

SEXUAL HARASSMENT AT THE WORKPLACE

The State of Justice



POSH
STAND UP, **SPEAK OUT**

SIX YEARS AFTER THE PREVENTION OF
SEXUAL HARASSMENT (POSH) ACT, 2013



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Six Years after the Prevention of Sexual Harassment (POSH) Act, 2013

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Abbreviations

ADC	Assistant Deputy Commissioner
AIDWA	All India Democratic Women's Association
BPO	Business Process Outsourcing
CEDAW	Convention on Elimination of All Forms of Discrimination, 1979
CPO	Child Protection Officer
CDPO	Child Development Project Officer
DC	District Collector; Deputy Commissioner
DCW	Delhi Commission for Women
DM	District Magistrate
DO	District Officer
DPO	District Probation Officer
DWCD	Department of Women and Child Development
FGD	Focus Group Discussion
IC	Internal Committee
IDI	In-depth Interview
ILO	International Labour Organisation
IT	Information Technology
KII	Key Informant Interview
LC	Local Committee
MoLE	Ministry of Labour and Employment
MWCD	Ministry of Women and Child Development
NCR	National Capital Region refers to Delhi, and urban areas of neighbouring states of Haryana, Uttar Pradesh and Rajasthan. In everyday use however, it commonly refers to Delhi and districts of Gurugram and Faridabad in Haryana and districts of Ghaziabad and Gautam Buddha Nagar (Noida) in Uttar Pradesh.
NCW	National Commission for Women
NFHS	National family Health Survey
NIFTY50	National Stock Exchange's (NSE) diversified index comprising of top 50 stocks from 13 sectors
NO	Nodal Officer
PIL	Public Interest Litigation
POSHCA	Prevention of Sexual Harassment and Child Abuse
RTI	Right to Information
SRCW	State Resource Centre for Women under the State Government (Department of WCD/Social Welfare)

1. Introduction

1.1 Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013¹

Violence against women, whether sexual, physical, verbal, or emotional, violates the fundamental freedoms guaranteed under the Indian Constitution. Data from reported crimes against women in India shows an increase in violence, despite laws safeguarding women from violence. This data is indicative only of reported crimes which omits a large swathe of India's population that do not / cannot report violence. The National Family Health Survey (NFHS-4)², conducted in 2015-16, suggests that 30 percent of women in India in the age group of 15-49 have experienced physical violence since the age of 15. Around 6 percent women in the same age group have experienced sexual violence at least once in their lifetime (Chauhan 2019). Most often, violence experienced by women spans the continuum of home, public spaces, and even their workspaces.

Women's rights groups and activists have highlighted the issue of sexual harassment within the workplace in India since the early 1980's. The Forum Against Oppression of Women (FAOW) fought against the sexual violence faced by nurses, teachers, air hostesses, students in their places of work by male colleagues and clients (Patel 2005). It took more than a decade and the brutal rape of a young woman employee of the Rajasthan state government for these concerns to be finally addressed by the Indian judiciary with the formulation of the Vishaka Guidelines in the Supreme Court Judgement of 1997 (Vishaka & Ors vs State of Rajasthan & Ors.,1997)³.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 [also referred to as the POSH Act; and along with the Rules known as the POSH law] came into force on 9 December 2013, sixteen years after the Supreme Court laid down guidelines, to prevent and protect women from sexual harassment at the workplace, in the Vishaka Judgement of 1997. With the aim of addressing and eliminating sexual harassment at the workplace, recognizing it as a form of discrimination, the Act was drawn up to provide mechanisms for redressal as well as prevention.

The introduction of the POSH Act cites Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW), to which India is a signatory and, Articles 14, 15 and 21 of the Constitution, relating to equality, discrimination and right to life and personal liberty, including right to life with dignity. The introduction of the Act adds that "*With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an enabling working environment for women through legislation became imperative.*" It cites General Recommendation No. 19 (1992) of the Committee on the Elimination of Discrimination against Women (CEDAW), that "*equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace.*"⁴

¹ This report was written prior to the pandemic based on data collected through primary and secondary sources in the period June-December 2019. It does not reflect the newer developments on the issue especially those that have emerged post-pandemic and the ensuing lockdown with regards to working in home spaces.

² The NFHS 4 survey can be accessed from <http://rchiips.org/nfhs/nfhs4.shtml>

³ The judgment and the guidelines can be accessed at <https://indiankanoon.org/doc/1031794/>

⁴ For more information: <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

Buttressing India's commitment to protecting and promoting women's constitutional rights, the section on statement of objects and reasons in the POSH Bill, 2010 declared that the proposed legislation contains provisions to "*protect every woman from any act of sexual harassment irrespective of whether such woman is employed or not*" by "*fixing the responsibility*" on the employer as well as state governments and laying down a statutory redressal mechanism⁵.

The provisions of the Act cover all kinds of workplaces, - public, private, organized, unorganized, including homes which are workplaces for domestic workers and other home-based workers. The expansion of the definition of the workplace to include homes was the result of a persistent demand from the women's movement, as was the demand for inclusion of domestic workers under the ambit of this law. The definitions of "aggrieved woman" and "employee" also ensure wide coverage and include all women facing sexual harassment in a workplace whether they are employed or not.

The Act provides for the setting up of Internal Complaints Committees [now referred to as Internal Committees or ICs] at all workplaces having more than ten employees and for Local Complaints Committees [now referred to as Local Committees or LCs] to be set up at the district level for all other cases, especially from the unorganized sector where it may not be possible to establish ICs and where the complaint is against the employer. These committees are meant to serve as the point of complaint and redressal for women facing sexual harassment at the workplace. They are an extension of the Complaints Committees that the Vishaka Guidelines had already provisioned for in 1997.

1.2. Sexual Harassment at the workplace in India

Twenty-two years after the Vishaka judgement and nearly six years after the POSH law became reality, the pervasiveness of sexual harassment at the workplace is far from being recognized, addressed or penalized as is evident from several studies (Bhandare 2017, FICCI 2015, Indian National Bar Association 2017, Sarpotdar 2016) and more recently from the wave of revelations associated with the #MeToo movement since 2018. A survey conducted by the Indian National Bar Association in 2017 at BPOs, IT sector offices, and at several educational institutes, hospitals and legal firms across the country, found that 38% of women had faced sexual harassment at the workplace (Indian National Bar Association 2017). Government data suggests an increase in the number of cases reported, of workplace sexual harassment in the period 2014-2017 (Mallapur and Alphonso 2018). However, these numbers do not capture the entirety of everyday sexual harassment that women face since much of it goes unreported.

Section 2(a) "aggrieved woman" means –
(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

Section 2(f), "employee" means a person employed at a workplace for any work on regular, temporary, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

Section 2(o) "workplace" includes - (vi) a dwelling place or a house;

⁵ See https://www.prsindia.org/sites/default/files/bill_files/sexual_harassment_bill.pdf for the 2010 Bill on POSH

In a survey conducted by the National Commission for Women (NCW) in 2014, a year after the enactment of the POSH law, the number of reported cases of sexual harassment at the workplace had doubled from 249 in 2013 to 526 in 2014 (FICCI 2015). India Spend (2014) reported that data tabled in the Lok Sabha showed that a total of 2535 cases of workplace sexual harassment had been reported between 2014-2018, an average of two cases per day (Mallapur and Alphonso 2018).

The number of cases registered with ICs of NIFTY 50 companies has been on an increase from 525 in 2016 to 601 in 2018 (Vijayalakshmi 2018). According to a news report, nearly two-thirds of those surveyed claimed that the absence of reporting and redressal systems at the workplace mandated by the POSH Act, 2013 was one of the main obstacles in registering a complaint when women experienced sexual harassment (Khullar 2017).

The situation may be worse for women in blue collared jobs and the unorganised sector. In 2016, a news report on the rampant abuse faced by women bus conductors in Hyderabad, highlighted that nearly 2000 women of the Telangana State Road Transport Corporation have reported facing at least 10-12 cases of molestation and harassment every month (Didalya 2016). A survey conducted in the National Capital Region (NCR) highlighted the hostile and unsafe working conditions that make domestic workers particularly vulnerable to sexual harassment at their workplaces (Martha Farrell Foundation 2018).

Other reports and articles continue to emphasise the frequency of incidents of harassment among women workers in the unorganised sector and the abysmal lack of both redressal mechanisms as well as efforts to ensure safe working environments that could ensure that such harassment does not recur (Vijayalakshmi 2018). Complex social relations and power dynamics also structure violence and harassment at the workplace, silencing the most vulnerable victims. This was highlighted in the criticism of the #MeToo movement in India (Mondol 2018, Rasul 2018, Sidharth 2019). Voicing one such criticism, Vijayalakshmi (2018) argued for *“a need to move beyond the digital boundaries of Twitter and share the platform with women who have been historically silenced: the less-educated, poor, rural, lower-caste women who work long hours, under difficult conditions for survival.”*

In analysing the reasons for these gaps, feminists, lawyers and experts have drawn on several aspects that range from specific lapses in the provisions within the Act ; the overall language of the Act and thereby its intent, as well as glaring gaps in its implementation. Bhandare, (2017) writes that, *“Sexual harassment at work remains rampant for many reasons– partly because organisations sometimes seem unaware of what is required by them under law, partly because women don’t seem to know their rights and partly because of a workplace culture that seems to be loaded in favour of powerful male bosses.”* The POSH law also has to address itself to social and systemic inequalities and create mechanisms that ensure provision of justice to the most vulnerable. Sakhrani (2017) argues that while the law addresses sexual harassment on a case-to-case basis, its biggest failure is in its inability to address the issue systemically. This systemic failure is rooted in gendered norms and patriarchal power structures in society, which are often mirrored in workplaces. It is expected that by creating a machinery to break down these power inequities, the POSH law would be able to provide justice. We turn to an examination of the institutional machinery proposed in the POSH Act.

