

Status and Functioning of Local Complaints Committees under The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 and Awareness levels among women in the workforce

FINAL REPORT (2019)
SUBMITTED TO
NATIONAL HUMAN RIGHTS COMMISSION



SOCIAL ACTION FORUM FOR MANAV ADHIKAR (SAFMA)



NATIONAL HUMAN RIGHTS COMMISSION (NHRC), NEW DELHI

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(SAFMA)



34

Contents

Contents

Acknowledgements

Abbreviations

Executive Summary 1-3

CHAPTER1 : INTRODUCTION 4-15

I. Origin of the research problem

II. Gender gap

III. Women in the informal sector

IV. Structure of the report

CHAPTER 2 : UNDERSTANDING CONTEXTS, CONCEPTS AND IDEAS 16-22

I. Historical perspective

II. Concept of consent

CHAPTER 3 : METHODOLOGICAL NOTE 23-31

I. Research design

II. Literature Survey

III. Method of data collection

CHAPTER 4 : FINDINGS AND GAPS 32-84

I. Demographic profile

II. State/LCC District profile

III. District Officer

IV. Constitution of LCC

V. Composition of LCC

VI. Allowances and Grants

VII. The Complaint

VIII. Conciliation

IX. Inquiry into complaint

X. Punishment

XI. Duties of District Officer

Chapter 5 : CONCLUSIONS AND RECOMMENDATIONS 85-104

I. Recommendations

II. Legislative changes

III. Guidelines

Chapter 6 : CASE STUDIES 106-113

Bibliography 114-118



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Any errors in the information or the citation of references in this study are inadvertent and may be ignored.



Abbreviations

<i>CDMO</i>	<i>Chief District Medical Officer</i>
<i>CDPO</i>	<i>Child Development Programme Officer</i>
<i>CP</i>	<i>Chairperson</i>
<i>DC</i>	<i>Deputy Commissioner</i>
<i>DCW</i>	<i>Delhi Commission for Women</i>
<i>DM/SDM</i>	<i>District Magistrate/Sub Divisional Magistrate</i>
<i>DO</i>	<i>District Officer</i>
<i>DSWO</i>	<i>District Social Welfare office</i>
<i>EU</i>	<i>European Union</i>
<i>HR</i>	<i>Haryana</i>
<i>IPC</i>	<i>Indian Penal Code, 1860</i>
<i>LCC</i>	<i>Local Complaints Committee</i>
<i>LPFR</i>	<i>Labour Force Participation Rate</i>
<i>MLC</i>	<i>Medico legal case</i>
<i>MWCD</i>	<i>Ministry of Women & Child Development</i>
<i>NCRB</i>	<i>National Crime Records Bureau</i>
<i>NCW</i>	<i>National Commission for Women</i>
<i>NGO</i>	<i>Non-government organisation</i>
<i>NHRC</i>	<i>National Human Rights Commission</i>
<i>NW</i>	<i>North West District (Delhi)</i>
<i>OD</i>	<i>Odisha</i>
<i>PIO</i>	<i>Public Information Officer</i>
<i>PLFS</i>	<i>Periodic Labour Force Survey</i>
<i>PO</i>	<i>Programme officer</i>
<i>POSH</i>	<i>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</i>
<i>PRI</i>	<i>Panchayati Raj Institution</i>
<i>RTI</i>	<i>Right to Information Act, 2005</i>
<i>SC/ST/OBC</i>	<i>Scheduled Caste/Scheduled Tribe/Other Backward Class</i>
<i>SE</i>	<i>South East District (Delhi)</i>
<i>SHe-Box</i>	<i>Sexual Harassment electronic Box</i>
<i>SHRC</i>	<i>State Human Rights Commission</i>
<i>UN</i>	<i>United Nations</i>
<i>WCD</i>	<i>Women & Child Development</i>
<i>WPR</i>	<i>Worker Population Ratio</i>



EXECUTIVE SUMMARY

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force on 9.12.13, almost sixteen years after the Supreme Court laid down guidelines in the Vishaka case. The provisions of the Act apply to all workplaces, public, private, organized or unorganized and seek to prevent and redress sexual harassment faced by women at workplaces. A safe working environment for women is conceived at two levels, firstly through the constitution of an Internal Complaints Committee by every employer; and secondly, by the setting up of Local Complaints Committees (LCC) in each District, to receive complaints of sexual harassment from establishments having less than ten workers or if the complaint is against the employer.

The present research attempts to explore the nature and functioning of the LCCs in Delhi, Haryana, and Odisha, including experiences of sexual harassment of women in the workplace. In addition to interviewing the LCC Chairpersons/Members in two districts of Delhi (South East & North West), four districts of Haryana (Faridabad, Gurugram, Panchkula & Palwal) and five districts of Odisha (Cuttack, Jagatsinghpur, Jajpur, Kendrapara, and Khurda), the study surveyed 743 women respondents. This information is considered particularly timely in an environment of #MeToo and reflects the current position. The high response rate has enabled a comprehensive and reliable information resource to be created, based on which are the recommendations in terms of on-the-ground practice and action in the stated regions.

Data Summary:

- All the subject states have constituted LCCs with the Chairperson/Members having an excellent track record of social work and gender issues. However, discrepancies in the constitution have been observed, for some LCCs do not include representation from the SC/ST/OBC/minority community or have legal expert as member. Frequent changes in ex-officio members, result in vacancies and the quorum being incomplete. All the subject states have not appointed nodal officers, and where appointed, they themselves are ignorant of their own role or existence of the LCC, except for Gurugram, Haryana.
- The LCCs have no visibility or physical presence in terms of office space or permanent address, and totally lack in basic infrastructure/staff support, essential for conducting proper inquiry into a complaint. None of the subject LCC Chairperson/Members have received any fees or transport allowance, yet continue to work with zeal at their own expense.



- The nomenclature 'Local Complaints Committee/Local Committee' is misleading since in almost every locality there is a local committee/NGO, which has not the remotest connection with the committees constituted under the POSH Act.
- The frequency of meeting is a bare minimal. For example in Delhi District North West not even an introductory meeting has been held.
- The subject LCCs usually do not receive complaints directly; or handle matters of women workers from the unorganised sector, for the benefit of whom they have been constituted. In Delhi complaints are received through SHe-Box, DCW referrals, and Vigilance Section in DC office or NGOs with whom members are associated. In Haryana complaints are received through the SHe-Box, Police or CM window, so by the time the complaint reaches the LCC it is already 1-2 months. In Odisha complaints are received through the office of the Collector.
- There is a complete lack of any initiative on the part of the authorities to ensure awareness among the general populace about the POSH Act. Neither has any specific budget been provided; nor orientation programme held for LCC members, informing them of their role and responsibilities, except in Khurda, Odisha.
- *Reasons for not reporting* : Comprise a mix of all three - lack of awareness, fear of the employer and society. Among the respondents who admitted to being subjected to sexual harassment 47 per cent chose to suffer the harassment; 24 per cent tolerated not knowing any redressal option; 19.5 per cent confronted the harasser; while 19.2 per cent left the workplace. 65 per cent respondents believed that no action would be taken against the harasser; 35.7 per cent feared retaliation, 34.3 per cent loss of employment, and 42.7 per cent felt that no one would believe the woman, on the contrary she would be blamed.
- *Physical contact* : Among the 376 respondents who admitted being subjected to physical advances and harassment 81 per cent experienced being touch physically; 75.6 per cent being touched while handing over something, 72.3 per cent bumped into while walking, and 22.9 per cent attempts to being kissed.
- *Verbal remarks of sexual nature* : Experienced by 276 respondents which included comments on physical attributes and body parts (80.4 per cent); double meaning words (61.6 per cent); referred to as 'darling', 'baby' or use of other endearment (50.3 per cent); jokes of sexual nature (45 per cent); and being made to overhear conversation of sexual nature, on the pretext of talking to someone else on the phone (44 per cent).



- *Visual harassment* : 376 respondents admitted to being subjected to some form of visual harassment, including unnecessary staring (89 per cent); being made to stand/sit in front of employer/male worker (50.6 per cent); obscene sounds, like whistling and kissing (45.6 per cent); male employer getting over-friendly in the absence of wife (38.5 per cent); and employer wearing clothes which exposed his private parts (24.2 per cent) and the woman was uncomfortable. Domestic workers reported a higher level of this form of harassment.
- *Quid quo pro* : Among the 239 respondents who owned up to being made offers in return for sexual favours, 40.6 per cent were offered cash money and 36 per cent gifts; 15.9 per cent offer of reducing work load (in terms of hours or extra holiday); 9.2 per cent offer of getting lighter duty instead of difficult duty; 17.6 per cent offered increase in seniority or promotion in return for sexual favours; and 10 per cent offered special treatment.
- *Detrimental treatment* : 237 respondents reported detrimental treatment on resisting sexual harassment at the workplace. In 35 per cent cases the employer/ male employees found unnecessary mistakes in the woman's work; 3 per cent faced delay/refusal in grant of entitled leave, 25.3 per cent reduction in wages; 17.2 per cent humiliation in front of other employees; 15.6 per cent allocation of difficult work; 10.9 per cent stopping of increment in wages; and in 10.5 per cent cases the harasser encouraged employees to misbehave with the woman.

Gender based violence, specifically sexual harassment at the workplace is emerging as a serious area of national concern. As more and more women enter the work force, it is imperative the LCCs be made functional and their work be accelerated and scaled up, to ensure women enjoy rights and freedoms on a basis of equality with men. The recommendations given in this report will pave the way for legal and policy change at the Central level; and hopefully the draft guidelines for implementation by the State Human Rights Commissions will set the stage for the development of important strategies to address sexual harassment at the workplace and its prevention.

Dr Charu WaliKhanna

New Delhi

31.07.2019



CHAPTER 1

INTRODUCTION

Sexual harassment, a form of gender based violence and discrimination constitutes a gross violation of women's right to equality and dignity. Women workers, especially in the informal sector experience various unwelcome forms of sexual conduct, yet continue to working in the intimidating, hostile and humiliating environment. In spite of sexual harassment in the workplace being rampant, it remains under-reported by women due to fear of disbelief, blame, social stigma, or retaliation. While sexual harassment is a human rights violation, there is no international treaty on gender-based violence in the workplace.¹ UN Women, the United Nations entity dedicated to gender equality and the empowerment of women, was established to accelerate progress on meeting their needs worldwide, and ending violence against women is one of UN Women's key priorities. It works globally with governments, including India, to make the vision of the Sustainable Development Goals a reality for women and girls and stands behind women's equal participation in all aspects of life, focusing on four strategic priorities; including all women and girls live a life free from all forms of violence.

The Beijing Platform for Action, adopted at the United Nations Fourth World Conference on Women, in Beijing, in 1995, flagged twelve key areas where urgent action was needed to ensure greater equality and opportunities for women.² In the critical area of 'women and the economy', it recognizes that women make enormous contributions to economies, whether in businesses, on farms, as entrepreneurs or employees, or through unpaid domestic or care work at home. The Government of India in its report on the implementation of the Beijing declaration and Platform for Action 20,³ reiterated its commitment to provide safe environment for women to work and live and fulfil their potential. However, it admitted that deep rooted gender inequalities continue to undermine the country's potential to translate economic growth into inclusive development. In the section on enabling legislations, detail was given of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 enacted to provide safe and secured environment at workplace; and the Criminal Law

¹International Labour Conference, 108th Session, 2019. Report V(1) Ending violence and harassment in the world of work Fifth item on the agenda proposed a Convention Concerning The Elimination of Violence and Harassment in The World Of Work. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_637108.pdf

²<http://www.unwomen.org/en/news/in-focus/csw59/feature-stories>

³ India's Report On the Implementation of Beijing Declaration and Platform for Action In Context of the Twentieth Anniversary of the Fourth World Conference on Women and the Adoption of the Beijing Declaration and Platform for Action 2015. Available at https://sustainabledevelopment.un.org/content/documents/13091India_review_Beijing20.pdf



(Amendment), Act 2013 specifically enacted to make the punishment more stringent for offences of gender based violence, among others.

In India the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the POSH Act) which came into force on December 9, 2013, almost sixteen years after the Supreme Court laid down guidelines in the Vishaka⁴ case. The provisions of the POSH Act apply to all workplaces - public, private, organized or unorganized and seek to prevent and redress sexual harassment faced by women at workplaces. An important provision of the Act is the setting up of Local Complaints Committees (LCC) under Section 6, according to which every District Officer shall constitute a “Local Complaints Committee”⁵ to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been instituted due to having less than 10 workers or if complaint is against the employer. Further it is mandatory for the District Officer to designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in urban areas, to receive complaints and forward to the concerned LCC within a period of 7 days. Undoubtedly, the statute aims at providing every woman a safe, secure and dignified working environment, free from all forms of sexual harassment, yet proper implementation of the provisions of the law specifically those relating to the working of the LCCs remain a challenge.

The importance of the LCC is augmented by the fact that the recently released PLFS data notes that between 2011-12 and 2017-18, the WPR declined for both the sexes in rural and urban areas. However, the decline was the highest (by seven percentage points) for rural female workers. A further break up of regular employment indicated an increase in women’s employment in other services industry - mostly low paid jobs none of which provided any social security benefits to women. Within this sector, majority of women (10 per cent) were working as personal service providers, including maids, cooks, governesses, babysitters. A significant proportion working as primary and secondary teachers in both rural and urban areas, while about 5 per cent were involved in the health sector in urban areas.⁶ Wage work in India, in a number of fields is sharply differentiated along sexual lines; and even, when men and women work in the same industry, one can find clear distinction between men’s and women’s work. Ministry of Labour data reveals that the percentage of Female Main Workers, Cultivator and Agricultural Labours to total female population had marginally declined whereas the

⁴ *Vishaka & Others v State of Rajasthan & Others*.

⁵ Substituted by Act 23 of 2016, Section 3 and Second schedule, with ‘Local Committee’ in place of ‘Local Complaints Committee’ (w.e.f. 06.05.2016).

⁶ Shiney Chakraborty, “What Does the Periodic Labour Force Survey Tell Us?” The Wire, June 23, 2019. Available at <https://thewire.in/labour/periodic-labour-force-survey-data-employment>.



percentage of female workers in household industry and other workers have increased.⁷ The Indian economy remains heavily gender segregated with women being 16 per cent of all service sector workers, but 60 per cent of domestic workers.⁸ This further underpins the role of the LCC since the POSH Act includes in the definition of workplace, a dwelling place or a house [Section 2(o)], making it the appropriate redressal forum for household/domestic workers, a large vulnerable group of women whose rights are unprotected and often overlooked. In such circumstances providing women a secure workplace is imperative to increase their participation in work.

Although, the POSH Act clearly defines sexual harassment at the workplace, yet in the absence of data, the dynamics of gender, power, and harassment of women specially in the unorganised sector remains poorly understood. Hon'ble Justice Indira Banerjee, Judge Supreme Court of India in her message to SAFMA emphasised the fact that sexual harassment at the workplace is a major impediment to the economic empowerment of women, and violative of the fundamental right of women to equality. Hundreds of women are constrained to drop out of employment only on account of sexual harassment. The problem is even more serious in the unorganised sector and in the case of self employed women. She felt that it is often noticed that sexual harassment is the outcome of total insensitivity to the feelings of women, stressing that there is a need to understand what constitutes inappropriate behaviour at work, as well as the responsibility in maintaining a harassment-free workplace, for only then will women's participation in work improve, resulting in their economic empowerment and inclusive growth.⁹ Furthermore, sexual harassment of women in the workforce is underplayed with the word 'misuse' often cropping up. It cannot be denied that women experience this form of gender based violence in all sectors - whether health, hospitality, retail or other; and whatever the nature of work, Anganwadi worker, event hostess, labourer, receptionist, computer operator, teacher or artiste. Women in domestic work, working behind closed doors are especially more at risk. In such a scenario, the present research attempts to close the gap. It explores the nature and functioning of LCCs in Delhi, Haryana, and Odisha, in

⁷ *Statistical Profile on Women Labour*. Primary objective of which is to provide comprehensive statistics on important aspects of women labour in India and also to study the gender variation, (page i). Available at http://labourbureau.nic.in/Statistical_Profile_WW_2012.pdf

⁸ *The State of Employment in India 2018*, Azim Premji University Centre for Sustainable Employment, page 21.

⁹ *Message of Hon'ble Justice Indira Banerjee, Judge Supreme Court of India* for programme "The Way Ahead - Prevention of Sexual Harassment" organized by SAFMA on March 18, 2019 in Bhubaneswar Odisha. Scheduled to inaugurate but being indisposed she sent message congratulating SAFMA for holding a workshop on the burning issue of sexual harassment of women at the workplace. Hon'ble Justice Indira Banerjee was on the Bench of judges of the Supreme Court that looked into the matter of the allegations of sexual harassment against the Chief Justice of India in 2019.



addition to studying experiences of sexual harassment of women working in the informal or what is referred to as the unorganised sector.

This research information is considered particularly timely in an environment of #MeToo and reflects the current position. The high response rate has enabled a comprehensive and reliable information resource to be created, hopefully to enable application in terms of on-the-ground practice and levels of awareness and action in the target States. The expected outcome of this research is the development of policies and creation of awareness which build on the findings of this research. Findings are also expected to contribute to defining future research work.

I. ORIGIN OF THE RESEARCH PROBLEM

In a conservative society like India, where any kind of discussion of sex is considered taboo or disgraceful, the natural corollary is that women would be hesitant to report any form of sexual harassment or sexual abuse, for fear of being branded immoral. Rules or expectations of behaviour, and cultural and social norms lead to a misdirected masculinity among men, characterised by male sexual dominance and unequal gender attitudes and behaviour. Indian society oscillates between two extremes. On the one hand, it looks at women as mere objects; while the other extreme is to subject them to countless restrictions in the name of women's protection. While objectifying women is wrong, equally abominable is the attempt, in the name of women's safety, to confine them to the four walls of the home. Equality and independence should be the 'twin mantras' in our treatment of women. Late Justice Leila Seth, first woman judge of the Delhi High Court, first woman to become Chief Justice of a state High Court (Himachal Pradesh), and Member Justice Verma Committee observed in her book *Talking of Justice: People's Rights in Modern India*: *"The approach generally taken with gender equality is that women are different from men because they are weaker and more subordinate and consequently need protection... the protectionist approach actually reinforces the difference and perpetuates it."*

i. **Vishaka Guidelines** : Sexual harassment at workplace originally was not a separate offence in the Indian Penal Code, 1860 (IPC), and cases were dealt under IPC Section 354 (outraging the modesty of women) and Section 509 (using a word, gesture or act intended to insult the modesty of a woman). The credit for drawing attention to this problem for the first time, goes to the Supreme Court of India, marking the first step in the evolution of laws for the protection of women from harassment at the workplace. In a public interest litigation, popularly known as the Vishaka case, noting the lack of legal recourse for women subjected to sexual harassment at workplace, the apex court defined what constituted sexual



harassment at workplace and issued guidelines having statutory force. The three judge bench deciding the case was headed by the Chief Justice of India and included a woman judge. They held :-

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

- (a) to ensure that all persons are able to live securely under the Rule of Law;*
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and*
- (c) to administer the law impartially among persons and between persons and the State."*

The Supreme Court referring to the general recommendations of CEDAW observed:-

Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are:
Article 11:

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on basis of equality of men and women, the same rights, in particular:

The right to work as an inalienable right of all human beings;

xxxxxxxxxxxxx

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

xxxxxxxxxxxxx



Article 24 : "States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention."

The general recommendations of CEDAW in this context in respect of Article 11 are :

"Violence and equality in employment:

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place."

Through this landmark judgement in the absence of any enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment at work place, the Supreme Court laid down Guidelines for due observance at all work places, until a legislation was enacted. Exercising its power under Article 32 of the Constitution for enforcement of the fundamental rights, further emphasised was that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution of India. Notable is that the guidelines and norms prescribed by the Supreme Court took into regard the definition of human rights in Section 2(D) of the Protection of Human Rights Act, 1993.

(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;

ii. Implementation of Vishaka : The Vishaka judgment initiated a nationwide discourse on sexual harassment in the workplace, emboldening women to come forward. Post Vishaka in 1999, the first case before the Supreme Court was *Apparel Export Promotion Council versus A.K Chopra*. Once again, the highest court of the land reiterated the law laid down in the Vishaka Judgment and upheld the



dismissal of a superior officer who was found guilty of sexually harassing a subordinate female employee. The Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential to amount to an act of sexual harassment. The apex court clarified that sexual harassment is a form of sex discrimination, projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.

Upholding constitutional guarantees, once again, the Supreme Court took cognizance of a letter written by Dr. Medha Kotwal of Aalochana (an NGO) which highlighted a number of individual cases of sexual harassment alleging that the Vishaka Guidelines were not being effectively implemented.¹⁰ Converting the letter into a writ petition, the Supreme Court directed State Governments across the country, to file affidavits on the steps taken by them to implement the Vishaka Guidelines. The Supreme Court observed :-

12. While we have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11 per cent of the total seats. India ranks 129 out of 147 countries in United Nations Gender Equality Index. This is lower than all South-Asian Countries except Afghanistan. Our Constitution framers believed in fairness and justice for women. They provided in the Constitution the States' commitment of gender parity and gender equality and guarantee against sexual harassment to women.

13. The implementation of the guidelines in Vishaka has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth.

iii. Law making process :

¹⁰ Medha Kotwal Lele and Others v Union of India and Others.



- a. 2000, 2003, 2004, 2006 and 2010 - The National Commission for Women (NCW) submits drafts of a Code of Conduct for the Workplace.
- b. 2010 - The Protection of Women against Sexual Harassment at Workplace Bill approved by the Union Cabinet in January 2010. Tabled before the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resource Development, which published its report in November 2011. Amendments by the Cabinet in May 2012.
- c. 2013 - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act comes into force on December 9, 2013, after Amended Bill is passed by the Lok Sabha in September 2012, the Rajya Sabha in February 2013, and signed by the President in April 2013.

vi. Post legislation : After the enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 one of the first cases filed before the Supreme Court was in 2014 by a woman Additional District and Sessions Judge,¹¹ challenging the procedure adopted by the Chief Justice of the Madhya Pradesh High Court. Enquiring into allegations of sexual harassment and alleged serious infirmities in the investigative process the Supreme Court held:-

In order to ensure, that the investigative process is fair and just, it is imperative to divest the concerned judge (against whom allegations have been levelled), of his administrative and supervisory authority and control over witnesses, to be produced either on behalf of the complainant, or on behalf of the concerned judge himself.

Notable is the fact that on March 4, 2015, fifty eight members of the Rajya Sabha gave Notice to the Chairman of a Motion for the removal of the Madhya Pradesh High Court, Bench at Gwalior under Article 217(1) (c) read with Article 124(4) of the Constitution of India on the following grounds:-

- (i) Sexual harassment of a woman Additional District and Sessions Judge of Gwalior while being a sitting Judge of the Gwalior Bench of the High Court of Madhya Pradesh.
- (ii) Victimisation of the said Additional District and Sessions Judge for not submitting to his illegal and immoral demands, including, but not limited to, transferring her from Gwalior to Sidhi.

¹¹ Additional District and Sessions Judge 'X' v Registrar General High Court of Madhya Pradesh and Others.



(iii) Misusing his position as the Administrative Judge of the High Court of Madhya Pradesh to use the subordinate judiciary to victimize the said Additional District and Sessions Judge.

The litmus test to the POSH Act and the upholders of the law came in 2019, when the Chief Justice of India himself was accused of sexual harassment by a former Supreme Court employee. All laws violated were violated to give the Chief Justice of India a so called 'clean chit'. Justice (Retired) Madan Lokur whom the Chief Justice had referred to in his farewell speech as his right hand went public about his opinion in an article aptly titled "*A one-sided Justice*"¹² :-

"The complainant in the sexual harassment case against the Chief Justice has not been fairly treated. Institutional bias is visible in the inquiry, which leaves complaints about victimisation unaddressed," and that "injustice has been done to the staffer (complainant)."

He concluded the article with an appeal for help :-

"On a consideration of the overall facts, it does appear that some injustice has been done to the staffer. Martin Luther King Jr. famously wrote: "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly." I am reminded of this because of my belief that the staffer has not been fairly treated. Many questions are left unanswered and actually many are trying to solve a riddle, wrapped in a mystery inside an enigma. Some transparency is needed. Can any member of the internal committee or somebody from the Supreme Court please help?"

II. GENDER GAP

In Indian patriarchal societies, women face numerous cultural and social discriminations, in addition to restrictions on physical mobility, and being burdened with the responsibility of taking care of children and elderly; thereby restricting women's access to both economic resources and labour markets. The gender gap in terms of representation of women is prevalent across industries, and in low paying industries such as manufacturing the gender wage gaps are close to 60 percent,¹³ which makes the situation of women in a male dominated workplace more vulnerable. Women contribute one-sixth of economic output, among the lowest shares in the world and half the global average. According to experts the unrealised contribution of women is one reason India remains so poor,

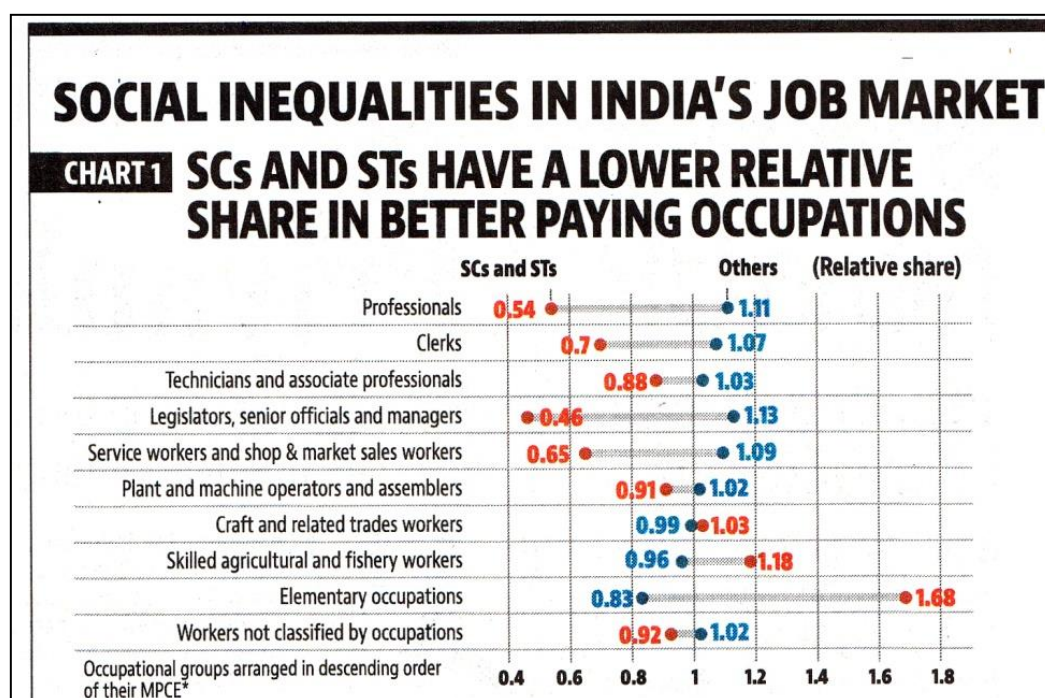
¹² Lokur Madan B, "*A one-sided justice*", The Indian Express, New Delhi, May 29, 2019.

¹³ Khanna Shantanu, "*Gender wage discrimination in India: Glass Ceiling or Sticky Floor?*" 2012.



and a rise in female employment rates would provide India with an extra 235 million workers, more than the EU has of either gender, and more than enough to fill all the factories in the rest of Asia.¹⁴ In short were India to rebalance its workforce, the world's biggest democracy would be 27 per cent richer.

Over the past two decades, employment in the informal sector has risen rapidly in all regions in the world. Most countries have experienced a decline in formal wage employment and a concomitant rise in informal employment. And, in terms of urban employment, the informal sector accounted for well over half in Africa and Asia and a quarter in Latin America and the Caribbean. In India and in Indonesia, the informal sector accounts for nine out of every ten women working outside agriculture, with domestic and household work forming a large segment.¹⁵ The informal sector units typically operate on a small scale, with little or no division between labour. Labour relations - where they exist - are based mostly on casual employment, kinship or personal and social relations, rather than contractual arrangements with formal guarantees. Thus it is abundantly clear that the informal sector reflects the social inequalities in India's job market (*refer to the CHART below*).¹⁶



¹⁴ The missing 235m: Why India needs women to work- Were India to rebalance its workforce, the world's biggest democracy would be 27% richer, The Economist, July 5, 2018. Available at <https://www.economist.com/leaders/2018/07/05/why-india-needs-women-to-work>

¹⁵ Chen Martha Alter, *Women In The Informal Sector: A Global Picture*, The Global Movement. Available at <http://www.cpahq.org/cpahq/cpadocs/module6mc.pdf>

¹⁶ Roshan Kishore, Vijdan Mohammad Kawoosa, *How share of jobs varies within social groups*, Hindustan Times, New Delhi, February 11, 2019. Available at <https://www.hindustantimes.com/india-news/how-share-of-jobs-varies-within-social-groups/story5CKPk1KPX9A7EA6VW XKQ2 J.html>



As the population in search of employment increases, and the creation of jobs in the formal economy and other government related activity continue to fail to absorb all the additions to the labour force, the unprecedented rate of growth in the informal economy is expected to continue unabated.¹⁷

III. WOMEN IN THE INFORMAL SECTOR

To get a vivid picture of women working in the informal sector (referred to as the unorganised sector in the POSH Act), it is important to delve into their background and the nature of work being done by them. The definition of unorganised sector is given in Section 2(p) of the POSH Act as follows:

"unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

The unorganised sector can be divided into two broad categories –(i) traditional household based informal sector, and (ii) modern informal sector. The sector is plagued with problems of wage discrimination, availability of work, and exploitation of workers on grounds of sex. Bargaining power is mostly with the employers, and as a natural consequence of which the poor workers are exploited; specially women who come from that section of society who must work to earn their livelihood and are socially, economically and traditionally backward and least privileged.¹⁸ Most of these women workers do not have a choice whether to work or not work, being needy and dependent on the income. The opportunities available for them are mostly low paid, and low-status jobs which do not have any possibilities of advancement or training prerequisites for growth. The very objective of incorporating Section 6 in the POSH Act is to provide protection and a redressal mechanism for women in this sector.

