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Corporate governance: Direct impact of functioning of organization's on internal complaints' committees

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Abstract

This paper looks at the effectiveness of institution of internal grievance mechanism (Internal Complaints' Committee or ICC) created under the Sexual harassment of Women at Workplace Act (Prevention, Prohibition and Redressal), 2013 hereinafter referred to as PoSH Act).

As practitioners, the author and the associates (hereinafter referred to as authors) observe that there are some organisations which are clearly well-established and system-driven and compliance is observed to be followed in letter and spirit. Corporate Governance is an integral part of the working of the organization. They ensure the institution of grievance redressal (ICC) has necessary checks and balances to impart justice.

The compliance status of some other institutions is more often than not, only on paper and corporate governance is taken lightly. This is a rather large set of organisations where there is an underlying deeper reluctance to even mention compliance in the true spirit. Thus, the weakening of the institution of ICC in such organisations starts ab-initio. Even where the institution is an established one, the institutionalization of fairness and justice in sexual harassment is found lacking.

There is yet another variety of institutions where the ICC works in the spirit for gender justice despite the organisation's lack of interest in general. This, in the experience of the authors, is often individual driven, and the responsibility of the organization being perceived as gender-just rests on the shoulder of one or few individuals.

The Government Institutions form another set of organisations that are completely rule driven. The role of the institution of ICC is marred by hierarchies, biases and excessive paperwork.

Thus, this study negotiates the prevalence of ICC in the dynamic theory of micro-level institution of ICC within the larger framework of corporate governance.

Keywords: Psychiatric disorders, suicide, suicide attempt; first admission; recurrent admission; schizophrenia; bipolar disorder; depression; substance abuse disorder

Introduction

Sexual harassment has been a widely and deeply researched topic world-wide. The ramifications are serious enough to warrant more research on this sensitive topic- be it the costs for organisations in terms of "reduced job satisfaction and work productivity and even increased withdrawal behaviours" (see Fitzgerald *et al.*, 1997; Langhout *et al.*, 2005, Leskinen *et al.*, 2011) [2, 3, 4] or psychological impact on victims who "report more depression, general stress, and anxiety as well as post-traumatic stress (Cortina & Berdahl, 2008) [5].

In India, The Sexual Harassment of Women at Workplace Act (Prevention, Prohibition and Redressal), 2013 is a noble legislation to ensure workplace safety for women employees. It is applicable to all organisations that have ten or more employees. ICC is the grievance committee that has some of the powers of a judge of a Civil Court and hence needs to be thoroughly trained to understand its powers and duties as well the process of complaint handling. It is these ICCs that play a key role in ensuring safe workplaces.

However, in India, different organisations tend to deal with compliances in different ways. The experience of authors working for eight-years across sectors, sizes, ownership status etc. shows that differences do exist. These differences are also reflected in the working of the ICCs.

The authors have picked from these experiences, taken a sample from each set and drawn its conclusions on reasons that may be responsible for categorizing the ICC on the basis of its effectiveness.

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Need of the study

As practitioners having access to the ICCs of various organisations, the authors observe that some ICCs are highly efficient in delivering justice following the rules given in the Act while some others exist only on paper. Most other ICCs are defunct. The purpose of this study is to understand how the functioning of the organisations impacts and allows the functioning of the micro-level institution of ICC.

It is being reiterated in every research that sexual harassment at workplaces has several negative repercussions. Every step towards compliance is a step to deter employees from indulging in it and a measure of confidence to prospective victims about not feeling intimidated.

The question that arose in the minds of the researchers is about the role of ICCs in helping create the safe culture for all employees.

In practical understanding, the authors intend to understand if the working of the ICCs is driven by the culture of compliance in the organisation.

A very important fact that should be understood is that an ICC is a quasi-judicial body that has the presence of an external member who understands women's issues as required by law. The employer therefore does not have full control on the working of the ICC. This is a point of insecurity for the employer. Hence, the reluctance in compliance increases. The suitability and compatibility of the external member is very important from the organisation's view.

Thus, this study negotiates the prevalence of ICC in the dynamic theory of micro-level institution of ICC as a part of a larger organisations.

