

27/8/2012

Moderator :: *Hello, and thank you for joining us for today's chat on “Effectively addressing Harassment & Violence in the workplace.”*

Moderator :: *This chat is part of SHRM India's HR Knowledge Center.*

Moderator :: *During this chat, HR Practitioners would be welcome to address any challenges or issues relating to the above mentioned topic. This chat will be responded to by a high powered, panel of experts.*

Moderator :: *We will start the chat at 3:00 pm. However, you may start sending in your questions right away...*

Anushri Verma: What are the policies and protection measures that must be implemented to avoid harassment for women workers?

Vikram Shroff: Thanks Anushri for your question. Care should be taken to ensure that you comply with applicable laws in relation to female employees. For example, in certain cases you need prior permission of the labour department to allow female employees to work in night shifts. Also, the Maternity Benefit Act provides for maternity leave and maternity bonus to female employees as additional benefits. The Factories Act, 1948 also contain certain provision for protection and for providing facilities to female employees. Accordingly, while there may not be a need for a separate set of policies, please ensure that you comply with applicable labour laws and best practices. The Supreme Court of India has also directed all organisations to enact a policy prohibiting sexual harassment against female employees. Hope this helps.

Anushri Verma: How can you build a culture of respect and healthy work atmosphere that does not let harassment and negativity penetrate?

Dipak Gadekar: Thanks Anushri for asking the very fundamental question. This is a function of the value system of an organisation. There are very many examples in our country, like the Tatas as one which organisations are based on basic human values of trust, care, respect for individuals and treating people with dignity. You need to endorse and communicate these values to the employees and all those who deal with the organisation, built them in your appraisal, reward & recognition program and also training and development programs, etc. You need to have effective mechanism to monitor and do the needful course correction if there are any non-adherence issues, only then over a period this will become a part of the organisational culture.

Anushri Verma: How to create an environment that curbs rumours, gossips and negativity and instils team work within a positive environment?

K.A. Narayan: It is important to inform the supervisor that his acts amount to public humiliation. You should also inform the HR Department so that the supervisor can be counselled. Rumours thrive if they are encouraged. Different organisations have followed different practices. Sometimes when it has to do with creating negativity, notices are displayed to counter the same. Otherwise, meeting with departmental heads and sharing the right information helps. Most often it is important to identify the mischief mongers through effective intelligence surveillance.

Anushri Verma: What are the current practices in implementing protection measures for employees in corporate IT sector?

Vikram Shroff: Anushri, would it be possible to provide a more specific question in this respect? Is your question pertaining to any particular issue?

Anushri Verma: What kinds of training/induction programs can be imparted to employees to effectively prevent harassment and violence in workplace?

Dipak Gadekar: These should cover the policy, the Code of Conduct, if defined, the redressal mechanism, etc. What is more important is to make it a part of the induction program, and also conduct periodical refresher programs, preferably by internal leaders. Customised to the target group, this should also cover the legal provisions as may be applicable.

J. Vo: Does India law (like US) require people managers to attend mandatory workplace harassment training at least once every two years?

Vikram Shroff: Thank you Joe for your question! As such, there is no such requirement under Indian labour laws requiring managers to attend mandatory workplace harassment training. However, in terms of best practices, we see several multinational companies adopting such best practices as precaution is always better than cure!

Shilpa Jaishree Kerketta: Hi, please throw some light on how to ensure removal of gender bias while handling sexual harassment concerns.

Dipak Gadekar: This is a tricky one and one of the most challenging issues. To ensure this and also based on the thinking that women are the most likely to be the subject matter of such harassment, it is recommended that more than 50% members of the redress committee should be female members and also it should be headed by one. And in many cases the evidence on record will help ensuring removal of bias.

S Shukla: What is the obligation of the employer in preventing harassment in the workplace?

K.A. Narayan: There is no obligation under law for prevention but it is good employee relations practice to prevent but once it is brought to the notice of the employer. There are various obligations, which are more deterrent for prevention of similar acts. If there is a suspected harassment, say for example, you see that the situation could result into a major problem, you could invoke various provisions of law to prevent the same.

S Shukla: What can the employer do about a complaint of harassment that occurred after work and away from company premises?

Vikram Shroff: Good question. To the extent the harassment involves other employees of the company or is likely to affect the workplace in general, it should be possible for the employer to initiate disciplinary proceeding in relation to the harassment complaint. Also, you may note that certain types of harassment could lead to a criminal offence under the Indian Penal Code. You may refer to the Delhi HC judgement of Saurabh Kumar Mallick vs. The Comptroller & Auditor General of India (2007) where the harassment occurred outside of the office premises.

S Shukla: What can happen if a supervisor does not take the employee's complaint of harassment seriously?

