

## **SEXUAL HARASSMENT OF WOMEN IN INFORMAL AND UNORGANISED SECTORS IN INDIA: AN ANALYTICAL STUDY**

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### **Abstract**

*Globally there is a great deal of arising tension about sexual harassment in the workplace. It is a type of gender-based violence that is harmful to the victims' productivity, well-being, and sense of dignity while also violating their human rights. In India, the informal and small-scale business sector that is not governed by official regulations is where the problem of sexual harassment is most prevalent. The issue of sexual harassment in the workplace is widespread and it impacts people in a variety of sectors and industries. But it's especially common in the unorganised sector where employees frequently don't have access to official complaint and redressal procedures. Since a sizable section of the labour force in India works in the unorganised sector, it is imperative that sexual harassment in this sector be prevented. This article shall discuss the problem of sexual harassment in India's unorganised industry, and its impact on employees, and the probable remedies that might be resorted to.*

**Keywords:** Sexual harassment , Unorganised Sectors , Women , Workplace.

### **Prologue**

“Women will work out their destinies – much better, too, than men can ever do for them. All the mischief to women has come because men undertook to shape the destiny of women.”

- Swami Vivekananda

Among 95% of Indian women working in the informal sector, there is a clear gender divide in the country's labour force participation in this sector. Women are employed in the unorganised sector as street vendors, housekeepers, labourers in agriculture, construction, and other occupations. Given the significant proportion of women employed in the unorganised sector a more thorough examination of the matter regarding the efficient enforcement of workplace sexual harassment legislation is warranted.

In India, the informal sector employs the majority of workers. The most recent statistics from the Periodic Labour Force Survey Annual report, 2020–2021 shows that women make up more than half (56.7%) of the non-agricultural informal sector. The majority of them are the only providers of income for their families, hailing from underprivileged origins and marginalised areas. Since they frequently lack literacy and knowledge of the law, it is quite challenging for them to speak out against harassment. They are further discouraged from reporting such assaults by their fear of losing their livelihood and the shame attached to the problem.<sup>1</sup>

The risks that persons working in the informal labour sector confront are highlighted by a recently released study that demonstrates poor women in India are often the targets of sexual harassment and abuse at work. This vulnerability is made worse by the global coronavirus pandemic. According to a report of Human Rights Watch, the abuse occurs as a result of insufficient enforcement of the sexual harassment laws by local and federal governments. Following nationwide demonstrations in response to a woman being gang-raped in New Delhi in 2013, the bill was passed. Employers in India with ten or more employees are required by law to abide by the policies in place to avoid harassment.<sup>2</sup>

Since the law's introduction, compliance has proven troublesome. According to a 2015 assessment by a non-governmental organisation that supports India's business community, 25% of global corporations and 36% of Indian businesses in the nation were not abiding by the law. The International Labour Organisation estimates that 2 billion people, or more than 61% of the working population worldwide, are employed in the informal sector. In terms of the total economy, growing and developing nations in Africa, the Asia-Pacific region, Latin America, and the Middle East have the highest percentages of informal labour. For many years, there has been a global issue with the mistreatment of workers in the informal sector, which includes jobs like home-based labour, street vending, household labour, waste collection, and physical labour in the construction and agricultural industries. However, the problem is particularly gender-based in India, where 95% of the 195 million female workers in the nation work in informal employment, according to a report by Deloitte and the Global Compact Network India, which uses statistics from the World Bank. Additionally, women employed in the

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<sup>1</sup> Surbhi Karwa 'India's Workplace Harassment Law Has Failed Informal, Marginalised Workers', (October 3, 2022), <https://behanbox.com/2022/10/03/indias-workplace-harassment-law-has-failed-informal-marginalised-workers/> (Last visited: Nov. 30, 2023)

<sup>2</sup>U.S. News Staff , 'India's Informal Female Workers at Risk of Abuse, The study by Human Rights Watch spotlights the vulnerability of people working in the informal sector.', (Oct. 16, 2020, 12:10 p.m.) , <https://www.usnews.com/news/best-countries/articles/2020-10-16/informal-female-workers-face-harassment-and-abuse-in-india-report-finds>.

unorganised sector lack the same voice as those in India's entertainment industries who have joined the worldwide #MeToo movement.<sup>3</sup>

