 2019-20* (Report, 2020) 46 <https://www.hul.co.in/Images/annual-report-2019-20_tcm1255-552034_1_en.pdf>

⁶⁹ Indian Railway and Catering Tourism Corporation, *21st Annual Report 2019-20: More Smiles Per Mile* 57 <<https://www.irctc.com/assets/images/IRCTC%20AR%202019-20.pdf>>

⁷⁰ Escorts Limited, *74th Annual Report 2019-20* (Report, 2020) 55 <<https://www.escortsgroup.com/images/annualreport/Escorts-AR-2019-2020.pdf>>

male or female employees, and irrespective of their positions within the company, and hence, is ‘gender neutral.’⁷¹ It may also be noted that companies’ attempt to extend these policies and thus, the jurisdiction of the ICC extends to even third parties, clients, daily wage labour, vendors, subsidiaries, joint ventures and workmen engaged through contractors, suppliers and ‘all visitors.’

Conversely, several companies reported that the Policy applied *only* to their women employees (either permanent, temporary, contractual or trainees/apprentices), women visitors or service providers. This may be myopic and conservative perspective taken by these companies.⁷² *Prima facie*, companies seem to be holding on to the traditional views that only women employees can be victims of sexual harassment-and that, consequently, only men can be the perpetrators.

G Access to Complete Versions of the Policy and ICC Members for Filing Complaints

As revealed by companies in their ARs, complete versions of the policy on prevention of workplace sexual harassment are easily accessible from various ‘external’ and ‘internal’ sources. ‘External sources’ include companies’ own website, their internal portals or intranet, and corporate governance reports published by companies. ‘Internal sources’ include their incorporation within the company’s service rules and conditions; Conduct Rules and Standing Orders, Certified Discipline and Appeal Rules and Code of Business Conduct. However, in this regard, only few number of companies (14 companies) have disclosed the places from where their policy documents may be accessed, which needless to say, is discouragingly low.

⁷¹ See, eg, Indian Hotels Company Limited, *Integrated Annual Report 2019-20* (Report, 2020) 129 <https://www.ihcltata.com/IHCL_Annual_Report_2019-20.pdf>; UPL Limited, *Annual Report 2019-20* (Report, 2020) 95 <https://www.upl-ltd.com/pdf/Annual_Report_2019_20.pdf>

⁷² See, eg, Coal India, *Annual Report and Accounts 2019-20* (Report, 2020) 64 <https://www.coalindia.in/media/documents/Coal_India_English_final.pdf>

H *Disclosures Related to Content of the Policy*

Only four companies have provided some details with regard to what is covered under their respective sexual harassment policies. According to companies' disclosures, their anti-sexual harassment policies contain guidelines on the complaint enquiry and redressal process. These broad guidelines may be referred to by the ICC when dealing with complaints related to sexual harassment. Other companies, for instance, Cadila Healthcare Ltd., disclosed that their policy also contains measures for prevention of sexual harassment against 'employees as well as contractors' as well as guidelines to 'identify' and 'prevent' instances of sexual misconduct.⁷³ Similarly, DLF Ltd.⁷⁴ and Gujarat Gas Ltd.⁷⁵ reported that their policies provide guidelines to facilitate any person wishing to file a complaint related to workplace sexual harassment to the ICC. Interestingly, companies such as Havells India Ltd., and State Bank of India Ltd. have also lent unique titles to their Policy- '*Nirbhaya* Policy' (named after the 2012 Delhi Gang rape victim who has given the nickname, '*Nirbhaya*', meaning 'fearless one') and '*GARIMA* Policy' (which loosely means self-respect or inner self-worth, particularly for a woman) respectively.⁷⁶

I *Measures taken by Companies for General Welfare and Safety of Women Employees*

Encouragingly, few companies have disclosed to have resorted to several measures to ensure general safety and security of their female employees or contract staff. These measures include, constitution of dedicated 'cells' for women

⁷³ Cadila Healthcare, *Annual Report 2019-20* (Report, 2020) 48
<<https://zyduscadila.com/public/pdf/financial/annual/Annual-Report-2019-2020.pdf>>

⁷⁴ DLF Limited (n 60) 114.