Dipak Gadekar: The supervisor would be guilty of ignoring the complaint and can be penalised depending upon the rules of the organisation. One can approach the higher authority, the HR or the named manager in such situations. To avoid such issues, all organisations should have a well defined and publicized redress mechanism.

Neha Bishnoi: Hi, thanks for raising this concern. My question is - can we use video footage as a proof for any incident?

Vikram Shroff: Yes, Neha, that should be possible. A video footage could also serve as an evidence under law. It is generally advisable to include in your HR policies that video footage/CCTV surveillance of the employees is being recorded at office so that they are made aware of it.

Sherin Jacob: In the wake of recent instances of workplace violence, how do we train the HR staff and personnel to be competent in addressing employees/unions, etc. What kind of training is required?

Dipak Gadekar: Sorry to have missed your questions. A proactive approach is what I would recommend. The HR folks and also the line managers need to be in touch with the pulse of the shop-floor and take appropriate actions proactively. We should avoid situations which can be seen as 'exploitative' and counsel the Management suitably. Extend your network to local community and the families of the employees, establish genuine interest in their issues and touch their lives even beyond the factory/office boundaries - the extra-mural activities. You can never do enough on this account and this would be a continuous activity. This is no guarantee against industrial disputes, but their manifestations would not be violent, I guess. Thanks for asking a very good question.

Mrunal Thorat: Hello, I have a query. Is it compulsory to have a Grievance Committee for an office (not a factory)?

K.A. Narayan: Thanks Mrunal. It is not compulsory

Mukundan Bharathan: Which are the relevant Indian laws applicable for harassment and violence in the workplace?

Vikram Shroff: Mukundan, thanks for your questions. The laws in general would be the Industrial Disputes Act (provisions relating to unfair labour practices), the Industrial Employment (Standing Orders) Act, the Supreme Court Guidelines on anti-harassment, etc. You can also refer to the provisions under the Indian Penal Code. As a practice, you should ensure that your standing orders/service rules/HR policies contain a list of acts that could constitute as misconduct or harassment.

Meenakshi Dutt: Hi sir, there are sometimes instances of mental harassment in the workplace and if your immediate boss is involved in that, how should it be handled? It hampers an employee's overall growth and moral.

Dipak Gadekar: It is a question of one's value system, are you willing to stand up for your self-esteem or do you want to give in for the sake of other possible difficulties? I would recommend that one should not compromise on such issues.

Abhirup Banerjee: Has Vishaka guidelines and the bill on sexual harassment has

become an Act? If not, when it might, what action requires to be taken?

Vikram Shroff: Not yet, Abhirup. We are still awaiting a codified law prohibiting sexual harassment at the workplace. As you may know, a bill has been tabled and awaiting parliament clearance. As of now, all organisations need to comply with the Supreme Court Guidelines on this subject. Hope this helps!

Ekta Singh: What is the recommended procedure to conduct an interview for the accused in a harassment investigation?

Vikram Shroff: Thanks Ekta. In general, misconduct on the part of the employee needs to be proved by way of conducting an internal enquiry based on the principles of natural justice. The process should be based on the principles of natural justice and in general involves (i) issuance of a charge-sheet, (ii) consideration of the explanation provided by the employee, (iii) giving a notice of enquiry, (iv) appointment of the Enquiry Officer, (v) holding the enquiry, (vi) issuance of report by the Enquiry Officer and (vii) taking the decision. The process needs to be finalized based on the applicable labour laws (Standing Orders Act), company policies and practices and terms of the employment contract. In case the act involves sexual harassment, you need to follow the guidelines laid down by the Supreme Court of India in the case of Vishaka vs. State of Rajasthan (1997). Hope this is useful.

Abhirup Banerjee: What kind of disciplinary action should be taken if someone has been spreading malicious rumours about someone else?

Dipak Gadekar: This is well covered in the FAQs available on the SHRM site, one can give simple censure or warning, depending on the gravity and if there is no improvement or if this is a habitual case then severe action like suspension or even termination may be recommended.

Sundaramurthy MK: How Vishakha guidelines will help to address harassment in the workplace?

K.A. Narayan: Thanks Sundar. Vishakha guidelines are about prescribing a procedure to deal with sexual harassment at workplace. There is a detailed procedure on the definitions, process and redressal mechanism.

Mrunal Thorat: Is there a standard procedure under Labour Laws for addressing harassment and violence in workplace? Or is any procedure designed by company for its own purpose sufficient? What are the basic requirements in this regard? Kindly advise.

K.A. Narayan: The Employment Relations Act 2000 deals with some aspects of dealing with harassment at work place. Otherwise, harassment is a misconduct and can be dealt with under Standing Orders. Violence is also a serious misconduct and is dealt with as per Standing Orders. So, it is important to define the misconducts in the Standing Orders.

Anushri Verma: Hi Vikram sir, I wanted to ask regarding some current trends prevalent in the IT sector to curb harassment issues and the best practices that can be picked up?