While social media sensationalises sexual harassment in the entertainment industry and in large offices, yet there appears to be little or no focus on the problems of sexual harassment experienced by women in the unorganised sector. A 2012 poll by Oxfam India found that the women most vulnerable to workplace harassment are labourers (29 per cent), domestic worker (23 per cent), and small-scale manufacturing unit workers (16 per cent).¹⁹ Instead of trying to figure out “why a woman is coming forward so late after the incident”, it would be more productive to focus on how the system and law can be made more effective in delivering justice and healing the scars of victims of sexual harassment. If not for

¹⁷ Sharma Khema, *Role of Women in Informal Sector in India*.

¹⁸ *supra*

¹⁹ Ambika Pandit, *Why this #MeToo doesn't make it to the headlines*, Times of India, October 15, 2018.



any other reason, these women need the support of society at large because they have mustered the courage to speak up.

In view of the above, the proposed research is significant for it throws light on a relatively fresh subject ie. composition, role and functioning of LCCs; procedure followed and whether the procedure is simple enough to be comprehended by poor, uneducated and rural women. Empirical research has been conducted in the samples states of Delhi, Haryana and Odisha to assess the extent of sexual harassment of women in the unorganised sector, and the levels of awareness to what constitutes sexual harassment, and the forum available for redressal of their complaint on being harassed, including barriers in approaching LCC/nodal officer.

IV. STRUCTURE OF THE REPORT

The first chapter is the introduction, followed by chapter on Understanding Contexts and Concept of Consent which deals with the historical perspective, and legal provisions of consent in a paradigm of women's equality and economic security. Chapter three the Methodological Note vividly explains the research methodology of the study and discusses certain methodological difficulties experienced during the field work. Chapter four contains the Findings and Gaps and at length deconstructs the statutory provisions of the POSH Act. The last chapter is the Conclusion and Recommendations in the forms of Goals and Targets, alongwith draft Guidelines for implementation.

CHAPTER 2

UNDERSTANDING CONTEXTS AND CONCEPT OF CONSENT

Historically, the workplace has always been considered as a male domain, with patriarchy reinforcing the view that men are superior to women. At a young age girls are indoctrinated with notions of obedience and subjugation, as a result of which they internalise their subordinate status, and willingly surrender to unfair practices. For centuries, society has attempted to control women's sexuality using cultural arguments and stereotypes. Today, in the twenty first century inspite of women acquiring education and degrees, the top of the pyramid still remains predominantly male; and often men still try to ensure that women remain in what is considered 'their place', by intimidating them through unwelcome conduct of sexual nature, whether by words or actions.

I. HISTORICAL PERSPECTIVE

Sexual harassment at the workplace, as a specific term may be relatively new, but it's origins can be traced back to the Industrial Revolution, when women joined the workforce in large numbers. Writers have identified incidents of sexual harassment in the 1830s when women began working in the textile mills in New England. Reva Siegel²⁰ traces incidents of sexual harassment way back to the era of chattel slavery. African-American women and those involved in domestic service suffered from sexual coercion. Siegel cites how Helen Campbell (Women Wage Workers, 1887) and Upton Sinclair (The Jungle, 1905) documented the victimization of working women by sexual harassers in household services and factories, particularly those working in the garments and meat-packing industries. The Industrial Revolution strengthened capitalist market economies which dichotomized gender roles. It was during this period when paid work-outside-the-home became distinct from domestic work. Perceived as competitors, employment conditions became difficult for women, and it was also more difficult to receive higher wages, have access to opportunities for improvement, and join trade unions. Worse, they had *"...to bear silently the sexual advances of their male counterparts, because to refuse meant to lose employment or to suffer reduced wages. This was tantamount to starvation to them and their families. On the other hand, to accept was a curse, for future marriage or better employment became an impossibility for the branded woman"*.²¹

²⁰ MacKinnon Catharine A, and Reva B Siegel, eds. "A Short History of Sexual Harassment"

²¹ Zarah Leann, *Sexual Harassment in the Workplace: History and Definition*- According to a paper on work decorum for the judiciary released by the Supreme Court of the Philippines in 2004. Available at <http://researchedworks.com/history-definition-sexual-harassment-workplace.php>



The origins of the term "sexual harassment" can be traced to a 1974 Cornell University case in which a female laboratory employee quit her job after a scientist made regular unwanted sexual advances. The female was denied unemployment insurance on the grounds of not having a 'good cause' to leave the job. However, it was the controversy of the nomination of Clarence Thomas as judge Supreme Court of the United States that created international awareness about sexual harassment in the workplace. Anita Hill, a young African-American law professor at the University of Oklahoma, came forward with accusations that Thomas had sexually harassed her with inappropriate discussion of sexual acts and pornographic films after she rebuffed his invitations to date him. Instead of castigating the male, the female victim's behaviour was on trial,²²³⁵ and a male perspective appeared to influence the case, including definitions of sexual harassment and expectations of how harassed women behave, thus engendering inequities in the legal system.²³ Interestingly, now in 2019, Joe Biden, a United States Presidential candidate, shared with Ms. Hill "his regret for what she endured" 28 years ago, when, as the chairman of the Senate Judiciary Committee, he had presided over the confirmation hearings in her sexual harassment case.³⁷ However, Ms. Hill is stated to have declined to characterize Mr. Biden's words to her as an apology and said she was not convinced that he has taken full

²² Ann C. Juliano, *Did She Ask for It?: The Unwelcome Requirement in Sexual Harassment Cases*, 77 Cornell L. Rev. 1558 (1992). Available at: <http://scholarship.law.cornell.edu/clr/vol77/iss6/10>

Hours of testimony in the Thomas hearings reflected the way in which Senators placed Professor Hill on trial. Judge Thomas's supporters produced witnesses to impugn Professor Hill's character, while Senators Specter and Hatch accused her of perjury. Derrick Z. Jackson, *After the Thomas Affair, Progress-Or Silence?*, BOSTON GLOBE, Oct. 20, 1991, at A37. Commentators suggested the absence of women on the Judiciary Committee as a cause of this reprehensible behavior: "There is no doubt, many activists say, that having more women in the Senate... almost certainly would have resulted in a different process." Marlene Cimon, *The Click! Heard 'Round the Nation*, L.A. TIMES, Oct. 18, 1991, at E1. "The 14 Judiciary Committee members, all men, were insensitive to women's experience and feelings." Anthony Lewis, *Abroad at Home: Wages of Cynicism*, N.Y. TIMES, Oct. 11, 1991, at A31. In fact, the National Women's Political Caucus placed ads "depicting Judge Clarence Thomas testifying before an all-female Senate Judiciary Committee and asking 'What If?'" *Hearing Fallout*, USA TODAY, Oct. 25, 1991, at 4A.

²³ Supra. Anita Hill's testimony as to the alleged sexual harassment by Thomas engendered feelings of outrage from some of the Senators: outrage over her behavior. Senators demanded to know how she could have been subjected to such behavior and not have come forward. These questions vividly depicted the male perspective of how a woman should react to harassing behavior. For example, Senator Specter queried, "I know you decided not to make a complaint but did you give that any consideration? And if so, how could you allow this kind of reprehensible conduct to go on right in the headquarters without doing something about it?" *The Thomas Nomination: Excerpts from Senate's Hearings on the Thomas Nomination*, N.Y. TIMES, Oct. 12, 1991, at A12. A befuddled Senator Orrin Hatch asked "How could she (Hill) tolerate it?... How could she stand such behavior and not file a complaint?" James Warren, *Coverage Offers Class on Sexual Harassment*, CHICAGO TRIBUNE, Oct. 12, 1991, at C1. Further, Senators used Hill's failure to file a complaint as proof of her lack of veracity. See Jane E. Larson & Jonathan A. Knee, *We Can Do Something About Sexual Harassment*, WASH. POST, Oct. 22, 1991, at A21. Women seemed to understand and empathize with Anita Hill's reluctance to file a complaint or go to the news media. For example, the editors of Ms. magazine expanded the letters column in the January/February edition to provide room for expressions of support and outrage. *Letters, Ms.*, Jan./Feb. 1992, at 8-11. The media cited the "fierce support that many Americans gave to Professor Hill . . ." and the "voices of women across the land who told men that they did believe Anita Hill" Larson & Knee, supra, at A2 1; Kathleen M. Sullivan, *Men Must See It With Women's Eyes*, NEWSDAY, Oct. 10, 1991, at 147



responsibility for his conduct at the hearings, or for the harm he caused the other victims of sexual harassment and gender violence.

i. **Indian context :** It is widely believed that in ancient India, women were treated equal to men and in fact held to be superior to men in many aspects. The word for strength, virility and power in Hindu culture is represented by the feminine "Shakti". In Hindu Mythology and literature, kings and towns were razed to the ground because a single woman, "queen", was wronged by the state or person in power. Examples include Ravana from the Ramayana and Kauravas from the Mahabharata. It cannot be pinpointed at what stage this perfect harmony of equity between sexes changed during the course of history, and when the status of women became drastically reduced to the extent of her becoming a mere commodity - a tool for enjoyment, reproduction and procreation. One of the first documented example of sexual harassment in Indian history is of Jabala, mother of mystic and sage Satyakam, who would fall in the present category of a domestic worker. She truthfully told her son that she did not know the name of his father because when she was young, being poor, she had to serve in many houses.²⁴ She said,

"I was afraid that one day you would ask me to send you to a master. I am a poor woman, but that is not a great difficulty. The difficulty is that when I was young I served in many houses -- I was poor, but I was beautiful. I don't know who your father is. And if I send you to a master, you are going to be asked what the name of your father is. And I am afraid they may reject you. But there is no harm in making an effort. You go and tell the truth, in the same way I have told the truth to you. Many men have used my body because I was poor. Just say that you don't know who your father is. Tell the master that your name is Satyakam, your mother's name is Jabala, so they can call you Satyakam Jabala. And as far as the search for truth is concerned, who your father is does not matter."

Satyakam was accepted as a disciple by Uddalak, an ancient seer in the forest, for having the courage to tell the truth. However, every woman is not as courageous as Jabala, for deep rooted socio-cultural behavioural patterns and norms tend to place responsibility on the victim, due to which even in this century women are reluctant to come forward and report. The greatest challenge in resolution and prevention of sexual harassment are the women themselves who due to a variety of reasons, mainly being shame and lack of faith in the system to deliver justice, are hesitant to report.

²⁴ Available at http://www.oshoworld.com/onlinemag/sept10/htm/story_of_the_month.asp



INTERNATIONAL INSTRUMENTS ADDRESSING DISPROPORTIONATE GENDER DISCRIMINATION

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Adopted by the United Nations General Assembly in 1979, has been ratified by 187 out of 194 countries (remaining countries are Iran, Palau, Somalia, Sudan, South Sudan, Tonga, and the United States). The convention requires states to take action 'in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men' (Article 3).

International Labour Organization (ILO) conventions

ILO conventions relevant to women's employment include:

- i. C095 Protection of Wages Convention, 1949
- ii. C100 Equal Remuneration Convention, 1951
- iii. C111 Discrimination (Employment and Occupation) Convention, 1958
- iv. C183 Maternity Protection Convention, 2000
- v. The Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011

International Covenant on Civil and Political Rights (ICCPR) (1966)

A multilateral treaty adopted by the United Nations General Assembly. It commits states parties to the Covenant to respect various civil and political rights of individuals, such as the right to life; freedom of religion, speech and assembly; and right to due process and fair trial. Article 2 requires that rights to be recognised without distinction of any kind, such as sex. Article 3 requires that men and women have equal right to the enjoyment of the rights set forth in the Covenant.

International Covenant on Economic, Social and Cultural Rights (ICESR) (1966)

A multilateral treaty adopted by the United Nations General Assembly. It commits states parties to the Covenant to respect various economic, social and cultural rights of individuals, including labour rights; the right to health; the right to education; and the right to an adequate standard of living. It contains the same provisions in Article 2 and 3 as the ICCPR with respect to non-discrimination based on sex and equal enjoyment of rights by men and women.

Investigating the complex interaction of forces of globalisation with shifts in the nature of women's work, it has been argued that while the Indian economy's recent boom has excluded the bulk of women in the country from its benefits, the issue of exclusion of women is historical and structural. Historically, women have been secluded to private spaces and public spaces are hostile to them. Whether it is lack of women's toilets or the acceptance of sexual harassment as normal, male privilege is structural and institutional.

ii. Cases of sexual harassment : According to official data, registered cases of sexual harassment at workplace increased 54 per cent from 371 in 2014 to 570 in 2017. The numbers seem very meagre in comparison to the vast working women population in India. In all, only 2,535 such cases were registered over the four years ending July 27, 2018, in other words nearly two cases reported every day, as per government data tabled in the Lok Sabha on July 27, 2018 and December 15, 2017.²⁵ Over the first seven months of 2018, ending July 27, 533 cases of sexual harassment were reported across the country, as per the data. Uttar Pradesh reported the most cases (726 or 29 per cent) over 2014-18, followed by Delhi (369), Haryana (171), Madhya Pradesh (154), and Maharashtra (147), as per the data presented in Lok Sabha.

II. CONCEPT OF CONSENT

The influence of the male perspective in the concept of consent is clearly reflected in both cases of Anita Hill and Jabala. In a male-dominated environment, where male and female have restricted contact with other after puberty, their relationship, if any, is usually characterised by male sexual dominance and unequal gender attitudes. In such a scenario, in India, men frequently tend to misconstrue even neutral interactions with women as being sexually charged, without waiting for affirmative indicators of consent. The situation is further exacerbated by the male perspective of hyper masculinity and male privilege and entitlement; and often women due to their subordinate status are forcibly made to consent to acts of sexual nature. Men seldom consider the reality of sex as anything beyond their own experience of it. No wonder, then, they claim they thought her resistance or disinclination was a deliberate spur to more ardent love-making.²⁶

²⁵ Chaitanya Mallapur and Anmol Alphonso, *#MeToo India: 54% Rise In Sexual Harassment Reported At Workplaces Between 2014-17*, India Spend October 15, 2018. Available at <https://www.indiaspend.com/metooindia-54-rise-in-sexual-harassment-reported-at-work-places-between-2014-17/>

²⁶ Pande Mrinal, *Consent in a man's world*, The Indian Express, November 9, 2018. Available at <https://indianexpress.com/article/opinion/columns/consent-in-a-mans-world-me-too-movement-mj-akbar-sexual-harassment-5438322/>



i. **Legal Provisions of consent** : In law, consent is defined as a voluntary agreement, made out of one's own free choice. What is overlooked is the lack of women's freedom and capacity to make that choice. Moreover, due to circumstances a woman may 'agree' to sex, under duress, coercion, fear, intimidation or force. In India the relevant legal provision regarding consent are contained in a positive and negative form in Section 87 and 90 of the IPC²⁷, respectively, basically define consent as an act of reason, accompanied by application of mind on the advantages and disadvantage of each side ie. to consent or not to consent.

Section 87 states that nothing is an offence which is not intended to cause death or grievous hurt; if the person to whom such hurt is caused being above the age of eighteen years has expressly or impliedly consented to suffer harm, or to take the risk of any harm. But this section will not apply where the act itself is prohibited by law. This rule is founded upon two simple propositions: (i) that every person is the best judge of his own interest; (ii) that no person will consent to what he thinks harmful to himself, thus making games like fencing, boxing, football etc. protected under this section.

The definition of consent under Section 90 of the IPC titled 'Consent known to be given under fear or misconception' is a negative definition elaborating upon what is not consent. The first paragraph states that consent given by a person under fear of injury, or under a misconception of fact, is not a valid consent provided the person doing the act knows or has reason to believe that the consent was given in consequence of such fear or misconception. This latter part is important for it clarifies that mere giving of consent under fear of injury or misconception of fact is not enough; and it becomes not a valid consent only when the taker of the consent also knows or has reason to believe that the person giving the consent is acting under such fear or misconception. The law does not take into regard that in a case of sexual harassment the woman may have given the consent under fear of

²⁷ IPC Section 87. *Act not intended and not known to be likely to cause death or grievous hurt, done by consent.*—Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm. Illustration A and Z agrees to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

IPC Section 90. *Consent known to be given under fear or misconception.*—A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

possibly losing her job; but the male aggressor, the taker of the consent, heady with power and masculine entitlement cannot conceive, or has no reason to believe that she is giving the consent under such fear.

ii. **Women's equality and economic security at stake** : The time has come for society and the law to consider that the woman's lack of power to decline consent stems from her fear of losing her employment and reputation, both critical for her survival. Sexual harassment is undeniably a serious problem and women in India are, for the first time, unabashedly sharing their experiences of sexual harassment, unveiling a work environment dominated by powerful male predators as bosses, and vulnerability of the subordinate woman's power to say "no." Evidence of which has been presented in the spurt in stories of sexual harassment experienced by women, both in the past and present, and a stream of name and shame campaigns are doing rounds on social media.

Sexual harassment at workplace does not distinguish between workplaces, and is not relegated to any one industry or any one subset of women; it prevails everywhere, whether media, hospitality, sports, journalism, and even the judiciary. This problem is more pervasive than as stated in official data, because many women are scared or too embarrassed to report sexual harassment. Equal opportunities must come equally, and with fair procedures. The courts and legislators may have introduced commendable changes by amending law and enacting fresh law to address this problem. However, the law must seriously introspect and reflect upon the issue of the sexual exploitation of women, acknowledging how much the legitimacy of much of our laws has been derived by force and at women's expense.²⁸ Only a systemic change in the culture and climate in our nation can stop the pattern of harassing behaviour from impacting the next generation of women.

²⁸ Supra note 26.



CHAPTER 3

METHODOLOGICAL NOTE

I. RESEARCH DESIGN

This study attempts to deconstruct the statutory provisions of the POSH Act to have an in depth understanding on the role and functioning of the LCCs constituted to deal with sexual harassment in the unorganised sector. In addition, the study aims to assess awareness levels of sexual harassment at the workplace among the selected sample of women workers in the unorganised sector. The data is necessary to support the development and design of effective prevention and redressal policies so as to improve the functioning of the LCCs by ensuring that a complaint is addressed effectively in a time bound manner; simultaneously provide support to women who come forward and report sexual harassment at the workplace to the LCC. Hence this study, considering the nature of the research questions employed both qualitative and quantitative research techniques.

Qualitative research methods were used to gather data to assess the role and functioning of LCCs. An interview schedule containing a set of structured questions had been prepared, to serve as a guide for the interviewer in collecting information on specific issues relating to the status and functioning of the LCCs, and thereby getting responses of all the respondents on the same issue. The qualitative research provided insights on several aspects of the functioning of the LCCs, and was conducted after the quantitative research measuring the extent of sexual harassment and awareness levels among women.

Non-Probability Convenience sampling technique was used, in which women participants were selected based on availability and willingness to take part, provided they met the inclusion criteria. Non-probability sampling appeared to be the most appropriate tool for this study with its small pre-determined sample size. The exclusion criteria was minor girls and women employed in workplaces which had more than ten employees. Quantitative research methods were used to gather information in a structured format mainly through a questionnaire administered to 743 respondents. Assessment of specific behaviours was done without requiring the respondent to label the behaviour as “sexual harassment”. To encourage maximum participation and make data representative, the respondents were clearly apprised that providing information is voluntary, and there would be no penalty if they chose not to respond.

i. Universe

a) LCC and women workers in Delhi, Haryana, and Odisha : As stated in the aforementioned paragraph, empirical research was conducted using both qualitative and quantitative methods. The LCC CP/ Members were interviewed using the interview schedule employing a conversational type of method to get more insight on the problem in their district. The method was semi-structured and sample comprised :-

State	Districts
DELHI	South East and North East
HARYANA	Panchkula, Faridabad, Gurugram, and Palwal
ODISHA	Kendrapara, Jagatsinghpur, Jajpur, Cuttack, and Khurda

A questionnaire was administered to 743 respondents and face to face interviews conducted reassuring the target group that the survey instrument will be treated as confidential and only group statistics will be reported. The sample comprised:-

1. 338 respondents in Delhi from the Districts of North West, North, West, East, North East, South West, New Delhi, South and Shahadara.
2. 204 respondents in Haryana from the Districts of Ambala, Bahadurgarh, Ballabgarh, Faridabad, Gurugram, Panipat, Palwal, Panchkula and Sonapat.
3. 201 respondents in Odisha from the districts of Jagatsinghpur, Cuttack, Baleswar, Baripada, Dhenkanal, Khurda, Puri, Jajpur, Keonjhar and Kendrapara.

ii. Objective of the study

To study –

- The role and functioning of LCCs, including the assessment and recommendation of a viable alternative, if necessary;
- Method of nominating members/nodal officer by the District Officer;
- Whether the composition of the LCC is in accordance with the Act;
- Procedure followed by LCC/Nodal Officer on receiving complaint and action taken, if any;
- Whether procedure followed is simple enough to be comprehended by poor, uneducated and rural women;



- Whether District Officer has taken measures under Section 20 for creation of awareness on sexual harassment and the rights of the women; AND
- Whether women in the work force are aware of what is sexual harassment, extent of harassment and the forum available for redressal of their complaint on being harassed, ie LCC/nodal officer. AND if aware have they approached LCC/Nodal Officer, including barriers in approaching LCC/Nodal officer. In addition if women required assistance of NGO in filing complaints.

II. LITERATURE SURVEY

Sexual harassment is a complex issue that plagues society, organisations and individuals. Measures to reduce vulnerability of women in the workplace, will lead to a safe working environment, and in turn result in increase in female participation in the labour force. While there is limited literature on the functioning and efficacy of the LCCs, it is contended that sexual harassment also needs to be examined from perspectives of patriarchy emphasising the fact that sexual harassment is not necessarily about sexuality or sexual desire, rather about assertion of power. In addition, the enforcement paradigm and structural inadequacies need an in-depth analysis. This review provides an overview of the definition, prevalence, and measurement of harassment, along with responses of the legal system.

Gender based violence

Defined as unwelcome verbal, visual, or physical, visual, verbal or non-verbal conduct of sexual nature (**POSH Act 2013**), sexual harassment at workplace obstructs women's constitutional and fundamental rights to equality, justice, and dignity. According to **The World Bank (1994)**, 'sexual harassment is any unwelcome sexual advance, request for sexual favor or other verbal, non-verbal or physical conduct of a sexual nature which unreasonably interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive environment.' The guidelines paper aims to assist centers to address the issue of sexual harassment explicitly, and ensure policies, procedures, and practices are in place for both deterring sexual harassment and dealing with it in an equitable and confidential manner when it arises.

Sexual harassment was first recognized in cases in which women lost their jobs because they rejected sexual overtures from their employers **Barnes (1977)**, and this type of sexual harassment became defined as *quid pro quo sexual harassment* ("this for that," meaning that a job or educational opportunity is



conditioned on some kind of sexual performance). Psychologists developed more nuanced terms to describe sexual harassment in order to more precisely measure behaviour that constituted sexual harassment, and to describe targets' experiences. A three-part classification system divides sexual harassment into distinct but related categories: *sexual coercion*, *unwanted sexual attention*, and *gender harassment*. *Sexual coercion* entails sexual advances, making the conditions of employment contingent upon sexual cooperation. *Unwanted sexual attention* also entails sexual advances, but it does not add professional rewards or threats to force compliance. *Gender harassment* is by far the most common type of sexual harassment. It refers to "a broad range of verbal and non-verbal behaviour not aimed at sexual cooperation but that convey insulting, hostile, and degrading attitudes about" members of one gender. **Gelfand et al (1995)**.

Dynamics of sexual harassment at the workplace

In India, sexual harassment at workplace is one of the most under reported forms of gender based violence, and in most case employers do not go beyond setting up complaints committee as mandated by the law. **Satpodar (2013)**, points out that privately-owned organisations are not receptive to complaints of sexual harassment. She is Chairperson of local committee under the POSH Act for the Mumbai city district which has not received a single complaint from women working in the unorganised sector. The law is developing and unclear, and most committees are unaware of the legal requirement, especially for cross examination and its importance. **Sahgal and Dang (2017)**, exploratory research attempts to understand the occurrence and dynamics of sexual harassment of women managers at workplace, and seeks to explore how women manage such behaviour meted out to them, what kind of policies and processes do organisations have for protecting them from being sexually harmed, and whether the enactment of a law is adequate in safeguarding their interest and reputation.

FICCI Report (2015), attempts to identify the changing dynamics of the workforce with regard to prevention of sexual harassment of women, endeavours to decipher how far we have reached with respect to combating the issue. Illustrated is need for employers to react to specific cases where there are disparities in perception and misgivings about instances that fall under the purview of the law. Discussed also are romantic relationships, as they are likely to lead to sexual harassment cases, thereby creating a considerably difficult situation for any committee to deal with. Although extensive trainings may have already been administered to over hundreds of employees across industries and locations, from C-suite executives to college recruits, questions around sexual harassment at the workplace still persist. Despite enactment of the law, there is unwillingness in organisations to streamline policies or set up appropriate mechanisms.



In India the bureaucracy provides the framework that ensures the successful running of our democratic nation. **Thakur (2004)**, examines women's issues in the civil service with a view to their redressal through on going institutional mechanisms. Whereas there can be little doubt that organisational processes determine the manner in which bureaucracy is constituted and perpetrated, the purpose of the survey is "to understand the nature of gender relations in the bureaucracy and to the extent which bureaucracy is gender neutral and to examine the manner and extent to which the bureaucracy contributes and reflects the bias of a larger societal context and is responsible for creating, maintaining and reproducing such biases." Survey revealed overall, 20.54 per cent of women civil servants felt there was sexual harassment, although the figure varied considerably with the service. Concluding that the state should go beyond the view of looking at women in the civil services as recipients of welfare, but be a leader in the quest for greater gender equity in the workplace. **Bhattacharyya (2017)**, explores the levels and forms of sexual harassment in the bureaucracy, where patriarchy has continued to serve as the norm and represents a particular challenge. Analysed is gender and position of the harasser, and the level of filing complaints by the victims, in addition to the reasons behind the silence of the victims in filing complaints. Studied is the relevance of socio-economic factors leading to sexual harassment in the Indian bureaucracy in Kolkata, Delhi and Bengaluru.

Inadequacy of the law

Taneja (2005) discusses the development of sexual harassment law in a country where most men are steeped in male-supremacist values, and remain unaware of their biases. Despite India now having a legal mechanism which can redress sexual harassment, there still needs to be a radical transformation in the way women are treated before equality and dignity for all can be translated into a meaningful reality. **Sakhrani (2017)**, draws on her experience of being part of sexual harassment complaints committees to highlight the loopholes in the current legal framework as well as the difficulties in formulating a law that is applicable to and effective for women across complexities of caste, class, and industry. Highlighted are the limited powers of LCC. The draft Act had made provisions for the LCC to take suo motu action, but this is absent in the POSH act and no committee (either internal or local) has this power. The Local Committee is also not empowered to act in cases where the Internal Committee is either not constituted or has an explicit bias. The remedy open to the woman in the first instance is to file a criminal complaint or a writ for constitution of the committee and in the latter, to challenge the findings by way of appeal. After almost four years of the functioning of the law, there is lack of clarity regarding the appointment of the appellate authority. Even after six years of passing of the POSH Act, **Manjunath (2017)**,

argues that data regarding number of complaints received by ICC and LCC on sexual harassment, enquiry conducted and justice rendered to victims is not available. Public policy on prevention of sexual harassment, in its present structure and enforcement paradigm has failed to achieve its objectives.

While there are number of studies on sexual harassment of women in the organised sector, however, research on sexual harassment in the unorganised sector with specific regard to the LCC, is still in its infancy. The present research is significant in the sense it breaks new ground and throws light on the role and functioning of LCCs; simultaneously undertaking empirical research into the extent women in the unorganised sector are aware of what constitutes sexual harassment at the workplace, and the forum available for redressal of their complaint on being harassed.

III. METHOD OF DATA COLLECTION

i. Primary Data

a) Questionnaire - The use of questionnaires enabled field researchers to gather information from the sample on the desired topic. The information entered allowed easy analysis of results and trends. The questionnaires were filled in by the field researchers themselves since the respondents from the unorganised sector were largely uneducated. Keeping in mind the sensitivity of the topic, where women are usually apprehensive of coming forward, the questionnaire endorsed complete confidentiality to maximise the comfort of those answering. The focus was on gathering information on the nature and frequency of sexual harassment experienced by the women; their access to a redressal mechanism in the form of the LCC; the consequences of sexual harassment on the women who experienced harassment - psychological, interpersonal and physical; and the strategies, whether external or internal, used by the victim to cope with sexual harassment.

Testing the questionnaire -The challenge was to continuously improve the questionnaire since the draft questionnaire developed by a social scientist and expert originally had over 100 questions. It was revised to 96 questions, and then re-revised to 60 questions after discussions between the chief investigator, researchers and colleagues. The questionnaire was tested through a pilot study to determine its effectiveness, and assess the length of time required for an interview - whether it was too time consuming, whether respondents would spare time in completing the questionnaire by giving adequate responses, or lose interest in completing the survey mid-way. After getting results from a pilot study, the questionnaire was modified and fixed at 45 questions. Since significant changes had been made, a small second pilot study was conducted.



Final Questionnaire : The questionnaire commences with a confidentiality statement that participants' responses are confidential, and only group statistics will be reported. The format of the questionnaire is divided into seven parts. Part A comprises questions relating to Demographic Information ie name, address, age, education, nature of work/employment and whether local or immigrant. Respondents who did not wish to be identified were not pressed upon to disclose names or address. The importance of confidentiality was clearly stressed upon, and it was explained that the information collected would be used to make improve security of women at the workplace. Questions on education and nature of work, were mandatory to be answered in order to link education levels with extent/form of sexual harassment at the workplace.

In Part B data relating to workplace conditions has been collected, while Part C is divided into seven parts elaborating on the different forms of sexual harassment ie, i) through visual observation, ii) touch/physical contact, iii) verbal remarks of sexual nature, iv) display/gestures of sexual nature, v) use of media sexual coercion/preferential treatment, and vii) adverse/ detrimental treatment. In Part D the legal awareness knowledge levels of the respondents were tested. Part E tested the woman's faith in law and its effectiveness. The questions in Part G were designed to assess the social repercussion a woman faces on reporting sexual harassment at the workplace.

b) Group meetings - The present study, in addition used the method of open end interviews, study through observation and group meetings (15 nos) for data collection, among which are included one large workshop in Sonapat, and two in Odisha (Bhubaneshwar and village Palli, District Ganjam). The observation notes of field researchers on their experiences and reactions of women helped this study to understand hidden nuances.