⁷⁵ Gujarat Gas, *8th Annual Report 2019-20* (Report, 2020) 41
<<https://www.gujaratgas.com/resources/downloads/8th-annual-report-2019-20-01092020.pdf>>

⁷⁶ Havells India Limited, *2nd Integrated Report: 37th Annual Report 2019-20* (Report, 2020) 51
<https://www.havells.com/HavellsProductImages/HavellsIndia/pdf/About-Havells/Investor-Relations/Financial/Annual-Reports/2019-2020/AnnualReport_29052020.pdf>; State Bank of India, *Annual Report 2019-20* (Report, 2020) 87
<https://www.sbi.co.in/documents/17826/35696/23062020_SBI+AR+2019-20+%28Time+16_3b11%29.pdf/a358b5ec-1d32-a093-d9ac-13071fda9ff6?t=1592911831224>

to ‘look after the developmental needs of women employees’⁷⁷ and for ‘reaching out to the women workforce’ by providing for a forum of discussions on women’s issues and addressing any concerns at workplaces. Some companies, for instance, Info Edge Ltd., disclosed to have established collaborations with the district administration’s app-based portals that allow their women employees to lodge complaints of workplace sexual harassment and track the disposal process.⁷⁸ Few companies disclosed to have tie-ups with app-based cab facilities such as OLA for women employees working during late hours (after 8 PM).⁷⁹ Some public sector companies extend ‘certain relaxations’ such as ‘postings at soft locations.’⁸⁰ Other efforts taken by companies, as revealed by their corporate disclosures, include organisation of self-defence workshops; GPS-enabled taxis; regular monitoring and evaluation of company bus/cab drivers for behavioural aspects.⁸¹ Interestingly, few companies disclosed to be explicitly ‘discouraging’ women employees to work during late hours. For instance, as disclosed by Hindustan Unilever Limited, women employees are generally ‘not encouraged’ to work beyond 8 or 8.30 PM.⁸² Any female employee found to be working beyond these hours is ‘immediately reported’ to the ‘line manager.’⁸³ Further, if working during late hours becomes ‘unavoidable’, women employees “are required to be dropped home by company-designated cabs or car vendors, while being escorted by ‘male colleagues’ back home and upon reaching, must inform the line manager that ‘they have reached home safely.’⁸⁴ Other measures include, for example, as disclosed

⁷⁷ See, eg, GAIL India (n 63) 107.

⁷⁸ Info Edge, *Annual Report 2019-20* (Report, 2020) 94 <<http://www.infoedge.in/pdfs/Annual-Report-2019-2020.pdf>>

⁷⁹ See, eg, India Bulls Home Loans, *Annual Report 2019-2068* (Report, 2020) <https://www.indiabullshomeloans.com/uploads/annual_report/indiabulls-housing-finance-annual-report-fy-2019-20-0253611001597460978.pdf>

⁸⁰ See, eg, Power Grid Corporation of India, *Annual Report 2019-20* (Report, 2020) 77 <https://www.powergridindia.com/sites/default/files/NSE_AR_dt29082020.pdf>

⁸¹ See, eg, Tech Mahindra, *Annual Report 2019-20* (Report, 2020) 48 <<https://insights.techmahindra.com/investors/Annual-Report.pdf>>

⁸² Hindustan Unilever Limited, *Integrated Annual Report 2019-20* (Report, 2020) 65 <https://www.hul.co.in/Images/annual-report-2019-20_tcm1255-552034_1_en.pdf>

⁸³ Ibid 65

⁸⁴ Ibid.

by DLF Ltd., organisation of workshops on women safety, which also include counselling sessions on identifying potential incidents of sexual abuse and steps to be taken to prevent sexual abuse.⁸⁵