### **Social Position of Women Working in Unorganised Sectors**

Given the grave human rights breaches and domestic violence that occurred during the lockdown, including sexual harassment at work, it is necessary to review the current laws in this case. Since they can give nations instructions on how to strive towards reducing labour market discrimination for guaranteeing decent work, access to social security, and promoting gender equality, it is possible to evaluate international labour standards and their reaction to the issue. India historically had a labour market that is highly informal with high rates of precarious work. Women make up a significant portion of the informal economy, employing almost 90% of all workers in this sector. As they work in the unorganised sector, women are not eligible for social protection or coverage under labour laws. Their circumstances were made worse by the COVID-19 pandemic which caused them to lose their means of subsistence and fall into poverty. In general, women work as independent contractors, part-time employees, domestic helpers, piece-rate workers, and home-based employees with formal employment contracts who are not entitled to paid time-off or social security. According to the Periodic Labour Force Survey (PLFS) report of 2017–18, 51.9% of women reported being self-employed, 27% reported working casually, and only 21% reported being paid a regular salary. Women are primarily employed in "other services" (44.4%) in urban areas, with manufacturing and trade coming in second and third, respectively, and hotel and restaurant at thirteen percent. According to the PLFS 2017–18 of the women in the regular pay salaried group, 51.8% were not qualified for social security, 50.4% did not have regular job contracts, and 66.8% did not qualify for paid leave. Therefore, one of the biggest obstacles facing the nation's female informal sector workers has been their access to social security. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and the Unorganised Workers' Social Security Act, 2008 are the current legal provisions that protect some of the women workers in the informal sector. Even though the nation's 44 labour laws have been codified into four labour codes, many informal workers remain beyond their legal jurisdiction because to the definition's establishment-oriented nature, which applies to establishments with ten or more employees, as well as enforcement gaps. Whether they work

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<sup>3</sup> *Ibid.*

for pay or for themselves, women are undoubtedly the worst affected groups in the informal economy. The gender pay gap continues to be a significant source of worry. Equal compensation standards are broken in a significant number of situations, such as when beedi-making, brick-making, building work, etc. Women are typically paid less than males for jobs of a similar nature.

It is believed that female employees are dependent on male employees who are actively employed, and their pay is viewed as secondary or, at most, supplemental. Therefore, some businesses are perfectly content to pay women employees less than their male colleagues. In these kinds of situations, the Equal Remuneration Act of 1976 is broken. Furthermore, women employed in the informal sector are not eligible for benefits under the Maternity Benefit Act of 1961 because this Act only applies to businesses with ten or more employees. Nonetheless, fewer than ten people are employed by the majority of the unofficial sectors. Additionally, a sizable portion of women employed in the informal sector work for themselves or in circumstances where employer-employee interactions are so murky that there is no employer to be identified.

An atmosphere that is safe to work in is something that many unofficial workspaces lack. Workplace sexual assault and harassment cases have not gotten enough attention from the general public or from the legal system. Most cases of sexual harassment of female employees occur in small-scale companies, informal vendor marketplaces, construction sites, domestic helper homes, and agricultural settings.

According to a new International Labour Organisation (ILO) brief on the COVID-19 crisis and the informal economy, lockdown and containment measures have caused extreme poverty for informal workers and their families resulting in a rise by more than 56% in lower- and middle-income countries (ILO Report, 2020). Their suffering has worsened after pandemic. During the lockdown, the National Commission on Women received 315 complaints about violence, with 47% of the accusations being to domestic abuse. Violence is more likely when there is economic hardship, a lack of social safety nets, post-traumatic stress brought on by isolation policies, and return migration. Although women had a brief escape earlier, the loss of livelihood for women employed in the unorganised sector changes the power dynamics and provides the offenders with an incentive to commit violent crimes. The new ILO Convention ratified by 190 countries concerning violence and harassment in the world of work adopted in June 2019 recognises that violence and harassment disproportionately impact women and girls and affects employment, productivity, health and safety. The convention has wide coverage applying to

all sectors formal and informal both in rural and urban areas. The convention acknowledges that domestic violence can have an impact on employment, productivity, health, and safety. It also reaffirms that, in addition to other measures, governments, employers, workers' organisations, and labour market institutions can help recognise, respond to, and address the effects of domestic violence. It also considers psychological violence and gives labour inspectorates more authority to carry out their duties in an efficient manner to ensure that labour inspectorates and other relevant authorities, as appropriate, have the authority to address workplace violence and harassment. This includes the ability to issue orders requiring immediate enforcement of measures and orders to halt work in situations where there is an immediate risk to an employee's life, health, or safety, subject to the right to appeal to a judicial or administrative authority that may be provided by law. This clause gives the Labour Inspectorate the authority to enforce the law effectively. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH) was passed in India, but it hasn't been easy for women in the unorganised sector to use the law. However, the POSH Act, 2013 does not specify the labour department's responsibility, which makes the legislation's execution inadequate. POSH Act, 2013 and its difficulties in implementation are one of the key obstacles of the POSH Act of 2013 as a legislation especially for women employed in the unorganised sector. They are unable to protest or seek redress in incidents of harassment because of their vulnerability and lack of agency. They just give in to harassment from bosses or coworkers because they are unaware of their legal options and fear social disgrace.