The focus group (type of group interviewed), allowed for sharing of opinions related the problem of sexual harassment at workplace. This approach provided an excellent means of gathering process insights, and the same have been video graphed (after taking due consent). The main strength of focus groups interviews was the depth of opinions expressed (e.g., honest expression, revelation of commonly held viewpoints, and ability for perception assessment); especially in view of the fact that the topic of inquiry in this research was highly sensitive making it hard to get accurate responses since women were hesitant to come forward and open up. In the group discussions when one woman came forward with her experience, it emboldened others to open up, and there was a group discussion of type of male predators; however, while filling the questionnaires the women again clammed up to answer in the negative.

During the group meetings and also while filling the individual questionnaires, distributed was the booklet “*Chuppi Todo*” developed by SAFMA in hindi and Oriya with a three-fold objective of generating awareness on the concept of sexual harassment at workplace; providing practical guidance to both LCC and women who are experience sexual harassment at the workplace on the redressal mechanism; and encouraging women to report harassment by elaborating on the psychological impact.

c) Interview – Personal interviews were conducted with District Magistrates/ Collectors of subject states to get indepth information on their experience and opinion. Special care was taken that the senior officers do not feel they were being cross examined. For interviewing LCC CP/Members a separate interview schedule was prepared containing a set of structured questions to serve as a guide for the researchers in collecting information. In the opening the respondent (LCC CP/Member) was made to feel relaxed and reassured that no attempt is being made to humiliate them for their ineffectiveness or inadequacy, although the objective of the interview was clearly indicated. This interview schedule allowed the researcher some freedom to probe into answers and adapt to the situation. The researchers did not rely solely on the numbers quoted in the official reports/ RTI replies, but as an accurate method for determining the prevalence tallied, both, RTI and LCC replies.

ii. Secondary Data

Apart from all these research tools this study reviewed secondary data ie. Information from a diverse source of documents, journals, articles, literature, newspaper reports, information from records (RTI), court cases, etc.

RTI's were filed for obtaining information under Right to Information Act, 2005 with the concerned Public Information Offices in 11 districts of Delhi, 22 districts of Haryana and 30 districts of Orissa. Questions on which information was sought:-

- The role and functioning of LCC constituted in the district under the POSH Act.
- The Composition (male and females) of LCC.
- The procedure followed by LCCs on receiving complaint of sexual harassment. Action taken on complaints received by LCC in last 5 years.
- Whether procedure followed by LCC is simple enough to be comprehended by poor, uneducated and rural women.



- How many complaints of sexual harassment have been received by LCC in last 5 years; and how many complains are pending with LCC till date.

iii. Ethical considerations : Ethical considerations were built into the research process, while conducting interviews with the sample respondents and during interactions with other key informants. The study objectives, as well as the final use of data being collected, were explained in detail to the respondents. Consent was sought from the respondents before the interviews. The researchers also sought prior consent for video/audio documentation of interviews.

iv. Challenges : It was a challenge to make women come forward and open up about their experience of sexual harassment. The field researchers were provided with identity cards, and visiting cards were also distributed in case respondents wanted to reach out and contact the NGO later. Most of women were not willing to share their contact details, especially in Odisha, so to reassure them the element of confidentiality was repeatedly emphasised, and the fact the data would only be used for reporting of group statistics. Even to gather information was a challenge because on contacting women at their workplace, the field researchers faced resistance from the employer, especially at construction sites and shops.

Limitations : Given that the study has been conducted in the select states and districts on the basis of certain indicators, no definite generalisation can be made from the research results. While qualified inferences can be drawn from the primary data, it must be borne in mind that the sample size, was purposively selected rather than chosen at random.

Future research : There is also a requirement for research in other areas which would address such issues as the impact of sexual harassment on the health of women in the unorganised sector, and the link between sexual harassment at the workplace and absenteeism. A variety of preventative initiatives have been undertaken by government agencies, which have however been limited to raising awareness through workshops, printing of brochures or guidelines posted on the internet. Therefore, suggested is research evaluating the impact of different media and identifying best practices for creating awareness at the mass level to ensure a culture of inclusion and safe work environment for women.

CHAPTER 4

FINDINGS AND GAPS

Sexual harassment is the manifestation of a culture of discrimination and privilege based on unequal gender relations and other power dynamics. Preventing and effectively addressing sexual harassment of women in the informal sector which is the backbone of the Indian economy, is a significant challenge. Furthermore, the lack of social security, low wages and poor working conditions; are exacerbated by women's vulnerability to sexual abuse and exploitation. Stress needs to be placed on accountability and zero impunity for those in power, with a strong focus on prevention; including the need for the LCCs to move beyond legal compliances to supporting and encouraging women come forward to report sexual harassment. However, to succeed in making these changes, all authorities, be it at the National, State or District level, need to assume responsibility for promoting a safe and respectful environment for women at the workplace. It is society and nation's combined responsibility to combat sexual harassment of women at the workplace and see it not a women's issue but a gross violation of human rights.

Presented below are the findings of the study, and conclusions, based on which are the recommendations in the next chapter.

I. DEMOGRAPHIC PROFILE

In addition to interviewing the LCC CP/Members in Delhi, Haryana and Odisha, the study surveyed 743 women respondents from the subject states, all belonging to the economically active population age groups from 18 years to 40 years and over. Results show 45 per cent (334) fall in the age group of 20-29 years; 40 per cent (297) in the age group of 30-39 years; 12 per cent (89) in the age group of 40 years and over; while 3 per cent (23) are between 18-19 years. Majority of respondents work as domestic workers (28 per cent), while a large number of women are employed in shops/retail (17 per cent),²⁹ women in labour (12 per cent), and workers in clinics (5 per cent). Respondents who fall in the category of 'Others' (38 per cent) comprise anganwadi workers, advocates, tutors, and women working with courier services, in the beauty/event/hospitality industry.³⁰ (Refer to TABLE 1

²⁹ Kapoor Radhicka, *Waiting for Jobs*. According to two most recent EUS of the Labour Bureau conducted in 2013-14 and 2015-16 in spite of decline in employment, the only sector to have witnessed a significant increase in employment during this period was wholesale and retail trade where employment increased from 43.7 million to 48.1 million.

³⁰ Singh Namrata, *The rise of women in male workplace*, The Times of India, March 8, 2019. Gender diversity numbers may not be statistically balanced yet. However, women today are not only breaking age old patriarchal doctrines but also riding male bastions as well. A study by TeamLease Service, done exclusively for Times of India, reveals 12-15 per cent of traditionally male dominated jobs are estimated to have been



and 1A). The largest segment is of domestic workers considering the fact women comprise 16 per cent of all service sector workers, but 60 per cent of domestic workers. Analysing the demographic information allows us to better understand certain background characteristics of the respondent segment for the benefit of whom the LCC has been constituted, and the linear association between nature of work, education levels and reluctance to report sexual harassment.

TABLE 1

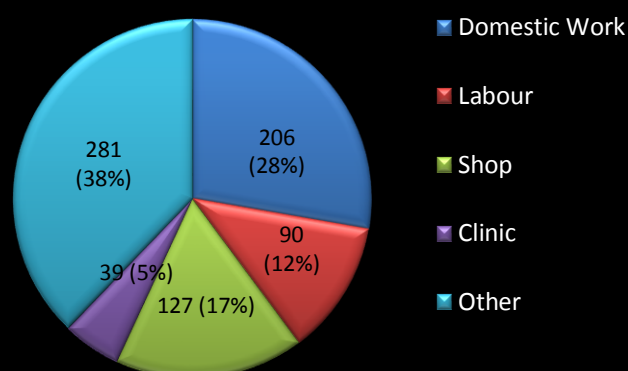
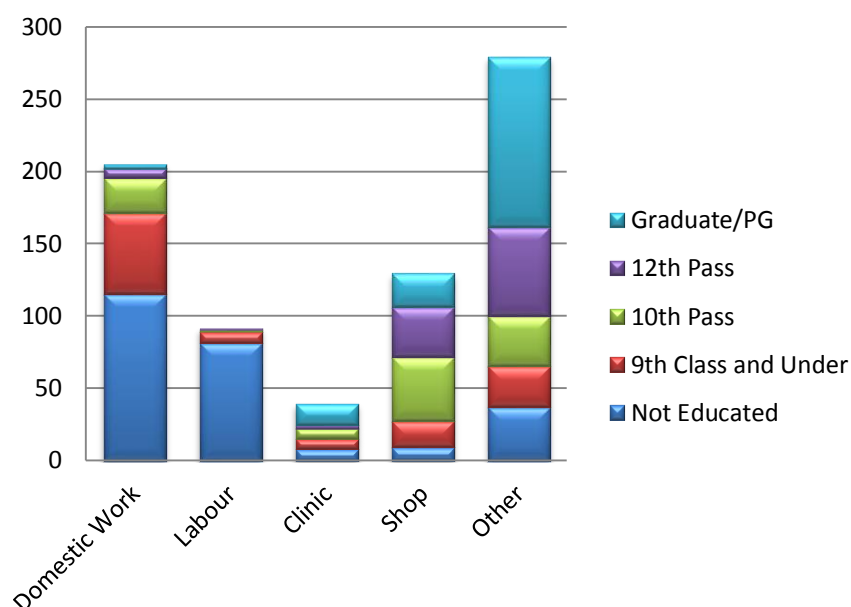


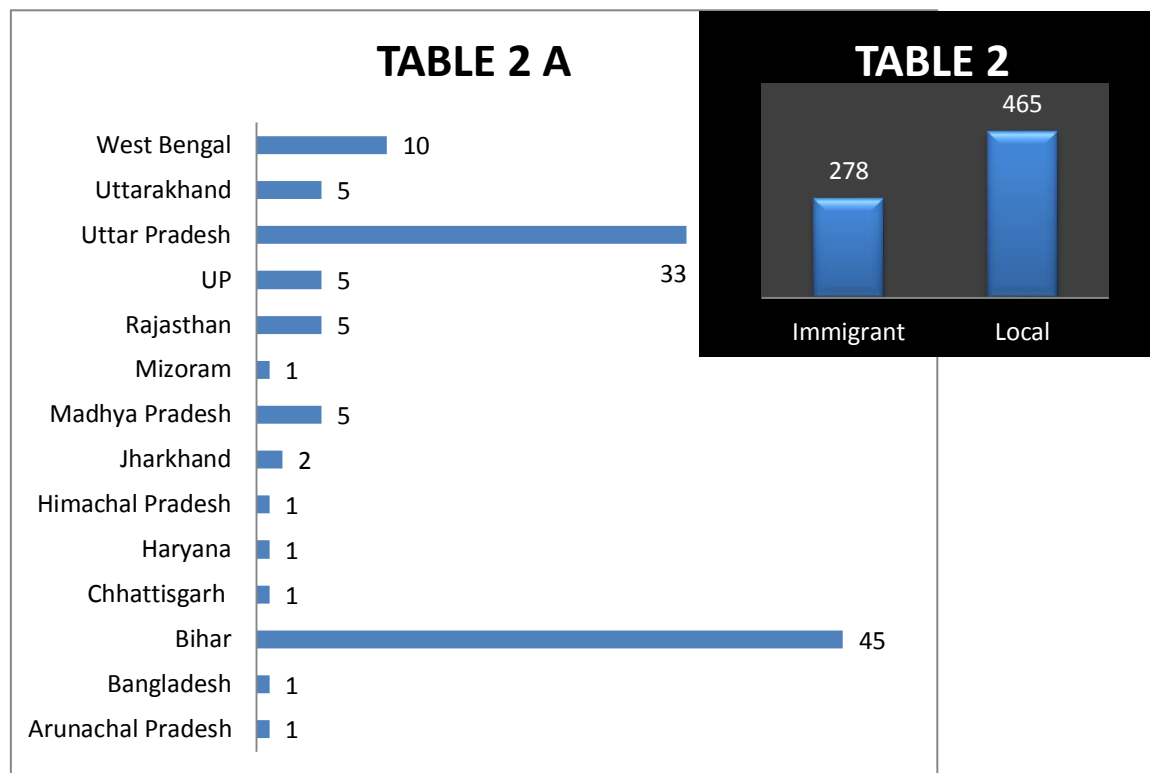
TABLE 1 A

Education level according to nature of work



replaced by women eg train/bus driver, delivery associates, mining engineers, bartenders, disco jockey and barbers. There are an estimated 40 per cent women in the tourism and hospitality sector as bartenders and chef managers. Available at <https://timesofindia.indiatimes.com/business/india-business/the-rise-of-women-in-a-maleworkplace/articleshow/68311338.cms>

Out of the 743 respondents 63 per cent (465) were local women and 37 per cent (278) immigrants (*Refer to TABLE 2*); with majority of the women having migrated for work from the States of Bihar and Uttar Pradesh (*Refer to TABLE 2A*). Demographic information regarding migration was sought in view of the fact that migrant women often face double discrimination – as women and as migrants - including sexual harassment in the workplace.



II. STATE/ LCC DISTRICT PROFILE

i. **DELHI** : Delhi is the capital of India, and there is a general perception that working and living conditions in Delhi in comparison to other States, are much better. Delhi as per Census 2011 reported the highest percentage of female main workers i.e., 90.3 per cent. Delhi and Odisha are reported to having the same share of factory employment (2 per cent) but Delhi has a much higher share of unorganised employment in manufacturing. Women are easily able to find work in the national capital and according to govt. data 1,00,472 women are informal labour, accounting for 45 per cent of the total female workforce.³¹ Despite being the capital city of the country, and arguably the most 'developed and forward'

³¹ Gupta Poorvi, Women Labour account for 11% in Three Sectors in Delhi: Govt. Data; March 3, 2018. shethepeople Women's News Channel. Available at <https://www.shethepeople.tv/news/women-labour-delhi-11-percent-data>



region in the country, it is distressing to note the unsatisfactory condition of the LCCs. LCCs are virtually non-functional and even where nodal officer had been appointed he is totally unaware of his nomination. Further, it was seen that women in the vicinity were not even aware that their existed a LCC in their area, least of all being aware of the process involved in making a complaint.

In Delhi selected are two LCCs from Districts having totally opposite development and literacy levels.

a) District South East - The posh, high-income South East Delhi is well developed and has easy access to public transportation including the metro line. Administratively, the district is divided into three subdivisions- Defence Colony, Sarita Vihar, and Kalkaji. The commercial hub of the District is Central Market (Lajpat Nagar), a shopper's paradise for clothes, jewellery and homeware; and includes a large number of office spaces. The District has a sizeable population of women workers in the unorganised sector.

b) District North East - Densely populated North East Delhi, a semi urban area comprising a number of villages, and slum clusters, is less developed in comparison to other districts of Delhi. Villages in North East Delhi are divided into three administrative units -Shahdara with no sub-villages, Seemapuri with one sub village, Mandoli, and Seelampur with twelve sub-villages. Major portions of the population in this district are migrants from the neighbouring states of UP, Haryana, Punjab, Uttaranchal and Bihar. In 2001, Delhi's literate population comprised close to 82 per cent, much higher than the national average of 65 per cent. Almost 75 per cent girls and women above the age of 7 could read. However, North-East district remained the worst performer with 77.5 per cent over all literacy figures.³² North-East Delhi is also home to a number of other home based industries and a large number of women are engaged in bindi making, assembling of machine parts, sticking stone on bangles, embroidery on jeans, burqas and scarfs, fitting of cork in the metallic bottle caps and waste picking. Reiterated is the condition of women predominantly in home based industries and the exploitative working conditions many of them are compelled to endure.

ii. HARYANA : One of the most prosperous states of India, Haryana has one of the highest per capita incomes in the country. According to the Census 2011 females constitute 46.77 per cent of population in Haryana, but their work participation rate is 17.79 per cent (20.8 per cent in rural sector and 12.1 per cent in urban sector. Moreover, there are high disparities in districts - from negligible

³² *Baseline Survey of North-East District, NCT Delhi.* Minority Concentrated Districts Project, Ministry of Minority Affairs, Govt of India, Jamia Millia Islamia, New Delhi. P 26,69. Available at <http://icssr.org/sites/default/files/districts/Baseline%20Survey%20of%20North%20East%20Delhi.pdf>

5.71 per cent in Yamuna Nagar to 19.82 per cent in Gurugram and almost equal to male in Mahendergarh (49.14 per cent). On one hand, the State has made advancements in the field of education; yet on the other hand it has the worst child sex ratio in the country, with a declining female labour force participation. The statistical invisibility of women in the workforce in Haryana is tellingly illustrated by a study conducted by the NCW in which quoted is an analysis of women's work pattern on farm and dairy which revealed that women played a key role (as unpaid workers) in dairy as well as agricultural production. There is a need for re-defining the concept of 'worker' and giving a monetary status for these activities. These should also be reflected in Gross National Product. With regard to the question of LCCs, this report notes that the LCCs in Haryana were functioning with meagre resources, but a zeal for the cause. Further, only women in the formal sector (organisations having more than 10 employees) were aware of the existence of LCCs in Haryana. This is indicative of one of the many issues at hand.

In Haryana selected are 4 District LCCs – Panchkula, Gurugram, Faridabad and Palwal.

a) Panchkula - Haryana has two growth centres, one located around the national capital, while second is located around the state capital Panchkula. The highest female literacy rate in Haryana is found in Panchkula at 77.48 per cent, followed by Gurugram (77.64), Ambala (76.64), and Faridabad (75.17).³³ The female workforce participation rate is 17.8 per cent as against the male rate of 55.

b) Gurugram and Faridabad – The commercially prosperous districts of Gurugram and Faridabad (in addition to Panchkula, Panipat, Rewari and Ambala) contribute to Haryana having the highest per capita income. Surprisingly, even the agriculture sector has done extremely well in Gurugram and Faridabad, which are known for industries and services. The female workforce participation rate is 16.1 per cent as against the male rate of 53; and 12.1 per cent as against the male rate of 49.4 respectively in Gurugram and Faridabad.

c) Palwal – Newly carved out as an independent district in 2008, Palwal has 282 villages. The sex ratio is 880 females per thousand males as against the national average of 943. The district displays low female literacy (56.4 per cent) principally on account of its backward economy and low socio- economic development. Due to intensification of agriculture, the demand for labour has increased resulting in children belonging to scheduled caste communities remaining away from schools. The female workforce participation rate is 13.9 per cent as against the male rate of 43.5.

³³ *Census of India 2011, Primary Census Abstract, Haryana*, Directorate of Census Operation, Haryana, Chandigarh.



iii. **ODISHA** : Endowed with nature's bounty, Odisha has a 482 km stretch coastline of virgin beaches, forest-clad blue hills of Eastern Ghats with rich wild life. The State's gross state domestic product (GSDP) is projected to grow at the rate of 7.14 per cent in 2017-18, higher than the national average of 6.5 per cent.³⁴ With a 22 per cent tribal population,³⁵ women workers are found more in primary sector such as agriculture, forest produce collection, fisheries, and infrastructural sector such as construction work, brick kiln. The proportion of women in total main workers has increased to 17.87 per cent in 2011, while the proportion of women marginal workers as compared to total marginal workers has declined from 85.80 per cent in 1981 to 54.52 per cent in 2011. The Districts are vast and varied ranging from well-developed business centres to remote villages, each having different social/geographical conditions, making it virtually impractical for one LCC to cater to the entire district. As a result, LCC members as social workers on their personal level do some counselling, but neither are they able to cover the entire district nor are women in different villages of the district aware of their existence; so the question of women having faith in the working of the LCC does not even arise. Despite limitations, it was only seen in Odisha that the Collector makes special effort to familiarise the LCC CP/Members with their role and responsibility on joining.

In Odisha selected are 5 District LCCs – Cuttack, Jagatsinghpur, Jajpur, Kendrapara and Khurda.

a) **Cuttack** - One of the oldest Districts of Odisha, Cuttack, is known as the business capital of Odisha. The sex ratio of the district is 940 female per 1000 male, but the city has a lower rate at 930; and as per the 2011 Census, female literacy rate in the district is 79.55 per cent against 91 per cent in Cuttack city. A major contributor towards the District's economic growth is export of cash crops. Revenue generators include the renowned silver filigree work, horn work, pattachitra, and dokra casting. In case of male labour force, Cuttack (52.2 per cent) is among the bottom five districts, with Puri (75.7 per cent) district reporting the highest participation rate as against the All Odisha (urban) rate of 58.2 per cent. Cuttack also occupied the lowest position in female labour force participation rate (LFPR) at 4.3 per cent.³⁶ What is alarming is that the rural female LFPR was almost one fifth of the rural male LFPR at all Odisha level.

³⁴ Odisha Economic Survey 2017-18, Planning and Convergence Dept, Directorate of Economics & Statistics, Govt of Odisha, March 2018. Available at https://pc.odisha.gov.in/Download/Economic_Survey_2017-18.pdf

³⁵ Available at <https://www.odisha.gov.in/content/land-and-people>

³⁶ *District Level Employment and Unemployment Situation of Odisha, Based on Pooled Data of Central & State Sample Of 68th Round NSS (2011 -12)*, Directorate Of Economics & Statistics Government Of Odisha. Available at http://www.desorissa.nic.in/pdf/emp_unemp_68nss.pdf

b) Jagatsinghpura - Earlier part of Cuttack, Jagatsinghpur has 8 Blocks, 8 Tehsils, 1320 villages, 194 Gram Panchayats and 13 Police stations.³⁷ According to the Census 2011, it ranks first in the State with 88.96 per cent male literacy rate, and is second in female literacy rate at 69.94 per cent after Khurda District. The participation of women in every tier of Panchayati Raj system is more than 50 per cent and out of the 26 Zila Parishad members 15 are women (57 per cent). The District is predominantly agrarian, with a section being engaged in fishing as allied activity. The handicraft and cottage Industries sector plays a vital role in the empowerment of women by creating large scale employment ie. self-employment with a lower capital investment.

c) Jajpur - Carved out of Cuttack District, Jajpur has 10 Blocks, 10 Tehsils, 1781 villages, 311 Gram Panchayats and 19 Police stations.³⁸ According to the Census 2011, the male literacy rate is 86.84 per cent, and female literacy rate at 73.29 per cent. In urban Odisha, Jajpur reported the highest sex ratio (1261).³⁹ The economy is primarily agrarian, however due to the district being rich in mineral deposits, mining plays a dominant role. The presence of large companies in the district has resulted in many upcoming residential projects, and women work as labour in construction sites and factories. The district has a large number of migrants from Bihar, Jharkhand, Chattisgarh and within Odisha itself. Not surprising Jajpur has the lowest unemployment rate (about 2.5 per cent) after Mayurbhanj (1.7 per cent), Koraput (1.9 per cent).

d) Kendrapara - Situated in the eastern portion, Kendrapara a coastal region is prone to natural disaster and cyclones. The sex ratio is 1007 females for every 1000 males,⁴⁰ literacy rate at 85.93 per cent and agriculture the main source of income. As per the NFHS -3, 2005-06 data women's participation in household decisions in India is very low; but such was not in case of the state of Odisha, which has a fairly good participation of women. In Kendrapara household decisions are taken jointly, and influence of education cannot be overlooked. Women migrants also display education levels better than the rest and their participation in household decisions is also apparent.⁴¹ Majority of the women are engaged in outside employment, where they normally go in groups, for they are advised by their families to take somebody along when venturing outside the village. A primary survey carried out in Kendrapara (Koraput and Sambalpur) shows a

³⁷ Available at <https://jagatsinghpur.nic.in/about-district/>

³⁸ Available at <https://jajpur.nic.in/demography/>

³⁹ Supra note 36

⁴⁰ Kendrapara District: Census 2011-2019 data. Available at <https://www.census2011.co.in/census/district/403-kendrapara.html>

⁴¹ Kasturi Bhadra Ray, *Status of Women Migrants*. Smriti Publishers, 2016.



positive attitudinal change towards female work. In majority of households women now enjoy autonomy with respect to decision making and are allowed to take decisions independently on many household related issues.⁴²

e) **Khurda** - The district has been divided out from Puri, and has 1546 villages, 190 Panchayats, and 5 urban bodies. Bhubaneswar, the state capital is located in Khurda, which is considered the most urbanized district of Odisha. Khurda is also an important centre of the handloom industry, and temple tourism, and now with major IT parks being built a tremendous thrust has been given to it's economic development.. The sex ratio of the district is 929 per 100 males, and literacy rate is 81.61 per cent for females as against 91.78 per cent for males. In urban Odisha, Khurda district was the highest populated district with a share of about 18 per cent to total state rural population (18 per cent male & 17 per cent female),⁴³ however it is placed at the bottom most position with the lowest WPR (Worker Population Ratio) at 28.1 per cent, after Kendrapara (24.8 per cent).

III. DISTRICT OFFICER

Under the POSH Act, 2013, the State Government is empowered to appoint a District Officer (DO) for each district in a state, who is responsible for appointment of members of the LCC. As per Section 5 –

“

5. Notification of District Officer. The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

”

Subject states have designated different authorities like Collectors, Deputy Collector, District Magistrates, Additional District Magistrates as DO. To know the relevant DO of a particular district, reference can be made to the notification issued by the concerned State Government. However, it may be pointed out that it is not easy to locate the notification. In the states under study the notifications

⁴² Dr P.P.Sahu, *Changing Perspectives of Women's Work and Decline in Female Labour Force Participation Rate in Rural India: A Case of Odisha*, P4. Available at http://nirdpr.org.in/nird_docs/srsc/srscrr-rh-261016-7.pdf

⁴³ Supra note 36.

regarding notification of the District Officer have been accessed through the internet, as given below :

DELHI	DISTRICT MAGISTRATES (DEPUTY COMMISSIONER OFFICE) as per order F.No. 60(198)/DWCD/WES/LCC/2014-15/23 dt 11.5.18.
HARYANA	DEPUTY COMMISSIONER as per order No. 371SW(1)2015dt9.03.15
ODISHA	COLLECTOR of each district as per notification No 23399 dt 7.12.2013 of the Women & Child Department. http://www.foododisha.in/Download/SexualHarassmentEnglish.pdf

GAPS

i. **DO inaccessible** : The District Magistrate is the overall in charge of every important official activity in the district, and coordinates the activities of all government departments which function in the district i.e. public health, agriculture, public works, irrigation, education and cooperation. The existence of plurality of departments at the district level, and the multi- dimensional functions; ranging from playing the role of Chief Returning officer to functioning as the District Census officer, make the District Magistrate overburdened. In such a situation, on the District Magistrate/DC/Collector being appointed as DO to exercise and discharge functions under the POSH Act, they are unable to do justice to the role. All the LCC CP/Members interviewed echoed the same view that DC is inaccessible, nor do they take proactive approach to find out how the LCC is doing/it's problems etc. Infact, former Chairperson LCC Gurugram alleged that inspite of LCC recommending action, the DC delays in implementing the same, as a result of which women end up exhausting themselves by making rounds to know the status of their complaint.

The District Magistrate Delhi SE during the interview was candid enough to admit that she interacted with the LCC only once in a couple of months due to involvement in work. However, she had nominated an SDM as coordinator, who worked as sufficient link so that appropriate action could be taken whenever required. On being interviewed he also admitted that multiple charges makes his involvement difficult, however he tries his utmost. Overload of work and multiplicity of responsibility was the reason given in other states also. In addition, frequent transfers of officials pose a problem. Collector Cuttack who had recently taken charge did not appear well versed with the working of the LCC and said he would get back after enquiry. While Collector Khurda remembered meeting the LCC CP few months back but could not recall the nature of interaction.

ii. **No liability** : There is no liability for failure to constitute LCC as per law. According to Section 26 an employer is liable to pay fine upto Rs. 50,000/- on failing to constitute an ICC and action taken under sections 13, 14 and 22; but there is no such liability on the State nor DO. Further, the District Officer responsible for the payment of allowances to LCC Members as per Rule 4 of the POSH Act, is easily able to escape responsibility, because the act does not provide for any punitive action in the event of default.

iii. **Single DO insufficient** : As per the Act, the appropriate govt. may notify a DO for every district to exercise powers or discharge functions under the POSH Act, ie. mainly the constitution of the LCC. A single DO is insufficient and the Act has been criticised as being urban centric. Panellists from Odisha⁴⁴ decried that the legislation does not take into consideration States like Odisha which has 33 districts. Except for Boudh, most of the districts are spread over a large land mass, and for an uneducated poor woman who can barely manage to eke out a living, it is a herculean task to travel all the way to the district headquarter, to file a complaint. Neither the Act nor Rules take into consideration her loss of income in appearing before the LCC. Neither is there any provision for diet money or allowance in the POSH Act.

IV. CONSTITUTION OF LCC

Section 6 of the POSH Act, states-

“

6. Constitution and jurisdiction of Local Complaints Committee. Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been instituted due to having less than ten workers or if the complaint is against the employer himself.

”

⁴⁴ SAFMA Workshop, *The Way Ahead - Prevention of Sexual Harassment*, Odisha, March 18, 2019. View of panelists Ms. Namrata Chadha Board Member of Juvenile Justice Board, Khurda during Pre-Workshop session on *How to make the LCC More Effective- Problems & Solutions*, Chaired by Ms. Jyotika Kalra, Hon'ble Member NHRC. Other panelists included Ms. Nirmala Kumari B.J. Manager Program, World Vision India; Mr. Manoj Kumar Jena, Member Core Team on Human Rights, NHRC; Ms. Anuradha Mohanty, Chairperson Khurda and Executive Director PECUC; Ms. Rina Rautray, Chairperson Odisha Gandhivadi Forum, social activist having knowledge of labour law; Ms. Rutuparna Mohanty Founder Maaghar; Sh. Sanjeev Marik IPS, Former Director General of Police (DGP); Ms. Trilotama Dash, LCC Chairperson Jagatsinghpur and renowned social worker. Booklet "Chuppi Todo" giving information of the POSH Act in Oriya was released by the Chief Guest, Ms. Jyotika Kalra Hon'ble Member NHRC who also addressed participants.