1 Constitution of an Internal Complaints Committee (ICC)

(i) Composition of the ICC

Only limited number of companies (19 out of 175 companies) disclosed details on the composition of ICCs established at their offices and other units. Companies have established internal complaints committees (ICCs) at either all locations of their offices and units or only at those units with sufficient number of women employees (10 or more).⁸⁶ The ICCs' internal members consist of senior-level women employees. External members consist of, in most cases, women nominated to the ICC based on their qualifications and experience in dealing with workplace sexual harassment complaints. In most cases, either the internal or external women representatives are also designated as Chairpersons or Presiding Officers of the ICC. External members nominated to the ICC by companies are drawn from varied backgrounds and experiences. This includes, for example, senior lawyers or Advocates-On-Record (AORs)⁸⁷ at the Supreme Court of India or high courts, and senior (Director or Assistant Director-level) representatives from non-governmental bodies (NGOs). Companies consider external members, usually women, from these backgrounds to be more competent and equipped to handle such complaints.⁸⁸ External members are generally also empowered to investigate, conduct inquiries into complaints, and recommend suitable action to be taken

⁸⁵ DLF Limited (n 60) 116.

⁸⁶ See, eg, Ajanta Pharmaceuticals (n 114) 58.

⁸⁷ See, eg, Container Corporation of India, *Annual Report 2019-20* (Report, 2020) 50 <<https://concorindia.co.in/AR1920/annualreport32sept.pdf>>

⁸⁸ Crompton Greaves Consumer Electricals, *Annual Report 2019-20* (Report, 2020) 50 <<https://www.crompton.co.in/wp-content/uploads/2020/07/Annual-Report-2019-20.pdf>>; Berger Paints India Limited, *Annual Report 2019-20: Innovate to Grow* (Report, 2020) 22 <<https://www.bergerpaints.com/investors/annual-reports.html>>; Rural Electrification Corporation, *51st Annual Report 2019-20* (Report, 2020) 52 <<https://recindia.nic.in/uploads/files/Annual-Report-2019-20.pdf>>

either during pendency or completion of the investigations. Only few companies disclosed to have established their ICCs with at least one-half of the members being men. These revelations clearly demonstrate companies' beliefs that sexual harassment at workplaces is by and large an offence against women and therefore, women are best suited to handle, given the nature, of such complaints.

(2) *Process followed by the ICC*

Twelve (12) out of 175 companies have revealed some details on the process followed by their ICCs on receipt of any sexual-misconduct related complaints. Hence, the number of companies disclosing this information remains appallingly low. Even companies which disclose this information have limited their revelations to evasive and ambiguous statements such as, 'process followed by ICC is as per the procedure established by law'⁸⁹ and that 'complaints are investigated as per the tenets of the law and company policy.'⁹⁰ Similar statements made by companies include, '...that the ICC operates under a defined redressal system for complaints...'⁹¹, without describing further what this 'defined system' means and how it operates. Only a few companies, such as Bharat Heavy Electrical Limited (BHEL) Ltd., have described the process of taking cognisance and adjudication of the complaints by the ICC with some explicit details. For instance, BHEL reported that 'a complaint given by an apprentice.... (who)...went to the cabin of a senior officer... (the officer) made some remarks...which she found in appropriate.'⁹² In this regard, the ICC, while taking cognisance of the complaint, summoned and heard both the parties. Finally, the 'senior officer' was 'asked' to tender a 'formal apology' to the apprentice.⁹³ Companies also disclose to have

⁸⁹ See, eg, Cummins India Limited, *Annual Report 2019-20* (Report, 2020) 19 <<https://www.cummins.com/sites/default/files/india/CIL%20Annual%20Report%202019-20%20-.pdf>> Bharti Airtel (n 60) 89; Jindal Steel and Power Limited, *Annual Report 2019-20* (Report, 2020) 42 <https://www1.nseindia.com/corporate/JINDALSTEL_08092020173023_stx08092020.pdf>

⁹⁰ Bharti Airtel (n 60) 43.

⁹¹ Dr Reddy Laboratories, *Annual Report 2019-20: Accelerating the Transformation* (Report, 2020) 84 <<https://www.drreddys.com/media/884823/annualreport2020forwebsite.pdf>>

⁹² Bharat Heavy Electricals Limited (BHEL) (n 66) 72.

⁹³ *Ibid* 72.