About Posh ACT

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act came into force in December 2013. The major pointers:

1. Applicable to all women working in organized and unorganized sectors. It includes hospitals, educational institutions, sports facilities, private and government-run organizations.
2. Direct onus on employer for ensuring compliance:
3. HR Policy Document and Service Rules declaring that sexual harassment will be treated as a misconduct.
4. Formation and training of ICC (Internal Complaints' Committee) essential to handle employee grievances. It is a quasi-judicial body.
5. Spread awareness about the Act to all employees in letter and spirit.
6. Take action on the recommendations of the ICC within prescribed time limits.
7. Monitor timely submission of Annual Reports (reporting number of trainings held, complaints received and disposed etc.) to the District Officer.
8. Compliance is statutory with penal consequences - monetary and cancellation of business licenses. Ministry of Corporate Affairs had notified an amendment to the Companies (Accounts) Rules, 2014, requiring all eligible companies to incorporate a statement in the Board of Directors Report that they have complied with the provisions. Consequences now include imprisonment too.
9. Time-bound process of receiving and resolving complaint, taking action on recommendation of ICC

and mechanism of Appeal available. A woman may take the route of conciliation, else a full inquiry is conducted. It is essential to maintain confidentiality.

10. The definitions of Women, Workplace, and Harassment were widened to broaden the umbrella of complaints that can be resolved. This is in line with the guiding principles of ILO 2019² on violence and harassment.
11. Emphasis is on prevention and prohibition rather than on redressal of complaints.

Review of literature

Global Trends Predicted by O'Kelly *et al.* (2021) in 'Harvard Law School Forum on Corporate Governance' included Climate Change Risk, Diversity, Equity & Inclusion (DE&I), Convergence of Sustainability Reporting Standards, Human Capital Management, Return of Activism and Increased Capital Markets Activity and that Virtual Board & Shareholder Meetings that are here to Stay. Thus, it can be seen that DE&I is hierarchically higher all over the world. The POSH Act is all about gender equality and safe workplaces for women.

MNCs employ various *control mechanisms* to coordinate units worldwide in order to meet global organizational objectives (Harzing and Sorge 2003)^[6].

Reporting serves as a pillar of MC at foreign subsidiaries as it supports PMS and goals achievement (Chung *et al.* 2006; Cooper and Ezzamel 2013)^[7, 8] establishes the importance of corporate governance.

It was found that firms had derived benefits from environmental compliance which were driven by cost-benefit calculations, moral values and social pressures. (Benefits of compliance with local environmental regulations: MNC perspectives, January 2009 by M.A. Dao, George Ofori, L.S. Pheng)^[9].

An article in 2021 in Business Standard states that 'women in the informal sector have no access to justice'. Anoo Bhuyan & Shreya Khaitan (Business Standard, May 30, 2021)^[10].

It needs to be understood that under the POSH Act, the onus of giving justice is with Local Complaints' Committees (LCC) that are mandated to be formed in every district.

Research Methodology

Representative organization has been taken as a case out of the various organisations where the authors are associated as part of the ICC. After thoughtful discussions on which organization out of the 50 plus organisations should be chosen, one representative organization was finalized.

The authors first gave a deep thought to ICCs that have been active over a five year period, are intermittently active or exist only on paper.

The first question therefore was to build a consensus on what the word "active ICC" actually means.

Active ICC

1. Well trained ICC as formed by the employer in the real spirit and the list of these members is displayed - names, mail id and phone numbers
2. Follows an SOP whenever a complaint is received
3. Ready to give time and priority to complaints
4. Follows Principles of Natural Justice
5. Independent- does not allow interference
6. Sensitive during handling complaints
7. Bold enough to hand out recommendations

8. Perceived as a just and fair body
9. Has regular meetings (atleast twice in a year) to discuss genuine cases, discuss judgements, etc.
10. Ensures Annual Report is submitted to district officer at the end of every calendar year

Delving deeper, the authors discussed the issue threadbare to understand that Point 1 - on being trained and understanding the nuances of the Act, has direct relation to being proactive on all points thereafter (points 2 to 10).

Point 1 is the direct responsibility of the "Employer" under the Act. Thus, it can be safely concluded that it is the culture of the organization or the priority that top management accords to compliance that may be an important driver that drives the efficiency of the ICC.

Steps followed

1. All organisations where Team POSHCA and all known associates have an understanding of the working of the organization were listed.
2. Segregated organisations on basis of "active ICCs", "functional ICCs" and "defunct ICCs".
3. Choose one from each category as a sample case study to understand the relationship between working of the organization and the working of the ICC.
4. The organisations so chosen have been elaborated as far as is observably possible and on data available in public domain.
5. Results were drawn and hypothesis laid down for further research.

