

Annual Review on the State of Sexual Harassment in India

2022 EDITION ●

STOP
SEXUAL
HARASS
MENT

Review on the 2021 Application of The
Sexual Harassment of Women at Workplace
(Prevention, Prohibition and Redressal) Act
2013 in the Formal and Informal Sectors.



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ANNUAL REVIEW ON THE STATE OF SEXUAL HARASSMENT IN INDIA

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We would like to extend our gratitude to The Women's Development Cell of Sri Venkateswara College, the Executive and Non-Executive MBA batches from JAGSoM University, the India Chapter of the Asian Medical Students Association, and everyone else who helped us reach out to the workers in the informal sector, especially Tulica Bhattacharya, for their tireless efforts in gathering survey data and sharing their insights on the Act, without which, this report would not have been possible.

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“

A huge flaw I see with the laws on sexual harassment in the workplace is how it is viewed - the PoSH Act sees the issue of sexual harassment at the workplace as a “women’s issue” and not as a labour issue. The focus is placed largely on the women, seeing them as the problem and takes away from the real problem which is hostile workplaces - which greatly diminishes the importance of the context in which the harassment is experienced – the workplace. It is crucial that the current legal framework ensures that workplaces that have traditionally been male-dominated spaces become inclusive and welcoming environments for women, changes the perspective with which sexual harassment at workplaces is viewed and embraces it as a labour issue.

Ragini Das

Co-Founder, Leap Club

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Preface


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- 1 *Rishika Sharma works with the Research Advisory vertical at Satva Consulting. She was also chosen as one of the gender advocates from the South Asia and MENA regions for the Swedish Institute's Leader Lab 2021 and has been invited to speak at numerous fora.*
- 2 *Rishika is the National President of the Council of Ethics at the Women's Indian Chamber of Commerce and Industry (WICCI).*

1.1

Response to the First Edition

- 3 As citizens of a democracy, we are all equally responsible for bringing about conducive changes in the social and political landscape of our country. To bring about any kind of change requires initiative, especially dialogue.
- 4 In preparation of the two editions of this Annual Review, we have come to realise the importance of conversations in the creation, preservation, and evolution of change in tandem with the needs of an evolving society.
- 5 Following the launch of the first edition of this Review in 2021, we were overwhelmed with the feedback we received from diverse stakeholders. The report also found mention in media journals and news articles, including Economic Times, the Gulf News Daily, Business Insider, and TV9 Hindi to name a few.

1.2

Changes in the Formal Sector

- 6 While jurisprudential advances in the direction of strengthening the Act have taken place over the course of the last year, many hurdles still remain to be crossed to ensure workplace safety for all.
- 7 These hurdles include hesitation among employees for filing complaints, lag in the renewal and addition of training materials used by HRs and ICs, as well as the highest command in the redressal of cases of sexual harassment at the workplace still being vested with the top management of most companies, among others. However, significant strides have been made in imparting awareness about the rights of employees in cases of workplace sexual harassment, with a majority of employees reporting that they were aware of the same.
- 8 This year's report also takes into account changing workplace dynamics as the formal sector underwent rapid digitisation, consequently blurring the lines between work and personal life. With most people now working late into the night and even on weekends, and office spaces having been moved into people's homes – instances of sexual harassment have also taken a different form.

- 9 This pushes the bar further on how extensive the definitions under the Act need to be, calling for a long-pending revision of the same.

1.3

Inclusion of the Informal Sector

- 10 Throughout the preparation of the first edition, the one gap that we were constantly aware of, was the absence of the informal sector, owing to the challenges posed by the pandemic-induced lockdowns and migrant displacements that made data collection difficult.
- 11 In this edition, we utilised the period between the second and third waves of the pandemic to survey the informal sector as extensively as possible. For this, we are indebted to the teams from The Women's Development Cell of Sri Venkateswara College, the executive and non-executive MBA batches from JAGSoM University, the India Chapter of The Asian Medical Students Association, and everyone else who volunteered to help us reach out to those working in the informal sector.
- 12 It was over the course of these conversations with informal sector workers, that we came across stories that were important to be heard. From uprooting one's life to escape constant harassment and abuse, and being unaware of the reason behind the accused's release on bail; to fearing social ostracisation and having one's calls for help going unheard.
- 13 These stories shed light on the need to increase conversations in relation to the informal sector. As such, we have provided these stories a stage of their own in this edition because they have helped us reiterate our understanding of the reasons why this review exists in the first place.

1.4

Not Just a 'Woman's Issue'

- 14 As part of the ground work that was done for this year's Survey, the extent of workplace sexual harassment in both the sectors, as well as the apathy towards it, was made more visible to us. From being called names due to one's sexual identity, to being overtly mocked for the way one dressed or conducted themselves – each person we spoke to was not merely a respondent to our Survey but a living proof of the need for the Act to be expanded to include people from all genders and all walks of life under its ambit. Work and conversations around preventing sexual harassment need to go beyond the mainstream gendered understanding of such violence.

Foreword



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- 15 *Shivani Bagdai is the Founder of TriChambers, a full-service Organisation Consultancy. She is also an Advisor to the Eight Goals One Foundation with whom she has co-developed a Methodology on fair decision-making, propagated by the UNESCO New Delhi.*
- 16 *Shivani is the Delhi State President at the Council of Ethics of the Women's Indian Chamber of Commerce and Industry (WICCI).*

2.1

Opportunity for Independent Work

- 17 Over the course of the past two years, the world witnessed a shift from physical spaces to the virtual world, at least for those of us who could afford it. To understand the challenges that today's workforce faces, it is important to understand the nature of the transformation that work and workplaces have undergone.
- 18 In a 2020 report published by our colleagues at The Associated Chambers of Commerce and Industry of India (ASSOCHAM), it was found that the number of independent workers in India's workforce is close to 15 million. These workers are engaged across IT, HR, and Planning sectors of the formal economy. At the time when this report was published, this number was increasing at the rate of 4 million additional workers every year and the majority of this demographic comprised of young adults, especially fresh graduates. Independent work offers flexibility, wherein workers can determine the nature of and number of hours they work, reducing the dependence on static and physical workspaces.

2.2

Formalisation of Gig and Contractual Workers

- 19 The introduction of the Code on Social Security in 2020 by the Government of India brought to light the community of "giggers" or platform workers. With the pandemic leading to disruptions in the job market, many found themselves out of jobs or in need of supplementary sources of income. This led to a significant increase in the number of people opting for third-party services which assist workers in finding gigs.
- 20 The Code on Social Security (hereinafter referred to as "the Code") defines a gig worker¹ as "a person who performs work or participates in a work arrangement and earns from such activities outside of the traditional employer-employee relationship". According to the Code, a platform worker is an individual working for an organisation that provides specific services using an online platform directly to individuals or organisations, such as Uber and Ola drivers. The addition and the distinction between these two definitions helps formalise the existence of contractual workers as part of the workforce.

1 Section 2 (35) of the Code on Social Security

2.3

Role of Aggregators

- 21 The gig economy functions with the help of aggregators. Aggregator models of business use e-commerce spaces to collect information pertaining to specific goods and services from various market sources. This information, when published on aggregator platforms, serves to help the goods and services providers to find additional consumers in return of a fee or commission. Most businesses in India, especially startups in various stages, are increasingly utilising these aggregation services to save on infrastructure, costs, and logistics that come with formal work structures.
- 22 The relationship between the aggregator and the service providers (or gig workers) has long been the subject of debate, as the aggregator platforms do not recognise gig workers as “employees”. As such, targeted gig workers are faced with the challenge of identifying the “organisation” that employs the perpetrator and subsequently raising the issue with the Internal Committee of the said “organisation”. To further their grievance, the Act, 2013, in its current form, is not directly applicable to gig services that have been provided at residential premises. The same applies to those working as freelancers or consultants with different organisations on tasks or projects. The Act, in that sense, views these workers as independent of the actual workforce. This highlights the need for revisiting the definitions in the Act so as to bring more women gig economy workers under its ambit.

2.4

Hindrances in Seeking Justice

- 23 While some of the aggregator platforms listing ad-hoc, contractual, or part-time services do offer added safety tools for both parties such as rigorous background checks, these checks are more often stricter for the service providers than the users. Furthermore, many of these platforms term cases of sexual harassment as “disputes” that carry no legal liability on either party and must be resolved via independent settlements outside the purview of these platforms.²
- 24 Where online inquiries are an option, an issue other than that of privacy of these proceedings arises in the interpretation of finer nuances of conversations that occurred between the target and the accused, which is left to the discretion of the members of the Internal Committees and the Local Committees³. The nature of virtual conversations held over social media platforms, e-mails and SMSes can be subjective and may give the accused the chance of getting away unscathed by simply stating that what they said in those conversations was misconstrued.

2.5

Need for Revision

- 25 In a 2021 Media Analysis of Reports on the cases of sexual harassment in cyberspace by Kanika Ahuja and Priyanka Padhy, it was found that cases of workplace harassment are being treated as “the woman’s problem”.
- 26 With discrepancies and rapidly shifting work dynamics in the country, it becomes imperative to revisit the content and context of the Act, 2013. Seeing that this exercise is long overdue, almost a decade has passed since the Act was put into action, this Annual Review seeks to reiterate this need in forthcoming sections.

² ORF Issue Brief, May 2020, Issue no. 359

³ Section 11, the Act of 2013



A new world order emerged with the onset of COVID-19. Workplaces transformed from physical offices to what we popularly call 'digital offices'. While this limits the possibility of sexual harassment in the physical form, it raises concerns for sexual harassment in the digital form. Recent data suggest that in the year 2020, while overall sexual harassment cases in India witnessed a dip of 7%, the number of cybercrimes related to sexual harassment and exploitation across India witnessed a significant jump of 45%. While this data is only indicative, it does point towards the emergence of new forms of sexual harassment utilising the digital space.

This necessitates taking corrective policy actions. While The Prevention of Sexual Harassment (PoSH) Act of 2013 does broadly cover sexual harassment in the new virtual workspace, it does not specifically mention the same. Changing times require a fresh revisit of the policy, with adequate provisions for inter-linkages with The Information Technology Act, 2000 dealing with cybercrime in India.

Dr Samridhi Bimal

Trade Economist

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 i.e. The Act of 2013



What is the Act about?

The objective of this Act is to make workplaces safer for women by preventing, prohibiting and redressing acts of sexual harassment against them in the workplace. The law came into effect in India on December 9, 2013. It is overseen by the Ministry for Women and Child Development.



Who is it for?

The Act protects all women employees who are employed: on a regular, temporary, ad hoc or daily wage basis, directly or through an agent or a contractor, with or without the knowledge of the principal employer, on a voluntary basis. The Act is also applicable when the terms of employment are expressed or implied, and for women contract workers, probationers, trainees, apprentices and interns.



Who needs to comply?

The Act is applicable to all employers, including: the head of any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the Government or local authority; the person responsible for the management, supervision and control of any workplace that is not covered above; a person or household who employs a domestic worker in a house or any kind of domestic dwelling, regardless of activities performed by the domestic worker, the time period they are employed for, or whether they are working full-time or part-time.



Who handles complaints and redressal?

Any employer of a workplace with 10 or more employees is required to constitute an Internal Committee (IC). The IC is responsible for hearing and redressing any complaints pertaining to sexual harassment in such a workplace. The Act mandates the constitution of a Local Committee (LC) in every District. The LC is responsible for hearing and redressing complaints of sexual harassment from workplaces that have fewer than 10 employees. The LC also redresses complaints in case such complaint is against the employer of a workplace themselves.



What happens in case of non-compliance?

If an employer fails to either constitute an Internal Committee or discharge any of the other duties placed upon them under the Act, they shall be punished with a fine which may extend to INR 50,000. In the event an employer contravenes the provisions of the Act a second time, they may be either fined twice the amount as the fine for the first contravention or face cancellation of their license, permit or registration for carrying on their business or activity.

Executive Summary of the Report

- 27 While the Indian polity and economy have expanded since independence, one area where the country still lags in is the participation of women in the workforce.
- 28 This is reflective of and further exacerbates the pre-existing inequalities between genders in India, which amongst other reasons, is also governed by the independence and autonomy that paid work provides an individual. Furthermore, cultural expectations of women as the primary caretakers of households play a significant role in fewer women entering the workforce in the first place. For those women who do join the workforce, challenges such as an unsafe work environment and gender-based discrimination, are common.
- 31 In addition to the research and opinions of the field experts, the Report has made observations based on the extensive surveys in the formal and informal sector undertaken by a dedicated team. These surveys garnered 23,584 unique responses from 1,101 individuals. In the spirit of a holistic approach, the report has also looked at the jurisprudential evidence to understand the particular trends in the interpretation of the Act.
- 32 It is hoped that this edition of the report will help take forward the discussion around a safe work environment for all, spread awareness on the Act, and continue the dialogue on improving the present framework of the Act.

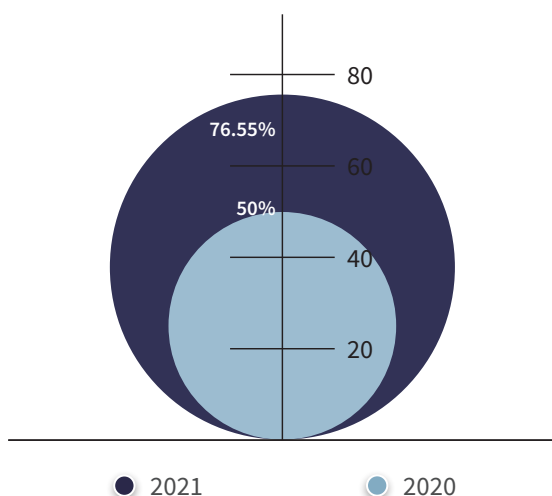
3.1

The Act

- 29 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as, “the Act of 2013” or “the Act”) is envisioned as an umbrella protection for all working women irrespective of the nature of work being undertaken by them. It is also the only targeted law that aims to protect women from workplace harassment.
- 30 As such, the current report aims at critically analysing the provisions of the Act, its applicability in different sets of work environments, the challenges to the functioning of the Internal Committees and Local Committees as the first line of

According to the Periodic Labour Force Survey Quarterly 2021 report, the female labour force participation rate (FLFPR) in the country has dropped to 21.2% in March 2021 compared to 21.9% one-year prior.

Awareness of ICs



3.2

Insights from the Survey

- 33 While the employees in the formal sector are becoming increasingly aware of the presence of Internal Committees with 76% stating the same in the 2021 Survey. There is a need for dedicated monitoring mechanisms to ensure that the constitution of the Internal Committees is in accordance with the law and that the members of these committees are adequately trained.
- 34 Even though there has been an increase in the filing of complaints of sexual harassment in the formal sector, the survey findings suggest that there is a hesitancy on part of the targets to file complaints to an in-house committee.

3.3

Lack of Jurisprudence in the Informal Sector

- 35 There is little data, jurisprudential or otherwise, to make any judgement on the functioning of the Act in the informal sector. The majority of the districts, even after nine years of the Act's promulgation, have failed to constitute mandatory Local Committees.
- 36 Therefore, the formulation of Local Committees would only be the first step of a long process. Additional work would have to be undertaken to spread awareness amongst marginalised groups, especially in the informal sector. There is an urgent need for targeted intervention and prevention strategies that could cater to the unique structure of the informal sector workforce.
- 37 These measures are imperative to uphold the spirit of the Act. The report has attempted to cover grounds that are relevant with respect to current economic trends. Several additions have also been recommended for the framework of the Act based on surveys and expert opinions.

3.4

Need for Safer Work Environment

- 38 Women can play a key role in expanding the economic pool of the country. Ensuring a safe work environment is a prerequisite to increasing women's participation in the workforce.
- 39 Furthermore, a safe working environment is imperative for the overall health of the professional work culture in the country. There is increasing evidence to suggest that a diverse group of professionals adds more value to any organisation. Understanding the Act with all its provisions and shortfalls provides us with an opportunity to address and facilitate conducive working environments for the entire workforce.



The law always considered “any place visited by the employee arising out of or during the course of employment” and included “a dwelling place or a house”. Post the COVID-19, work-from-home is now a norm. This has brought to fore many other dimensions to be considered by organisations under their PoSH policy and training to employees. Most organisations extended their policies to address the new norm. However, digital and online formats such as chat rooms, video meetings, metaverse and other prevalent interaction tools make for newer ammunition at the hands of perpetrators, for example, lewd GIFs, inappropriate emojis, among others. This segues into addressing harassment in the digital space. The organisations need to be aware of these changing formats and ensure to ramp up means for addressing these complaints appropriately and reasonably. There are technological solutions that scuttle inappropriate behaviours online and implementation of predictive AI algorithms may be considered as a solution sometime in future!

Dr Samridhi Bimal

Trade Economist

4

The Formal Sector: Redefining the Workplace

- 40 Increased uptake of remote or hybrid work modes is now a common phenomenon in the formal sector. With the digitisation of the workplace, incidents of online sexual harassment have also become apparent in numerous organisations. It is in these circumstances that the importance of sensitisation workshops becomes crucial in helping create awareness amongst employees as to what kind of exchanges are appropriate.

4.1

Corporate Compliance in the WFH Era

- 41 Prior to the pandemic, cases of sexual harassment at the workplace were consistently underreported due to the lack of awareness about the provisions of the Act, or/and a lag in its implementation.
- 42 As per an IndiaSpend Analysis report of 2015, 36% of Indian and 25% of multinational corporations admitted to a lag in the implementation of the Act. The report stated that though these corporations had Internal Committees (ICs) in place, their members were not legally trained or competent enough to shoulder the responsibilities mentioned in the Act. The firms that did have adequate committees had not conducted the requisite awareness workshops for their employees as frequently as mentioned in the Act.
- 43 As a result, most workers were unaware that they could and should be reporting instances of the lack of professional conduct among their fellow employees, let alone know what procedures and protocols to follow.