According to a 2012 Oxfam India and Social and Rural Research Institute (PARI) survey, women who engage in construction (29%), domestic work (23%), and small-scale manufacturing (16%) are the most susceptible to workplace harassment (Oxfam 2018). Fear of losing one's job, the lack of a workplace complaint procedure, the fear of social stigma, and ignorance of redressal mechanisms were among the main excuses given by the female informal workers for not reporting instances of harassment. One of the numerous causes of India's dropping female labour force participation rate over the past several years is workplace sexual harassment. There is little doubt that the Vishakha Guidelines and the POSH Act, 2013 that followed were important steps in the fight against workplace sexual harassment. The statute defines a workplace as one that includes self-employed individuals as well as those in the organised and unorganised sectors. Unfortunately, the Act's rules are not being implemented well, particularly when it comes to informal workplaces. Every organisation must establish internal complaints committees (ICC) in accordance with the Act. In the unorganised sector,

the legislation has required the creation of a local complaints committee (LCC) to look into and handle complaints of sexual harassment. The informal sector is dispersed over space, so the government must still create such LCCs in every economic area. The informal workforce, particularly women workers, know very little about the establishment of said LCCs. Women employees are unable to seek redress under this act due to the lack of LCCs or their ignorance of the remedial mechanism. In the Direction of Improved Execution, it is urgently necessary to identify practical solutions for this grave problem in a country the size of India. Ensuring the efficient operation and successful constitution of Local Community Councils (LCCs) in every district is the primary responsibility. District magistrates have the authority to create LCCs in accordance with the results of surveys they conduct on the various jobs and kinds of work that women in their districts perform. The responsibility for overseeing LCCs for various worker categories must be delegated to representative bodies or registered organisations. For instance, town vending committees should handle street sellers, residents welfare organisations should handle domestic helpers, and welfare boards for construction workers should handle construction workers welfare boards need to look after construction workers, panchayats may be empowered to take care of women farm workers, and so on. The Ministry of Labour and Employment and the Ministry of Women and Child Development should launch a media campaign, utilising social media, to raise awareness among the general public and among women employed in the informal sector in particular. Commercials on radio and television that discuss the law can be extensively disseminated and publicised. In the same way that businesses are required to display posters promoting ICCs, LCCs must also be promoted everywhere that women who work in the informal sector typically congregate, such as markets, neighbourhoods, construction sites, rural farms, etc. As the labour department plays a crucial role in improving the enforcement of the law, it is necessary to take into account the labour department's involvement in accordance with ILO Convention of 2019. Furthermore, the crisis has given rise to a whole new dimension in the problem of violence and harassment in the workplace, which means that governments need to review the current legal framework and create effective response plans for new types of harassment that have an impact on employees' well-being. International labour standards can offer a framework for well-informed policy decisions in this regard. Creating gender-sensitive social protection measures is also necessary to defend the rights of women employed in the unorganised sector.<sup>4</sup>

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<sup>4</sup>Ellina Samantroy et. al , violence in times of covid-19 , lack of legal protection for women informal workers , <http://feministlawarchives.pldindia.org/wp-content/uploads/violence-in-times-of-covid-19-lack-of-legal-protection-for-women-informal-workers.pdf> .

## **Emergence of the Problem**

The origin of discriminatory treatment against women is misogynistic approach towards women by the society. The term “**misogyny**” is derived from Ancient Greek word “**misogynic**” meaning hatred towards women. Misogyny has taken shape in multiple forms such as male privilege, patriarchy, gender discrimination, belittling of women, violence against women and sexual objectification. The roots of misogyny can be traced back to ancient Greek mythology.<sup>5</sup>

## **Historical Perspective**

**Hesiod** in **Greek mythology** claims that before women existed, men lived in harmony with the gods as partners until Prometheus chose to take the God's fire recipe, which infuriated Zeus. Zeus punished mankind with an evil thing for their delight called Pandora who was believed to be the first woman carrying a box which unleashed all evils such as labour, sickness, old age and death. As mythology started spreading vices about women almost every religion started developing a negative outlook towards women. According to **Hindu mythology** though women are elevated to the position of Goddess but some scriptures restrict the role of women only to that of a mother, daughter and wife as described in Manusmriti. Tertullian, who was the founder of **Latin Christianity**, said that being a female is a curse given by God and they are a Devil's Gateway. Similarly, in **Islam**, the holy book Quran has a 4<sup>th</sup> chapter called An-Nisa meaning women. The 34<sup>th</sup> verse is a key verse in feminist criticism of Islam which states that men are in charge of women in respect of rights, maintenance and women are bound to depend on men for all needs. It is also mentioned that arrogance from women should not be tolerated and if seen such women should be stuck off. So, it is evident that religious scriptures were gravely responsible for suppression of women socially. So gradually with time the entire globe along with their mindset has been constituted upon a patriarchal base. Misogyny over years has evolved as an ideology engulfing the society as smog with no or faint traces of light for growth and upliftment of women. Great philosophers, socialists and thinkers were subdued by roars of male dominant society which narrowed their vision and made them a supporter of patriarchal society.<sup>6</sup>

**Aristotle** being one of the most ancient philosopher and scientist was also a misogynist. He considered women as a deformity, an incomplete male. He preached that male should always have a command and women being inferior creatures created by God are bound to follow.