GAPS

i. **LCCs not constituted** : It is most unfortunate that inspite of passage of over six years, yet still LCCs have not been constituted in all states, that even the Supreme Court had to intervene in the matter. Information regarding constitution of LCCs has been sourced through a number of methods including judgements of the court, RTI applications to the subject State governments, State Women's Commissions and other authorities, the summary of which is below.

a) **Court Intervention** - In a public interest litigation in the Supreme Court of India titled *Initiatives For Inclusion Foundation v Union of India & Others*, it was averred that that the affidavit filed by the Union of India did not take care of all the assertions made in the petition and also did not focus on certain statutory provisions of the POSH Act, pursuant to which Supreme Court directed all States to file their respective affidavits focusing on the compliance of the POSH Act. The matter is still pending in Supreme Court and was last listed on May 3, 2018, when adjournment was sought.

Subsequently the Ministry of Women & Child Development (Women Welfare Division) wrote to State governments seeking compliance report in respect of constitution of LCCs. Further to which the Press Information Bureau, Govt of India, Ministry of Women and Child Development,⁴⁵ issued a press release stating that 29 States/UTs have notified District Officers and constituted LCCs. It also stated that the Ministry has launched an online complaint management system titled Sexual Harassment electronic-Box (SHe-Box) for registering complaints related to sexual harassment at workplace of all women employees in the country, including government and private employees. In addition, in order to create wide spread awareness about the Act across the country, both in organized and unorganized sectors, Ministry of Women and Child Development has identified a pool of 223 Resource Institutions to provide capacity building programmes i.e. training, workshops, etc, on the issue of sexual harassment at workplace.

The MWCD instead of strengthening the already constituted LCCs came out with a alternate mechanism the SHe-Box (Sexual Harassment electronic Box), and web site (www.shebox.nic.in) with page on how to register a complaint. It appears to be very simple for all a woman needs to do is click on the register your complaint tab and choose the category to which she belongs – govt. (central or state) or private- and fill all the fields of the registration form and press the submit button.

⁴⁵ 29 States/UTs have notified District Officers and constituted Local Complaint Committee under Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013: Dr. Virendra Kumar. Press Information Bureau, Government of India, Ministry of Women and Child Development, July 30, 2018. Available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=181217>



Women are under the impression that the SHe-Box is a redressal mechanism which will provide them immediate relief. However the harsh reality is that the SHe-Box complaint forwards the complaint to the existing LCC in the State/District, and finally the complaint reaches the LCC almost after 6 months. It must be mentioned that for registering complaints through the SHe-Box, a valid email id is required, an almost impossibility for a large number of women in the unorganised sector. According to information given by the WCD Minister, in a written reply in the Rajya Sabha on 25.07.2019 the total number of complaints received through SHe-Box is 612 which includes 196 from Central Govt., 103 from State Govt. and 313 from Private organizations. Further no result are seen of the Ministry's efforts, if any, to create wide spread awareness about the Act across the country, both in organized and unorganized sectors. There still is no clarity among women in the workforce as to what constitutes sexual harassment at workplace, and nor are they aware of the redressal mechanism or whom to contact. The official website of the Ministry would have been the most appropriate place to provide women information of the LCCs, however neither does the section on external links nor associated organisations contain any information/details of LCCs constituted in the different districts of States.

b) Information through RTI - For the purpose of the study RTI applications were filed with the concerned Public Information Officers (PIOs) in the Women and Child Development Department/District Magistrate/Deputy Commissioner Office of all the three subject states. Not only did they ignore the information sought even after the mandatory 30 days, but also in many cases vague or insufficient replies were given. Many application were transferred/forwarded/tossed around to other PIOs. It is pertinent to mention that the RTI Act empowers the citizen to procure information from public authorities, but frequently, as in the present case Public Information Officers to whom the application had been submitted did not reciprocate as per their duty, laid out in the Act.

Delhi - RTIs were filed with all District Magistrates in Delhi, however no response has been received. The DM Offices transferred RTI to various SDM offices in it's jurisdiction, namely SDM (HQ), SDM (Kotwali), SDM (Karol Bagh), and SDM (Civil lines). RTI reply from Delhi Commission for Women (DCW) was received with Observation/remark of the In-Charge, Rape Crisis Cell stating that the information does not pertain to DCW, and the said RTI has been forwarded to PIO Police Headquarter, Delhi. The apathy is most unfortunate since the DCW itself receives a large number of complaints of sexual harassment. According to news reports the DCW Chairperson expressed sadness over the fact that even after two years of the passage of the Act, the DOs and LCCs have not been notified in the city till date. "There has already been a considerable delay in this regard. It cannot be

overemphasized that the Act virtually exists on paper and steps are yet to taken for its effective implementation,” she said in her letter to the Lt Governor, adding, the Commission has been receiving a large number of complaints regarding sexual harassment at workplace.⁴⁶

Replies have been received from the different Offices of the PIO-cum Additional Deputy Commissioner of Police (to whom the RTI was forwarded) giving information on constitution of ICC and number of cases, which however do not pertain to the present study.

Haryana - The most efficient state in responding to RTI applications is Haryana. Refer to *TABLE 3* for responses received from State/District PIOs.

TABLE 3		
AMBALA	LCC constituted	1 Complaint received. No pendency
BHIWANI	LCC constituted	Complaint received NIL
FARIDABAD	LCC constituted	3 complaints in last 5 years. 2 under process.
FATEHABAD	LCC constituted	2 complaints in last 5 years. Disposed off
GURUGRAM	LCC constituted	67 complaints received. 4 Pending
HISAR	LCC constituted	2 complaint received. 1 Pending
JIND	No detail	2nd returned due to incomplete quorum NO complaint received in last 5 years RTI forwarded to a ll State bodies and replies received ranging from Public Health Engineering Division, to Departments of Labour, Farmer Welfare, Forest etc., and from schools to police.
KAITHAL	LCC constituted	NIL Complaint received.
KARNAL	No detail	1 complaint in 2014. Disposed off
PANCHKULA	LCC constituted	NIL Complaint received
PANIPAT	LCC constituted	NIL Complaint received
REWARI	No detail	1 complaint in last 5 years. Disposed off NO case from poor, uneducated & rural woman
ROHTAK	LCC constituted	NIL Complaint received

Odisha - RTIs were filed with the Office of the Collector and District Magistrate of different Districts in Odisha, and also Commissioner-cum-Secretary Women and Child Development Department Secretariat, Bhubaneswar, and PIO Orissa State Commission for Women. No information was received, and the RTIs have been transferred or returned with vague objections like application not completed in all

⁴⁶ *Delhi govt proposes setting up 'Local Complaints Committee' to help those facing sexual harassment*. First Post Jan 31, 2016. Available at <https://www.firstpost.com/india/delhi-govt-proposes-setting-up-local-complaints-committee-to-help-those-facing-sexual-harassment-2605374.html>



respect, or not in prescribed format or not given copy of ID proof. Notable is the fact that the PIO has no authority to ask reasons for seeking information, nor any other personal details, except those that may be necessary for contacting the applicant. Also, the Rules do not prescribe any format of application for seeking information, therefore, no applicant can be asked to give justification for seeking information or to submit application in any particular form. Letter dated 31.10.2018 sent by Officer on Special Duty has been received on 08.07.2019 with postal stamp dated 05.07.2019, forwarded to PO Home department, Govt of Odisha stating that since the LCC is functioning at the District level, information sought may be collected from the concerned District officers and supplied to the applicant directly under intimation to their office.

ii. Women's Commissions : Neither National nor State Commissions constituted to safeguard rights of women, showed any willingness to share information.

Delhi – Reply of DCW bears the observation/remark of In-charge, Rape Crisis Cell DCW - *"Information does not pertain to DCW,"* - and the RTI has been forwarded to PIO Police Headquarter, Delhi. This is in contradiction of the stand taken by the DCW Chairperson, quoted earlier, as writing in a letter the Lt Governor, Delhi that the Commission has been receiving a large number of complaints regarding sexual harassment at workplace.

Haryana - Haryana State Commission for Women, Panchkula responded that information sought did not related to their office, and may be obtained from concerned LCC constituted by DC or District.

Odisha - No reply has been received from State Commission for Women, Odisha.

V. COMPOSITION OF LCC

In order to know whether the composition of LCC is in accordance with the Act, examined is Section 7 of the POSH Act, which delineates the composition, tenure and other terms and conditions of the LCC. Section 7(1)(a)states that the LCC -

“

Shall consist a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women; provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

”

In all the subject states, LCCs have been constituted by the notified DO, and the CP/Members appointed all have an excellent track record of social work and gender issues. In Delhi, Haryana and Odisha the subject LCC CP comply with S.7(a) i.e. eminent women in the field of social work and committed to the cause of women. However, nomination of neither the Chairperson nor members is done through a transparent process seeking applications through open advertisement, as confirmed through interviews with DM and LCC members. In all subject states provisions of Section 7(1)(d) had been complied with and the concerned officer dealing with the departments of social welfare or women and child development in the district, is ex-officio member.

GAP

i. **Composition not as per Act** : Discrepancies in the constitution of the LCC have been observed for some do not include representation from the SC/ST/OBC or minority community. Further the second proviso to Section 7(1)(c) is frequently not complied with, which specifically states that at least 1 of the nominees should, preferably, have a background in law or legal knowledge. It is clarified here that it is not necessary for the member to be an advocate, and any person who has sufficient legal knowledge about laws related to sexual harassment can be appointed as well.

In Delhi the LCC constituted for District South East, for a long time had vacancy of Scheduled Caste category member, before fresh nomination was made. Interview with the DM revealed that it took them some time to find suitable candidate. Had a transparent procedure been followed and appointment made by advertising the post, this problem may not have arisen. Further the same LCC does not include person with legal background, and this lack of expert having domain knowledge is proving a drawback for the committee in handling cases. The Chairperson informed the research team that she had made request to the DC for providing a legal expert.

In the subject LCCs in Haryana there was a member having a legal background, whereas in the case of the subject LCCs Odisha either the Chairperson or Members had knowledge of law, by virtue of qualification or work experience.

Another shortcoming is the frequent changes in ex-officio members, which results in vacancies and the quorum being incomplete. As can be seen from *TABLE 3* that in Hisar, Haryana due to the quorum not being complete a complaint had to be returned. Whereas in District Jagatsinghpur, Odisha the CDPO has changed and officer holding temporary charge is officiating as CDPO. In short she is now holding three charges, her own work, the additional responsibility of officiating as CDPO

and thirdly as Presiding Officer to the LCC. The same was case in Cuttack where the PO had changed and was not the same as mentioned in the notification. In the case of the Jajpur LCC the ex officio member belongs to SC category, and there is no independent SC category member. Thus in case of transfer of the ex-officio member the committee may be deprived of the special category member.

TABLE 4

DELHI	HARYANA	ODISHA
DIST SOUTH EAST 1 Chairperson - F 3 NGO Members –2 F+1M 1 Ex-officio Member-F NO SC/ST/OBC/Minority NO Member Legal NO Nodal officer	PANCHKULA 1 Chairperson - F 1 NGO Members – F 1 Member Legal-F 2 Ex-officio Member-F NOSC/ST/OBC/Minority NO Nodal Officer	CUTTACK 1 Chairperson - F 2 NGO Members – 1 F+1 M(SC) 1 Govt. Member -F 1 Ex-officio Member-F NO Nodal Officer
DIST NORTH EAST 1 Chairperson - F 1 NGO Members –1M 1 Member SC/ST - F 1 Ex-officio Member-M 3 Nodal Officers 1 Member Legal -F <i>Note: CP LCC said NO legal expert. But notification has mention, although phone number of unknown person.</i>	FARIDABAD 1 Chairperson - F 3 Members – F 1 Member Legal-F 1 Red Cross Sec-M/F 1 Ex-officio Member-F NOSC/ST/OBC/Minority NO Nodal Officer	KENDRAPARA 1 Chairperson - F 1 Member - F(SEBC) Tehsildar 2 NGO Member - 1 F+ 1 M(OBC) 1 Ex-officio Member - F No Nodal Officer
	GURUGRAM 1 Chairperson –F 1 NGO Member – F 1 Member Legal-F 1 Ex-officio Member-F NOSC/ST/OBC/Minority 35 Nodal Officers	KHURDA 1 Chairperson - F 3 NGO Members – 1+ 1 F(ST)+1 M 1 Govt. Member -F 1 Ex-officio Member-F Nodal Officer- No Clarity*
	PALWAL 1 Chairperson –F 1 NGO Member – F 1 Member Legal-F 2 Ex-officio Member-F NOSC/ST/OBC/Minority NO Nodal Officer	JAGATSINGHPUR 1 Chairperson - F 2 NGO Members –2 F 1 Ex-officio Member-F(SC) NO independent SC/ST/OBC/Minority member NO Nodal Officer
		JAJPUR 1 Chairperson - F 3 Members – 1 F(SC)+1 M + 1 M (OBC) 1 Ex-officio Member-F NO Member Legal NO Nodal Officer
		<i>*Note- According to CP Nodal officer is Sub Collector & CDPO. According to PO – CDPOs-13 nos.</i>

ii. **Lack of Nodal Officers** : According to the Act, the District Officer will designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned LCC within a period of seven days. This is important because the Act envisages a doorstep delivery mechanism, where the nodal officer arrives at the woman's doorstep to assist her in filing complaint and she does not have to undergo the trauma of going from office to office to register her complaint. Unfortunately even where nodal officers have been nominated they themselves are not aware of the existence of LCC or their own role.

a) **Delhi** - In District South East no nodal officer has been appointed, while District North East has three. The villages in District North East Delhi are divided into three administrative villages: Shahdara with no sub-villages, Seema Puri with one sub village, Mandoli, and Seelampur with twelve sub-villages. The notification mentions 3 Nodal Officers- Tehsildars/Executive Magistrate of Karawal Nagar, Yamuna Vihar and Seelampur (Seelampur). The Executive Magistrate Karawal Nagar and Yamuna Vihar both sit in the DC Office Nand Nagri and were totally unaware of their nomination. The Executive Magistrate Seelampur sits at the SDM office, GT Road, Seelampur and although he was aware of the notification 'filed somewhere', but had no idea of his role since he had been given any training nor called for any LCC meeting. He had not been informed of his role and duties, nor had he received any complaint so far.

b) **Haryana** - In Haryana no nodal officer had been nominated in the districts of Panchkula, Palwal or Faridabad. However, on interviewing the CP LCC Gurugram (now former), she stated that the notification did not mention any nodal officers, but in order to make the LCC accessible to grass-root level women she on her own accord appointed committed persons as nodal officers. Her successor has taken this initiative to a higher level and identified 35 nodal officers whose names and contact numbers are mentioned in the LCC website. However, till May 2019 only 1 complaint had been received through a nodal officer.

c) **Odisha** - In Odisha no nodal officer had been nominated in the subject districts. The importance of nodal officers is accentuated, in view of the fact as stated earlier that districts in Odisha are vast and spread out, and women from remote villages work from day to night as contract labour in mines and construction sites to earn a living. To file a complaint of sexual harassment with the LCC in the district headquarter only means more travel and loss of daily wages. Cognizant of this fact and in order to reduce her trauma, both mental and physical, the legislation has made provision for a nodal officer in every block, taluka and

tehsil, whose role is to facilitate the woman making a complaint at her doorstep, and forward the same to the concerned LCC within a period of seven days.

There is even lack of clarity as to who is the nodal officer, since on one hand the CP LCC Jajpur stated that the Sub collector is first nodal officer and second the CDPO; while on the other hand the CDPO said that there are 13 nodal officers since all 13 CDPOs have been appointed as nodal officers.

iii. Lack of awareness among women of LCC/nodal officer : Simply constituting a LCC may be the first step towards legal compliance, but that is not sufficient and will remain merely symbolic unless awareness is created among the women whom the law intends to protect and provide a redressal mechanism. It is reiterated that the legislative intent can only be achieved when the aggrieved woman and the LCC members both proactively address the problem effectively. In other words, the LCC should be easily accessible to women; and in case women are subjected to sexual harassment at the workplace, they should not only be aware of the LCC as a forum of redressal, but also be able to impose confidence in the LCC. In this context an important suggestion to make the LCCs more effective was made by CP LCC Jajpur, Odisha who suggested conducting of meeting atleast twice a week to create awareness.

The present state of ignorance is reflected in an informal interaction held with the Ganjam Bar Association (19.03.2019) at Beharampur Court complex which has 21 courts. The Secretary of the Association proclaimed that no ICC has been constituted and wanted to know procedure for doing the same. He also stated that the Ganjam District Court has a committee, however there is no representation from the Bar, which is in contradiction with the information available on the website⁴⁷ which clearly mentions inclusion of advocate in the ICC. When there is such a lack of awareness among lawyers, who are in the profession of enforcement of rights, then it is not at all astonishing that ordinary women in the unorganised sector are totally ignorant of specially constituted redressal forums. Notable is that educated and uneducated women workers, both have similar responses, as is reflected in the response of a women lawyer in Behrampur, District Ganjam Odisha who was worried, *“If the harasser is an advocate then how can I complain to ICC/LCC. I have to work here”*.

Awareness levels of women respondents in the 3 subject states were tested. 85 per cent of the sample were totally unaware of the LCC constituted in their District for redressal of complaints of sexual harassment at workplace. 15 per cent respondents who answered in the affirmative were also not clear as to which committee they were referring to. The nomenclature is misleading since in almost

⁴⁷ Available at <https://districts.ecourts.gov.in/ganjam>

every locality there is a 'local committee'/NGO which has no remote connection with the LCC under the POSH Act. When respondents are unaware of the LCCs, it is illogical to expect them to know about it's role or functions (*Refer to TABLE 5C & 5D*) or the time limit within which a complaint can be made (*Refer to TABLE 5B*).

TABLE 5A

743 RESPONSES

Are you aware that a Nodal Officer in every block, taluka and tehsil shall be designated to receive complaints and forward to LCC within 7 days?

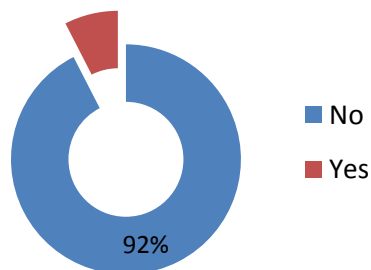


TABLE 5B

743 RESPONSES

Do you know the time limit within which you can make complaint of sexual harassment to LCC?

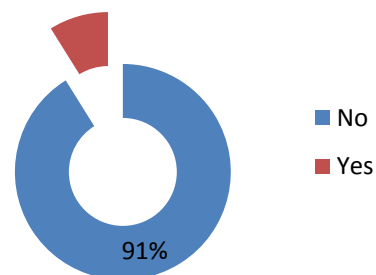


TABLE 5C

743 RESPONSES

Are you aware that LCC can assist you settle the matter with the respondent, if you so desire?

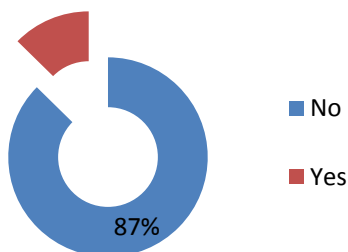
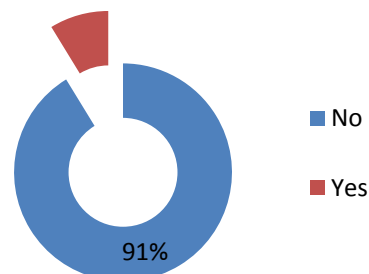


TABLE 5D

743 RESPONSES

Are you aware that if you cannot make a complaint in writing it is the duty of the LCC to assist you in making complaint in writing?



VI. ALLOWANCES AND FINANCIAL GRANTS

Provision for professional services rendered and transport allowance is made in Section 7(4) of the POSH Act, which states –

“

The Chairperson and Members of the LCC other than the Members nominated under clauses (b) and (d) of sub-section (I) shall be entitled to such fees or allowances for holding the proceedings of the LCC as may be prescribed.

”

In addition, Section 8 makes provisions for the Central Government to transfer funds in the form of grants to the State Government for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7. The State Government may set up an agency to receive grants from the Central Government and which in turn:-

- a) Shall pay to the District Officer the required sum of money to be paid as allowances and fees for the Chairperson and members.
- b) Is required to maintain its audit and accounts in consultation with the Accountant General of the State. The agency is also liable to furnish an audited copy of its accounts along with the auditor's report to the State Government.

GAP

All the aforesaid provisions of the POSH Act virtually exist only on paper and steps are yet to be taken for effective implementation. All the LCC CP/Members in Delhi, Haryana and Odisha emphatically stated that they had not been paid any honorarium, nor provided with any transportation/expenses. Reimbursement of travel cost is important, especially in a place like Delhi or Odisha, where long distances have to be traversed to reach the place of work/DC office, and can act as an incentive for the LCC to be more active by meeting more frequently, and holding more meetings. On one hand there are discussions advocating a universal basic income scheme for citizens, yet on the other hand eminent persons/members of the LCC who are working with passion and commitment are not being paid. The POSH Rules in Rule 4(1) provide for fees to be paid to the Chairperson and members of the LCC, according to which the entitlement is a petty Rs. 250/- for the Chairperson and Rs. 200/- for members. This daily fee is a token payment made to bestow recognition to an individual (eminent woman) for services performed, and reimbursement of travel costs incurred, and DO is responsible for

payment. Yet even this woefully inadequate amount is not paid, resulting in demotivating members to continue working or attend meetings (*Refer to TABLE 6*). DM Delhi District SE admitted that the fees acts as incentive for members to work in earnest, and the specified amount was quite low for a city like Delhi. Not surprising, CP LCC NW Delhi said she was in the process of resigning, while CP LCC SE Delhi has resigned. Even the LCC Member Jagatsinghpur, Odisha stated that an honorarium would be an incentive to hold/attend more meeting, while the Gurugram LCC former CP has been making request after request for payment of her dues for the last 3 years, including sending legal notices, but there is no response. Interestingly some of the LCCs held meetings just prior to giving the interview. The chart below shows the infrequent number of meetings held in the past two years:-

TABLE 6	
DELHI	
SE NW	Once a month depending on no. of cases. Last meeting- 25.02.19 Conflicting versions. CP said Once in 3 months. Member said NO meeting, not even introductory meeting.
HARYANA	
Faridabad Gurugram Palwal Panchkula	3 meetings since May 2018. Last meeting- 28.02.19 Atleast once a week Once/twice a year Conflicting versions. CP said no case so no meeting. PO said 5-6 in last four months
ODISHA	
Cuttack Kendrapara Khurda Jagatsinghpur Jajpur	2-3 meetings in past 2 years. Last meeting- 07.04.18. 1 case in 2018 and NIL in 2019. Infrequent. Last meeting- 14.01.19 Two times in past 2 years. Last meeting on 11.07.19 to hear a case. Once a month depending on no. of cases. Last meeting- 16.07.19 Two times in past 2 years. Last meeting- 11.07.19

INTERACTION BETWEEN LCC MEMBERS

In the absence of meetings, the LCC Members in Delhi SE, Faridabad and Gurugram interact with each other on a regular basis through a whatsapp group. A combination of technology and commitment is an effective way for Members to stay in touch.

The most efficient is the Gurugram LCC which activates the whatsapp group within 2-3 hours of receiving a complaint and communicate to each other the next course of action.



However credit goes to the Members of all the subject LCCs who inspite of constraints are working with commitment, and in contact with each other through telephone or whatsapp groups, specially Delhi SE and Faridabad and Gurugram.

VII. THE COMPLAINT

Women, often, silently suffer sexual harassment at the workplace, and do not complain, yet this form of gender based violence cannot be dismissed as harmless, for it involves serious health, economic and social costs which manifest themselves in the development indices of the country. Chapter 4 of the POSH Act deals with the complaint and Section 9(1) states –

“

9. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

”

The aggrieved woman, according to law, has the choice of making a complaint directly to the LCC; or to submitting a complaint to the designated nodal officer in her block, taluka and tehsil if she belongs to a rural or tribal area, and in case of urban area to the nodal officer of her ward or municipality; who will in turn forward the complaint to the concerned LCC within a period of 7 days. The jurisdiction of the LCC extends to the areas of the district where it is constituted.

It may be noted that the LCC is also empowered to inquire into complaints against the employer, since as pointed out by the Justice Verma Committee Report 2013 that it may be presumed since the ICC has been constituted by the employer, it may be subject to manipulation or be biased in favour of the employer.

It is pertinent to mention that neither of the subject LCCs have received complaints, nor handled matters of women workers from the unorganised sector, for the benefit of whom they have been constituted. In Delhi, Gurugram and Faridabad most of the complaints are from women working in offices having more than 10 employees and where ICCs have been constituted. The matters are handled giving an expanded interpretation to Section 6 which gives jurisdiction to the LCC if the complaint is against the employer himself. In Odisha similar is the case and complaints range from women office workers to government school teachers (Jagatsinghpur).

i. **Time Frame** : The complaint ideally should be made within 3 months from the date of the incident, however, this time frame may be extended to another 3 months if the aggrieved woman can prove that grave circumstances prevented her from reporting. The LCC has to record the reasons of delay. If there are a series of incidents then the complaint has to be filed within 3 months from the date of the last incident.

ii. **Form of Complaint** : Written assistance must be provided by the LCC to the woman if she needs help in writing the complaint.

GAP

The chance of the aggrieved woman approaching the LCC directly are very remote, since most LCCs have no physical presence in terms of office space or a permanent address (*Refer to TABLE 7*). Hence it is not astonishing that working women in the District/workplace are not even aware of the LCC. This finding underpins the need for the LCC/DO to introduce strategies to increase visibility (as suggested by LCC Jajpur) and accessibility.

TABLE 7	
Delhi SE	Board outside DC Office with names of Members. The telephone number 011-23471503 mentioned does not exist. The names on the board do not tally with the names in the notification (2016) nor the RTI response (2018).
Delhi NW	No Board displayed. However in the same complex is the Office of DC Shahdara and displayed are names of LCC Shahdara meeting. Not even introductory meeting.
HR Faridabad	Board displayed outside District. Child Protection Unit mentioning names of members, specially created email faridabadlcc@gmail.com, and telephone nos 0129-2265199, 9354069059
HR Gurugram	No Board displayed. To be put up shortly alongwith posters
HR Palwal	No Board displayed
HR Panchkula	No Board displayed. In spite of a large Board in Mini Secretariat displaying location of different offices, LCC not mentioned.
OD Cuttack	No Board displayed.
OD Jagatsinghpur	No Board displayed.
OD Jajpur	No Board displayed.
OD Kendrapara	Board displayed outside Offices of CDPO and DSWO.
OD Khurda	No Board displayed.

Most of the subject LCCs do not receive complaints directly from women but through the following sources:-

Delhi SE	SHe-Box, DCW referrals, and Vigilance Section in DC office marks complaints to LCC. Mainly from the organised sector
Delhi NW	NGO where the CP does counselling. District has number of slums and villages but outreach limited.



HR Faridabad	SHe-Box, Police and CM window so by the time complaint reaches it is already 1-2 months
HR Gurugram	Through SHe-Box and 1 from website poshgurugram.org -an initiative of the Chairperson who has funded it with her own resources. All complaints are from organised sector.
HR Palwal	No case. This is a small newly created district. The officers themselves not clear about procedures/systems. DLSA has done extensive work on compiling data on persons with special needs but has no presence on LCC.
HR Panchkula	No case
OD Cuttack	No case in 2019. One in 2018 through Collector.
OD Jagatsinghpur	Through Collector. Receive 5-6 cases.
OD Jajpur	One case through Collector
OD Kendrapara	2 cases. One against CDMO which was 'compromised'. Second from Collector's Office which was sent to ICC.
OD Khurda	No case in 2019. Two cases received in 2018 and same forwarded to ICC.

VIII. CONCILIATION

The LCCs can respond to a complaint of sexual harassment in two ways - Conciliation or Inquiry. The POSH Act empowers the LCC to take steps to settle matters through conciliation before initiating an inquiry and Section 10 states-

“

10. (1) The IC or, as the case may be, the LC, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

”

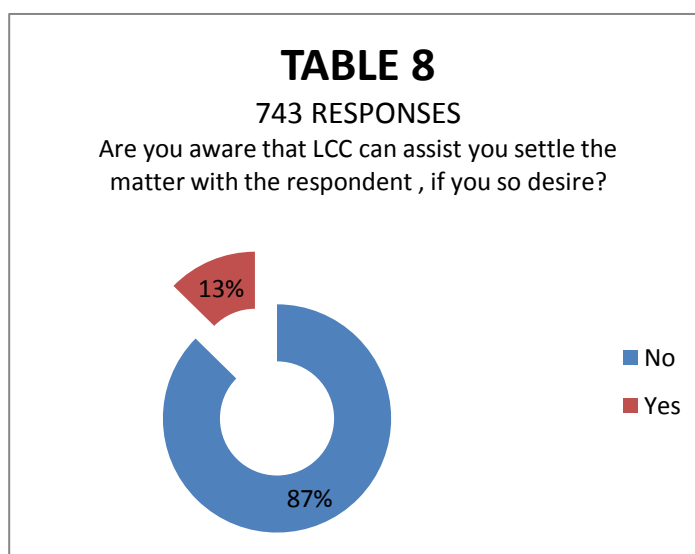
The conciliation can only initiated at the request of the aggrieved woman and money cannot be the basis of this settlement. Once the settlement has been agreed upon, a record of the settlement needs to be sent to the DO to take action as specified in the recommendation. The copy of the settlement should be sent to both the aggrieved woman and the respondent. When a settlement is arrived no further inquiry is conducted. However, if any of the conditions of the settlement are not complied with by the respondent, the proviso to Section 11(1) entitles the aggrieved woman to go back to the Committee for conducting an inquiry. The LCC CP/Members were interviewed on the scope and process for conciliation under Section 10, and the number of times they had resorted to this provision.