1.3 Internal and Local Complaints Committees

The Internal Complaint Committees (IC) and Local Complaint Committees (LC) are part of the statutory redressal mechanism as laid down in the Act. However, several studies indicate that ICs and LCs have hardly been constituted and where constituted, are functioning poorly.

Calamur (2018) points out that,

For most organisations in India, the first tryst with the Prevention of Sexual Harassment (POSH) came about after the Tehelka case [in 2013] where the managing editor Tarun Tejpal was accused of forcing his sexual attentions on a younger colleague. This is when many organisations scrambled together to set their anti-sexual harassment committees in place. Unfortunately, the haste with which these were setup meant that there was no room for training those who ran these committees. The setting up of POSH committees was done to comply with the law; not to solve the issue of harassment.

Sarpotdar (2016) found that many firms in Mumbai did not form an IC or when they did, the organisations did not take women's complaints seriously. Aravind's findings (2017) indicate that in many firms, ICs are created since the law mandates it, but employees are not made aware of it. In another study, Bhavila and Beegom (2017) interviewed employers, chairpersons, and members from 15 ICs in government offices in Kerala and found that while the ICs were constituted as mandated by the law with both external and internal members, women members, including the chairperson at times, were afraid of asserting themselves against senior male members. Further, they found that the IC members had little idea about the investigation procedures and had patriarchal attitudes. An improper and biased constitution of ICs more often than not led to further appeals by both the complainant and the respondent. This rendered the original purpose of the law void, since the complainant in either case was forced to enter the long and winding legal process.

There are 17.79 lakh companies registered in India, of which 66% or 11, 89,826 are active companies as of June 30, 2018 (Live Mint 2018)⁶. According to news reports, in 2015 the National Minister for Women and Child Development had asked business associations such as the FICCI and CII to furnish monthly compliance reports of its members on the POSH Act provisions, especially regarding training and sensitization of employees on the issue (Vyas 2015). There is no further update on whether this is being done.

The 2016-17 Annual Report of the Ministry of Women and Child Development (MWCD) states that until December 2016, 13,797 complaints/cases were registered at the Complaints and Investigation Cell (C&I Cell), of which 402 complaints/cases were under the category of sexual harassment including Sexual Harassment at Workplace. According to the Ministry's press release dated 22 November 2018, "Till November 20, 2018, as many as 321 complaints have been registered with 'SHe-Box' out of which 120 are related to central ministries/departments, 58 are from state governments and 143 are from private companies."⁷ The She-Box portal, a central government initiative, provides complainants with an online platform for registering complaints of sexual harassment. More details on the portal are provided in the subsequent section on the role of the central and state government.

⁶ For more details see: <https://www.livemint.com/Companies/S7Ri5aQEAMlaiikRpMYRNI/Only-66-of-registered-companies-in-India-are-active-Govt-d.html>

⁷ The press release can be accessed at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1553469>

Another news report in January 2019 quotes the MWCD as reporting that “Central ministries have received as many as 141 sexual harassment complaints since last year, out of which 45 have been disposed of” (The Economic Times 2019). This means that only 32% of the complaints were addressed - a very slow redressal rate.

ICs are staffed by either inadequately trained members or the committee reflects the existing power hierarchies in the organisation rendering it unapproachable. In many cases reporting to the IC led to further victimisation of the complainant (Dutta 2019).

Most committees are unaware of the legal requirement for cross-examination and its importance. In most cases, there is a lack of coordination between the complaints committee and the personnel/disciplinary authority of the organisation.

Having been on several committees, one is rarely aware of the outcome of the report one submits, except through the grapevine or when stringent steps are taken such as the removal of the employee (which in my experience is rare). (Sakhrani 2017)

It is also interesting to note that the judgements of several court cases indicate improper constitution of ICs (Roy and Kanjamala 2019). For example, in the case below, the High Court of Madras highlighted the bias that existed within the IC members:

In M. Rajendran v. Daisyrani and Others (2018 3 MLJ 84), the proceedings of an ICC were challenged on the grounds of bias where the respondent to an inquiry was the senior functionary of a public medical college and hospital. The High Court of Madras observed that the respondent had issued the order for constituting the ICC to hear the matter against him, and that the ICC (other than the external member) comprised of members who were his subordinates and functioning under the control of the respondent. Accordingly, the High Court held that there was reasonable apprehension that any inquiry conducted by such an ICC would be vitiated by bias, and directed that the director of the Tamil Nadu State Transport Corporation, under the auspices of which the medical college and hospital was framed, constitute the ICC as required under the POSH Act to hear the specific complaint. (Roy and Kanjamala 2019)

Roy and Kanjamala also note that in *K. Hema Latha v. The State of Tamil Nadu and Others (2018 LLR 447)*, the High Court of Madras rejected the report of the IC on the grounds that the members were constituted solely from a single department, the administrative department of the institution, and therefore it was not in accordance with the provisions of the 2013 Act. In 2014, the Madras High Court directed Chennai-based ISG Novasoft Technologies Ltd to pay Rs 1.68 crore as damages on account of sexual harassment to an aggrieved woman (Ms.G vs IsgNovasoft Technologies, 2014)⁸. “The court said in its order on September 2 that if the company had set up a committee to inquire into allegations of sexual harassment, the litigation may have been avoided.” (Vyas 2015)

While the ICs are not functioning as envisioned, it is important to recall that such recourse was put in place to address the history of treatment of survivors of sexual harassment by existing state and legal machinery. The availability of a space for redressal within the workplace theoretically makes it that much easier for women to seek justice (Kidwai 2013) and does away with the extra effort required to access external legal systems. It thus becomes imperative for the law to not only enshrine such spaces but also provide mechanisms to ensure their effective formation and working.

⁸ The judgement can be accessed at <https://indiankanoon.org/doc/29530984/>

1.3.1 Local Committees

While much has been written about and also discussed among experts on the functioning of ICs, Local Committees (LCs) have not received similar focus. There is relatively less data that focuses on the experience of low wage workers as pointed out by Vijayalakshmi (2018) and neither are there reports that focus on the experience of low wage workers in the unorganized sector, such as construction workers, domestic workers, street vendors etc. As highlighted earlier, LCs are mandated to receive complaints of sexual harassment especially from the unorganized sector where it may not be possible to establish ICs; from establishments where ICs have not been constituted, or if the complaint is against the employer himself.

It is an established fact now that most districts of the country have not constituted LCs and where constituted, they appear to exist only on paper. There have been sporadic efforts by civil society organisations to gather data on the constitution of LCs through RTIs and writ petitions⁹. “Out of 655 districts in India, more than half of the district administrations did not reply to the RTI filed by the Martha Farrell Foundation for a study conducted over 2016-18, and only around 189 district administrations confirmed that a local committee had been constituted. As the LC is the body tasked with ensuring the prohibition, prevention and redressal of sexual harassment, for unorganised sector workers (specifically the increasing constituency of domestic workers), in its absence, a large population of workers are excluded from mechanisms of legal justice.

Most women’s organizations and labour unions in the National Capital Region (NCR) have reported that they are unable to find any information on LCs. Most districts have yet to constitute LCs or even notify District Officers who are mandated by law to constitute the LCs (Martha Farrell Foundation 2018)

Additionally, in the absence of District Officers fulfilling their duties under the Act, there is a lacuna in the effective monitoring of the ICs and penalisation of employers for non-compliance. The Federation of Indian Chambers of Commerce and Industry (FICCI) and Ernst and Young conducted a study in 2015 which revealed that one in every three Indian companies, i.e. 31%, had not set up an IC, 44% did not conduct awareness trainings for their employees, 40% did not implement trainings to orient the members about legal provisions and 35% were altogether unaware of the penal consequences of not complying with the law.

1.4 Intent and Scope of the Report

Given this evidence of severe laxity in the implementation of the POSH law even as the Ministry of Women and Child Development (MWCD) called for a review of the Act in light of the #MeToo movement in 2018, this report examines the implementation of the LC and IC provisions of the Act in the NCR region.

The first section presents an overview of the research, its objectives and the methodology followed. The second section focuses on the evolution of the POSH law by detailing the many issues that were debated, included, or left out of the Act post the Vishaka Judgement of 1997. This section also discusses debates that continue to grow around the Act. In the third section the role of the

⁹ Organisations such as the Martha Farrell Foundation and Initiatives for Inclusion Foundation, both based in Delhi have in the past made attempts at collecting data on constitution of LCs across states through filing of RTIs. Researchers of this report filed RTIs as well.

government is discussed, especially in promoting and ensuring effective implementation of the Act. The fourth and fifth sections discuss findings of the field-based research. The fourth section draws on the responses from members of ICs/LCs and district administration staff, and the fifth section shares testimonials of women who have endured and seen other women endure sexual violence and struggle to access justice. The last section focuses the discussion on several interlinked concerns, situating them within the provisions of the POSH law to underscore possible avenues for improvement. Lastly the report presents recommendations to strengthen the implementation of the Act. The basis of the recommendations is to deliver more effectively and sensitively, on the promise of providing women with non-hostile workplaces, free from sexual harassment and violence.

1.4.1 Research Objective

The report assesses the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, by gathering evidence on the current state of functioning of the Internal Committee and the Local Committee in the Delhi/NCR area, to identify gaps and advocate for improvement.

It builds on the existing knowledge of workers, activists and policy makers who have worked toward addressing sexual harassment in the workplace. It foregrounds experiences of women factory workers and domestic workers and also highlights experiences of individuals who work within the various redressal mechanisms set up via the POSH law.

1.4.2 Methodology¹⁰

Both primary and secondary sources were used for obtaining data for this report. The four tools used included In-depth interviews (ID), Focus group discussions (FGDs), Key informant interview (KII), and RTIs. In-depth interviews were conducted with members of ICs/LCs, district administration staff and women workers; FGDs were conducted with women workers to understand their experiences of unsafe workplaces; KIIs were conducted with stakeholders such as lawyers, trade union members, police officials and other experts on the POSH law to inform the context within which to locate the observations and findings of the report. Lastly, RTIs were filed in each district to obtain information on the functioning of the ICs and LCs.