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<sup>5</sup>Srivastava K, Chaudhury et al ., Misogyny, feminism and sexual harassment, 26 *Ind Psychiatry Journal* 111-113 (2017) .

<sup>6</sup> *Ibid.*

Misogyny had several male supporters in the front but with times women started following and believing in this concept indirectly and unknowingly and is also responsible for suppression of women. Over centuries women and their rights have been suppressed and they were neglected as human being treated as a lower part of the society. Their roles were restricted to household chores and giving birth. Prolonged oppression raised voices and collectively led to the concept of feminism which started as the longest movement in history and is still continuing.<sup>7</sup>

### **Present Situation**

After our Independence with the rapid development of the media it appears that a modern educated girl in big cities of India neither cares for religion and spiritual perfection nor hankers after domestic life as before. But practice of inequality emerging from spiritual belief is something that can never grow old, fade off or die. As the nation cannot change its soul, so it cannot also change its age-old ideas. That is why even during the turbulent modern age of over materialism, over realism, over individualism, over rationalism and over cynicism women faces oppression in all walks of life though they have gained noticeable importance at parliamentary, administrative and professional levels. The Women constituting almost half the country's population now have the right to participate in political activity on equal terms but still are deprived of self-respect and are subjugated into a grim existence. As India enters the 21st century, where Indian women are beginning to stir but even today the traditional families consider a husband to be the master. The wife's role is to look after him and his comforts. The whole world revolves round him. He does not like his wife to be independent and there are feelings of jealousy and suspicion. He uses physical force to keep his wife subdued or creates hurdles in her work to prove his superiority. This is the major cause of tension at home and workplace as well which contributes in a big way towards the rising graph of cruelty even today.<sup>8</sup>

### **International Overview**

Since its founding, the United Nations has prioritized the promotion of women in its operations. Reaffirming belief in fundamental human rights, human dignity and worth, and gender equality is one of the main objectives outlined in the UN Charter Preamble. To address concerns pertaining to women, the Commission on the Status of Women was founded in 1946. The **Universal Declaration of Human Rights** had affirmed the principle of inadmissibility of

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<sup>7</sup> *Ibid.*

<sup>8</sup> R. Radha, Historical perspective of violence against women in India through various ages, 9 *International Journal of Basic and Applied Research*, 152 (2019).



discrimination and proclaimed that all human beings are born free and equal in dignity and rights and everyone is entitled to all rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. Nonetheless, a great deal of discrimination against women still persists, mostly because women and girls are subject to numerous socially rather than legally imposed restrictions. It went against the values of respect for human rights and equality of rights. A **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** was formed in order to put the Declaration's ideas into practice. The General Assembly adopted the **Declaration on the Elimination of Discrimination against Women** on November 7, 1967. A common description of this Convention is "an international bill of rights for women." It has established a complete set of rights to which all people, including women, are entitled, as well as extra safeguards for women's human rights.<sup>9</sup>

During the United Nations-sponsored International Women's Decade (1976–1985), three conferences were organized in addition to the aforementioned convention in Mexico City (1975), Copenhagen (1980), and Nairobi (1985). The fourth conference, which took place in Beijing in 1995, significantly raised awareness of women's issues throughout the world. The Beijing Conference declared that women's rights are human rights and demanded that these rights be integrated into the activities of the various UN human rights committees. It regarded the problem of violence against women as a human rights issue, both in public and private settings. The Conference demanded that all conflicts between women's rights and negative consequences be eliminated.<sup>10</sup> The UN General Assembly in 2000 convened a Special session on 'Women: Gender Equality, Development and Peace for 21st Century' to assess the progress on women's issues. The Beijing Platform for Action, also known as the Women's Human Rights Agreement, was reviewed by the Commission on the Status of Women during its 49th Session in February 2005. Numerous topics were covered at the conference, such as human rights, education, the environment, poverty, economics, girls' rights, and authority and decision-making. The World Summit Outcome was reaffirmed in the General Assembly's twenty-third Special Session in 2005. The Summit decided to abolish systematic gender discrimination and advance gender equality. The U.N. Commission on the Status of Women met on March 14, 2011 in the Economic and Social Council Chamber to discuss the present scenario of gender violence in the world.<sup>11</sup> The international community can create a gender-sensitive plan for implementing the WHO Framework for women's protection by building on

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<sup>9</sup> Lok Sabha Secretariat "Crime against Women" (2013).

