

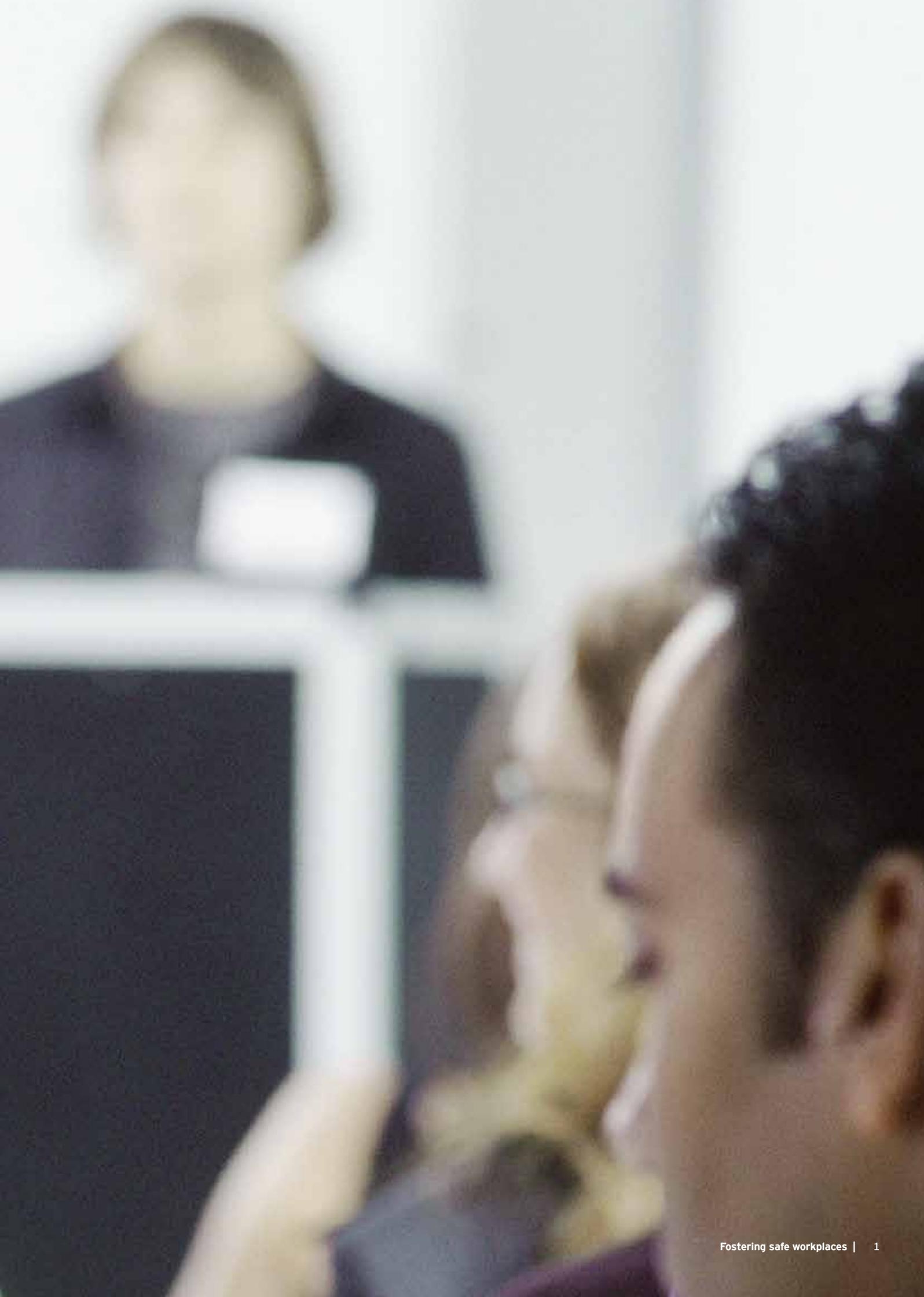
Fostering safe workplaces

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



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Introduction

The regulatory push toward effectively addressing concerns about sexual harassment at the workplace has driven a noticeable change within corporate India. Companies have been striving to ensure their compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and implement the mechanisms needed as per its provisions. The initial phase of this shift required for them to deal with the intricacies of equipping their management and internal complaints committee (ICC) with the appropriate understanding and tools to address such cases. The next phase will be an entirely different journey, as enforcement of acceptable behaviour and principles mandated by the Act is interpreted basis each case brought forth for investigation, by all parties involved. It is at this stage that companies need to appropriately enforce their position and ensure it echoes through their ranks - especially in the case with the management. The senior management needs to be actively involved in setting the right tone within a company, in order for the recommendations put forth by the ICC to be correctly administered.