‘created confidential email addresses for the employees to report complaints, pertaining to sexual harassment-accessible only to the Chairman for the ICC’ and ‘while dealing with all complaints confidentially, sensitively and in the most judicious and unbiased manner.’⁹⁴ Thus, as the above analysis demonstrates, companies lack in disclosing qualitative information on process and procedures as well as methods adopted for resolution followed by their ICC’s at their workplaces for dealing with complaints related to workplace sexual harassment and misconduct.

3 *Nature of Actions Taken by ICC*

Only 7 out of 175 (4%) companies revealed the nature of ‘actions’ taken by their ICCs against persons found guilty of sexual misconduct. Amongst companies that have revealed this critical information, most companies tend to use generic, defensive and evading language, for instance, that ‘actions have been taken against the erring employees in accordance with the established procedures as laid down in the Policy’⁹⁵, ‘remedial measures are taken against erring employees as appropriate’⁹⁶ or ‘as prescribed under the companies’ rules’ to describe the nature of actions against assailants.⁹⁷ Only few companies, such as Infosys Ltd., Bharti Airtel Ltd.-both prominent privately-owned companies, and Bharat Electricals Ltd. (BHEL)- one of most profitable government companies (or Public Sector Enterprises, as they are known in India) have provided detailed disclosures on the various kinds of ‘actions’ taken by them against persons guilty of sexual misconduct. Companies usually strive to resolve the complaints as amicably as

⁹⁴ India Bulls Home Loans (n 90) 79.

⁹⁵ See, eg, ICICI Bank (n 56) 68.

⁹⁶ See, eg, Eicher Motors Limited, *Annual Report 2019-20* (Report, 2020) 101 <https://www.eicher.in/uploads/1594976193_EML%20AR%202019-20.pdf> Fortis Healthcare, *Annual Report 2019-2020* (Report, 2020) 49 <https://s3-ap-southeast-1.amazonaws.com/s3.fortishealthcare.com/FHL_AR_2019-20_forWebsite.pdf> ITC Limited, *Report and Accounts 2020* (Report, 2020) 355 <<https://www.itcportal.com/about-itc/shareholder-value/annual-reports/itc-annual-report-2020/pdf/ITC-Report-and-Accounts-2020.pdf>> Sanofi India Limited, *64th Annual Report 2019* (Report, 2020) 43 <https://www.sanofiindia.com/-/media/Project/One-Sanofi-Web/Websites/Asia-Pacific/Sanofi-INLTD/Home/Investors/annual-reports/Annual_Report_2019.pdf?la=en>

⁹⁷ *Ibid.*

possible by using various conciliatory methods.⁹⁸ However, companies may also resort to more severe measures, based on the nature of the complaint, such as issuance formal apology to the victim⁹⁹ and the company or ‘warning’ letters.¹⁰⁰ Other ‘more severe’ disciplinary measures, include, suspensions, or terminations or discharge from services¹⁰¹, fines, transfers to different office locations¹⁰² and filed charge-sheets,¹⁰³ if the suspect was found to be indulging in criminal activities, such as stalking the victim, or in cases where the sexual misconduct continued despite repeated warnings or other ‘less harsh’ previously imposed punitive actions. On the other hand, ‘malicious or unsubstantiated’¹⁰⁴ complaints or ‘lack of proper and sufficient evidence’¹⁰⁵ have also been disposed of, without further investigations. Figure 4 demonstrates the nature of ‘actions’ taken by companies against persons guilty of sexual misconduct.

⁹⁸ Infosys (n 62) 303; Bharti Airtel (n 60) 50.

⁹⁹ Bharat Heavy Electricals Limited (n 124) 72.

¹⁰⁰ Ibid; Infosys (n 62) 304.