4.2

Examining Data

- 44 As per a report by Business Today, there was a year-on-year increase in the number of complaints received by the top five BSE companies by 8.6% between 2019 and 2020, the pre-Work From Home (WFH) period. Incidentally, where HDFC Bank saw a rise in complaints by 108%, Hindustan Unilever and Infosys saw a decrease of 25% and 13% respectively in the same period, and Reliance Industries reported zero cases.
- 45 In the 2020-21 period, as per a survey by the ET Intelligence Group, the reported percentage of sexual harassment complaints filed by women at many Indian and India-based multinational corporations had decreased by 35% since they had gone virtual.
- 46 Effectively, the increase in complaints corresponds to not just the instances of harassment but the increased level of awareness amongst employees as well as strong compliance structures.
- 47 Additionally, data from the big firms may still be easily available but the same cannot be said for the growing number of micro, small and medium enterprises (MSMEs) in India

“Under the law, the new virtual workspace fits in as a new workplace under (Sec 2(o) of PoSH Act, 2013). Practically the work from home situation has expanded the definition of workplace considerably. With increased flexibility given including working remotely from anywhere, the work and personal space and time have blurred completely. Thus the scope has also increased as it is not restricted to board rooms, office premises and the traditional expanded definition of workplace.”

Pouruchisti Wadia

Associate Program Director at SNEHA (Society for Nutrition, Education and Health Action), Romila Palliative Care Center

which employ close to 40% of the total workforce in India. Hence, there is no telling on the extent to which workplace harassment may or may not be prevalent in enterprises.

4.3

Blurred Lines Between Work Life and Personal Life

48 Another side effect of WFH has been the mass erasure of office hours. This is highlighted by the UCS survey which found that nearly 29% of women found that working from home is more unsafe than working from the office. Instances of supervisors asking their employees to “shift closer to the camera” so they could “see” them “properly”, or secretly sending perverse comments on their attire and hairstyle – have become increasingly common.

49 The blurred lines between office spaces and home spaces have also added to increasing frustrations and difficulties for employees to maintain and separate their work and life. This has often translated into scornful exchanges between clients and employees, and/or work calls turning into vents for personal problems.

50 This further puts the role of HR in focus, especially with respect to how they deal with the sensitisation of employees towards appropriate virtual conduct, without ambiguity on what kind of digital exchanges are acceptable and what must be avoided.

4.4

Adopting the provision of the Act for Remote Work

51 A 2020 Gartner study had predicted a 30% increase in the uptake of remote work by 2030. The same study also found that 30% of business leaders expressed concerns over

maintaining a conducive corporate culture including challenges in creating parity between in-office and remote work experience alongside the promotion of seamless employee experience.

52 While the work from home culture garnered more attention due to the pandemic-induced lockdowns, but for many firms, remote work has been regularly present especially when outsourcing talent. Albeit, the share of such employment was not previously as significant as it is today, however, it was still present enough to warrant attention. Despite this, there is no comprehensive data on how many corporations have actually adopted the provisions of the Act and applied it to remote work scenarios in the last two years.

4.5

Dissatisfaction with Online Inquiries

53 The manner of conducting inquiries into online complaints is another pressing concern. With virtual conversations, the interpretation of finer nuances of communication remains subjective to the personal views and bias amongst the members of the Internal Committees (IC). Additionally, follow through and investigations into inquiries without in-person interactions have, to an extent, affected the seriousness and urgency with which such issues should be addressed.

54 The Act has provisions wherein a complainant who is dissatisfied by the proceedings of the IC can raise the issue to an appellate authority of the Government, which in most cases translates to the Court.⁴ But, going to court and dealing with legal procedures can be daunting for most individuals who then choose to withdraw their complaints or quit working with the firm in question.

“No reported complaints should not be misinterpreted as the absence of sexual harassment in the organisation. It could be a reflection of low awareness and lack of faith in the IC. Focusing on the prevention of sexual harassment which is effective entails assuring women employees of speedy redress of complaints and encouraging them to report without being fearful of losing employment. This cannot be achieved using mundane online content that does not allow employees to ask questions. Online training modules are preferred for their low cost and wide coverage. They are general in nature, serve the purpose of symbolic compliance to the law and their focus is on warding off a legal liability than preventing sexual harassment. Facilitator-driven live awareness sessions generate discussions on contentious issues such as misuse of law, gender specificity of the law and organisation anti-sexual harassment policy. Employees need to be explained the nuances of a gender-neutral policy.”

Dr Anagha Sarpotdar

Anti Sexual Harassment at Workplace (PoSH) Consultant

⁴ Section 18(1), the Act of 2013

The difference in physical and virtual sexual harassment only consists of the physical aspect, since the impact of harassment can be mentally the same in both cases. People are now spending more time on digital platforms, consequently, they have become more prone to be harassed online. For instance, taking screen captures during video calls without permission and circulating them on social media, or managers demanding women colleagues to attend impromptu meetings post office hours, using phallic emoticons, and offering to send pictures is all becoming increasingly and alarmingly high.

Ragini Das

Co-Founder, Leap Club

- 55 This routes the discussion back to the need for better training for members appointed to the IC, the need to update laws in line with changing contexts, and increasing awareness on alternative processes for those dissatisfied with the procedures of the IC.

4.6

When matters move to Court

- 56 When cases of sexual harassment at the workplace are taken to court, procedural fault lines and differential interpretation of the language of the Act have emerged as hindrances to the speedy delivery of justice to the target party.
- 57 To that effect, on the 3rd of December 2021, the Supreme Court asked courts “not to resort to hyper-technical interpretation of service rules and regulations on prevention of sexual harassment at the workplace”, adding that the “transformative legislation may not come to the aid of victims if the appellate mechanisms turn the process into a punishment”. The bench, led by Justice DY Chandrachud, further went on to say, “It is important that courts uphold the spirit of the right against sexual harassment, which is vested in all persons as a part of their right to life and right to dignity under Article 21 of the Constitution. It is also important to be mindful of the power dynamics that are mired in sexual harassment at the workplace”.

4.7

The Current Data

- 58 To fully gauge the changes that have happened on the legal and psychological fronts as far as workplace harassment is concerned, it is important to factor in a variety of sentiments across the formal sector. In the following sections, we will highlight the findings of the Annual Review of the State of Sexual Harassment at the Workplace Survey 2021 and compare them with the previous year’s findings to unearth the changes that have taken place in recent times.

The Formal Sector Survey: A Comparison between 2020 and 2021

To assess the implementation and awareness of the Act, four different sets of surveys were circulated to different stakeholders to understand how the Act has impacted employees and employers across the country. The identified stakeholders that we reached out to included: (i) Employees working in the formal sector, (ii) Human Resource Managers/Chief Executive Officers, (iii) NGOs working in the workplace sexual harassment domain, and (iv) Internal Committee (IC) as well as Local Committee (LC) members.

While the findings of the survey have been detailed in the forthcoming section, a few notable observations are mentioned below.



Filing of Complaints:

The percentage of employees who decided to file complaints in the year 2021 increased to 44.8% from 31.3% in the year 2020.



Process for Filing of Complaints:

55.9% of respondents stated that they were aware of the process of filing complaints about workplace sexual harassment in their organisations.



Witnessing Workplace Harassment:

The percentage of HRs/ CXOs who witnessed instances of workplace sexual harassment increased to 64.8% in 2021 from 23.1% in 2020.



Updation of Training Material:

When asked how frequently their organisation reviewed the material used in trainings and workshops regarding sexual harassment at the workplace, 41.6% of HRs/CXOs marked "Never".



Types of Training:

Only 4% of the HRs/ CXOs stated that their organisations conducted awareness training on sexual harassment in 2021.



Awareness of Local Committees:

The number of employees who knew how to contact their Local Committee increased to 67.4% in 2021 from 33.3% in 2020.



The time period for Filing Complaints:

The number of respondents who felt that the period for filing a complaint should be increased from the current three months (from the date of the incident) decreased to 25.9% in 2021 from 51% in 2020.



In order to further strengthen the objective behind the formulation of the Act, as an initiative by the Ministry of Women and Child Development, an online complaint management system for women working in both public as well as private sector organisations has been launched on November 6, 2017, which is known as “She-Box” (Sexual Harassment e- Box) to ensure the effective implementation of the Act. This online portal has been linked to all the Central Ministries, Departments, and 653 districts across 33 States/ Union Territories. All the complaints lodged by women are directly monitored by the WCD Ministry to ensure that necessary action is taken by the Internal Committee of an organisation. Since the mechanism is computer-based, the complaints are much more organised, allowing for effective, speedy disposal as it is a user-friendly interface. This e-portal gave a really good momentum to the Act and is definitely a key step to curb the menace on digital platforms as well.



Smita Paliwal

*Partner – King Stubb & Kasiva,
Advocates & Attorneys*

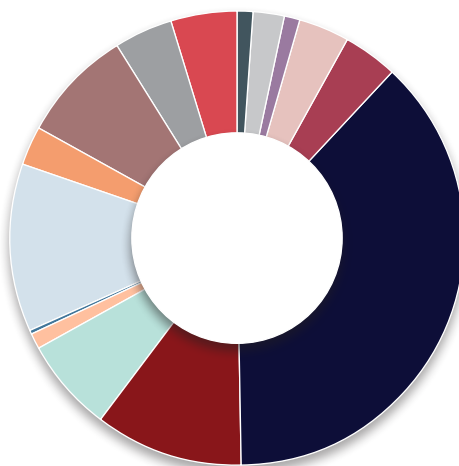
Formal Sector Survey: Methodology

- 59 As mentioned above, four different sets of surveys were circulated to different stakeholders. Each survey questionnaire consisted of 26 questions and the responses were collected anonymously keeping in view the sensitive nature of the context of the survey.
- 60 No question was marked compulsory, unless the responses were dependent on another question's response, giving the respondents the choice to submit the survey at any point. All this was conveyed to the respondents through a consent form at the beginning.

6.1

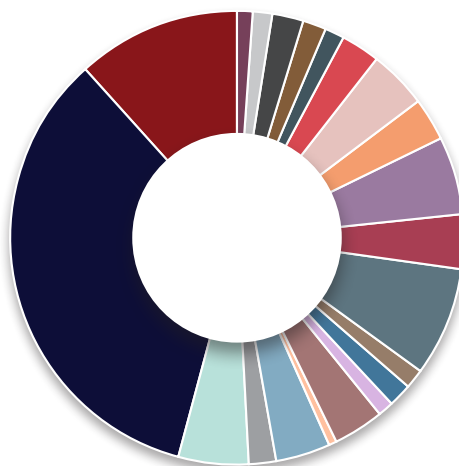
Demographics Covered

State/Union Territory



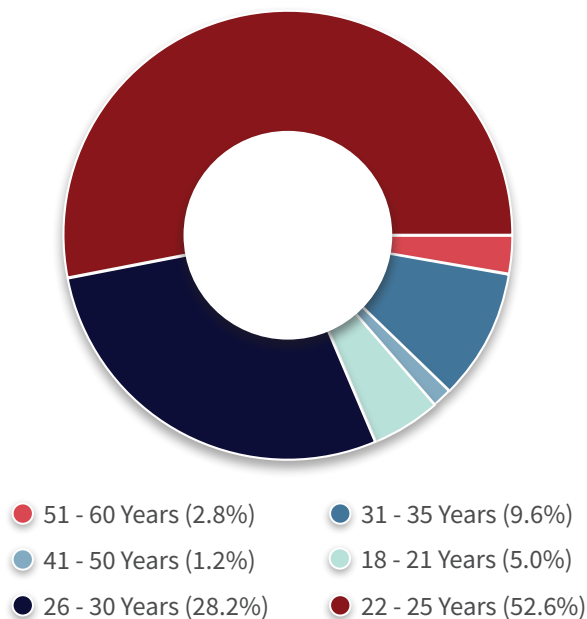
Jharkhand (1.2%)	Bihar (2.2%)	Pondicherry (1.2%)	Kerala (3.7%)
Tamil Nadu (3.7%)	Karnataka (37.9%)	Maharashtra (10.6%)	Delhi (6.5%)
Haryana (1.2%)	Uttarakhand (0.3%)	West Bengal (11.8%)	Uttar Pradesh (2.8%)
Andhra Pradesh (8.1%)	Telangana (4.3%)	Others (4.5%)	

Industry

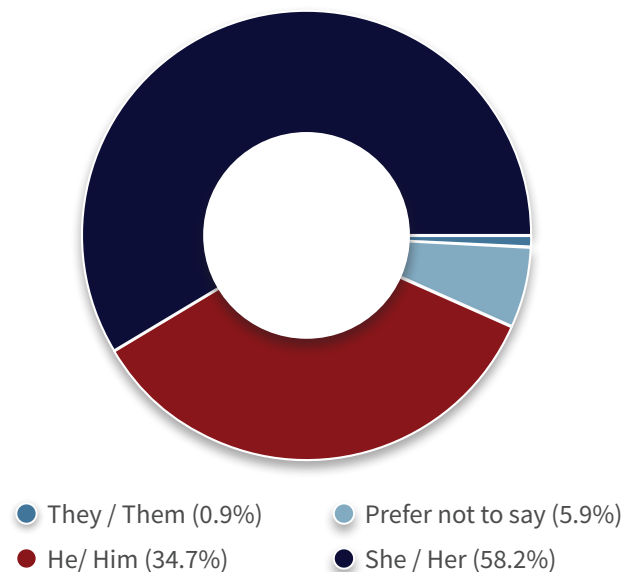


Energy, Power, Renewables & Natural Resources (1.3%)	Insurance (1.3%)	Marketing (2.3%)	Asset Management (1.6%)
Manufacturing (1.3%)	Information Technology Enabled Services (2.9%)	Banking and Capital Markets (4.2%)	Electronics (2.9%)
E-commerce (5.8%)	Technology (3.9%)	Education (7.7%)	Not-for-profit Organisation (1.3%)
Telecommunications, Media & Entertainment (1.6%)	Event Management 1.3%	Professional Services (3.5%)	Government & Public Sector (0.6%)
Automotive (3.9%)	Healthcare & Wellness (1.9%)	Financial Services (5.1%)	Information Technology (34.1%)
Other 11.5%			

Awareness of ICs



Preferred Pronouns



6.2

Key Findings from 2021

- 61 This section provides a summary of the key findings from the different sections of our survey which broadly focused on awareness of forms of sexual harassment, redressal mechanisms, training procedures, and workplace observations.

Understanding of the Forms of Sexual Harassment

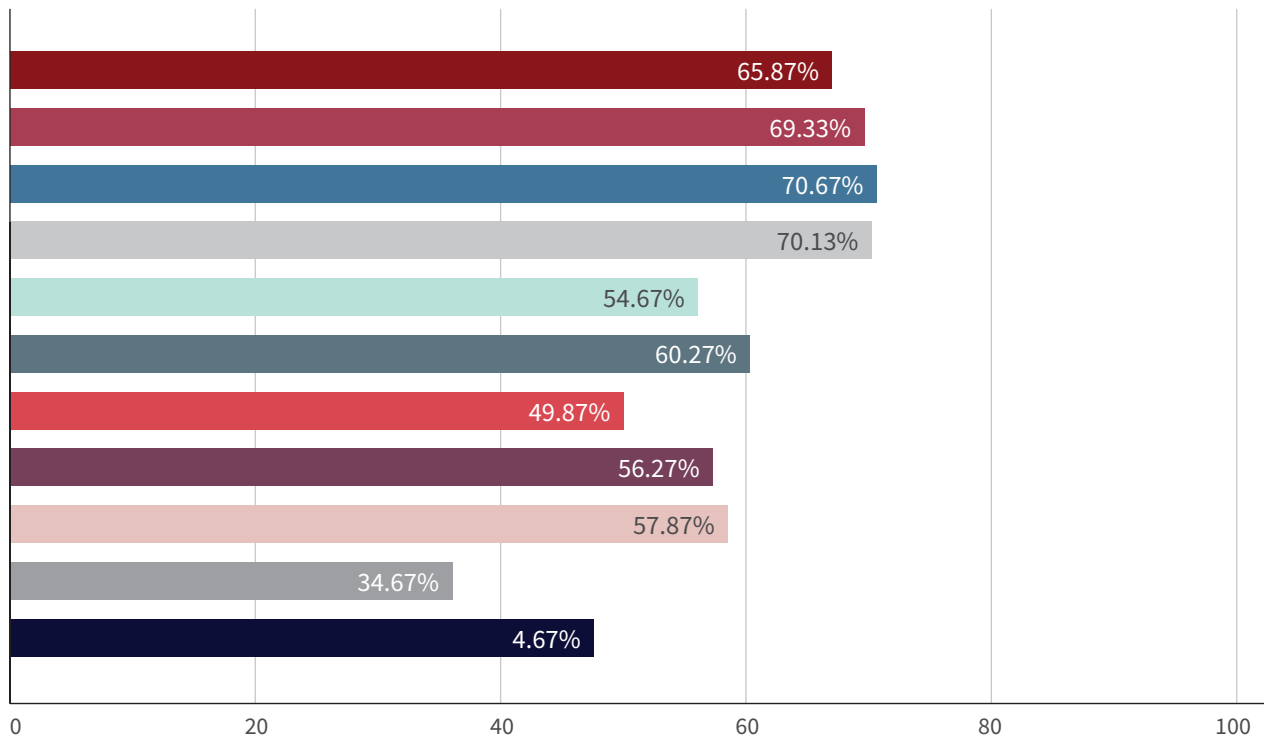
When asked what constituted sexual harassment at the workplace (see figure below),

- 70.6% of respondents marked “Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person”,
- 70.1% marked “sharing images or videos, including pornography or indecent GIFs”,
- 69% marked “a demand or request for sexual favours”.

This suggests that in the formal sector, there is an increasing awareness about both the physical and digital forms of sexual harassment.

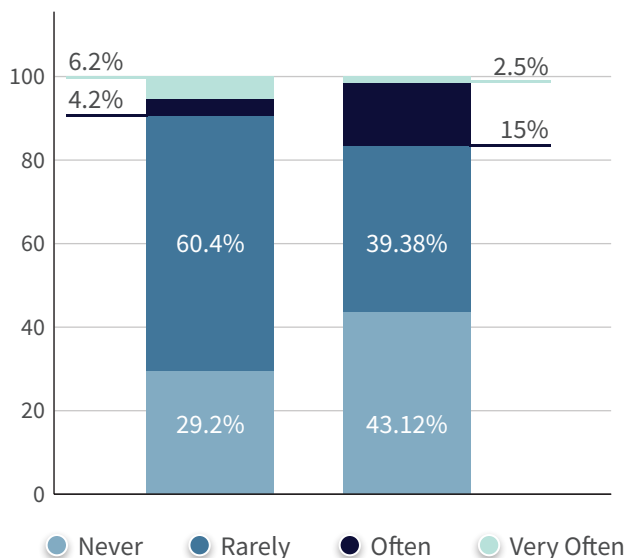
However, considering the preference given to other options, fewer respondents (34.6%) marked “Making offensive comments about someone’s sexual orientation or gender identity” as a form of sexual harassment, indicating the need for more gender-inclusive conversations.