While India is certainly paving a way for a more gender-balanced workforce, it is imperative that a strong sense of public opinion against sexual harassment prevails. The past years have seen awareness levels increase significantly, through training and consistent communication from a compliance standpoint. This reason for acceptability needs to go beyond just complying for the sake of compliance - it needs to resonate with individuals at a more personal level.

Taking cue from the magnanimity of the situation and the need for prompt action to be taken in the correct manner, FICCI and EY have collaborated to identify the changing dynamics of the workforce with regard to prevention of sexual harassment of women. This report is an endeavour to decipher how far we have reached with respect to combating this issue and aims to highlight a few considerations that would serve as enablers for companies treading this path.



A Singh

Arpinder Singh
Partner & National Leader
Fraud investigation & Dispute Services

Foreword

Over the past decades, the workplace has become a much more diverse space. With increasing representation of women to the total workforce, India aspires to create gender equality among its working population. It has thus become imperative to ensure that women are safe at the workplace. While physical safety and security of women is an important aspect, corporates are serious about addressing women's concerns about sexual harassment at workplace.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been a watershed in the history of India's attempt to ensure a safe and conducive working environment for women. The Act not only puts in place necessary mechanisms for the safety and security of working women, but also provides the much needed fillip and direction to the efforts of corporate India to ensure an unbiased and gender neutral working atmosphere. In the recent past, there has been a marked improvement in the approach of the management in bringing down cases of sexual harassment at workplace by setting up necessary preventive mechanisms and internal complaints committee (ICC). However, the next step in completely eliminating incidences of sexual harassment is through higher level of awareness, trainings, and consistent and clear communication against sexual harassment from a compliance perspective.

This report is an attempt to provide impetus to efforts to eliminate sexual harassment at workplace beyond the confines of the legal into the realm of the personal. The report also provides topical issues on the current state of affair that have been witnessed in organizations while dealing with such cases. It illustrates how employers need to react to specific cases where there are disparities in perception and misgivings about instances that fall under the purview of the law. It is the responsibility of the employer to provide a safe work space for women. This is not only a legal obligation, but is also required for the growth of the organization. The issue, if not taken seriously, will send a wrong message to the employees. A sense of insecurity will prevail among the employees resulting in lower job-satisfaction and turnover, hence, causing loss of valuable employees, and thus incurring economical costs.

I am confident that this report is an important step in the direction to ensure a safe and gender balanced workforce and will be useful to employers, employees, members of ICC and policymakers.



A handwritten signature in black ink, appearing to read 'A. Didar Singh'.

A. Didar Singh
Secretary General
FICCI

What does the Act entail?

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

The Act aims to provide protection against sexual harassment of women at the workplace and the prevention and redressal of complaints of sexual harassment and for connected matters. The provisions laid under the Act aim to protect the interest of all women employees and fuel the adoption of good governance practices.

What is sexual harassment?	“Sexual harassment” includes unwelcome acts or behavior (whether directly or by implication) such as physical contact and advance, a demand or request for sexual favors, making sexually colored remarks, showing pornography etc.
Who does the Act apply to?	Applies to an “aggrieved woman,” which is a woman, of any age and whether employed or not, who alleges to have been subjected to any act of sexual harassment.
Who is responsible for implementing the provisions of the Act?	Employer’s responsibility: <ul style="list-style-type: none"> ▶ Provide a safe working environment ▶ Constitute the Internal Complaints Committee (ICC) ▶ Display the penal consequences of sexual harassment at a conspicuous place in the workplace ▶ Organise orientation programmes for the members of the ICC ▶ Organise awareness programmes for employees
Where is it applicable?	At the “workplace,” which includes “any place visited by the employee, arising out of, or during the course of employment, including transportation provided by the employer”.