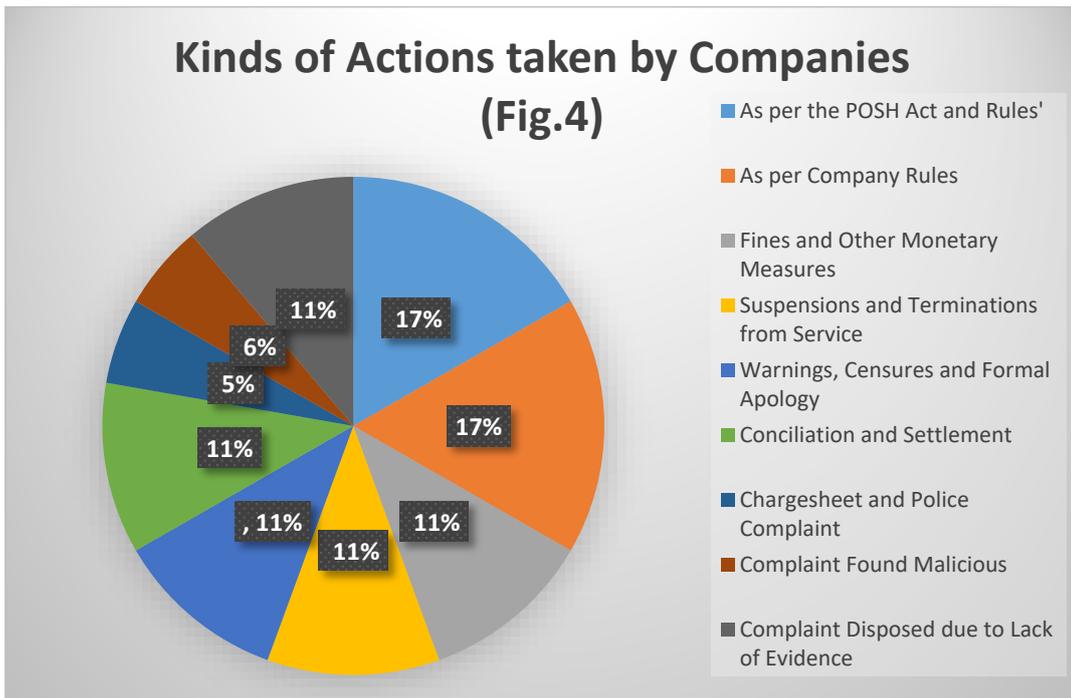
¹⁰¹ See, eg, DLF India Limited (n 60) 115.

¹⁰² Infosys (n 62) 304.

¹⁰³ Bharat Heavy Electricals Limited (n 66) 73.

¹⁰⁴ See, eg, Cadila Healthcare (n 83) 48.

¹⁰⁵ Infosys (n 62) 305.



Particulars	Distribution					
	No complaints received (zero/nil)	Between 1 to 5	Between 6 to 10	11 - 20	21- 30	More than 30
Report extracted from ARs showing No. of companies dealing with complaints (out	70 (39%)	47 (26%)	23 (13%)	13 (7%)	16 (9%)	15 (8%)

of 184 companies)*						
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4 Number of complaints filed, disposed of and pending (as of the end of the financial year on 31st March 2020)

Tables 1 and 2 demonstrate the findings related to number of complaints filed with the ICCs of the companies, the number of complaints disposed of by the ICC and number of complaints which remained pending for the financial year (2019-20).

(Table 1: Distribution of Number of Complaints received by sample companies)

As may be seen from Table 1, most companies (39% of the companies in the sample) surprisingly have disclosed to have *not* received *any* number of sexual harassment complaints from their female employees. Many of the companies (26%) have reported to have received between 1 to 5 complaints of sexual harassment from women employees during the 2019-20 financial year. Several companies (13%) reported to have received between 6 to 10 complaints of sexual misconduct in the financial year 2019-20. As demonstrated from Table 1, few companies (16%) have reported to have received more than 10 complaints of workplace sexual misconduct during the financial year. These figures demonstrate an overall low levels of filing and reporting of complaints to the ICC on workplace sexual misconduct within Indian companies.