What Counts as Sexual Harassment at the Workplace



- Physical Contact and Advances
- A demand or request for sexual favours
- Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing against another person
- Sharing images or videos, including pornography or indecent GIFs
- Staring or Whistling
- Sharing sexual anecdotes
- Lewd Jokes
- Inquiring about someone's personal life including sexual orientation and such
- Making remarks about appearance, clothing, or body type.
- Making offensive comments about someone's sexual orientation or gender identity
- Sending suggestive letters, notes, emails, SMS, and other mode of written communication

Feeling Uncomfortable around a Colleague



6.3

Discomfort at the Workplace

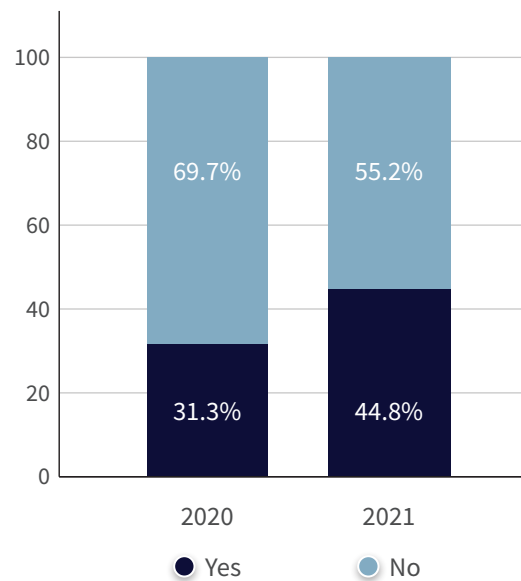
62 When asked if employees felt uncomfortable in the presence of a colleague, the percentage of respondents who said "Never" increased to ~43% in 2021 from ~29% in 2020. This change can be attributed to the increased uptake of remote work during this period and decreased physical interaction amongst the employees.

6.4

Filing a Complaint

63 While the number of employees who decided to file complaints against instances of sexual harassment at the workplace increased to 44.8% in 2021 from 31.3% in 2020, the majority (55.2%) decided not to file a complaint. This is a significant data point that shows the need for greater awareness amongst employees about their rights and complaint redressal mechanisms.

Deciding to file a Complaint

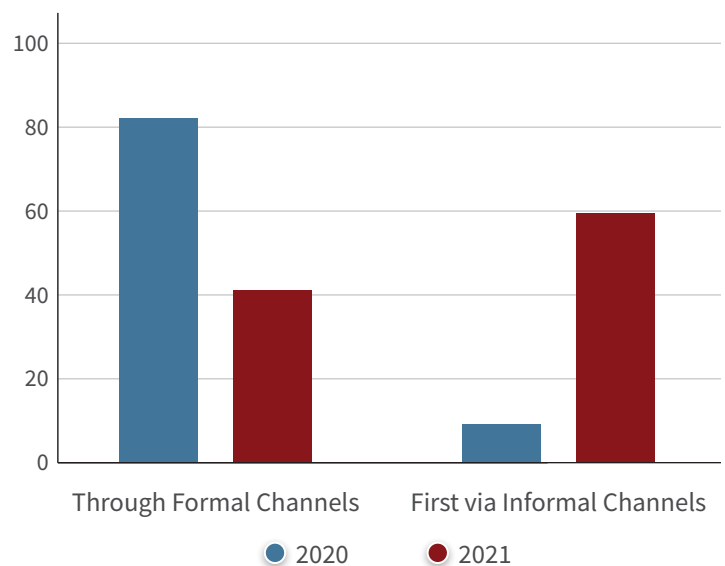


6.5

Mode of Complaint Redressal

64 While in 2020, 81.8% of complaints fell under the formal redressal mechanism, this number stood at 40.9% in 2021. This may be an indication of the lack of mechanisms for filing redressals in a virtual office setting.

Mode of Complaints

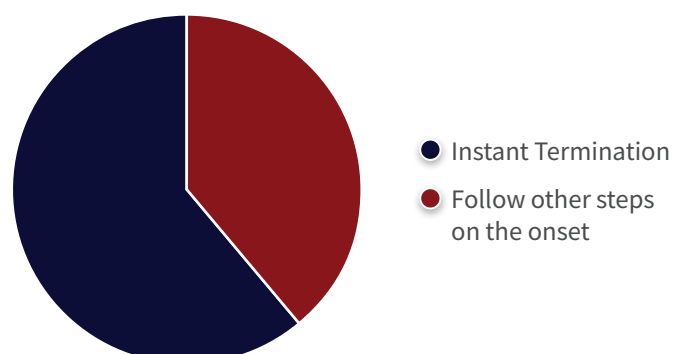


6.6

Termination of Employment

65 In the year 2021, when cases of sexual harassment at the workplace were brought to light, 39.1% of the investigations resulted in instant termination of the accused while the rest of the cases involved termination after completion of the redressal process by the HRs/CXOs.

Mode of Complaints

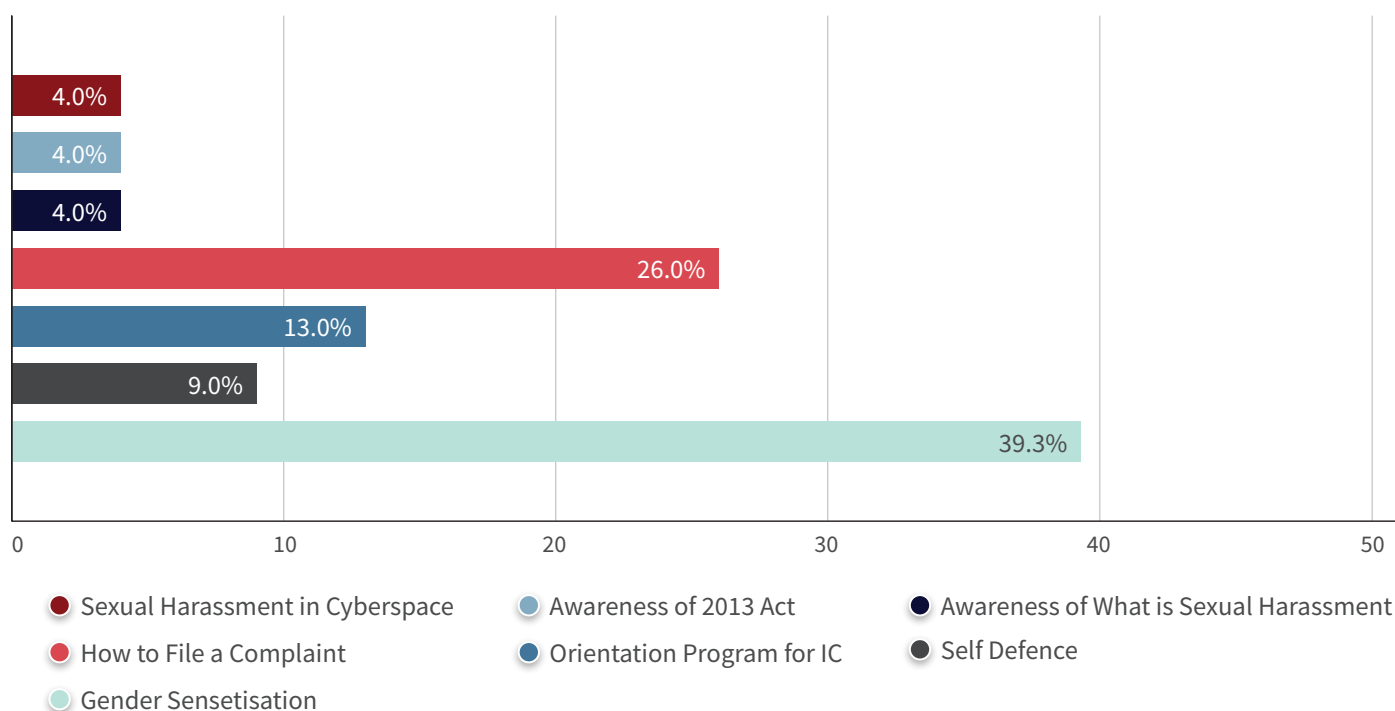


6.7

Types of Training

66 When asked if they conducted awareness workshops or trainings for their employees, the majority (39.3%) of HRs/CXOs stated that they conducted Gender Sensitisation workshops. However, options such as “What is sexual harassment?”, “Awareness of the Act 2013”, and “Sexual Harassment in Cyberspace” were each marked by only 4% of the HRs/CXOs (see figure).

Different kinds of Training

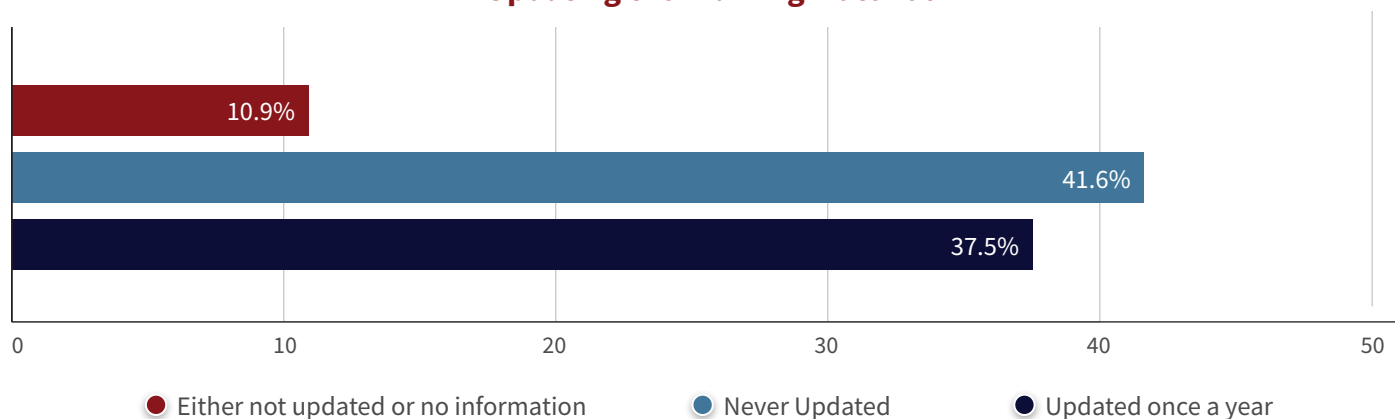


6.8

Updating Training Material

67 Additionally, when the HRs/CXOs were asked how frequently their training materials were updated, 41.6% marked that these materials were never updated (see figure).

Updating the Training Material





Female migrant workers are a prominently unprotected group of informal workers in India as they face issues owing to their migration and conditions at workplaces. The majority migrate with their husbands from rural to urban spaces in search of better income and take up work as domestic workers in households. For female workers, rights' protection is further complicated by their vulnerability and invisibility – these jobs are temporary and routinely depend upon several middlemen. Further, there are rarely any work or labour contracts, or unionisation to protect workers' rights. While the PoSH Act provides opportunities for redressals to female migrants, these are usually complicated by their precarious employment and socially marginalised positions. In November 2021, around 200 female workers were sacked for protesting against the alleged rape of an underaged woman at a workplace in Andhra Pradesh. However, since the workers were from another state their complaints were not readily registered. Complaining about sexual harassment is a risk for female workers, but for female migrants, it is further compounded by their migrant status that brings-up unique forms of marginalisation.

Rahul Sambaraju

Assistant Professor,
Trinity College, Dublin

The Informal Sector

68 In India, the informal sector consists largely of self-employed or informal wage labourers. These are individuals operating or employed at small businesses without any formal registration with government bodies. Those holding informal jobs are outside the ambit of regulations such as taxation of income, social security benefits, labour legislation, and employee entitlements such as severance pay, sick leaves, notice prior to dismissal, and annuities.

69 Employees in this sector include daily wage workers such as domestic help, small factory workers, street vendors, flea market vendors, manual scavengers, garment factory workers, ASHA and Anganwadi workers, amongst others. As per a review by IndiaSpend, this workforce consists of 384 million people, half of whom reside in rural areas and 195 million of whom are women.

7.1

Experiences of Workers in the Informal Sector

70 When it comes to the nature of harassment experienced by workers employed in the informal sector, a number of factors surfaced. Factors such as cultural differences and power inequalities are prominent across such types of employment. These differences especially reinforce the stigma that surrounds the harassment of individuals, especially women, including pinning the blame on the gender, caste, or socioeconomic background of the target of such forms of harassment.

71 As per a report by UNWomen, in cases where the woman resists or tries to report such acts by her

colleagues or employers, she is met with comments such as sexual harassment is “complementary and inevitable in the lives of women and girls”, or that sexual favours are “natural and immutable for men: women learn to acquiesce to men’s expectations and that their voices carry less credibility than those of their abusers”. This discourages them and others experiencing similar circumstances from seeking redressal or for that matter, even daring to report.

72 Such issues were further exacerbated during the pandemic and the consequent lockdowns wherein speaking up against abusers or even thinking of reporting instances of harassment was not an option for informal sector workers. Their economic realities meant that they could not risk putting even a day’s wage or their chances of further employment in jeopardy, because they had little to no savings to cushion the effects of any breaks in employment.

7.2

Examining Data

73 Government surveys on the informal sector are usually conducted once in five years, and even then they are conducted from an economic perspective to understand the share of GDP and taxes. This prevents us from understanding on-ground realities of the informal workplaces.

74 Additionally, given the fact that most workers employed in the informal sector barely have access to the internet or social media, the dissemination of information about their rights is a difficult task.

Although efforts are made by NGOs and student councils to help educate informal sector workers, most being daily wage workers see it as the loss of a day's work making it difficult to reach and educate a large number of workers in the sector.

- 75 A survey, conducted in 2018 by Martha Farrell Foundation in collaboration with Participatory Research In Asia (PRIA), found that of 291 domestic workers, more than 29% experienced sexual harassment at work. Of these, 61.8% cited sexual harassment in the form of lewd gestures and whistling, while 52% reported receiving SMSes or WhatsApp messages with sexual connotations. Further, 19% ignored the incident, 15% spoke with their friends about it, and 20% of them complained to the police, without results.
- 76 Even in cases where workers would be willing to report the instances of harassment faced by them, the lack of awareness about their rights and knowledge of redressal methods at their disposal becomes a hurdle. Further, where there is awareness, there is a lack of access owing to the fact that even methods such as SHeBox, an online portal to report incidents, requires internet access.

7.3

Lack of Support

- 77 Another factor that governs the number of individuals who report cases of harassment in the informal sector is social support. In cases where the target fails to find support from their family, co-workers, or neighbours, they have no choice but to continue living with the perpetual fear of ostracisation or joblessness as consequences of seeking redressal. This further exacerbates the psychological and physical abuse sustained by the target in the long run.

7.4

The Sector Under the Lens of the Act 2013

- 78 The Act of 2013 applies to all public and private employers and employees in both the formal and informal sectors. The Act makes no distinction on the basis of the type of employment i.e., being employed directly by the principal employer or indirectly, through contractors and agencies. The Act is also applicable to any place the worker may have visited as part of their job including transportation⁵. Therefore, these provisions are applicable to all workers in all workplaces, regardless of their age, the status of employment, or the nature of employment.
- 79 However, even with these provisions in place, the Act does not differentiate between the formal and informal sectors in the manner of redressal of complaints. The same provisions of having Internal Committees (ICs) or Local Committees (LCs) in place applies to the informal sector as well. Thereafter, if the target is dissatisfied with the inquiries conducted by the said committees, they can raise their complaint to the designated appellate authority.
- 80 While the formal sector provides systems and processes through which employees can approach bodies and hold specific individuals responsible, informal sector workers do not have clarity or awareness regarding the paths for redressal and/or implementation.

7.5

Pitfalls of the Act in this Sector

- 81 By virtue of its definition, the informal sector has no strict procedures or structures of employment in place.

Ideally, the service rules should specify that all categories of employees are covered when it comes to providing them with a safe working environment. They should not be distinguished based on that. However, in reality, there is more job insecurity in the case of contractual workers, consultants etc. It is also more challenging for them to negotiate for a safer working environment. It is also easier to mix issues of work performance and other HR issues to avoid giving them their due.

Pouruchisti Wadia

Associate Program Director at SNEHA (Society for Nutrition, Education and Health Action) Romila Palliative Care Center

5 Section 2(o), the Act of 2013

“There is a complete lack of awareness amongst women working in the informal sector about the redressal mechanism of LC. Though the law mandates the creation of awareness towards prevention, there are inadequate budgetary or infrastructure provisions to enable LCs to do so. Additionally, the same reasons which prevent women from complaining in the formal sector are multiplied manifold in the context of women working in the informal sector, especially their fears related to job security and personal safety and including an absence of trust. There are also challenges when the disciplinary authority or the respondent does not cooperate with the outside body leaving out litigation as the only recourse.”

Pouruchisti Wadia

Associate Program Director at
SNEHA (Society for Nutrition,
Education and Health Action)
Romila Palliative Care Center

Since most of the enterprises or employers under this sector are not registered officially with any government or tax authority, they find it easy to evade the provisions of the Act. As such, the workers in this sector rarely have the chance of finding any assistance from ICs or LCs.

- 82 To add to this, not all the workers employed in this sector have proof of employment or identity cards or any paperwork with them. For them, if any untoward incident were to occur, they would not be able to prove the accused to be their employer. While the Supreme Court has iterated that the targets' word would be given importance in such cases, there is not enough evidence to prove that the same belief is maintained on the ground.

7.6

Role of the Local Complaints Committees

- 83 As mentioned earlier, the Act mandates the setting up of ICs for enterprises that employ more than ten employees, it becomes a challenge to have these ICs set up in the informal sector by virtue of its definition itself. In the absence of ICs,

there must be LCs set up district-wise to cater to the provisions of the Act.

- 84 In cases of ICs, the onus lies with the enterprise for creating awareness amongst their employees about their rights. However, the same cannot be applied in the case of the LCs where community outreach programmes play a greater role. Such outreach programmes require monetary support from the local bodies or State and Central Governments in order to reach out to more workers in the informal sector. In places where awareness of LCs does exist among workers, the information about reaching out to or receiving relief and redressal from the LCs is difficult to obtain even in major cities such as Delhi.
- 85 In May of 2016, an amendment was made to the Act whereby the name of the Local Complaints Committee was changed to Local Committees or LCs. This was done with the intention of broadening the definition of the LCs from simply being complaint redressal centres to safe spaces for workers to feel safe in sharing their grievances without fear. However, the assessment of success of this vision remains to be established since data is difficult to procure.