Site Selection:

Primary research was conducted across six districts in three states in the Delhi/NCR region:

- Delhi: New Delhi and South East Delhi
- Haryana: Gurugram and Faridabad
- Uttar Pradesh: Gautam Buddha Nagar (Noida) and Ghaziabad¹¹

¹⁰ The field work for this study was conducted between June-December 2019. The findings and overall conclusion of this report is based on this field work.

¹¹ The Ghaziabad LC had not been constituted even as late as 13.11.2019. Therefore, the final findings of this report do not include the district of Ghaziabad. The previous LC had been dissolved in August 2019 and the district administration did not provide the researchers with any name or contact details of the previous members.



Image 1: Districts of Delhi

Source:

<https://www.mapsofindia.com/delhi/districts/delhi-district-map.jpg>



Image2: Primary Research Areas

Source:

<https://qphs.fs.quoracdn.net/main-qimg-8f3b5f80dd80036d352cc9dcb6bc8723>

Since primary research is grounded in the experience of the Act’s functioning for a large section of women workers employed in factories and in domestic work, the districts were chosen keeping in mind the prevalence of this particular constituency as well as the distance of the districts from New Delhi, which was the base for the research team. In Delhi the choice of the two districts was based on availability of information and access to LC members.

Sample Selection:

Primary research was conducted with identified stakeholders in each district that included:

- LC members and Chairperson
- District Officer
- IC members and
- Women workers

Table 1: Interviewee/Participant Pool

Research Tool	Number of Interviewees	Type of Interviewees
In Depth Interviews	31	<ul style="list-style-type: none"> ● District Officer ● LC Chairperson ● LC Members (former and current) ● District Administration Staff ● Nodal Officer ● IC Member ● Workers
Focus Group Discussions (3)	23	<ul style="list-style-type: none"> ● Factory workers and Domestic workers
Key Informant Interviews	8	<ul style="list-style-type: none"> ● SHO, Women’s Police Station or Mahila Thana ● Trade Union Leader ● Gender Budget Expert ● Delhi Department of Women and Child Development ● Haryana SRCW

Table 2: District-Wise Distribution of Interviewees

	Gurugram	Faridabad	South Delhi	East New Delhi	Gautam Buddha Nagar
District Officer			1		
LC Members	2	2	3	3	2
Nodal Officer (NO)	1	NA		NA	NA
Former Members (LC)	1				
Other District Staff	1	1			1
Workers	4	9 (FGD)	14 (through 2 FGDs) and 3 (through IDIs)		4
IC Member	1				1
Total Interviewees	10	12	24		8

A total of 20 IDIs (6 in Gurugram, 3 in Faridabad 4 in South East Delhi, 3 in New Delhi and 4 in Gautam Buddha Nagar) were conducted with district administration staff, IC and LC members.

A total of 34 workers were spoken to through FGDs (23) and IDIs (11). Of these, 11 were domestic workers and 23 worked in small and medium-sized factories.

Key informant interviews have also been held with 8 other stakeholders including a lawyer and a woman trade union leader (working with both organised and unorganised sector women workers) and with police officials.

1.4.3 Limitations and Challenges of the Report

- Ghaziabad had not constituted an LC as of 13.11.2019. The final findings of this report therefore do not include any information from the district of Ghaziabad. However, the lack of an LC itself is indicative of the poor implementation of the Act.
- Due to a paucity of publicly available information on LCs across these districts, researchers found it challenging to access committee members. Much time was invested in tracking down LCs and contact details of its members.
- Only one ex-officio member was interviewed as they were unwilling to speak with the researchers citing issues of permission. Even on obtaining permission from the District Officer, the ex-officio member in Gurugram did not speak with the researchers citing her busy schedule.
- This has also been the case with District Officers who were largely unavailable to speak with the researchers. Only one District Officer was interviewed.
- RTIs were filed in all the districts chosen for this research, and in all 11 districts of Delhi. However, at the time of finalisation of this report, responses had been received only from Gurugram and 6 districts in Delhi. Wherever required, the responses have been integrated with the findings of the primary data. Details are also tabulated in an annexure.

- The methodology included conducting IDIs with survivors. However, at the pilot stage it was observed that due to the lack of information among women regarding the POSH law as well as the normalisation of sexual harassment among them, IDIs did not elicit the required information. Thus, the tool was modified to FGDs with worker groups for understanding incidents of sexual harassment and violations at the workplace as experienced by the group instead of individual experiences (which women hesitate to share in first person due to a prevalent culture of silence and shame surrounding sexual harassment and violence.)
- The findings of the primary research are based on narrative accounts shared by informants in five districts and hence the findings regarding the functioning of ICs and LCs are restricted to these districts and the researchers do not extrapolate or make generalized claims about the functioning of all ICs/LCs across all districts of the country.
- Experiences of harassment are never easy to recount; the trauma maybe further escalated when the harassment is followed by persistent victimisation. The researchers were constantly posed with the ethical dilemma of asking women to re-live their experiences. At every step, the team was conscious and respectful of the agency of the informants over their stories and experiences .

2. Evolution of the Sexual Harassment Law: *Vishaka Guidelines 1997 to the POSH Act 2013*

The Vishaka Judgement (1997) was a significant victory, but the procedural guidelines were to serve as an interim measure until legislation was passed by the Parliament. It took over a decade and a half and several iterations to finally translate the guidelines into a justiciable right in the form of the POSH Act, 2013. This section contextualizes the implementation and reach of the POSH law against the background of the struggle that led to the enactment of this legislation.

The Act in its essence, of providing legal recourse to sexual harassment at workplace violation was a remarkable win, especially considering the long and winding struggle that precedes it. However, experts have also pointed out several contentions with regard to the framing of the Act as well as its language and provisions. The last section on current debates around the POSH law highlights the concerns that remain unresolved even after the passing of the Act.

2.1 The Vishaka Judgement, 1997

A Public Interest Litigation (PIL) filed in the Supreme Court in 1992 urging justice for Bhanwari Devi, a rural, government employee who had been brutally raped in 1992 during the course of her work as a *'saathin'*¹² brought widespread attention to the question of women's safety at their workplaces. Previously, women's groups in places such as Maharashtra had raised their voices against sexual violence of women employees at their place of work. But it was this PIL that finally led to the passing of the landmark Vishaka Judgment and Guidelines in 1997 (*Vishaka vs State of Rajasthan*) that was instrumental in recognising sexual harassment as more than 'eve teasing'; that sexual harassment at the workplace was a violation of a woman's constitutional right to equality, non-discrimination, life, and liberty, as well as the right to carry out any occupation guaranteed under Articles 14, 19 and 21. It also extended the traditional concept of the workplace while granting recognition to work performed by women regardless of employment status and remuneration – all of which form the basis for definitions in the current POSH Act.

It was this judgement that finally codified "sexual harassment" in law. Kapur (2013) argues that prior to this the only recourse to legal justice for violence against women was under Sections 354 and 509 of the Indian Penal Code (IPC)¹³ that used the euphemised (and morally laden) term "intent to outrage" a woman's "modesty"; despite its failure to address the issue. In fact, before the Vishaka Judgement, *"the language of 'sexual harassment' remained coded, invisible and frivolous ('eve*

¹² Workers in Rajasthan government's Women's Development Programme in the 1980s were referred to as *saathin* and their responsibilities entailed spreading awareness about hygiene, family planning and the necessity of educating girls, along with campaigning against female foeticide, infanticide, dowry and child marriages. For details of Bhanwari Devi's case see Nathan 2018.

¹³ *IPC Section 354*: Assault or criminal force toward a woman with the intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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.

teasing' is a good example). The 'sexual' dimension of 'harassment' was disabling and unspoken. We were uncomfortable with it. And nothing short of attempted rape would suffice for making a complaint. Even then, it fell within the moral assessment of 'criminal' law" (Kapur 2009). The Vishaka Judgement, anchored in the concept of the constitutional guarantee of equality, recognized sexual harassment at the workplace as a form of gender discrimination at the workplace and not merely a private act of an individual. Moreover, in the context of workplace rights, the judgement went beyond physical harassment to define sexual harassment as any act that creates a hostile work environment with Justice Verma writing that "Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right...the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse."

With the Vishaka Guidelines, for the first time, the responsibility for providing a safe, dignified and equal workplace lay with the employer, the institution, and the State. It emphasised not only on the *redressal* aspect through the setting up of complaint committees but also on *prohibition and prevention* through making workplaces responsible for the creation of a non-hostile work environment. The latter is viewed by many as the transformative aspect of the judgement.

The landmark judgement was rightly hailed two decades ago as being exemplary. However, there were voices that critiqued some aspects of it. Susan Abraham (cited in Punwani 1997) notes that the judgement situates workplace sexual harassment as a man-woman issue instead of the employer-employee issue that it should be. Unlike other instances of harassment, workplace harassment needs to be viewed as the inability of the employer to provide a safe work environment to its workers. In this regard it is a labour violation, and therefore an employer-employee issue. Raised in 1997, this issue continues to be as relevant today, over two decades later, as the findings of this report demonstrate. Interviews with women workers, as well as with members of various complaint committees, reveals that workplace sexual harassment continues to be predominantly seen as an individual man-woman issue between the perpetrator and the survivor. The challenges of establishing institutional accountability are discussed in the next section.