GAP

i. **Delhi** : District South East LCC reported that there were no circumstances for having to resort to S. 10. There was one case in which the woman herself withdrew the complaint presumably due to backdoor negotiations and settlement, but not through the LCC. In Delhi District North East according to the CP there was a complaint which got settled through a *mafinama* (apology) but no formal process was followed since no case had been registered.

ii. **Haryana** : According to the Gurugram LCC most of the complaints are from the organised sector. These cases do not strictly fall within their jurisdiction but when an aggrieved woman comes to them in a devastated condition they feel duty bound to help her. The LCC calls both the parties and clearly informs them that they are not the appropriate forum, and in case still both the employer and aggrieved woman want them to proceed, then the LCC assists in the settlement process. Similar was the case of Faridabad LCC which found that usually employers cooperate, and even the aggrieved woman feels more confident when the settlement takes place before the LCC, specially the *mafinama*. Both the LCCs of PALWAL and PANCHKULA have had no reason to invoke provisions of Section 10.

iii. **Odisha** : All the subject LCCs in Odisha felt that there is wide scope for conciliation under Section 10, however they had not received any such request, and only on women coming forward to report sexual harassment at the workplace, can the LCC initiate a conciliation/*samadhaan*. Example is case before LCC Khurda against the CDMO, which was 'compromised'. The CP LCC Jajpur opined that there is wide scope if the committee feels matter can be handled by conciliation, however proper steps need to be taken to sensitively settle matter between the aggrieved woman and respondent. This provision was prone to being misused and



former Member of the State Women’s Commission, Ms. Namrata Chadha, alleged that inspite of sending case with evidence to the LCC Khurda, they forcibly (*zabardasti*) made the woman compromise the matter. She was soon to get married and under fear of losing her employment she agreed to compromise. Empirical finding reveal that 87 per cent women respondents in the 3 subject states were unaware that the LCC has the powers to assist in settling the matter, between the victim and perpetrator. (*Refer to TABLE 8*). The 13 per cent who replied “YES” on further probing revealed that they were referring to local NGOs/mohalla panchayat/police who usually tried to settle the matter between the victim and the perpetrator of the gender based violence. Again the term ‘local complaints committee’ is creating confusion because there are multiple local bodies for women’s welfare. Notable is the fact that efforts are made to settle even cases of rape/child sexual abuse and assault.

IX. INQUIRY INTO COMPLAINT

In case the matter is not settled through conciliation then the LCC proceeds with the inquiry. Section 10 states-

“

11..... the Local Committee shall proceed to make an inquiry into the complaint or as the case may be, forward the complaint to the police:
Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

”

While conducting an inquiry the POSH Act empowers the LCC with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 with respect to the following:

- Summoning and enforcing attendance of any person
- Examining parties on oath
- Requiring the discovery and production of documents essential to the case.

The LCC is bound to complete the inquiry within a time period of 90 days upon receiving the complaint [S.11(4)]. Although the Act does not provide specific steps for handling cases, yet upholding the principles of natural justice, clarified in the proviso is that both parties shall be given a fair hearing and opportunity of being heard.

GAP

i. **Issuance of Summons** - Summons/NOTICE is the first limb of the principle 'No one should be condemned unheard'. The notice should be precise and unambiguous appraising the party determinatively the case he has to meet. Time given to appear or reply should be adequate so as to enable the respondent make a representation. The biggest hurdle in legal proceedings is serving of summons and notices, similarly the LCC also faces this difficulty.

a) **Respondent** - Even in cases where the summons are served, getting the respondent to appear is a challenge. There was a general view among the LCCs that when the respondent is influential, often he fails to appear before the LCC for inquiry.

Faridabad LCC CP said that persons with low income fear harassment by police and tend to respond more positively to the summons, unlike those who are financially or socially better off. In cases where the respondent does not appear for three consecutive hearing (Rule 7.5) then the LCC (Gurugram and Faridabad) take an ex-parte decision. Delhi District SE LCC showed their inability to handle such situations due to lack of presence of legal expert in the committee. They informed the researchers that request had been made to the DC to provide a legal expert who could provide advice on how to deal with such situations, among others. Further, there are issues of powerful respondents going to court, due to which the aggrieved woman including the LCC face the harassment of court cases, as stated by the DM Delhi District SE.

b) **Aggrieved woman** - The experience of Palwal LCC CP was that after filing initial complaint, often it is the aggrieved woman who herself does not turn up. There is a possibility that she was in a consensual relationship, but on being caught by her parents who may have raised a hue and cry, and under pressure to prove her innocence to them, the woman may have filed the complaint. In case the aggrieved woman does not appear, the inquiry cannot proceed further.

Duplicity - Since the LCC usually does not receive any complaint directly but through the She-box, Office of Chief Minister or the police, especially in Haryana, there tends to be duplicity in cases. In order to have her voice heard there is a tendency for the aggrieved woman to make a complaint in every available forum, with all the complaints finally reaching the LCC at different points of time leading to unnecessary deployment of time and effort. Moreover, by the time the complaint reaches the LCC through the lethargic administrative channel/process, the respondent may have changed address or employment, making it all the more difficult to serve the summons.

c) Third Party - So far none of the subject LCCs have handled complaints from the unorganised sector nor complaints against third parties. As such tracing out the address particulars of third party will be next to impossible and unless the notices and summons are served on them, it will not be possible to proceed further. In the absence of a notice and reasonable opportunity to be heard, the order passed may become wholly vitiated. One of the most important principles of natural justice is that a party should be put on notice of the case before any adverse order is passed. The hearing should not be reduced to mere formality but be an effective hearing.

d) Inquiry into Complaint - To inquire into a complaint basic infrastructure is required to facilitate the work of the LCC. In this context, in addition to providing a safe working environment for women, safety to women from third parties, displaying the penal consequences of sexual harassment and the order constituting the ICC; Section 19 also specifies that -

- necessary facilities must be provided to the ICC/LCC for dealing with the complaint and conducting inquiry
- assistance in securing the attendance of respondent and witnesses before the ICC/LCC
- such information must be made available to the IC/LCC, as it may require having regard to the complaint made under sub-section (1) of section 9.

However, inspite of legislative guarantee the LCC woefully lack infrastructure and facilities not having a permanent office or staff.

e) Recording of proceedings - All the subject LCCs during the interview threw light on the different stages of the procedure while inquiring into a complaint. However, recording of the proceedings was a challenge. The preparing of report with a recommended course of action to the appropriate decision maker/DC and submission in the prescribed time is was an onerous task, due to a total lack of any form of assistance. To ensure fairness the aggrieved woman is required to be interviewed and all details of the incident documented, alongwith recording of the meeting -a laborious exercise without any office staff/equipment. Neither of the subject LCCs have been provided with any secretarial clerical, staff and lacked even basic infrastructure. Proceeding were being recorded by the Gurugram LCC on their personal cell phones, but hours were wasted transcribing the audio with endless replaying of the recording. Tired of asking for facilities the Gurugram LCC have devised their own method and use a mobile phone recording software application. Similar to a dictation software tool, it listens and transcribes the words

being spoken simultaneously into text. The disadvantage is that the software only recognises the English language, while most complaints prefer to speak in hindi.

The subject LCCs lacked the basic office equipment which makes day to day operations run smoothly – computer, printer, scanner, water dispenser, filing cabinets, internet connection, etc. Gurugram LCC lamented that inspite of wanting to give women a friendly environment their hands were tied, for they did not even have a peon to provide water. Members all carried their own tea and water, which they often shared with women complaints, sobbing uncontrollably. Atleast, the Gurugram DC Office had an identified room for LCC meeting, which was not the case in Faridabad, with the CP being compelled to carry files in her private car.

The right to make representation requires that the person proceeded against must have opportunity to peruse all material relied upon. Copies are to be provided free of charge, and without being demanded. Without a photocopier machine at their disposal the LCC is again dependent on DC Office and staff.

f) Procedure - The ignorance of the rule makers of the pathetic state of infrastructure at the grass root level is astounding, for the POSH Rules incorporate some absurd provisions. For example according to Rule 7 at the time of filing the complaint, the complainant is required to submit six copies of the complaint along with supporting documents and the names and addresses of the witnesses. It's not astonishing that PIOs have skilfully skirted the RTI question on whether the procedure was simple enough to be understood by poor uneducated women. PIOs Rewari and Bhiwani have been candid enough to admit that NO case had been received from poor, uneducated and rural woman. PIO Faridabad stated that the procedure is SIMPLE but only 3 complaints have been received in the last five years; while PIO Gurugram replied that 'we also try to aware poor uneducated rural women who visit this office.' It is pertinent to mention here that the subject LCCs have so far only handled cases from the organised sector and yet to receive complaints from women in the unorganised sector.

Gurugram LCC alleged to receiving a large number of false/motivated complaints (same was the case in Palwal), who in cross examination develop behavioural problems escalating into security issues. There is no CCTV which could instantly give live feed and capture the threatening behaviour. CCTV cameras are not only useful in the aftermath of an incident for gathering evidence, but also a deterrent to any misbehaviour by parties when persons know they are under surveillance. In Odisha the Jajpur and Cuttack LCCs followed an innovative procedure of making spot visits.

SUCCESS STORY

During pendency of inquiry, Section 12 makes provision for relief to the aggrieved woman in the form of transfer, additional leave or monetary compensation. Rule 8 provides that the Complaints Committee may recommend to the employer to restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and restrain him from supervising any academic activity of the aggrieved woman. This has been incorporated keeping power dynamics at play for the daily proximity of the aggrieved woman with her “harasser” may have a lasting negative impact on her emotional, physical and social functioning, since she is often in a more subordinate position than the accused.

FARIDABAD LCC was successful in implementing its recommendation to the employer to give paid leave to the aggrieved woman who was working in a school. On the flip side the employers willingly cooperated because they felt the woman was a ‘troublemaker’ and it was less troublesome to give her paid leave, rather than have her attending work.

It was sometimes observed that false allegation were made in order to satisfy someone’s a grudge or personal vendetta. In such cases the CP expressed her difficulty in doing justice without infrastructural back up and dedicated office. She said that a proper agenda with fixed time schedule to be followed, is lacking.

g) Inquiry Report - The responsibility of preparing the final inquiry report on completion of inquiry within 90 days, rests with the LCC CP. The inquiry report should not only incorporate all evidence acquired in the proceedings, but also build up an argument of the conclusion reached and rationale for punishment recommended. Section 13 of the POSH Act mandates on completion of the inquiry the LCC must send a report of its findings to the DO within a period of 10 days of completion of the inquiry. For finalising the report, in addition to support from other members, the CP may need expert legal advice, depending upon the proceedings and the complexities of the case. Here again in District Delhi SE, the LCC found its work hampered by lack of having a member with legal knowledge. In cases where the LCC CP requires the services of a professional to transcribe recorded statements or legal advice in understanding complex aspects of a case, she is dependent on making request to the DC, which can be time consuming.

X. PUNISHMENT

It is mandatory for the DO to act upon the recommendation of the LCC within sixty days of its receipt. The POSH Rules 2013, elaborate upon the forms of penalty that

can be imposed on the respondent on a complaint of sexual harassment being established and Rule 9 states -

“

Rule 9.Manner of taking action for sexual harassment.—Except in cases where service rules exist, where the CC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the DO, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

”

Thus the LCC inquiry report may give the following decisions:

1. In case the allegation against the respondent has not been proved, the LCC may dispose of the complaint and recommend to the DO that no action is required to be taken in the matter. [S.13(2)]
2. In case the allegation against the respondent has been proved, the LCC shall recommend to the DO punishment against the respondent. If the recommendation is monetary in nature and the respondent fails to pay the sum then the LCC may forward the order for recovery of the sum as an arrear of land revenue to the concerned DO. [Proviso to S.13(3)]

All the subject LCC CP/Members were well aware of the punishment that could be imposed, although they did not have any reason to impose the same, since inquiries had not reached that stage. Gurugram LCC stated that they mostly imposed penalties having financial implications, but since they were against the employers who were influential companies, the inquiry reports were being challenged in appeal.

GAP

There was also a common complaint that after recommendation by the LCC, the file for implementing the punishment lies in the DC Office, creating unduly delays.

XI. DUTIES OF DO

The POSH Act in Chapter VI and VII defines the roles of the different stakeholders - employer and District Officer, respectively. The duties and powers of the DO are given in Section 20 which states -

“

- 20. The DO shall a) monitor the timely submission of reports furnished by the LC; (b) take such measures as may be necessary for engaging NGOs for creation of awareness on sexual harassment & rights of women.
- 21.(1) The IC or LC, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the DO.
- (2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.

”

The key responsibility of advocating among the general public the understanding of the provisions of the POSH Act, fall upon the government through the DO. The POSH Rules (Rule 13) elaborate on the manner of organising workshops, but nowhere does the rule mention the District Officer’s involvement. As per Section 23 it is the responsibility of the government to monitor the implementation of the POSH Act and maintain data on the number of cases filed and disposed off. Further Section 24 mandates that the Central and State Governments develop relevant Information:-

- Education and Communication (IEC) and training materials
- Organise awareness programmes to advance the understanding of the public on the provisions of the POSH Act
- Formulate orientation and training programmes for the member of the LCC

GAP

Rule 14 relating to annual reports in sub rule (d) clearly states that the complaint committee has to provide details of number of workshops or awareness programme carried out with regard to harassment,

“

- Preparation of annual report: The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details:
 - a) number of complaints of sexual harassment received in the year;
 - b) number of complaints disposed off during the year;
 - c) number of cases pending for more than ninety days;
 - d) number of workshops or awareness programme against sexual harassment carried out;
 - e) nature of action taken by the employer or District Officer.

”



In spite of Rule 14, observed is a complete lack of any initiative on the part of the authorities to ensure awareness among general populace about the POSH Act, neither has any specific budgeted been provided by the DO for the same. Nor has there been any exercise to balance this lack of awareness with sensitisation programmes for the LCCs, ensuring that atleast persons involved in the redressal system understand the effects of sexual harassment at workplace and are thorough with the procedure in dispensing justice. Presently there seems to be an overlap between the nature of work and responsibilities of the LCC and DO. For example the Gurugram LC CP (former) proclaimed to have issued 7000 notices and received 3500 annual reports. However, no case had been filed against any employer in their area for non -compliance.

One of the reasons given by the concerned DOs is budgetary constraints despite best interests. According to DM Delhi District South East, the individual district is not sanctioned funds for publicity and awareness. The entire fund is with the Department of Women & Child Development, which creates awareness amongst general public regarding the welfare measures, and over which individual DMs have no control off. If individual districts were given funds for awareness, then interventions could be fine-tuned to their specific district, and details of the District LCC publicised locally through various media. This would automatically act as deterrent and people in the District would be wary of transgressing the law, knowing that women on being subjected to sexual harassment at the workplace have a forum for reporting.

i. Lack of Training : The subject LCCs unanimously admitted that no orientation programme had been held for members, (prior to or after joining) informing them of their role and responsibilities, nor had any training programme been conducted specifically on the POSH Act; nor had the DO conducted any awareness programme for the women or general public. The lack of complaints from the unorganised sector clearly establish the lack of awareness among women of the presence of LCCs. Reports have alleged that “Women may not know where to go to report harassment or it could be that the cases may not have been dealt with sincerely. Often, women go to committees believing them to be independent, and find that they are actually puppets in the hands of their superiors.”⁴⁸ The Haryana Gurugram LCC informed that training is scheduled in March but is pending due to the elections. Innovative strategies were being devised by the various CPs. Faridabad LCC CP professed that since there is no separate funds are available to the LCC for training and awareness, she combines the POSH Act with POCSO awareness workshops conducted with funds of the Department of Women & Child.

⁴⁸ Supra note 25



The state of Odisha appears to be more sensitive to the need for training members. In order to make the LCC more effective, in Khurda a common meeting was held by DM and ADM alongwith LCC CP/Members where they were apprised of their role and responsibilities; while Jagatsinghpur LCC CP/Member acknowledged having being informed of their role and responsibilities by the Collector on joining. In Jajpur, excluding the CP some members had been provided orientation training by NGOs. Even in Jajpur and Kendrapara the LCC members had been trained, while in Cuttack the LCC members had undergone a two day training conducted by the WCD department. All the ex-officio members, basically the ICDS Programme Officers, had undergone training conducted by the WCD department.

ii. **Lack of Awareness** : Sexual harassment exists, but is silenced due to a lack of awareness of it being a crime. A large number of women in the unorganised sector do not know as to what constitutes sexual harassment, defeating the whole purpose of Section 2 which clearly defines behaviour falling in the category of sexual harassment at workplace. According to the Gurugram LCC women who experience workplace harassment, discrimination or workplace bullying, often, misinterpret the misogynist behaviour as sexual harassment and approach the LCC for relief. The Panchkula LCC CP divulged that even on a boss reprimanding a woman employee, she comes to the LCC. A similar opinion was reproduced by LCCs in Odisha where awareness initiatives by government agencies included trafficking and domestic violence, but not sexual harassment at the workplace. This is echoed in the views of 64 per cent (475) respondents who stressed on the need for widespread dissemination of the law to make it more effective. 44 per cent (326) respondents felt the need to remove fear of reprisal by employer on reporting sexual harassment at workplace. (Refer to TABLE 9). The CP LCC Jajpur Odisha suggested involvement of stakeholders from different fields, including collaboration of administration, department of social welfare/WCD and judiciary. A view mirrored in the response of 46.7 per cent (346) respondents who suggested making NGOs/social organisations more aware and active.

The DMs also reiterated the need for information dissemination, due to the lack of which women at grass root level were not aware of the redressal forum and where to report. DM Delhi District South East opined that a social movement to mobilise people was required, not only to change societies, but also inspire women to come forward. Not knowing the appropriate forum, as a result women go to the police. It is a fallacy to presume that just because the Parliament has legislated a law, the said law will be forced or control the behaviour of individuals it intends to. On the surface the POSH Act has provided for funding and training, yet the one cannot escape the unrelenting system that continues to lag behind, and there is gross

misalignment between outcomes and legislative values. She highlighted that when “society does not get the results expected, the situation worsens. The side effect of lack of deterrents is that employers/males continue harassment without sanction. In order for the POSH Act to be effective, as for any other legislation, it is important to disseminate the law among the target group it intends to protect, and the crime it intends to prevent, so that people can avail the opportunity to exercise their rights and responsibilities.” All the subject LCCs in Delhi, Haryana and Odisha unanimously stressed on need for awareness. As a result of the lack of awareness, and not knowing what to do, there appears a tendency among women workers to tolerate harassment. 47 per cent of chose to remain silent, and 24 per cent remained silent due to lack of knowledge of the options available (*Refer to TABLE 10*). It is clear that a lack of awareness has aggravated the problem of sexual harassment of women at the workplace.

TABLE 9

740 RESPONSES

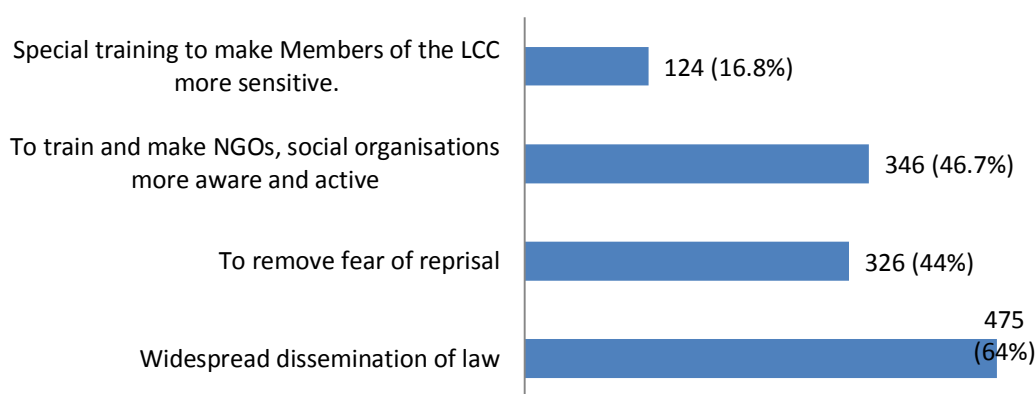
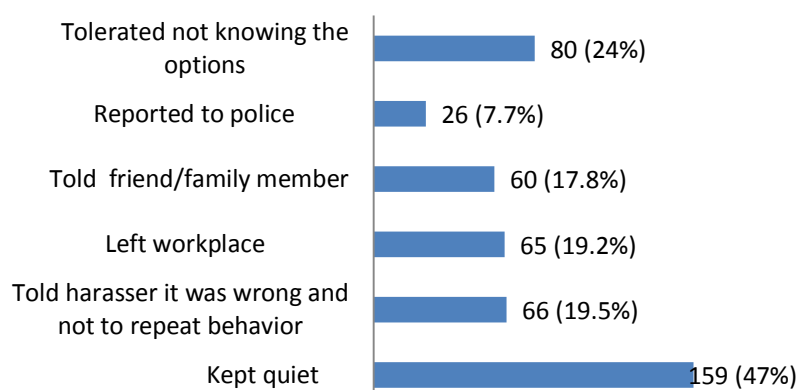


TABLE 10

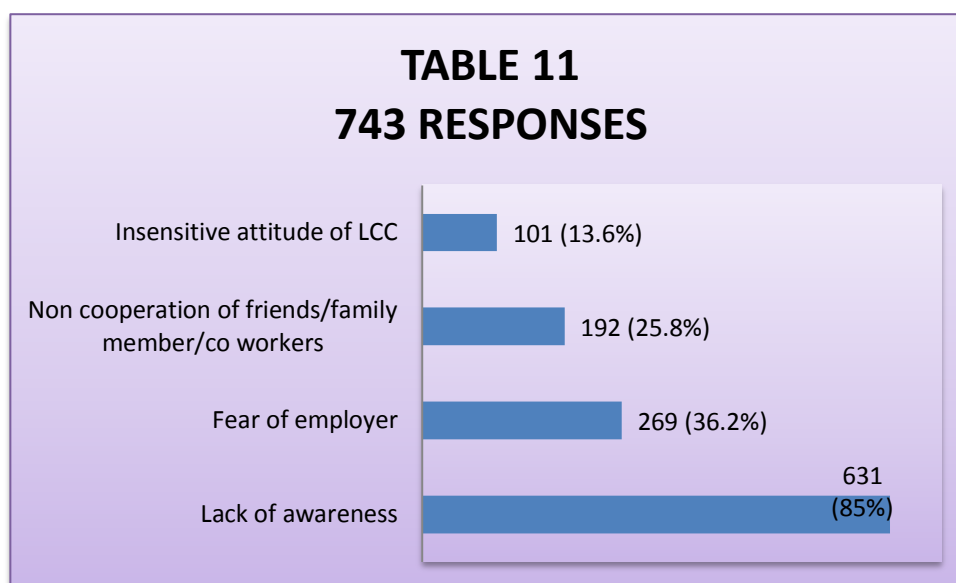
338 RESPONSES

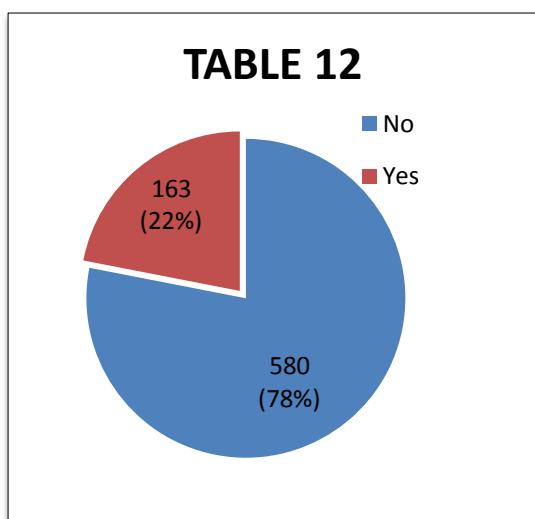


iii. Victim unreached by LCC : Sexual harassment at the workplace of women in the unorganised sector is widespread, yet due to it going unreported, victims tend to remain unreached by the LCC, its services and support programs; defeating the whole purpose of Section 6 of the POSH Act. Needless, to say the intent of the POSH Act, to protect and cover women in the unorganised sector through the LCC, is not being satisfied. All the subject LCC CP/Members stressed on the need to hold awareness camps and widely publicise the presence of the LCC in the District. Member LCC Jajpur, Odisha, opined that visibility must be the key for an LCC in every District. *“Is the LCC even visible? Is it being seen as deterrent?”*

The lack of awareness is at two levels; firstly women are not aware of the law, and secondly they are unaware of the forum for redressal of grievances related to sexual harassment at the workplace. In addition to not knowing the options available, the other reasons given by respondents for not reporting sexual harassment at workplace are non-cooperation of friends/family member/co-workers (25.8 per cent-192) and insensitive attitude of the LCC (13.6 per cent-101) (Refer to TABLE 11). It quite understandable that women have difficulty in opening up about the harassment to a third party (the LCC), considering the fact that instead of showing compassion for what they have been through, their own family and friends doubt them.

Note : It may be noted that often respondents while referring to LCC mean the local committees/NGOs of their area, and not LCC specifically constituted under the POSH Act.





iv. Normalisation of gender based violence :

a) **Lack of priority** - Among the reasons given by the LCCs as to why women do not report sexual harassment, is that they do not recognize it as a real threat, and for them it is not a priority. As per the LCC Gurugram experts priorities of women from the unorganised sector are domestic violence and child sexual abuse, not their own experience of sexual harassment at

the workplace.

Familiar with gender issues the Members LCC Gurugram cautioned that it is the harmful attitudes in society which allow gender based violence to persist. Women working in the unorganised sector mostly hail from lower segments of society and have been socialised in an atmosphere of oppression, inequality and discrimination. Brought up in harsh living conditions they are taught from childhood to adjust with comments like “If you leave the house you will have to endure such misconduct by men(“*adjust karo. Ghar ke bahar jaoge to sehna parega*”). “So unless it is rape or a severe form of molestation or the woman is pregnant, she will avoid reporting the harassment”.

Fear of parents doubting the girl’s character or asking her to leave the parental home, act as disincentives for the woman to report workplace harassment. Hesitant to open up, only 22 per cent (163) candidly admitted to having faced some form sexual harassment in the workplace, with majority of them, 78 per cent (580) replying in the negative. (Refer to TABLE 12). This is just the tip of the ice burg because in the indepth interviews most women admitted to the presence of sexual harassment at workplace. While insisting that they had not experienced it, yet they added hearing of or knowing of other women who had been harassed by male employee/employer. Also noteworthy is the fact that 22 per cent (166) respondents denied having experienced sexual harassment at the workplace, but when asked about specific incidents more than 22 per cent answered in the affirmative.

b) **Lack of clarity on what is sexual harassment at the workplace** – Involved in gender issues and experts in their field, all the subject LCC CP/Members were well conversant with the behaviour falling within the definition of sexual

harassment at workplace, but the same was not the case of the women respondents/general public. The definition of sexual harassment at workplace is given in Section 2(n) of the POSH Act as :-

“

“sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely–

- i. physical contact and advances; or
- ii. a demand or request for sexual favours; or
- iii. making sexually coloured remarks; or
- iv. showing pornography; or
- v. any other unwelcome physical, verbal or non verbal conduct of sexual nature;

”

As stated earlier in the preceding paragraphs, according to the subject LCCs often a woman is not able to distinguish between misogynist behaviour and sexual harassment at the workplace, due to which her complaint runs the risk of being dismissed. The dismissal of a complaint has a snow ball effect on other women, who then hesitate to report on actually facing harassment which may fall within the definition of sexual harassment at workplace; and their silence may be seen as consent by the aggressor. Resultantly workplace sexual harassment remains rampant and goes unchecked, underpinning the need to create a safe culture that makes clear in practical and legal terms what behaviours in the workplace will not be tolerated - sexual or otherwise. This includes gender bias comments and jokes, along with acts that are more subtle.

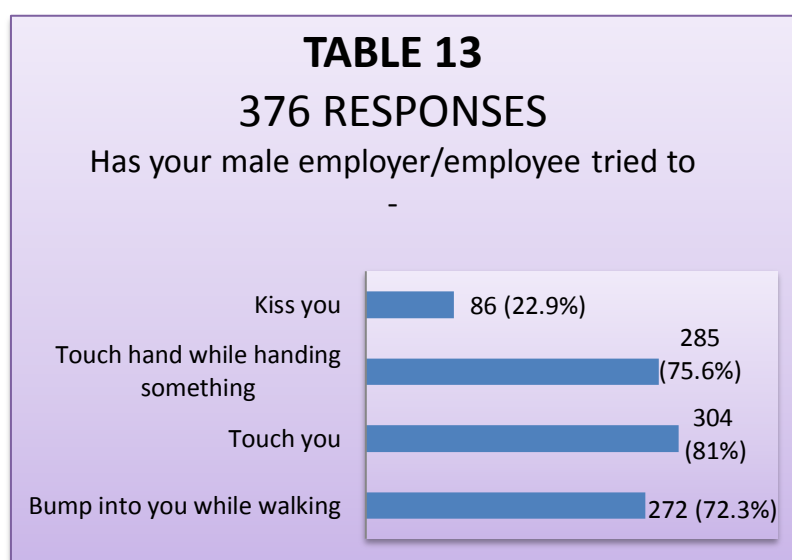
v. Forms of sexual harassment experienced by women : Since the definition given in Section 2(n) clearly elaborates on the different forms of sexual harassment of women occurring in the workplace- physical, verbal or visual acts - Part C of the questionnaire was used to assess the different forms of sexual harassment experienced by the women respondents.

a) Physical contact and advances - The most obvious form of sexual harassment is through unwelcome physical contact. Examples include touching a woman, bumping into her, rubbing against her, placing arms around her, or touching her hand for a longer time than necessary while handing over something, or physically interfering with a woman’s movement. Women inspite of being subjected to these forms of harassment, are reluctant to report feeling ashamed of themselves or ‘unclean’. Often the inappropriate physical touch is so subtle that the woman feels she may have imagined the bodily contact. Among the

respondents who admitted to having experienced sexual harassment at workplace (Refer to TABLE 13) –

- 81 per cent (304) reported the employer/male worker's attempt to touch, and 75.6 per cent (285) of touching hand while handing something.
- 22.9 per cent (86) reported the employer/male worker trying to kiss her.

