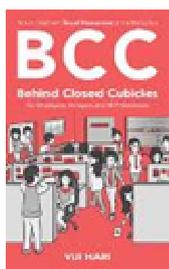


Excerpts from the book BCC: Behind Closed Cubicles



BCC : Behind Closed Cubicles: For Employees, Managers and HR Professionals

by **Viji Hari**

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This book BCC is a collection of 18 short, real life stories of Sexual harassment at across the Indian Workplace.

BCC, demonstrates, through a collection of short stories, how apparently harmless statements and actions have impacted people at the workplace. The short stories are based on real life sexual harassment incidents from across the Indian corporate world. Stories that include both genders, and range from freshers to CXOs, and across different industries.

BCC attempts to give tips and share best practices to Employees, Managers, HR, Committee members, Employers, etc., so the reader is better equipped to deal with different forms of incidents. Below are some snippets from the book from the Afterword section.

Over the last couple of decades, the media has elaborately reported some of the scandalous and high-profile cases in India:

- Ashok Kumar Ganguly: The former Supreme Court judge stepped down as head of the West Bengal human rights commission in 2014 after a law intern accused him of sexually harassing her in a hotel room.
- The case of KPS Gill, former Punjab director general of police. Gill was found guilty of outraging the modesty of Rupan Deol Bajaj, an IAS officer, by a trial court in 1996. She had complained in 1988 that Gill had made sexual advances at a party where he was allegedly drunk.
- In Haryana, SPS Rathore, former inspector general of police. Rathore was convicted in 2009 for molesting 14-year-old Ruchika Girhotra in 1990. After years of harassment by officials, Ruchika committed suicide in 1993.
- RK Pachauri — The Energy and Resource Institute (TERI) Director General, Nobel Laureate and former environment minister's involvement in a case of sexual harassment is one of the most shocking cases. On May 2015, an internal probe by TERI found that RK Pachauri was guilty in the sexual harassment case filed against him by a woman colleague. TERI committee also recommended disciplinary action against Pachauri. The committee found that Pachauri's repeated attempts to build a personal relationship with the woman had amounted to 'sexual harassment.'
- Possibly the most notorious case of them all. The former Tehelka chief was accused of sexual assault during a Goa event by a former colleague. The case grabbed international headlines after allegations that staffers at Tehelka had tried to bury the complaint.
- Phaneesh Murthy's initial case as one of India's best known software executives and a rising star. Phaneesh Murthy had to resign from Infosys in 2002 after his secretary Reka Maximovitch accused him of sexual harassment.

Vishaka case and guidelines

Vishaka is the women's rights group that filed a PIL in the Supreme Court of India — the case of Bhanwari Devi vs. the State of Rajasthan in 1997. Bhanwari Devi was a woman from a potter community who tried to prevent a child marriage that was being conducted as part of her duties as a worker of the Women Development Programme. She was raped by the landlords of the community in order to teach her a lesson. The rape survivor did not get justice from the Rajasthan High Court and the rapists were allowed to go free.

This resulted in the Vishaka guidelines, which deals with sexual harassment of women at the workplace. The verdict defined sexual harassment, laid down duties of employers in dealing with complaints and stipulated formation of committees to address complaints from victims of harassment.

Prior to this verdict, the person facing sexual harassment at workplace had to lodge a complaint under Section 354 or 509 of the Indian Penal Code (IPC).

On 9th December 2013, the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** came into force. This statute superseded the Vishaka Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

4 key steps to be compliant with the Act:

- Sexual Harassment Policy creation in compliance to the Act – detailing the Employee and Employer's roles and responsibilities; Complaint and Redressal mechanisms.

- The setting up of an Internal Committee as per guidelines that is equipped to ensure prevention and redressal. This should handle complaints after a thorough investigation and recommend actions to be taken.
- Ensuring awareness among the Internal Committee and Employees by way of training on the Act and on the Complaints and Redressal mechanisms as detailed in the policy.
- Statutory reporting of the cases filed, action taken should be reported and filed in the Company's annual report.