Table 2: Percentage-Wise Distribution of Resolution of Cases by ICC

Percentage of complaints	0-25%	26-50%	51-75%	76-100%
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* Annual Reports of 16 companies have not been included due to either insufficient data or due to unavailability of the reports of companies

resolved by ICC				
No. of companies falling in each category (out of 184 companies)	32	31	46	75

Table 2 shows the data on percentage of cases disposed of by ICCs of companies. 75 out of 184 companies disclosed that their ICCs have disposed 75-100% of the total number of reported workplace sexual harassment-related complaints. Similarly, 46 out of 184 companies reported that their ICCs have disposed of more 50% of the total workplace sexual harassment complaints. Conversely, only 32 out of 184 companies reported that their ICCs have disposed of up to 25% of the total number of complaints reported to them. 31 out of 184 companies reported that their ICCs have disposed of less than 50% of total number of complaints received by their ICCs. As Table 2 demonstrates, many companies have, reportedly, disposed of most of the workplace sexual harassment complaints received by their ICCs. Accordingly, the number of cases that remained pending with the ICCs are fairly low. *Prima facie*, the above data supports the ICCs of companies striving to dispose of as many number of workplace sexual harassment complaints received as possible.

VI CONCLUSION AND RECOMMENDATIONS

As discussed in the previous section of the paper, several key observations emerged from the analysis of companies' workplace sexual harassment-related disclosures demonstrating their compliance with the POSH law under the Indian companies' and securities' law. Significantly, many companies reported that extremely low number of complaints related to workplace sexual misconduct were filed with their ICCs during the financial year 2019-20. Some explanations to

these findings could be obtained from studies referred to in the literature review section of the paper on the experiences of women employees who have faced the complaint redressal process of their organizations' ICCs. Sehgal and Dang's study¹⁰⁶ points out that despite companies' claims to be having robust anti-workplace sexual harassment policies and complaints' redressal systems to enforce the POSH law, women hesitate and may even refrain from reporting to their employers' any instance of workplace sexual harassment. Women are afraid to file formal complaints against their perpetrators due to the superior status of the harasser for the fear of losing their job or any related benefits, including, promotions and higher pay scales.¹⁰⁷ Thus, it is fairly common among women to downplay or underreport incidents of workplace sexual harassment.¹⁰⁸ The tendency to refrain from filing a formal complaint against workplace sexual harassment is more commonly found within the Indian private sector than public sector, due to higher overall job security and social security guarantees within the public sector than private sector in India.¹⁰⁹

Moreover, internal complaints committees, though constituted, operate in a perfunctory manner and are often dysfunctional.¹¹⁰ Companies are also often reluctant to take action against harassers who are high-performing employees, and are thus, indispensable to the organisation.¹¹¹ In such cases, 'actions' are taken by companies against harassers to either 'set a precedent' or as a 'face-saving exercise' to protect the organisation's overall reputation.¹¹² These observations may offer some possible explanations to companies reporting low number of workplace sexual harassment-related complaints received by their respective

¹⁰⁶ Sehgal and Dang (n 21) 52.

¹⁰⁷ Ibid 54.

¹⁰⁸ Ibid 56.

¹⁰⁹ Anangha Sapotdar (n 21) 22.

¹¹⁰ Sehgal and Dang (n 21) 56.

¹¹¹ Ibid 54.

¹¹² Ibid 55.

ICCs. If women were to report on these kinds of instances too, the number of filed complaints is likely to be much higher than as reported by companies.

With regard to workplace sexual harassment-related disclosures demonstrating companies' compliance with the POSH law, there is a need for companies to improve their quality by refraining from giving vague and ambiguous disclosures on several important aspects of their compliance with the POSH law. This includes reporting on important details related to the number of training sessions organised and employees sensitised on workplace sexual harassment and the law and the actual composition and working of the companies' ICCs. In this regard, we suggest that provisions under the companies' and securities' law mandating reporting on companies' compliance with the POSH law may be further strengthened by inserting a common reporting format to include as many qualitative and quantitative details as possible. This format may be used by companies while disclosing the state of their compliance with the POSH law. Enhancing the mandate for companies to disclose on their compliance with the POSH law may also be linked with the prevailing national and international corporate governance and sustainability standards. Under the current corporate governance standards, if companies were to become more gender diverse and create safer working environment, this may be viewed favourably by investors (including institutional investors) who are likely to take their investment decisions based on the sustainability indices of the companies.