Salient features of the Vishaka Guidelines:

- Codification of sexual harassment at the workplace in law
- Extending the definition of sexual harassment beyond physical harassment to define it as any act that creates a hostile work environment
- Recognition of workplace sexual harassment as a violation of a woman's constitutional rights of equality, non-discrimination, life, and liberty, as well as the right to carry out any occupation
- Extending and redefining the traditional concept of the workplace
- Recognition of so-called voluntary and honorary workers as workers irrespective of their employment and remuneration status
- Emphasis on redressal of complaints but equally importantly on prevention and creation of a non-hostile workplace

2.2 From Vishaka to POSH Act, 2013 and beyond

The first version of the Bill was drawn up by the National Commission for Women (NCW), under the instructions of the central government. However, women's rights activists raised several issues with the draft Bill released in 2000, subsequent to which a drafting committee was formed with representation from several women's rights organisations. Issues with the NCW draft included the absence of the prevention aspect of the law (a key aspect in the Vishaka Judgement), the need to include the unorganised sector, and key aspects of existing labour laws (Patel 2005). Women's rights groups as well as trade unions worked on drafting several versions of the bill before it was introduced by the Minister of Women and Child Development, Krishna Tirath, in 2007 and approved by the Union Cabinet in January 2010 (Bala 2016).

The Bill was subsequently tabled in Lok Sabha in December 2010 and referred for review to the Parliamentary Standing Committee on Human Resources Development. The 2010 Bill was also critiqued by women's rights activists for glaring conceptual lapses that would render the law ineffective. The Standing Committee Report was published on 30 November 2011 and engaged with some of these lapses and made recommendations to strengthen the law. However, most of the recommendations, including those raised by a large number of experts, went unheeded. Before the law was passed in 2013, recommendations were also given by the Verma Committee formed in the wake of the 2012 brutal gang-rape of Jyoti Singh (Nirbhaya). The recommendations provided by the Verma Committee in its Report of 23 January 2013 largely echoed those of the Parliamentary Standing Committee, but none of these were taken into consideration in the Act tabled and passed by Parliament. A detailed table in the annexe (Table I) provides further information on the various recommendations and changes that went into creating the 2013 Act.

Table 3: Milestones in the Evolution of the POSH Act, 2013

1997	Vishaka Judgement passed on 13.08.97
2000	First draft of the POSH Bill drawn up by the NCW
2000-2010	Various versions of the Bill with inputs from experts and women's rights activists
2006	Supreme Court orders Labour Commissioners of each state to ensure setting up of Complaints Committees in factories, shops and establishment as stated in the case of Medha Kotwal Lele vs Union of India
2007	Bill introduced by the Ministry of Women and Child Development
2010	2007 Bill Approved by Union Cabinet; published on 30.11.11; tabled in the Lok Sabha on December 2010
2011	Standing Committee Recommendations Report
2012	Bill passed by Lok Sabha on 03.09.2012
2013	Verma Committee Report submitted on 23.01.13 Bill passed by Rajya Sabha on 26.02.13 POSH Act enforced on 09.12.13

2.3 Shaping the POSH Act

The current POSH law was created after much debate and several iterations. The following section highlights some of the issues and the relevant provisions that were either added or left out of the 2013 Act, with a specific intent to highlight the ones concerning this research.

Disconnect from labour rights

The POSH Act, 2013 is under the Ministry of Women and Child Welfare, and does not contain any provisions that link it to the Ministry of Labour and Employment. This disconnects the law from the labour rights mechanism although it is a law that guarantees protection from a 'workplace' violation. The absence is surprising since in the early days of consideration, the labour department had been given a primary role in the implementation of the law. Initial versions of the Bill carried provisions that directly placed responsibility of responding to workplace sexual harassment with the Labour Department. For example, the 2003 draft Bill provided in Section 16 (2) for an appointed female District Level Officer to be situated in the Labour Department and deal with all cases of sexual harassment at the workplace arising in the district, whether in the organised or unorganised sector.

Draft Bill 2003: Section 16 (ii) The District Level Officer specified in Clause (i) shall be based in Labour Department and shall look after the complaints of sexual harassment at workplace by all women of the district irrespective of whether they are employed in organised or unorganised sector or are self- employed.

Furthermore, other principles of labour protection were also included, such as the provision in Section 6 of the 2000 draft and Section 8 of the 2003 draft for the complainant's case to be pleaded by a member of the trade union of which she is a part of (apart from a representative of a women's rights organisation or the complainant representing herself). In subsequent versions of the bill from 2006 onwards, these provisions were removed. Reasons for the removal remain unclear.

Experts had also advocated for the inclusion of trade unions within the Act (Punwani, 1997). The NCW too had recommended inclusion of trade union/workers' association representatives even in the Internal Committees of organisations. The 2011 Standing Committee report recommended inclusion of trade union representatives as well, both in ICs and LCs, *"The Committee supports the inclusion of representatives of trade union or employee association and recommends to the Ministry to incorporate this category of members in the LCC in order to have a broad-based membership protecting the interests of the victim as a woman as well as an employee."* However, the recommendations, as is evident, went unheeded.

Draft Bill 2000: Section 6- Notwithstanding anything contained in any other law for the time being in force the case of a sexually harassed woman at a work place shall be pleaded either by herself or with her consent by women's organisation or the trade union of which she is a member.

Draft Bill 2003: Section 8- Pleading in case of harassed women worker: Notwithstanding anything contained in any other law for the time being in force the case of a sexually harassed woman at a work place shall be pleaded at her option either by herself or by her counsel or by a woman's organisation or by a trade union of which she is a member.

This policy-level disconnect has deep implications, some of which have been corroborated during the field work for this research. For example, our field areas were marked with a culture of silo-ised working of the LCs and the office of the District Officer, independent of any communication with the labour department and its officials.

Often, since workplace sexual harassment is enmeshed with other labour violations, complainants have to approach both the LC and the labour department and lodge parallel cases. She is not able to

show that her complaint against sexual harassment resulted in her victimization in a way that her labour rights were violated or that her complaint against a labour rights violation resulted in victimization in the form of sexual harassment.

This disconnect not only multiplies the complainant's trauma but also impacts her access to justice. It is important that the two departments are able to work in tandem to address issues of workplace sexual harassment so that the complainant is relieved of the burden of accessing multiple platforms for legal recourse.

Inclusion of 'domestic workers' as employees

As mentioned before, most of the recommendations of the Standing Committee Report (2011) were not included in the final draft Bill and the subsequent 2013 Act. However, one of the more important recommendations that were heeded was the inclusion of domestic workers as employees, which was missing from initial versions of the Bill. Reservations about the exclusion of domestic workers from the ambit of the Bill had also been raised different women's groups across the country (AIDWA, 2010, Nandy, 2010). The Act also extended the definitions of employers and workplace to cover domestic workers.

Penalisation of false and malicious complaints

One of the more problematic clauses of the Act that was inserted despite severe opposition (AIDWA 2010, Nandy 2010) is that of action for false and malicious complaints and evidence under Section 14 of the Act. This clause did not exist in the Vishaka Judgement and had been recommended to be omitted by the Verma Committee. As rightly pointed out, the clause undermines the entire ethos of the Act wherein instead of working to protect the complainant's rights, it belies the integrity of the complainant by already assuming a possibility of deceit. As such, the possibility that a registered complaint is false is applicable across all laws that provide justice to the complainant. Kapur, (2013) points out that this flawed logic is a hallmark and unique feature only of gender-specific legislation; it is not found in any other legislation as a matter of practice.

The clause also unfairly burdens survivors of harassment, by placing on them the obligation to construct in tangible measures something that often may only be felt. Workplace sexual harassment is often not overt as physical violence. Experiences shared by workers in our field work reveal that often the sexual intonation is hidden in double entendres and gestures that may be difficult to prove within the framework of legally recognizable evidence. Penalisation of the complainant in such cases is not only unfair but also runs the risk of discouraging other survivors to seek recourse through the law (Nandy 2010).

Constitution of complaints committees

Another important concern raised was the manner in which the complaint committees were to be constituted. Specifically, with respect to the local complaint committees, AIDWA in its statement on the 2010 draft version of the Bill had highlighted that since the "discretion to appoint the committee rests solely with the District Officer, it is liable to be exercised in an arbitrary manner. A more transparent procedure should be prescribed under the proposed law." However, this was not taken into cognizance and the power still rests with the District Officer to identify and appoint members of the LC.

This, as our findings have shown, has posed significant problems with committees being fashioned out of thin air with no apparent process followed by the District Officer. In many instances this has compromised the services provided by the committee vis-à-vis access to justice for the complainant.

Further in the constitution of ICs, the Standing Committee Report (2011) as well as the Verma Committee Report (2012) had raised issues regarding the absence of a member with a legal background. For a committee to perform as a civil court, and deliver justice on principled grounds, prior knowledge of law and its working was a prerequisite. This too was not taken in to cognizance and the ICs are not mandated to include a member with legal background. As seen in our field work, this has in fact hindered the efficacy of the ICs in many instances.

Provision of necessary resources

The Standing Committee Recommendations (2011) included an important clause that was to have a direct implication on the working of the Local Committees. It recommended the Act includes under the duties of the District Officer:

(as the DO) is mandated to set up the LCs for effective functioning, the absence of necessary resources that should be provided to them for conducting inquiries will lead to denial of justice.

The absence of this clause from the 2013 Act has proved to be an Achilles' heel for the system. The significance of the clause is amply evident from the primary data that points to the complete breakdown of the LC machinery in the absence of infrastructure such as a room, chairs, table, cabinets, and a staff member. In the absence of sanctioned resources, the District Officer may or may not cooperate in the procurement of these provisions for the LC.

2.4 Current Debates on the POSH law

This section presents a literature review, exploring questions raised around the Act, its provisions and implementations that continue to be debated between women's rights activists, labour activists and other experts.

2.4.1 Definition of Workplace

The definition of "workplace" under the Act has evolved after much debate and discussion over the years. However, "workplace" and thereby situations and spaces where a woman can claim access to justice under this law continues to be fraught with contradictions and interpretations.