“

As labour compliance, the PoSH Act finds space in the formal sector but in the informal sector employers themselves are not aware of the legal framework to what constitutes sexual harassment let alone provide the required protection against it. The informal sector will grapple with issues of harassment because the workforce will either normalise it or bear with it having no awareness of the redressal system and their rights. This will only change if the government will invest machinery to create the required awareness as a continual process rather than merely covering the sector in the Act.

Anushree Singh

*Head, Human Resources
Educate Girls*

The Informal Sector Survey at a Glance

This edition of the Annual Review has gone beyond the scope of the first edition to incorporate the Informal Sector in its fold. We utilised primary, secondary and tertiary data sources to understand this sector better. Overall, data in this sector was difficult to validate and find, given the lack of its extensiveness and availability.

With respect to primary data, access to workers posed a challenge since most of them were daily wage workers who could not leave work for too long fearing the risk of losing their wages. Additionally, the lack of harassment-related conversations in their lives led to hesitancy and fear, thereby making the conduct of such conversations difficult.

In view of such circumstances, volunteers from across the country, including The Women's Development Cell of Sri Venkateswara College, the executive and non-executive MBA batches from JAGSoM University, and the India Chapter of the Asian Medical Students Association worked towards engaging workers and gathering responses from across the country.

These volunteers underwent a series of workshops that were targeted at sensitising them and making them practice the manner in which such conversations should be conducted.

While the findings of the survey have been highlighted in the forthcoming section in detail, a few notable observations are mentioned below.



Social Context:

Economic status (67.1%) and caste (45.2%) play the biggest role in determining how vulnerable someone is to sexual harassment.



Workplace Discomfort:

43% of respondents stated that they had felt uncomfortable in the presence of an employer and/or co-worker.



Being Subject to Personal Remarks:

55% of respondents stated that they experienced someone making sexually suggestive remarks about their appearance, clothing, or body parts at least once.



Comments on Sexuality:

40% of respondents reported that they heard offensive comments about their sexual orientation or gender identity at least once.



Experiencing Uncomfortable Instances:

42% of respondents stated that they experienced instances of harassment such as being stared at in a sexually suggestive or offensive manner at least once. Additionally, 55% of respondents stated that they experienced inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up at least once.



Lack of Awareness of Redressal Mechanisms:

Only 15.9% of respondents stated that they were aware of the Local Committees (LCs) in their districts.

Informal Sector Survey: Methodology

86 For the purpose of the survey in the informal sector, a questionnaire consisting of 14 questions was prepared. Given the sensitive nature of the survey, all responses were collected anonymously, with no question marked compulsory, unless they were dependent on the response to another question, giving the respondents the choice to submit the survey at any point. This information was conveyed to the respondents through a consent form at the beginning as well.

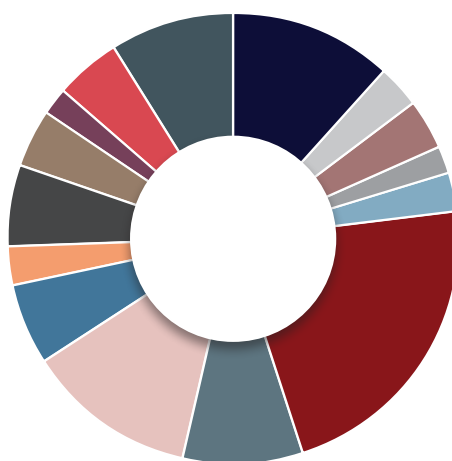
87 The volunteers helped the workers answer the questions by translating the text for them in their respective regional languages and helping them understand the nature of the questions. The translation was done to the best of the volunteers' knowledge and understanding. We recognise that there may be something lost in translation and are cognisant of the same.

A whopping majority of 95% is the informal sector. This category is unaware of such laws leave alone exercising their right against harassment. We are talking about the marginalised, unrecognised, unrecorded category of women here, where the invisible workforce can't afford technology, education which are the key tools of creating awareness. There is a need to find a strong stimulus to set off a movement for the safety of women in the unorganised sector.

9.1

Demographics Covered

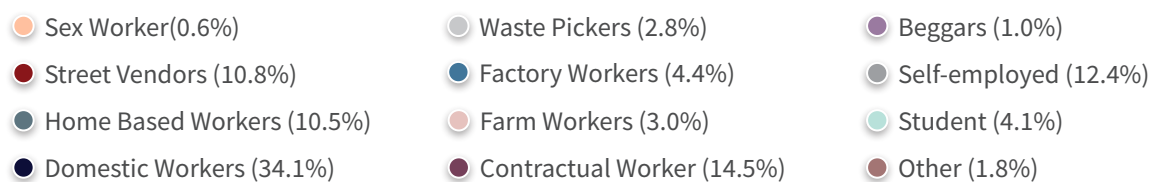
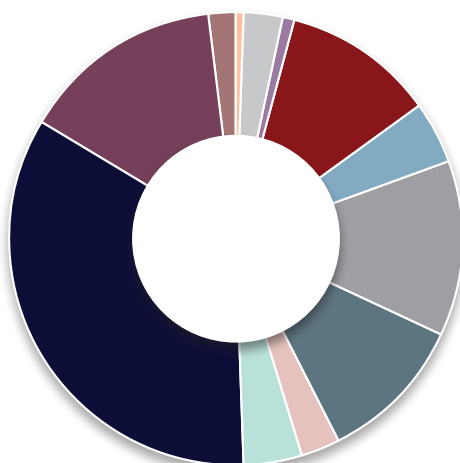
State/Union Territory



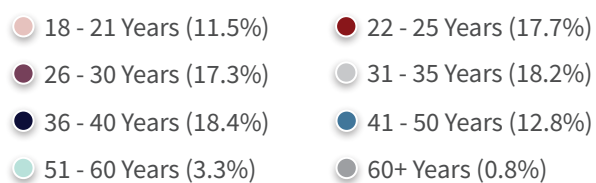
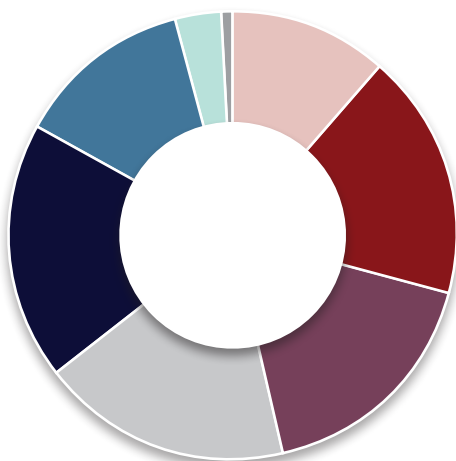
Dr Gayathri Vasudevan

Chief Impact Officer at Sambhav Foundation & Chairperson at LabourNet Services India Pvt. Ltd.

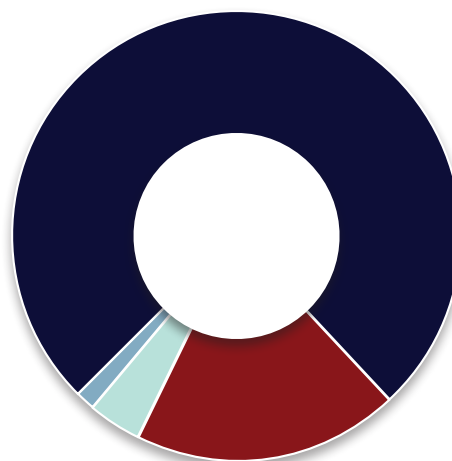
Occupation



Age Groups



Preferred Pronouns



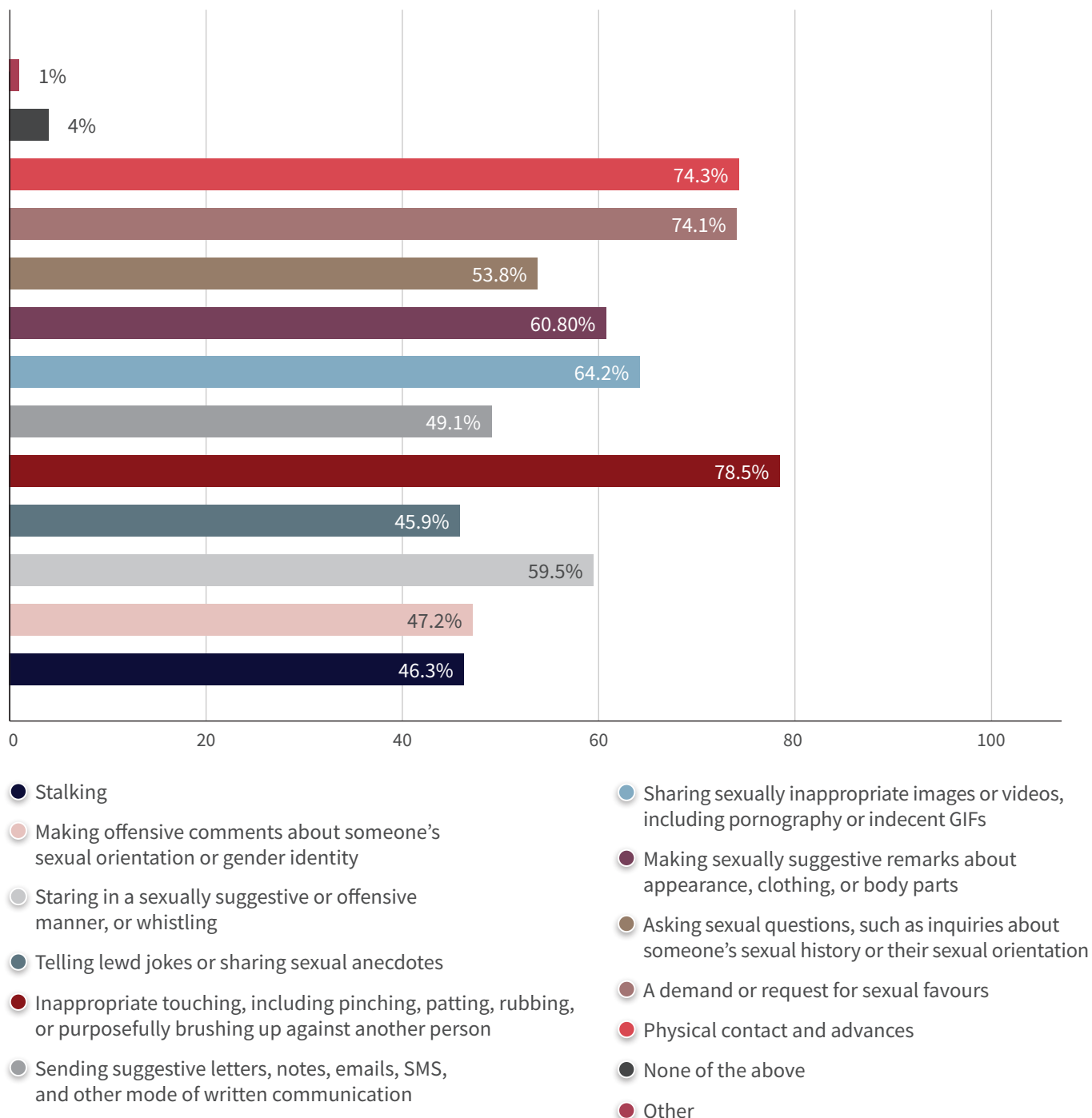
9.2

Key Findings: Understanding of Sexual Harassment

88 The figure below shows what the respondents believed constituted as sexual harassment. The numbers show how most of the respondents consider physical gestures or acts as sexual harassment. For instance, “Inappropriate touching, including

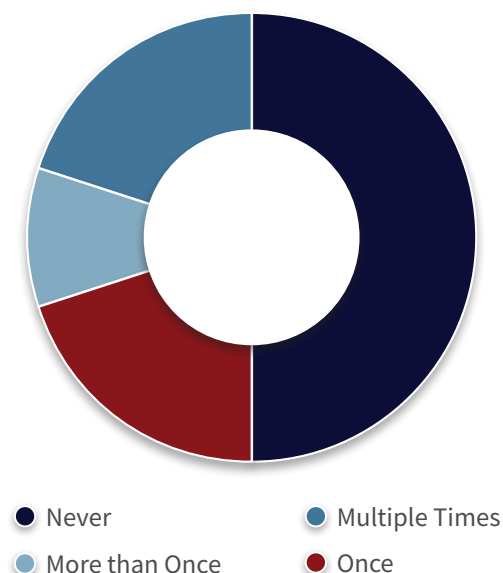
pinching, patting, rubbing, or purposefully brushing up against another person” and “Physical contact and advances” were chosen by 78% and 74% of the respondents respectively.

What Counts as Sexual Harassment at the Workplace

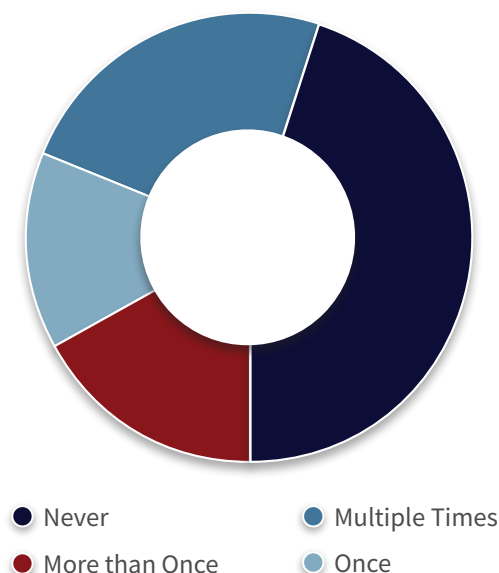


- 89 On the other hand, “Sending suggestive letters, notes, emails, SMS, and other modes of written communication” and “Sharing sexually inappropriate images or videos, including pornography or indecent GIFs” were considered as sexual harassment by 49% and 64% of respondents respectively.

Physical Contacts and Advances

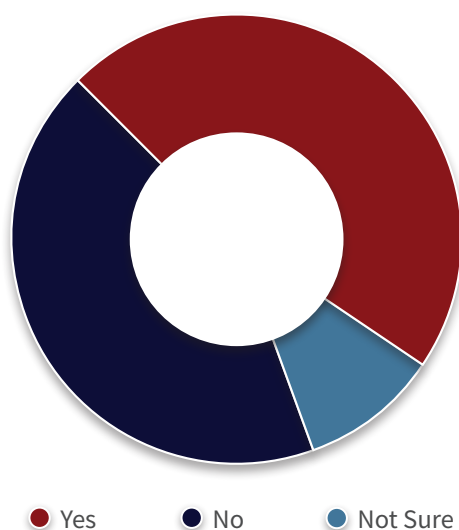


Instance of Inappropriate Touching



- 90 As is evident from **Figures above**, 50% and 55% of respondents respectively stated that they experienced “Physical contact or advances” or “Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person” at least once.

Have you ever felt uncomfortable in the presence of your employer or coworker

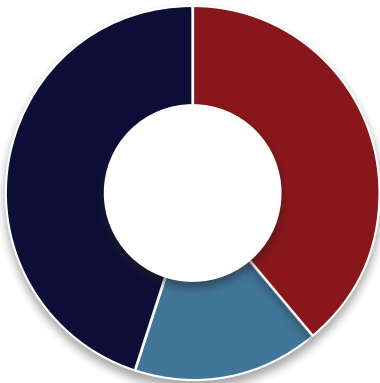


9.3

Workplace Discomfort

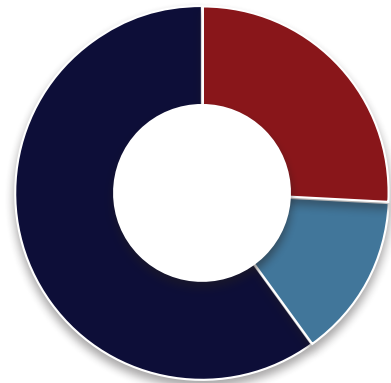
- 91 When asked if workers felt uncomfortable in the presence of their employer(s) and/or co-worker(s), 43% of respondents stated yes. While this number may not reflect the views of the majority, it is statistically significant.
- 92 Additionally, survey respondents stated that they had experienced discomfort due to inappropriate conversations initiated by an employer or co-worker at least once in the form of:
- Sexually suggestive remarks about appearance, clothing, or body parts (55%);
 - Sexual questions, such as inquiries about sexual history or sexual orientation (40%);
 - Demands or requests for sexual favours (36%);
 - Lewd jokes or sexual anecdotes (43%); and
 - Offensive comments about sexual orientation or gender identity (31%).