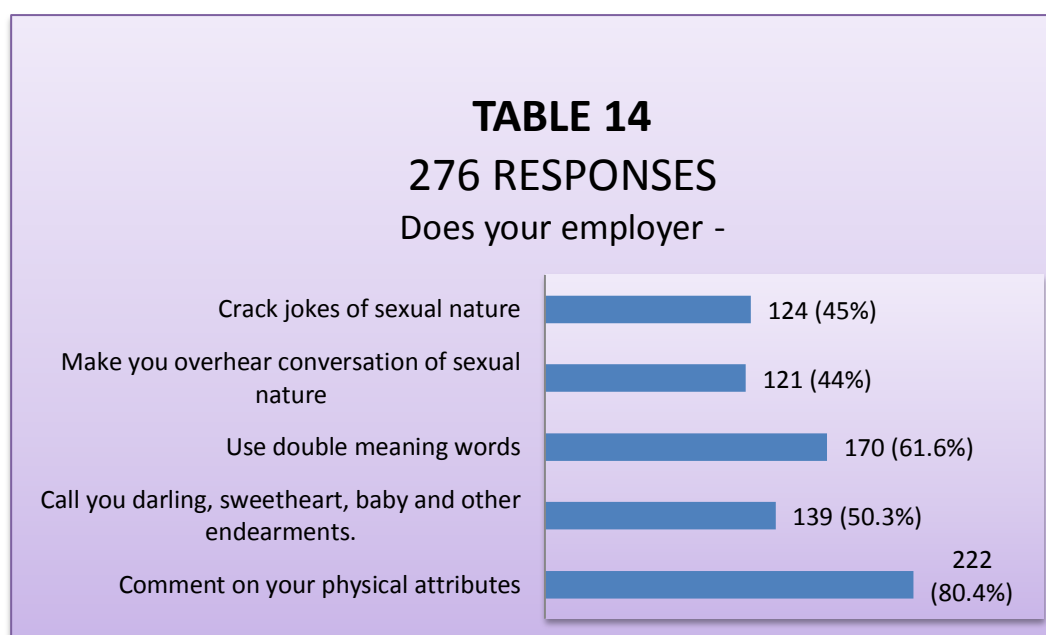
It is seen that men do not limit their misconduct to mere physical touch, but make frequently attempts to kiss the woman. NGOs working with women respondents (who conducted the survey in Haryana) said that kissing was not uncommon, 'yeh to hota hi hai', and women have to devise their own escape mechanism. Not surprising women in villages in Odisha are encouraged to go to work in groups, while going unaccompanied by someone is discouraged. Despite the lurking fear and growing concern of sexual harassment, data placed before the Lok Sabha, by the Union Minister for WCD in totally contradictory. As reported⁴⁹ she informed the House that only 8 cases of sexual harassment at workplace were recorded in Odisha in 2014. However, no such incidents were reported from the State in next two years. She said, "Between 2014 and 2016, a total of 76 sexual harassment cases were reported in Bihar followed by 56 in Delhi, 48 in Maharashtra and 45 in Telangana. While Delhi recorded 11 and 36 cases in 2014 and 2015 respectively, Bihar saw 73 cases of sexual harassment at workplace in 2016. A total of 142 such cases were reported across the country in 2016, 119 in 2015 and 57 in 2014."



⁴⁹ Clean chit to Odisha on workplace harassment, says Smriti Irani. No cases of sexual harassment at workplace reported from Odisha in 2015 and 2016, informs Union Minister Smriti Irani. Indian Express, July 22, 2019. Available at <http://www.newindianexpress.com/states/odisha/2019/jul/22/clean-chit-to-odisha-on-workplace-harassment-2007589.html>



On one hand, women who are uneducated not only lack income opportunities, but also access to social media, which provides an opportunity to unburden themselves, and anonymously share the story of abuse. While on the other hand, educated women and professionals working in unorganised sector are coming forward, and naming and shaming their perpetrators - whether in the film industry or media houses, or other. More than 9,78,000 #MeToo tweets were posted from India in September 2018 month, while the highest #MeToo activity in the US in September 2018, was a little over 9,53,000 tweets, according to data obtained from Twitter.⁵⁰



b) Verbal remarks of sexual nature - The second most common form of sexual harassment is verbal in nature ie. outrightly making a demand or request for sexual favour, making sexually coloured remarks or disrespectful comments. These include endearments, nicknames, labels, or titles, examples include calling the female employee '*maal*', '*cheez*' or '*Miss India*'. Such forms of speech are not only offensive, but have a sexual connotation since they indirectly refer to a woman's anatomy. *TABLE 14* depicts different types of verbal harassment -

- 80.4 per cent (222) respondents disclosed that their employer/male worker made comments on their physical attributes and body parts;
- 61.6 per cent (170) respondents were subjected to employer/male worker using double meaning words in the woman's presence;

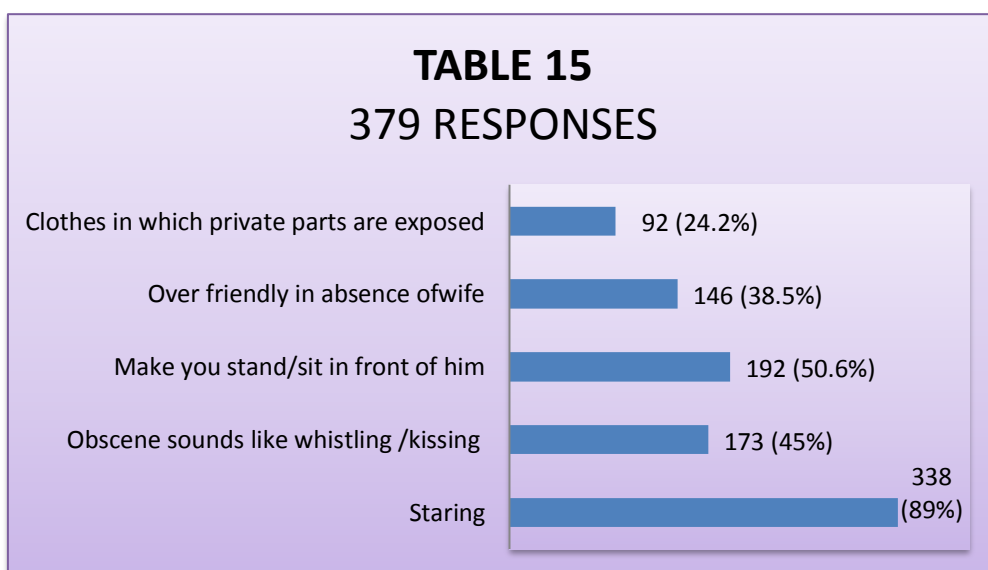
⁵⁰ Karishma Mehrotra, *Indian #MeToo tweet spike surpasses US monthly data*. Indian Express, New Delhi October 24, 2018. Available at <https://indianexpress.com/article/technology/social/indian-metoo-tweet-spike-surpasses-us-monthly-data-5415254/>

- 50.3 per cent (139) confessed their employer/ male worker referred to them as darling, sweetheart, baby or used other endearments;
- Cracking jokes of sexual nature in the woman's presence (45 per cent), and making her over hear conversation of sexual nature on the pretext of talking to someone else on the phone (44 per cent), were at position four and five, respectively.

c) Visual Harassment - The most common form of sexual harassment experienced by women falls under Section 2(n)(v) namely, 'any other unwelcome physical, verbal or non-verbal conduct of sexual nature.' Examples range from staring without reason to the male flashing his private parts. It is not always the employer who is the perpetrator, sometimes it can even be a male co-worker. However, this should not absolve the employer from being responsible for such frequent unregulated occurrences which lead to a hostile work environment.

Staring - Visual harassment occurs in a variety of ways that are not as blatant as perhaps an employer/co-worker exposing himself, and although the perpetrator is not physically touching the woman, yet he succeeds in making her uncomfortable. Staring, the most common forms of sexual harassment (*Refer to TABLE 15*), is also the most difficult to prove. Employers/LCC can take a cue from an entertainment company's alleged "five-second staring rule", where staff was taught what is NOT appropriate. "Looking at anyone longer than five seconds is considered creepy."

Wolf whistle/Elevator eyes - Men frequently justify making catcalls, known as 'wolf whistle'; or deriving sexual arousal and gratification by looking at the woman from top to toe, popularly called 'elevator eyes'. Their justification is that they were only appreciating the woman's beauty, without realising the devastating impact it may

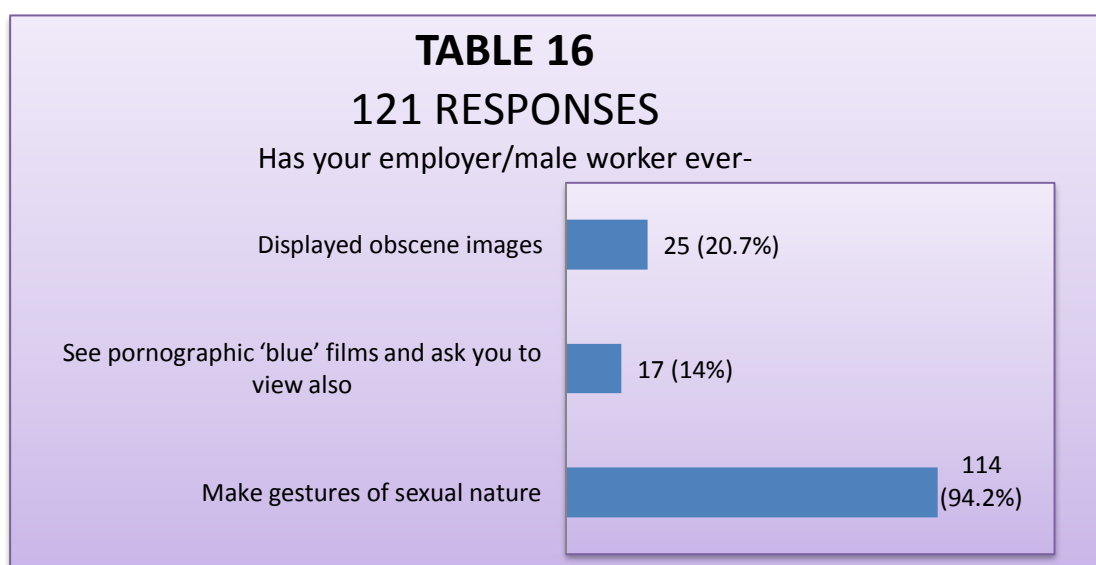


have had on the woman. Resultantly, abusive behaviour is trivialised and a culture of gender based violence normalised. Data reveals the following:-

- 89 per cent (338) respondents reported being subjected to unnecessary staring;
- 50.6 per cent (192) had been called by the male employer on some pretext or other and made to stand/sit in front of him, including staring at the woman up and down suggestively every time she passed by;
- 45.6 per cent (173) were subjected to obscene sounds, like whistling and kissing;
- 38.5 per cent (146) experienced the male employers trying to get over-friendly in the absence of their wife;
- 24.2 per cent (92) alleged the employer wore clothes in which his private parts were exposed or the woman was uncomfortable. *Domestic workers reported a higher level of this form of harassment.*

Obscene visuals - Women are frequently subjected to sexual harassment through display of obscene visuals exhibited in the workplace, most common of which are drawings of females with exaggerated breasts. Examples also include display of obscene, or sexually explicit printed or visual material, pictures, greeting cards, articles, books, magazines, photographs, posters, drawings or cartoons; or obscene videos, emails, SMS/texts, unwelcome notes, or any other written or graphic material. On respondents being asked if the employer/male worker displayed obscene images of a sexual nature, 25 women replied in the positive. (Refer to TABLE 16).

Lewd gestures – 94.2 per cent women (114) responded in the positive on being asked if the employer/male worker ever made gestures of sexual nature in their



presence. Non-verbal gestures constitute sexual harassment if the behaviour is sexual in nature and makes a woman uncomfortable, even if the gestures are not specifically aimed at her. Lewd gestures that cross the line into harassment and create a hostile work environment include among others, hip thrusts and other sexually suggestive actions, hand gestures that simulate sex acts, obscene gestures with the lips or tongue, simulating groping or touching, use of the middle finger in a threatening or sexual way, etc.

Harassment through use of technology - In today's digital age, a large populace possess smart phones with access to the internet. In the workplace it is not unusual for male workers to openly share videos and whatsapp messages of sexual nature. Such behaviour falls in the category of visual harassment, even if it may not be targeted at the woman. For example, a male employee showing another co-worker a sexually explicit video may make the woman uncomfortable. Although the video is not being shown to the woman but the action is taking place in her presence. *TABLE 16* depicts that 14 per cent (17) respondents admitted that their employer/male worker viewed pornographic 'blue' films in their presence and asked them to view also.

In India far more people are reported to have access to a cell phone than to a toilet, according to a UN Report. The number of Facebook users in India stands at 241 million as compared to 240 million in the USA.⁵¹ Facebook allow its users to chat with each other, see each other's pictures, and comment on any post. However, this ability to see other's pictures, and share personal information not only raises privacy issues, but in addition has become another source of sexual harassment by way of unwelcome emails, text messages, or phone calls. *TABLE 17* reveals that 59 per cent (188) respondents reported receiving unwanted phone calls, a characteristic pattern of which included sexual requests, groaning, or silent blank calls. This followed by friend request/message or photograph on internet [32.2 per cent (103)], unwelcome posts on facebook [32 per cent (101)]; and unwelcome SMS/text messages [(29.4 per cent (94)], which were sometimes threatening.

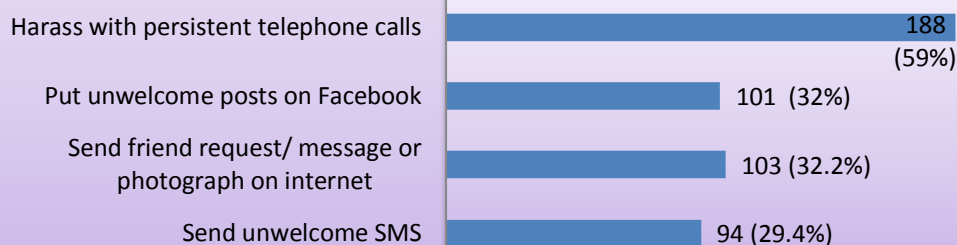
d) Quid Quo Pro Harassment - Women workers in the unorganised sector are usually placed at the lower rungs of management, and more vulnerable to harassment having the least workplace authority. The literal translation of the Latin phrase quid pro quo is "this for that." Usually quid pro quo sexual harassment occurs when the male in position of power offers something in

⁵¹ India now has highest number of Facebook users, beats US: PTI Report. Livemint, July 14, 2017. Available at <https://www.livemint.com/Consumer/CyEKdaltF64YycZsU72oEK/Indians-largest-audience-country-for-Facebook-Report.html>



TABLE 17
319 RESPONSES

Does your employer/male worker -



return to the woman for a sexual favour. The exact terms of the offer may not be laid out explicitly, but it may implied that the woman employee's success or progress depends upon her compliance.

Quid pro quo harassment applies when an employer/male employee seeks sexual favours in return for giving the woman a job benefit or to avoid a job detriment. To prevent any such behaviour at the workplace Section 3 of the POSH Act titled 'Prevention' clearly states that no woman shall be subjected to sexual harassment at any workplace, whether in the organised sector or unorganised. Given in sub section 2 of Section 3 are the circumstances which amount to sexual harassment at the workplace:-

“

Prevention of sexual harassment – 1.No woman shall be subjected to sexual harassment at any workplace,
2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment --
i. Implied or explicit promise of preferential treatment in her employment; or
ii. implied or explicit threat of detrimental treatment in her employment; or
iii, implied or explicit threat about her present or future employment status;
iv. interference with her work or creating an intimidating or offensive or hostile work environment for her; or
v. humiliating treatment likely to effect her health or safety.

”

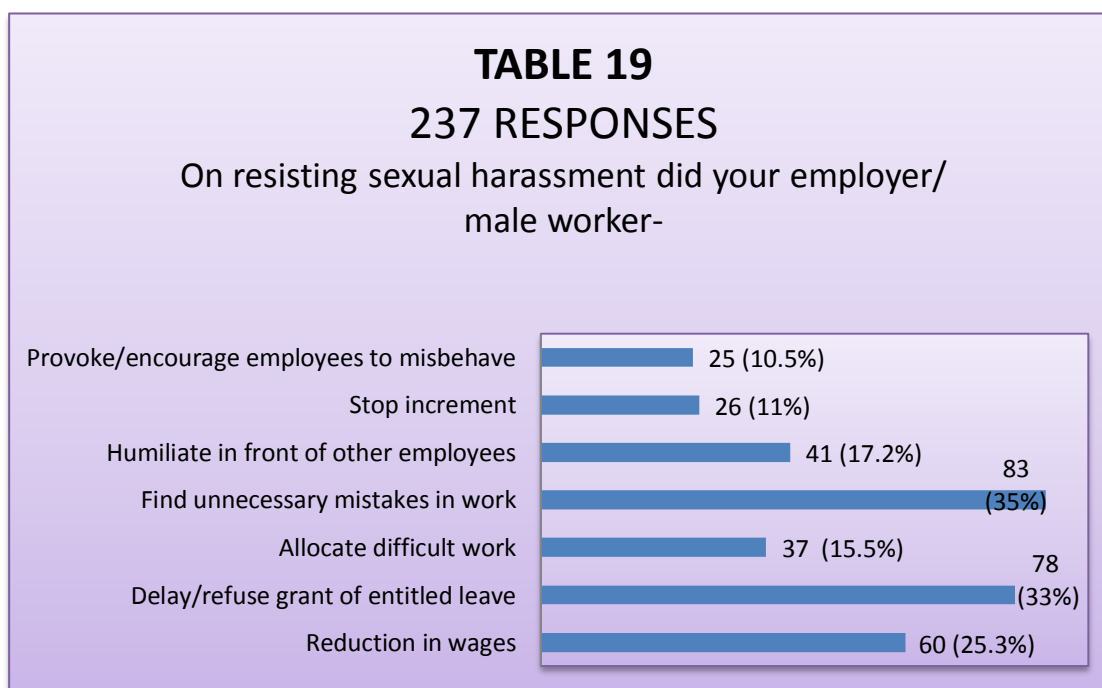
The results of the study reinforce the theory that sexual harassment is about power. Usually the person who makes the quid pro quo offer is not necessarily the

direct employer, but the supervisor, contractor or other male to whom the woman reports to. Sometimes the employer may be totally unaware of the extent of sexual harassment in the workplace. Agents, drivers, gardener and other persons with whom the woman worker comes in contact on a daily basis are the ones who offer her a better job or higher paying employment, in return for sexual favours.

TABLE 18 presents offers made to the 32 per cent women respondents who admitted having been offered incentives in return for sexual favours –

- 40.6 per cent (97) respondents had been offered cash money;
- 36 per cent (86) respondents had been offered gifts;
- 15.9 per cent (38) respondents had been made offer of reducing work load (in terms of hours or extra holiday);
- 9.2 per cent (22) respondents received offer of getting lighter duty instead of difficult duty;
- 17.6 per cent (42) had been offered increase in seniority or promotion in return for sexual favours; and 10 per cent special treatment.

Among the respondents who admitted facing sexual harassment at the workplace, 237 women confirmed being subjected to detrimental treatment



on resisting sexual harassment. (Refer to TABLE 19) –

- In 35 per cent (83) cases the employer/male employees found unnecessary mistakes in the woman's work, and she was subjected to harsh treatment and unnecessary reprimanding;
- 33 per cent (78) faced delay/refusal in grant of entitled leave, followed by reduction in wages (25.3 per cent-60), and in 11 per cent (26) cases increment in wages was stopped;
- 17.2 per cent (41) were subjected to humiliation in front of other employees;
- 15.5 per cent (37) were allocated difficult work;
- In 10.5 per cent cases the harasser encouraged the employees to misbehave with the woman.

vi. Consequences of Resisting - The primary reasons given by the subject LCC CP/Members for women hesitating to coming forward about workplace harassment was fear of the repercussions on complaining against the misconduct, and loss of reputation (Refer to TABLE 20); reasons which are authenticated by the responses of the women respondents. This information is critical to improving the functioning of the LCC given that the large majority of women who experienced sexual harassment in the workplace in the last five years did not make a formal report (as per RTI replies).

TABLE 20 Reasons Given by LCCs for Women Not Reporting Sexual Harassment	
Fear of Employer/Retribution	LCC- DSE, DNE, HR Gurugram OD Khurda OD Jagatsinghpur,
Lack of family Support	LCC - DSE, DNE, OD Khurda
Loss of reputation	LCC - DSE, DNE
Lack of education/awareness/ignorance/women even uncomfortable using the word sex	LCC - DSE, DNE, OD Jagatsinghpur, OD Jajpur
Threat of job/income loss	LCC- DSE, DNE, HR Faridabad
Lack of an institutional support mechanism/confidence in system	LCC – DSE, HR Gurugram, OD Jajpur
No one will believe her	LCC – DSE
Who will ensure safety of complainant/ Fear of life	LCC – DNE, OD Khurda
Threat of Transfer	LCC –HR Panchkula
No one willing to stand as witness	LCC- HR Panchkula
Social stigma/Social pressure	LCC – HR Palwal, HR Faridabad, OD Khurda, OD Jagatsinghpur, OD Jajpur, Kendrapara

The views of the subject LCC CP/Members are also corroborated by survey conducted by the Indian Bar Association in 2017 of 6,047 respondents, in which 70 per cent women said they did not report sexual harassment by superiors because they feared the repercussions.⁵² Moreover, a study has highlighted the 'Raja Beta' syndrome with which Indian men are raised in families. It's a heady, intoxicating mix of power and anger, and gives birth to unkind men who think their worth is limited to their conquests.

a) Reprisal - Retaliation against the woman who dares to resist the male aggressor takes different forms, ranging from humiliating the woman in front of co-workers to being terminated from the job, or from allocating difficult work to unnecessary disciplining.

b) Social repercussion - The most salient reason for women not reporting is 'shame', and the social stigma attached to reporting, with women feeling that they would be blamed rather than the perpetrator of the crime. A misplaced sense of shame causes victims to blame themselves for the sexual misconduct of their perpetrator. During the group interviews respondents made comments like "*I assume it is my fault. I use too much lipstick*"; or "*I'm a very friendly person, and always smile*". Similarly family/society shift the blame on the women for causing her own victimization with comments like, "*What did you expect when you use lipstick*" or "*Why do you wear always wear saris having bright colours.*" This is reflected by the confidential discussions held with the District judiciary in Odisha who appeared to have a gender bias and instead of showing sensitivity diverted the topic to misuse, and how financial independence of women was leading to adultery. He blamed television serials, and the internet for women taking undue advantage of the law to extort money. "*Cases unknown to our society now coming up.*" Resultantly, women exposed to this patriarchal culture internalise their low status leading to a sense of low self esteem; and instead of reporting try to avoid the harasser, downplay the gravity of the situation, or simply endure the behaviour as her '*kismet*'.

c) Perpetrator in position of power - People who wield their power to prey on other people are often quite adept at holding onto that power by any means necessary, including proving the woman to be a liar. The LCC Jagatsinghpur, Odisha emphatically stated that the victims are afraid of the culprits; a view endorsed in the replies of women respondents, who expressed being overawed with the perpetrator's position of power and how he could use it against them. The

⁵² Manisha Chachra, *Despite Law, 70% Working Women Do Not Report Workplace Sexual Harassment; Employers Show Poor Compliance*. IndiaSpend March 4, 2017. Available at <http://archive.indiaspend.com/cover-story/despite-law-70-working-women-do-not-reportworkplace-sexual-harassment-employers-show-poor-compliance-94743>



common response was “*woh bada aaadmi hai, kuch bhi kar sakta hai*” (he is a big man, he can do anything to harm us). This corroborates with the inference of the LCCs that men from influential backgrounds tend not to respond to the summons to appear before the LCC, and also the statement of the Former Director General of Police (DGP), Odisha who while addressing the audience at the SAFMA workshop⁵³ decried that when powerful people are involved in cases of crime against women or sexual harassment at the workplace, then unfortunately even the police tend to take the offence lightly. Hence the unorganised sector workplace exhibits four characteristics that create higher levels of risk for the occurrence of sexual harassment :

- i. Male-dominated environment, with men in positions of power and authority.
- ii. Society’s tolerance for sexually harassing behaviour (e.g., failing to take the woman’s complaints seriously, or failing to protect the complainant from retaliation).
- iii. Hierarchical and dependent relationships between the woman and her employer/co worker.
- iv. Isolating environments (e.g., domestic homes, small clinic, or construction sites).

The condition of women in the unorganised sector is the same all over India, irrespective of whether from Delhi, Haryana, Odisha; or for that matter Maharashtra⁵⁴ where female labourers are reported to being sexually assaulted by supervisors and landowners, and advised to have a hysterectomy to prevent any further pregnancies or menstrual complications.

These results also indicate that State governments need to better communicate that making a complaint with the LCC will not result in further victimisation, and LCC will take active steps to ensure justice for the aggrieved woman, which is found lacking, a view endorsed by the District DMs. In fact, CP LCC Jagatsinghpur is a renowned social worker, who has rescued almost 25,000 in her individual capacity; but the lack of the LCC having a regular office and staff acts as an impediments to reach out to women in the District. Highlighted is the need for the LCC to take suo moto cognizance in cases where there are reports of sexual exploitation of women in large groups by powerful contactors and builders or others, so that a Beed, Maharashtra like crisis does not occur.

53 Supra note 44. View of panellist Sh. Sanjeev Marik IPS, Former Director General of Police (DGP), Odisha.

54 Rina Chandran : *Sexual abuse plagues female workers on India's sugarcane fields*. Reuters World News, August 2, 2016.



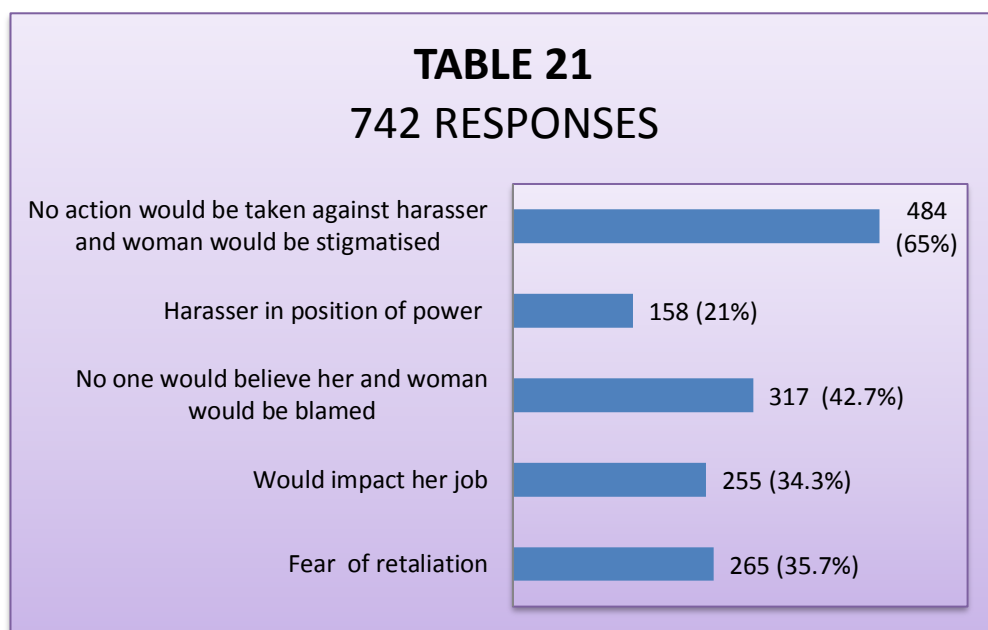


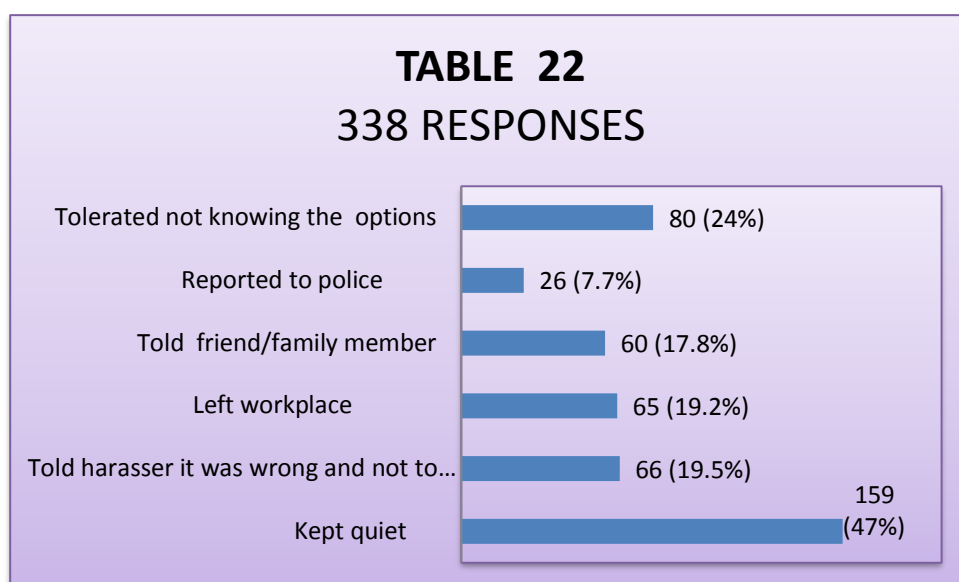
TABLE 21 throws spotlight on the reasons given by women respondents on why they hesitate to report sexual harassment at the workplace - comprising a mix of both, fear of the employer and society.

- 65 per cent (484) believed that no action would be taken against the harasser;
- 35.7 per cent (265) feared retaliation;
- 34.3 per cent (255) anticipated loss of employment;
- 42.7 per cent (317) felt that no one would believe the woman on the contrary she would be blamed; since there prevails a common perception of 'misuse', and women making up allegations of sexual harassment, for that matter any other form of gender based violence.

vii. Feelings of Helplessness, and Denial : The concept of 'helplessness' is a phenomenon in which people feel like they have no control over what happens, they tend to simply give up and accede to their "*kismet*" or fate. *TABLE 22* presents the responses of women on how they reacted on being subjected to sexual harassment at the workplace.