Recalling the need for inventive and innovative tools to address sexual harassment in light of the Bhanwari Devi case, lawyers and petitioners in her case argue that "*One of the greatest contributions of the Bhanwari Devi Andolan is a rethinking of the traditional definition of the workplace*" (Nathan 2018) because the government was refusing to recognize that Bhanwari Devi had been attacked in course of her employment duties. However, others such as Sakhrani (2017) argue that while the judgement forced the nation to take cognizance of the phenomenon of sexual harassment at the workplace, Bhanwari Devi, whose gang rape led to this landmark judgment, was not covered by it since the perpetrators were not "employees" of the state and were not "at work". Third party harassment which was not included in the ambit of the judgement was subsequently pushed for by women's groups in the many versions of draft bills. However, these recommendations were not considered in the 2013 Act.

Sakhrani (2017) feels that the Act still falls short in addressing this in a decisive manner since it has significantly diluted employers' accountability to provide a safe working environment, thereby failing to address the overarching goal of the Act, which is to rid any workplace entirely of violence, whether committed by employees or by third parties. Kapur (2013) argues for a simpler definition of the workplace such as "any place where a woman is present by virtue of her work" as was discussed at a consultation attended by several members of the Parliamentary Standing Committee. She argues that the current "itemized" definition does not cover students in educational institutions, for example.

However, Advocate Vrinda Grover argues that even in the absence of the inclusion of the term, the definition of the 'workplace' itself is broad enough to cover third party harassment. She writes that,

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and Rules under it, provide redress to an "aggrieved woman", which includes women employed by the organisation, as well as women associated with the organisation in any capacity, such as a visitor or an intern; or other women aggrieved by sexual harassment committed in relation to the work or workplace of that organisation. A complaint can be filed against an employee of the organisation, or even an outsider who comes into contact in the course of or in relation to the work, such as a consultant, service provider, a vendor, with the workplace or the organisation.

2.4.2 Continued disconnect of sexual harassment from the labour rights framework

The obvious gender-labour bifurcation in the Act, its language and in its operation cannot be over-emphasised. Workplace sexual harassment continues to be considered solely an issue of women's rights, and neglected as the labour issue it represents (Bala 2016). Sexual harassment is intrinsically linked to the working conditions prevalent in the workplace and the power dynamics that govern labour-management relations. John (2014) argues that provisions in the Act lie in direct contradiction to this notion, especially by mandating employer constituted ICs as the authority for investigating and adjudicating on the cases. She argues that this erases, rather than establishing, the fact that "gender discrimination is embedded within labour relations." Studies have shown that women do not report cases of harassment as they either feel that the ICs are beholden to management, or they fear retaliation including further victimisation as well as loss of job, and isolation within the workplace (John 2014, Sarpotdar 2013). This gets further complicated due to the additional pressures of stigma and potential retaliation by family members who may lay the blame on the survivor herself.

In addition, John argues constituting a separate committee for addressing sexual harassments within the workplace isolates this act of workplace violation from existing laws that guarantee labour rights; and in doing so it belies the rationale that sexual harassment is violation of workers' rights, and a form of gender-based discrimination that creates adverse conditions of work for women workers. In a 2013 article of the National Human Rights Commission's Journal, Justice Manohar reported sexual harassment to be a continuing 'occupational hazard'. Studies have also shown sexual harassment to be a deciding factor for the declining female work force participation (Satyam and Pickup 2018).

In practical terms, separating the sexual harassment at workplace law from labour laws has meant that women have had to access a different law, under the jurisdiction of a separate ministry. They

also have to access two separate redressal systems to file complaints about labour rights violations and sexual harassment at workplace even though often there is a close relationship between both violations as raising a complaint of sexual harassment often leads to victimization, such as demotions, frequent transfers, loss of plum assignments or promotions and ultimately loss of employment. Section 3(2) of the POSH Act, even outlines such instances of victimisation, but, because employment related complaints fall under the jurisdiction of the industrial disputes law administered by the Labour Department and sexual harassment complaints fall under the jurisdiction of POSH Act administered by the Women and Child Development department, it is difficult for women to simultaneously pursue two complaints and give evidence of harassment.

The Supreme Court (SC) in an interim order issued in 2006 designated the Labour Commissioner's office of each state as the nodal agency to collect details about complaints of sexual harassment and to make sure that the required committees are established in factories, shops and commercial establishments (Sarpotdar 2013). To situate workplace sexual harassment within the ambit of the labour rights framework, experts from the women's and labour rights movement (Saheli 2001) as well as the Parliamentary Standing Committee in 2011 have called for mandating specific provisions in the act such as the inclusion of trade union representatives. However, despite concerns being raised throughout the evolution of the Act, no mention of either the labour department or the role of trade unions or workers' association has found place in the Act passed by Parliament.

In other parts of the world sexual harassment at the workplace is addressed within the country's labour code. For example, Division XV.1 of Part III of the Canada Labour Code establishes an employee's right to employment free of sexual harassment and requires employers to take positive action to prevent sexual harassment in the workplace (Government of Canada 2019). The Vietnam Labour Code of 2012 stipulates that sexual harassment is prohibited in the workplace.¹⁴

In South Africa, the Labour Relations Act deals with sexual harassment in the workplace and it has a Code of Good Practice on Sexual Harassment wherein sexual harassment is categorized as an unfair labour practice.¹⁵ Several other countries such as Argentina, Chile, Colombia, France, Mexico, New Zealand also include sexual harassment in their labour or employment laws (Ernst and Young 2018).

In India, following the Vishaka guidelines, the Industrial Employment (Standing Orders) Rules, 1946 was amended in 1999 and sexual harassment was categorized as 'misconduct' (Rule 14 (I), Schedule 1 and Rule 17(z), Schedule 1A). We are not aware of any cases yet where these Rules have been applied. In addition, even twenty years later there is a patchy record of state level amendments to the standing order rules. There has however been no demand to categorize sexual harassment as an unfair labour practice for which the employer or institution would be held responsible and face imprisonment or a fine under Section 25(u) of the Industrial Disputes Act, 1947.

The time has come to categorize the failure to provide a non-discriminatory, non-hostile work environment as unfair labour practice in the Second Schedule of the Industrial Relations Code 2020 with criminal penalty for non-compliance.

¹⁴ Refer to the Vietnam Labour Code here:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91650

¹⁵ For more details refer to: <https://mywage.co.za/women-and-work/sexual-harassment-1>

2.4.3 Institutional accountability for sexual harassment at the workplace

Under the Vishaka Guidelines the goal was to shift the responsibility from the individual perpetrator of the act of sexual harassment to employers and institutions. Naina Kapur (2008) recalls the importance of this shift, that by “*imposing an onus on ‘responsible persons’ (including employers, persons in a position of trust or moral ascendancy), accountability for sexual harassment was no longer limited to the individual perpetrator but enlarged to cover institutions and their obligation to ensure a safe and healthy environment for women.*”

Sarpotdar (2013) has similarly argued the need to institutionalise responses to sexual harassment, arguing that

It is important to understand that sexual harassment is a socio-legal issue surrounded by shame, stigma and confusion. A general code of conduct may not address the requirements and specifics of the issue. It is necessary that a special policy be formulated and institutionalised, which ensures empathetic response, sensitive handling, mature investigation, and prompt implementation of the recommendations made by the complaints committee on sexual harassment to the management.

By setting up complaints’ committees, internal and local, and providing for a mechanism for the organisation or institution to respond to and address concerns of workplace sexual harassment, the Act has situated sexual harassment at the workplace within an institution without imposing institutional responsibility in a comprehensive manner.

However, location of the complaints’ committee within the institutional framework has not been welcomed by all. For example, responding to the Vishaka guidelines, the women’s organization Saheli (1997) expressed reservation, saying that,

The Supreme Court guidelines place a very high degree of faith in the employer to take up the issue, ensure redressal and carry out disciplinary action. This faith is largely misplaced. It has been proven time and again that it is most often, the employer or person-in-charge himself who is guilty of sexually harassing women employees under his supervision....Further, sexual harassment has long been a tool to attempt to subdue women who are active in Trade Unions or demands for worker’s rights. Women are often the vulnerable targets to break agitations and dampen dissent. Especially in such situations, faith in the employer’s goodwill to take up cases of sexual harassment (when he himself may be one of the culprits) is misplaced.

A year after the POSH law came into effect, John (2014) too argued that assigning primary responsibility to internal committees constituted by employers, amounts to reducing “gender-cum-labour rights to a *private* affair between two *private parties*.”

Preventive steps and obligations of the employer were emphasized and outlined in section 3 of the Vishaka guidelines. It gives specific directions -

(c) As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

while Section 5 lays out the consequences,

Disciplinary Action: Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

In fact, the guidelines specifically create space for workers' voice and initiative, detailing in **Section 8,**

Workers' Initiative: Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

The difference of opinion may lie in the respective understandings about the role of the employer, the internal committee and the State. Kapur sees the ICs as employers' responsibility, for prevention and enabling of a healthy and equal work environment whereas John sees the workplace as a privatized space and hence with little or no accountability; while Saheli rightly points to the unequal power dynamics that affect the functioning of employer instituted mechanisms.

In the same vein, while Kapur sees the role of the State and state agencies such as police and courts as historically being hostile to issues of violence faced by women, John argues for greater state intervention in labour issues even as the state increasingly retreats from regulating employer-employee relations and working conditions.

Saheli's concern in 1997 regarding fixing of accountability on employers continues to plague us even today; especially for women workers in the unorganized sector where the power dynamics are worse,

It is not clear how exactly affected women should go about registering a complaint, and who exactly will look into the complaint. With regard to women workers in the unorganised sector, in which the large majority of women work, it is not clear how redressal mechanisms will function. The same applies to domestic workers who are sexually harassed by their employers, and landless labourers by landlords and contractors, both of which are especially common. There needs to be more clarity so that the guidelines do not remain mere rhetoric, but actually help women who have been sexually harassed.