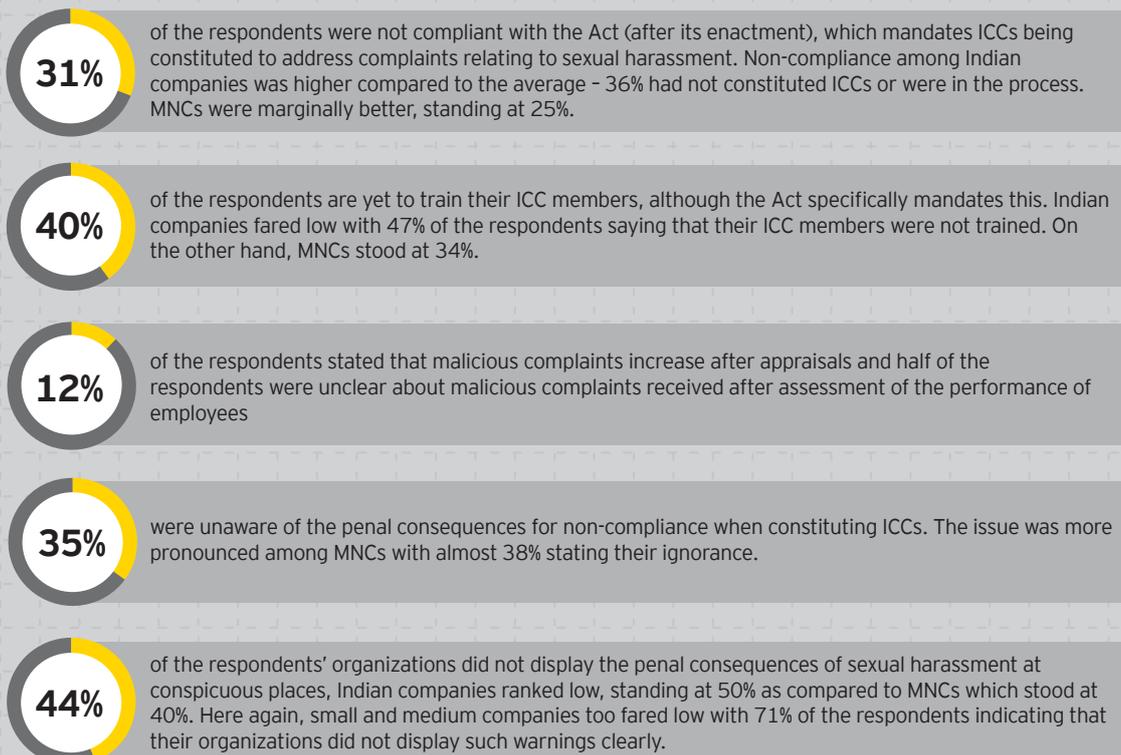
Impact of the Act on the employer

Employer’s accountability	The Act deems the employer responsible and accountable to provide a safe working environment. Failure to perform these duties would result in conviction or a fine. Repeat conviction will result in double the amount of fine with penalty in the form of cancellation of the company’s licence, withdrawal of the registration.
Establishment of an ICC	The provisions of the Act mandates the constitution of an ICC for all organizations with more than 10 employees. Different ICCs are required in case there are multiple offices.
Orientation programs	It is mandatory for the employer to organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act. The employer also needs to hold orientation programs for the members of the ICC.
Set up a Grievance Redressal Mechanism	The employer is required to form a Grievance Redressal Mechanism so that women employees can approach the organization and voice their concerns around possible instances of harassment at the workplace.
Following the complaints procedure	An “aggrieved woman” can file a complaint of sexual harassment in writing within a period of three months from the date of such incident.
Reporting and inquiry report	On the completion of an inquiry, the ICC will be required to provide a report of its findings to the employer within 10 days of completion of inquiry. The employer is also required to monitor timely submission of reports by the ICC. The employer has to act upon the recommendations within 60 days of the report date.

Pulse-check: Assessing industry sentiments

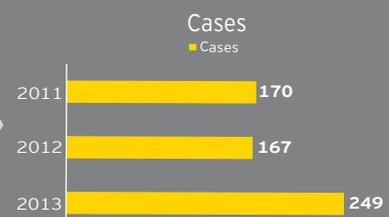
EY Fraud Investigation & Dispute Services recently conducted a survey titled *'Reining in sexual harassment at the workplace in India'* to gauge corporate India's perception of the transformation being witnessed due to the enactment of the Act. The key findings showed that companies are focused on driving an emancipating change, although uncertainty, caution and introspection are still highly prevalent.

Are companies equipped to deal with sexual harassment at the workplace?



According to the data compiled by the National Commission for Women (NCW), there is a noticeable rise in sexual harassment at the workplace

526 Complaints were reported in 2014



Mapping the path companies tread in their endeavours to prompt change

Ambiguities of law

The Act has outlined specific guidelines for appropriate addressal of sexual harassment of women. While its enactment has driven a heightened need for companies to incorporate effective and dedicated mechanisms to tackle such cases, there are several misgivings about technicalities and interpretations that are now emerging.

