

# Annual Review on the State of Sexual Harassment in India

2023 EDITION ●

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STOP  
SEXUAL  
HARASS  
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Review on the 2022 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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# About Us

## **Eight Goals One Foundation (8one)**

Eight Goals One Foundation (8one) was founded to support the eight goals that the foundation has identified as crucial in its mission for humanity. These goals include - Well-being, Gender Equality, Peace, Environment, Hygiene, Nutrition, Education and Employment. It aims to affect pragmatic and sustainable progress across these goals with a focus on social development over other interpretations of the term 'development'.

In addition to grassroots programmes, the Foundation engages with governments, inter-governmental organisations as well as various civil society organisations, universities, and development agencies in India and across the world, for policy and social sector initiatives. 8one actively seeks and builds panoptic collaborations across demographics and geographies to create synergies for meaningful dialogue and action.

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# **ANNUAL REVIEW ON THE STATE OF SEXUAL HARASSMENT IN INDIA**

Review on the 2022 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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Our sincere gratitude goes to the volunteers from the Executive and Non-executive MBA batches of Jagdish Sheth School of Management (JAGSoM) for their relentless efforts. Their dedication in gathering data and generating awareness on-ground has provided us with crucial insights, particularly in bringing to light the experiences of informal sector workers.

We are immensely thankful to Hrithika Veenus and Shivani Bagdai from TriChambers for granting us corporate access. Their support has been instrumental in enriching our understanding of workplace dynamics and the broader implications of sexual harassment in corporate settings.

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## 1

# Foreword



**Aparna Nayyar**

*Core Team Member,  
Eight Goals One Foundation*

1. It is with a profound sense of responsibility and commitment that we present the third edition of our annual publication, a review of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 and its implementation on ground. Over the past three years, our endeavour has been not just to chronicle the incidences and implications of sexual harassment in the workplace but to push the boundaries of our understanding and advocacy for safer, more inclusive work environments across India.
2. In this edition, we have expanded our purview to explore workplaces such as agriculture. This includes agricultural labourers, domestic workers, women in sports, gig/platform workers, and women in educational institutions. Our aim was to shed light on the unique challenges faced by individuals in these sectors and bring their experiences into the broader discourse on workplace safety and rights.
3. 2022 marked a pivotal year for our research methodology, as we shifted our survey strategy to prioritise the quality of engagement with our respondents. This approach was underpinned by the belief that meaningful interactions are crucial for understanding the nuanced realities of sexual harassment. Our student volunteers from the Executive and Non-executive MBA batches of the Jagdish Sheth School of Management (JAGSoM) were instrumental in this regard. They underwent comprehensive training by our team to ensure that they could effectively raise awareness among respondents about their rights, empower them to take action, and provide a comforting presence that dispelled fear and self-doubt.
4. This year, we received 1,924 unique responses to our surveys, alongside narratives from informal sector workers who shared their lived experiences voluntarily. These accounts have been translated and included in this edition, enriching our analysis and understanding of sexual harassment across different workspaces.
5. Through our jurisprudential research, we discovered that courts and tribunals have not only upheld the Act and its guidelines but have also expanded their interpretation to prevent the misuse of terms mentioned in the Act and to make the definitions of “employee” and “workplace” more inclusive. This nuanced approach by the judiciary has been critical in ensuring that the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, are applied effectively and equitably, safeguarding against exploitation and extending protection to a broader spectrum of the workforce.
6. This edition of the Annual Review reflects our ongoing commitment to advocating for safer workplaces and the rights of all workers, regardless of their sector of employment. By documenting these realities, we aim to foster dialogue, inspire action, and contribute to the continuous improvement of workplace safety standards across India.

# Executive Summary of the Review

7. Since gaining Independence, India has experienced significant advancements in its political and economic sectors. However, there are notable deficiencies in the active engagement of women in the workforce, a situation that both reflects and exacerbates the prevailing gender inequalities. As per World Bank Data from 2022, the total workforce participation rate for India stood at 51.3 per cent while the female participation therein stood at 48.4 per cent.
8. Among other reasons for not joining the workforce, “childcare and/or personal commitments in homemaking” ranked the highest at 44.5 per cent of the population surveyed as per the Annual Periodic Labour Force Survey Report 2021-22. For those women who join the workforce, pervasive challenges such as an unsafe work environment and gender-based discrimination remain prevalent.

## 2.1

### The Review

9. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as, “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 in India that aims to protect women from workplace harassment. As such, this Review 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 defence, as well as their accessibility.
10. To examine this, the Review pays individual attention to the challenges of the formal sector, the work from home environment, contractual and gig economy workers, and the informal sector. In addition to the research and opinions of field experts, the Review has made observations based on the extensive surveys in the formal and informal sector undertaken by a dedicated team of volunteers and researchers. Collectively, these surveys garnered 1924 unique responses in 2022. In addition to these surveys, the Review incorporates a literature review of the formal and informal sectors, as well as jurisprudential evidence to understand trends in the interpretation of the Act.
11. It is hoped that this edition of the Review will help take forward discussions and inspire action towards making workplaces safe for all, spread awareness about the Act and its guidelines, and continue the dialogue on strengthening the interpretation and implementation of the Act.

## 2.2

### Addressing the Formal Sector

12. In 2022, the spread of COVID-19 diminished, paving the way for an increased adoption of hybrid working arrangements within the formal sector. This period also witnessed

the rise of various work-related trends such as “workations”, the gig economy, and metaverse workspaces, each presenting distinct challenges explored further in this Review.

13. The concept of “workations”, blending remote work with holidays to enhance work-life balance, challenges established workspace norms. In the absence of specific legal frameworks in India, organisations are navigating these challenges through the development of internal policies, safety protocols, and employee performance assessments. Similarly, metaverse workspaces, created to mitigate the limitations of remote work, have encountered issues of virtual harassment, highlighting the urgent need for protective measures and exposing gaps in current legislation.
14. Furthermore, sexual harassment within family-run businesses presents complex issues, intertwined with personal and professional dynamics. Addressing these challenges necessitates proactive strategies, such as implementing transparent reporting mechanisms and tackling power imbalances, to ensure a safe working environment. The establishment of an effective system for handling complaints of workplace sexual harassment is critical, encompassing a centralised reporting system, immediate acknowledgment to the complainant, and various redressal options.

### 2.3

## Addressing the Informal Sector

15. Gender pay gaps, digital barriers, and inadequate redressal mechanisms continue to persist within the informal sector, demanding comprehensive solutions. The expansion of the gig economy within the informal sector presents unique challenges in enforcing protective measures.
16. As per the Periodic Labour Force Survey (PLFS) conducted in 2021-22, the share of working women employed as domestic helps in the urban and rural areas, stood at 57 per cent and 46 per cent respectively. With this sector predominantly comprising of women, lack of regulatory and awareness institutions leaves these women vulnerable to sexual harassment in private spaces.
17. The PLFS of 2021-22 also reported that agriculture has the highest estimated female labour force participation of 62.9 per cent. However, women employed in agriculture too face exploitative conditions and power imbalances, raising concerns about sexual harassment.
18. In the construction sector, as observed by this Review, women reported multiple occurrences of harassment, inequality, and power imbalances, emphasising the need for a safe working environment.
19. The implementation of the Act in the informal sector faces significant challenges, including but not limited to the lack of awareness, redressal mechanisms, and reporting options in informal workplaces, marginalised status of informal sector women, psychological impacts of harassment, migration-related issues, and complex power dynamics influenced by factors like caste and gender. Local Committees (LCs) play a crucial role, but their effectiveness is hampered by government system defaults, highlighted in reports from the Delhi Commission for Women. The absence of data on LC functionality and accountability further complicates assessing the Act’s effectiveness in the informal sector.

**2.4****Jurisprudential Perspective**

20. This Review also factors in the recent judicial trends for the year 2022 to present a holistic study of the Act, its implementation, and steps taken to improve its efficacy. The role of judiciary in addressing gaps in the implementation of the Act is crucial due to the evident disparities in protection and awareness of employees across the formal and informal sectors. Ensuring comprehensive implementation is vital to address systemic inequalities, protect the target, and foster safe workplaces for everyone, irrespective of their sector or gender.
21. Cases like Aureliano Fernandes v. State of Goa and Ors., and Initiatives for Inclusion Foundation and Anr. v. Union of India and Others shed light on legal interpretations of the constituents of the Act.
22. The Supreme Court has directed time-bound exercises, stressing committee adherence to requirements within the Act, and advocating for comprehensive training programs. Judicial pronouncements from the High Courts during 2022 helped broaden the scope of the Act in the film industry.
23. Judicial trends during this period also show a growing awareness of the challenges faced by gig workers, with courts recognising the need to modify legal frameworks to protect their rights. With respect to extending protection for domestic workers, positive trends include increased awareness, court involvement, and media coverage to prioritise their welfare and dignity.

## 3

# The Formal Sector: Overview

## 3.1

## Understanding the Formal Sector and the Act

24. The formal sector, also known as the organised sector, bears characteristic features such as regular employment terms, adherence to governmental regulations, and the provision of employee benefits. The formal sector plays an important role in shaping the nation's economic landscape. Encompassing diverse industries such as manufacturing, services, information technology, and finance, it emerges as a powerhouse driving employment generation, contributing 55 per cent to the country's GDP as per the Quarterly Economic Survey conducted by Ministry of Statistics and Programme Implementation (MoSPI) in 2022.

## 3.2

## Recent Trends in Formal Workspaces

## 3.2.1

### Gig Economy

25. Gig economy has gained momentum with the growing trends of workers engaging in non-traditional workspaces with short-term contractual or freelance jobs. People earning livelihood through freelancing, online platforms, self-employment, on-call work, and other temporary contractual work come within the purview of the gig economy where contractual terms of the employers bind the workers, while providing them the flexibility to utilise their skills or knowledge on multiple 'gigs' at one time. Section 2(35)<sup>1</sup> of the Code of Social Security 2020 defines a gig worker as 'a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationships.'
26. NITI Aayog quoted an estimate of 7.7 million gig workers in India in 2020-21 with the number expected to reach 23.5 million in 2029-30<sup>2</sup>. Participation in this sector has increased owing to the COVID-19 pandemic but is yet to be regulated in India. The lack of recognition and regulation has placed a large number of workers in the vulnerable position of being targets of sexual harassment. The legal obligation binding the enterprises to adhere to the provisions laid within the Act, for the well-being and safety of employees is overlooked in the gig economy wherein the workers are considered as 'partners' letting aggregators bypass compliance with the Act.
27. Since female gig workers are classified as independent contractors, the Act does not fully protect them. The contractual terms governing the actions of workers, platforms, and customers provides no mention to workplace sexual harassment policies or constitution of ICs. Lack of information about the Act puts gig workers at risk with no alternative but to work in hostile work conditions, therefore leaving incidences of sexual harassment underreported.

<sup>1</sup> Section 2(35) in Code on Social Security, 2020.

<sup>2</sup> NITI Aayog. (2022). India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work. June, 2022.

## 3.2.2

**Workations**

28. In simple terms, workation is the concept of combining remote work along with vacations to strike a healthy work-life balance. The trend began as a result of the shift from a virtual workspace to a semi-virtual one, more prominently in 2022 as the COVID-19 related restrictions began to ease. This phenomenon contributed to diminishing distinctions between work and private life. However, despite its growing popularity, the existing legal framework does not yet accommodate such flexible work arrangements.
29. The absence of restrictions from labour laws in the context of workations, exerts pressure on companies for creating and enforcing internal workation policies that address risks associated with the same. While the luxury of maintaining a perpetual state of workation was traditionally linked to a (digital) nomadic way of life, ongoing trends are fostering the rise of a futuristic workforce of digital globetrotters. The distinction between work and various forms of leisure for this group is progressively becoming more fluid, as exemplified by recent developments<sup>3</sup>.

## 3.2.3

**Metaverse Workspaces**

30. While remote working significantly helped many businesses during the pandemic, there existed feelings of isolation and social disconnect with the workers<sup>4</sup>. Metaverse workspaces were mostly established to mitigate the problems associated with remote work and to set up a replica of a physical working space. A typical Metaverse workspace includes features such as 3D avatars of employees who can access the immersive experience of virtual settings through a 3D virtual reality headset.
31. In November 2022, Meta<sup>5</sup> reported that after making a virtual reality social media platform called Horizon Worlds selectively accessible, a groping incident was reported by a woman on its beta testing group on Facebook.
32. With regard to this incident, Meta's Internal Committee (IC) review<sup>6</sup> of the incident, suggested that there should have been a tool called "Safe Zone", within which no one can touch, talk or interact with them. This will act as a form of protective virtual bubble that the targets can activate whenever threatened.
33. As there are no laws governing virtual workspaces currently in the Indian legal system, the onus for safer workplaces rests with companies to ensure proper use of their metaverses, address the problems of delay in reporting cases, anonymity of the target, information asymmetry, and proof of evidence.

## 3.2.4

**Higher Education Institutions (HEIs)**

34. Academic and hierarchical structures in HEIs foster a complex atmosphere that is susceptible to power disparities and possible exploitation. Faculty members who

3 Rainoldi, M., & Buhalis, D. (2022). Blending work and leisure: a future digital worker hybrid lifestyle perspective. *Annals of Leisure Research*, 1–21. <https://doi.org/10.1080/11745398.2022.2070513>

4 Jaiswal, A., Arun, C.J. (2022) Working from home during COVID-19 and its impact on Indian employees' stress and creativity. *Asian Bus Manage*. <https://doi.org/10.1057/s41291-022-00202-5>

5 Basu, T. (2022, February 4). The metaverse has a groping problem already. *MIT Technology Review*. <https://www.technologyreview.com/2021/12/16/1042516/the-metaverse-has-a-groping-problem/>

6 Culliford, E. (2022, February 4). Facebook owner Meta adds a tool to guard against harassment in metaverse. *Reuters*. <https://www.reuters.com/technology/facebook-owner-meta-adds-tool-guard-against-harassment-metaverse-2022-02-04/>

influence students may foster an environment where it is difficult for targets of sexual harassment to come forward out of fear of reprisals or losing their academic standing.

35. The reporting process can be made more difficult by the quid pro quo harassment phenomenon, which occurs when academic rewards are granted or withheld in exchange for sexual favours. This is because of the typical power dynamics. In higher education institutions, faculty members tend to hold influence over students, which poses a challenge to establishing an open and transparent reporting system. Diverse understandings of appropriate conduct, shaped by social and cultural contexts, can make it more challenging to develop a paradigm that applies to all HEIs.
36. Depending on the situation, power relations in HEIs might change dramatically, for example, in research environments or during student counselling. It is challenging to assess whether sexual harassment has happened and whether behaviour is suitable in various contexts because of these variations. A customised strategy is needed to address these complex power dynamics and guarantee that rules and procedures work in various situations.

### 3.2.5

## The Sports Industry

37. Power dynamics between athletes and coaches, especially gender-based power disparity, along with a lack of accountability, questionable independence of ICs in sports institutes, as well as the prevailing notion that the Act may not be applicable to them hinder the safety and productivity of women in sports. On the contrary, as per Section 2(o)(iv) of the Act,<sup>7</sup> “any sports institute, stadium, sports complex or competitions or games venue, whether residential or not used for training, sports or other activities relating thereto” is a workplace.<sup>8</sup> The Act also uses terms such as “management, supervision, and control” as responsibilities of an employer, which can be associated with coaches and sports authorities.
38. In May 2022, a complaint was filed with the Sports Authority of India (SAI) by a cyclist who accused their coach of making sexual advances and untoward comments towards them in Slovenia. The SAI and Cycling Federation of India (CFI) then created a panel to investigate the charges.

<sup>7</sup> Section 2(o) of the Prevention of Workplace Sexual Harassment Act.