**Sexually suggestive remarks
about appearance, clothing, and
body parts**



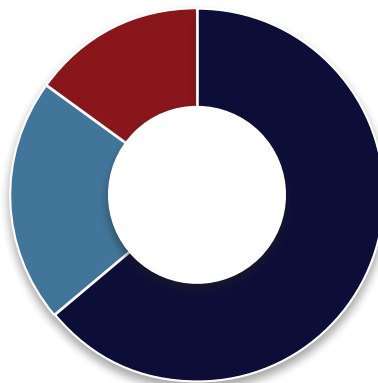
Once More than Once Never

**Sexual questions such as inquiries
about sexual history or sexual
orientation**



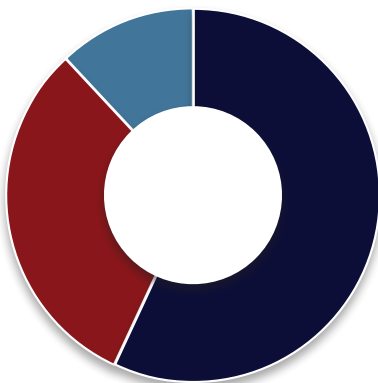
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**Demand or request of
sexual favour**



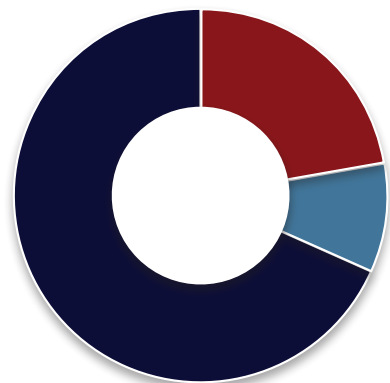
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**Told lewd jokes or sexual
anecdotes**



Once More than Once Never

**Offensive comments about sexual
orientation or gender identity**

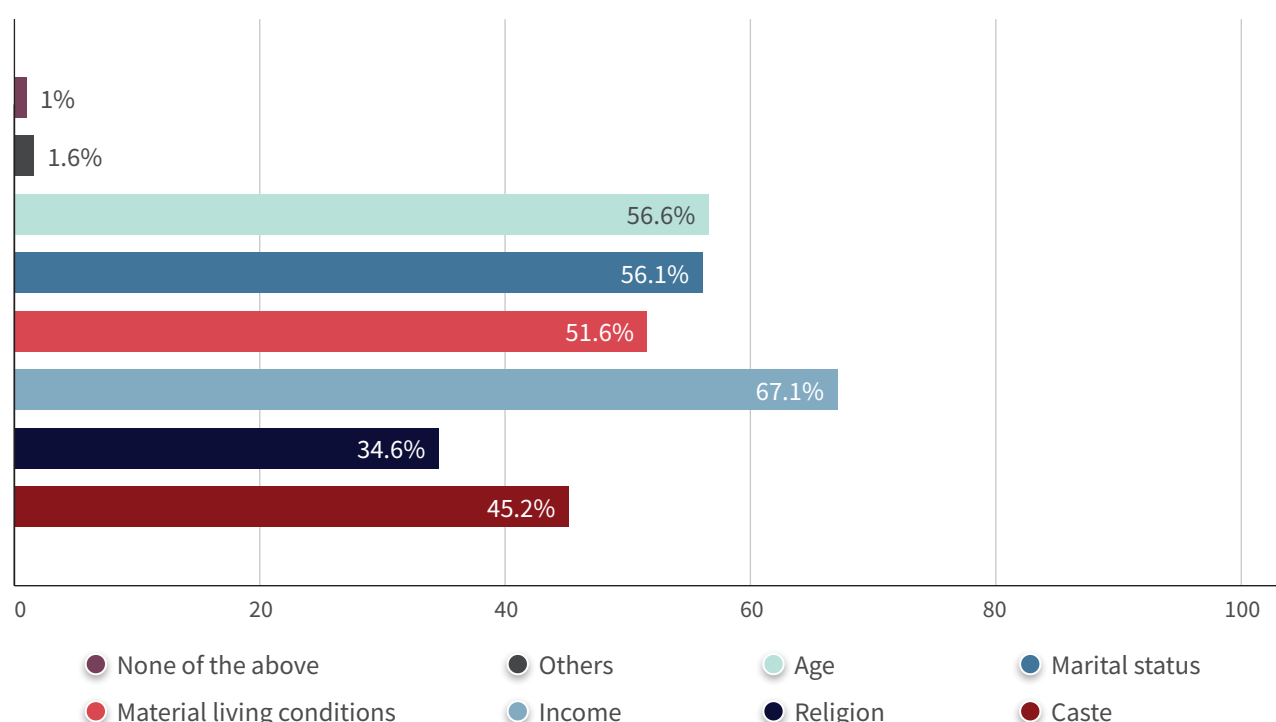
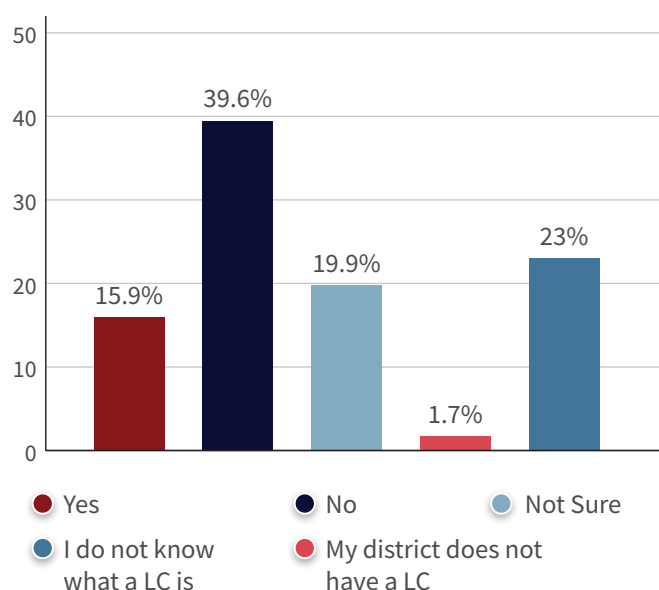


Once More than Once Never

9.4

Distinguishing Social Factors

93 When asked if distinguishing factors such as age, caste, religion, income, material living conditions, and/or marital status played a role in instances of sexual harassment, 67% marked income, and 43% marked caste, while 56% each, marked marital status and age. These numbers suggest that stigma prevalent in society aggravates the marginalisation of these workers, reiterating the importance of using an intersectional lens while understanding such forms of violence.

Distinguishing Factors Playing a Role in Sexual Harassment cases**Awareness of Local Committees**

9.5

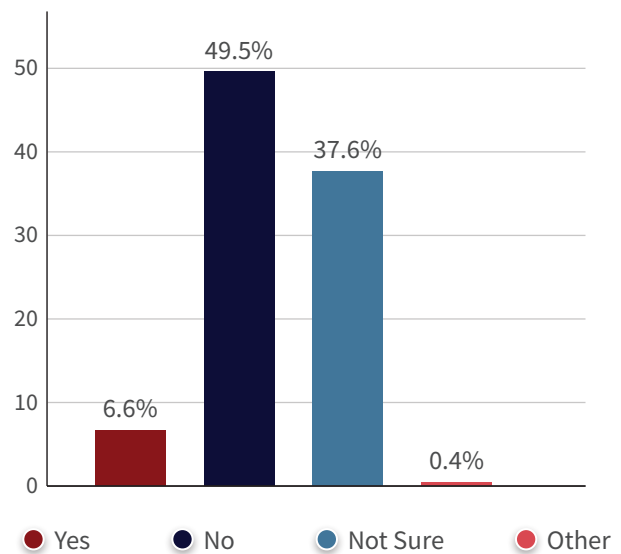
Awareness of Local Committees

94 Keeping in view the fact that Local Committees are the foremost line of defence and redressal for informal sector workers experiencing sexual harassment, it becomes imperative to note whether workers are aware of their rights and the Committees that can come to their aid.

95 In this light, the respondents were questioned if they were aware of Local Committees (LC) in their districts. Only 15.9% of respondents said that they were aware of an LC. This indicates the need for prompt and extensive awareness campaigns to help workers become aware of their rights and the redressal mechanisms that exist to support and protect them.

96 Additionally, when asked if they were aware of an instance where the Local Committee (LC) in their district had denied filing a case, 6.6% of respondents stated 'Yes'. This statistic is significant as it shows that LCs have denied filing a complaint, which suggests the additional difficulties the targets may be subjected to when they seek help.

Are you aware of instances when the LC denied filing your case or that of someone else you know?





The informal sector employs more than 90% of all working women in India. Such women are the most vulnerable group in the labour force. These women are underprivileged and impoverished yet forced to join the workforce as primary and often times the sole bread-earners. While the law does ensure that unorganised sector complaints of sexual harassment are redressed through Local Committees, the proper constitution of the LCs, the appointment of nodal officers in each district and information and awareness regarding the PoSH Act needs a lot of work. In order for us to give effect to the law in the informal sector, it is critical that we pay attention to its execution mechanism and need to educate the women of their rights and legal redressal mechanisms. Many of these women are uneducated, illiterate and have limited means or time, being daily wagers, hence the awareness programs need tailoring for integration into their day-to-day lives.



Lakshika Joshi

*Lead IP Counsel, Global & AVP - Legal
Capgemini Engineering*

Lived Experience of Informal Sector Survey Respondents

The last section of the Informal Sector Survey was optional for those individuals who had experienced sexual harassment at the workplace. This was a subjective section that included anonymous narrations via audio/text. These accounts are mentioned below. All names have been changed to maintain the anonymity of respondents.

"No action was taken so far. I am still working at the same site, in order to sustain my livelihood and generate income to support my family."

"I was sexually harassed by my boss. I don't want to take any steps because I am married and don't want troubles in my life."

"I don't want to complain because I don't want to be a socially unacceptable person."

"I work as a house help. My employer is a 40 years old bachelor. I have often been through situations in which he asked for sexual favours and touched me inappropriately. I did not file a complaint against him with the local authorities because I am afraid."

"It was one of my colleagues who used to touch me and had asked me multiple times for having sexual intercourse with him. I did not cave in and sternly warned him multiple times until he finally stepped back."

"I was married at the age of sixteen and had a daughter when I was eighteen. After I shifted to my husband's house, I started working as a domestic helper. But after four years of my marriage, my husband passed away and we were suffering financially and mentally. The place where I used to work as a domestic helper was a family of three. The male member of that family always used to look at me in a very wrong way, whenever his wife was not home he used to come into the kitchen and try touching me in an inappropriate way. I warned him multiple times and told him that I will inform his wife about his actions, but he said that if I told anyone about this, he would have me fired. He then mentally tortured me by repeatedly telling me to stay quiet and continue working at his house otherwise my daughter and I will die. I always wanted to complain but I couldn't because he was a very well-known local politician and could make my daughter and my life worse. I was very stressed but felt too scared to do anything because the harassment continued. I even tried giving up my life but the thought of my daughter stopped me. I didn't share any of this with anyone for a few months, after which I decided to leave my hometown and shift to another village without any financial support. I stayed on the footpaths for many months until I could save some money and built a bamboo (tent) where I stay with my daughter now."

"I filed a complaint against my landlord, who I also used to work for as a domestic worker. He used to come to my room when my husband was not at home or while I was bathing. After telling my husband about this we left his house and filed a complaint. He was taken under custody and was charged a fine as well but then was left on bail. He was given bail after a week but I have no idea about the fine charged or anything. I felt we were left unaware of the process of the jurisdiction. We were not even informed about his fine or when he was released."

"I never complained about the harassment, because it was not very prominent. And I could lose my job. That was before I started working here for the hospital. Now that I think of it, I feel like I should have done something."

"I have never experienced such harassment in the workplace, but I have seen my female coworkers (other construction workers) being stared at or being passed sexually inappropriate comments. I tried to intervene once when it became physical and eventually the blame was put on the female target by the contractor and she was warned that she would lose her job."

"There was a young girl at my workplace who told me that she had been harassed multiple times by the man she worked for as domestic help. She was helpless and hopeless after losing her family because of which she had to work. After a few months, she finally lost hope of someone helping her and so she quit working for him."

"I have experienced occasional inappropriate touching by my co-workers. Once or twice I tried changing my workplace. I have also been stalked by my co-workers a few times whenever I have to wait for the bus to go to work or come back home. Since I am a tailor, I have to go buy materials for work and also do home deliveries. People have sent me inappropriate messages, photos and videos at times. I have also received calls making fun of my body."

"I experienced some sexual advances from a man in whose house I used to work as a maid. I then quit my job in their house and never spoke about it to anyone, let alone file a complaint."

"Once, when I was around 25 years old, my employer made some lewd comments and then I quit working for him. I told this incident to my husband who refused to let me go to work anywhere at all and I never spoke about this to anyone. I did not file a complaint because I didn't know that I could file a complaint against him."

"When I was 25 years old, I worked as a girls hostel guard under a private company. I had night shift duty. One night, a few boys arrived at the gate of the hostel and asked me to let them in because they wanted to meet a girl. Since, according to the rules, nobody was allowed to leave the hostel late at night and boys were not allowed to get in, I denied them entry. Then the boys tried to force me by inappropriately touching, abusing and cursing me. Somehow I got myself out of that situation, ran and closed the doors and locked myself in. I informed the hostel warden and other authorities."

"I used to work as a part-time worker and had a lot of loans that needed to be paid. The owner of the place often made sexual comments, inappropriate touching and physical contact. The owner asked me to engage in an extramarital physical relationship with him and he would pay me extra for it. But I denied it. So, the owner got offended and tried to force me to accept the offer. He said that I would lose the job if I didn't accept the offer and gave me a day to think about it keeping in mind all the money I could get. I knew it was a problem, so I left that place and never went back."

"Once I worked in a house as a maid and the owner of the house used to stare at me while I worked and tried touching me inappropriately at times. I left that house after that incident and complained to his wife."

"I did not want to spoil my name but I had to continue working to support my family. So I decided to approach my Supervisor and he asked what happened, then he took the time to clear the issue. The individual was removed and shifted to a different location."

"I got married when I was eleven years old. Ever since I have been working with my husband in the laundry business. Earlier, when I used to go to pick up clothes from houses or hostel rooms, there were times when if the men of those houses were drunk, they would stare at me and give me inappropriate hints. So, I stopped picking up clothes from their houses and my husband started going there instead. Ever since I only go to girls' hostel rooms or homes with families."

"There was a college student who used to give me a lot of his underwear – he made me pack those dirty underwear one by one to get them washed. I used to feel humiliated by that. I didn't take any step against him because I believe this is an everyday problem and I can not get away from it as it is my only source of putting food on the table."

"I complained to my supervisor of the behaviour of a particular man. The supervisor did not pay heed at first, but after multiple women complained of the same thing, he had to fire the offender."

"When I was working at a construction site, the employer used to suggest that I be sexually involved with him to make extra money. He used to threaten me by saying that if I rejected it, I would lose my job and reputation around my co-workers and family members."

"A senior male member of the household in my workplace was being offensive and making sexual remarks. The man called me "baby" against my choice and gave me lewd looks that made me uncomfortable. He also made absurd comments about the clothes I wore. I quit a few days later and found out that the house was ill-famed for this reason. I did not file a complaint."

"Around four years ago, when I used to work as agricultural labour, my male co-worker used to trouble me and some other ladies working with me. We complained to the man who used to supervise our work. He made sure that the man who was troubling us didn't come to work from the next day. We did not register any complaints."

"I am a maid and work in several houses. There have been a few incidents in one house that made me feel very uncomfortable, like inappropriate touching and verbal abuse. I never filed any case but I did discuss it with other members of that family. I left that job after one month. I don't know about the committee which helps people like us but I feel it's embarrassing to come forward and speak for myself."

"I have not filed a case because I believe it won't show any result and only a few months are left for my contract to end."



There are several ways in which one can report crime on the cybercrime portal and provide information — by uploading videos, audios or by describing the incident through a written account. However, the cybercrime portal supports videos that are not more than 5 MB in size. This makes it impossible to upload say, a 6-7 minute video with a good resolution.

While some questions to be answered on the portal are optional, describing the incident in writing is compulsory. However, the portal allows only fifteen hundred characters as the limit. This means that every letter and every space will count as a character. For example, typing the words “Hello friend” would mean exhausting twelve characters which is a redundant way of calculating the wordage. In the last section of the cyber complaint, the portal asks the complainant to submit a national ID card or document of the victim/survivor. It is not always possible for the complainant to have an Aadhaar Card or any other ID proof if the victim/survivor is not filing the complaint themselves, and the report is being filed by say, organisers of an online program over heckling and bullying of their guest speakers, or even by a friend.

Cybercrime cases are very complex, it becomes difficult identifying the criminal offence especially when multiple incidents take place in a particular meeting. There is a lack of clarity and there are no guidelines with regard to the nature of the complaint as the instructions given on the portal are inadequate.

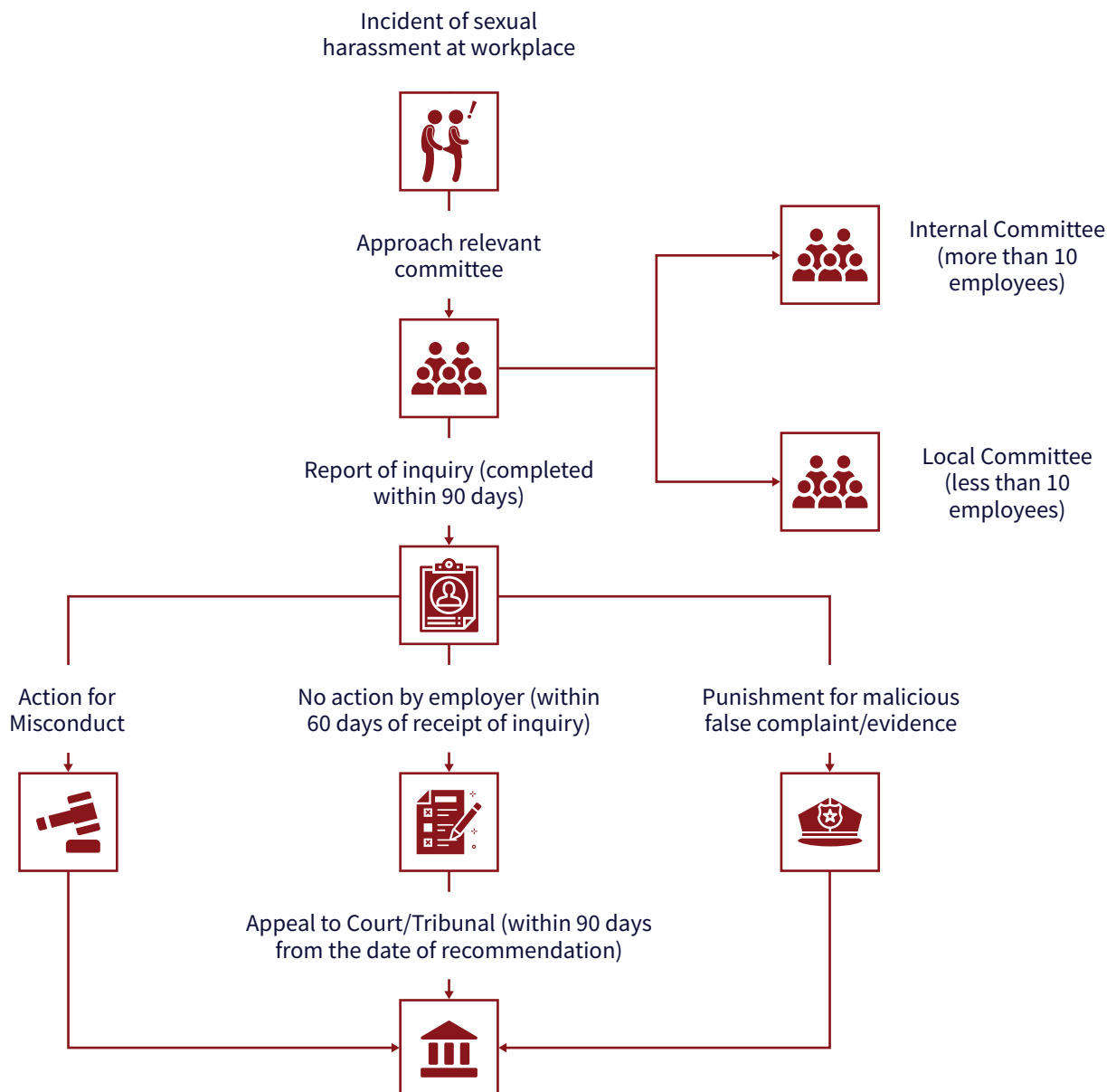
The length of multiple sections in the portal and the above-mentioned limitations that abound, make the process of filing a cyber complaint tedious and not user friendly in the least.