K.A. Narayan: Hi Anushri, your question is too broad. To the best of my knowledge, the trends to curb harassment are to demonstrate action and deal with offences strictly. In some cases, even criminal complaints in courts or police action have been filed against errant employees.

Jeff Olson: If an employee (female or male) is being harassed and threatened by an outside party, under Indian Law, what obligation does the employer have to counsel and protect their employee?

Dipak Gadekar: The guidelines issued by the Supreme Court in the famous Vishakha case recommend that the company shall take reasonable steps to assist the affected person in terms of support and preventive action for harassment by third party, including police complaint as may be required.

Ashish Bharadwaj: Hi Vikram, You touched upon the requirement of prior permission to allow female employees to work in night shift. What qualifies as night shift and is there a list of type of establishments which are exempt?

Vikram Shroff: Ashish, your question would need to be answered based on the applicable labour laws to your organisation, along with the location of the employees. While in general, a prior permission is necessary, certain Indian states have also introduced guidelines in terms of conditions that need to be complied with for allowing female employees to work in night shifts.

Vismay Shroff: How does one deal with false allegations and complaints of harassment, sexual or otherwise?

Dipak Gadekar: The committee or the authority responsible for investigating the complaints shall assess the genuineness of the complaint and shall take appropriate action against the complainant if it is found to be baseless or malicious.

Ashadiya Soniah: What should normally be the first step to attend to a case of workplace violence?

Vikram Shroff: Thanks Ashadiya. Since workplace violence would be regarded as misconduct on the part of an employee, you can initiate the process of disciplinary action against the employee. Please see my earlier response in relation to the process to be followed in this respect. The first step as such would be to issue a charge-sheet to the employee providing details of the charges laid against him in relation to his misconduct.

Nisha Ninan: Where should one draw the boundary on deciding what is harassment and what is acceptable behaviour? Is it purely based on legal implications? For instance, jokes about one's nationality, strong preferences to work and live in particular locations and inability to integrate and appreciate local environment.

Dipak Gadekar: This is very subjective and the lines need to be drawn in the context. Anything that is not welcome by the other party will amount to harassment. However, the person should warn/caution the offender before taking this further so that the other person is made aware that such jokes/comments are not welcome.

Jeff Olson: Culturally, within Indian society, is it common for a victim of threats and harassment to report this to their manager and/or Human Resources. If not, is this an under reported problem?

Dipak Gadekar: I would agree to an extent. However, the awareness is greater in the younger generation. And it is no more a taboo for employees to report such instances. They do not hesitate to stand up for themselves.

Anand Rawal: Many times unnecessary harassment is undertaken by Project Managers or Team Leaders or HR when any employee is in notice period. In such a case, what action one can take?

Dipak Gadekar: The employee can still report to the designated authority. Alternatively, such employees are making use of social sites to vent out their frustration or grievances.

Anita Mathew: The current environment does not seem friendly to women. Unfair means seem to be in vogue. How do you advise women for responsible roles? Also, words such as ambitious/career oriented are not being widely acceptable for women.

K.A. Narayan: Hi Anita. Thanks for the question. The legal framework and the judicial process in India is still too slow. I do not know what you mean by unfair means seem to be in vogue. However, the safest way for women is to be cautious and vigilant to observe trends and react in time. On the second part of your question, India Inc is moving big time towards gender diversity. So I do not agree with you that ambitious and career oriented words are not acceptable. There are many women leaders in corporate India and many organisations have moved far ahead on this front to encourage ambitious and career-oriented women.

Ashish Bharadwaj: Mr. Narayanan, does The Sexual Harassment of Women at the Workplace (Prevention and Redressal) Act, 2003 require employers to form a committee to deal with issues related to harassment at work place?

K.A. Narayan: Hi Ashish. Yes, the Vishaka guidelines laid down by the Supreme Court prescribes a detailed process. You may please refer to the same.

S Shukla: What can the employer do about a complaint of non-verbal harassment?

Vikram Shroff: Thanks. Can you please explain the kind of harassment that you are referring to? For sexual harassment against female employees, the Supreme Court has laid down certain guidelines that need to be followed. For any other form of harassment, the guidelines as per your HR policies/Standing Orders may be followed.

Ashadiya Soniah: Normally an office has an environment where people joke with each other. Can this be considered as harassment in an office where people from different countries/cultures work? How should the HR handle this?

Dipak Gadekar: This is already covered in an answer above.

Phalgunan Kumaran: Normally when workplace harassment subject is discussed, it is mentally assumed to be towards women. Have there been cases involving reverse harassment (men being harassed by women). If yes, what are the steps towards resolving such issues?

Dipak Gadekar: The steps would be the same for any person's complaint whether male or female. These days there is an increasing awareness and realization that there could be harassment of males also.