<sup>8</sup> Sexual Harassment in Sports in India. (2022, July 08). Ungender. <https://ungender.in/sexual-harassment-in-sports-in-india/>.

## 4

# The Formal Sector Survey

## 4.1

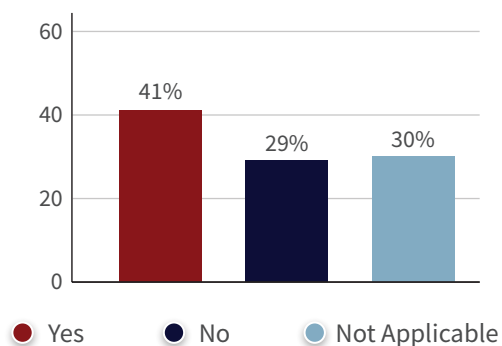
## Methodology

39. The Formal Sector Survey 2022 was a review of the state of sexual harassment at formal workplaces in India, constituting 100 questions and received 1510 unique responses from across India. The Survey is divided into 4 sections, each respectively catering to Employees, Corporate Heads, Internal Committee/Local Committee members, and members of NGOs.
40. The Survey was disbursed with the help of student volunteers from the Executive and Non-executive MBA batches of Jagdish Sheth School of Management (JAGSoM). Prior to starting the response collection process, the 8one team conducted detailed sensitisation and training sessions with the volunteers. These sessions included introductions to the Act and its constituents, sexual harassment in its varying forms, interacting with respondents and introducing the initiative, obtaining consent for participation, and sharing resources such as helpline numbers and support forums. Volunteers were given the objective of building awareness, and hence were asked to spend as much time with respondents as they needed, emphasising on the quality instead of the quantity of Survey responses received.
41. The Survey is designed to have no compulsory questions, allowing respondents to provide responses to as many or as few questions as they deemed convenient. While the Survey questions were drafted in English, student volunteers received support from 8one in translating the drafts in regional languages before the start of the Survey exercise. The student volunteers were also encouraged to conduct primary and secondary research on the Act and to collect helpline numbers, names and websites of online redressal portals, as well as names and locations of nearest LCs prior to the Survey exercise.
42. This section shares insights from the responses obtained to questions in the Survey, cross comparing some pertinent questions with the data from the second edition of this Review, and deriving further insights and interpretations.

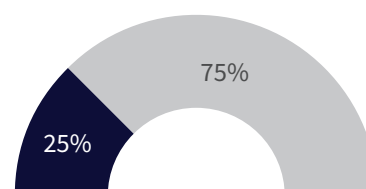


## 4.2

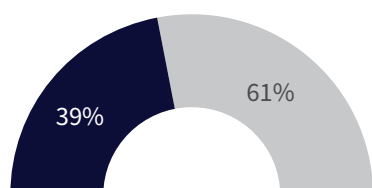
## Key Findings



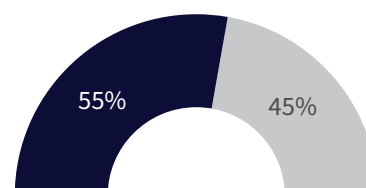
**Figure 4.2.1:** 41 per cent of the surveyed employees said “No” when asked if they had intervened as a bystander to protect other employees from sexual harassment. 29 per cent responded, “Yes”. Others stated it was “Not Applicable” to them.



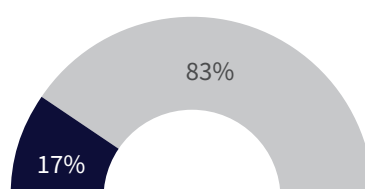
**Figure 4.2.2:** On being asked if their “organisation’s policy against sexual harassment works differently for those in leadership positions”, 25 per cent of the respondents said, “Yes”.



**Figure 4.2.3:** 39 per cent of the surveyed employees responded, “Never” when asked how frequently their organisation conducts trainings/workshops covering its policy on sexual harassment in the cyberspace.



**Figure 4.2.4:** 55 per cent of the corporate heads surveyed stated that the members of their Internal Committee were appointed based on “internal discussion/consideration by senior employees”.



**Figure 4.2.5:** 17 per cent of the corporate heads surveyed stated that their organisation “Never” conducts “trainings/workshops that covers your company’s policy on sexual harassment”.

## 4.3

## Observations from the Survey

## 4.3.1

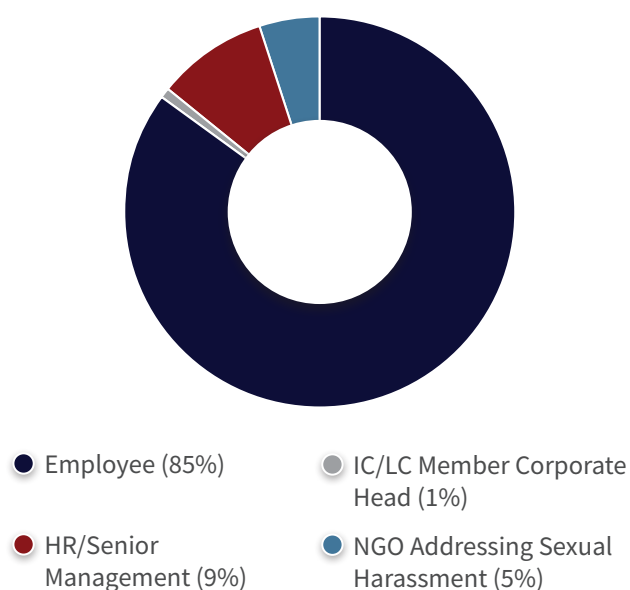
## Demographical Data

43. 55 per cent of the respondents preferred she/her as their pronouns (Figure 4.3.3). 52 per cent of the respondents were young professionals in the age group of 22 to 25 years (Figure 4.3.4). 3 per cent of the respondents worked in organisations with less than 10 employees, while 97 per cent worked in organisations with more than 10 employees (Figure 4.3.5).

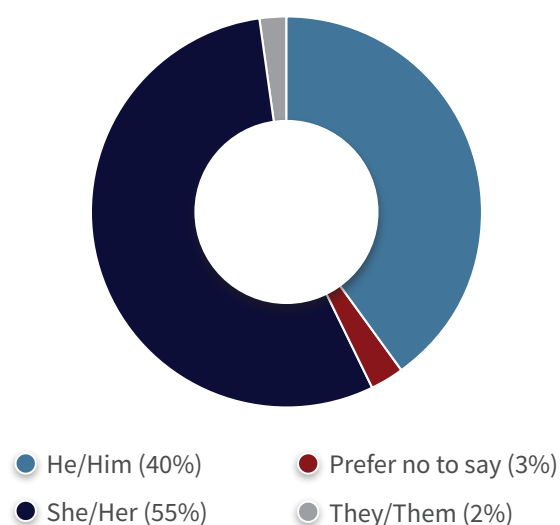


Figure 4.3.1: Distribution of respondents across the survey categories.

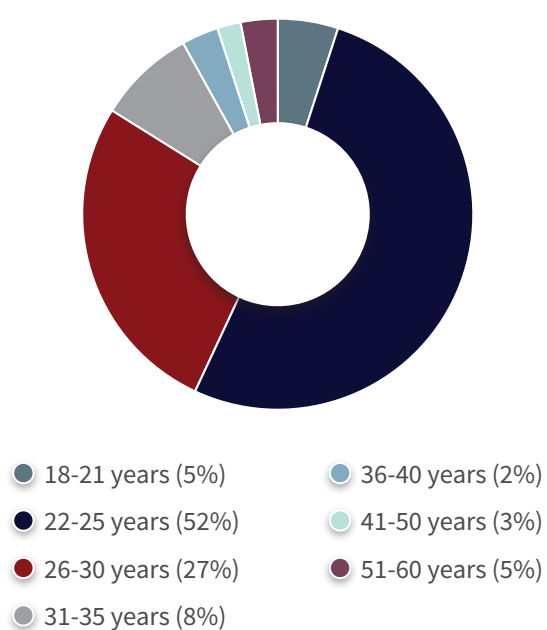
**Figure 4.3.2: Distribution of respondents across the survey categories.**



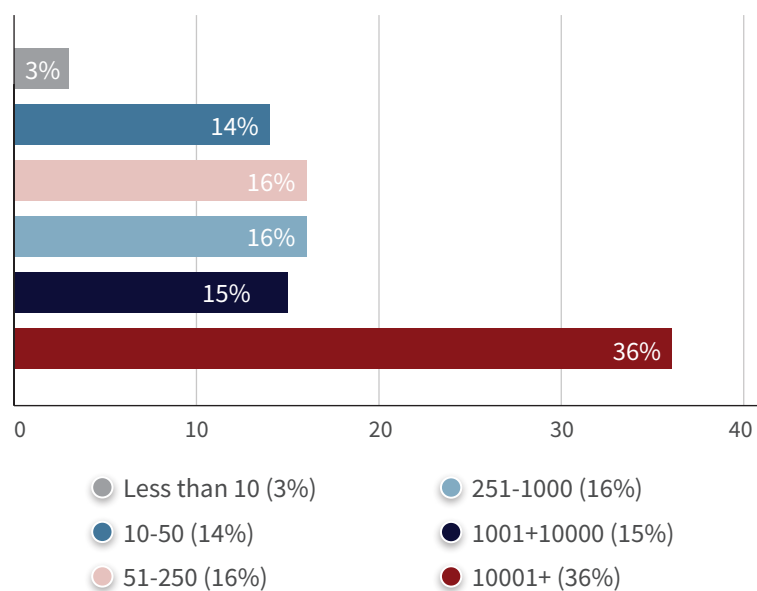
**Figure 4.3.3: Preferred pronouns of the respondents.**

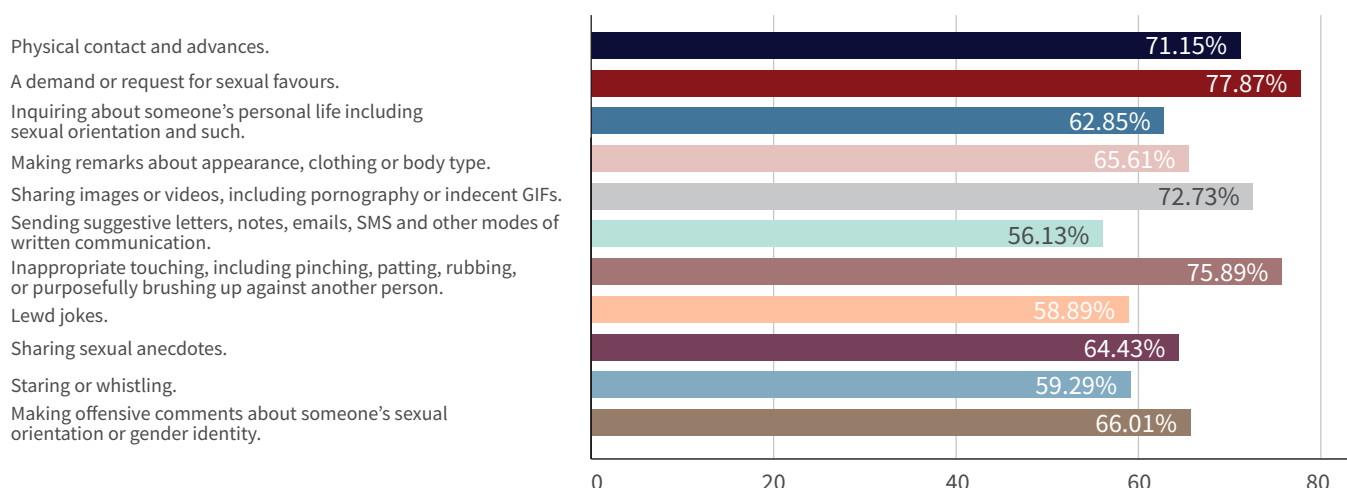


**Figure 4.3.4: Distribution of respondents across age groups.**



**Figure 4.3.5: Distribution of respondents per the number of employees in their organisation.**

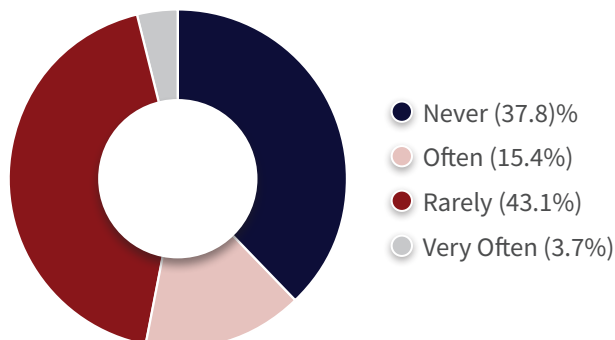


**Figure 4.3.6: Constituents of the definition of sexual harassment.****4.3.2****Perception of Sexual Harassment**

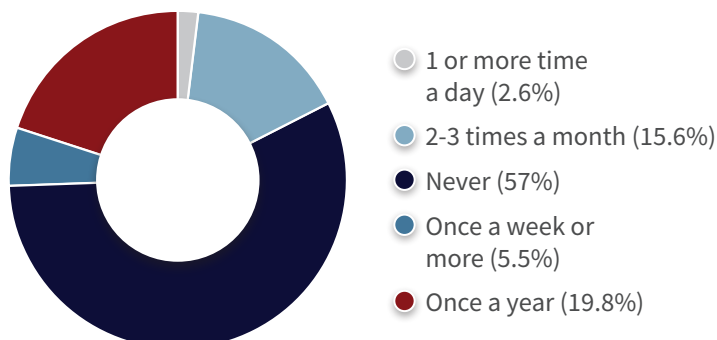
44. When questioned about what they thought sexual harassment constituted (Figure 4.3.6), most of the respondents considered more overt and conspicuous actions such, “Physical contact and advances” (~71 per cent), “A demand or request for sexual favours” (~77 per cent), “Inappropriate touching, including pinching, patting, rubbing, or purposely brushing up against another person” (~75 per cent), and “Sharing images or videos, including pornography or indecent GIFs” (~72 per cent) to be acts of sexual harassment.

**4.3.3****Workplace Discomfort**

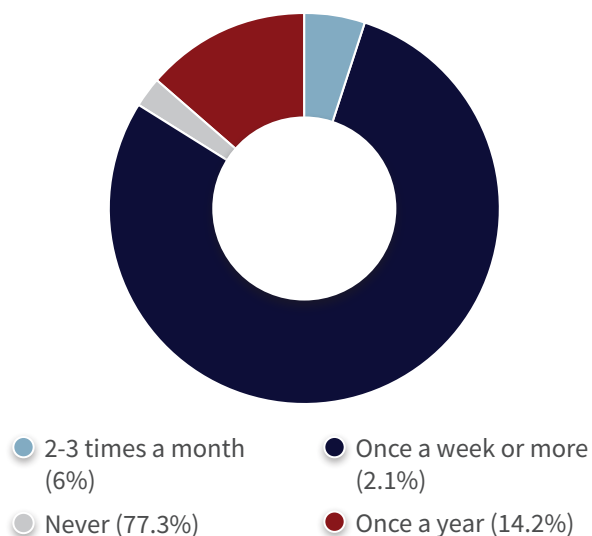
45. On being asked if they felt uncomfortable by the behaviour of a co-worker (Figure 4.3.7), only ~37 per cent of the respondents said, “Never”. Other respondents answered, “Very Often” (~3 per cent), “Often” (~15 per cent), and “Rarely” (~43 per cent).