For example, recently, among several other recommendations drawn up during the NCW Consultation in November 2018, it was pointed out that while the Act refers to "prevention" in its title, the actual provisions within it do not adequately address it (Chatterjee 2018). Prevention necessitates that organisations and employers provide women workers with an environment that is non-hostile and non-discriminatory.

However, for a law that guarantees a workplace free from sexual harassment, there appears to be little onus on the employer to take responsibility for its implementation. The only liability faced by

the employer is a penalty of Rs. 50,000 for non-compliance. For repeat offenders the penalty can amount to de-registration of the business. However, the reality is that with little or no monitoring mechanisms, non-compliance is rarely penalised. An even more serious lacuna is the fact that the onus of prevention is obviated as there is no clause for penalty for not providing a safe workplace (Sakhrani 2017).

Kapur (2013) argues that the Act fails to foreground the provision of a workplace free of sexual harassment as a fundamental right, a principle that was the backbone of the earlier Vishaka Judgement.

The absence of this provision leaves it to the discretion of the employer to act as they please.

Prescribing “duties” under the new Act as a way to compel employers to prevent sexual harassment runs contrary to contemporary human rights emphasis on promoting “responsibilities”. It is the difference between what employers feel obliged to do (and hence resist and scuttle) from what they would responsibly own and do (and hence, be proud of) (Kapur 2013).

It is time for another look at the POSH law in India not just in terms of the efficacy of its implementation but also to ensure that employers take responsibility for providing safe and dignified work environments to all workers irrespective of their gender; and for sexual harassment to be categorized as unfair labour practice.

2.4.4 Due Process and ‘Justice’

John (2014) rightly identifies that the women’s movement had sought ICs as recourse under civil law at a time when the prevailing remedies lay only within criminal law. The reason for seeking civil law recourse was as Kapur (2008) points out that “*women complainants of violence have repeatedly emerged from the criminal justice system more humiliated, less empowered and with almost no sense of self left intact.*”

Currently women have recourse to both civil and criminal law provisions. Despite this, due process (both civil and criminal) appears to be failing and many complainants have chosen to name and shame on social media (Dasgupta, 2018; Pallavi, 2017) or find other avenues, rather than seek legal remedies that provide no real justice at the end of the long struggle. Bhanwari Devi’s appeal against the acquittal of her rapists is still pending in court, 27 years after the crime.

In recent times, the List of Sexual Harassers in Academia (LoSHA) and #MeToo movement have also raised questions regarding due process and its efficacy in the complainants’ access to justice. The highly polarised debate divided the women's movement and pushed one to think beyond the legal recourse in cases of sexual harassment and instead question what seeking “justice” means from a complainant’s perspective.

While a section of the movement has categorically argued for the need to follow due process attained after a long and challenging feminist struggle (Menon 2019); others acknowledge the complexities around ‘justice through due process’ and have supported the process of calling out one’s perpetrators without necessarily following norms of “due process” (Bhandaram 2017).

With an issue as complex and sensitive as sexual harassment one might want to reconsider an either-or approach. As pointed out by Kannabiran (2018),

The deeply disturbing testimonies that have called out perpetrators in the past year bear witness to the harms of sexual violence ranging from unwelcome gestures, verbal abuse, visual and physical molestation and stalking to child sexual abuse, rape and gang rape – some of which may be in the jurisdiction of internal complaints mechanisms of workplaces, others that fall through the cracks of different jurisdictions and are therefore confronted with the impossibility of redress, and yet others firmly in the domain for formal criminal law that calls for immediate prosecution. All of these, whether or not the lines of due process are clear, are within the domain of public call-outs of perpetrators that is the method the #MeToo movement deploys to challenge the impunity of perpetrators and push for due diligence by public actors, non-state actors and importantly the media (print, electronic and social/digital).

Samuel (2018) sees LOSHA and the #MeToo movements as a way for survivors to hold their abusers accountable.

...it is not about finding solution through a punitive justice system which demands high standards of evidence to convict a criminal; it is a way a victim woman can find closure by telling her truth as experienced by her and holding the perpetrator accountable for his act. It is taking back the power and autonomy that was snatched away from her.

At the same time the #MeToo movement was criticised for its limited access by many blue-collar working women because of its use of digital media as the primary means of expression and articulation (Sharma 2018).

Considering the growing revelations by women from the corporate houses, it is pressing to investigate the current mechanisms of redressal and access to justice for women from marginalised identities such as members from the Dalit community and women from scheduled castes and scheduled tribes working as informal workers in organisations, institutions, factories, homes, and on the streets.

3. Role of Central and State Government

The Act mandates both the central and state governments to take active measures towards publicising the Act, creating resource materials, training members of local committees as well as towards monitoring the implementation of the Act through maintaining records and data related to complaints of sexual harassment, and ordering inspections when required.

The Act also includes a budgetary clause that requires the central government to allocate funds for the payment of fees and allowances for the local committee members.

Central and State Government Responsibilities under POSH Act, 2013

Section 2(b) “appropriate Government” means—

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

Section 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.

Section 8. Grants and audit.—(1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7.

(2) State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors’ report thereon.

Section 23. Appropriate Government to monitor implementation and maintain data.—The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

Section 24. Appropriate Government to take measures to publicise the Act.—The appropriate Government may, subject to the availability of financial and other resources, —

(a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace;

(b) formulate orientation and training programmes for the members of the Local Committee.

Section 25. Power to call for information and inspection of records.—(1) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing, —

(a) call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;

(b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

Section 29. Power of appropriate Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Apart from creating more tools and mechanisms to add to ways in which complaints can be filed and awareness can be spread, the central and most state governments have remained silent on most issues concerning the Act and its implementation. Our field work indicates that in the districts covered by the research, there has been no role played by the government in training of LC members, maintaining records and documentation of the complaints registered and dealt with, and no inspections of workplaces to monitor compliance as required under the Act. Information available in the public domain also suggests that across India, governments have not invested enough towards the successful implementation of the Act. The researchers of this study found that a curiously undocumented area in the public domain is the budgetary allocations made for the Act.

Many states have developed specific mechanisms for the implementation of the Act. In Haryana for example, to address the issue of training and compliance within government departments and institutions, the Department of Women and Child Welfare has directed the State Resource Centre for Women (SRCW) to undertake this role. Maharashtra and Telangana governments have announced compulsory registration of the ICs of all workplaces in the states under the Women and Child Department. In Telangana this is to be done online through the SHe-Box (Mohapatra and Preetha 2019).

3.1 Government Initiatives and Gaps

3.1.1 SHe-Box portal for receiving complaints

In November 2017, the Ministry of Women and Child Development (MWCD) set up an e-portal called SHe-Box, for working women to file complaints of sexual harassment at the workplace. The Ministry said that the intent behind this online portal was for complaints to be monitored by the MWCD directly. Upon receiving a complaint, it is directed to the concerned IC/LC and the Ministry thereafter can monitor the progress of the complaint through this portal. The portal also allows for the complainant to directly interact with the Ministry if she so wishes, with a clause for a time-bound response. As of July 2019, the total number of complaints received through SHe-Box was 612 which include 196 complaints from women employed in the Central Government, 103 from State Government employees and 313 from private organization employees (Government of India 2019).

3.1.2 Companies (Accounts) Rules, 2014 Amendment

A significant action taken by the government, in 2013 was to make it mandatory for companies to disclose their compliance with the provisions of the POSH Act, in their annual reports. In response to the request of the Ministry of Women and Child Development, the Ministry of Corporate Affairs of the Government of India amended the Companies (Accounts) Rules, 2014 issued under Section 134 of the Companies Act, 2013 in July 2018 making it mandatory under Rule 8(5)(x) of these rules for the Board of Directors to include in their annual report a statement that the company has complied with provisions relating to constitution of Internal Committee under the POSH Act (Government of India 2019). Section 134 of the Companies Act, 2013 provides the disclosure framework which Directors of companies are required to comply with in the Annual Reports and also includes the penal provisions for non-disclosure (MWCD, 2018).

3.1.3 Group of Ministers formed post #MeToo

After the #MeToo movement exploded in 2018 and many accounts of workplace harassment were narrated on social media, the Government of India rushed to form a Group of Ministers (GoM) in October 2018 to investigate the concerns. The GoM was primarily entrusted with examining the “legal and institutional framework for handling complaints” of sexual harassment at work, and to suggest amendments in the existing laws to penalise employers who fail to set up ICs. The GOM’s report was expected at the end of the year in 2018. Neither was any report made public nor were any of the proceedings disclosed, before the newly elected central government scrapped the previous GoM to set up a new group in July 2019 (Tripathi 2018). Interestingly, before the government announced the formation of the new committee, the news portal Quint had filed an RTI seeking information regarding the work done by the previous committee and the committee’s report on recommendations and mechanisms for effective enforcement of the law. The government refused to divulge any information regarding the committee or its proceedings (Iyer 2019).

3.1.4 Documentation/Record Keeping

Documentation and maintaining records of the number of cases of workplace sexual harassment dealt with across the length and breadth of the country is inconsistent. The Central Government at present does not maintain any data related to sexual harassment of women at workplaces. Any questions asked in Parliament, regarding the number of complaints registered under the POSH law whether in educational institutions, hospitals, factories, government or privately owned, is responded to by quoting NCRB data (Government of India 2019). The only other source quoted in response to questions on number of cases and their disposal is the SHe-Box portal which is maintained by the Ministry of Women and Child Development.

There is no effort yet at consolidating data from the district levels through annual reports received by the District Officer (DO). In fact, district administration officials interviewed in our field work confirmed that the state government did not require them to submit information collated from annual reports that institutions have to submit to the DO. In turn, the central government does not seem to require state governments to collate and submit information received from all districts. The lack of seriousness in the implementation of POSH law is evident across all levels of the government from district level authorities to the central government.