Some Observations on what the Act states:

- Employment rules/service rules should also be amended to include:
- Termination or action taken due to sexual harassment at workplace based on and in compliance with the Internal Committee (IC) report or findings.
- Victim has the right to ask for a transfer or leave during pendency of enquiry
- Per law, there should be an IC formed at every branch of the company in the country, where there are more than 10 employees. The District Officer is required to constitute a Local Committee at each district, and if required at the block level.
- IC is also applicable for an all-men branch. As even a lady vendor or a lady visitor to the workplace needs to have the option of raising the complaint.
- IC – can also be headed by a Senior male employee in case a Senior woman is not available in a particular branch. But in all, there should be 2 women as part of the IC including the 3rd party NGO representative.
- The IC is required to complete the inquiry within a time period of 90 days.
- Annual Statutory reporting – as part of the Annual report that every company files, the number of cases reported and action taken should be published.
- A victim has to raise a complaint within 3 months of the incident.
- Sexual harassment at the workplace is a criminal offence as per the changes made in IPC. So a victim can raise a criminal complaint case as well as a case with the ICC and both can run in parallel.

Role of Employer:

- Provide a safe working environment for persons coming in contact with the workplace.
- Create and empower the Internal Committee as defined in the Act.
- Ensure your organization's anti-sexual harassment policy is aligned with the provisions of the new law.
- Display conspicuously at the workplace, the penal consequences of sexual harassment and the composition of the Internal Committee.
- Organize workshops and awareness programmes periodically for sensitizing employees on the Act and organizing orientation programmes for members of the Internal Committee.
- Changes to the employment contracts/Service rules to make the employees are legally bound for the acts of sexual harassment at the workplace.
- Submit necessary information pertaining to sexual harassment to specified authorities.
- Help your employee to initiate legal action against the perpetrator (if the perpetrator is not an employee) under criminal law.

Role of Internal Committee at the workplace:

- Shall provide assistance to the victim to make the complaint in writing.
- Complaints need to be filed within 3 months from the last incident occurrence date. IC may extend the time limit by another 3 months.
- Before initiating an inquiry, at the request of the aggrieved woman, IC must take steps to settle the matter through conciliation.
- Shall recommend action during pendency of inquiry like granting leave or transferring either the victim or respondent.
- If IC arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required.
- If IC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer:
 - To take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.
 - To deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.
- If Internal Committee arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or witness or any other person making the complaint has made the complaint knowing it to be false or has

produced any forged or misleading document, IC may recommend to the employer or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules or as may be prescribed.

- Shall record the settlement of an inquiry and forward to the employer to take action as per the recommendations.
- Shall share copies of settlement to the victim and respondent.
- Committee to submit annual report in each calendar year and prepare the cases received, disposed, pending and preventions measures during the year and submit the same to the employer and the District Officer.
- The role of the Committee will not be restricted to complaint resolution but will encompass prevention measures as well.

Confidentiality:

Every aspect of an investigation should be kept confidential. Maintaining confidentiality is critical to the integrity of an investigation. There can be serious consequences for failing to ensure that confidentiality is maintained. These consequences include:

- Damage to someone's reputation if others learn that the allegations were made.
- The success of the investigation can be undermined if others know of the investigation.
- The subject of the investigation could try to cover-up any misconduct if they learn they are being investigated.
- The company may face liability or negative publicity.
- The company's ability to defend any legal action associated with the matter could be compromised.
- The disclosure of the information could cause retaliatory action.

If you are victim, how to deal with Sexual Harassment:

- Make it clear to the harasser that you consider the behaviour as harassment.
- Say a firm 'NO' and tell the person to stop contacting you.
- Stop answering the person's calls, emails, and other messages.
- Delete or mark the number as spam in your phone and social media accounts.
- Inform your friends and family what's going on.
- Don't publicize your location and daily habits.
- Keep records and evidences.
- Talk to the HR, Internal Complaints Committee or Harassment cell at your institution or workplace.
- If you work in an unorganized sector or organisation with less than 10 employees, then reach out to the Local Complaints Committee.

If it is a rape or an assault or any form of criminal act, then a Police complaint needs to be lodged under the Indian Penal Code.