**Figure 4.3.7: Discomfort in the presence of co-workers.****Figure 4.3.8: Unwanted remarks on physical appearance.**

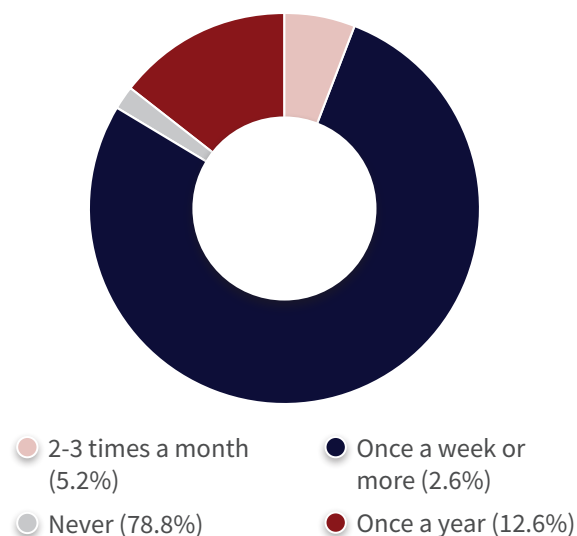
46. In the distribution of responses pertaining to persistent sexist remarks on physical appearances from coworkers (Figure 4.3.8), ~15 per cent of the respondents chose “2-3 times a month”, ~2 per cent of the respondents chose “1 or more times a day” and ~5 per cent of the respondents chose “once a week or more”.



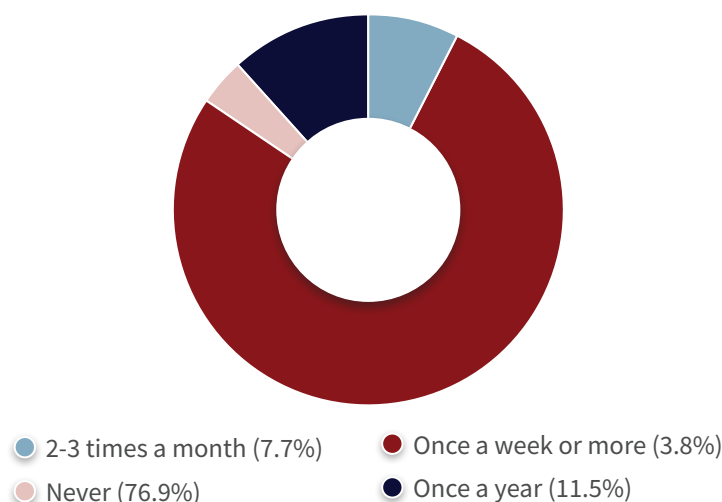
**Figure 4.3.9: Unwanted attempts to establish a sexual relationship by a co-worker.**



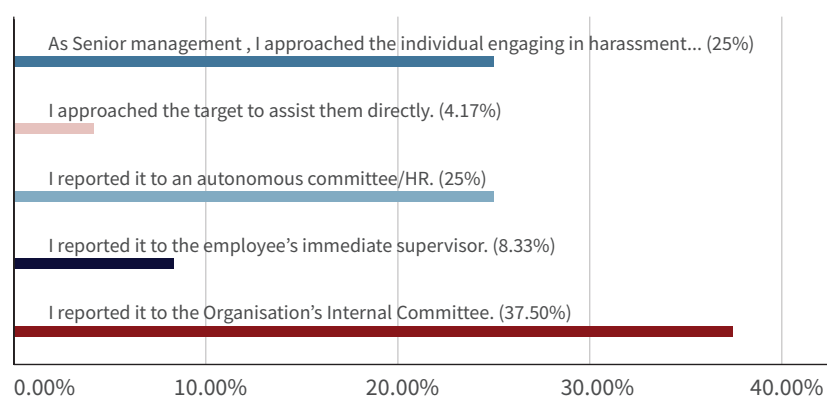
**Figure 4.3.10: Being offered bribes or promise of special treatment in return for sexual favours by a co-worker.**



**Figure 4.3.11: Frequency of receiving complaints about employees being touched inappropriately by their coworkers.**



**Figure 4.3.12: Action taken by corporate heads.**



47. In response to questions pertaining to unwanted attempts to engage in sexual activities (Figure 4.3.9), and bribery (Figure 4.3.10) 77-79 per cent of the respondents stated “Never”, while 5-6 per cent of the respondents responded with “2-3 times a month”, and 12-14 per cent of the respondents responded with “once a year”.

48. When corporate heads (CXOs) were asked about the frequency with which they received complaints from employees about being touched inappropriately by a coworker (Figure 4.3.11), most responses were registered for “Never” (~77 per cent) but there were complaints that were made “Once a week or more” (~4 per cent) and “2-3 times a month” (~8 per cent).

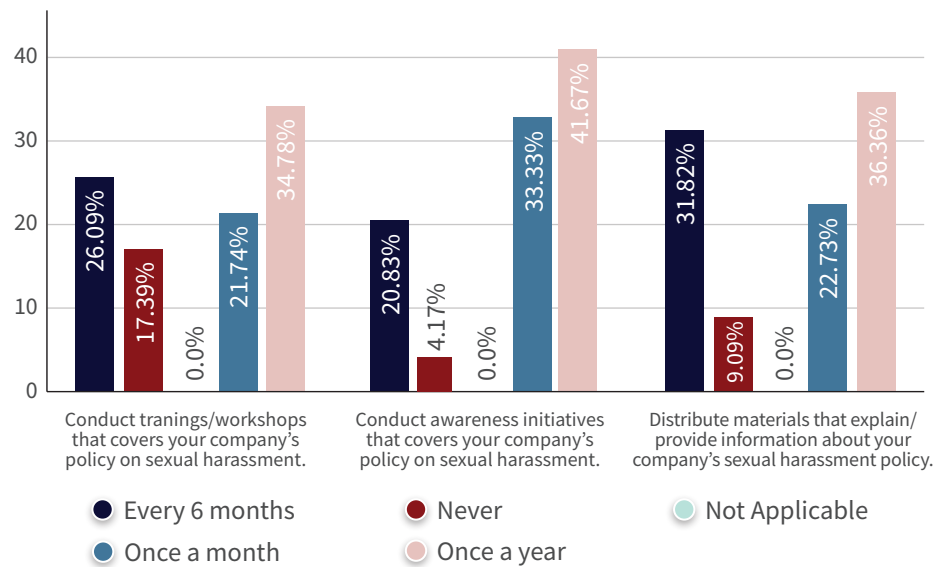
49. On being asked what actions they took when they saw an employee engaging in behaviours which count as sexual harassment (Figure 4.3.12), corporate heads said that they themselves approached the person in question (25 per cent), approached the target to assist them (~4 per cent), reported it to an autonomous committee (25 per cent), and reported it to the Internal Committee (~37 per cent).

50. Corporate heads were also asked about the frequency and types of awareness trainings and workshops related to sexual harassment conducted by their organisation. As seen in Figure 4.3.13, 4.17 per cent of the respondents answered “Never” to said trainings.

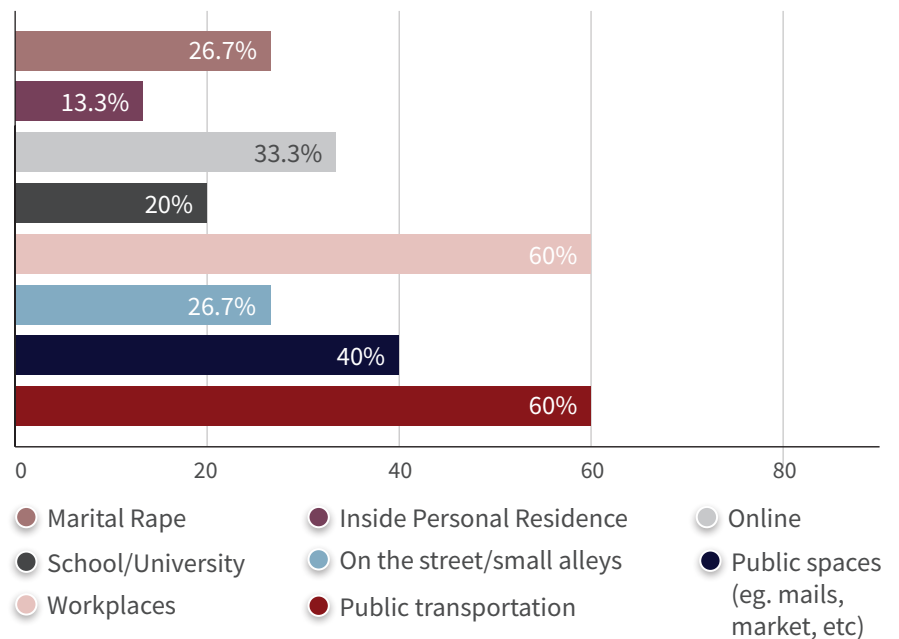
51. The Survey also asked NGO personnel about the nature of complaints with respect to sexual harassment that they had received and the most common places where harassment had taken place, as reported by the complainants/targets. Figure 4.3.14 shows the distribution of the responses in this segment. Options chosen by the respondents included workplaces (60 per cent), school/university (20 per cent), and online harassment (33.3 per cent) among others.

52. Employees were asked if they were aware of an Internal Committee within their organisation that conducts workshops, provides training, prominently displays relevant information and distributes reading material on a regular basis to your members (Figure 4.3.15). 23 per cent employees stated that they were not aware of an IC that did the above.

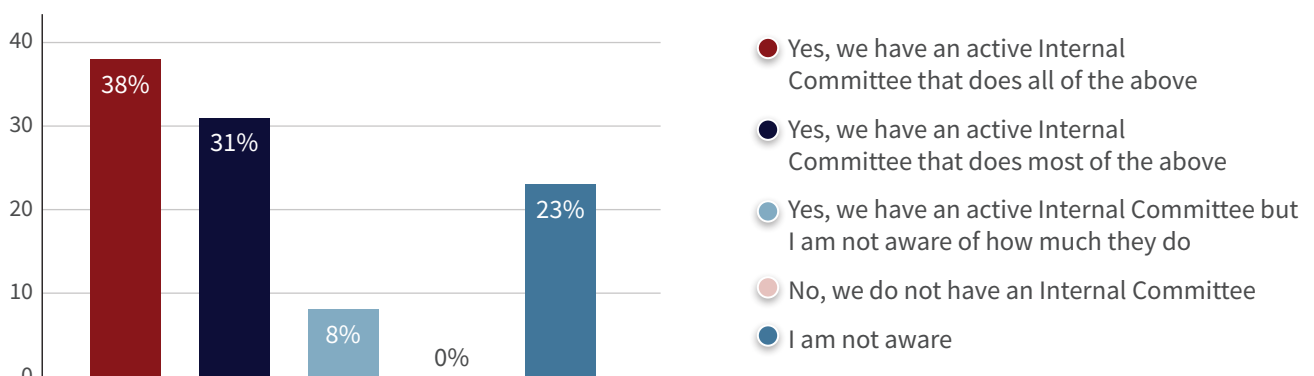
**Figure 4.3.13: Frequency and type of trainings and workshops conducted with respect to sexual harassment at the workplace.**



**Figure 4.3.14: Places where sexual harassment had occurred.**



**Figure 4.3.15: Awareness of IC in the organisation.**



## 5

# The Informal Sector: Overview

## 5.1

## Understanding the Informal Sector

53. The Act defines unorganised sector under section 2(g)<sup>9</sup> in relation to a workplace. It consists of workers engaged in factories, street vending, flea markets, garment industry, manual scavenging, domestic work, ASHA and Anganwadis, amongst others.
54. Unlike the formal sector, the informal sector workers face exploitative working conditions, insufficient wage standards, lack of access to a social security net, as well as sexual harassment from co-workers or employers<sup>10</sup>. The implementation of the Act, enacted for the purpose of empowering women workers to participate in the labour force and contribute to India's economy by providing them with safe and secure workplaces, is yet to be strengthened for the informal sector.

## 5.2

## An Overview of Some of the Workspaces within the Informal Sector

## 5.2.1

### Domestic Work

55. Indian workspaces employs 4.75 million domestic workers, out of which 3 million are women making it an important sector catalysing women's participation in the country's labour force.<sup>11</sup> The Act defines domestic worker as a 'woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full-time basis, but does not include any member of the family of the employer'<sup>12</sup>.
56. As this Review observed, targeted individuals resist filing a complaint due to fear of retention, loss of work or reputation, and stigma attached with it, which could cost them their job prospects in future. Most domestic workers come from socially and economically weaker sections of society having attained limited literacy, minimal or no understanding of the Act and working in households (in proximity to the perpetrator) with no redressal mechanism. Also, seen as 'private spaces', it is difficult to administer the implementation of the Act in households.

9 The Act and the Rules on Sexual Harassment of Women at Workplace. (n.d.). Poshtatwork. [https://poshtatwork.com/sexual-harassment-act-rules/#:~:text=Under Section 2 \(g\) of,of polices for such organisation.](https://poshtatwork.com/sexual-harassment-act-rules/#:~:text=Under Section 2 (g) of,of polices for such organisation.)

10 Vijayalakshmi, A. (2022). Domestic workers and sexual harassment in India: Examining preferred response strategies. Sciencedirect. <https://sciencedirect.com/science/article/abs/pii/S0305750X22000651>.

11 Iqbal, N. (2022). Domestic Workers Need To Work In 6 Households To Make Minimum Wage: Study. IndiaSpend. <https://indiaspend.com/special-reports/domestic-workers-need-to-work-in-6-households-to-make-minimum-wage-study-845619>.

12 Section 2(e)

## 5.2.2

**Agriculture**

57. 80 percent of economically active women in India are employed in agriculture and related activities<sup>13</sup>. With the migration of men from rural to urban areas, the sector has seen a drastic change with ‘feminisation of agriculture’ through rise in women’s participation in farming and related activities. Nevertheless, this phenomenon may not inherently align with women’s empowerment within the sector, as it is closely tied with poverty-related indicators and escalation in workloads borne by rural women ultimately contributing to the decline in their well-being<sup>14</sup>.
58. These women work in exploitative working conditions with power dynamics pushing them in subordinate positions with disparities in land ownerships, access to credit and participation in decision-making processes related to agriculture. Community and cultural factors present in rural areas can influence the prevalence of sexual harassment at workplace thus, normalising discriminatory practices followed in the unorganised sector.

## 5.3

**Implementation of the Act in the Informal Sector**

59. The Act mandates constitution of LCs in every district under Section 6<sup>15</sup> with authority to address sexual harassment at both formal and informal establishments having less than 10 workers. For many workers in the unorganised sector, it is the only source for seeking protection and justice.
60. The Delhi Commission for Women in its report to the Delhi Government highlighted the low reporting of cases in the LCs with the reported cases lying unattended beyond the time limit of inquiry provided in the Act<sup>16</sup>. The underreporting of cases is also due to widespread unawareness of the rights of informal sector workers in the event of being targets of sexual harassment at the workspace. For most, as is evident from the lived experiences shared in subsequent sections of this review, going to the police is the only known option which acts as a deterrent.
61. With limited research and no available state-wise or centralised data on the functioning of the LCs, it is difficult to determine the effectiveness of the Act in the informal sector. The accountability within the Act cannot be monitored and arising challenges tackled without data and analysis thereof. The state governments are responsible for monitoring implementation and database management of filed and disposed cases, however no reports concerning this have been brought to public attention.

13 Move over ‘Sons of the soil’: Why you need to know the female farmers that are revolutionizing agriculture in India. (2018, November 15). Oxfam India(OIN). <https://www.oxfamindia.org/women-empowerment-india-farmers>

14 Pattnaik, I., Lahiri-Dutt, K., Lockie, S., & Pritchard, B. (2018). The feminization of agriculture or the feminization of agrarian distress? Tracking the trajectory of women in agriculture in India. *Journal of the Asia Pacific Economy*, 23(1), 138-155.