3.2 No Role of the Ministry of Labour and Employment (MoLE)

The role of the MoLE is still severely wanting in the enforcement of the Act. At present, the Act and its functioning are disconnected from any intervention by the MoLE as noted several times above. Until 2012 the Ministry of Labour and Employment seemed to have been involved in deliberations on the issue of workplace sexual harassment. In a tripartite meeting held in Bangalore in October 2012 (ILO 2012), the ILO worked with the MoLE to flesh out the role of Labour Commissioners in the prevention and redressal of issues of workplace sexual harassment.

This meeting was preceded by a rapid study conducted by the ILO and the MoLE in 2011 to identify factors that promote an enabling environment for regulatory responses and/or processes for the prevention of sexual harassment in workplaces at the level of the state government.

The box below provides a snapshot of the role of the Labour Commissioner, as outlined by the ILO (2012) in addressing workplace sexual harassment.

Role of the Labour Commissioner in Addressing Workplace Sexual Harassment

- ❖ As per the Public Interest Litigation (PIL) filed in the Supreme Court in the Medha Kotwal Lele vs Union of India and Others 26.4.2004, Labour Commissioners will work as a nodal agency with regard to shops, factories and commercial establishments
- ❖ Publish information in an analytical form on the number of cases of sexual harassment within their jurisdiction and forward these to the Ministry of Labour and Employment for further action
- ❖ Accept complaints of sexual harassment lodged by individual women, irrespective of their designation in their establishment or workplace and process the same for action to the concerned Internal Complaints Committee as prescribed by the Act
- ❖ Conciliate the dispute between a complainant and employer on redressal of cases of sexual harassment in the workplace, including a) establishment of an internal complaints committee in case one does not exist b) the release of all duties in case a complainant leaves the establishment due to sexual harassment at the workplace
- ❖ Ensure that the recommendations of the Internal Complaints Committee are followed by the employer or the disciplinary committee, as the case may be
- ❖ Take action against those employers who have not undertaken obligations that are necessary when female employees work beyond stipulated hours (specific to those employers who are permitted to allow women to work beyond the usual hours, as in the Factories Act, 1948)
- ❖ Labour department/commissioners to issue separate notifications with regard to private organizations to ensure necessary modifications in compliance with the Act in accordance with the Industrial Employment (Standing Orders) Act, 1946
- ❖ Bring defaulting employers to the notice of the Supreme Court of India, and issue directions against them and impose costs against them in specific cases of sexual harassment at the workplace.

Source: Preventing and Responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India, ILO Decent Work Team for South Asia and Country Office for India, 2013

Given this investment by the MoLE, its current disassociation from the issue is both surprising and unwarranted and needs to be revisited since workers face backlash and victimization for raising issues of sexual harassment at the workplace, but the labour department does not entertain their complaints as we note later in the report.

4. Functioning of Committees-Local and Internal

4.1 Functioning of Local Committee

The following section is a detailed analysis of the data collected on the working of Local Committees in the districts of New Delhi, South East Delhi, Gautam Buddha Nagar, Gurugram, and Faridabad. The current situation has been analysed on the efficacy of the committees in four key aspects of:

- I. Constitution of committees
- II. Operation and administration
- III. Budgetary provisions
- IV. Case related processes

4.1.1 Constitution of committees

Finding: At present, there is no systematic, uniform, process that is followed across the five districts in identification, selection and training of LC members. The committees function in an ad-hoc manner that depends on the goodwill and passion of individuals instead of a concerted institutional effort. If there has been a fully functional, operative LC, it is not by design as much as by accident. Thus, instead of a transformative shift across geographies in survivors' access to justice, the way in which the Act is implemented at present, can at best guarantee piecemeal justice to complainants.

Constitution of Local Committees

Section 6(1): *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 constituted due to having less than ten workers or if the complaint is against the employer himself.*

In all the districts covered by the research, the LCs were constituted more than a year after the enforcement of the Act and apart from Gurugram, in the other districts, the constituted committees were not functional and only existed on paper.

In three out of five districts (Gurugram, Gautam Buddha Nagar and South East Delhi) civil society organisations have played a significant role in the process of formation and functioning of the committees. In South East Delhi, the LC was constituted on paper in 2016, but actually started functioning only after the Martha Farrell Foundation intervened in 2018 to highlight the need for a functional LC for domestic workers.

In 2018 when we approached the district administration, LC members from 2016 had no idea what their roles were. Since we were working with domestic workers, especially in South East Delhi, for us getting the LC to work was a priority. We spoke with the

administration and told them that we'll form the LC for them. And so last year (2018) we reconstituted the committee, trained all the members twice...we were also asked to be a part of the committee.

-Director, Martha Farrell Foundation

POSH Act, 2013:

Section 7. (1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely: —

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

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;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.

In Haryana, while both Gurugram and Faridabad constituted LCs in 2015, the LC in Gurugram was formed only after civil society intervention. The founder of an NGO, POSHCA (Prevention of Sexual Harassment and Child Abuse), had approached the then District Commissioner (DC) of Gurugram with her concerns regarding compliance. This interaction set the ball rolling for the formation of the LC.

We would provide trainings on the Act to different companies and then tell them that it is mandatory to submit annual reports to the district. But then we kept hearing from them that the district administration had no idea about the Act and no one was willing to receive reports from the company. That is when I realised that at the district level they were still completely unprepared. So I approached the DC and started interacting with him about the Act and its provisions.

My first interaction with him was actually to ask him to appoint someone who would just receive the returns that the companies were submitting. Gradually we also managed to set up the LC in Gurugram.

-Founder, POSHCA

In Gautam Buddha Nagar, although there was no direct push by any particular organisation for forming the LC, it was a notification issued to the district administration on POSH Act compliance as an outcome of public interest litigation (PIL) that compelled them to set up the LC.

The formation of LCs has not followed a uniform schedule within a single state. For example, in Delhi, the Martha Farrell Foundation found that out of 11 districts, only 5 had constituted LCs in 2019. None of the other districts in the capital have an LC even six years into the enforcement of the Act.

Knowledge of the previous committees, including its composition or process of constitution, is low among current LC members as well as within the district administration staff. In Gautam Buddha Nagar, the staff as well as the ex-officio member was unable to tell us the year of the constitution of the first LC. In all the four districts, current members and district staff involved in implementation of the Act are not aware of the names of the previously constituted committee members.

Lack of a transparent and systematic process for selection of members

All five districts have followed varied approaches for selection of LC members as well as Nodal Officers (NO). The process differed even within a state across districts. While the District Officer seemed to have appointed the members as per the Act provisions, the manner in which the members were identified and selected was unknown to the members themselves. A common response from present members as well as administrative staff on the criteria followed to select members into the LC was, “Members are chosen by the DC/DM...we don’t know how they are identified. But the Act [Section 7] anyway spells out who can be appointed as members in the LC.” In districts of Gurugram and New Delhi that responded to the query on selection process also responded by attaching Section 7(1) of the POSH Act, 2013 without any other information on the actual process followed. This raises questions of accountability and transparency.

Section 7(1) of the Act provides guidelines for selection as well as provisions for representation of members from SC/ST communities. However, a missing link is the process of selecting members into the committee. This is a significant step as the composition of the LC determines its functioning to a large extent. A number of factors including sensitivity, knowledge, qualification, experience of dealing with sexual harassment concerns among others is crucial in the handling of cases and therein its recommendations of the same.

Ideally, they [the LC members] should be people who are in the know [of gender, issues of violence against women], but who is deciding who knows what? And the law says nothing about that. It isn’t necessary that someone working with women will be able to understand things like principle of natural justice, or someone with legal knowledge will work with a gender lens. Can everyone do that?

-LC Member

It is imperative that the appointment happens through an informed process that ensures that the LC comprises of a group that combines legal knowledge, and feminist and labour perspectives, and is representative of not only SC/ST/OBC groups but also of workers’ associations.

At present, the process of identification and selection is ad-hoc and therefore runs the risk of being biased, a concern that was raised even during the drafting of the Bills (AIDWA 2010). As shown in the examples of South East Delhi and Gurugram, any civil society organisation that has shown interest, has been given the responsibility of ensuring functioning of the Act. Whether it is the District Officer who identifies LC members or any other individual within the administration, the process is based on personal familiarity with an individual or her work. There is no institutional mechanism to ensure

appointments through a qualification process. This informal mechanism can also be attributed to the absence of provision of paid staff by the Act, due to which all posts are of a voluntary nature; thus obviating the need for a formal, transparent and systematic selection process.

Composition of committees in violation of the POSH Act provisions

The fallout of the ad-hoc selection process is a lack of uniformity across districts (and even within one single state) in the composition of the LC (as per Section 7(1) of the Act). For example, while in Gurugram, Faridabad, and Gautam Buddha Nagar, the LCs comprise of at least one member with legal experience, the South East Delhi LC does not have anyone with legal experience. This has been a hindrance especially during inquiries as shared by a member of the LC. The LC has had to seek an advocate who can advise them on case related concerns.

Proxy members: In one of the districts, an interviewee told us that she was not a part of the LC officially but took part in its operations as a substitute for the ex-officio member who owing to her busy schedule as the District Probation Officer (DPO) finds it difficult to fulfil her responsibilities as an LC member. It is important to note that the interviewee is however listed as a member in the official Facebook page of the LC.

No SC/ST/OBC Representation: Although it is mandated under Section 7(1) of the POSH Act, 2013 to include one member from the SC/ST/OBC community, there is no SC/ST/OBC representation in the 2019 LCs in Gurugram, Faridabad and Gautam Buddha Nagar. While in South East Delhi, although the committee has an SC member, other members shared that he is generally absent from meetings and inquiries. Only the New Delhi LC has a functional representative from this category.