Dr Rina Ramdev

Sri Venkateswara College, University of Delhi

Jurisprudence Review

- 97 Laws addressing sexual harassment have been evolving ever since the Vishakha Guidelines were enacted by the judicial authority. Since then, the legal framework pertaining to sexual harassment of women at the workplace has witnessed a range of operational and functional upheavals. With the enactment of the Act in 2013, it was speculated that the inadequacies in the absence of a legal code would be resolved.
- 98 From the survey responses and secondary research conducted to assess the efficacy of the current legal framework, it is evident that there are procedural, interpretive, as well as organisational issues surrounding the Act. This coupled with inherent fallacies, of the Act, a visible chasm has been created between the Act on paper and its implementation on the ground.



11.1**Lack of Monitoring Mechanisms**

- 99 Effective enforcement of the Act is a prerequisite to facilitating legal recourse. It entails laying out a well-defined framework for ensuring awareness and training around the Act as well as enabling effective operation of committees, complaint mechanisms and eventual redressal.
- 100 Considering the implications of non-compliance, the law lays down punitive measures for failing to constitute Internal Committees. Section 23 of the Act states that the appropriate government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at the workplace. However, the Act doesn't specify silent monitoring or registration mechanisms to ensure the same.

11.2**Prevention of Sexual Harassment**

- 101 While there have been prosecutions for failing to constitute the IC, there have been no prosecutions for failing to provide a safe environment at work. A 2016 amendment to the Act renamed the Internal Complaints Committee to Internal Committee and Local Complaints Committee to Local Committees with the aim of broadening their role from being just complaints committees to proactively working towards the prevention of sexual harassment. However, it is yet to be ascertained to what extent the Act has been able to prevent workplace harassment.

11.3**Absence of Committees**

- 102 A 2018 study by the Martha Farrell Foundation and Society for Participatory Research in Asia found that out of 655 districts in the country, 29% replied that they had formed Local Committees, while 15% had not done so. The majority, 56%, did not respond. By May 2020, even in the capital, New Delhi, only 8 out of 11 districts had constituted Local Committees.

11.4**Illegitimate and Fallacious Committees**

- 103 The study also found a lack of awareness regarding the constitution, roles, and responsibilities among committee members, indicating a lack of capacity to handle sexual harassment complaints.
- 104 The fault lines in the composition and procedures of the committees leave room for their judgements to be challenged in higher courts. In Tanya Mander vs the Rajiv Gandhi National University of Law, the legality of the IC was challenged based on the grounds that its composition was illegal and not in line with the laws.
- 105 Therefore, it is imperative to ensure that these bodies are constituted in complete accordance with the law. However, there is a lack of awareness, clarity and initiative on part of the bodies entrusted to constitute these committees.

11.5**Non-compliance**

- 106 There is a lack of compliance from organisations, most of which fail to comply with the decisions of the committees. In certain cases, even

Digital space is another main concern where vulnerable women are being lured by fraudulent agencies. This has never been properly addressed in India, hence the need for a redressal mechanism in a prompt and effective manner. Even complaints filed online are never taken into action, so this needs to be taken up. Since the Covid-19 pandemic, such cases have increased.

Alana Golmei

Founder,
Pann Nu Foundation Center

While where we work may have changed, we each still have the right to a secure workplace where we can do our best each day. We hope that understanding the PoSH law in this light will go a long way in helping us maintain safe and positive workplaces.

Sreemoyee Malakar

COO,
Lawcubator Technologies
Pvt. Ltd.

the members of the committees fall short of understanding the process of conducting enquiries adequately. Even in circumstances where committees discharged their duties lawfully, the outcome of their report remains unknown unless any suspensions or transfers take place.

increased from the current three months (from the date of the incident), only 25.9% agreed in 2021 as compared to 51% in 2020.

The term consent is not understood correctly and maintenance of confidentiality is a huge challenge. Usually, it is the complainant who suffers due to workplace gossip. The presence of unions also causes complications where the committee tends to question the credibility of the complainant in the first instance. Often the committee does face pressure from the senior officials and does not enjoy total independence. Appealing against the decisions has always been challenging. In Maharashtra, the appellate authority was appointed seven years after the Act through a notification in 2021. Prior to that women were constrained to approach the High court.

Pouruchisti Wadia

Founder,
Associate Program Director at
SNEHA (Society for Nutrition,
Education and Health Action)
Romila Palliative Care Center

11.6

Burden of Proof

- 107 Section 14 of the Act aims at penalising women for false and malicious complaints and evidence. There have been instances where a committee or a court has presumed a complaint to be fallacious on the grounds that the complainant was not able to provide any witness or evidence in the favour of the complaint.
- 108 The Act should address mechanisms to deal with such instances and ensure that contextual relevance plays its part in ensuring fairness and justice.

11.7

Deadline to File a Complaint

- 109 The Act also lays down a limitation of filing a complaint within 3 months of an incident of sexual harassment, which can be further extended to 3 more months at the discretion of the Committee⁷.
- 110 By prescribing a deadline to the validity of a felt experience, the Act does not account for the psychological toll that sexual harassment could take on the target, thereby discounting those instances of sexual harassment where the target may take time to come to terms with what they experienced.
- 111 When questioned if the period for filing a complaint should be

11.8

Impact of Power Dynamics

- 112 The unequal power relations in a workplace is also a significant aspect that needs to be accounted for. Justice J.S. Verma Committee had also reviewed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012. The Committee found that the structure of Internal Committees defeats the purpose of the Act as “the in-house dealing of all grievances would dissuade women from filing complaints and may promote a culture of suppression of legitimate complaints in order to avoid the concerned establishment falling into disrepute.” Instead, it was in the favour of setting up a separate Employment Tribunal to receive and adjudicate all sexual harassment complaints.

11.9

Informal Sector

- 113 In the informal sector, shortcomings are multifaceted. The intersectional discrimination that informal workers face renders them especially vulnerable to sexual and other forms of harassment. The applicability of the Act is questionable in places where the definitions of the workplace, employer, employee and what constitutes harassment is unclear. Since the informal sector ranges from employees like construction and agricultural workers to domestic workers, it is challenging to delineate the provisions of the Act. For domestic workers, the 2013 Act says that Local Committees have to refer the case to the police, leaving no civil remedy.

⁷ Section 9(1), the Act of 2013

114 Poverty, caste, class and social hierarchies, stigmatisation, and lack of awareness are barriers that hold back individuals in the informal sector from seeking justice from a district-level committee that is rarely visible if not altogether absent. Even in large cities like Mumbai, there have been very few complaints to the Local Committees from the informal sector.

115 The lack of constant grassroots awareness and training programs that take into account the vulnerabilities of individuals in the informal sector leads the Act to remain on paper without direct assistance to the 95% women workforce engaged in the informal sector.

11.10

Work from Home

116 The pandemic brought about a reimagination of the workspace. With the changing definition of the workplace, the contours of sexual harassment have also become manifold.

117 According to a joint survey by Southeast Asia, Freedom of Expression Network (SafeNet), and Never Okay Project, it was found that 86 of 315 respondents claimed they were sexually harassed while working from home. These figures reinstate the relevance of protecting women

from such abuses in a remote and 'safe' environment.

11.11

Prevalence of Stigma

118 A 2017 survey conducted by the Indian National Bar Association found that workplace harassment existed across sectors and entailed incidents of different intensities ranging from perverted comments to demands for sexual favours. However, most women did not report such cases to any senior management "because of stigma, fear of retribution, embarrassment, lack of awareness of reporting policies, or lack of confidence in the complaints mechanism". The survey had also discovered that most firms "still failed to comply with the law, or members of Internal Committees did not understand the process adequately". Even though the survey was conducted four years prior to this report, the findings remain more or less consistent to date.

119 There is a clear need to focus on improving the current mechanisms by bringing about a re-evaluation of the socio-cultural demographic as well as the legal recourse. And there is sufficient cause for a reimagining of the provisions of the Act for their applicability to the informal sector. More importantly, it is imperative to initiate dialogue and discourse around the issue.

Making laws and creating awareness is what got us so far with the formal sector, but with the informal sector, we need to take this a few steps further. Focussed efforts on bringing about social awareness and investing in the community's behavioural change will bring about a gradual change. Domestic violence and workplace harassment need to be integrated and addressed as a key issue into the grid of social issues that we are currently addressing in weaker communities.

Dr Gayathri Vasudevan

Chief Impact Officer at Sambhav Foundation & Chairperson at LabourNet Services India Pvt. Ltd.



The workforce has traditionally been considered as a pool of full-time employees (FTEs) who are present at the office for collaborative tasks and to whom day-to-day work is distributed. People policies till 2020 were geared to support such a workforce and the absence of options was never questioned. But the traditional workforce is now looking to pivot to a more diverse “salad bowl” – from FTEs to freelancers to the gig economy and even a global workforce. Therefore, hiring and employment contracts will necessarily need to reflect the applicability of the PoSH Act to all types and modes of employment. Similarly, the workplace of the present is no longer an office or a building but is rapidly morphing into a mindset. Hybrid work includes employees who work from home, from the office and even from a co-working space who use the online medium/video conferencing as well as physical spaces. These nuances in how we understand the workforce and workplace in the post-pandemic era will be critical to keeping the PoSH Act relevant in letter and spirit.

Anjali Varma

*People and Culture Officer,
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Recent Judicial Trends at a Glance

120 The interpretation of the law by judicial authority is of utmost importance in a democracy. In the context of the Act, the jurisprudential review not only aids in understanding and analysing the issues from a legal perspective but also helps in charting out the trends that have far-reaching consequences for our social structure, and its stakeholders in particular.

121 Judicial trends take precedence because they keep evolving in line with the peculiarity of each case. Be it the interpretation of the law, laying down guidelines for the investigative procedure, or the composition of relevant bodies, the judicial authority has frequently enabled a more comprehensive understanding of the law. While all cases are judged on their respective merits, there is a certain commonality to how the law is interpreted in most of these cases.

- To begin with, one pattern that was observed during preliminary research was that most of the cases that made it to the court were filed by the penalised individuals. Most of the writs that were filed were found to be challenging the decisions of ICs and LCs based on minuscule technicalities. For example, *Duraisamy Baskaran v. GAIL (India) Limited and Others and Union of India and Ors. v. Mudrika Singh*.
- Another trend was the passive role of the judicial authority that the courts adhered to. The courts seem to be shying away from interventionist measures and instead put the onus on the bodies/committees to handle each case. They are directed to follow

through with what has been prescribed by the law, without making any pronouncements that could impede or influence the process.

- Yet another pattern was the reluctance of the judicial authority to bring about any noteworthy interpretation of the law. While the courts have interpreted the law differently, they have refrained from making judgements that would bring about any amendments to the Act. The only notable case against this argument is the *Sanjeev Mishra v. Disciplinary Authority and General Manager, Bank Of Baroda and Ors.* case, where the court, through its judgement, brought about a reinterpretation of the workplace.
- Lastly, passing the buck, from the committees to courts and back to the committees is another trend that can be observed. The judicial authority does not take it upon itself to pass direct judgments on the merits of the case. It outsources/delegates the committees/organisations to adjudicate. In *Silajit Guha vs. Sikkim University and Ors.*, the court refrained from passing a determinant judgement on the scope of the workplace and the jurisdiction of the Act in a private setting and instead, left it on the Executive Authority to decide, based on the particulars of the said case. While it is essential to provide some degree of autonomy to the said bodies, it is equally important to take a decisive stance which is something that the judiciary has by and large been unable to do.

However good the legal framework may be unless the mindset of the decision-makers is right women will not be safe.

Meenakshi Nayar

President at ETASHA Society

Some Noteworthy Judicial Pronouncements of 2021

Sanjeev Mishra v. Disciplinary Authority and General Manager, Bank of Baroda and Ors.	47
Dr Ajay S. Sekhar v. The Internal Complaints Committee, Sree Sankaracharya University of Sanskrit	48
Mobashar Jawed Akbar v. Priya Ramani	49
Duraisamy Baskaran v. GAIL (India) Limited and Ors.	50
Dr Tanya Mander v. Rajiv Gandhi National University of Law	51
Nagaram Balakrishna v. State of Andhra Pradesh	52
Tabassum v. Century Overseas	53
Silajit Guha v. Sikkim University and Ors.	54
Mary Rajasekaran v. University of Madras and Ors.	55
P v. A & Ors.	56
Union of India and Others. v. Mudrika Singh	57
S. Sophia v. The Director Of Medical And Rural Health Service	55

13.1

Sanjeev Mishra v. Disciplinary Authority and General Manager, Bank Of Baroda and Ors.

11.01.21

High Court of Rajasthan

122 Sanjeev Mishra, who was employed as the Chief Manager of Bank of Baroda, Jaipur Branch had allegedly sent obscene and overt messages to a female employee of the bank. In the past, the Complainant and the Petitioner were posted in the same branch. However, the Complainant was transferred to a different branch in a different State and she was situated in a different State when the alleged obscene messages were sent to her by the Petitioner.

123 The Complainant filed a complaint of sexual harassment against the Petitioner and as per the service rules applicable to the Bank, a charge-sheet was filed against the Petitioner by the Disciplinary Authority and General Manager, Bank of Baroda. The Petitioner filed a Petition before the Supreme Court for quashing and setting aside the charge-sheet filed against him.

124 The Petitioner challenged the Disciplinary Authority and General Manager's charge-sheet claiming that there was no jurisdiction to conduct the inquiry against him on two grounds:

- **Geographical Location** – The petitioner raised an objection

that the committee doesn't have jurisdiction in this case because the petitioner is working in a different State while the Complainant who has lodged a complaint about sexual harassment is in another State.

- **Working hours** – The Petitioner alleged that the said messages were sent by him after office hours, which does not cover the employment timings.

125 The Court in its judgement held that in a digital workplace setting, it would be impossible to say that two people were not working out of the same workplace merely because they were situated in two separate geographical locations. Even if the messages were sent late at night, considering the fact that the Petitioner's working hours could not be constrained in the traditional 10:30 A.M. to 4:30 P.M. bracket, it would not be fair to say that the incident of sexual harassment occurred outside the workplace because it was sent later in the day. The Petitioner's contention, that the incident happened outside of the ambit of the workplace since the Complainant was situated in a different State, and it was done late at night, were rejected by the Court.

Takeaways:
Changing the definition of a workplace in the backdrop of the pandemic; reinterpretation of the Act.

13.2

**Dr Ajay S. Sekhar v. The Internal Complaints Committee,
Sree Sankaracharya University of Sanskrit**

10.02.2021

High Court of Kerala

Takeaway:
Jurisdiction of
the IC per the
definition of the
workplace; online
harassment;
procedural
faultiness.

- 126 A complaint was submitted by a student organisation stating that one of the teachers of the University had a Facebook chat, alleging sexual tones, with a former student.
- 127 The complaint was based on a Facebook post of a former student of the University wherein the said student had raised serious allegations against her teacher. This had been confirmed by another teacher on her Facebook.
- 128 Proceedings were initiated by the Internal Committee through Smt. Jenny Rappal, as the Presiding Officer, under the UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, enacted under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Appellant filed a writ petition against quashing the complaint on the grounds that:
- The IC does not have any jurisdiction or power to conduct an inquiry on the basis of a complaint filed by a student organisation, as they do not qualify the definition of a 'student', 'aggrieved woman', or 'employee', as provided under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and the regulations made thereunder.
 - The present Presiding officer does not fulfil the qualification, as prescribed under Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- 129 The Appellant also stated that since the alleged incident did not take place within the definition of a workplace, it did not fall under the Act. According to the Appellant, he was served a notice to appear before the IC and sought a copy of the complaint in order to prepare his defence, however, the IC allegedly failed to provide him with a copy. He was directed to appear before the IC which he did not. Upon preliminary enquiry and the absence of the Appellant's response, the IC began the proceedings, which the Appellant had challenged.
- 130 The Court directed the Appellant to comply with the proceedings that must be taken with due consideration to law and the constitution of the IC. It is for the Appellant/writ Petitioner, to submit the explanation, as stated by him. An explanation is submitted, within one month from the date of receipt of a copy of this judgement. On receipt of the explanation, along with the supporting documents, the Registrar of Sree Sankaracharya University of Sanskrit, Kalady, was directed to pass orders on its merits and in accordance with law within the stipulated time period of two months.

13.3

Mobashar Jawed Akbar v. Priya Ramani**17.02.2021**

Delhi District Court

- 131 The Complainant moved the court against the Accused, of defaming and damaging the Complainant's reputation by way of social media posts, print and online articles, etc., on platforms such as Vogue Magazine, Twitter, Firstpost etc.
- 132 It is further alleged by the Complainant that accused herself, while putting forward the above-mentioned defamatory statements, relating to the incidents that allegedly occurred 20 years ago, simultaneously admits that the Complainant did not 'do' anything to her and despite that she had intentionally put forward malicious, fabricated and salacious imputations to harm the reputation of the Complainant.
- 133 The Accused, Priya Ramani, took the defence that the publication of content was done for the public good and was regarding a true incident of her sexual harassment. The Accused also stated that she published this content in good faith and for the protection of other women's interests regarding sexual harassment at the workplace.
- 134 The Court was of the view that a woman cannot be punished for raising her voice against sexual abuse on the pretext of a criminal complaint about defamation. They further stated that the right of reputation cannot be protected at the cost of the right of life and dignity, as is guaranteed in the Indian Constitution under Article 21 and right of equality before the law and equal protection of the law as guaranteed under Article 14. The woman has a right to put her grievance at any platform of her choice, even after decades.
- 135 Further, the Court stated, as per the Economic Survey Report of the year 2020 – 2021 presented in the Parliament, the pan Indian workforce participation rate of females in the production age (15 to 59 years) was 26.5% in the year 2018 – 2019 as compared to 80.3% for male. It is suggested in the said Report that in order to incentivise more women to join the workforce, apart from the investment in institutional support and other areas, a safe work environment needs to be made.
- 136 In conclusion, the Court is of the view that the case of the Complainant regarding defamation against the Accused is not proved and that she is acquitted for the same.