<sup>10</sup> *Id.* at 15.

<sup>11</sup> *Op.cit.*, Violence against Women and Children, 184-185.

already-existing policy documents, legislative tools, and international initiatives.<sup>12</sup> Many attempts have been made to combat the pandemic since the mid-1980s, when the world community started to recognize violence against women as a global social problem. These efforts have included declarations, resolutions, and regional treaties. Significant advancements in women's security and rights have been sparked by these instruments. However, everyone has some limitations. It relates to a problem or area, or it is not legally enforceable. Women's safeguards are therefore patchy, which a global convention will fix.<sup>13</sup>

### **The Existing Legal Remedies**

Other socially vulnerable groups and communities, in addition to girls, women, boys, and men, are frequently the targets of sexual harassment because of their social identities. A particular gender identity and sexual orientation are valued by our society as "normal." Violence is more likely to occur to those who defy this. Individuals with physical, sensory, or psychological limitations frequently experience sexual harassment or are viewed as less capable and inferior. Similarly, people who exhibit unusual gendered behaviours (effeminate men and masculine women) or alternative sexual orientations (transsexuals, gays, lesbians, bisexuals, etc.) are frequently made fun of and ridiculed for their speech, demeanour, attire, and/or sexual preferences. Sexual harassment is defined as any form of discrimination, exclusion, offensive or disparaging comment, or breach of privacy. It is critical that we respect and acknowledge the decisions made by "others" and abstain from acting in a way that betrays our preconceptions or causes us discomfort. We must make sure that these people's choices and rights are respected.<sup>14</sup>

### ***The Penal Provisions***

There are several provisions existing to protect women against sexual harassment at workplace but only few provisions have been provided in the Indian Penal Code, 1860 to deal with acts of sexual harassment. The sections include,

**Section 294:** Obscene acts and songs whoever, to the annoyance of others:

1. does any obscene act in any public place, or

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<sup>12</sup> World Health Organization, *Gender, women, and the tobacco epidemic*, 231 (May 31, 2010).

<sup>13</sup> Violence Against Women and International Law: An Overview, <https://everywoman.org/violence-against-women-and-the-law/> (Last visited: Nov. 12, 2023).

<sup>14</sup> Sexual Harassment, <https://wcd.nic.in/sites/default/files/Sexual%20Harassment%2C%20English-Jagori.pdf>.

2. sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

**Section 354:** Any man commits to assault or use of criminal force to woman with intent to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment or fined or both.

Sexual harassment includes:

1. physical contact and advances involving unwelcome and explicit sexual overtures
2. demand or request for sexual favours
3. showing pornography against the will of a woman
4. making sexually coloured remarks Punishment: imprisonment which may extend to three years or with fine or both.

**Voyeurism** is also penalised in which any man watching or capturing the image of a woman and engaging in a private act. The punishment is on first conviction there shall be an imprisonment for not less than one year which may extend to three years and fine. Repeated offenders shall be subjected to an imprisonment not less than three years, this may extend to seven years and fine.

**Stalking** is if any man is following a woman and attempting to contact, or foster personal interaction despite a clear indication of disinterest by her or monitors the use by a woman of internet, email or any other form of electronic communication. The punishment shall be imprisonment which may extend up to three years and for repeated offenders imprisonment may extend to five years and fine.

**Section 509:** uttering any word or making any gesture intended to insult the modesty of a woman Punishment: imprisonment for three years and fine.

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

Any act of abuse, assault, or harassment with overtly sexual undertones, whether overt or covert, including the unwelcome or excessive promise of incentives in exchange for sexual favors, is considered sexual harassment. One of the ways that women's rights to equality, life, and liberty are violated at work is through sexual harassment. It makes the workplace

unfriendly and insecure, which deters women from working and hinders their ability to advance socially and economically. It causes problems with mental and psychological health, like bipolar illness and depression. Following the Supreme Court's decision in the *Vishaka v. State of Rajasthan*<sup>15</sup>, the legislation on Sexual Harassment of women at workplace was created by in 2013 and put into effect to offer safeguards against sexual harassment for employed women. The Supreme Court adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was ratified by the Indian government in 1993, as well as the fundamental human rights established in Articles 14, 15, 19(1)(g), and 21 of the Indian Constitution.