Abhirup Banerjee: Can warning letter be issued without show cause notice?

Vikram Shroff: Yes, Abhirup, this is possible. A warning letter could be issued without a show cause notice. In fact, if the employer is satisfied with a warning letter and does not want to formalise it by issuing a show cause notice, it is possible and generally done. Hope this clarifies.

Megha Subodh: In a workplace sexual harassment case, if after constituting a

committer as per Vishaka guidelines the case remains one word against the other with no witnesses, can the company take a decision not to take action against the accused or does benefit of doubt have to be given to the complainant?

Vikram Shroff: Megha, this is generally a very tricky issue as it is largely based on the circumstances. From an employer's perspective, he should in good faith follow the decision made by the Complaints Committee and act accordingly. The management's decision, however, should not be out of proportion to the nature of misconduct/harassment.

Jeff Olson: Is an employer obligated in any way to report a case of harassment to law enforcement?

Vikram Shroff: Jeff, as such, this is not a requirement under labour law. The employer can proceed with the internal inquiry and make the decision based on the report of the Complaints Committee. For your information, the Complaints Committee is required to make an annual report to the government department in relation to the complaints and the actions taken by it. There is no legal requirement to report the case to law enforcement unless the employer feels it is necessary to protect the interests of the employee and the establishment in general.

Gopal: How should one deal with defamatory false allegations made by a whistleblower based on personal biases and vengeance?

Vikram Shroff: Does your company have a policy on whistleblowing? If not, you may take necessary action against the whistleblower for defamatory false allegations. In case of defamation to the public at large, you can also sue him under criminal law.

Pragya Bhardwaj: To handle harassment complaints, should a company have a separate third party or an in-house team to handle such complaints?

K.A. Narayan: Thanks Pragya. I am assuming that you are referring to a sexual harassment. If it is so, it has to be an internal body. If not as per the legal process to deal with disciplinary action, an enquiry officer is appointed to deal with complaints. There are other practices like appointing an ombudsman to deal with such issues neutrally.

Amol Puranik: Hello, I have a query...How do we handle a situation, wherein the person from the grievance committee is harassing someone or maybe the senior most designated person is harassing?

Dipak Gadekar: This would be a very unfortunate situation, but a technical possibility. In such a situation, the other committee members should be approached.

Abhirup Banerjee: If an employee is getting threat from another employee , is it necessary for the organization to lodge a police complaint on behalf of the employee, or is it an employee's prerogative whether to lodge a police complaint or not?

Vikram Shroff: Abhirup, this is largely the employee's prerogative, unless the employee requests the management to take action. Also, if you feel that a police complaint would provide protection to the employee concerned, you may wish to take a call in that respect in good faith.

Anand Rawal: In many organisations, extra sitting is done by employees against decided working hours, which ultimately affects health of individual and also raises family issues. So, is there any specific law under which such things should be prevented?

Vikram Shroff: Thank you Anand. I am unclear on the nature of your question. Would it be possible for you to kindly clarify? In general, we do not recommend that employees work beyond the statutory maximum daily and weekly hours at the workplace.

Ruby Varghese: How does one approach a complaint when there are no witnesses or alibi?

Vikram Shroff: Ruby, for each complaint, the process to be followed will need to be based on the specific case. Obviously, it is harder to prove the complaint in absence of witnesses or alibi and to that extent could be a challenge for the employer.

Abhirup Banerjee: Most of the times the sexual or other harassment boils down to "I say" and "you say," and mostly there are no witnesses. Are there any specific tips to investigate these cases?

Vikram Shroff: Abhirup, we agree! This is unfortunately the reality of the situation as this issue is highly subjective in nature. At the end, it is for the Complaints Committee to determine based on its experience and based on the merits of each case.

Devakumar Ramamoorthy: Hi, the labour laws prescribe that employer has to provide the safety in terms of transport to the women employees working in the night shift. What if female employees opt out from the employers' transport and what is employer's liability in that situation?

Vikram Shroff: Devakumar, this is a practical concern being faced by many companies. While it is better to follow the law (in terms of providing transport and security services), if the employees do not

agree to it, you may consider signing an agreement where the employee opt out of such service and prefer to use their own transportation. While this may not reduce the risk to the employer, it may provide for some protection as it is being done at the preference of the employee. Please, however, refrain from making this a standard policy where all employees may their own arrangements.

Gopal: What is the liability of an employer if someone suffers loss of property or injures grievously due to workplace violence?

Vikram Shroff: Gopal, this is a very good question! The employer in general is required to provide a healthy and safe workplace environment to its employees. To the extent an employee suffers due to workplace violence, the employee could also sue the employer for the employer's inability to provide safe working conditions. The employer should try and mitigate such risks by having well defined policies and best practices. In general, the employer's obligations would be under the Employees' Compensation Act, 1923 as may be applicable.