For instance, in a certain scenario the company conducted a hearing on a sexual harassment case without the NGO member of the ICC present. The committee passed a ruling in favour of the aggrieved woman at the time. The perpetrator thereafter registered a case in the lower court, basing his appeal on the missed technicality; that all ICC members were not present during the session.

Another case highlighted the disharmony sensed from the management when the ICC took a stance at terminating a perpetrator. The management was disconcerted about the ICC's ruling and the finality of it, as the law quotes the term 'recommendation'. Although the terminology may be misleading it does clearly state that "The employer shall implement the recommendations made by the ICC or the LCC and send the report of such implementation to the ICC or the LCC. (Section 12(3))". The ICC is a quasi-judicial body and its recommendations are equivalent to any judicial ruling.

In addition, according to the Act every employer should constitute a Committee to be known as the ICC.

How does the employer react to such instances?

The ambiguity created through such instances creates a resultant unrest within a company. Such cases have the potential to severely impact an organisation's brand quotient and therefore need to be dealt with extreme diligence and caution. The company needs to ensure that both management and the ICC are adequately sensitised during such investigations and appeals.

The market currently seems to be witnessing an increase in individuals resorting to litigation for such instances. This is a reaction that is ideally witnessed when the company's measures fail to instil the necessary trust in its processes and mechanisms. It is undoubtedly difficult to weather this tide; however it is possible through positive synchronisation of ideals within a company's ranks.

The law casts an obligation upon the employer to address grievances in respect of sexual harassment of women at workplace in a time bound manner, which in several cases may not be possible as the employees or witnesses involved may not easily or readily co-operate.

Disparity in perception and misgivings about instances that fall under the purview of this law

ICC members may have come across several instances where the perpetrator may not be aware that he is violating any law. Such instances usually comprise inappropriate communication through sexually coloured jokes, teasing, uncomfortable proximity, etc. The core issue here is that many individuals including women were unaware about being able to report such acts if they were made to feel uncomfortable, and therefore these cases had traditionally been overlooked. With the Act coming into form and awareness levels increasing, there is a disparity that currently seems to exist between the acceptability of such mannerisms and the intent behind the action. While the ICC may inherently be instituted to protect women, they need to ensure that each instance is effectively probed to determine the intent of the perpetrator and diligently judge the case.



Senior management unwilling to accept that such instances occur in their organization

It is the most imperative for a company's senior management to harbour the right sentiment in dealing with this sensitive issue. One of the key elements in achieving this mind-set is the acceptance quotient that is still questioned during discussions today. This is primarily the case with larger companies that find it difficult to acknowledge that such instances could take place within their environments too. It is another matter that they have implemented the required mechanisms as mandated by law. This creates a dichotomy between thought and action which unfortunately penetrates through the company. While it may seem a trivial aspect at the onset, it sets a discomforting tone as employees may feel that any complaint made in this regard could be unduly dismissed.