"No woman shall be subjected to harassment at any workplace, whether public or private, whether the aggrieved woman is employed there or not," is stated by the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act of 2013. The following are the main parts of the law:

- **Complaints Committee:** In order to address allegations of sexual harassment at work, employers with ten or more employees are required by law to establish an Internal Complaints Committee. If this committee is not constituted or its recommendations are not followed, there would be a penalty of up to Rs. 50,000/-for the first offence, double the fine, or the loss of the business licence for the second offence. If the offended woman decides to take legal action on her own, the employer is also required to support her and to start proceedings against the offender under the Indian Penal Code. The woman may bring a complaint to the District Office's Local Complaints Committee if there isn't already an internal complaints committee in place.
- **To file a complaint in accordance with this Act:** Within three months of the occurrence, a woman has the option to file a report of sexual harassment with the internal or municipal complaints committee. Her legal successor may also file the complaint if the lady is unable of doing so because of a physical or mental disability or death.
- **Results of the Inquiry:** Following its investigation, the internal/local complaints committee may recommend to the employer, within sixty days, that the respondent be disciplined for sexual harassment as a misconduct in accordance with government guidelines or service rules, or the employer may deduct appropriate amounts from the

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<sup>15</sup>AIR 1997 SC 3011

respondent's salary or wages. The woman who was wronged may also file an appeal with the government-designated court or tribunal. The appeal must be filed in response to the recommendations within ninety days.

The importance of passing laws prohibiting workplace sexual harassment was emphasised in the 2013 Justice J.S. Verma Committee Report, which also emphasised that the legislation should be sufficiently wide to protect "every female member of the national workforce." The report also underlined how important it was to make sure that the law still applied to the informal sector and that it was under its authority.

The International Labour Organisation (ILO) recently passed the historic 2019 Violence and Harassment Convention, which created global norms for responding to workplace violence and harassment. It presented the notion of the "world of work." Before this Convention, there was no international legislation specifically addressing violence and harassment in the workplace. Aside from the formal and informal economies, the Convention's broad application also extends to "persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, job seekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer." A resounding majority of votes came from India approved the Convention.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (referred to as the "POSH Act") is a domestic law that provides victims with civil redress and codifies the prohibition against sexual harassment in the workplace. The POSH Act recognises that every woman has a right to a workplace that is secure, safe, and free from harassment and hostility, regardless of her age or level of employment. The law provides protection to women who work in whatever capacity be it regular, temporary, ad hoc, or daily salary basis. According to Section 2(p) of the POSH Act, an unorganised sector is any place of business where less than 10 persons are employed and where an enterprise owned by individuals or self-employed workers is engaged in the production, sale, or provision of any form of service. Any workplace with fewer than ten workers is considered to be in the unorganised sector, to put it simply.

Local Committee or LCs has a greater degree of power in comparison to Internal Complaints Committees (ICCs) found in private enterprises or the organised sector. While LCs work in tandem with the state apparatus and have authority over the entire district for which they are

created, ICCs are restricted to the jurisdiction of their particular organisation. The shockingly low number of current LCs (only 29%) across the country is indicative of the government apparatus's lack of earnestness in ensuring that the Act is applied effectively. Many reasons contribute to the low reporting rate of incidents of workplace sexual harassment, such as a lack of knowledge about the law, mistrust of the complaints and redressal process, stigma, humiliation, and fear of reprisals. It is essential that LCs be built and managed efficiently across the country because for women working in the unorganised sector, district-level LCs represent their only choice.

When monitored only five states Madhya Pradesh, Kerala, Karnataka, Haryana, and Chhattisgarh and two Union Territories Daman and Diu and Dadra and Nagar Haveli furnished precise information regarding the LCs that were established within their respective borders, according to the plea. Furthermore, according to the petition, no state could divulge details regarding the initiatives their respective state governments had taken to advance and publicise the POSH Act. A public interest litigation (PIL) was brought in 2017 to highlight the inadequate implementation of the POSH Act in the state of Tamil Nadu, specifically in mills and factories, before the Madras High Court through the case of *R.Karuppusamy v. State of Tamil Nadu & Ors.*<sup>16</sup>. The Court directed the Collectors in each district of the state to submit individual reports outlining their efforts to form Local Committees (LCs) to handle complaints of workplace harassment. Three proposals were made in the petition to ensure POSH Act compliance and improve the current state of affairs. In the first place, the LCs ought to be properly formed. Each district, which consists of wards or municipalities in urban areas and blocks, talukas, and tehsils in rural regions, shall have a nodal officer appointed. Third, awareness should be encouraged and information concerning the POSH Act properly distributed.