Roopali Sundar: Many a times, employees are unable to identify or differentiate workplace harassment considering that Indians by culture are more patient and subtle individuals. Are there education programs that could educate employees on how and when to raise the harassment issues/concerns?

Dipak Gadekar: This will have to be designed and developed for the situation and the culture of the respective organisation. It is in the interest of the employer and I would say a moral and legal duty to offer a safe work environment to all its employees, specifically, the female employees. And, hence, they should roll out suitable awareness and sensitizing programs for their employees.

Megha Subodh: Thanks for your response, a follow up to my question then is in the panel's experience what do you see as most commonly followed if the investigation reaches a deadlock, is benefit given to the complainant especially if it is a woman? Also, is there anything legally that defines this?

Vikram Shroff: Megha, if the investigation reaches a deadlock, the employer should in good faith rely on the report on the enquiry officer/investigation committee, and take the decision accordingly. The officer/committee is required to follow the principles of natural justice in terms of their investigation of the matter.

Abhirup Banerjee: How do you differentiate between bullying and harassment?

Dipak Gadekar: Bullying is a kind of harassment.

S Shukla: Which things should be kept in mind for formulating Workplace Harassment Policy?

K.A. Narayan: The things to be kept in mind are: 1) how do you define harassment? 2) what are the types of prohibited behaviour? 3) complaint procedure 4) investigation process 5) disciplinary action procedure.

Ashadiya Soniah: Should whistleblowing be encouraged? Or will it create opportunities for false accusations?

K.A. Narayan: Hi Ashadiya. All whistleblowing always has some chaff. We will have to distil the wheat from the chaff but it is an effective mechanism to bring out many things which otherwise does not come out.

Kripaneeta Mukherjee: Till about Sept 2011 the Government had granted exemption on the IT/ITES companies not to have Standing Orders. However, the Government has now set a six-month timeframe for IT/ITES companies to get certification. Could you throw some light on how the industry is approaching this?

Vikram Shroff: Kripaneeta, I assume your company is based in Bangalore/State of Karnataka, where the Standing Orders Act has been made applicable to IT/ITES establishments since 2011. While some companies are in the process of adopting/certifying their Standing Orders, most other companies are trying to obtain an exemption from having Standing Orders as their policies may be superior in nature. Please refer to our hotline on this subject that you can access at http://www.nishithdesai.com/New_Hotline/Hr/HR%20Law%20Hotline_Aug1412.htm

Kripaneeta Mukherjee: Is there any broad guideline in India (provided by case laws etc) around different kinds of misconduct and appropriate disciplinary action that could be taken in each circumstance? Or each organisation follows its own guidelines as defined?

K.A. Narayan: Oh! There are various laws that cover this subject and there are a multitude of judicial precedents. You may have to refer to Industrial Disputes Act, Standing Orders, and a host of case laws which have given different interpretations to misconduct. For example, the Supreme Court dealt with an issue whether attacking the General Manager at his house with lethal weapons warrants the punishment of dismissal or not. There are similar interpretations of whether sleeping on duty, slapping a manager, use of abusive language, disobeying orders etc.

Amrita Shetty: If the employee accused of harassment has confessed in writing to the same, does the employer still have to initiate disciplinary proceedings against the

harassment complaint in order to comply with the principles of natural justice?

K.A. Narayan: Any employee who confesses in writing can withdraw the confession or refute it later. Hence, it is advisable to initiate disciplinary proceedings so that if it is challenged in court, it stands scrutiny. However, there are occasions where it becomes difficult for the employer to keep the accused employee at work in which case action is initiated with right to prove the charge before the court.

Shikha Prabhakar: Is there a minimum number of female employees working in the organization to have a sexual harassment committee?

Vikram Shroff: Shikha, there is no such minimum number of female employees to constitute a Complaints Committee. Such committee would technically be required even if there is only one female employee in the organisation. You may refer to the Supreme Court guidelines in the case of Vishaka vs. State of Rajasthan for more details in this respect.

Jeff Olson: What penalties what penalties might an employer face if they fail to properly respond to a victims report of harrassment or violence in the workplace? Would any certain level of management be targeted for retribution based on this failure to act?

Vikram Shroff: Thanks Jeff for your question. As I indicated in a previous response, the employer is required to provide healthy and safe working conditions. If the employer receives harassment claims, it should ensure that it follows due process under law and under company policies to investigate and take appropriate action. Inability of the employer could lead to legal risks in terms of claims from employees. Regarding your second question, each labour law in general defines the management who could be held liable for violation of that law. Hope this helps.

Praveen Kumar: How can we encourage Unions and workmen to play proactive role in the functioning/progress of an organisation?

K.A. Narayan: Hi Praveen, very good question. I personally believe that the underlying factor for a proactive role of unions and workmen is the trust between workmen and management. If you create the trust and transparency and show fairness, even when the workmen are affiliated to outside unions, they work proactively for the progress.