15 SHLC. (n.d.). PoSH Act Section 6 - Constitution and Jurisdiction of Local Committee. Shlc. <https://shlc.in/law/posh-act-section-6-constitution-and-jurisdiction-of-local-committee/#:~:text=Every District Officer shall constitute,is against the employer himself.>

16 TNN. (2022, September 20). Implement sexual harassment law: Delhi Commission for Women. *The Times of India*. <https://timesofindia.indiatimes.com/city/delhi/implement-sexual-harassment-law-delhi-commission-for-women/articleshow/94311527.cms>



## 6

# The Informal Sector Survey

62. The focus of the Survey of this edition of the Annual Review laid particular emphasis on the informal sector in order to adapt the data collection methods to address the unique problems faced by the informal sector. Recognising the low level of awareness among informal sector workers, proactive steps were taken to ensure enough time is spent by student volunteers on-ground to gain trust, educate, and sensitise the respondents whilst collecting their responses to the Survey.

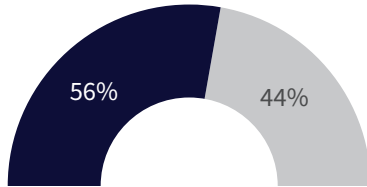
## 6.1

## Methodology

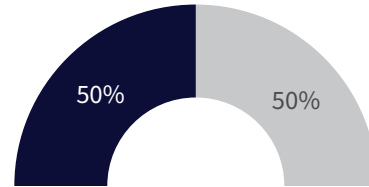
63. Volunteers from the Executive and Non-Executive MBA batches of Jagdish Sheth School of Management (JAGSoM) collected data by interacting directly with respondents from all walks of life within the informal sector. Volunteers were thoroughly trained prior to the Survey exercise to spend ample time with each respondent by the 8one team. They were encouraged to conduct primary and secondary research about the Act and the informal sector as well as to equip themselves with necessary materials, including information portals, helpline details, local LC information, and translated transcripts of the Survey which contained 12 questions with an option for the respondents to share their lived experience.
64. Given the widespread lack of awareness about rights and redressal mechanisms (beyond the police) among informal sector workers, 8one prioritised building awareness and sensitivity throughout the data collection process. Emphasising comprehensive responses over a larger sample size, data collected in 2022 was lesser in quantity compared to the previous year. The volunteers assured respondents about complete confidentiality of their responses confirming that engaging with this exercise shall not, in any way, affect their work or livelihood.

## 6.2

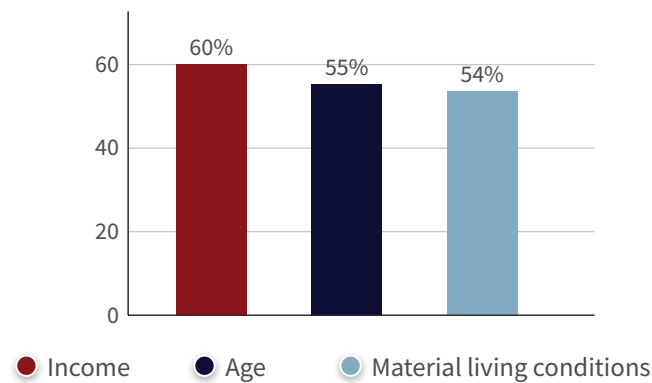
## Key Findings



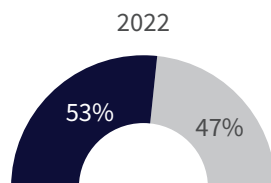
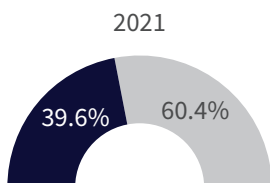
**Figure 6.2.1:** 56% of the respondents stated that they had heard sexually suggestive remarks about their clothing, appearance or body parts at least once.



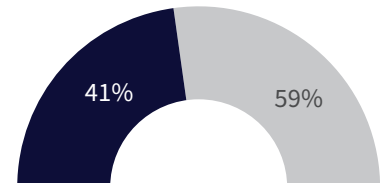
**Figure 6.2.2:** 50% of the respondents stated that they had experienced uncomfortable instances such as being stared at in a sexually suggestive manner at least.



**Figure 6.2.3:** The distinguishing factors that play a key role in sexual harassment cases include: Income (60%), Age (55%), and Material Living Conditions (54%).



**Figure 6.2.4:** The number of respondents who were not aware of members of the LC and how to reach them increased from 39.6% in 2021 to 53% in 2022.



**Figure 6.2.5:** 41% of the respondents felt uncomfortable in the presence of their employer/co-worker.

## 6.3

## Observations from the Survey

## 6.3.1

## Demographical Data

- 65 29 per cent of the respondents were employed as domestic workers (Figure 6.3.2). 49 per cent of the respondents were in the age group of 26 to 35 years (Figure 6.3.3). 71 per cent of the respondents preferred “She/Her” as their pronouns (Figure 6.3.4).



Figure 6.3.1: Distribution of respondents across the survey categories.

Figure 6.3.2: Occupation of the respondents.

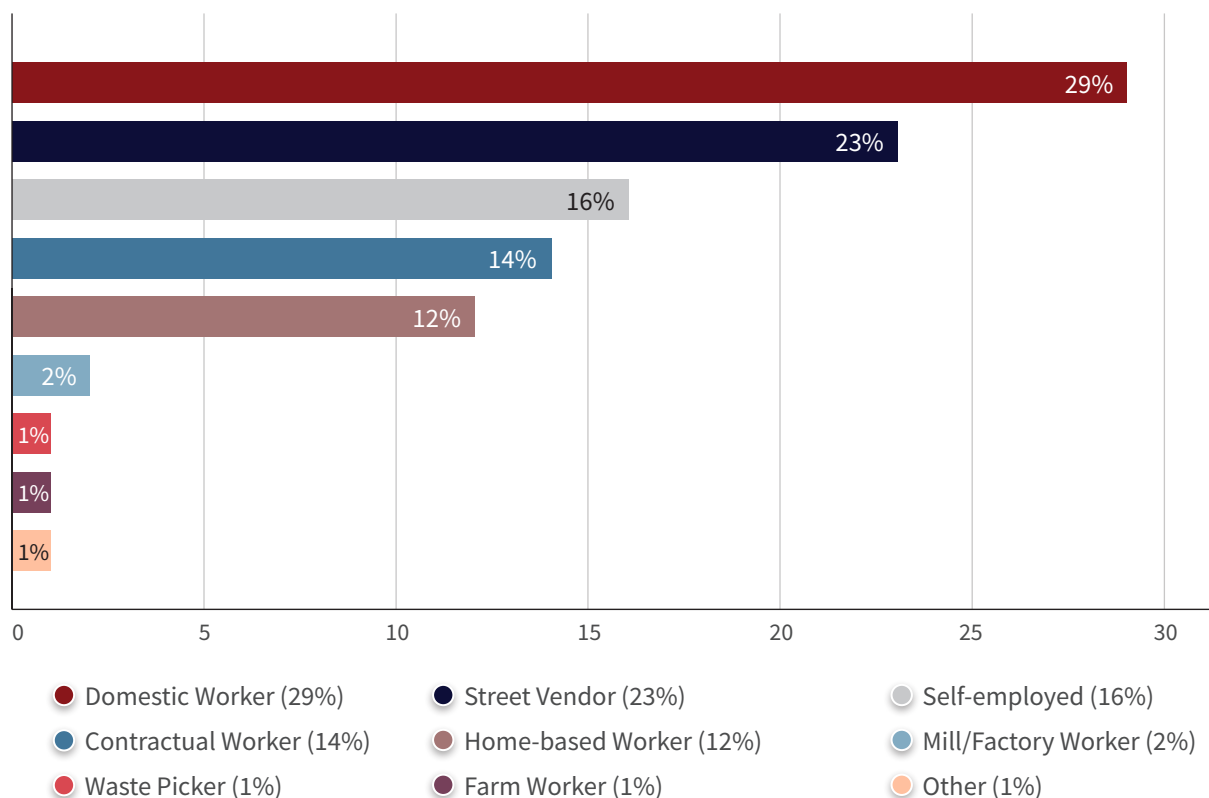


Figure 6.3.3: Distribution of age of the respondents.

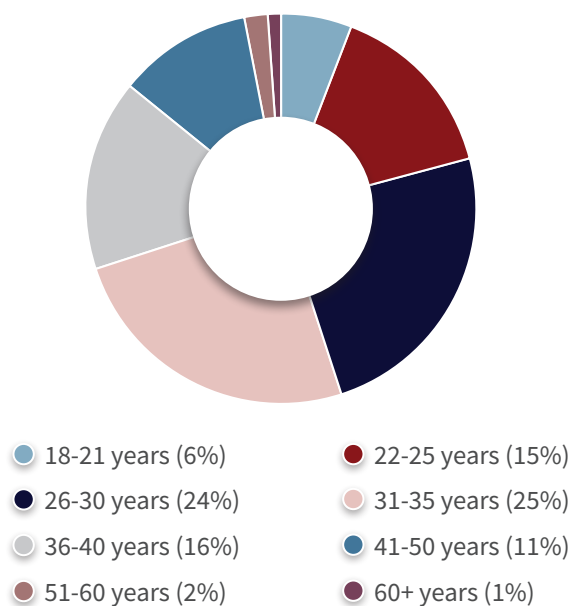
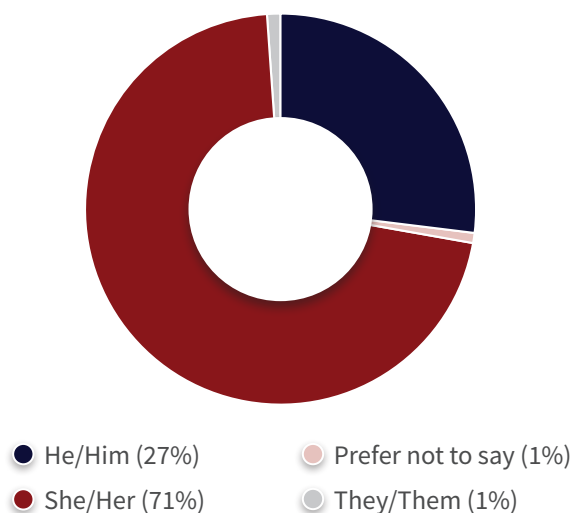
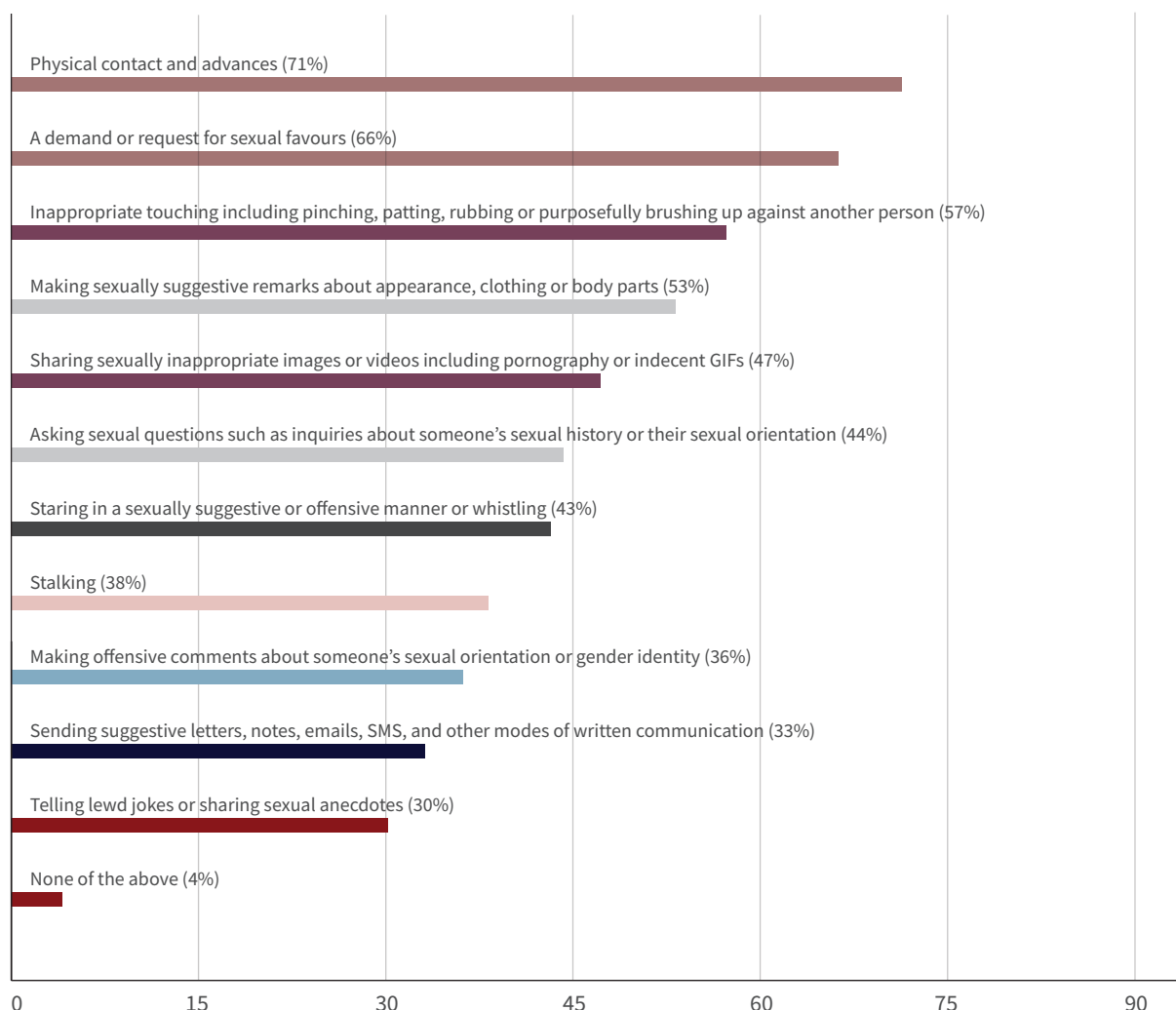


Figure 6.3.4: Preferred pronouns of the respondents.

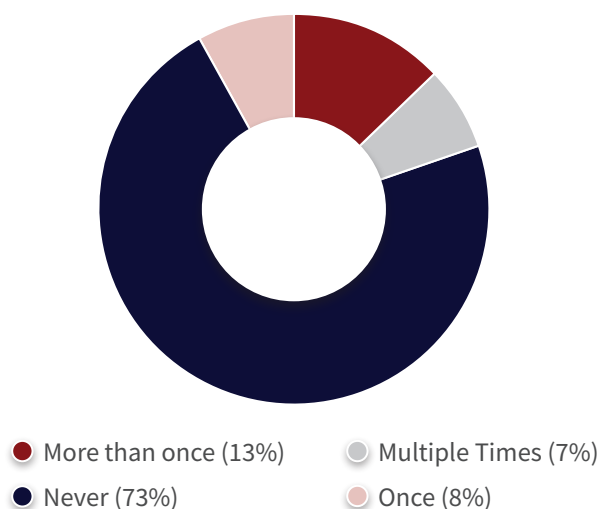


**Figure 6.3.5: Respondents' understanding of what constitutes sexual harassment.****6.3.2****Understanding Sexual Harassment**

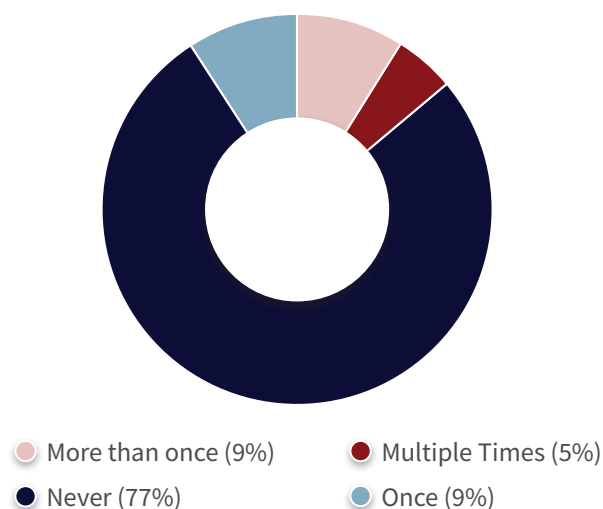
66. Figure 6.3.5 depicts what the respondents' understanding of the constituents of sexual harassment were. From the distribution of their responses, most of the surveyed informal sector workers picked overt and conspicuous instances of harassment as sexual harassment as listed below.