### ***Provisions for Sexually Harassed Women Employed in Unorganised Sectors***

The perspective from which the law on sexual harassment in the workplace is perceived is one of its main shortcomings. Under the POSH Act, sexual harassment at work is primarily seen as a "women's issue" rather than a labour one. The Ministry of Women and Child Development (WCD) is in charge of the matter; the Ministry of Labour and Employment is rarely involved at all. This is fundamentally problematic because it focuses primarily on women, making them the problem, and ignores the true issue, which is unfriendly workplaces, when sexual

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<sup>16</sup> W.P. 106340/2017.

harassment at work is classified as a women's issue. This significantly lessens the significance of the work environment, which is the setting in which the harassment occurs. To guarantee that traditionally male-dominated businesses are inclusive and friendly to women, laws pertaining to sexual harassment at work are essential. One of the biggest steps towards creating more inclusive workplaces will be to shift the way that sexual harassment in the workplace is perceived and to accept it as a labour issue.

- **The Importance of Local Committee**

In the unorganised sector, the process for addressing allegations of sexual harassment at work is outlined in Section 7 of the POSH Act. This section also addresses the Local Committee's (LC) duration, makeup, and other terms and conditions.

As a district-level committee, the LC has authority comparable to that of a civil court. It is formed by the District Officer, who may hold the position of Collector, Deputy Collector, Additional District Magistrate, or District Magistrate. It is tasked with investigating accusations of sexual harassment made by employees against their employers or by employers with fewer than ten workers. Furthermore, the POSH Act's Section 2(e) defines domestic workers separately. Regarding domestic workers, LC forwards the complaint to the police, who will file a case under Section 509 of the Indian Penal Code, 1860 (word, gesture, or act designed to insult a woman's modesty) and register it within seven days. In accordance with the POSH Act's provisions, the government is also in charge of creating educational and training materials, organising awareness campaigns, enhancing public knowledge of the law, promoting the Act's provisions, and leading orientation and training sessions for LC members.

- **Evaluating The Effectiveness of The Law**

Among the most vulnerable segments of the labour force in the nation are women employed in the unorganised sector. A sizable fraction of India's socially and economically disadvantaged women work in the unorganised economy. These women are frequently the main breadwinners for their families; they are forced to work for their basic survival regardless of their desire to do so. Furthermore, assessing the work of LCs is essential to determining whether or not the POSH Act is being implemented properly, given that over 90% of all working women in India are employed in the unorganised sector.

## **Drawbacks with the Present Legislation**

The legislation covering the sexual harassment issues mostly deals with the scenario whereby it covers sexual harassment cases in organised and formal sectors with no guidelines for the employers of unorganised sectors in actuality. The problems of addressing the same includes:

- **Local Committees are Critical for POSH Implementation**

In order to prevent and address workplace sexual harassment, the legislation establishes two types of committees: an internal committee for the organised sector and a local committee for the unorganised sector. The term "unorganised sector" refers to businesses with fewer than ten employees. In accordance with section 6 of the POSH Act, a District Officer must form a group known as the Local Committee in order to handle complaints from unorganised businesses on sexual harassment. The complaints must be transmitted within 7 days after receipt, and the district official must appoint a nodal official in each block, taluka, tehsil, or ward to receive them. The committee consists of a chairperson, who is typically a distinguished woman in the social work field who is dedicated to the cause of women; one member who is a woman working in a district block, taluka, tehsil, ward, or municipality; two members from NGOs or associations that address sexual harassment issues; and an ex-officio member who is the district's social welfare or women and child development officer. Additionally, a minimum of one nominee must be a female from one of the Scheduled Tribes, Scheduled Castes, Other Backward Classes, or Minority Communities.

- **Non-constitution of Local Committees**

In order to provide women from the unorganised sector with a channel for redress against sexual harassment, district authorities are essential. In addition to designating the committee and informing the local nodal officials, the District Officer is obligated to act upon the Local Committee's suggestion in the event that the allegations are verified. Furthermore, the District Officer receives the inquiry report regarding the claims of sexual harassment. District Officers, however, have been proven to be deficient in their duties. In October 2018, the Martha Farrell Foundation conducted research through RTI that examined 655 districts and discovered that most local committees are "defunct," with members having "improper constitutions of membership" and "lack of awareness of roles and responsibilities amongst members." Just 29% of the 655 districts reported having established local committees, while 15% stated they had not. It was reported by 57% of the districts that they were unsure if they had local committees. Just 16% of the 29% of respondents had a female chairman, despite section 7's



mandate that the Committee's composition include women. Furthermore, just 18% of respondents claimed their committee has five or more members. Up to 103 districts were still lacking a committee.

- **Non appointment of the Appellate authorities.**

Employers who violate the Act by failing to form an internal committee risk penalty. However, there isn't a precise system in place to guarantee the District Officer's real accountability. Effective data on the operations of local committees, which, in contrast to internal committees, have not received much research, is likewise lacking. This applies to local committees in government and civil society organisations such as the NCW. Even in the study conducted by the Martha Farrell Foundation, 56% of districts failed to reply to RTI requests. This demonstrates once more the lack of interest in examining the local committees' operations within government agencies. This lessens the ability of women employed in the unorganised sector to seek improved legal execution.