Pragya Bhardwaj: As India has been the hub for MNCs, so do these MNCs need to comply with any International Standards for harassment or Indian law and company policies in India would be applicable?

Dipak Gadekar: Every organisation in India will have to comply with the Supreme Court guidelines and other legal provisions, in addition to their internal guidelines, if any.

Latha Gupta: Is it more effective to outsource the enquiry process to an outside entity? Are there service providers in this space?

Dipak Gadekar: As per the guidelines the committee has to be an internal one with an external member from an NGO working in the related space. It is not advisable to outsource such a sensitive issue to an external agency.

Kripaaneeta Mukherjee: If there is a complaint reported by an employee who is himself not involved in an act and the aggrieved employee has not reported the matter, is the employer obligated to investigate the issue?

K.A. Narayan: It is always good practice to investigate the issue but it is not mandatory under law.

Moderator :: The detailed chat transcript will also be shared with participants via email post the event

Ashadiya Soniah: In case an employee is threatening another staff and the HR person walks in at the same time, should the HR person take any action even if no one is complaining about the incident?

K.A. Narayan: Of course, the HR person has to take action. It is in the interest of ensuring discipline. Many times, employees do not complain fearing reprisal but once the offence is noticed it is important to take action.

Maria Thomas: How to deal a case which was initially lodged as ‘physical harassment’ and on investigation proved that it was mutual. As an organization what should be the standpoint?

Dipak Gadekar: Then it would be a case of either a false complaint or no-complaint at all. It should be dealt with accordingly.

Mehul Mehta: How to judge the credibility of witnesses?

K.A. Narayan: Hi Mehul, the credibility of a witness comes out in the Domestic Enquiry when he is cross examined and what is the evidence he leads. This is a difficult task and you need trained people who can bring the truth out on the table.

Jeff Olson: Based on a previous comment, it appears that there is a requirement for

employers to establish a committee to monitor and investigate cases of sexual harassment in the workplace. For MNCs, is it required for this "Committee" to be based in India, or can it be at a corporate level?

Vikram Shroff: Jeff, your understanding is correct. This requirement comes from the guidelines laid down by the Supreme Court of India in 1997. India is still to enact a codified law on sexual harassment against female employees. Given the background, it would be necessary for the Complaints Committee to be situated in India, mostly at the location where the issue may have happened rather than at a remote location. Please also note that there certain requirements in terms of constitution of such committee. We can provide more details if you would like.

Amol Puranik: Are there some specific rules, parameters to form a Complain Committee in a government organisation, private company and so on?

Vikram Shroff: Yes, Amol. Your understanding is correct. As per the guidelines laid down by the Supreme Court of India in the case of Vishaka vs. State of Rajasthan (1997), all organisations are required to form a Complaints Committee to address any claims in relation to sexual harassment against female employees. The committee should include a majority of female and the chairperson should also be a female. The committee may include external experts including members of NGOs who are familiar with the issue of sexual harassment. The committee is required to investigate the complaint, for which purpose it should meet as soon as is practicable, upon receiving the complaint. The committee has the powers to call any person and record their statements and make such investigation as may be necessary to decide as to the truth or falsity of the complaint. In the event the committee comes to a prima-facie conclusion that the complaint is true, it shall advise the management in writing on initiating disciplinary action.

S Shukla: What are the maximum daily or weekly hours as per Indian Constitution?

Vikram Shroff: Thank you for your question, for which we would need to know the nature of your establishment and the location. For your reference, provisions in relation to hours of work are captured under the Factories Act and the state-specific shops and establishment enactments.

S Shukla: Hello Vikram Sir, my question is related to IT industry.

Vikram Shroff: Thanks. We also need to know the location (city), based on which we can comment. If for Mumbai, the maximum daily and weekly work hours are 9 and 48 respectively.

Vismay Shroff: Is there an element of limitation on the raising of harassment/violence claims at the workplace, both within the organisation and under the law?

Vikram Shroff: Hi Vismay, hope you are doing well. As such, there is no specific limitation under law in raising harassment / violence claims. The Limitation Act is silent in this respect. However, courts could require an explanation for extensive delay on the part of the claimant, which as such could go against his interest.

Tajamul Hassan: How should we discourage false complaints?

Dipak Gadekar: If you penalize those who make false complaints, then these instances would be minimized.

Ram: How can we stop verbal harassment among co employees at workplace? I mean criticizing him/her for religion, race, physical or mental disability, etc.

K.A. Narayan: The only way is to prescribe strict procedure for dealing with such issues and take immediate action wherever it comes to notice.

Ashadiya Soniah: Can psychological pressure be considered as harassment? If yes, how would you advise to deal with it as it is present in almost every workplace?