Takeaway: Right to complain even after decades. Right to speak of one's experience on any platform. Broad definition of what constitutes harassment. Reiteration of the importance of a safe work environment for increasing women's participation in the workforce.

13.4

Duraisamy Baskaran v. GAIL (India) Limited and Ors.

16.03.21

Telangana High Court

Takeaway:
Addressing
the ambiguity
regarding
procedures and
disciplinary
action.

- 137 The Accused was working as the Deputy Manager of a corporation based in Surat. On multiple occasions, complaints of sexual harassment were filed against the Accused. The ICC undertook the preliminary enquiry on the basis of four complaints and subsequently, the report of the preliminary investigation conducted by the ICC was submitted to the disciplinary authority with the finding that some of the allegations levelled against the Petitioner were proved and in respect of some allegations, it was held as not proved.
- 138 Even before the IC could submit its report, the Petitioner was placed under suspension vide proceedings under Rule 25 of the GAIL Employees' (CDA) Rules, 1986. Thereafter, the IC report was communicated to the Petitioner so as to enable the Petitioner to submit his objections and a date for a personal hearing was fixed. The Accused appeared for the hearing and due procedure was followed throughout the proceedings. A charge memo was issued to the accused in accordance with Regulation 30 of the Rules, 1986 and straight away, a major penalty of removal from service was imposed on him.
- 139 Aggrieved by the said order, the Accused had preferred an appeal before the appellate authority. He contended that without initiating disciplinary proceedings, the respondents could not have imposed a major penalty of removal. If any regular departmental enquiry was conducted, the Petitioner could get an opportunity to submit his explanation. The IC report was treated as a final report and based upon the IC report, the Petitioner was removed from service without following the Regulations.
- 140 The Court held that the disciplinary authority ought to have initiated disciplinary proceedings against the Petitioner and after giving an opportunity to the Petitioner in the regular departmental inquiry, and only if the charges are proved in the departmental inquiry, should the disciplinary authority impose any punishment. But without following the procedure, the respondents ought not to have imposed a punishment of removal.
- 141 Therefore, the impugned orders as confirmed by the appellate authority were set aside and the matter was remanded to the disciplinary authority for initiating disciplinary proceedings in accordance with Regulation 30 of the Rules, 1986. Since no charge memo was issued to the Petitioner, the question of initiation of disciplinary action against the Petitioner would not arise and since no disciplinary proceedings were initiated, the Petitioner could not have been imposed with a major penalty of removal.

13.5

Dr Tanya Mander v. Rajiv Gandhi National University of Law**22.03.2021**

High Court of Punjab

142 The Petitioner, Dr Tanya Mander has been working as an Assistant Professor of English in the respondent University since the year 2007. The complaint of the petitioner was that one of her senior colleagues had scribbled derogatory and lewd remarks on the wall of her office.

143 According to the Petitioner, the Committee as constituted by the respondent University was not in accordance with Regulation 4 of UGC Regulations. The contentions are along the following lines:

- The presiding officer of the Committee cannot be below the rank of Professor in the case of a university, whereas the Committee was headed by an Associate Professor.
- One member has to be from a non-government organisation or an association committed to the cause of women, however, in the aforementioned case, there was none.
- Two of the members of the nine-member Committee were contractual employees of the respondent university.

144 The Court observed that the Committee is headed by an Associate Professor of Law who is the senior-most lady faculty member in the University. Then, there are six Assistant Professors who are members of the committee. A Medical Officer, as well as an Assistant Librarian, are also members of the Internal Committee.

145 Thereafter, the law requires that not less than two members should be amongst employees, preferably committed to the cause of women, or who have social work experience work, or have legal knowledge. In this case, most of the members are faculty members of Law and thus possess the required legal knowledge. Further, it was observed that the committee was quite broad-based and the contractual employees were only two out of nine members. In fact, more than half of the total number of members of the committee are women. Keeping in view the aforesaid facts, the court dismissed the petition.

Takeaways: Lack of clarity on the composition of the complaints committee; time and resources being invested in the wrong direction.

13.6

Nagaram Balakrishna v. State of Andhra Pradesh**23.03.2021**

High Court of Andhra Pradesh

Takeaway:
Keeping the suspension order aside, the court directed the investigation process to continue as per the law and stated that it was a question of fact to be decided. The investigation process is tainted by malice in law though no malice in fact.

- 146 Acting on a complaint of sexual harassment by a subordinate officer, The Special Enforcement Bureau, Guntur, had relieved the Petitioner from the position of Enforcement Superintendent in September 2020. The target was working in the capacity of a sub-inspector when the alleged act of harassment took place.
- 147 As per the allegations, the Petitioner had instructed the target to copy contents from a liquor salesman's phone to a compact disk as part of an investigation. The said cell phone contained explicit content and the target was disturbed upon discovering them. Consequently, she filed a complaint against the ES through her husband on grounds of sexual harassment.
- 148 A Special Committee was constituted to investigate the charges, in the absence of an IC. After carrying out the investigation, it was found that the Accused was aware of the contents on the device and pressured the target to copy the material despite her disapproval. The inquiry committee, therefore, declared it as an act of sexual harassment and recommended that the Accused be placed under suspension.
- 149 The Accused then filed a writ petition challenging his suspension order. The Court in its judgement stated that the process of investigation and the subsequent suspension was vitiated by serious irregularity. The Court set aside the inquiry conducted by the Special Committee stating that the husband of the target had no locus standi to lodge such a complaint. Based solely on the recommendations of the inquiry committee, the composition of which was not in line with the law, the suspension order could not have been carried out lawfully and is therefore invalid.
- 150 The Court further stated that while suspension orders are imperative to carry out a fair investigation, they cannot be made the norm especially when it is riddled with irregularities.

13.7

Tabassum v. Century Overseas

06.04.2021

Delhi District Court

- 151 The Appellant, Tabassum, who has been an employee of Century Overseas for the past four years, had filed a complaint against three of her colleagues. She had reported incidents of sexual and workplace harassment immediately after it occurrence with her and continued to do so every time these incidents occurred.
- 152 The Appellant alleged that even after the complaint was made, the IC failed to take any punitive action against her co-workers and she was kept in the dark about the proceedings. The report of the IC clearly stated that there was no mutual or forcible physical kind of abuse.
- 153 Considering the physical and mental health of the Appellant, the IC decided to transfer the Respondent in question to another unit of the company or left the decision with the Complainant to decide if she herself wanted to get transferred to the other unit.
- 154 The Court observed that the recommendations made by the IC are in accordance with the law and therefore, sufficient to redress the complaint of the appellant.

Takeaway: Lack of procedural transparency in decision making.

13.8

Mary Rajasekaran v. University of Madras and Ors.**25.08.2021**

High Court of Madras

Takeaway:
Interpretation of the definition of harassment: the court has defined what does not constitute sexual harassment.

- 155 Mary Rajasekaran had been appointed as an Administrator on contract in Loyola Development Office and Alumni Association in July 2010 and was subsequently promoted as Secretary to the Rector of Loyola Institutions on a contract basis. Her services were terminated on September 3, 2014, and she was offered a sum of Rs 50,000 in lieu of allowing her to serve the notice period, but she rejected the offer.
- 156 In 2016, she moved to the High Court filing a writ petition for her reinstatement and also accused a former Principal, the Director of the Alumni Association (between May 2012 and May 2015) of sexual harassment. She contended that Loyola College had not taken any action against the Accused and violated the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- 157 She argued that the accused was transferred to Trichy, which itself indicates that the allegations raised by her regarding sexual harassment are true. While the plea was pending, she approached the Tamil Nadu State Commission for Women and on December 22 she had obtained an order for payment of INR 64.3 lakh as compensation. Loyola College filed a writ in 2021 against the order of the Commission.
- 158 Respondents contended that the allegations were false and were forged by the Petitioner only after the police started investigating the crime against her son. There is no evidence whatsoever available on record to show that she ever raised any sexual allegation or complaint against the accused. Only when she addressed an email to the Police Commissioner regarding the criminal investigation against her son, did she include one word “sexually”. It was argued that this allegation was made only to blackmail the management.
- 159 The Court observed that emails sent to authorities did not contain any allegation of sexual harassment or physical abuse as pleaded in the Writ Petition. The first time her son was investigated by the police, a complaint was sent to the Commissioner of Police, Coimbatore, stating that the Accused was harassing her “mentally, emotionally and sexually”. Except for these three words, nothing else was mentioned. Even in it, she did not give any specific instances and nature of allegations etc.
- 160 The Court held that merely on the basis of a personal feud between the Accused and the Petitioner, one cannot say it is sexual harassment. Such ‘misunderstandings’ in the workplace cannot be classified as sexual harassment.

13.9

P v. A & Ors.**24.09.2021**

Bombay High Court

- 161 The Bombay High Court acting in the interest of both parties associated with the case directed that it was imperative, to protect the identities of the parties from disclosure, even accidental disclosure, in the proceedings. These proceedings involve issues under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- 162 This order set a precedent for future orders, hearings and case file management. The guidelines thereby issued and subject to revision, as and when the need arises, are as follows:
- Anonymise the identities of the parties: The orders shall not bear the name of parties either in the titles or in the body of the order including the parties' personally identifiable information ("PII") such as email ids, mobile numbers, etc. The reference would need to be in the manner of A vs. B, or Plaintiff vs Defendant, etc. The identities of witnesses shall also not be revealed in the orders.
 - Orders/judgments on merits will not be uploaded. Because this order sets out general guidelines and does not address the merits, it is permitted to be uploaded.
 - All orders and judgments will be delivered in private, that is to say, not pronounced in open court but only in Chambers or on-camera.
 - Any attempt to record or transcribe any part of the proceedings will be a contempt of Court.
 - No PII document shall be retained by the Registry. For verification of identity, the Registry may ask for the production of an identity document to establish the identity of the deponent, but no copy of any such document is to be retained on file.
 - The Registry will not permit anyone other than the Advocate-on-Record with a current and valid vakalatnama to take inspection or copies of any filing or order. The record is not to be digitised by any third-party solution provider without an order of the court.
 - Both sides and all parties and advocates, as also witnesses, are forbidden from disclosing the contents of any order, judgement or filing to the media or publishing any such material in any mode or fashion by any means, including social media, without specific leave of the court.
- 163 These guidelines only extend to open courts, and committees such as ICs are exempted. However, given the requirement under Section 16 of the Act on confidentiality, IC is duty-bound to handle such matters maintaining confidentiality in any case. IC also does not engage in media disclosures and inquiry reports and recommendations are not circulated in the media.
- 164 The woman plaintiff in the case has now approached the Supreme Court against the order passed by the High Court. The petition points at "grave irregularities" in the High Court order and states "It

Takeaway:
Curtailling public access to information in the name of anonymity is a step in the wrong direction.

will legitimise undue protection to sexual offenders in gross violation of principles of open court, natural justice and fundamental rights of survivors.” Advocate Abha Singh, representing the plaintiff, stated that the High Court’s order violates freedom of speech and expression

guaranteed under Article 19(1)(a) of the Constitution of India. The petition draws attention to the importance of public discourse in shaping the nature of legal entitlements delivered to women in matters of social justice and women empowerment.

13.11**Union of India and Ors. v. Mudrika Singh****03.12.2021**

The Supreme Court of India

- 165 The Supreme Court upheld the charges of sodomy against an officer of the Border Security Force (BSF). The Court was deciding on an appeal by the Central government and BSF against a Division Bench order of the Calcutta High Court which has set aside orders of the Director-General (DG) of BSF who had upheld charges of sodomy against the Respondent Officer.
- 166 The target had alleged that the BSF officer, who was a Head Constable, committed sodomy on him. The Respondent refuted the charge. The commandant upheld sodomy charges and demoted him from head constable to constable rank.
- 167 The Respondent challenged this to the DG, the DG BSF upheld the charges of sodomy but commuted the punishment. Instead of demotion, the DG ordered forfeiture of 5 years of service for the purpose of promotion and 7 years of service for the purpose of pension.
- 168 The Respondent further challenged this in the Calcutta High Court. The Calcutta High single-judge set aside the orders of the BSF stating that there was no jurisdiction with the commandant to direct preparation of an additional record of evidence and that there was insufficient evidence.
- 169 The Division Bench upheld the order of the single-judge leading to the present appeal before the Supreme Court.
- 170 The Supreme Court held that there was no error of jurisdiction on the part of the commandant in seeking clarification with regard to the date of the incident by calling for an additional record of evidence. The Court, therefore, upheld the sodomy charges.
- 171 The Court pointed out that there is an increasing trend of invalidation of proceedings inquiring into sexual misconduct, on the hyper-technical interpretations of the applicable service rules. The existence of transformative legislation like the Act may not come to the aid of the target if the appellate mechanisms turn the process into punishment.
- 172 The Court further stated, "It is important that Courts uphold the spirit of the right against sexual harassment, which is vested in all persons as a part of their right to life and right to dignity under Article 21 of the Constitution. It is also important to be mindful of the power dynamics that are mired in sexual harassment at the workplace."

Takeaways:
Importance of upholding the spirit of right against sexual harassment without it getting lost in the technical issues of rules and procedures. Highlighting power dynamics at play in the workplace sexual harassment cases.

13.12**S. Sophia v. The Director Of Medical And Rural Health Services****15.12.2021**

High Court of Madras

Takeaways: A contemptuous interpretation of punitive/corrective measures is detrimental to the target.

173 The Petitioner, S. Sophia, lodged a complaint against the Superintendent of the Government dispensary on grounds of sexual harassment. It was alleged that the said person sexually harassed the Petitioner and demanded sexual favours from her.

174 Therefore, the Petitioner filed a complaint before the Superintendent of Police. In response, the Petitioner was transferred to another dispensary. Thereafter, the Petitioner sent a representation to the higher officials for appropriate action against the said Superintendent. However, there was no response.

175 Taking cognisance of a writ petition filed by the Petitioner, a committee was formed and the said

Committee found that there are materials against the Respondent and transferred him to another place.

176 The Respondent stated that both transfers were done to ensure smooth administration. However, after filing the petition, the Petitioner was transferred once again. The Petitioner, who was already undergoing mental stress due to harassment, was further victimised in this case by way of these punitive transfers.

177 The court observed that the impugned transfer order was not in accordance with the law and therefore cannot be sustained. The order, as well as any consequential proceedings, were simultaneously quashed.



An important aspect to remember in the context of sexual harassment is the issue of power. Although the existing laws take that into consideration and have made provisions for confidentiality and protection, it is not adequate, especially in view of the increasing informality of employment, fear of losing the job, fear of further harassment, and fear of stigma and backlash. What becomes as important as law is to build a culture of ethics and respect, through a variety of means such as reflexive training, both single-gender and mixed-gender communities of support, strong ethical guidelines broken into simple sets of non-negotiable behaviour and strong action in instances of violence. Institutional leadership has to build an organisational ethos that makes sexual or any other form of harassment at any level completely unacceptable.



Jyotsna Jha

*Director,
Centre for Budget and Policy Studies*



“While the legal framework is strong enough to address sexual harassment at the workplace, the efficacy of it is questionable; as most incidents don’t really get reported by the victim for the fear of reprisals and the associated social stigma. Organisations may comply with the legal requirements for the need of being compliant but not necessarily invest in building an environment that is non- tolerant to sexual harassment or making it conducive for employees to freely share grievances. How many organisations are fine with risking their profits and taking action against the power players? Also looking at it from another perspective, the majority of victims may be women but can’t ignore the fact that the legal redressal mechanism can be misused (and many a time is) with wrong allegations. Organisations need to accentuate the value of ‘Respect for Individuals’ irrespective of their gender and levels in the organisation.”



Anushree Singh

Head HR,
Educate Girls

Recommendations to Strengthen Policy Framework and Execution

178 The forthcoming sections observe some ways in which the Act can be strengthened legally and socially to ensure every person working in every sector can enjoy safe and secure workspaces so that they can focus on fulfilling their potential and finding their professional footing in the world.

179 While many of the suggestions find reiteration from the previous edition of the report, all suggestions are geared towards achieving the goals stated above.

14.1

The Act

14.1.1

Definition

180 The current definitions have scope to be expanded to make the Act more inclusive:

Workplace

181 While the Act currently provides an extensive definition of the workplace, it should further be expanded, taking into consideration the changing landscape of how individuals understand a workplace, i.e. in cyberspace. The workplace can be redefined to include cyberspace, sexual harassment on social media, and an organisation's online chat systems, in order to include individuals working from home.

Applicability

182 The Act, which is currently only applicable for women who face sexual harassment at the workplace, should be expanded to include and provide legal recourse to all genders facing sexual harassment at the workplace.

183 It should be further clarified that acts of sexual harassment by those of the same gender is also categorically covered by the Act. Therefore, definitions such as those of 'Aggrieved woman' as well as 'Domestic worker' should be expanded to include all genders given that it is not just women who face sexual harassment, in both the formal and informal sectors.

Employee

184 In lieu of the recommendations of the Parliamentary Standing Committee on Labour, as well as changes made to the Code on Social Security, the definition of 'employee' under the Act must be amended to explicitly cover all classes of workers, across all sections of society. This means including gig and contractual workers, and formalising the work of ASHA and Anganwadi workers.

Alternative Legal Acts Addressing Workplace Sexual Harassment

185 In order to truly realise the impact that the Act can create, both in letter and spirit, it has scope for

Global shifts to remote work have changed the flavour of our work cultures, and our PoSH frameworks must get more nuanced, to keep pace with these shifts. We need more reflection, intention and real-time understanding of the impacts on safety, accountability and existing redressal mechanisms. Technology can definitely be harnessed better to build online helplines at scale and tools that create awareness and agency in the workforce. I am also seeing a trend where businesses are investing in the mental health of their workforce. For instance, giving access to a mental health app is a simple but powerful investment businesses can make to support their employees and workers, in tough times.