- **Underreporting, Lack of Proactive Approach by Local Committees**

Even with the complex complaint and investigation process, very few instances really make it to local committees. According to the Martha Farrell Foundation Study, just 11% of districts having local committees addressed complaints made in accordance with the laws. Comparably, by 2020, the Local Committee in Mumbai had only received five complaints—all of which came from the official sector. The same foundation conducted another study on domestic workers in certain parts of Delhi and discovered that despite dealing with numerous cases of sexual harassment, none of the workers filed complaints with the local committees. There are multiple explanations for why local committees are no longer in operation. In the Martha Farrell Foundation Study, it was shown that only eighteen percent of districts with local committees had arranged orientation and training sessions for committee members. In the Foundation's report on domestic workers, comparable findings were also seen with regard to sensitization and further trainings against sexual harassment for domestic workers.

Many domestic workers in Delhi who participated in the quick poll conducted by the Martha Farrell Foundation had never heard of these panels. Additionally, there was nothing on the internet about them.

This demonstrates the lack of initiative on the part of local bodies. According to the law, their roles extend beyond being redressal committees to include acting as entities that take action to stop sexual harassment. The committee was renamed from the Local Complaints Committee

to the Local Committee in 2016 to make it clearer that it is also a forum for prevention. As mandated by the law, district officers and local committees must arrange training, sensitization events, and legal education. In the Martha Farrell Foundation Study, it was shown that only eighteen percent of districts with local committees had arranged orientation and training sessions for committee members. In the Foundation's report on domestic workers, comparable findings were also seen with regard to sensitization and further trainings against sexual harassment for domestic workers.

- **Poor Focus on Marginalised Women**

One other significant difficulty is that the law fails to consider the numerous marginalisation of women workers in the informal sector during the complaint and inquiry procedure. Workers in the informal sector file complaints with informal Local Committees using a procedure akin to that of internal committees. The unique obstacles that marginalised working women have when reporting harassment are disregarded. First of all, a daily wage earner or a domestic worker lacks documentation to prove her employment, unlike women in the formal sector. In addition, any complaint of harassment must be reported within three months in accordance with Section 9. However, the statute permits the committee to continue receiving complaints beyond this time frame. Anagha Sarpotdar, a social science researcher, discovered that committees do not read the clause to take into consideration the marginalised status of workers in the unorganised sector as a justification for complaint filing delays.

The Verma Committee has suggested that there be no deadline for submitting a complaint. Instead, complaints about the facts and circumstances surrounding, as well as the complainant's personal circumstances, should be accepted within a fair timeframe. Next, the Committee may resolve the dispute through party conciliation and document the settlement before opening an investigation into the complaint request. The Verma committee had also suggested that this clause be removed, pointing out that it will make it more difficult for women to file legitimate complaints. Given the disparity in power between the two parties, this is especially true for employees in the unorganised sector.

In a similar vein, under section 12, an aggrieved woman may, as a temporary measure, be granted three months' leave, transfer to another branch, or other relief while the complaint is pending in order to prevent future victimisation. This assumes that the company has multiple branches and that a leave policy is in place. In the unorganised sector, this might not be the case.

The vast majority of labour and social security legislation now in effect in India are limited to the formal sector and do not apply to the large-scale informal sector. A working woman in the informal sector has no choice but to quit her job, a tendency shown in a number of studies. Due to the fact that many of these women are the only providers for their families, their situation is much more precarious.

### **Epilogue**

Economic stability and the ability to avoid sexual harassment at work are inextricably intertwined. If an inclusive and equal employment rights regime does not protect women in the unorganised sector, the requirements of the subject specific legislation would probably remain unattainable for them. The foundation of society's inclination to stigmatise women in any instance of sexual harassment is the patriarchal inclination to place blame on women and exonerate men. Although they are the most difficult to implement, attitude adjustments are essential for total change. Programmes for gender sensitization are essential, particularly for the younger generation. Strict legal awareness campaigns are the only way to combat the almost complete ignorance of women in the unorganised sector regarding the law and their rights. The State legal services authorities and other human rights institutions should carry out this duty. A number of civil society organisations also prioritise legal awareness. Change in this area can be greatly aided by convergence and synergies. In the absence of active and functional LCCs, there will not be any benefit to women employed in the unorganised sector. This requires more than just appointing them. The fundamental milestone hasn't been reached yet as it needs proper training, the right tools, and progress tracking. To reach this marginalised group, a comprehensive support structure made up of LCCs, Legal Services Authorities, and Human Rights Institutions must collaborate. This will only occur if state authorities recognise the fundamental rights of women to life, safety, and a means of subsistence and treat them with the gravity that they deserve.