Dipak Gadekar: Unwarranted psychological pressure with intent to harass can be covered under this.

Shilpa Jaishree Kerketta: What is the standard timeline that corporates can follow to redress a sexual harassment concern?

Vikram Shroff: Thanks Shilpa. There is no timeline defined under law. However, your question is important considering the sensitivity of the issue and we would recommend that the employer deals with the situation as soon as possible without any delay.

Abhirup Banerjee: In a sexual harassment case, is it mandatory to involve the external party (as per the Vishakha guideline), or it can be prerogative of the internal committee based on the merit of the case?

Vikram Shroff: Abhirup, as per the Supreme Court guidelines, the Complaints Committee may include external experts including members of NGOs who are familiar with the issue of sexual harassment. While it does not appear to be mandatory to include external expert/NGO representative, it is generally advisable (and legally recommended) as it helps prevent the possibility of any undue pressure or influence from senior levels. I hope this clarifies your doubts.

Mrunal Thorat: For an MNC, what is the obligation of Indian entity if the harassment of an Indian employee has taken place while travelling for business purpose outside India? May be in the MNCs office outside India?

Vikram Shroff: Thanks Mrunal. To the extent the employee remains an employee of the Indian company, he would be eligible to protection under the Indian company's policies and Standing Orders. Also, if the employee is traveling outside the country, he could also claim protection under the laws of the country where the harassment took place. Hope this helps.

Vaishali Buch: We had discussed on sexual harassment but what about mental harassment which generally all seniors give like never appreciate the work, forcefully extra hour seating, has to come before time or any such mental pressure can we do something to prevent such things in organisation?

Dipak Gadekar: The subject matter of harassment cover, both physical and mental harassment. However, the mental harassment is more difficult to prove. It has to be treated in the same manner as that of physical. The complaint should be investigated and if found correct, the offender needs to be counselled, warned or punished depending upon gravity and habitualness.

Mukundan Bharathan: The fear an employee would have is of retaliation from his boss/company in the event he speaks up. Could you advise what recourse should he take against such retaliation?

K.A. Narayan: Hi Mukund, truth prevails at the end. So, the employee will have to trust that the company will be objective and in every organisation these challenges are always there but everyone knows where the truth lies.

Shilpa Jaishree Kerketta: In case of consensual relationships at work later turning sour and leading to workplace violence, will it be treated as a sexual harassment concern?

Dipak Gadekar: It will have to be dealt with accordingly. Any workplace violence cannot be tolerated.

Shilpa Jaishree Kerketta: Hi, can you please elaborate on the appeal system that corporates can look at providing to the alleged accused and the complainant in case of sexual harassment concerns. Is there any mandate regarding this in India?

K.A. Narayan: The guidelines for dealing with such cases should provide for appeal as well. Normally, there is a committee which investigates the complaint and appeal lies under the disciplinary procedure or standing orders to an authority prescribed under the standing orders

Anand Rawal: Violent activities are mostly seen at factory premises which often take place because of unnecessary work pressure. So what basic steps need to be formatted in policy to meet such situations?

K.A. Narayan: I believe that violence is not due to work pressure but due to lack of trust and fairness of compensation for the work done. Formulating healthy grievance redressal forum is the best way to deal with this

Rajeev Dewal: We keep hearing growing instances of women employees using their feminine charms aiming favours and that not forthcoming alleging sexual harassment and often managements finding easy solution to get rid of the person so alleged...any comments?

K.A. Narayan: Hi Rajeev, this is highly subjective question and it is for the management to evaluate the merits. I believe that men are smart enough to realise where they are being lured!

Jeff Olson: If an employee is being threatened with violence (including death threats), and these threats appear so grievous that other employees in the workplace may also be at risk; Is it legal to terminate the threatened employee and remove them to ensure the safety of others in the workplace?

Vikram Shroff: Thanks Jeff. If I have understood your question correctly, I do not believe that it would be possible to legally terminate the threatened employee just because he is getting death threats. It would instead be better to report this to the police authorities and work with them to ensure that the interest of the employees are not jeopardised.

Vismay Shroff: How does one deal with harassment by a senior or others from an organisation, once one's employment with them has ceased?

K.A. Narayan: Complain to the police.

AmolPuranik: In case of an MNC, if the Indian employee has been harassed outside the country in the Company premises may be say the HO, would it still fall under Indian Laws?

Vikram Shroff: Amol, I just answered a similar question earlier. In addition to the Indian laws and company policies, the laws of the foreign country also need to be considered in case of harassment. Hope this is helpful.

Ram: How can the psychological pressure with an intention to harass be dealt at workplace?

K.A. Narayan: Hi Ram, psychological pressures can be dealt with only by the individual concerned. Try spirituality.

Anand Rawal: Sometimes management does also not taking any active steps on such managers which are pro-active in office politics and harassment activities related to work and for them exploitation of employees is priority rather than their work. In such case what will be your suggestion?