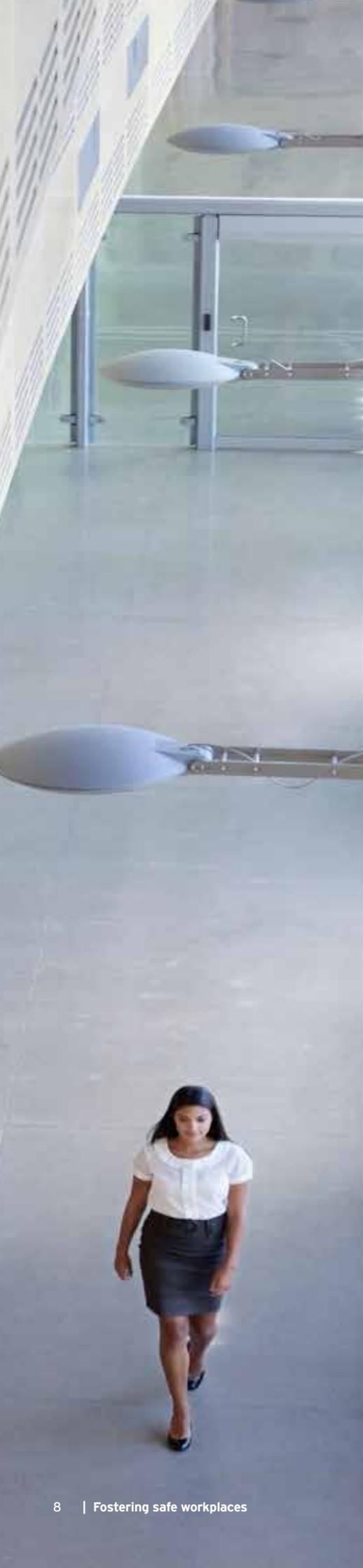
Fluid workplace

The issues arising out of a fluid workplace are relatively challenging in comparison to fixed workplaces. Many industries require employees to either travel or conduct business interactions at external locations. Given the nature of the workplace and the accompanying atmosphere it may present, there seem to be considerable ambiguities around dealing with complaints of misbehaviour at these areas. The inconsistency of workplace premises (coffee shops, pubs etc.) may create a dilemma for the investigation. The ideal way to tackle such instances is to prevent harassment occurring in the first place - and to minimise the risk of liability if it does. For this, the employer should ensure employees are aware that any inappropriate behaviour will be intolerable at any place of work, irrespective of the nature of the environment.

What is "workplace" according to the Act?

Workplace includes:

- ▶ Any department, organisation, undertaking, establishment, enterprise, institution, office, branch, or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a cooperation or a co-operative society;
- ▶ Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- ▶ Hospitals or nursing homes;
- ▶ Any sports institute, stadium, sports complex or competition or games venue, whether residential or not, used for training, sports or other activities relating thereto;
- ▶ Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such a journey;
- ▶ A dwelling place or a house



Dating policies

The significant amount of time spent at work often leads to “closeness” amongst employees which may culminate in romantic relationships. It is not uncommon to find that when such romantic relationships end bitterly, the work environment and productivity are impacted. Employers have overlooked this area, considering that it could overstep professional limits. However, such cases could potentially have a detrimental impact on the organisation in the long term.

While a relationship may begin as a consensual one, it could turn sour over time. Consider this; what could be the consequences of one partner moving on, while the other does not? What if the latter continues the pursuit? Is it possible to segregate emotions appropriately when both parties working in the same office will see each other every day? Such situations are like a ticking time bomb as they are likely to lead to sexual harassment cases, thereby creating a considerably difficult situation for any ICC to deal with. Furthermore, such dating practices that take place within the same department/hierarchy create further liability on the employer for being unable to provide a safe work environment.

What are some of the workplace issues that can arise when supervisors and subordinates get romantically involved?

- ▶ Perceived favouritism by other employees
- ▶ Diminished credibility of the supervisor in the eyes of his/her team
- ▶ Lowered employee morale
- ▶ Potential conflicts of interest
- ▶ Violations of company policy
- ▶ Challenges to consistent enforcement of company policy
- ▶ Discrimination claims by other employees
- ▶ Internal gossip and rumours that can impact the overall work environment and the longer term careers of the individuals who are involved in the romance
- ▶ Privacy issues associated with employer inquiries into the romance

Employers therefore need to ensure they outline policies to clearly outline their stance on such relationships. This prevents a host of HR issues as well as sexual harassment or discrimination claims by one of the partners if the relationship ends badly.

Making an exit: Asked to leave (ATL) versus Termination

For obvious reasons, most companies would prefer that such cases are dealt with in a more confidential manner. This is why most perpetrators that are found guilty of inappropriate behaviour are usually ‘Asked to Leave’. This creates a rather grave problem – the person’s reputation isn’t tainted and therefore any other company that may choose to employ him would be unaware of this past history. This would essentially mean that this in itself is not a justifiable punishment and could mean that he may conduct himself inappropriately in the future as well. Many companies have misunderstood this key element, and in the interest of safeguarding their own reputation, have set the perpetrator free without the stigma associated with termination. Companies have traditionally been wary of taking strong action as it could result in the disgruntled employee resorting to legal recourse.

This is an important aspect that companies have to consider and incorporate into their procedures, as a mere request to be asked to leave does not effectively set precedence for future outliers.

Industry speak*

“We are committed to creating a safe and secure workplace where our employees and business partners can work together in an environment free from harassment and exploitation. We view it as an essential requirement to encourage greater participation of women at work. We have zero tolerance for sexual harassment and undertake regular initiatives at our offices and at client sites to spread awareness about the need for creating a safe and secure work environment and education on sexual harassment laws. We have a policy against sexual harassment at workplace and will take serious disciplinary action against any employee who is found guilty of committing such an offence. “

- Mr. Ashok Bajpai, Managing Director, G4S Corporate Service (India) Pvt. Ltd.