- a. Physical contact and advances (71%)
- b. A demand or request for sexual favours (66%)
- c. Inappropriate touching including pinching, patting, rubbing or purposefully brushing up against another person (57%)
- d. Making sexually suggestive remarks about appearance, clothing or body parts (53%)

**Figure 6.3.6: Frequency of receiving sexually inappropriate media from a coworker.**



**Figure 6.3.7: Frequency of receiving sexually inappropriate messages from a coworker.**



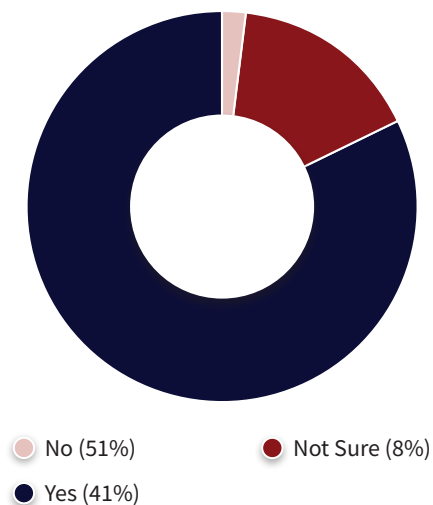
67. To understand whether the respondents had experienced more covert and inconspicuous instances of sexual harassment, they were asked how often they had received sexually inappropriate messages from a coworker, (suggestive letters, notes, emails, SMS, and other mode of written communication) (Figure 6.3.7), and how often someone had shared sexually inappropriate media (images or videos including pornography or indecent GIFs) with them (Figure 6.3.6). High percentage of responses to “Never” (73 per cent) can be attributed to lower relevance of remote work/internet connectivity amongst these workers in comparison to the formal sector.

### 6.3.3

## Workplace Discomfort

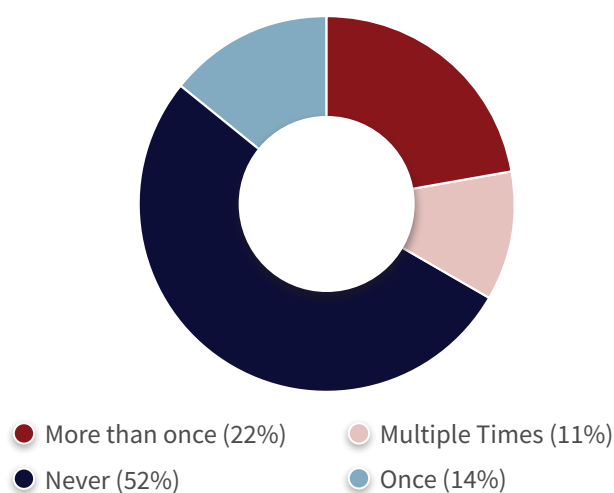
68. 41 per cent of the respondents answered, “Yes” when asked if they had felt uncomfortable in the presence of any co-worker/employer (Figure 6.3.8).
69. When asked about the reasons for feeling uncomfortable in the presence of a coworker or employer, respondents chose the following reasons:
- Physical contact and advances (47%) (Figure 6.3.9).
  - Demand or request for sexual favours (41%) (Figure 6.3.10).
  - Being asked sexual questions, such as enquiries about sexual history/sexual orientation (38%) (Figure 6.3.11).
  - Sexually suggestive remarks about appearance, clothing or body parts (56%) (Figure 6.3.12).

**Figure 6.3.8: Experiencing discomfort in the presence of a coworker/employer.**

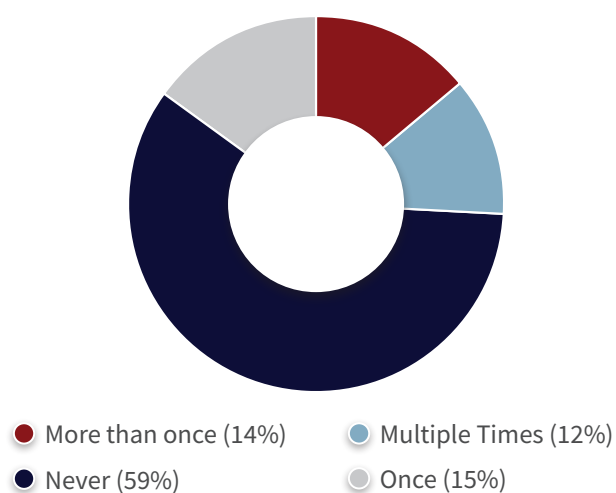


- e. Inappropriate touching, including pinching, patting, rubbing or purposefully brushing up against another person (49%) (Figure 6.3.13).
  - f. Told lewd jokes or sexual anecdotes (41%) (Figure 6.3.14).
  - g. Stared in a sexually suggestive/ offensive manner/ whistling (50%) (Figure 6.3.15).
  - h. Heard offensive comments about sexual orientation/gender identity (34%) (Figure 6.3.16).
  - i. Experienced an unwanted sexual advance from anyone while commuting to or from your workplace (39%) (Figure 6.3.17).
70. Respondents were then asked about the form(s) of sexual harassment that they had been subject to. Figures 6.3.9 till 6.3.17 show the distribution of responses for each type of harassment.

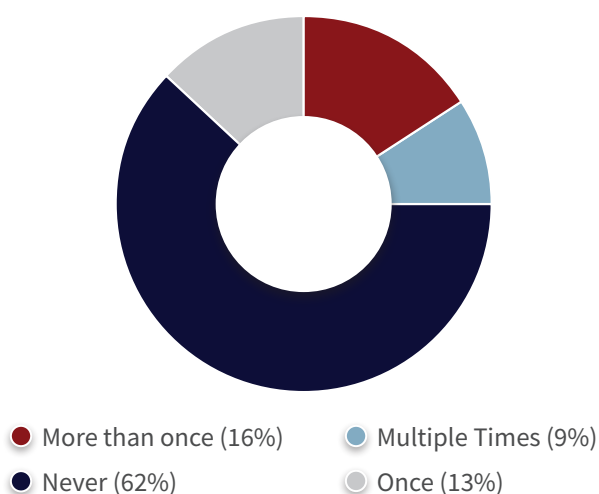
**Figure 6.3.9: Physical contact and advances.**



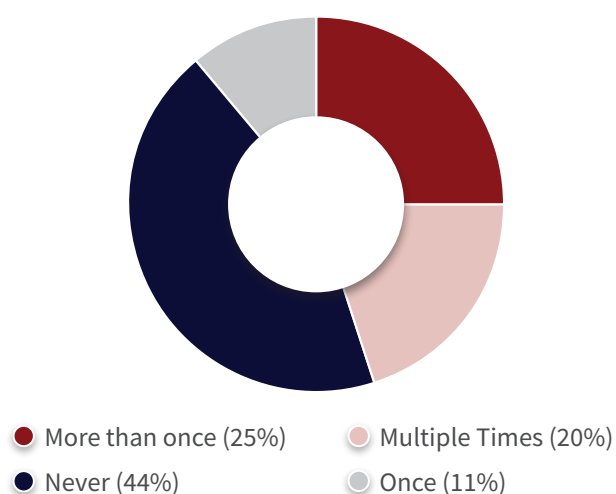
**Figure 6.3.10: A demand or request for sexual favours.**



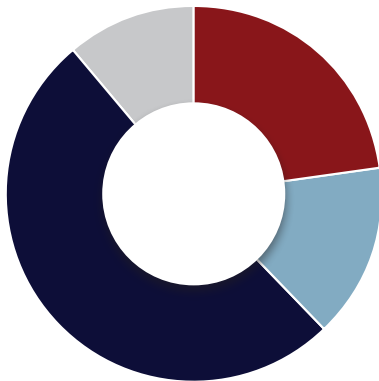
**Figure 6.3.11: Being asked sexual questions, such as inquiries about your sexual history or your sexual orientation.**



**Figure 6.3.12: Someone made sexually suggestive remarks about your appearance, clothing, or body parts.**

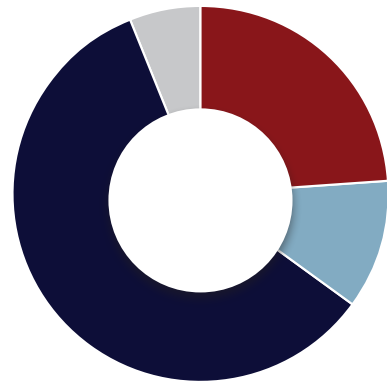


**Figure 6.3.13: Inappropriate touching, including pinching, patting rubbing, or purposefully brushing up against another person.**



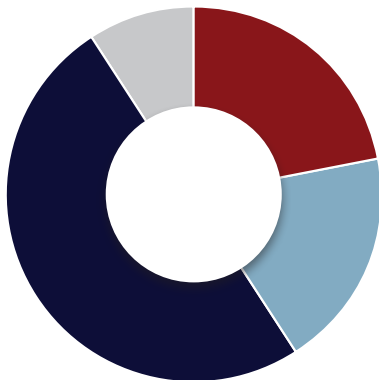
More than once (23%) Multiple Times (15%)  
Never (51%) Once (11%)

**Figure 6.3.14: Told lewd jokes or sexual anecdotes.**



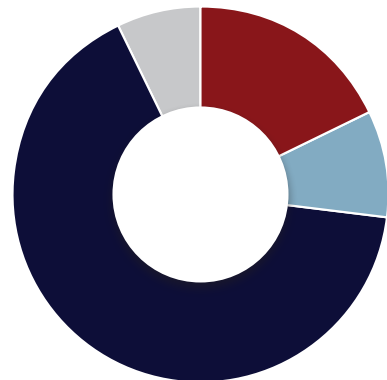
More than once (24%) Multiple Times (11%)  
Never (59%) Once (6%)

**Figure 6.3.15: Started in a sexually suggestive or offensive manner, or whistling.**



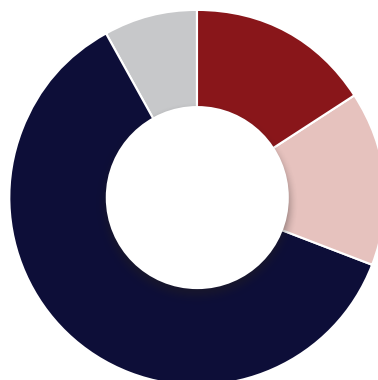
More than once (22%) Multiple Times (19%)  
Never (50%) Once (9%)

**Figure 6.3.16: Heard offensive comments about your sexual orientation or gender equality.**



More than once (18%) Multiple Times (9%)  
Never (66%) Once (7%)

**Figure 6.3.17: Experienced an unwanted sexual advance from anyone while communicating to or from your workplace (eg. stalking).**



More than once (16%)  
Multiple Times (15%)  
Never (61%)  
Once (8%)



71. The data in Figures 6.3.9 till 6.3.17 shows a higher prevalence of physical harassment compared to online forms of harassment, likely due to the isolated nature of informal work settings. The lack of witnesses and inherent vulnerability of these settings may be the cause of increased instances of such cases.

#### 6.3.4

### Distinguishing Social Factors

72. When asked about the distinguishing social factors that they believe are determinants in workplace sexual harassment, 60 per cent respondents chose “Income”, and 34 per cent chose “Caste” (Figure 6.3.18).
73. 55 per cent and 54 per cent chose “Age” and “Material living conditions”. Highlighting how age, income, and living conditions can contribute to power imbalances and vulnerability to sexual harassment (Figure 6.3.18).

Figure 6.3.18: Distinguishing social factors leading to sexual harassment at the workplace.

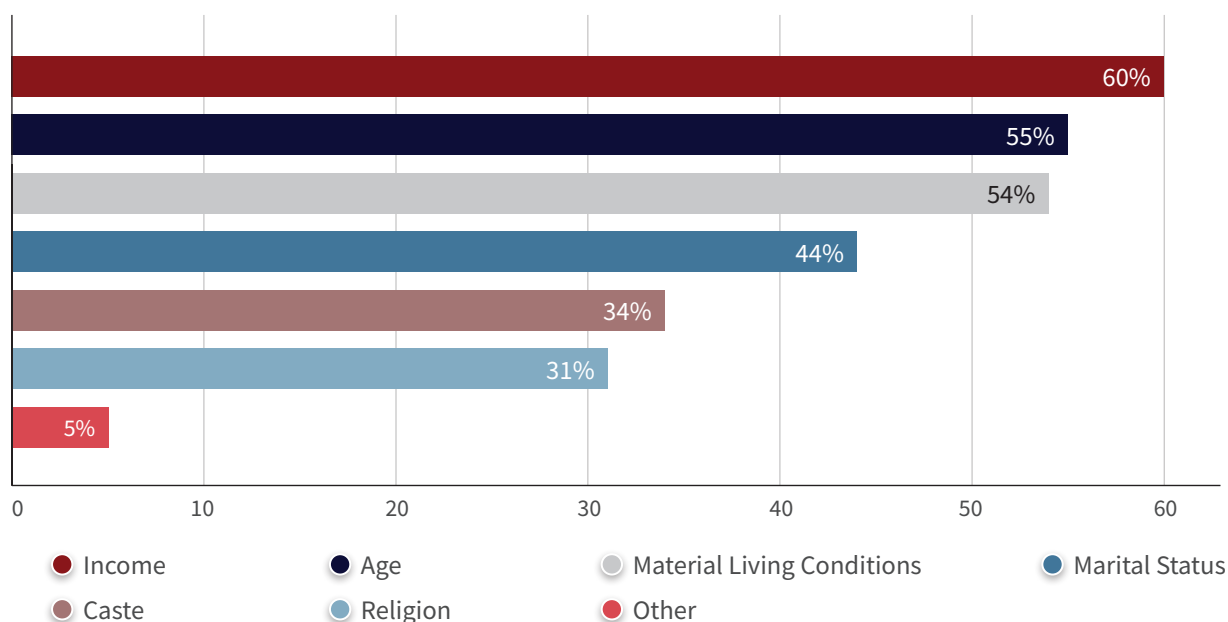
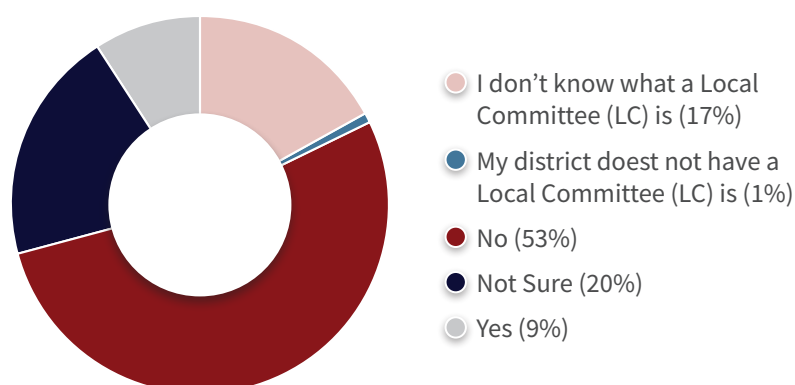


Figure 6.3.19: Awareness of a Local Committee in their district.