Dipak Gadekar: This is a matter of organisation values and culture. There are some examples where organisations have dealt strictly with such misbehaviour from even very senior officials (Infosys) and there are some who do not have any mechanism in place to address such issues.

Ravi Naidu: Regular false complaints (or intended to "harass" production-demanding Supervisors/Managers, the rules (Standing Orders, SC Order, Manual, etc., do not contain rules/ways of punishing false-complainants. How to fill this lacuna?

Vikram Shroff: Ravi, if the complaint is found to be false and with an intent/motive to simply harass, you could as such initiate disciplinary proceedings against that employee for such a complaint.

Shilpa Jaishree Kerketta: Does the complainant have the right to know the final decision taken by the internal committee on sexual harassment concerns?

Vikram Shroff: Good question Shilpa! We may need to do some further research. As such, this may need to be the case under the principles of natural justice although from the company's perspective, the company needs to communicate its decision to the parties involved.

Pragya Bhardwaj: Who would be the authority where an employee can go and complain if the organisation does not take cognizance of employees complaint?

Vikram Shroff: Thanks Pragya. If the organisation fails to take cognizance of the complaint, the employee could approach the labour department, police authorities or the regulators, depending on the type of the case. Hope this helps.

Ram: What measures can be taken to avoid harassment between superior and subordinate employees and maintain good relations?

Dipak Gadekar: Appropriate policy, communication of the same and programs to imbibe this in the organisational culture as mentioned in an earlier answer.

Anand Rawal: Do Employer need to pay if he makes his staff to sit for extra hours? If yes, then what amount is fixed for over time as per Government Law? And what steps need to be taken if she/he fails to pay for the same?

Vikram Shroff: Anand, your understanding is correct. Labour laws provide for overtime compensation. To answer your question, we will need more facts in terms of the nature of establishment and the locations. However, in general, payment for overtime is twice the hourly rate of wages. Hope this is useful for your analysis.

Moderator :: We are almost reaching the end of the chat. Kindly share your Feedback with us, by clicking on the feedback link, which will appear on your screen through a pop up shortly...

Elias Lobo: Employees are losing their confidence in job when their boss harasses them every day. Now their team members have a question whether they are capable of doing the job. How would you react to this kind of harassment?

Dipak Gadekar: As mentioned earlier, the person need to face this up, stand up to the boss who is harassing and which is affecting the performance or else the miserable situation will never change!.

Tajamul Hassan: The involvement of senior official in harassment may make it difficult for HR to pursue such cases especially in a small organization where these people have full control on systems and management. What is the effective way of dealing with harassment in such organizations?

Dipak Gadekar: It is a matter of the value system of the organisation - small or big, if the management is not serious of dealing with such issues in an impartial manner, it will have a bad reputation for the organisation and will lead to its own issues in future like low employee morale, high attrition, problems in hiring, etc.

Archana Gupta: What will be the best way of handling a complaint under sexual harassment wherein evidence shows that both parties were equal participants. Also in such case what will be the best way of handling the issue when complainant withdraws the complaint.

Vikram Shroff: Archana, to be honest, this would be case specific. If evidence shows both parties were equal participants, you may wish to check as to why the employee decided to officially complain

about being sexually harassed and whether she was indeed harassed. If the employee was harassed, the employer should initiate disciplinary proceedings. At the end of the day, the employer needs to rely on the report of Complainants Committee that has been set up for this purpose. You may note that the Supreme Court has recommended that Complaints Committee may include experts or NGO members who are experienced and familiar with this issue and to that extent their expertise would be valuable as a guidance to the employer. Finally, if the case is eventually withdrawn by the complainant then to that extent there should not be any requirement of a decision or follow up on the part of the employer.

Elias Lobo: Our Company is in IT Domain. Do we need to have standing order act, we are based out in Pune.

Vikram Shroff: Yes, you need to comply and have your Standing Orders certified by the labour department, assuming your company has a minimum of 50 employees. You may refer to section 38-B of the Bombay Shops and Establishments Act, 1948 (I am assuming you company is registered under the BSEA) which extends the provisions of the Industrial Employment (Standing Orders) Act, 1946 to all establishments wherein 50 or more employees have been employed. You may wish to discuss this with your labour law compliance agent.

Moderator :: *And that response will have to be the last for today's chat. We would like to thank our panelists, Mr K. A Narayan, Dipak Gadekar & Vikram Shroff for their time and the valuable insights they have shared with us today.*

Moderator :: *Since Industrial Relations solutions would differ widely based on the specific circumstances of the case and the policies of the organisation, these responses are intended to provide general information, and are not a substitute for legal advice. You are advised to consult your legal /professional advisors and discuss the facts and circumstances that may apply to your particular situation, before taking any decisions or implementing any change.*

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