“There is no doubt about the fact that women’s safety at workplace has become a critical matter for any organization. Harassment and violence against women at the workplace is not a private, individual, or isolated problem, it affects us all, and we have a role to play in ending it. Safety should not be just confined to the physical environments of the office but should go beyond that. Safety encompasses empowering the employees with the information on their rights and responsibilities, creating awareness about reporting procedures without fear of discrimination and biases, sensitization across gender on dignity of an individual. As the workplace becomes more diverse, organizations should try to sensitize employees on what constitutes harassment and accordingly eliminate the stereotype surrounding women. The sense of security at the workplace improves women’s participation in work, resulting in their economic empowerment and inclusive growth. Effective measures like CCTV cameras, manned entries & exit by security personnel’s can help make office premises much safer for women.”

- Major Manjit Rajain, Group Chairman, Tenon Group

“Women in India have always been a leading force in forging this nation’s destiny, even more so in the 21st century. They continually lead in all fields including defence, corporate and the government sectors. It is our responsibility to ensure we make our society a safe inclusive workplace for our women colleagues.”

- Colonel Harendra Bana, Head Security - PepsiCo India Region

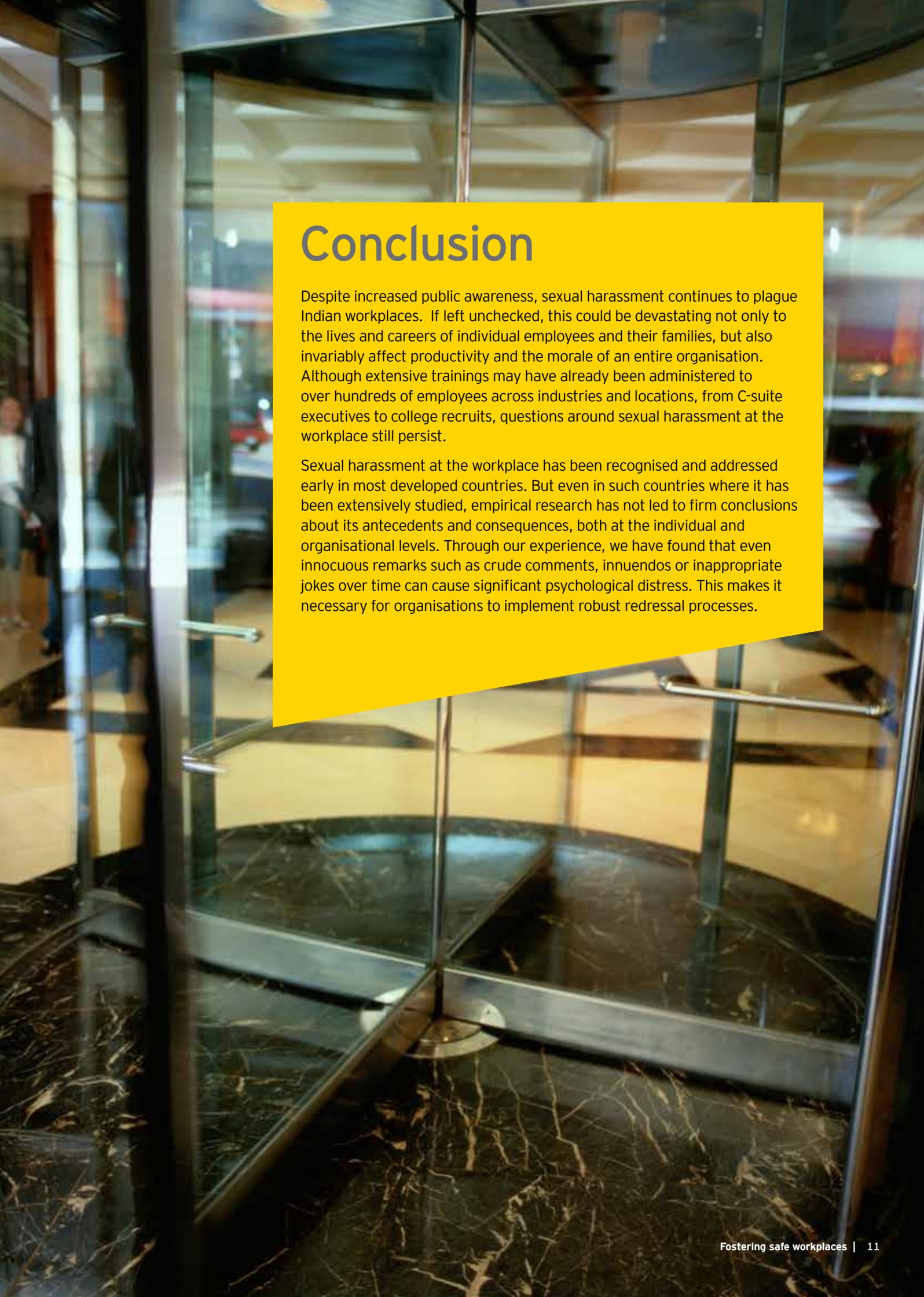
“A discussion on the sexual harassment law and its implementation in the corporate sector is as timely as it is necessary. The law has made it mandatory for corporations and businesses to set up committees and to put in place all the steps needed for effective implementation. This is not a simple matter of putting in place legal practices, rather it requires transformations at many levels, social, behavioural, educational and in workplace dynamics and practices. To make this law work, and to transform our workplaces into egalitarian and gender sensitive spaces, we will need to understand its opportunities and challenges.”