#### 6.3.5

### Awareness of Local Committees

74. The respondents were asked if they knew of the existence of a Local Committee (LC) for seeking redressal in the event of experiencing sexual harassment at the workplace. 53 per cent of them responded “No”, while 20 per cent responded “Not Sure” (Figure 6.3.19).

# Lived Experiences of Informal Sector Workers

*Disclaimer: 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 have been translated, after removing all personal identifiers of the respondents, whilst ensuring no loss of meaning.*

*The manager and assistant manager solicited sexual favours in exchange for employment and financial compensation, and I was instructed to visit the manager's residence for physical contact instead of going to the job site.*

*As the sole provider for a family of five, I hesitate to report issues to avoid jeopardising my job. Such incidents seem common in the workplace, and addressing them could result in unemployment.*

*A mason working under a contractor decided who was selected for specific tasks and their work locations. If someone lacked efficiency, the mason would demand sexual favours as compensation. They also exploited the absence of oversight at the site by offering extra money.*

*After experiencing sexual harassment, I filed a complaint. Although it was received by the authorities, no action has been taken yet.*

*As a male, my understanding of sexual harassment is limited to inappropriate physical actions.*

*I was subjected to inappropriate touching and, unaware of any committee to report the incident to, I chose to ignore it and acted as if nothing had happened.*

*While employed as a domestic worker in a hostel, I experienced the head stalking, staring, and making lewd jokes. He eventually demanded sexual favours, and upon refusal, he threatened to use his connections to prevent me from finding work elsewhere.*

*He financially supported me in exchange for cooking and laundry services. When intoxicated, he would touch me inappropriately and solicit sexual favours, which I endured due to my financial situation.*

*I remained silent about my experience to avoid societal defamation.*

*As a maid, I have experienced stalking and noticed the absence of women's grievance forums at the workplace to address such issues.*

*Upon entering the residential complex for work, guards record my number for the residential security mobile application registration, through which they later contact me from their personal numbers.*

*The market area becomes isolated at night, prompting us to leave in groups and head home as early as possible after concluding our business.*

*As a tailor, I encounter inappropriate behaviour and lewd jokes from male clients and young boys during measurements. I felt compelled to accept this as normal for a street-side vendor and did not take action due to my financial status.*

*Originating from Nagaland, I have held various jobs and delivered food for a Chinese restaurant over three years. I faced sexual propositions from individuals of both genders, exploiting my North-eastern heritage. Despite dismissing these advances as acts of desperation, they left an impact.*

# Jurisprudence Review

75. This section explores recent judicial developments that touch on different aspects of the Act and provides insights into the decisions made by the judiciary in the year 2022.

## 8.1

### The Role of High Courts

76. High Courts have been vital in determining the parameters of the Act by acting as essential interpreters. The Kerala High Court limited the Act's application in *Centre for Constitutional Rights Research and Advocacy (CCRRA) v. State of Kerala and Ors.*<sup>14</sup> by releasing political parties from IC duties. However, rulings in *Women In Cinema Collective v. State Of Kerala*<sup>15</sup> and *Pawan Kumar Niroula v. Union of India and Ors.*<sup>16</sup> broadened the scope of the Act to include film industry associations and female-only schools.

## 8.2

### Bridging Legal Gaps and Ensuring Protections for Gig Workers

77. Given their non-traditional employer-employee connections, gig workers provide a noteworthy issue when enforcing laws such as the Act of 2013. Since gig workers lack a regular employment structure, it is not easy to provide them with traditional safeguards; therefore, legal frameworks protecting their rights need to be re-evaluated. The legal environment for independent contractors is dramatically changing as courts realise that independent contractors should have the same rights as regular employees.
78. An increasing recognition of platform responsibility for sexual harassment of female gig workers has been observed in recent court trends. The Kerala High Court established the obligation of the platform to guarantee a harassment-free work environment for gig workers in 2022. This precedent emphasises the Act's critical role in forming the legal discourse around gig employment and is essential in directing legal proceedings.

## 8.3

### Extending Protection to Domestic Workers

79. Domestic workers face distinct challenges in reporting and addressing sexual harassment, primarily rooted in fear of losing their jobs, employer retaliation, and a lack of trust in the legal system. These barriers often deter domestic workers from coming forward.
80. The Act's coverage of domestic workers is limited due to its formal sector concentration, which means that a sizable segment of the workforce is not adequately protected.

<sup>14</sup> Constitutional Rights Research and Advocacy (CCRRA) v. State of Kerala & Others, WP(C) No. 36059 Of 2018

<sup>15</sup> Women In Cinema Collective v. State Of Kerala, WP(C) No. 33994 Of 2018

<sup>16</sup> Pawan Kumar Niroula v. Union of India and Others, WP.CT 86 Of 2021

Although the Supreme Court's 2019 decision to extend the Act's application to domestic workers was a significant legal milestone, there have been anomalies in recent judicial trends, with certain courts contesting this extension.

81. Suggestions for advancing these positive developments include giving domestic workers access to the protections of the Act, offering targeted training, setting up specialised complaint channels, kicking off awareness campaigns, and confronting social perceptions that cast doubt on the validity of the protections provided to domestic workers. Within the parameters of the Act, addressing these issues is crucial to establishing a setting that prioritises the welfare and dignity of domestic workers.

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## 9.1

## The Managing Director, HDFC Standard Life Insurance Company v. Suresh Babu<sup>17</sup>

10.01.2022

Kerala High Court

82. In this case, the Internal Committee (IC) received a complaint from six HDFC Standard Life Insurance Company workers alleging that the Assistant Sales Manager (respondent number 1) had violated the Act. The employer terminated respondent number 1's services after the IC found that he had participated in unwanted verbal conduct of sexual character, which is considered sexual harassment under the Act. Respondent number 1 filed an appeal with the Regional Joint Labour Commissioner, who overturned the IC's report and remanded the matter for further investigation because it violated the principles of natural justice<sup>18</sup>.
83. With the current writ petition, the Managing Directors and Managers of HDFC Standard Life Insurance Company Limited contested the appellate authority's conclusions. Respondent number 1 argued that the Act and Rules, as well as the principles of natural justice, were not followed by the IC in conducting its investigation. He said he was not given a copy of the complaint or the IC's conclusions nor the chance to question complainants or witnesses in cross-examination. In addition, he contended that service norms should have carried out a formal investigation before recommending termination.
84. In response, the petitioners argued that the Act requires neither cross-examination nor giving the accused access to IC documents. They asserted that respondent number 1 neglected to ask for witness statements or cross-examination. The Kerala High Court determined that the IC's investigation violated the norms of natural justice and was not in compliance with the Act. Although the Court recognised the flexibility of natural justice, it stressed the need for fairness and ensured the accused had access to relevant evidence. The Court rejected the argument that respondent number 1's non-attendance during the witness examination invalidated the questioning during verbal cross-examination.
85. The Court rejected the IC's report and remanded the case for additional investigation. It instructed that complaints and witness and complainant statements be sent to respondent number 1, giving him a deadline to file objections. It did, however, rule out vocal cross-examination without the complainants' or witnesses' permission. Respondent number 1 was placed on suspension while the employer made a decision based on the IC's recommendations, and the IC was directed to wrap up the investigation in three months.

## 9.1.1

### Impact of the Case

86. The accused shall be furnished with a copy of the complaints, the depositions of all the complainants and witnesses, and the IC report for having a fair opportunity to correct and contradict thereof.
87. It deters false charges, empowers the accused by allowing access to records and an opportunity to react, and increases awareness of the fair procedures stated in the Act.

<sup>17</sup> The Managing Director, HDFC Standard Life Insurance Company v. Suresh Babu, WP(C) No. 14688 Of 2018

<sup>18</sup> Principles Of Natural Justice in The Light Of Administrative Law. (n.d.). Legal Service India. <https://legalserviceindia.com/legal/article-1659-principles-of-natural-justice-in-the-light-of-administrative-law.html>.

## 9.2

**Pawan Kumar Niroula v. Union of India and Ors.<sup>19</sup>****24.01.2022**

Calcutta High Court

88. A Trained Graduate Teacher (TGT) at Jawahar Navodaya Vidyalaya in Ravangla, South Sikkim, was accused of sexual harassment by over 67 students who filed written complaints against him. An Internal Committee was then established to look into these concerns. The petitioner was detained under Section 10 of the POCSO Act<sup>20</sup>, 2012, in response to a police complaint by the school's principal and released on bond. The petitioner's employment was suspended from February 16, 2020, to February 10, 2021, while they were in custody.

89. The Central Administrative Tribunal, Kolkata Bench, permitted the respondent authorities to proceed with the summary trial and instructed the petitioner to cooperate after contesting the suspension order and the committee's Constitution. In this case, the petitioner disputed the contested order from the tribunal. Invoking the terms of the Act, the petitioner argued that an Internal Complaints Committee (IC) should have been established because the nature of the complaint against him fits within sexual harassment at work. On the other hand, the respondent contended that since female students made claims of sexual harassment, the respondent institution is exempt from the requirements of the Act.

90. The Calcutta High Court discerned that the Committee formed by the respondent school authorities

did not qualify as an Internal Committee under Section 4<sup>21</sup> of the Act. Furthermore, it underscored Section 2(a)<sup>22</sup> of the Act, affirming its application to students within the school.

**9.2.1****Impact of the Case**

91. The direct impact of the Pawan Kumar Niroula v. Union of India and Ors. case extends across both educational and legal spheres. In education, the ruling has extended the protection of the Act to students, ensuring a safe and harassment-free learning environment. Educational institutions now face increased accountability for establishing effective Internal Committees (ICs) and promptly implementing the provisions within the Act. The ruling underscores the need for comprehensive training and awareness programs on sexual harassment, emphasising the importance of timely investigations and justice for targets.

92. Legally, the ruling provides a clear interpretation of the Act, clarifying its applicability to educational institutions and protecting students from sexual harassment. It establishes a precedent for future cases, ensuring consistent application of the law and strengthening the framework of gender equality laws in India.

19 Pawan Kumar Niroula v. Union of India and Others, WP.CT 86 Of 2021

20 Section 10 - Punishment for aggravated sexual assault. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012. (n.d.). Bhubaneswar Cuttack Police. <https://bhubaneswarcuttackpolice.gov.in/wp-content/uploads/2020/08/POCSO-ACT.pdf>.

21 Section 4: Constitution of Internal Complaints Committee. Constitution of Internal Complaints Committee. (n.d.). India Code. [https://indiacode.nic.in/show-data?actid=AC\\_CEN\\_13\\_14\\_00009\\_201314\\_1517807327213](https://indiacode.nic.in/show-data?actid=AC_CEN_13_14_00009_201314_1517807327213).

22 Section 2(a): Definitions, "aggrieved woman". Definitions. (n.d.). India Code. [https://indiacode.nic.in/show-data?actid=AC\\_CEN\\_13\\_14\\_00009\\_201314\\_1517807327213](https://indiacode.nic.in/show-data?actid=AC_CEN_13_14_00009_201314_1517807327213).



## 9.3

**Ms. X v. Registrar General, High Court of Madhya Pradesh and Another<sup>23</sup>**

10.02.2022

Supreme Court of India

93. In this case, the petitioner asked the Hon'ble Supreme Court for relief, requesting the overturning of the decision made by the Chief Justice of the Madhya Pradesh High Court, which had rejected her request for reinstatement. Ms. X, who was the VIIIth Additional District and Sessions Judge in Gwalior before, said that Justice 'A' had harassed her sexually. Then, at Justice A's request, the District and Sessions Judge complained about her at the Madhya Pradesh High Court, following which she was ordered to move from Gwalior to Sidhi by a transfer order.
94. In response, the petitioner went to the Registrar General and requested for a posting in a city like Ujjain, Raisen, Dewas, or Sehore or for an eight-month extension. The aim was to enable her daughter to finish her academic year in the twelfth grade. Both submissions were summarily dismissed. The petitioner submitted her resignation on July 15, 2014; on July 17, 2014, the Madhya Pradesh Government's Law and Legislative Affairs Department accepted it.
95. The petitioner argued that the transfer orders were punitive because she disobeyed the supervising High Court Judge's directives. It was argued that transferring from a Category 'A' city to a Category 'C' city and a Naxal-affected area violated the High Court's established transfer regulation.
96. In its ruling, the Honourable Supreme Court declared the petitioner's resignation void and put it aside. It recognised Ms. X's right to continued service and all ensuing benefits and ordered the respondents to promptly restore her to her previous role as Additional District and Sessions Judge.

## 9.3.1

**Impact of the Case**

97. The resignation tendered as an outcome of a hostile work environment cannot be construed as voluntary and amounts to constructive dismissal. The ruling gave the petitioner more authority by allowing her to return to her prior role and vigorously encouraged other women to pursue careers in the judiciary. It also made the judiciary responsible for handling sexual harassment and increased awareness of it.
98. Legally speaking, the case reinforced the framework that shields women from sexual harassment, expanded the meaning of constructive dismissal, and defined the requirements for contesting transfer orders.

23 Ms. X v. Registrar General, High Court of Madhya Pradesh and Another, W.P.(C) No. 1137 Of 2018

## 9.4

**Ukkash A v. State of Kerala and Ors.<sup>24</sup>**

09.03.2022

Kerala High Court

99. The petitioner in a Public Interest Litigation (PIL) claimed that by failing to guarantee the Local Committee's (LC) efficient operation within the State of Kerala, the State Government has failed to implement the requirements of the Act. The petitioner cited instances of inactivity about the appointment and reconstitution of the LC after its term had ended and the non-payment of Committee members who were constituted.

100. According to the petitioner, the statutory provisions of the Act were not being followed and violated Articles 14<sup>25</sup>, 15<sup>26</sup>, 19(1)(g)<sup>27</sup>, and 21<sup>28</sup> of the Indian Constitution. On February 7, 2022, the Court issued an order requiring adherence to the orders it had made after carefully reviewing the arguments put out by both sides. Later, the respondent filed a supplemental statement informing the Court that the State Government had addressed the petitioner's concerns by creating the LC.

101. The Court ordered that the necessary actions be taken to enforce the provisions of the Act and the Rules accompanying it. The Court also mandated the reconstitution of the LC, highlighting the need for information about the composition

of the Committee to be widely disseminated in compliance with the Act and Rules.

## 9.4.1

**Impact of the Case**

102. The order necessitates enforcement of the provisions of the 2013 Act and rules with the reconstitution of the LC on the expiry of its term. The Court directed the State Government to provide adequate funding to LCs to enable them to function effectively. This included funding for salaries of LC members, administrative expenses, and training for members. In addition, the judgement also necessitated the State Government to publicise the constitution of LCs. This was crucial to raise awareness about the existence and functioning of LCs, encouraging employees to come forward with sexual harassment complaints. The Court's order emphasises the importance of public awareness regarding the constitution of the LC. This directive supports transparency in the process and aligns with the broader goal of creating a safe and harassment-free work environment by making information about the committee's existence and functions widely accessible.

<sup>24</sup> Ukkash A v. State of Kerala & Ors., WP(C) NO. 28156 OF 2021

<sup>25</sup> Article 14: Equality before law. Article 14 in Constitution of India.

<sup>26</sup> Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 15 in Constitution of India.

<sup>27</sup> Article 19(1)(g): All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business. Article 19 in Constitution of India.

<sup>28</sup> Article 21: Protection of life and personal liberty. Article 21 in Constitution of India.