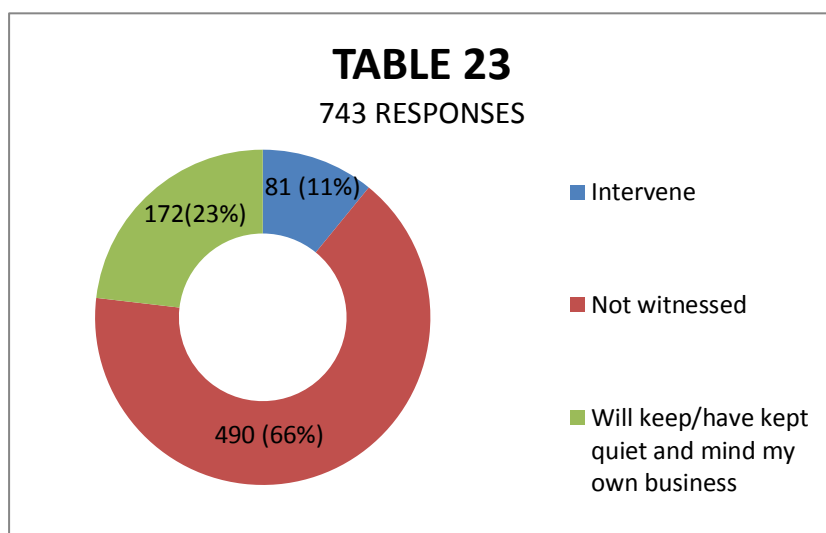
- 405 respondents declared that the question was not applicable to them since they have not experienced any sexual harassment at the workplace;

- 47 per cent (338) kept quiet. Disillusioned they retorted “I remained silent, what else can we (women) do” (*Chup rahe, aur kya karege*). This angry reaction communicates the victim’s sense of hopelessness and helplessness in not being able to see a way out of the abusive situation, and in turn contributes to women giving up and not trying to escape or seek help;
- 24 per cent (80) tolerated the harassment, not knowing what the options were, and having no other alternative being dependent of the employment for their source of livelihood;
- 19.5 per cent (66) confronted the employer/male co worker, and told the harasser it was wrong and not to repeat such behaviour; and
- 19.2 per cent (65) left the workplace.



Women tended to downplay the behaviour of the harasser convincing themselves that “this is common,” (*aisa to hota hi hai*); “if a woman leaves the protection of her house then she has to tolerate such behaviour”, (*mahila ghar ke bahar naukri par jayegi to sehna padta hai*). There is a tendency to convince themselves that being sexually harassed at the workplace is nothing compared to what other women face – rape, sexual assault, molestation- and just continue to work in the same environment, forgetting the incident of sexual harassment. It is repeated that sexual harassment at the workplace is not a priority with women who frequently face domestic violence, and are more worried about the safety of their children; so on experiencing sexual harassment at the workplace they learn to cope with the problem in a variety of ways, most often by ignoring or appeasing the harasser.

viii. **Witnessing sexual harassment** : *TABLE 23* shows that 23 per cent (172) respondents said that they would keep/have kept quiet and mind their own business, in case of witnessing sexual harassment of another woman at the workplace; and 11 per cent (81) professed that they would take action by intervening immediately.



ix. **Lack of confidence in the system** - An important characteristic of an effective law is that it should be enforceable, which means that if the law is violated, there should be a reasonably high likelihood that the offender will be caught and punished. The questionnaire tested women respondents' faith in the law. 83 per cent (620) felt that the present law is not sufficient and effective to prevent sexual harassment at the workplace. *TABLE 22* exhibits that a meagre 7.7 per cent (26) respondents reported the harassment to the police. The responses signify that women do not trust the legal system, and feel if their harassment becomes public, then they will be exposed and affected socially. In addition 64 per cent respondents (475) felt there was a greater need for wide spread dissemination of the law.

The Gurugram LCC stated that the perpetrator of sexual harassment, the respondent male, is usually an influential person in the organisation. The management would rather sacrifice the woman's interest than penalise the man. Delhi District NE LCC CP made no bones in emphatically stating that there is a lack of faith in the system. If the woman gets justice, then many like her will raise their voice expecting justice. But since the wheels of law move slowly, the woman is forced into a situation where she is made to compromise. She emphasised that women have been waiting for years for maintenance order under the Protection of

Women from Domestic Violence Act, 2005, so it is stretching it a bit too far for them to imagine that they will get relief from the LCC.

Women who have been sexually harassed feel all the more angry and helpless, since the chances are extremely high that they did not receive the justice they hoped for. This reinforces the view that women feel it is useless to report seeing the way others have been treated. As rightly commented by the Chairperson of the LCC Delhi District NE *“Nyaya milega to nyaya par vishwas hoga”* (women will believe in the law only if they get justice). Dealing with complaints effectively, and minimising the negative impact on women who experience sexual harassment, also makes strong business sense for the economic growth of the country. This finding highlights the need for the LCC/DO to build greater awareness and confidence amongst women workers about the LCC complaint procedure and disposal in time bound manner.

x. Role of NGO : 54 per cent (402) respondents did not want support of a NGO or other person in registering a complaint of sexual harassment at the workplace, as against 46 per cent (341) who sought assistance. On encouraging them to share details of the case, women respondents began to share heart rending tales of domestic violence, corroborating the view of the LCC Members that sexual harassment at the workplace is not a priority with women. Even organisations working with domestic workers find that most domestic workers do not report sexual harassment, but come to them for assistance in reporting assault, rape and forced labour.⁵⁵ This finding highlights the need for specific training to local NGOs on the POSH Act, since NGOs are the first point of formal contact from whom women frequently seek informal advice and assistance. The fact friends/family are common sources of advice for an abused women, demonstrates the need for wider public education on identifying what is sexual harassment and the appropriate remedy under the law ie. POSH Act, so that friends/family encourage the woman seek the help of the District LCC who will provide her redressal and specialist support and advice.

IMPLICATIONS

Sexual harassment is one of the most important problems confronting women in the workforce in the unorganised sector; consequently, this research has been carried out in an attempt to minimize, if not totally eradicate, this form of gender based violence. Presented in the next chapter are recommendations on the basis of the findings and gaps, so that no woman is compelled to suffer in silence without remedy; and the general public is aware of what constitutes prohibited

⁵⁵ Supra note 19.

behaviour at the workplace. A robust, accessible law urgently needs to replace the culture of silence and fear of stigma which have set workplace conditions, and regrettably made the workplace a fertile breeding grounds for commission of repeated offences by predators.



CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

Sexual harassment at the workplace, fundamentally detrimental to the constitutional edifice of equality, affects women in every kind of workplace setting and at every level of employment, as is clear from the preceding chapters. The problem is more severe in the informal unorganised sector where women workers in low-paid employments are more vulnerable, having fewer protections and limited access to social security or paid leave. Moreover, there is a greater likelihood of their experiencing harassment from multiple sources, including “third party,” ie. customers, vendors, and clients.

The findings of the study are consistent with data that there is a lack of understanding of what constitutes sexual harassment, hence underpinning the obligation of the State to support wide reaching education and awareness programmes. In view of the general absence of awareness among women as to what constitutes sexual harassment at the workplace, or the presence and role of the LCCs and its redressal mechanism, it is not surprising that the LCCs do not receive complaints from the unorganised sector. Hence recommendations are submitted under three categories - (1) Recommendations on basis of interviews with LCC/DM; (2) Legislative changes, and (3) Guidelines for implementation by the State Human Rights Commissions.

At this juncture, it is interesting to note that women themselves have a number of ideas and opinions about how to curb the rampant sexual harassment that exists. Despite not being experts, harassment is a lived reality for these women, therefore they are capable of identifying solutions to their problems. A number of these recommendations are corroborated by the women interviewed, who believe that a change in the Act and stricter implementation and regulation is the only way to ensure a safer and more equitable life for them.

I. RECOMMENDATIONS

Based on the finding of the study and suggestions of the LCC CP/Members in Delhi, Haryana and Odisha, presented below are the following recommendation:-

i. **RECOMENDATION #1-LCC be provided with training and facilities** : The problem of sexual harassment in the unorganised sector is getting aggravated due to the inadequacies in the functioning of the LCC, as a result of a training deficit and absence of infrastructural facilities, which further is enabling individual sexual harassers to persist in their offensive behaviour.

a) Training of LCC Members – The Chairperson and all members of the LCC should be given a standardized training to ensure that they are aware of what behaviours constitute sexual harassment, including the difference between bullying and misogynist behaviour; and instructions in procedures of handling a complaint. In view of the fact that the LCC Members themselves felt the need for specific training to acquire relevant knowledge and skills on how to conduct an inquiry under the POSH Act, the training should be viewed as the means of providing the skills needed by LCC members, each of whom has a role to play in building a positive climate, focussing on safety and respect for the aggrieved woman, and not simply as a method of ensuring compliance with the law. The training and orientation programmes should be well publicised through the district information/labour offices so that an awareness is created in the District of the State's zero tolerance policy towards sexual harassment. The training to include approaches regarding supporting and improving communication with victims/aggrieved women.

b) Independent Office, Infrastructure and Fees – The LCC should have a designated office with a board outside displaying details of the LCC. This will not only give the LCC a physical presence making it easily accessible, but also provide privacy to members in having a confidential conversation with the aggrieved woman. A separate office with full facilities will set a clear physical boundary between the LCC and the outside world, making the woman feel she has entered a safe place. Suggestions were invited from the LCC CP/Members and DOs on how the LCC could be made more effective so as to facilitate women in making complaints. Responses ranged from allocation of specific budget for facilities, dedicated office space which women can easily access, to budgetary allocation for fees and transportation. The office to have CCTV coverage, which will act as a deterrent against misbehaviour by parties, who know they are under surveillance. An independent designated office will enhance the authority of the LCC, unlike presently where the Chairperson keeps the files in her car, or has to make numerous requests for availability of room to conduct meeting.

The contact details of LCC office, names of CP/Members alongwith with telephone numbers, and the website should be displayed at prominent places. In rural areas medium of wall painting can be used, similar to how the Gram Sabha projects are prominently displayed. In urban areas posters to be displayed at metro stations, market places, and industrial areas where there is a proliferation of small factories/units. The website can in addition be used to display summons to the respondent and would eliminate problem of service of summons. The Department of Women & Child Development office, is the nodal point of delivery of various schemes at the state/district level, and usually frequented by women, senior

citizens and other marginalized populations; hence display of information about the LCC here will increase visibility. In addition the web sites of the NCW, State Commissions for Women, State Human Rights Commissions, Department of Women & Child Development at the National/State/ District level to include details of LCC.

The LCC CP/Members should be provided financial remuneration in terms of fees and transportation, for committed persons on a full time basis are required. Furthermore, the LCC budget should have provision of granting the aggrieved woman, diet money and transport allowance, on the lines provided to witnesses in criminal cases. If the woman has to spend the night in the district headquarter then arrangement should be made for her accommodation, especially in States like Odisha, where districts are large. Thereby, sending the message that a women's effort to report is encouraged.

The responsibility lies on the shoulders of the DO, who should be made accountable, but before which a separate budget should be sanctioned to every DO district-wise. In case of any default a penalty should be imposed on the DO on the lines of the Right to Information Act 2005 which in Section 20(1) states that 'Public Information Officers' can be penalised, however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

c) Nodal Officers - As per constitution of India and Panchyati Raj Act, villages are administered by the Sarpanch (Head of Village) who is the elected representative of village, (a large number of whom are women due to reservation). Being their elected leader women will have faith and trust in her/him, and as per the suggestions which emerged during a gender sensitisation programme,⁵⁶ the Sarpanch should be made Nodal officer to collect complaints. Furthermore the inquiry proceedings should be held preferable in the village or closeby, may be the closest Police Station.

⁵⁶ Gender sensitisation and awareness workshop conducted by SAFMA on March 18, 2019 at Village Palli, a medium size village located in Golanthara Block of Ganjam district, Orissa. A total of 119 families reside there and the village has population of 510 as per Population Census 2011. The Palli village has a lower literacy rate compared to Odisha, and most of the women work in the stone quarries. The program was attended by over 100 persons and the SAFMA team distributed the oriya booklet to on sexual harassment at the workplace. The women appeared to be desperately impoverished and said when they spend 8-10 hours working in the quarry and crushers they have no time to complain and to whom. According to a report (<https://ruralindiaonline.org/articles/visible-work-invisible-women-bricks-coal-and-stone-panel-1> Visible work, Invisible Women - Bricks Coal and stone by P.Sainath) despite the open violation of minimum wage acts, none of these labourers can seek redress. The outdated laws covering migrant workers do not protect them. For instance, the laws do not compel the labour department of Andhra Pradesh to help the Odiyas. And the labour authorities of Odisha have no power in Andhra. Bondage also exposes the many women and young girls working in brick kilns to sexual exploitation.

ii. RECOMENDATION #2-PREVENTION : The two characteristics of an environment associated with higher rates of sexual harassment as per the findings are (a) male-dominated gender ratios and leadership and (b) a social climate that communicates tolerance of sexual harassment, for a person is more likely to engage in harassing behaviour in an environment that supports such misconduct. Hence it is imperative to consider approaches that address the culture of patriarchy, and replace it by a climate that enables an aggrieved woman to approach the LCC, rather than remaining quiet. Aim being to promote a culture where abusive behavior is seen as an aberration, and not as the norm.

All LCCs underscored the need for prevention, for the legal process alone is not an adequate mechanism for reducing or preventing sexual harassment. Especially in view of the fact that a large number of women are unable to identify or perceive behaviour that is in fact sexual harassment, as indicated by the findings. Resultantly women do not report the misconduct. Women do not realise that if adequate measures are taken to stop the perpetrator at an early stage, they can prevent its reoccurrence and from becoming a bigger problem later. Adherence to legal requirements is necessary but not sufficient to drive the change needed to address sexual harassment. It cannot be denied that preventing sexual harassment from occurring in the workplace is much less time-consuming, as compared to the time and energy spent by the LCC in proceeding with the inquiry, summoning the respondent in case-by-case incidents, and making the final recommendation which subsequently can only be implemented through the DC.

a) Awareness Workshops – Separate budget should be allocated for awareness and gender sensitisation workshops on the POSH Act, in which acceptable behaviour and the consequences of overstepping the limit is clearly defined. For the general public developed should be a simple one-page flyer or infographics on the POSH Act, containing details of the LCC and consequence of sexual harassing a woman at the workplace; and for LCC members and other professionals and stakeholders a more detailed document on the lines of the legal awareness training conducted for elected women representatives in PRIs.⁵⁷ So that persons, both men and women, are better equipped to identify and respond to harassment – whenever and wherever it occurs. Conversely, individuals who

⁵⁷ The Training Module prepared by Goa Institute of Public Administration & Rural Development (GIPARD), outlines the role of the facilitators and the details of activities to be carried out during a training programme designed for two days. It covers different topics like Legal Safe Guards for women, Family Laws & Right to Property & Succession, Protection of women from Domestic Violence Act, Goa Panchayati Raj Act, 1994 and Children's Act, 2003; unfortunately does not include the POSH Act. One of the points highlighted by participants during the Odisha workshop was the lack of training on sexual harassment among the PRIs.

may have been unaware that their behaviour is inappropriate, may mend their ways and be more careful. Hence, the need to create awareness on appropriate interpersonal behaviour and employer-employee relations, is a critical input for prevention, and best tool for minimization if not total the total elimination of sexual harassment at the workplace.

Workshops should be conducted among target groups specially teachers, students, and anganwadi/ASHA workers, local Panchayati Raj Representatives, whom the LCC CP/Members suggested are a very good medium for spreading awareness, since they interact with several different social groups – family, society and institutes. Gram panchayats and local NGO Members are also considered appropriate bodies for awareness creation.

In states like Odisha where large amount of road construction and other civil works are being undertaken, it should be made mandatory for contractors of road projects to conduct workshops on the POSH Act. In addition the women's helpline should be linked to the LCC/nodal officer.

b) Inclusion of stakeholders – There should be increase in involvement of NGOs at community the level, and Resident Welfare Associations.⁵⁸ LCC should include representation from the labour department, the main function of which is to improve the working conditions and the quality of life of workers, regulating conditions of work, occupational health and safety of workers. The presence of ex-officio members of the WCD department should be reduced to the minimal, since frequent transfers of officials lead to vacancies, and the LCC quorum falls short. The ex-officio members have to coordinate with a number of different agencies and being tied up with their daily routine activities, the work of LCC is not a priority for them.

c) Counselling & linkages – Need to promote the facility of counselling and develop linkages to make the law robust, on the lines of the Protection of Women from Domestic Violence Act, 2005, which provides for counselling under Sections 9 and 14.⁵⁹ It has been recognised that counselling through informal advice in a confidential setting is a step towards registering a formal complaint. The LCC

⁵⁸ Supra note 25. Sanjay Kumar, India director of Harvard's Mittal Institute, says there is a need to create deterrence at the community level. "Residents' welfare associations can start by creating committees for domestic workers to report cases. These can be linked to district authorities where the local complaints committees must be set up," he says.

⁵⁹ According to Protection of Women from Domestic Violence Act, 2005, Section 9 among the duties and functions of the Protection Officers is to maintain a list of all service providers providing legal aid or counselling.

Section 14. - (1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counseling with any member of a service provider who possess such qualifications and experience in counseling as may be prescribed.

should convey to the woman that reporting sexual harassment is a courageous action, and regardless of if she desires to file a formal report or not, she can avail support services in the form of counselling. This would provide an alternative and less formal means of recording information about the sexual harassment and encourage more women to come forward. Preferably, family counselling of the aggrieved woman should be included so that there is no pressure from her family to turn hostile. Effectively addressing sexual harassment through the law requires taking into account the fact that targets of sexual harassment, especially in the unorganised sector, are more unlikely to report harassment, and the option for informal reporting through access to counselling can reduce their reluctance to report, as well as lessen the adverse impact the sexual harassment has caused.

The responsibility of maintaining the service provider list should be of the nodal officer who is familiar with the area.

Replicated could be examples of Child Protection Units under the Juvenile Justice (Care And Protection Of Children) Act, 2015, which is a community based child protection system to monitor the most vulnerable children in a systematic manner. On similar lines Vulnerable Women Units could play the role of formal protection mechanisms at the Panchayat and District levels with inclusion from other departments including labour, police, media and judiciary.⁶⁰

iii. RECOMENDATION #3-EDUCATION for creating an inclusive and respectful environment : Change is inter-generational, and it cannot be denied that young men in India grow up in a patriarchal society with misdirected notions of masculinity. Gender sensitisation, identity, equality and self-worth all need to be addressed in order to eliminate gender based violence. This initiative has to begin in the life of a child from a young age, through education and in the realm of learning. Not an intervention at a later stage when pre-conceived notions have already been embedded in the mind of the individual.

Education not only empowers those who may encounter sexual harassment to recognize and report it, but also warns persons indulging in inappropriate behaviour by clearly defining violations, and penalties. The syllabus content on gender sensitization for students should be developed to encourage behaviour/practices that promote gender equality, respect and tolerance. Included should be modules focusing on sexual violence and gender based discrimination.

⁶⁰ At SAFMA Workshop, *The Way Ahead - Prevention of Sexual Harassment*, Odisha, March 18, 2019 Ms Nirmala Kumari B.J. Manager Program World Vision India spoke about their work. A novel feature were the Child Protection Units (CPUs), community based child protection systems to monitor the most vulnerable children in a systematic manner in order to ensure their safety. These CPUs work with the formal child protection mechanism at the Panchayat and District levels with schools and other departments including police, media and judiciary.



Such an education will help empower the next generation, and provide a safe space by dislodging distorted views of masculinity. Age appropriate standard modules should be created, and on the lines of the Protection of Children from Sexual Offences (POCSO) Act, 2012, the Director of Education should issue circular making it compulsory for all schools to have one session per month on prevention of sexual harassment at the workplace; especially for girls age 16 years and above, since they will be soon entering the workplace.

a) Implementation:

- Creation of a syllabus for training. This syllabus should be vetted by an independent expert body, including experts in law, human rights, and education.
- The training of all District Magistrates/ District Officers in a state must be done together for a period of three days to a week, similar to the training camp that the NSSO officials are made to go through. These weeklong workshops to include - stories of victims, information about the project, sensitisation to harassment, sensitisation to gender issues, legal education etc.
- Participants during these workshops should be addressed/lectured by stakeholders from civil society, NGOs, police personnel, counsellors, RWAs, among others.
- Thus, there need not be an entire roadmap created for the training - it can be modified by States but must be undertaken in one go in each state.
- A deadline for the separation of the LCC office from the DM office should be set, and surprise checks conducted to ensure compliance. Checks may be conducted by the apparatus of the State Human Rights Commissions.

II. LEGISLATIVE CHANGES

i. Change in nomenclature 'Local Committee' to 'Sexual Harassment Local Committee' : The name of the committee should reflect the work it does and for better clarity be called 'Sexual Harassment Complaints Committee'. The nomenclature 'Local Committee' tends to confuse women, who do not know which specific committee to turn to on experiencing sexual harassment, since in every area there are a number of committees/NGOs operating. The nomenclature 'Local Complaints Committee' has been replaced with 'Local Committee' as per amendment vide Gazette notification issued on May 9, 2016, but this appears to

be mere semantics and in no way acts as a guide to women on the committee's nature, role or objectives.

ii. Choice to woman : The choice of whether she wants to approach the ICC/LCC should be given to the woman. On one hand allegations of the ICC being prone to bias have been made in view of the fact that they have been constituted by the employer/senior level management. A subordinate woman on being harassed by a senior officer may be hesitant to approach such an ICC, apprehending she would not get justice, or that the ICC members may be influenced by the management, or that it is merely a puppet body. On the other hand, there is an apprehension that Members of the ICC being under the control of the organisation they are working for, may further persecute the woman or perhaps even be protective of the perpetrator of the offence. Further constituting an ICC at every administrative unit of the organization, training and replacing its members every 3 years requires immense human and financial resources, which may not be possible for every organization. Resultantly there is only a symbolic compliance of the POSH Act by organisations to avoid liability, and not on sincere prevention of sexual harassment. In addition the law requires every employer to include an external member committed to the cause of women, whereas on the ground level organizations find it difficult to identify such experts. Therefore, the woman should be given a choice to approach the committee with which she feels safe and comfortable - ICC or LCC.

iii. Extension of time frame : The POSH Act provides for a time frame of 3 months to the aggrieved woman to file her complaint. The law is not clear whether it covers only a woman during the course of her employment, or a woman whose employment is terminated before she could garner courage to file a complaint. For a woman in the unorganised sector it takes time to come forward, which she does only after immense counselling by family and friends, or when the extent of harassment increases to the level that she is compelled to leave the workplace.

iv. Provision for Counselling : Provision for counselling to be included, whether by LCC or service provider, even in cases where the aggrieved woman does not want to file a formal complaint. The responsibility of maintaining the service provider list should be that of the Nodal Officer.

v. Procedure on woman not appearing : Provision to be included regarding the procedure to be followed by LCC in case the aggrieved woman does not appear after filing of initial complaint.

vi. Parallel changes in law in role of DO and penalty on default : The role of the DO has been specified in the POSH Act, however no penalty has been imposed

in law on default. Keeping pace with the POSH Act, Alignment of Service Rules has been done,⁶¹ and for educational institutions the University Grants Commission has notified Regulations 2015. Even the Companies Rules⁶² have been amended to include mandatory disclosure of the ICC in the directors' responsibility statement, which forms a part of the company's annual report. It is time now to make the head of a District, the DO, accountable under the POSH Act and not be allowed to escape responsibility.

vii. Suo moto cognizance : Included should be provision for LCC to intervene suo moto, whenever necessary to promote, protect and enforce the rights of women as a class. And provision for initiating class action by third party, in view of the fact that women in remote areas, specially Odisha, go to work in groups and are vulnerable to sexual harassment at workplace, but being unempowered are unable to take up their own cause.

III. GUIDELINES

On the basis of the findings and gaps, recommendations have been developed in the form of model guidelines to be issued by NHRC to the State Human Rights Commissions for implementation, the role of whom is to review safeguards provided under the law and recommend measures for their effective implementation, among others. The recommendations in the form of goals and target have been divided into three categories: (1) for implementation by the state government, (2) responsibility of the District officer, and (3) recommendations for the effective functioning of the LCC.

GUIDELINES

The National Human Rights Commission (NHRC) an embodiment of India's concern for the promotion and protection of human rights. NHRC concerned on the non-implementation of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, with the aim to reduce vulnerability of women to sexual harassment at the workplace and improve the functioning of the regulatory mechanism ie. Local Complaints Committees (LCCs)

⁶¹ No. 11013/2/2014 Estt (A.III) Office Memorandum, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated November 27, 2014.

⁶² Pursuant to the Ministry of Women and Child Development recommendations to the Ministry of Corporate Affairs with regard to corporate reporting requirements, notified was the Companies (Accounts) Amendment Rules, 2018 issued under Section 134 of the Companies Act, 2013 in order to ensure safe workplaces for women in the private sector. wef from July 31, 2018. Mandatory disclosure in the board's report of every company to include - "A statement that the Company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".

leading to a safe working environment and resultantly increased participation of women in the labour force; issues the following guidelines to be followed by establishments in States for procedures in relation to both prevention and handling of complaints of sexual harassment at the workplace.

We call upon all State Governments to put sexual harassment at the top of the agenda and be committed to providing a workplace that is free from sexual harassment. Sexual harassment in the workplace is against the law and will not be tolerated. Prompt and appropriate corrective action shall be taken immediately.

A. CENTRAL GOVERNMENT RESPONSIBILITY

It shall be the responsibility of the central government to -

Goal **1. MONITOR** the implementation of the POSH Act and maintain data on the number of cases filed and disposed off under the Act, and report the same annually to the NHRC.

Target 1.1 Periodic (preferably quarterly) audits be conducted in which comprehensive case-wise reports of the LCCs be provide to NHRC through the government. These audits should include questions about: women's behaviour, compliance, reluctance etc, and the procedure followed by LCC.

1.2 Imposition of penalty for delay in submission of reports furnished by the LCC/state government/central government.

Goal **2. GRANT** money to the State Government for being utilised for the payment of fees or allowances referred to Section 7(4) of the POSH Act, including provision for diet money to be paid to the aggrieved woman.

Target 2.1 NHRC to ensure money/grant for payment of fees or allowances referred to Section 7(4) of the POSH Act, including provision for diet money is transferred to state Government.

Goal **3. MODIFY** school curriculum and textbooks to include chapter on gender sensitisation and respect for women, in order to harmonize behaviour with constitutional guarantees to uproot the deeply embedded patriarchy.

Target 3.1 A time limit be set for the said modification of curriculum and text books, and dead line for the same to be provided to NHRC.

3.2 Central schools be encouraged to conduct monthly workshops on gender sensitisation and respect for women. Information of the contents of the workshops and schedule be shared with NHRC.

B. STATE RESPONSIBILITY

It shall be the responsibility of each State to -

Goal **1. PROMOTE** gender sensitisation and respect for women by making gender studies compulsory at primary and secondary level. Further, an annual two-three day gender module be conducted with all teachers in order to demolish preconceived notions of gender.

Target 1.1 Annual two-three day gender module be conducted for all teachers in a particular district together, so as to ensure maximum participation and compliance. These modules be organised on lines of workshops for District Magistrates, and to ensure some form of breaking down of embedded normative ideas, included should be lectures from experts on gender issues, NGOs, counsellors and strategies to deal with victim psychology.

1.2 Sessions to encompass how to deal with complaints made by children about their mother/sibling/other experiencing sexual harassment at the workplace. Since teachers are often seen as figures of authority with whom students feel safe confiding in.

Goal **2. NOTIFY** a District Officer to discharge functions under the Act.

Target 2.1 The Officer notified to be accessible and approachable to the LCC CP/Members and be in a position to devote time to the issue.

2.2 The officer notified to be given a two day training on role and responsibility as District Officer.

Goal **3. FORMULATE** orientation and training programmes for the Chairperson and members of the LCC.

Target 3.1 A seven day training be conducted annually. The first two days training can be common for both District Officer and LCC Chairperson/Members. The next five days to be exclusively devoted to role and functioning of the LCC and the procedure to be followed.

Goal **4. TRANSFER** the grants made by the Central Government under Section 7(4) of the POSH Act to the District Officer, for payment of fees or allowances of the LCC CP/Members, and diet money to the aggrieved woman. In addition sufficient funds be made available to the District officer for providing the LCC adequate office infrastructure, facilities and staff.

Target 4.1 Information to be provided by the state government to the SHRC on quarterly basis regarding transfer of such funds under separate head district wise.

4.2 The information provided in sub paragraph 4.1 to include summary report about the funds received - whether they were adequate, and how exactly they were used.

Goal 5. **ALLOCATE** separate budget to publicise the POSH Act, so as to advance the understanding of the public as to what constitutes sexual harassment at the workplace which includes, whether directly or by implication, namely:

- (i) physical contact and advances, or
- (ii) demand or request for sexual favours, or
- (iii) making sexually coloured remarks, or
- (iv) showing pornography, or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.
- (vi) Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - a. An employment decision affecting the woman is made because she submitted to or rejected the unwelcome conduct, including behaviour, such as awards, training, conditional promotions, or other job benefits.
 - b. The unwelcome conduct unreasonably interferes with a woman's work or creates an intimidating, offensive or hostile work environment including but not limited to:-
 - Touching or groping of a sexual nature;
 - Repeatedly standing too close or brushing against her;
 - Repeatedly asking a woman to meet up/socialize during off-duty hours when she has indicated she is not interested;
 - Harassing with unwanted telephone calls;
 - Placed prominently in the work area calendars or pictures of scantily clad women in suggestive poses;
 - Giving gifts in lieu of sexual favours;
 - Sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via social media.
 - c. Any humiliating treatment in relation to sexual harassment at the workplace which is likely to affect her health or safety.

Target 5.1 Concerted all round effort to be made through outdoor, print and electronic media, to raise public awareness district-wise on what constitutes sexual harassment at the workplace. The role of advocacy, public education and communication is all about changing mind sets at all levels, and gradually brings about social transformation.

5.2 Names, contact numbers and office address of the LCC to be prominently displayed at Gram Panchayat, DM/DC/Labour/WCD offices, RWA Office, metro stations among others. In addition, details be posted on the web sites of the State Govt./District/WCD Departments. Links of the same be provided to SHRC/NHRC and State Women's Commissions/NCW/MWCD to post on their web site.

5.3 One of the best ways of publicising details of the POSH Act is to conduct 'sunvahis' or hearings on a quarterly basis in each district/different parts of the district. Specifically those districts/areas be targeted where there is a concentration of women workforce (for example in construction or mining activity); and presence of SHRC/state govt officer be ensured at each of these public hearings.