- Ms. Urvashi Butalia, Chairperson, FICCI Committee on Publishing and Director, Zubaan

*Disclaimer: The quotes have been obtained from the industry as a response to an inquiry about their stance on prevention of sexual harassment of women at the workplace.

Key considerations

<p>Invoke a strong commitment to this cause</p>	<p>Organisations need to focus on giving appropriate trainings to employees so they are aware of the nature and scope of sexual harassment at the workplace. They also need to advocate a zero tolerance policy and at the same time, encourage women to report such incidents in time.</p> <p>If the organisation is a MNC, a global training module might not be adequate, it is essential to have a localised training module which complies with the applicable laws in India.</p>
<p>Utilise diligent investigative mechanisms</p>	<p>Malicious complaints do surface from time to time, more so around performance reviews or appraisals. It is imperative that organisations conduct thorough investigations into such complaints and in cases where malafide intent is found, take strict disciplinary action against the complainant to ensure that there is no misuse.</p> <p>The Act has inbuilt mechanisms to effectively deal with malicious complaints and even recommends that disciplinary action shall be taken against anyone filing a complaint or giving false information, knowing it to be false, and with a malafide intent.</p> <p>All managers and supervisors could be instructed to keep a vigil in the workplace and report any untoward incident to the senior management at the earliest.</p>
<p>Create a mechanism to address different perspectives</p>	<p>A key area of concern in sexual harassment at the workplace is its perceptual nature, which may be viewed differently by different individuals. These divergent opinions could be due to many reasons, including a communication gap that may have been developed over a period of time. Hence it is essential that at the very onset, every employee needs to be educated to understand what may constitute sexual harassment.</p>
<p>Manage issues effectively</p>	<p>The ICC tends to receive a gamut of complaints which varies in nature and intensity. These could be from basic complaints around receiving unwanted attention such as flowers or gifts, to cases of severe harassment such as abusive work relationships or misuse of power. These can lead to mental and emotional distress on a daily basis. Each case comes with its own distinctive set of facts and circumstances and should be dealt with accordingly by the ICC.</p> <p>Regular skill building workshops for the ICC, awareness sessions that percolate down to the grass-root level (junior-most employee or contractor), a non-prejudiced and fair ICC, swift and timely action by them, employers' initiative to deter such improper behaviour, setting the tone correctly at the top are some of the ways that organisations can effectively combat sexual harassment at the workplace.</p> <p>All complaints of sexual harassment should be handled in a sensitive manner and be addressed seriously by the management.</p>

A photograph of a glass revolving door in a modern building lobby. The door is made of glass and metal, and is set on a dark, patterned marble floor. The background shows a brightly lit interior with other people and architectural details. A large yellow rectangular box is overlaid on the right side of the image, containing text.

Conclusion

Despite increased public awareness, sexual harassment continues to plague Indian workplaces. If left unchecked, this could be devastating not only to the lives and careers of individual employees and their families, but also invariably affect productivity and the morale of an entire organisation. Although extensive trainings may have already been administered to over hundreds of employees across industries and locations, from C-suite executives to college recruits, questions around sexual harassment at the workplace still persist.

Sexual harassment at the workplace has been recognised and addressed early in most developed countries. But even in such countries where it has been extensively studied, empirical research has not led to firm conclusions about its antecedents and consequences, both at the individual and organisational levels. Through our experience, we have found that even innocuous remarks such as crude comments, innuendos or inappropriate jokes over time can cause significant psychological distress. This makes it necessary for organisations to implement robust redressal processes.