Prima facie, policies against workplace sexual harassment of many companies are still heavily inclined towards women. Companies seem to be holding on to traditional views that only women employees can be victims of sexual harassment and that, consequently, only men are the perpetrators. Here, the challenge does not necessarily lie with the implementation of the law by companies, but more so with the inherent limitations with the drafting and construction of the POSH law. The POSH Act, therefore, considers women as a 'vulnerable' group who are most prone to be subjected to acts of sexual assault and other forms of sexual

misconduct, *by* men. Hence, the focus of the Act is harassment *of* women *by* men. However, the socio-legal view today was shifted from this traditional lens which the POSH law has adopted. Numerous studies demonstrate that, even though women are at a higher risk of facing workplace sexual harassment, ‘individuals’ today of *any* gender can be victims or perpetrators of sexual harassment. In 2010, *The Economic Times-Synovate* conducted a study on 527 employees in seven Indian cities.¹¹³ It was found that 50% of the employees working in firms based in Bengaluru have been harassed by their female colleagues.¹¹⁴ Only 32% of the employees reported being sexually harassed were by male employees at their workplaces. Other cities have also reported that they have faced sexual harassment by their female colleagues or bosses.¹¹⁵ Substantial number of respondents agreed that in today’s workplaces, even men are as ‘vulnerable’ as women to sexual harassment. Men can also be subjected to various forms of workplace sexual harassment, including verbal, physical and ‘psychological’-which involves being approached for ‘sexual favours’ in return for promotions, and other related benefits.¹¹⁶ Studies also point out that male employees often do not report their ordeal to companies’ complaints committees because of fear of being disbelieved, socially-rejected and perceived as ‘sexually-weak (*namard*).’¹¹⁷ Similarly, the International Labour Organisation (ILO) points out that sexual harassment can be perpetuated against both women and men. However, the majority of cases of sexual harassment in the workplace are perpetuated by men against women as women often do not have equal status as men, lack power, and are in more

¹¹³ ‘Even men aren't safe from sexual harassment at workplace: Survey’ *The Economic Times* (online, 22 August 2010) <<https://economictimes.indiatimes.com/special-report/even-men-arent-safe-from-sexual-harassment-at-workplace-survey/articleshow/6389438.cms>>

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ See Karan Arora, ‘Why India Inc. needs to protect Men against Sexual Harassment at Workplaces in India- case for gender neutral policies’ *Ungender* (online, 18 Nov 2019) <<https://www.ungender.in/why-india-inc-needs-to-protect-men-against-sexual-harassment-at-workplaces-in-india-case-for-gender-neutral-policies>>

vulnerable and insecure positions.¹¹⁸ In this regard, we suggest the need for suitable amendments to the POSH law to recognise gender neutrality for workplace-based sexual harassment. Furthermore, the POSH law emphasises on use of conciliatory methods by the ICC to resolve sexual-harassment related complaints.¹¹⁹ In this regard, the POSH law should provide policy-based justifications on scope, purpose and objective of the law to ‘encourage’ the use of conciliation by the ICC to resolve complaints. Moreover, the penal provisions under the law for any default, particularly for establishment of an internal complaint redressal committee-which impose fines of INR 50,000 to INR 1,00,000-may be too low, especially, for companies whose net profits or annual turnover may run into millions of rupees.¹²⁰ For any company which makes huge sums of money in net profits or turnover, can easily avoid its obligations under the Act by paying a fine of just INR 50,000. Due to its low penal provision, the law may be reduced to simply a ‘paper tiger’-that which lacks any effective mandate. Despite its several shortcomings, the POSH Act and its supplementary Rules continue to be the most important legal weapon in the hands of women-victims to fight against workplace sexual harassment. It also legally binds companies to realise their duties to ensure a safe, equitable and non-discriminatory working culture towards their female employees. The Indian #MeToo movement has renewed the significance of this Act, and the need to ensure safer workplaces for women. In terms of the implementation and enforcement of the POSH law, companies need to also recognise that workplace sexual harassment was and continues to be a complex socio-legal issue, driven by many cultural and sociological contexts and factors.

¹¹⁸ International Labour Organisation, *Preventing and Responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India* (Report, <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sronew_delhi/documents/publication/wcms_630227.pdf>

¹¹⁹ *The Sexual Harassment of Women at Workplace Act 2013* s 10(1)

¹²⁰ *Ibid* s 26 (1) (a)-(c); s 26 (2)(i)