Case I

These are established organisations that have existed for a fairly long time and have a presence in India and abroad. The HR Policy and Service rules governed are strictly followed- thus establishing strict corporate governance. Thus, as soon as the PoSH legislation was passed in India, the HR Policy and Service Rules were adapted by a well-established legal department. The ICC was formed as is stated in the Act- minimum four members, Chairperson being a senior woman employee, one external member who is familiar with women's issues and more women than men. The list of these members were promptly displayed, put on the internal computer system where employee rules are uploaded. A link was created to the Act which was accessible by all employees.

Employee grievances were being handled earlier too and these were just shifted to ICC where they pertained to sexual harassment at workplace. The policy was made "gender-neutral" keeping in mind the larger goal of "equality/equal opportunity" followed globally.

The ICC was trained to understand the Indian Act and this needed only a little tweaking from the preparedness the organization already had.

All in all, the organization is a well-oiled one and so is the ICC.

As and when a complaint arises, the chairperson shares the complaint via email with all ICC members who are to be involved (minimum 3 members as per Act). The due process is followed. Sensitivity and confidentiality are maintained. After the entire proceedings, the report is prepared within the given timeline and recommendations given to 'employer' for implementation.

The same standard procedure is followed with every complaint received. The ICC makes an effort to leave no stone unturned even if it involves travel (and thus costs) of the members, complainant, respondent or witnesses. In other words, there is an ideal compliance of the Act.

Case II

These organisations are similar in working to the above category. The systems are put in place slowly as the organisation has been growing. The work culture is set by the initial owners or professionals who build the organization. Corporate Governance/ compliances are given due importance. Strong legal departments are in place.

Strong ICC is accordingly in place. The SOP of complaint handling is set and revised along the way to continuously improve itself.

The cases are actively dealt with. The ICC is perceived as an active body that imparts justice, deals severely with those found guilty and send the clear message that harassment will not be tolerated at the workplace.

Case III

These organizations are also established and existed for long but not on a growth trajectory. They are trying to sustain themselves in the given competition and economic dynamics. The compliance of laws is not the priority, but the owner prefers to stay free of government interferences /objections and hence tries to steer clear of payment of fines. The PoSH Act is one of the so many compliances. The HR Policy and Service rules have been amended as required by the existing labour lawyer who helps them with other similar compliances. The ICC is created in the files. No extra effort or cost is made to train them so that they are equipped to handle complaints. Further requirement of employee awareness is also not talked about. Professional trainers who understand the subject involve cost and hence not engaged. Moreover, there is a general reluctance and a feeling that making employees aware of PoSH is an unnecessary wastage of time and energy. However, the Annual Report is submitted to the District Officer. Thus, law is followed on paper only. The complaints, if any, are dealt with by immediate supervisors. Two simple steps are followed- either telling the complainant to "ignore" what has made her uncomfortable or calling both the parties and warning them to not repeat the behaviour.

Case IV

Business is set up by a family member and continued by the heirs. Corporate Governance doesn't mean much and there is no legal support sought. Owner is the sole decision-maker who has learnt the ropes from the senior family member. Most likely the owner will not even know that there is yet another legislation. No importance is given to such matters at all. In case of an audit, the owner is seasoned at handling junior government inspectors and manages either by bribing the official or completes the compliance on paper. Corporate governance in general and forming an ICC, in particular are often not on the radar.

Case V

Government organisations in India were always well-intentioned role- model organisations set up by the government. Apart from this, there are administrative

organisations. All practical experience points towards the fact that such organisations are like abandoned babies. There is no sense of ownership since the head may have a limited tenure and is not driven towards putting systems in place. Compliance on PoSH is but a mere formality. If there is a push from the higher ups there is a sudden movement for compliance but by and large the ICCs are defunct. The members are not trained, complaints discouraged. The number of ad-hoc employees is on the rise and the outsourced employees are forming a larger section of vulnerable women than ever before. However, any voice raised by a woman is muffled and the threat of loss of job looms large. Annual Reports are submitted on time. Thus, to conclude, in practice, the authors observe that the functioning of different organisations impacts the functioning of the ICCs as well. However, it has been observed that there are exceptions across organisations where one or a few individuals can change the entire scenario. Such an individual or set of individuals drive the whole compliance in practice. It has been observed that ICCs that may be working very well may suddenly become inactive after that person moves out. Similarly, an inactive ICC may start showing its presence after an individual starts driving the compliance whole-heartedly.

Findings

A trend can be observed as practitioners over the last eight-year period. Some organisations have been system-driven with competent ICCs. Most organisations (usually owner-

driven and depending on the size) are compliant but more on paper than in spirit. The ICCs in such organizations are not proactive but can cope up if a complaint is received. Yet another set of organisations are rule-driven (mostly Government organisations) that are nearly defunct. Another observation is that this trend has exceptions where proactive individuals may drive the entire process of complaint handling. This trend has been analysed and the findings are not too far from the practical cases taken as representative here.