About EY Fraud Investigation & Dispute Services

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- ▶ Anti-bribery and Anti-corruption Compliance Services
- ▶ Dispute Advisory Services
- ▶ Competition and Trade Services
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- ▶ Third-party Due Diligence
- ▶ Whistle-blowing Services
- ▶ Supply Chain Compliance
- ▶ Data Integrity Reviews
- ▶ Forensic Technology & Discovery Services
 - ▶ Computer forensics
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 - ▶ Software License and Forensic Disputes Services
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- ▶ **Deep competencies:** Our FIDS team has specific domain knowledge along with wide industry experience.
- ▶ **Forensic technology:** We use sophisticated tools and established forensic techniques to provide requisite services to address individual client challenges.
- ▶ **Global exposure:** Our team members have been trained on international engagements and have had global exposure to fraud scenarios.
- ▶ **Market intelligence:** We have dedicated field professionals, who are specifically experienced and trained in corporate intelligence, and are capable of conducting extensive market intelligence and background studies on various subjects, industries, companies and people.
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About FICCI Security Department

FICCI has many specialized committees where key concerns of the industry are debated and discussed with the specific aim of presenting the recommendations to the Government for favourable decisions.

Considering internal security is the backbone of growth and overall development of a nation, FICCI has constituted two specialized committees to look into various aspects of security -

- ▶ Committee on Homeland Security (HLS) is chaired by Mr. G. K. Pillai, Former Union Home Secretary, Govt. of India, which is working towards bridging the gap between policing and technology.
- ▶ Committee on Private Security Industry (PSI) is chaired by Ms. Manjari Jaruhar, Former Special DG - CISF, Govt. of India. The committee has been advocating for key policy issues confronting the industry.

Some of the focus areas:

- ▶ **Police Modernization:** FICCI is working towards bridging the gap between policing and technology. We engage with various enforcement agencies and provide them a platform to interact with industry, to articulate their requirements and to understand new technologies for security. This initiative is under our umbrella theme of "Safe & Secure Nation".
- ▶ **SMART Policing:** FICCI has initiated the process of examining the details of reforms in SMART Policing across the country and will share the same with the relevant ministries/departments to help Government and police departments in learning from the experiences of other states and also for possible adoption of some of the best practices. FICCI has also been advocating for the cause of SMART policing and its relevance for India's growth.
- ▶ **India Risk Survey:** FICCI every year conducts survey of risk as perceived by corporates, which could affect business continuity. The objective of the report is to inform and sensitise all stakeholders about the emerging risks for a developing economy like India, so that well planned and strategic policy decisions can be made.
- ▶ **Security Standards and Guidelines:** FICCI is working with the Bureau of Indian Standards (BIS) for creation of standards and guidelines for electronic security.
- ▶ **Road Safety:** United Nations has proclaimed 2011-20 as the Decade of Action on Road Safety. FICCI feels that the Indian Industry can play a significant role in addressing the issue of road safety and will be promoting potential private sector interventions in Road Safety through their core business activities.
- ▶ **Capacity Building Programmes:** FICCI has initiated capacity-building programmes and workshops as an attempt to increase awareness about Women Safety at Work Place, Forensics of Fraud Detection, White Collar Crimes, etc.
- ▶ **Public Procurement for Internal Security:** FICCI is working towards advocacy for bringing well-defined procedures for fair and transparent procurement of security products and solutions, so as to provide level playing field to the industry.
- ▶ **Enforcement of Private Security Agencies Regulation (PSAR) Act 2005:** Major portion of the private security industry is unorganized. FICCI is advocating the proper enforcement of the Act.
- ▶ **Armed Security for Cash Logistics:** FICCI is advocating for a well-articulated policy for deployment of armed private security guards for protection of cash vans, which carry crores of public money every day.

- ▶ **Private Security Workers' Categorization as Skilled / Highly Skilled Workers:** FICCI is working towards appropriate categorization of the private security guards.
- ▶ **Minimum Standards / Guidelines for Cash Logistics Companies:** FICCI is advocating for establishment of standards and operating guidelines for cash logistics companies.

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About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies.

A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry. From influencing policy to encouraging debate, engaging with policy makers and civil society, FICCI articulates the views and concerns of industry. It serves its members from the Indian private and public corporate sectors and multinational companies, drawing its strength from diverse regional chambers of commerce and industry across states, reaching out to over 2,50,000 companies.

FICCI provides a platform for networking and consensus building within and across sectors and is the first port of call for Indian industry, policy makers and the international business community.

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