5.4 Funds to be allocated district-wise for conducting these hearings in a comfortable gender friendly environment, including budgeting for light snacks and water etc. so as to create an incentive for women workers to attend.

5.5 Furthermore, to encourage dialogue between various stakeholders, govt. institutions such as schools, colleges, and vocational institutions also to be involved. This can be done at various levels: by RWAs, Gram Panchayat associations, NGOs, academics etc.

5.6 The publicising of the POSH Act to be monitored by SHRC and penalty be imposed by SHRC on the state govt. in case of non-compliance of sub paragraphs 5.1-5.6.

C. RESPONSIBILITY OF DISTRICT OFFICER

It shall be the responsibility of the District Officer to -

Goal **1. CONSTITUTE** LCC in District to receive complaints of sexual harassment from establishments having less than ten workers or if the complaint is against the employer; and if required more than one LCC in view of the density of population and geographical vastness of the District.

i. The Chairperson shall be an eminent woman in the field of social work, one woman member to be nominated from block, taluka, tehsil or ward or municipality in the district; and minimum two more members.

ii. Atleast one nominee shall have a background in law and one woman belong to the SC/ST/OBC or minority community.

Target 1.1 The DO/concerned department shall issue advertisement inviting applications for post of LCC CP/Members, specifying the conditions of

eligibility. The advertisement to be published in at least two local vernacular newspapers, and website of the State govt/WCD department.

1.2 The LCC preferably be constituted with an odd number of members, so that in case of a divided opinion, they arrive at a decision based on majority view.

1.3 Members to be selected based on evaluation of various factors including whether they are accessible, approachable, committed, sensitive and understanding. Interview should be held to assess if they are sensitive to issues pertaining to gender-based violence.

1.4 Members shall not have criminal record and have good credibility and technical competency to handle grievance procedures.

1.5 It should be the responsibility of the District Officer to conduct background enquiry check before making an appointment.

1.6 The notification of the LCC should specifically mention the category of the member against name – GEN/SC/ST/OBC/Minority- and specific mention be made of member having legal background.

1.7 Information regarding composition of the LCC to be provided annually by state government to the SHRC, and in case of any change in composition, within 60 days of the change.

1.8 The information mentioned in sub paragraph 1.7 to include attendance sheet of LCC alongwith honorarium/payment made. This attendance record should preferably be electronic. (An example is the biometric system in the NHRC office itself).

Goal 2. Provide **SEPARATE OFFICE SPACE** to LCC for conducting meetings, including office facilities, infrastructure etc, and timely payment of fees to LCC CP/Members, in addition to diet money to the aggrieved woman, if required.

Target 2.1 The District officer to provide the LCC, which is the fulcrum of the POSH Act, a separate designated office with all facilities and infrastructure.

2.2 A full time multi-task assistant to be made available in the LCC office, who in the absence of Members may attend to women approaching the LCC.

2.3 District Officer to hold periodic discussions with the LCC, preferably bi-monthly. A summary report of these bi-monthly discussions - something even as simple as minutes of the meeting - be created and a record be maintained.

2.4 A deadline to be set by State govt. for creation of separate designated LCC office by the District officer. Proof of sub paragraph 2.1-2.3

be submitted the state government to the SHRC alongwith photographic evidence of the room, name plate, board, infrastructure, staff etc.

2.5 Payment of fees to be made to LCC CP/Members within 60 days of each meeting.

2.6 Payment of diet money, if required, be made to aggrieved woman within 7 days. Preferably the money to be transferred directly into her bank account, however in view of the fact that a large number of women in the workforce are daily wagers, the aggrieved woman may be paid cash and submit a receipt containing UID number. This receipt itself should preferably be a unique identity form of verification, ie a fingerprint stamp or biometric scan.

2.7 SHRC may recommend to state govt. imposing light penalty on District officer in case of non-compliance of sub paragraph 2.1-2.6.

Goal **3. CONDUCT ORIENTATION** and training of LCC members, focusing on their role, functioning and procedures.

Target 3.1 The dates and venue of the training and orientation programmes be posted on the notice board of Gram Panchayat/RWA and other venues for general awareness.

3.2 The training sessions be video-recorded, alongwith feed back of LCC members, if any.

3.3 The training to include approaches to supporting the aggrieved woman and providing her a gender friendly environment.

Goal **4. MONITOR** the timely submission of reports furnished by the LCC. The annual report shall contain the following:-

i. Number of complaints of sexual harassment received by LCC in one year, sectorwise- organised/unorganised;

ii. Number of complaints disposed off during the year;

iii. Number of complaints pending inquiry for more than ninety days;

iv. Number of workshops/awareness programmes conducted on prevention of sexual harassment at the workplace by LCC and DO separately.

v. Number of places display boards have been installed publicising details of LCC.

Target 4.1 A record of each annual report be maintained and scrutinised.

4.2 In case of non-compliance, state govt. may impose light penalty on District officer.

Goal 5. DESIGNATE one nodal officer or more depending on the density of the population and geographical vastness, in every, block, taluka and tehsil to receive complaints and forward the same to the LCC within seven days.

Target 5.1 The Nodal officer nominated to preferably be the village Sarpanch or Tehsildar, and number of Nodal Officers to depend on the female workforce, density of the population and geographical vastness of the District.

5.2 In order to ensure a safe environment for women, the Nodal officer, besides filing complaints, must also analyse the problem areas, ie where most complaints are coming from. Based on this analysis, the Nodal officer shall conduct periodic visits to work sites, and use this as an opportunity to spread awareness of the LCC among women workers who may be unaware of the LCC. This will result in greater visibility of the nodal officer, as well as the LCC; in addition to their being more approachable and accessible.

5.3 Details of Nodal officers appointed and their specific activities be provided by the state government to the SHRC for information.

Goal 6. ENGAGE with service providers and NGOs for creation of awareness on sexual harassment and the rights of the women, and provide assistance to the LCC in counselling of women who may not want to file a formal report.

Target 6.1 The District Officer to engage with service providers with the assistance of the Nodal Officers, who should be responsible for maintaining a list of service providers and NGOs in their designated area.

6.2 The Nodal Officers to be made in-charge of coordinating with NGOs regarding content of gender sensitisation workshops and presentations and names of their members be recommended as external consultants to be engaged by schools, colleges, and other local institutions, to create awareness outside of the state apparatus.

6.3 The District officer to coordinate with NGOs involved in the *sunvahis* conducted by the state government through the Nodal officer.

Goal 7. DO HIS DUTY, for which the District officer shall be accountable.

Target 7.1 In case of the District Officer not submitting the report, or doing duty diligently, a penalty may be imposed and disciplinary action taken under the applicable service rules.

D. RESPONSIBILITY OF LOCAL COMPLAINTS COMMITTEE

It shall be the responsibility of the Local Complaints Committee acting as a redressal mechanism to -

Goal 1. TAKE IMMEDIATE ACTION on receiving an allegation of sexual harassment at the workplace and ensure that the matter is promptly inquired into and addressed. The LCC is committed to take action if it learns of possible sexual harassment, even if the woman does not wish to file a formal complaint or only wants counselling.

Target 1.1 Action to be taken within a stipulated time period of maximum 7 days.

1.2 A complainant who approaches the LCC to be treated with utmost consideration, compassion, and respect.

Goal 2. FACILITATE COUNSELLING of the aggrieved woman, if required, through a service provider, close to her place of work/residence.

Target 2.1 The LCC to facilitate counselling of the aggrieved woman through a service provider, close to her place of work/residence, from the list maintained by the Nodal officer.

2.2 The LCC to follow up on the condition of the woman, and take action against the service provider or nodal officer in case they did not assist her in a time bound manner.

2.3 The service provider or nodal officer to have a regular and open channel of communication with the LCC, so that the woman not only has access to counselling but also feels she is getting redressal.

2.4 The efforts of the LCC/Nodal Officer/Service provider in sub paragraphs 2.1-2.3 be recorded and entered in an electronic sheet that is updated each time fresh action is taken in the case.

Goal 3. PROVIDE ASSISTANCE to the woman, including guiding her on the procedure and assisting her to make complaint in writing, alongwith list of witnesses.

Target 3.1 The LCC in each case to record that it has explained the process to the woman in simple language so that a poor uneducated woman can understand her rights and is encouraged and feels empowered to report sexual harassment at workplace, even if orally. The same may be entered in the electronic sheet mentioned in sub paragraph 2.4.

3.2 The members of the LCC NOT to make inappropriate remarks like telling the woman “*auraton ko adjust karna padta hai*”, “*men are like that*”

or “it was just a joke”, and in case of such treatment the woman should have recourse to an external authority, preferable the SHRC.

3.3 The members of the LCC shall NOT blame the woman for encouraging the harasser for his misconduct. By blaming the woman or ignoring the situation, the message is sent out that the harasser has the right to continue such action, which is unacceptable. In case of such treatment the woman should have recourse to an external authority, preferable the SHRC.

3.4 It shall be the duty of the LCC to make copies of the complaint and provide the same to the respondent for his reply within a period of 10 days.

Goal 4. SUMMONS TO RESPONDENT to file his reply within ten days of receipt of the complaint, alongwith list of witnesses.

Target 4.1 Assistance of police may be taken in serving summons to respondent.

4.2 Imposition of a penalty, perhaps a monetary fine, in case of non compliance.

4.3 In case of non-appearance of respondent posting of summons in local newspaper and on website of LCC to be considered sufficient for service.

Goal 5. PROVIDE OPPORTUNITY OF CROSS EXAMINATION

Target 5.1 The LCC to call both the aggrieved woman and respondent and give them an opportunity to cross examine each other and the witnesses.

5.2 To whatever extent possible a record of the cross examination be maintained electronically.

5.3 CCTV camera and security staff to be made available in the LCC office to avoid unruly, disgruntled and upset parties indulging in violence; and so that verbal confrontations do not escalate into physical violence. Specially, in view of the fact that the parties, whether aggrieved woman or respondent are vulnerable to exhibiting inappropriate behaviour and language which may build up vicious behaviour on either side.

5.4 The presence of security staff be recorded and subject to random review so as to ensure proper implementation.

Goal 6. SUBMIT FINAL REPORT

Target 6.1 The LCC on completion of inquiry shall within ten days provide to the District Officer report of it's findings alongwith recommendation of penal action against the respondent, as appropriate to the circumstances, ranging from a written apology, warning, letter of reprimand through censure, withholding of promotion or increment, termination from service or undergoing a counselling session.

6.2 The report be made available to both parties, the aggrieved woman and respondent.

6.3 In case of default, of LCC not submitting the report within the specified period of ten days, then the position of the members stand subject to review. A verbal progress report should be given within the first seven days, to ensure that the LCC is on track with its recommendations and report.

6.4 The District Officer to act upon the recommendation of the LCC within sixty days of receipt of report.

Goal 7. PROVIDE PROTECTION of aggrieved woman against harassment pending inquiry/completion of inquiry and confidentiality of both parties ie aggrieved woman and respondent.

Target 7.1 The LCC to take necessary steps to protect women/employees from retaliation who in good faith report incidents of sexual harassment at the workplace. *For this purpose, the creation of a separate office and meeting room for the LCC is crucial.*

7.2 To the extent possible the aggrieved woman be allowed to enter the meeting room through an entrance separate from that used by the respondent.

7.3 The staff involved in recording of LCC meetings be made to sign a non-disclosure agreement, specifying that they will not discuss the details of inquiry with anyone.

7.4 Files to be kept under lock and key, accessible only to authorised personnel.

7.5 The LCC should make all efforts to protect the identities of the aggrieved woman and the respondent.

7.6 SHRC to review steps taken by LCC to protect the identities of the aggrieved , respondent and witnesses. In case the identity of the woman is revealed, she be allowed legal recourse for action against the LCC or persons involved in disclosure through the SHRC.

Goal 8. CLARITY ON DEFINITION OF SEXUAL HARASSMENT under the law. Views as to what behaviour constitutes sexual harassment, vary according to sex and age. Often due to miscommunication the perpetrator could be unaware of the offence caused by his behaviour. It should be clarified that in law a particular behaviour is sexual harassment, irrespective of intention of the perpetrator. It is what the woman feels which is important. If she feels the behaviour is unwelcome and offensive, the LCC should consider it as sexual harassment.

Target 8.1 This can be clarified through workshops and sunvahis as mentioned in GOAL 5 of State Responsibility. It is crucial that the LCC does not base its decision against the accused simply because he was unaware that his behaviour constitutes sexual harassment. The LCC must remain objective under any circumstance.

NOTE 1: The dignity of women employees should be safeguarded to jointly create harmonious labour relations and a culture of mutual respect. Remember, the lowest-paid workers are least likely to be able to take forward a case even though high levels of sexual harassment occur in low pay sectors. The key distinguishing feature of sexual harassment at workplace is that the conduct is unwanted and unwelcome by the woman recipient. It is important to distinguish sexual harassment in the workplace from intimacy and jokes in normal relations.

NOTE 2: SEXISM is an attitude that the male is superior to a female.

SEX DISCRIMINATION is a behaviour which occurs when employment decisions are based on a female employee's gender or when she is treated differently because of her gender.

SUBTLE SEXUAL HARASSMENT is a behaviour but not a legal term. It is unwelcome behaviour of a sexual nature that if allowed to continue could create a QUID PRO QUO and/or a Hostile Work Environment for the recipient. For example, unwelcome sexual comments, jokes, innuendoes.

QUID PRO QUO sexual harassment, a form of sexual blackmail (which mean 'this for that'). Quid pro quo harassment occurs when employment decisions are based on the female employee's acceptance or rejection of unwelcome sexual behaviour.

It includes **HOSTILE WORK ENVIRONMENT**, which is a work environment created by unwelcome sexual behaviour or behaviour directed at female employees that is offensive, hostile and/or intimidating and adversely affects her ability to do her job.

CHAPTER 6

CASE STUDIES

Sexual assault is a terrifying and humiliating experience. The findings of this study reveal the main obstacles to understanding the exact prevalence of sexual harassment and to combating the problem is the low incidence of reporting. Women choose not to report for a variety of reasons — fear of not being believed, being too embarrassed and ashamed, or being afraid that society will blame them, including their own families. Another reason is the lack of employment options, due to which women tend to put up with situations they feel they cannot change. "What can't be cured must be endured" is too often the case. In case a woman somehow garners the courage to report, she has to be prepared to face another uphill task of having to prove the sexual harassment. Making a formal report is not always associated with well-being, on the contrary the complaint may result in her being further harassed, not only by the respondent, but the authorities and often even the police. Not surprising, the negative consequences deter victims from coming forward, and only after a long time gap of many years does the woman feel confident of revealing all, without fearing any reprisal. In fact, the barriers to reporting that existed at the time of the incident may no longer be in existence; for example the harasser may have retired, or may no longer be in a superior position to impact her employment, or the woman herself may have after a long time gap overcome the combination of guilt and embarrassment.

Presented here are two case studies (all names have been changed) - one of Neena, a woman who on experiencing sexual harassment and assault reported the matter. In spite of having the order of committee in her favour, it has not been implemented; and on the contrary, she is the one who is being threatened with removal from employment. The second case study is of Durga Devi who chose to complain, not to the authorities but her own family and friends, and instead of being sympathetic, they chose to blame her. The third case study is of Ruhani, a mid-wage worker, who in spite of repeatedly telling off her employer is compelled to put up with the sexual harassment due to lack of employment opportunities. Interspersed with the case studies are voices of women from the unorganised sector who face sexual harassment at the workplace.

Case Study #1 – Ineffective implementation of the law

"On 12.04.2017 while I was teaching class 5, suddenly the Sanskrit male teacher barged in and groped, manhandled, abused, harassed and physically assaulted me. When I resisted he pulled my shirt and hit me. I fell down. On his glowering at the students, they ran out of the room scared. He continued to molest me,

until another teacher Ms. S entered the room and saved me. While running away he threatened me that he is very powerful and the Principal and Manager are well known to him. No one will come to my rescue. Terrorised I called the police and dialled 100 no.”

1st barrier – Non cooperation of Principal. The Principal in connivance with accused tried to hush up the matter, and even went to the extent of getting the blood stains on the floor of the class room cleaned before the police arrived.

2nd barrier – Non registration of FIR. – Since Ms. Neena had dialled 100, the police arrived but was not allowed to her and were misguided/manipulated by the school Principal. Complaint was finally registered as FIR No. 121/17 u/s 323/342/354/506 PS Nagar only after Ms. Neena physically went to the police station and literally begged them for help. Notable is the fact that the time of registration is mentioned as 22.05hrs, whereas incident occurred at 13.20 hrs. She was not given copy of FIR easily and efforts were underway to convert the case into a scuffle/fight “Jhagda”.

3rd barrier – Inaction by authorities. Despite making repeated requests neither did the police take any action against the accused, nor was the mandatory inquiry conducted by the ICC under the POSH Act. In desperation seeking justice, the complainant approached DCW who vide dt dt 30.06.2018 directed the President of the School Managing Committee to initiate proceeding of the ICC under the POSH Act. The letter also clarified that “.....the proceedings of the ICC are independent of the criminal proceedings. Pendency of a case before the court of law does not preclude any action by the ICC, as the administrative action taken by the ICC is to assist the aggrieved woman which in no manner amounts to an interference with the justice delivery system.”

In July 2018, the ICC inquiry started, **more than one year after** incident-12.4.2017.

4rd barrier - Non-cooperation of respondent. 13 meetings of the ICC were conducted on the school premises to inquire into Ms. Neena’s complaint. Written questionnaires were issued to both the complainant and respondent. Reply of respondent to relevant questions reveals connivance of Principal/authorities, and the same is as under:-

Q N	Question by ICC	Answer of respondent	Conclusion of ICC	Inference by ICC
1	Did you enter the class room of the complainant on 12.04.17	Yes	Accepted	Why no action was taken by school Principal when the respondent himself had a regular period on ground floor.

2	Why did you enter the classroom	I am HOD Hindi & Sanskrit and went to ask syllabus and see hindi books of students	Not valid reason to enter the classroom when he himself had a regular class that time.	Not accepted. School records show he is HOD Sanskrit. He had no plausible cause to ask syllabus and see hindi books from students.
3	Did you apply for bail? Provide details of all bail application/cases.	Yes Reply not received.	He is currently on bail at personal security of Rs. 50,000/-.	The School authorities are unaware of his arrest memo dt 6.11.17
4	Was any inquiry conducted with regard to this case by the school	The Principal made an inquiry.	The enquiry was conducted with the motive to help him in getting bail.	The Principal has been denying receipt of complaint from the complainant. On which basis she conducted the inquiry.
5	Were you asked to participate in any inquiry conducted by the school regarding this case	No	Then how come he knows about it's findings and insisting ICC rely on it.	How can inquiry be conducted without the participation of the complainant and accused.

Another set of questions were given to the respondent to give him a fair opportunity to defend himself. The **Respondent** questioned the existence of the ICC and raised questions on their jurisdiction and **DID NOT COOPERATE** with ICC enquiry.

5th barrier - Principal in denial mode despite evidence. Witnesses deposed in favour of the complainant confirming that they saw Ms Neena bleeding after the physical assault by the respondent. Six members had reviewed the CCTV footage and confirmed the physical assault.

One of the witnesses, Ms. 'R', has in her testimony explicitly deposed as under :-

Point number 3	The complainant had blood stains, injury marks, and blue spots on face
Point number 4	Wife of Respondent and Pandit 'A' were there insisting that the complainant need not register the complaint with police and that Respondent said " sorry"
Point number 5	The school principal and Mr 'N' from school office, asking the complainant to finish the matter. Respondent was scolded by them. He once again said "sorry" to the complainant asking her not insist on FIR.
Point number 6	The complainant gave her complaint to the Principal, with a copy to the police personnel for registering FIR.
Point number 7	The Principal received the complaint, assuring victim to give the diary number later.

Point number 8	The Principal and Mr 'N' assured victim that the CCTV footage will be preserved.
Point number 9	Respondent was asked to lodge a complaint by his accomplices to put pressure on the victim.

6th barrier - Non implementation of ICC order. After almost a year of inquiry and two years after the incident, finally in February 2019 the ICC submitted it's report. Notable are the finding and recommendations which are reproduced as under :

Findings:

On going through deeply into the written complaint, the supporting documents provided i.e medical records, police complaints, court proceedings, the complainant answers to the queries, the answers given by the respondent, testimony of Ms. 'R, written statements of Ms 'S', Ms 'Su', Ms 'K' and Ms 'M' and phone-recording of random Class V children regarding the incident of 12/4/2017, ICC is fully convinced and finds the respondent guilty of physical assault.

Recommendation :

The gross misconduct of teachers in the classroom showing rowdiness unruly behaviour in front of children is not at all tolerated in a civilised society and is liable to be punished.

ICC unanimously recommends action as per the provisions in force.

The respondent was found guilty of sexual harassment at the workplace. However till date no action has been taken by the school management, nor has any departmental action been initiated against the school for not following the laws of the land. .

7th barrier – Nature of Punishment not recommended. The order of the ICC is well worded and a reasoned order, has not recommended any specific punishment. The ICC after recommending the punishment should have forwarded the order within a period of ten days from the date of completion of inquiry, to the School Management Committee; who shall act upon the recommendations within sixty days [s.13(4)]. Since the school is recognised by the **Department of Education, Govt of Delhi**, a copy of the ICC order should have also been forwarded to them, for information and action. For this precise reason and as a deterrent Section 19 (b) of the POSH Act provides that every employer shall display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee.

8th barrier - Normalisation of gender based violence.

The impact of the incident on the children can be gauged by the fact that students shared recording of the incident, done on their mobile phones. When children are exposed to sexual violence and sexual harassment at the workplace without any prompt action being taken against the perpetrator, then there is a normalisation of gender based violence. Boys will get encouraged to abuse and bully girls, while girls on their part will be hesitant to report, expecting that the authorities will not take them seriously. This will further lead to sexual harassment going unchecked.

**DIFFICULT TO PROVE
Domestic Worker**

*He tried to touch me when
I was cleaning the room.
I tried complaining to his
wife, but she asked me to
get proof.
Where can I get proof? No
bedroom has a CCTV
camera?*

9th barrier – Impact on self. The victim is suffering from all the psychological effects of women who experience sexual harassment. She has lost weight, her mental health has been effected, she experiences disrupted sleep patterns, and psychological distress symptoms (including persistent sadness, restlessness, hopelessness, and worthlessness). The worst is that in these over three years her family life has been severely affected. Her own existence is at stake. The husband who has been supportive, in the sense that he did not doubt her, now questions her decision to report- “*tujhe kya mila sirf badnaami*” (what did she get out of it, except defamation).

10th barrier – Perpetration of the Power theory.

The inaction of the authorities has further emboldened the respondent who feels invincible. It is the victim/complainant who is running from pillar to post to get justice and has visited over 100 (figure of speech) offices to ensure she gets justice. To earn her living she still goes to school, but is compelled to put up with his abusive insinuating statements. He not only stares at her but mockingly refers to her as ‘rape victim’. He taunts her ‘*Tu mera kuch nahin bigad sakti*’ (I am well connected you cannot do anything). Her reporting has led to a

**FEAR OF RETRIBUTION & STIGMA
Woman labourer
Odisha**

*I will loose my job. Who
will feed my family and
what will I gain from it,
except stigma?
How can I prove the
contractor is always
staring at me.*

backlash effect, increasing the workplace harassment as a means to maintain existing hierarchies of power.

INTERVENTION - The workplace/school environment for the victim has turned into an atmosphere of threat, terror and reprisal. Reporting has resulted in serious negative implications; and the respondent in connivance with the Principal is threatening her with loss of employment. She has been counselled to approach the NHRC, which has registered her complaint.

NO ONE WILL BELIEVE HER

**Women worker,
Haryana**

*"Hamari baat kaun
manega"*

Who will believe me?

Case Study #2 – Victim is blamed.

"I am a class 8 pass, house wife with teenage children. To supplement the household income I used to distribute newspapers from house to house in the neighbouring areas, specially Alipur which is 3 kms away from my village Khampur, Delhi. Once while I was handing over the newspaper to a regular subscriber he tried to grab hold of my hand. Shaking like a leaf I somehow resisted and confronted him 'yeh kya kar rahe ho'. He just laughed it off. I was terrified but managed to tell him off, before retreating. He replied, 'that is the problem with you women, first you dress up and when someone appreciates your beauty, you don't know how to take compliments.'

Scared stiff I ran back home and shared the incident with my friend circle. They also laughed it off and blamed me for dressing up. 'Tu itni lipstick kyun lagati hai'. (why do you use so much lipstick)."

1st barrier –Disbelieved and blamed for the harassment. It is most natural for a woman on being subjected to sexual harassment at the workplace, to first share the trauma with her family and friends, which Ms. Durga Devi did. Instead of being supportive and sympathetic, they put the blame on her 'dressing sense', and insisting that working

LACK OF AWARENESS

**Woman labourer
Haryana**

*"Hum rozi roti kamate
hain. Yeh sab kya jaane"*

*We are too busy surviving
to know about this law
business.*

*Words like 'rights,' 'justice,'
'equality' don't exist for us.*

women should merge with the background and not draw attention to themselves.

Women who have survived sexual assault tend to feel shame and self-doubt, and convince themselves that the harassment was due to their own fault and they had done something wrong. Similarly, Durga feels that her using 'excessive lipstick' may have attracted the man towards her, and feels a sense of humiliation and blame.

2nd barrier – She was asking for it. Durga is always in a saree and like most women enhances her appearance with simple make-up, which in a village comprises lipstick and bindi. However, the myth has been perpetrated that dressing up or wearing modern clothing, or drinking means the victim was "asking for it". Whereas, the fact is that the victim's behaviour or clothing choices do not mean that they are consenting to the unwelcome sexual activity.

3rd barrier – Loss of income. Due to the risk of the incident of sexual harassment being repeated, Durga left a lucrative employment and has chosen another means to supplement her income. She said, *"I left that job and now earn an income by doing piece work stitching and tailoring. I do not want to do any employment in which there is a public dealing, especially with men."*

4th barrier – Lack of confidence in the system. – Durga being part of the women's groups is involved with NGO work and women's leadership development in the village. She feels that no purpose will be served by reporting the matter, on the contrary she herself will be defamed. Since her own women's group did not believe her, she does not expect strangers to believe her

LACK OF CONFIDENCE IN SYSTEM Women worker, Delhi

*Reaching workplace itself is harassment. In the bus we are often pushed and groped. At the workplace men stare at us.
Law will do nothing.
Nobody is punished.*

LACK OF ALTERNATIVE Domestic Worker

"I have no parents. My sister and I moved in with different families. We do cooking and household chores and are reliant on them for food, clothes etc. My sister's employer sexually assaulted her once, and gave a mobile phone in return. If she complains, even I will be thrown out. Then where will we go?"

(“who to ajnabi haine”), and will ask her embarrassing questions.

Intervention – She was counselled to approach the LCC, but flatly refused saying she has no problem and her life is going on smoothly.

Case Study #2 – Quid Quo Pro Harassment

“I am an Odiya girl born and brought up in Faridabad. Due to financial problems in the family I had to discontinue my education after class 8 and began to work. Presently I am working in an embroidery unit which has 8-9 other employees, both male and female. I do embroidery on sarees. My employer is very ‘badtameez’, and constantly makes ‘galat’ sexually coloured comments. He behaves like that with the other girls also, but more with me and wants to make ‘relation with me’. I have directly refused. He is putting a lot of pressure on me to succumb and said ‘do not leave the job, I will increase your payment’. I am feeling helpless and do not know what to do.”

1st barrier – Feelings of Helplessness. The concept of ‘helplessness’ is a common phenomenon experienced by victims of sexual harassment at the workplace, and they often simply give up. But Ruhani is strong and has not succumbed under the pressure to accede to her employer’s demands, nor the temptation of earning additional income. Only time will tell for how long she can withstand the pressure. Although she does not feel any shame or guilt like Durga, but Ruhani is struggling with the psychological impact of harassment and confused and depressed. She is not in a position to look towards her family for emotional support, or share the trauma with them, because they may prohibit her from going out of the house, since her dignity is at stake (“hum chote log hain aur hamare pass izzat hi hai”).

FAMILY NOT SUPPORTIVE
Woman worker
Delhi

2nd barrier – Harasser in position of power – Ruhani is dependent on the employer for her wages, which are given monthly. The employer is in a position of power which he wields by threatening to hold back her wages. On her reporting a case of sexual harassment against him, he has the capability to prove Ruhani is a liar, due to which he intimidates her that being in a subordinate position she cannot harm him (“Chhote log ho, kya kar loge?”).

“If I share my experience of sexual harassment with my parents, I am sure they will ask me to leave the job and get married. All my dreams and aspirations of earning money and possessing my own vehicle will end.”

Intervention – Ruhani is a dignified young girl with a high sense of self-esteem, but totally at the end of her wits on how to handle the situation. She wants to leave the employment and search for work elsewhere, but jobs are not easy to find.

Ruhani has been extensively counselled to approach the Faridabad LCC, including personally referring her to the Chairperson, who is very sensitive to gender issues. She has refused and does not want the matter to be public. Efforts were made to convince her that confidentiality will be maintained, but it cannot be denied that the moment a complaint is lodged, and summons sent to the employer there is a danger of his retaliating, and her family and society coming to know.

Ruhani has been advised that in case the employer repeats the offer to establish sexual relations with her, she should not only flatly refuse, but threaten to report the matter to the LCC by flashing the name and telephone numbers. However, she keeps insisting that she does not want any assistance in reporting the sexual harassment to the LCC, but help in securing another good employment.

The real life examples in the form of case studies and voices of women referred to in this chapter are reflective of some of the ways women across the country are dealing with sexual harassment at the workplace, and how organisations and educational institutions are dealing with revelations and complaints of employees having been engaged in sexual harassment. Much of the offensive conduct goes unreported because victims are embarrassed or fear they will be stigmatized or retaliated against, all which underscore the need for effective and efficacious functioning of the LCC, in order in order to promote a safe work space for women.

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-*IPC Section 509. Word, gesture or act intended to insult the modesty of a woman.* Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

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Duties and functions of Protection Officers.—(1) It shall be the duty of the Protection Officer—(a) to assist the Magistrate in the discharge of his functions under this Act;

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

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