Conclusion

The authors collective thought process brings out a direct relationship of the working of the organization and hence the prevalence of ICC in the dynamic theory of micro-level institution of ICC that has been created under the PoSH Act to impart justice. Keeping in mind that ICC is a quasi-judicial body - the working of which is not under the direct scrutiny of the employer, thus it is unnerving for organisations to form the ICC and not interfere in its working at all. Unless there is a complete trust that all rules are being followed through the Principles of Natural Justice, it is rather difficult to leave the ICC to function independently.

Thus, organisations’ reluctance can be understood despite best intentions. It may thus be a time-taking process to choose an external member whose values match that of the organisation’s. However, the ICC functions smoothly once it is aligned.

Table 1: The authors conclusion may be represented in the following tabular form

Types of organizations	System driven (Case I)	Owner driven-large (Case II)	Owner driven-medium (Case III)	Owner driven-small (Case IV)	Rule driven (Case V)
Efficient ICC	Yes	Yes	No	No	No
At least Functional ICC	Yes	Yes	Yes	No	No
Insignificant	No	No	No	Yes	Yes

It is amply clear and can be reasonably deduced that organisations that are large enough and long-established run by professionals with set systems, have ICCs that are also active, functional and perceived as institutions imparting justice.

However, owner driven medium and small organisations run more on the whims of the owner rather than by systems. The culture of the organization is set by founders and safety of women is also defined there itself. It has been observed that supervisors take it to be a part of their duty to call the complainant and ask her to ignore the incident/s. Or the complainant and respondent are called together and given a stern warning not to repeat any such behaviour. The third option is to terminate both parties without understanding the issue. Compliances may be viewed as a part of business that must be fulfilled to steer clear of the mess that may be created by compliance officials.

The third set of very small owner driven organisations and most government offices usually have defunct ICCs where complaints are usually not received and even if they are, most members are biased and opinionated individuals not trained to handle complaints. The women suffer most in these categories.

Implications and further scope of study

Corporate Governance is followed in a different spirit across different organisations. ICC is the nodal institution that

helps prevent, prohibit, and redress sexual harassment incidents. Compliance in spirit will help organisations form a safe working environment leading to saving of costs for individuals, organisations and help reduce health issues associated with victims of sexual harassment. Corrective measures by top managements can help their own organization as well as society at large.

The reason for believing and building this theory is that practitioners and their associates have an experience of eight years on the ground pan India. The study is a practioners valuable collective experience as enablers of compliance on POSH Act on ground level. Hence it is an original contribution to the field of study.

The moot question here is what steps should be taken to ensure ICC’s are active. The advantages of having active ICC’s are manifold:

1. They help in prevention of sexual harassment and not just redressal.
2. Sensitive ICC’s are more approachable thereby giving confidence to employees who may be feeling victimized but hesitant to approach
3. They maintain confidentiality which again is a confidence-building measure.
4. They complete their paper work thus leaving minimal scope for appeal. This also saves the precious time of the Court (Mostly labour courts)

5. They hand out justice that send a strong signal in the organization that no one escapes it's clutches- however influential.

Thus, the authors observe that special effort can and should be made towards stricter compliances. Ideal as it may sound, it certainly will be a leap in achieving gender justice and a better society to live in.

It will have to be reiterated that the authors and their associates are External Counsels/members on the ICC's of:

- a. Corporates, hospitals, educational institutes,
- b. Across sectors like manufacturing, (auto parts, garments, paper mills, etc) service industry (technology, global executive-search, back-end financial organisations, etc.) start-ups, exporters, etc.
- c. Across MNC's, large, medium, small companies and government sector as well.
- d. Organisations with multiple locations across India

However, the authors definitely feel more research is needed before one can verify the view that authors have formed from their experience. Some suggestions for future research are:

1. The number of organisations from which the cases have been drawn are limited. A bigger sample can be taken.
2. This the view of a limited number of practitioners. It can definitely have views from more experienced experts.
3. The parameters for an "Active ICC" may be corroborated with more experts.
4. The exception across organisations which the authors feel happen due to motivated self-driven individuals, definitely needs deeper understanding.
5. Real time interviews of employers and/or HR Heads may give a deeper understanding of the working of efficient and defunct ICC's.
6. On ground working of LCC's

This is an original theory built from the view of a limited set of practitioners.

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