**9.5****P v. A and Ors.<sup>29</sup>****17.03.2022**

Bombay High Court

103. In the continuing lawsuit involving private parties, the applicant, the Forum Against Oppression of Women, filed an interim application. The suit's progress was governed by previous directives from the Bombay High Court, which addressed confidentiality issues. The applicant wanted to know if these instructions, which had to do with the 2013 Rules and the Act, were universally applicable or of a generic nature. In an earlier order dated 24.09.2021, the Court had set rules to protect the parties' identities from unintentional publication in matters involving the Act and Rules, considering their interests.
104. The Forum Against Oppression of Women, the applicant submitted an interim application in the ongoing action involving private parties. Previous directions from the Bombay High Court, which dealt with confidentiality issues, limited the progress of the suit. The applicant sought clarification on whether these instructions—which dealt with the Act and the 2013 Rules—were generic in

character or universally applicable. The parties' interests were considered when the Court established guidelines in a previous ruling dated 24.09.2021, to safeguard their names from inadvertent publication in cases concerning the Act.

**9.5.1****Impact of the Case**

105. Confidentiality-related directions issued by a Court in view of the Act are case-specific and have no general application. The case highlights how crucial identity protection is in such cases, and empowers targets to disclose crimes without fear of reprisal. From a legal perspective, it protects privacy rights, stresses a case-specific approach, and clarifies individual courts' restricted authority. Legally speaking, it limits the general use of confidentiality orders, highlights appropriate procedures for broader use, and guarantees procedurally equitable treatment for all parties involved.

<sup>29</sup> P v. A & Ors., Interim Application (L) No. 2215 Of 2022 In Suit No.142 Of 2021

## 9.6

**Vimalkant Bhanuprasad Shrimali v. IDMC Limited<sup>30</sup>**

19.04.2022

Gujarat High Court

106. The petitioner in this case, Vimalkant Bhanuprasad Shrimali, challenged both the IDMC Limited termination order and the ensuing appeal that upheld it. After two years of employment as an Assistant Vice President for HR and Administration, the petitioner was a target of a complaint filed under the Act which prompted an investigation by the Internal Committee (IC). The IC terminated the employment of the petitioner after it judged him guilty of sexual harassment. The Appeals Court later supported this decision.
107. Citing several examples, the petitioner argued that investigation by the IC did not follow the core ideas of natural justice:
- The charge sheet had insufficient specifics about the alleged misbehaviour.
  - The petitioner was not allowed to cross-examine the complainant's witnesses or receive statements from them. Instead, the IC told the petitioner to create a cross-examination questionnaire, a task he declined to comply with.
  - The petitioner was not allowed to call witnesses on his behalf.
  - The audio tape of the meeting was not made available to him.
108. The petitioner claimed that these elements were against the Conduct, Discipline, and Appeal Rules of the Company which required that sexual harassment allegations be investigated in conformity with the prescribed guidelines of the Act. The petitioner requested that the termination order and the Appeals Court rulings be overturned.
109. IDMC Limited, which sent the petitioner copies of the proceedings, argued that they followed the norms of natural justice. Equal opportunities were provided to both parties to address accusations and provide supporting documentation. Given the hierarchical differences between the petitioner and the witnesses, the IC decided to use written questions throughout the cross-examination by the petitioner in order to reduce any possibility of intimidation or influence. The respondent disclosed that the petitioner resigned from a previous role due to similar accusations of sexual harassment.
110. The Gujarat High Court upheld the termination, asserting that the proceedings, including the method of cross-examination through written questions, did not breach the principles of natural justice. The court deemed the behaviour of the petitioner as falling within the definition of sexual harassment under the Act, with a history of similar conduct in his previous employment. Consequently, the petition was dismissed.

**9.6.1****Impact of the Case**

111. The Court ruling highlighted the impact of the difference in position between the witnesses and the respondent in proceedings under the Act, preventing the witnesses from disposing freely without fear. To prevent this, the Court ruled to avoid disclosing their identity to the respondent and their counsel. Further, asking the respondent to submit written questions for cross-examinations of witnesses was held to be by the principles of natural justice.

<sup>30</sup> Vimalkant Bhanuprasad Shrimali vs. IDMC Limited, R/Special Civil Application No. 16219 of 2020

## 9.7

**Pradip Mandal v. Metal Scrap Trade Corporation Ltd. and Ors.<sup>31</sup>****19.05.2022**

Calcutta High Court

112. The case revolved around whether, in the context of a sexual harassment complaint, the disciplinary authority is obliged to initiate a new inquiry or can proceed with disciplinary action by treating the Internal Committee (IC) report as the official inquiry report.
113. In 2014, a sexual harassment complaint was lodged against the petitioner, who was serving as a Manager (Law) in the Metal Scrap Trade Corporation, by respondent number 3 (Special Duty (Law)). The IC provided its report to the petitioner in March 2015, before the disciplinary authority had already issued an order of punishment. The petitioner, challenging the punishment of reduction to a lower pay grade, filed an appeal. Simultaneously, the petitioner initiated a writ petition to challenge the IC's findings and recommendations. The Appellate Committee upheld the punishment, and the initial petition was dismissed for non-prosecution. Subsequently, this writ petition was filed to annul the orders passed by the Appellate Committee.
114. According to the petitioner, the IC's investigation falls under the fact-finding process of the Act. When accusations are validated, the employer is required by service rules (the Conduct, Discipline, and Appeal Rules, 1980) to address sexual harassment as misbehaviour. The petitioner argued that the conclusions and report of the IC could not be compared to the report by the Inquiry Authority because it was only an initial investigation or inquiry that resulted in disciplinary punishment. According to the Act and CDA Rules, the petitioner argued that the authorities had combined the two separate investigations. It was further emphasised that the lack of opportunity of the petitioner to challenge the IC report violated natural justice standards.
115. The respondent refuted these arguments by citing the *Medha Kotwal Lele and Ors. ruling v. the Union of India and Ors. (2013) 1 SCC 297*, which held that the IC report should be considered part of an investigation into the misbehaviour of the criminal. According to Rule 27A of the CDA Rules, which was invoked, the Complaints Committee is the inquiry committee in sexual harassment cases, and its report is regarded as the inquiry report under the rules.
116. The Court found that the IC's investigation was thorough, gave both sides the chance to support their claims, and was conclusive. As a result, the inquiry report from the ICC is more than just an initial investigative report. Furthermore, the Disciplinary Authority designates the IC as an investigating authority in sexual harassment under Rule 25(2) of the CDA Rules, 1980, and its report is considered the official inquiry report, eliminating the need for a second inquiry by the disciplinary authority.
117. An inquiry report based on an inquiry by the IC cannot be said to be merely a preliminary investigation report, and the IC has to follow the principles of

## 9.7.1

**Impact of the Case**

31 Pradip Mandal Vs. Metal Scrap Trade Corporation Ltd. & Ors., WPA 888 Of 2020

natural justice. Social norms of justice in sexual harassment cases align with the Court's acknowledgment of the Internal Complaints Committee (IC) as a strong, independent investigative body.

118. Legally, the decision streamlines the procedure and provides legal

clarity in sexual harassment claims by stating that the IC report functions as the inquiry report under the Central Civil Services Rules. The case establishes a precedent by highlighting the conclusion and thoroughness of the IC's investigation, guaranteeing adherence to natural justice standards.

## 9.8

**S. Ravi Selvan v. Central Board of Indirect Taxes and Customs and Ors.<sup>32</sup>**

09.09.2022

Madras High Court

119. In the writ case, Mr. S. Ravi Selvan disputed the establishment of the Internal Committee (IC), which followed a sexual harassment charge brought against the petitioner by XYZ (respondent number 4). The complaint was filed on May 24, 2022, and Mr. Ravi Selvan was the Principal Commissioner of Customs. The petitioner requested a declaration stating that all measures and proceedings taken in response to the sexual harassment allegation by the Chief Commissioner and the Central Board of Indirect Taxes and Customs (CBIC) were unlawful and beyond the scope of their authority.
120. The petitioner challenged the Constitution of the IC on the following grounds:
  - a. The Constitution of the IC is an abuse of law and lacks jurisdiction.
  - b. Malafides taint the sexual harassment complaint and is retaliatory to an investigation into a scam.
  - c. Violation of Rule 7<sup>33</sup> of the Rules of the Act.
  - d. The petitioner and XYZ did not share the same workplace, rendering the Act inapplicable.
  - e. The IC members exhibit bias against the petitioner.
  - f. The complaint is time-barred under Section 93<sup>4</sup> of the Act.
121. The arguments by the petitioner were disputed by the respondents, who claimed that the CBIC-constituted IC complied with Section 3<sup>35</sup> of the Act, which allows any woman who is the target of workplace sexual harassment, to make a complaint, regardless of whether her workplaces are shared. They refuted the assertion by the petitioner that there was a direct connection between the complaint and the purported swindle, saying that preliminary investigation by the IC would handle such issues. In response to claims of IC bias, the responses defended the impartiality of the IC and highlighted its function as a fact-finding organisation. They argued that neither Section 9 of the Act nor the natural justice standards had been broken.
122. During its consideration, the Madras High Court made it clear that the Act covers more than just employees and that the sole prerequisite is that sexual harassment must occur in the workplace. The Court emphasised that when accusations of sexual

<sup>32</sup> S. Ravi Selvan v. Central Board of Indirect Taxes & customs & Others, W.P.No. 17798 of 2022 and W.M.P. No. 17093 of 2022 & 17928 of 2022

<sup>33</sup> Rule 7: "A local woman will be chosen from among the women who work in the district's blocks, talukas, tehsils, wards, and municipalities. And. Two members of non-governmental organizations of whom one must be a woman from a women's organization or someone knowledgeable about sexual harassment issues." Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (n.d.). India Code. [https://indiacode.nic.in/handle/123456789/2104?sam\\_handle=123456789/1362](https://indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362).

<sup>34</sup> Section 9: Complaint of sexual harassment. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (n.d.). India Code. [https://indiacode.nic.in/handle/123456789/2104?sam\\_handle=123456789/1362](https://indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362).

<sup>35</sup> Section 3: Prevention of sexual harassment. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (n.d.). India Code. [https://indiacode.nic.in/handle/123456789/2104?sam\\_handle=123456789/1362](https://indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362).

harassment occur in the workplace, joint departments are not needed. After examining the definition of “employer” as given in the Act, the Court determined that the constitution of the IC complied with the Act’s requirements.

123. In response to the petitioner’s allegations of prejudice, the Court noted insufficient proof to substantiate these claims, especially as there was no concrete evidence linking committee members to XYZ. According to the Court, the lawsuit and the purported swindle did not appear to be related. The Court held that the subject matter of the petition fell the jurisdiction of the Administrative Tribunals, excluding it from the writ jurisdiction. Consequently, the Court deemed the petition not maintainable and dismissed it accordingly.

#### 9.8.1

### Impact of the Case

124. High Courts are not the proper forum to approach under Article 226<sup>36</sup> of the Indian Constitution to decide on the constitution of ICs and need adjudication by the Administrative Tribunals. Socially, by acknowledging that harassment concerns may arise in various professional settings, the Court’s recognition that the Act extends its protective umbrella beyond traditional workplace relationships signals a commitment to inclusivity.
125. Legally, the decision establishes a precedent by defining the appropriate forum for resolving disputes about creating Internal Committees (ICs). The ruling upholds the validity of the Act, emphasising that it is dependent on the occurrence of workplace harassment rather than being limited to people working in the same department.

<sup>36</sup> Article 226: Power of High Courts to issues certain writs. Article 226 in Constitution of India.



## 9.9

**Jhoney Rebeiro v. Union of India and Ors.<sup>37</sup>****14.10.2022**

Delhi High Court

126. The IC rejected the request of the petitioner for legal counsel throughout the proceedings, citing Rule 7(6)<sup>38</sup> of the Act. This prompted the petitioner to bring a writ suit under Article 226 of the Indian Constitution, arguing that Rule 7(6) violates Articles 14, 19, and 21 of the Constitution<sup>39</sup> and the natural justice principles and should be repealed or amended. On 28<sup>th</sup> September, 2022, the writ petition was finally dismissed, and the petitioner was permitted to submit a new one.

127. The petitioner invoked Section 11(3)<sup>40</sup> of the Act, arguing that the IC, which is empowered by the Code of Civil Procedure, 1908, to act as a Civil Court and allow for the appearance of a next friend who is permitted to cross-examine witnesses during the investigation. The complainant's attorney contended that the petitioner was not granted the right to legal representation or representation through a next friend

under the Act.

128. The Court, deeming the petition non-maintainable, expressed that since the petitioner had not contested the validity of Rule 7(6), the Court was precluded from interpreting or diluting the statutory mandate. Furthermore, allowing the petitioner's representation before the IC was considered prejudicial to the complainant, who lacked the assistance of a legal practitioner or next friend.

## 9.9.1

**Impact of the Case**

129. The Court's decision to uphold Rule 7(6) of the Act without contesting its validity highlights the importance of preserving the legislative framework until it is directly challenged. The case clarifies the rights of the accused and the need to uphold the interests of the complainants.

<sup>37</sup> Jhoney Rebeiro v. Union of India & Ors., W.P.(C) 14547/2022

<sup>38</sup> Rule 7(6) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules states that parties in question shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of proceedings before the IC. Thapliyal, N. (2022). Live Law. [https://livelaw.in/news-updates/posh-act-party-right-legal-representation-internal-complaints-committee-prohibited-rules-delhi-hc-212223#:~:text=Rule 7\(6\) of the Sexual Harassment of Women at,of proceedings before the ICC.](https://livelaw.in/news-updates/posh-act-party-right-legal-representation-internal-complaints-committee-prohibited-rules-delhi-hc-212223#:~:text=Rule%207(6)%20of%20the%20Sexual%20Harassment%20of%20Women%20at%20of%20proceedings%20before%20the%20ICC.)

<sup>39</sup> Article 14: Right to Equality; Article 19: Right to Freedom; Article 21: Right to Life and Liberty. Golden Triangle Of The Constitution Of India: Articles 14, 19 And 21. (n.d.). Legal Service India. <https://legalserviceindia.com/legal/article-10701-golden-triangle-of-the-constitution-of-india-articles-14-19-and-21.html>.

<sup>40</sup> Section 11: Inquiry into Complaint. Section 11 of Prevention of Sexual Harassment at Workplace Section 11.

**9.10****Raj Kumari v. The Chairman, Bank of Maharashtra and Ors.<sup>41</sup>****23.12.2022**

Delhi High Court

130. The petitioner filed this writ petition seeking to set aside the orders of dismissal from service passed by the Disciplinary Authority on 24<sup>th</sup> December, 2010 and the dismissal of the appeal passed by the Appellate Authority on 7<sup>th</sup> April, 2011. The petitioner was accused of using a senior manager's credit card without authorisation while working as an economist at the Bank of Maharashtra's regional office in New Delhi. It is said that the petitioner spent Rs. 34,622 in cash without permission before returning the same amount the next day, along with an unidentified letter left on the Manager's desk. A show-cause notice was sent in response to the Senior Manager's complaint, claiming that an infringement of employee regulations had occurred. The petitioner was fired as the result of a disciplinary investigation that followed. The petition was brought about when the dissatisfied petitioner appealed to the Appellate Authority, which upheld the conclusions.
131. The petitioner argued that the Senior Manager, who had given his credit card to her to make approved purchases, had falsely accused her of stealing. She claimed that the Senior Manager's grievance sprang from a personal grudge after she turned down his sexual advances. In *Vishaka and Ors v. State of Rajasthan and Ors*, (1997) 6 SCC 241, the petitioner expressed concerns with eliminating allegations about advances during the inquiry, claiming a violation of guidelines imposed by the Hon'ble Supreme Court.
132. The Presenting Officer rejected accusations of sexual harassment, and the Court observed that this happened without conducting a full investigation. It underlined that sexual harassment problems are not limited to business spaces and urged decision-makers to confront and settle these kinds of cases. The Court overturned the petitioner's dismissal orders and granted her reinstatement with all related benefits after discovering no hard evidence to back up the accusations made against her.
133. The Court ordered the respondents to pay compensation, finding that the petitioner's discrimination impacted the authorities' conduct—the Court's decision centred on the need for a comprehensive inquiry into allegations related to workplace harassment.