Sairee Chahal

CEO & Founder - SHEROES and Mahila Money

While Governments have an important role to play, it is also imperative that private organisations, corporates and others take greater ownership of this challenge and ensure that guidelines are actually implemented and adhered to. Ultimately ensuring an equal and harassment-free workplace for all is critical for the organisation's success and is not merely a social goal.

Urvashi Prasad

Director,
Development Monitoring &
Evaluation Office, NITI Aayog

amendments that bring provisions of other legal statutes and Acts under its fold. This can help provide greater protection to all working individuals.

- 186 This would mean collating the provisions of The Information Technology Act, 2000, The Indian Penal Code, The Code on Social Security, and the Occupational Safety, Health and Working Conditions Code, 2020 to name a few.

14.1.2

Regular Examination

- 187 A system for conducting checks and collating information on the implementation of the Act should be done at regular intervals.

- 188 The onus of this should be handed out to the appropriate bodies, with state governments regularly examining the District Officers and checking if organisations with more than 10 members have an IC, as is mentioned under Section 21. The state governments should also work proactively to ensure that the LCs are constituted at district and sub district level.

- 189 Though the Act stipulates a redressal mechanism for this, it fails to create a strong deterrent in a company's failure to do so. The standard fine under the Act is currently INR 50,000⁸, however, this is a weak deterrent for any organisation with more than ten employees.

- 190 Therefore, while this amount should increase, other forms of redressals for such organisations should also be put in place. Additionally, public transparency forms an important aspect of the Act, further increasing the safety of women by increasing awareness. In that, a list of those companies that are found in violation of the Act in any way should be uploaded and regularly updated in the public domain.

14.1.3

Time Period for Filing a Complaint

- 191 The stipulated time period for reporting an incident of sexual harassment is 3 months, which can be extended upto a maximum of 6 months taking into consideration factors such as mental health,

Features	SHe-Box	IT Act	Industrial Employment Act	IPC
Target	Workplace Sexual Harassment	Cybercrime including virtual sexual harassment	Employment in an industrial establishment	Universally applicable criminal code of India
Gender neutrality	No	No	No	No
Sector	Formal & Informal Sector	Formal Sector	Formal Sector	Formal & Informal Sector
Enacted by	Ministry of Women & Child Development	Ministry of Electronics & Information Technology	Ministry of Labour & Employment	Imperial Legislative Council

⁸ Section 4(1), the Act of 2013

physical stress, fear of losing work, financial and societal pressures, amongst others, which may cause the target to take longer to file a complaint.

- 192 Taking into account the sensitive nature of such complaints, the time period should be further increased if not altogether removed. This will prevent us from discounting previous cases of harassment where the target may not have been able to report the incident due to several of the above mentioned factors.

14.1.4

Anonymous Complaints

- 193 There is no provision in the Act to raise anonymous complaints, which could prevent many individuals from filing official complaints due to social stigma, concerns for personal safety, fear of affecting one's career, amongst other factors. The Act should provide the complainant the option to keep their identity hidden as a way to encourage more individuals to report harassment, with the least possible hindrance.

14.2

The Internal Committee (IC)

- 194 As per Section 4 of the Act, "every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal [Complaints] Committee": Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices."
- 195 For those organisations who do have ICs in place, it is important to examine the scope of their functioning and ensure that they are

facilitated in their work. This must be accorded greater importance since it has been found by various surveys, studies, and the above mentioned jurisprudential announcements, that many organisations constitute ICs for the sake of compliance and not for the actual benefit of their employees.

14.2.1

Training IC Members

- 196 Training members of the IC on the full scope of powers and processes under the Act is extremely crucial, irrespective of any existing knowledge they might possess. Additionally, IC Members should have standard written procedures constantly available to them, to ensure that all inquiries are conducted as per the letter of the law. The IC members must be afforded additional training in terms of what constitutes proof of harassment, especially when most exchanges are happening in the digital space with the uptake of remote and hybrid work modes.

14.2.2

Employee Awareness

- 197 Information about the presence of an IC, its members, ways to contact them, and the redressal process, should be made available to all members of an organisation. This information should include, but not be limited to:
- Systems and processes for addressing workplace harassment;
 - Powers of the IC to take action; and
 - Procedure for filing a complaint.
- 198 Additionally, conducting anonymous, periodic surveys for all individuals at the workplace, could further help increase awareness of one's rights, as well as provide information to ICs on how they could proceed forward for undertaking activities

"As we are seeing a shift from physical to virtual workplaces, questions about the appropriate work ethics, safety, and online sexual harassment in virtual workplaces have started to pile up. We all know that the pandemic has made working from home and remote working more common. But how much do we know about our safety and rights in this virtual world? After all, along with new ways of working, we also need new ways to ensure our safety."

Sreemoyee Malakar

COO,
Lawcubator Technologies
Pvt. Ltd.

The all-new technical issues and obstacles in the virtual workplace in terms of evidence admissibility are left unaddressed. Since the evidence in the case of the digital workplace is always in electronic form, it should always be scrutinised and judged by an expert in order to be labelled as authentic and admissible in courts. Thus to address such issues, there needs to be more improvement in the technology which processes such cases.

Team Good Business Lab

There is an urgent need to increase awareness of various support services that are available to those who have experienced sexual harassment at the workplace. Employers should not only stop at strengthening the redressal mechanisms but also look into how they can support the survivors. The conversation around mental health is incomplete in the larger discourse on workplace harassment and should be continued.

Falak Choksi

*Project Consultant
Maitrayana Charity Foundation*

Awareness plays an important role in helping all genders navigate PoSH frameworks in an informed way. We need mass interventions that go beyond company-led PoSH awareness sessions to help our workforce get savvy about what constitutes harassment, and the various redressal mechanisms available across sectors. For instance, introducing conversations at the college, university and community level, can nurture a workforce that is better equipped with an understanding of rights and privileges, even before they enter the world of work.

Merril Diniz

*Head of Communications,
SHEROES*

such as knowledge dissemination and training in light of increasing digitisation of work, including questions related to:

- An individual's perception of their own safety at the workplace;
- Rights of an employee, as stipulated under the Act; and
- The type of acts that can be considered as sexual harassment, as stipulated under the Act.

14.2.3

Employee Training

199 Employee training through workshops and seminars, knowledge materials, posters, sessions on the Act, etc. are still lagging in many organisations. In order to ensure that the Act achieves its desired aim, ICs need to take the onus of ensuring that such sessions happen periodically, methodically, and through formal organisational policies.

200 Additionally, training should be divided and targeted for employees at different levels of the organisations. This is not to indicate that the training should be entirely different, but that certain customisations for new hires, mid-level management, team/department heads, amongst others, are taken into account. It is especially important to ensure this since one's position in the company impacts the steps one can take in case one is made aware of harassment.

201 To further ensure that trainings are being conducted efficiently, collaborative initiatives between ICs and LCs could be undertaken, especially for increasing awareness.

14.2.4

Filing a Complaint

202 An important aspect of the functioning of the ICs is the process

of filing complaints. Currently, only formal complaints can be filed under the Act which limits the number of complaints being filed in the first place.

203 While informal mechanisms aren't stipulated under the Act, until such time that they are, IC members should take active steps to address this and do as much as they can to make the process smoother and easier for employees.

204 Furthermore, active steps to ensure that moral and procedural assistance is provided for the filing of such complaints is also important, and under the purview of IC members. This should especially be undertaken in recognition of the hesitancy that many targets of sexual harassment face prior to filing a formal complaint. Factors such as the impact on work environment, relations with other employees, personal and professional pressures, concern for one's career at the company, amongst others, should be addressed by IC members, in their attempt to facilitate the filing of complaints.

205 Lastly, IC members should also build trust in the inquiry and redressal procedures among employees, to give them assurance of a just procedure.

14.3

The Local Committee (LC)

206 The Local Committees (LCs) form an important aspect of the Act and are in place for those establishments who aren't mandated to have ICs due to the organisation having less than ten employees, or, for when the complaint is against the employer⁹. Therefore, LCs and members of LCs need to be facilitated in several ways to help them fulfil their responsibilities.

207 The LCs take precedence in the informal sector where most

⁹ Section 6(1), the Act of 2013

organisations and workers are not registered formally with any government body. After the introduction of the Economic Relief Packages in light of the pandemic in 2020, many informal sector workers and enterprises had no choice but to get registered. However, there is no official data yet on the number of such registrations, as well as how many of them are actual organisations and not fake accounts. This should neither deter nor dilute the functioning of the LCs. These registrations should instead be used as an opportunity for greater awareness and outreach.

- 208 Furthermore, over the last two years, the country has witnessed an increase in the number of startups. Most of these startups usually function with less than ten employees and even when they do have more than 10 employees, they are too cash-strapped to constitute ICs.
- 209 This further adds to the importance of the LCs, the awareness of which, must reach the employees of such firms as well.

14.3.1

Training LC Members

- 210 To facilitate the members of the LCs, it is important to ensure that all members are aware of their own powers and the scope of their work. This can be done through:
- Conducting periodic training for LC members on the powers they possess under the Act.
 - Ensuring that the personal bias of any member does not impact their work or the outcome of Complaints.
 - Ensuring that all members have a coherent written procedure to rely on to make sure all inquiries are conducted as per the letter of the law.

14.3.2

Awareness of LCs

- 211 It is important, even more so in the case of LCs, to ensure that information of their existence is circulated to establishments across the district, especially to the workers involved in the informal sector.
- 212 Additionally, in the formal sector, this information should not just be circulated to those organisations that do not have an IC but also to those who do have ICs, in order to provide an alternative to complainants when filing their complaints.
- 213 Information that should be regularly circulated includes, but is not limited to:
- Members of the committee;
 - The roles and responsibilities of committees;
 - The assistance that the committee can provide to individuals who have faced or witnessed harassment at the workplace;
 - Procedure for filing complaints.
- 214 As much as they can, LCs should also conduct surveys to increase their knowledge about the perception of sexual harassment, and the awareness of the Act, to better equip themselves with information pertaining to the Act, as well as the issues beings experienced by the workers/employees across different organisations and sectors. This will go a long way in helping them provide efficient redressals while working on cases of sexual harassment and extending support to the complainants, as well as for training members of the committees at various levels.
- 215 Over the last few years, many of these committees have ceased to function efficiently, owing to the lack of funds. As such, in order to further support the LCs in the fulfilment of their duties and goals, both the Central

We have the legal framework and other provisions and if they are effectively addressed it will resolve many cases. But unfortunately, the Internal Complaints Committee/Local Complaints Committee are not very effective and exist mostly only for the namesake. Also, most of the committees are very biased and favour the accused especially if he is an influential person. When a Committee submits a biased report, the accused is mostly acquitted even in genuine cases where women faced sexual harassment. Such Committees should also be monitored.

Dr Alana Golmei

Founder,
Pann Nu Foundation

A few ways to address harassment in the digital space are to first and foremost, set the right expectation with your employees and educate them on what amounts to sexual harassment and the etiquette surrounding work-related communications during periods of remote working. This can be done with a mandatory PoSH training and awareness sessions by HR. Organisations should also ensure that their existing policies are reviewed and updated to reflect changes that the rise of remote working and dependency of technology and social media have brought. Lastly, I feel, as the founder of an organisation, one needs to be very responsive and empathetic. If a sexual harassment complaint is received from an employee, it should be handled sensitively, thoroughly and, promptly. Reporting incidents like sexual harassment can be overwhelming since victims confront feelings of guilt and shame and can fear recriminations. It thus becomes even more crucial for employers to ensure this is addressed in the right manner.

Ragini Das

Co-Founder,
Leap Club

and State Governments must ensure that the requisite funds are received by these committees on time.

14.3.3

Training

- 216 As part of their work, LCs must conduct regular training programs, disseminate knowledge materials, as well as conduct workshops, to increase awareness of the rights individuals possess when faced with sexual harassment.
- 217 To further be more effective in their initiative, LCs can collaborate with ICs, as well as local bodies such as the local market associations, Resident Welfare Associations, amongst others, to ensure the protection of women working in the informal sector, non-MCD sweepers, domestic workers, among others.
- 218 Additionally, periodic reviews to check the status of domestic workers in the district should receive special attention by making information available to them, including:
- Rights under the Act;
 - The manner in which they can approach the LC; and
 - Filing a complaint before the LC.

14.3.4

Auditing

- 219 In order to ensure the smooth and efficient functioning of any Local Committee, it is imperative to have certain checks and balances. Consistently reviewing the functioning, composition and experience of the members of these committees ensures that:
- the committees are fulfilling their objectives;
 - the members of the committees are averse to bias in the process of their decision making;

- there are adequate mechanisms for the dissemination of information about what Local Committees are and how workers from all sectors can approach them for the redressal of their complaints; and
- the firms with less than 10 employees are conducting adequate awareness and sensitisation workshops.

14.4

The Organisation

- 220 While the role of ICs and LCs is crucial to the implementation of the Act, it is not solely their duty to address sexual harassment at the workplace. The blanket role remains to be that of the organisations, which includes ensuring a safe working environment, effective human resource management, facilitating procedures, as well as setting the overall tone when it comes to addressing sexual harassment at the workplace.
- 221 There are several steps that an organisation can take to address sexual harassment at the workplace and facilitate the implementation of the Act.

14.4.1

Facilitating ICs

- 222 Organisations must ensure that they have set up an IC in the manner stipulated by the Act, and thereafter, do all they can to facilitate the functioning of these ICs.
- 223 For those organisations who already have an IC, they must ensure its effective and efficient functioning, by ensuring that they are complying with the law, and allocating a dedicated budget for such committees.
- 224 The organisations must also ensure that the ICs, once set up, are working consistently towards

the dissemination of knowledge surrounding what constitutes sexual harassment at the workplace, and how they can help their employees feel safer whether working in an office or from home.

14.4.2

Employee Training

- 225 Organisations could also ensure compulsory training for new hires about sexual harassment at the workplace on topics including, but not limited to:
- Actions which constitute as harassment under the Act including cyberspace sexual harassment;
 - Individuals/Committees to approach when incidents of sexual harassment have occurred;
 - Rights of the employees as individuals who have been harassed;
 - How to approach someone who has been accused of harassment; and
 - Ways in which they can extend their help and support to an employee/colleague who has been harassed

such as intervention training, providing support, assistance in writing formal complaints, among others.

14.4.3

Knowledge Dissemination

- 226 Organisations should also promote information about the different forms of sexual harassment and the punishments for employees through e-mails, posters, notices, and other forms of communication to ensure that all employees are informed, aware, and up to date.
- 227 They should also conduct periodic reviews of the performance of the IC in areas including, but not limited to:
- Performance of the IC in dealing with complaints;
 - Interacting with complainants and how safe they feel working with the IC;
 - Compliance with the Act in terms of remuneration and case deal around; and
 - Promoting information about the Local Committee to employees as part of the training material.

For women working in the formal and informal sector (perhaps more in the informal sector), access to the IC is usually through a supervisor/HR or a colleague. Training and enlisting IC members to be the “first responders” needs to be worked on.

Nandita Banerjee

Head HR & Capacity Building at ASER Centre, Pratham Education

“

While the challenge of preventing sexual harassment at conventional workplaces in the informal and formal sectors remains, the pandemic, in particular, has also given rise to the added problem of preventing and addressing harassment in the new era of accelerated adoption of digital technologies as well as work from home. The definition of the workplace itself is undergoing a change with many more employees working remotely instead of from an office space. It is critical that we put in place adequate guidelines and standard operating procedures to tackle harassment in such situations. Experiences and good practices in this regard must also be shared across organisations and industries.

Urvashi Prasad

*Director,
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Conclusion

- 228 In this year's Annual Review, we have assessed and analysed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, eight years after it came into existence. The Act was introduced in 2013 in order to regulate and deal with workplace harassment of women. Going a step further than the previous edition of the Annual Review, this edition explored the state of workplace sexual harassment of women in the Informal Sector as well.
- 229 On collating and analysing data from primary and secondary research, as well as conversations with experts, it can be concluded that while the Act has been successful in giving voice to working women across the country, the potential for it to be more detailed and expand, is ever-present. In its current form, as was covered in the review, this Act alone is unable to provide protection from sexual harassment at the workplace for all.
- 230 Such a conclusion was supported by the surveys responses that we received from stakeholders in the formal sector (including employees, HR/CXOs, IC/LC members and NGO members), workers in the informal sector, as well as experts who have been working in the area of sexual harassment and more specifically, with the Act.
- 231 Given that the Act is the only law governing and protecting workplaces against sexual harassment, it should develop an approach that is inclusive and holistic by taking into consideration the issues faced by all individuals in the workforce.
- 232 One place where the Act still lacks, is acknowledging the systemic inequalities that play a crucial role in how cases of sexual harassment are reported and dealt with. Additionally, better deterrents and punitive measures need to be included for offenders so as to make the Act holistic.
- 233 While the #MeToo Movement provided a lot of individuals with a platform to talk about sexual harassment which highlighted the commonality of such cases, sexual harassment remains to be a sensitive issue that not every target of harassment is comfortable sharing. To add to this, the fear of a complaint being labelled false/malicious and the fear of being ostracised once the complaint is filed often discourages individuals to come forward and report a case of sexual harassment. This is especially true for the informal sector workforce, as is evident from the many personal accounts mentioned in this review.
- 234 In order to create safer spaces for every individual, it becomes pertinent to acknowledge the need for these systemic changes. This must involve acknowledging that all genders face sexual harassment as well as the social dynamics that come into play when someone harasses another individual.
- 235 The Review has attempted to keep jurisprudence as a key theme as well – to analyse how different courts in the country have been interpreting the law. This allows for a holistic understanding of the Act and paves the way for future actions to create safe workplaces for all individuals,

regardless of their caste, class, socioeconomic status, gender and/or sector of work.

- 236 Throughout this Review, one key highlight has been the fact that there is a lot left to be done even though undeniable progress is being made. We envision a world where every individual is treated with respect, dignity and courtesy, where safety and consent are given the topmost

priority, where an individual can walk with their head held high and where justice is promptly delivered. To reach that state of eudaimonia, we need to continuously work towards bettering our current policies, judicial system, workplaces and most importantly, our own selves. To reiterate the famous phrase, change begins at home. Let us try ensuring that we are able to bring that change home.

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