**9.10.1****Impact of the Case**

134. The Court highlighted the issue of sexual harassment being not limited to the four walls of an office premises but extends to the officials outside that premises who are abusing their power and capacity to influence juniors and newcomers by making unwelcoming advances, requesting sexual favours, and making physical contact, or other sexually determined behaviour. This issue needs to be addressed and resolved as "an unheard claim of a woman against sexual harassment at the workplace can mute others in the future."

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41 Raj Kumari v. The Chairman, Bank of Maharashtra And Others, W.P.(C) 4213/2011 & CM APPL. 19728/2022

## 10

# Policy Recommendations

135. This section presents a comprehensive set of recommendations aimed at refining the Act and bolstering its enforcement across various sectors. Our goal is to create an environment where every woman in India can pursue her vocation with dignity, free from the threat of sexual harassment. These proposals are designed not only to address existing shortcomings within the Act but also to ensure its principles are effectively translated into practice, thereby safeguarding the rights and well-being of women in the workplace.

## 10.1

## Definitions

136. The current definitions within the Act are extensive, however they can be further broadened to ensure that they address the needs of all working women in various sectors leaving negligible room for error or disadvantage.

## 10.1.1

### Workplace

137. On analysis of multiple company policies, the definition of a workplace was found to have scope to be inclusive of spaces within the digital realm, a concern stemming not only from the advent of ‘work from home’ opportunities, but from the perpetuation and the necessity of usage of chat systems, video conferencing tools, among others. The Act may include spaces such as, metaverse, cyberspace, and workations.

138. Policy focus can be on clearly defining mandated work hours and days, such that there is lessened space for coercion to work at unexplained hours, which may be uncomfortable and disconcerting.

## Applicability

139. Definitions such as those of “aggrieved woman” as well as “domestic worker” can be expanded to include all genders, given that it is not just women who face sexual harassment, in both formal and informal sectors.

## Employee

140. For widespread social impact, the definition of “employee” under the Act may be broadened to bring all classes of workers under its ambit. This may include gig worker and formalising ASHA and Anganwadi workers who are also seen as ‘volunteers’ earning an ‘honorarium’.

141. These changes can help establish a clearer connection between the gig workers/volunteers and firms/government, and will help in the identification of the true strength of the workforce as well as check safeguard their rights.

**10.1.2****Regular Examination**

142. A robust system that ensures a safe work environment is one with a system of checks and balances, and one which collates and verifies information on the implementation of the Act at regular intervals to make sure there are no arbitrary or tone-deaf agendas at play. It is necessary that the onus of this be handed out to:
- the appropriate bodies,
  - the state government, which can work proactively to ensure that the LCs are constituted at district and sub district level, and
  - the district officer (who should be under thorough examination of the government), who can be steadfast in checking if organisations with more than 10 members have an IC, as is mentioned under Section 21<sup>42</sup>.
143. 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 50,000, not a strong deterrent for organisation with more than ten employees. Therefore, while this amount can increase, other forms of redressals for organisations may also be put in place, such as:
- Many company policies have provisions for sending an annual report to the district officer. This can be made mandatory for all and the company performance may be checked by the district officer.
  - A list of those companies that are found in violation of the Act in any way can be uploaded and regularly updated in the public domain.
144. Public transparency and accountability form important aspects of the Act, and the disclosure of the violators to the public, plus the review of company performance ultimately by the State governments through a check on the district officers would add to effective safeguards.

**10.1.3****Time Period for Filing a Complaint**

145. The stipulated time period for reporting an incident of sexual harassment is three months from the time of occurrence, which can be extended up to a maximum of six months taking into consideration factors such as mental health, physical stress, fear of losing work, financial and societal pressures, amongst others, which may cause the target to take longer to file a complaint.
146. Considering the sensitive nature of such complaints, it is suggested the time period be increased if not altogether removed. This can prevent discounting previous cases of harassment where the aggrieved person may not have been able to report the incident due to several of the above-mentioned factors.

**10.1.4****Anonymity**

147. If the Act provides the complainant with the option to keep their requested proceeding as confidential as possible, it will encourage more individuals to report

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42 Section 21: Committee to submit annual report. Section 21 of Prevention of Sexual Harassment at Workplace Section 21.

harassment, with the least possible hindrance. However, this need not be done through undocumented or verbal complaints, for they may:

- a. turn the case-specific identity concealment to a general application of the principle,
  - b. lead to a general uncertainty about the information and scepticism when deliberating a decision, and
  - c. give undue security to an offender.
148. Rather, an alternative to take this forward can be through implementation of a ‘SHe-Box’ like company-wide online portal. The portal can be accessible to only the HR and the IC members, and one can track the status of one’s complaints on the same. This might not necessitate the need for any kind of physical engagement or confrontation for which one may not be prepared for, or is deemed risky due to the unsafe environment in the workplace.

## 10.2

### The Internal Committee

149. 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.”
150. The IC is a major element of the Act that ensures that the aggrieved can get a sufficient and timely redressal when they encounter a malignant work environment. It is of importance that organisations which do have ICs in place ensure that they are enabled to the full scope of their functioning and transparency as determined by the Act. This has to be accorded greater importance since it has been found by various surveys, studies, and the previously shared jurisprudential pronouncements, that many organisations constitute ICs for the sake of compliance and not for the actual benefit of their employees.

#### 10.2.1

### Training IC Members

151. Training members of the IC on the full scope of powers and processes under the Act is crucial, irrespective of any existing knowledge they may possess. Training can be carried out but not be limited to the following fronts:
- a. A very brief assessment through a short test can be one of the checks and balances.
  - b. The IC Members to have standard written procedures constantly available to them, to ensure that all inquiries are conducted as per the letter of the law.
  - c. IC members to receive at least a day of refresher training, by an external organisation or even just the external member of the committee before the proceedings and deliberation on a case.
  - d. The IC members can 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.
  - e. Thorough review of the principle of “provocativeness in the eye of the beholder” to focus that it matters how the Act was perceived by the aggrieved and not how it was intended.

**10.2.2****Employee Awareness**

152. Information about the presence of an IC, its members, ways to contact them, and the redressal process, can be made available to all members of an organisation. It can be mandatory to circulate the policy and information regarding team members to all the new joiners of the organisation. To ensure seriousness, all employees can sign the document to indicate that they have read and understood it. This information can 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.
153. It can be constructive to conduct anonymous, periodic surveys for all individuals at the workplace, to further help increase awareness of employee rights, as well as provide information and address 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 behaviours, verbal and non-verbal, that can be considered as sexual harassment, as stipulated in the Act.

**10.2.3****Employee Training**

154. Employee training through workshops and seminars, knowledge materials, posters, and sessions on the Act are still lagging in many organisations. To ensure that the Act achieves its desired aim, ICs can take the onus of ensuring that such sessions happen periodically, methodically, and through formal organisational policies. Additional practices that can lead to a net positive can be:
- Special events can be conducted on days of relevance which have engaging quizzes with declared rewards.
  - Training to 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.
  - To ensure that training is being conducted efficiently, collaborative initiatives between ICs and LCs could be undertaken, especially for increasing awareness.

**10.2.4****Filing a Complaint**

155. 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.
156. While informal mechanisms are not stipulated under the Act, until such time that they are, IC members can take active steps to address this and try to make the process smoother and easier for employees. A practice which can be effective here is for the HR of the company to get the facts from the aggrieved person verbally, and draft a report themselves, as they may be better suited for its proper formulation at that juncture.

157. 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 can especially be undertaken in recognition of the hesitation that many targets of sexual harassment face prior to filing a formal complaint, and special measures including but not limited to the following can be instituted:
- a. The IC members sending a short questionnaire (physically or by mail) at least on a monthly basis to inquire on employee wellbeing and to share their contact details,
  - b. A special job security clause that addresses how the distressed persons shall not be taken up for performance issues during the ordeal, and how any sort of transfer shall not be undertaken (unless it is meant to be in the interest of the aggrieved), can be inserted into company policies, and
  - c. IC members can also build trust in the inquiry and redressal procedures among employees, to give them assurance of it being a just procedure.
158. These measures may address 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.<sup>43</sup>

### 10.3

## The Local Committee

159. The Local Committee (LC) as described in the Act, is a vital facet of the Act, and needs to be facilitated to enable the holistic functioning of the Act. The LCs take precedence in the informal sector where most 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.
160. However, there is no official data yet on the number of such registrations or clarity on how many are actual organisations and not fake accounts. This can neither deter nor dilute the functioning of the LCs. These registrations can instead be used as an opportunity for greater awareness and outreach.
161. India has fast become a haven for startups and LC outreach to and association with startups is especially important in this context since:
- a. Most of these usually function with less than ten employees; even when they do have more than 10 employees, they are too cash-strapped to constitute ICs.
  - b. A telling feature of the startup culture is long and unusual hours.
  - c. Startup culture tends to be more informal and means-to-end oriented than traditional corporates, and less emphasis is placed on conduct.

### 10.3.1

## Training LC Members

162. Building awareness amongst members of LC, whether newly elected or veterans, regarding their powers and the scope of their work can be made more robust and efficient through:
- a. Conducting periodic training for LC members on the powers they possess under the Act.

43 H. Lopez, S. (n.d.). Power, Status, and Abuse at Work: General and Sexual Harassment Compared on JSTOR . JSTOR. <https://jstor.org/stable/40220119?seq=4>.

- b. Ensuring that the personal bias of any member does not impact their work or the outcome of complaints.
  - c. 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.
163. Proper implementation of the Act and checks upon LCs depend on locating accountability in the system, and the person(s) in-charge such as in this case, the district officer. The annual review that the government employees undergo can include a section for district officers that focuses on the measures taken by them to ensure compliance with the Act.

**10.3.2****Awareness of the LCs**

164. It is important to ensure that information of the existence of LCs in each district is circulated to establishments across the district, especially to the workers involved in the informal sector. Additionally, in the formal sector, this information can be circulated to those organisations that do not have an IC and to those who do have ICs, in order to provide an alternative to complainants when filing their complaints.
165. Information that can be regularly circulated includes, but is not limited to:
- a. Members of the committee,
  - b. The roles and responsibilities of committee and its members,
  - c. The assistance that the committee can provide to individuals who have faced or witnessed harassment at the workplace,
  - d. Procedure for filing complaint(s).
166. Further, measures to ensure that issues such as lack of funds do not hinder the efficiency of the LCs can include:
- a. Both the Central and State Governments can ensure that the requisite funds are received by these committees on time,
  - b. The aforementioned information can be displayed in all Government owned utility stores since they are frequented by people who are often at a disadvantage when it comes to access to information, and
  - c. A focus on ration shops displaying information about LCs (preferably in the regional language of the place) to further improve information dissemination.

**10.3.3****Training**

167. As part of their work, LCs can take responsibility for conducting regular training programs, distributing awareness materials, as well as conducting workshops, to increase awareness of the rights individuals possess when faced with sexual harassment at their workplace. This can be further enhanced through:
- a. Guidelines specifying materials which are essential to be distributed to the public, and
  - b. Collaboration between LCs, ICs, as well as local bodies such as local market associations, Resident Welfare Associations amongst others, to ensure the protection of women working in the informal sector.



**10.4****Auditing**

168. To ensure the smooth and efficient functioning of ICs and LCs, it is imperative to have certain checks and balances. Consistently reviewing the functioning, composition, and experience of the members of these committees ensures that:
- a. the committees are fulfilling their objectives;
  - b. the members of the committees are averse to bias in the process of their decision making;
  - c. there are adequate mechanisms for the dissemination of information about what ICs and LCs are and how workers can approach them for the redressal of their complaints;
  - d. the firms with less than 10 employees are conducting adequate awareness and sensitisation workshops.

**10.5****The Organisation**

169. 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,
- a. Ensuring a safe working environment,
  - b. Effective human resource management,
  - c. Facilitating procedures, and
  - d. Setting the overall tone when it comes to addressing sexual harassment at the workplace.

**10.5.1****Facilitating ICs**

170. Organisations need to 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. They could be consistently filling gaps which may arise due to their own functioning necessities.
171. The roles of ICs also extend to ensuring employees are safe when engaging with third-parties as part of their responsibilities. The need to engage with third-parties is often due to the business needs of the firms and the responsibility to redress such claims can fall upon them too.
172. For those organisations which already have an IC, they can maintain its efficiency by:
- a. Ensuring that they are complying with the Act, and allocating a dedicated budget for such committees, and
  - b. Being more cognisant and regular in the assessment of the ICs.
173. Another facet to be addressed is following up to an action that has been taken to ascertain its viability and whether the action has led to a safer workplace environment.

## 10.5.2

**Employee Training**

174. 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.

## 10.6

**The State**

175. There are various concerns attached with the Act, including that the Act does not satisfactorily address accountability, not specifying who is in charge of ensuring workplaces comply with the Act, and who can be held responsible if its provisions are not followed. It is up to the state to not only make the Act more effective in its current rendition but to also legislate and modify the Act to progress with the times. The State can achieve this through:
- Prioritising Data Collection:** The State can equip LCs to conduct surveys to increase 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 being experienced by the workers/employees across different organisations and sectors. This can be useful for putting in place efficient redressal mechanisms as well.
  - Fixing Accountability:** The State can make checking the implementation of the Act an essential part of the annual review of district officers. Whilst making any interference for the on-ground selection an offence, the MPs of the constituencies could be required to possess the data on the functioning of the LCs in their districts, via mandatory engagements with the respective district officer.
  - Appointing an Ombudsman:** An Ombudsman is a public advocate who checks on the government/organisation's activities, identifies systemic concerns, and is not biased.
  - Establishing Common Ground:** Committees composed of members of various ministries whose jurisdictions overlap, can make data collected on the implementation of the Act more united thereby leading to action plans which are streamlined and effective.

# Conclusion

176. The 2023 edition of the Annual Review on the State of Sexual Harassment marks a significant step in our endeavour to comprehensively address and understand the nuances of sexual harassment across varied employment sectors in India. This edition broadens its analytical perspective to include not only traditional formal workspaces but extends to gig workers, sports, and educational institutions. This expansion is instrumental in capturing a wider spectrum of the workforce, offering a more inclusive examination of workplace safety and rights.
177. Furthermore, the Review incorporates the narratives of women workers from the informal sector, providing a voice to those often marginalised in mainstream discourse on sexual harassment. By translating and sharing their lived experiences, the review illuminates the glaring deficiencies in the application of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, for these groups. It highlights the critical need for enhanced support and information accessibility for women in the informal sector.
178. A focal point of the Review is its detailed exploration of the judicial landscape of 2022, spotlighting key legal pronouncements that have fortified the Act. These judicial outcomes not only validate the legal framework against sexual harassment but safeguard against the potential misinterpretation of the provisions within the Act as well, ensuring targets receive justice. Through this analysis, the Review underscores the pivotal role of the judiciary, in interpreting and enforcing the Act to reflect contemporary challenges and prevent exploitation of its guidelines.
179. The Review also includes strategic recommendations aimed at bolstering the implementation of the Act, advocating for safer work environments for everyone, irrespective of their sector, location, or the nature of their work relationships. These recommendations envisage a comprehensive approach, encompassing enhanced auditing, accountability, and governmental responsibility, essential for cultivating a respectful and secure workplace for all employees.
180. As we continue to publish future editions of the Annual Review, our ultimate aspiration transcends the mere dissemination of findings and recommendations. Instead, we envision a future where the necessity for such reviews is rendered obsolete. This is not due to a lack of readership but rather through the hope that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, is implemented so effectively that all workplaces across India become inherently safe for all workers, irrespective of the sector. Our goal is for workplace sexual harassment to become a non-issue, eliminating the need for further studies or recommendations to improve workplace safety and equity.



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