Absent or On-Paper Appointment of Nodal Officers: In New Delhi, Faridabad and Gautam Buddha Nagar, Nodal Officers (NO) have not been appointed at the block/taluka level. As specified under Section 6(2) of the Act, it is the Nodal Officers (appointed by the District Officer) who are to receive complaints at the municipality/ward level and forward these to the LC. The presence of Nodal Officers therefore, ensures greater outreach as well as a link between the public and the LC. A well-functioning team of NOs ameliorates greatly the issue of access to LCs by unorganised sector workers. On the other hand, in South East Delhi while NOs were appointed in 2016, until 2018, the officers themselves had no knowledge of the appointment and understanding of their role.

The nodal officers had not received written nor telephonic communication regarding their appointment.

When we began our work, it was a challenge to identify nodal officers and when we did find them, we found that many of them were not trained and were unaware of their roles.

-Director, Martha Farrell Foundation

Only Gurugram had a team of NOs. However, here too the process of appointing NOs is flawed. One of the Nodal Officers informed us that they did not receive a written notification, and instead were notified through a telephonic conversation by the District Administration of their appointment.

Appointment of Male Nodal Officers: Although Gurugram has an operational team of Nodal Officers, it is likely that their appointment was done without much thought since the first team of NOs are primarily male. It is well established that, women choose to remain silent on issues of sexual

harassment due to a variety of reasons that work against them, especially stigmatisation. Women will find it even tougher to report such incidents to a male Nodal Officer, rendering this team of largely male NOs practically useless.

Large share of members affiliated to the ruling party: In Gurugram a significant number of Nodal Officers as well as members in both the previous and current LCs are affiliated to the ruling party. While there is no law or rule barring appointment due to one's political affiliation, a large percentage of the entire team's affiliations lying with the ruling party runs the risk of being perceived as lacking diversity and being biased.

According to one of the LC members in Gurugram, having a politically powerful chairperson is advantageous to the LC that may in many instances deal with cases where the accused has significant political clout. This too needs to be questioned as the functioning of the Act should not be dependent on political influence.

The political patronage may also reflect in the respect members command within the district administration. While in Gurugram past and current LC members have been satisfied with the treatment they have received, LC members in South East Delhi felt that they were not given the required respect and dignity that they commanded. One member shared her reluctance to continue her term after it ended as a result of perceived disrespect.

Section 24: *The appropriate Government may, subject to the availability of financial and other resources,*

(b) *formulate orientation and training programmes for the members of the Local Complaint Committee.*

Untrained committees

The POSH Act requires a committee that is constituted of citizens of India, who have in the past worked on issues related to women, adjudicate on matters of workplace sexual harassment. To this effect, the committee has been given the powers of a civil court. It is imperative for members of this committee to be provided with basic training on the Act itself as well as on other matters integral to its functioning such as basic concepts of gender, sexuality, body, consent, violence etc. as well as legal knowledge on the functioning of civil courts. In fact, the Act mandates (under Section 24 b) that the government provide orientation and training programmes for the members of the Local Committee. However members of the LCs we spoke to across all five districts said they had not received any training or orientation by the government, either central or state. Trainings of LC members if at all were done by civil society organisations through their own initiative.

The RTI responses received from Gurugram and New Delhi districts also stated that no training had been conducted between 2016 and 2019 by the government.

Our members have not been given any training. Actually, the issue is that members [of the LC] are not provided proper training on the law. Hence in many instances, many LC members are themselves not aware of the provisions of the law or its implementation. WCD may conduct trainings at times, but they are neither regular nor easily accessible

since they are at the head office and it is difficult for many members, who are working full time, to travel that far to attend the trainings.

– LC Member, Faridabad

In South East Delhi, before Martha Farrell Foundation’s intervention, the members of the LC were not aware of their role and responsibilities vis-à-vis the Act.

We had to take the list of members from the administration and actually go from door to door to find them and bring them together. The committee had been constituted since 2016 but no one was performing their duties as LC members till as late as 2018. No one had been provided with any training on the Act. We had to speak with the DO and had to then train the members.

-Director, Martha Farrell Foundation

Role of Haryana State Women’s Resource Centre

The Haryana State Women’s Resource Centre (SRCW) has been involved in various programmes and activities towards advancing the interest of women’s rights. From 2018 under the instruction of the Haryana State Department of Women and Child Welfare, the SRCW has also launched a campaign for capacity building and ensuring formation of ICs in all government run/funded department and institutions as well as of LCs at the district level. They provide trainings to the committee members once in every six months and also monitors compliance. This role of SRCW in the functioning of the Act is unique only to Haryana and wasn’t found in the other states of Uttar Pradesh and Delhi.

Training, especially perspective-building on the contours of workplace sexual harassment both from a labour rights as well as a feminist lens is crucial. Existing patriarchal practices and notions stigmatise women’s experiences of sexual harassment. In the workplace, this harassment not only brings with it implications of social stigma, but also a direct impact on her ability to work. Thus adjudication on complaints of workplace sexual harassment encompasses not only a woman’s bodily integrity but also her labour rights. This in fact extends not just to the LC members, but other staff in the district administration working on the implementation of the Act.

4.1.2 Operation and administration

Finding: Operational concerns were flagged by most interviewees, especially by staff in the district administration. Currently there seems to be no clear mandate on administrative procedures and availability of resources. LCs that have been around for longer such as in South East Delhi and Gurugram have responded to operational challenges as and when they have come up, and therefore have had different, often ad-hoc mechanisms. More recently formed LCs such as those in New Delhi, Faridabad and Gautam Buddha Nagar, are still grappling with issues such as lack of infrastructure.

With any Act a sound administrative base is crucial to its effective implementation. In the absence of basic resources, functioning of local committees and nodal officers will be constantly impeded, compromising the efficacy of the system.

Lack of basic infrastructure

Members shared that they had to struggle to acquire the basic minimum resources for operation, even for conducting inquiries. Essentials such as a separate room, a cupboard that can be locked for storing case files, stationery, and even tables and chairs were not made available to the committee upon its formation.

In Gurugram, the first committee that was constituted had to write letters to the State Women and Child Department for acquiring these resources.

We didn't even have a cupboard to store our case files. And all files are supposed to be confidential. This is a basic necessity. But we had to have rounds of conversations and letters written to be issued a cupboard that could be locked.

–Former Chairperson, LC, South East Delhi

Other LC members from the rest of the districts also narrated similar challenges.

Our initial struggle was just to get a table with three chairs, on one side and another across the table for the complainant to sit. We were finally given a small room, a table and a cupboard...there was no time to think of other things like trainings and awareness generation.

–Former Member, LC, Gurugram

Some committees...meet at the Chairperson's office who could be a professor in some university. But this isn't fair because we should have our own space and all the necessary resources like stationery also to function effectively. These things need to be set up. The members don't have time to do all this because they all have other jobs to do. It is the district administration that should provide all of these necessary things.

–LC Member, South East Delhi

The absence of a room that can be identified with the LC also has implications of access for complainants. The LC functions out of different offices in different districts. As there is no staff that holds a position assigned through the Act, the room that a complainant has to physically visit to lodge a complaint, can be either the office of the Child Development Project Officer (CDPO), or the cabin of the Secretary to the DO, or any room dependent on the staff chosen by the DO. There is no common space allocated to LCs across districts even in the same state. It took researchers (of this study) several days and trips to locate the LC space amidst government buildings and office spaces. For women workers who are uneducated and do not have the privilege of time and money, locating LCs to lodge a complaint becomes an exercise of further harassment and trauma and some abandon their pursuit for justice.

Functioning of LC contingent on District Officer

Much of the actual implementation seems to be dependent on the motivation and resourcefulness of the DO and their individual interest and intent. Therefore, situations such as frequent change of the DO or lack of interest of the individual in the issue of workplace sexual harassment affect operationalization of the Act.

The DOs keep changing because the District Commissioners keep getting transferred. This becomes a slight challenge. I have sent many requests to the DO's office for appointment

of Nodal Officers. But following up is difficult because new individuals keep getting appointed to the post.

–LC Member

A significant part of implementation of this Act is dependent on the DO. The initial constitution of the LC is to be done by them. Therefore, intent of the individual does become important. Also, the DOs are generally District Magistrates who are always overworked. This is not a priority for them.

– Member, LC, South East Delhi

No budget for staff to implement the Act

The law in its envisaging of the machinery that will cater to the unorganised sector workers has outlined roles that require full-time staff, but has delegated the work to unpaid volunteers, a large number of whom are already engaged in full-time work elsewhere. Whether it is the team of on-ground Nodal Officers, or the District Officer, or even members of the LC, no individual is provided emoluments under the Act to perform a specific function. Thus, the work of awareness raising, outreach to both workers as well as employers, handling of cases, documentation and record keeping, all core to the effective implementation of the law, are done by volunteers based on their availability in addition to their regular jobs.

How much can LC members do? They are not government employees; they do things based on their voluntary will. We can't expect them to do things as per how we think useful.

–District Officer, South East Delhi

The assigning of additional responsibilities to existing ones is a common practice of the government. However, this seems to be particularly the case for policies and acts addressing gender concerns. Kanika Kaul of CBGA explains that, *“The Centre typically has not assumed financial responsibility for implementation of legislations pertaining to women. The responsibility of this is generally left to states. Consequently, one of the aspects most affected is staffing as States, instead of hiring new staff, delegate the responsibility to existing staff due to low allocation of funds. This has happened even in the PWDVA wherein many states appointed Child Development Protection Officers under ICDS as Protection Officers.”* In fact, we found that even the implementation of the POSH law has been thrust upon already overworked and overburdened Child Protection Officers in some districts.

Administrative Staff: Ad-hoc assigning of staff to LC

The POSH Act mandates for several functions apart from that of complaint redressal by both the ICs and LCs. Especially for the district machinery, this entails a significant share of administrative and operational work. Under Section 20 (a) it is the duty of the District Officer¹⁶ to monitor the timely submission of annual reports by the Local Committee, under Section 21 (2) the DO is mandated to compile a brief report of the annual reports received from workplaces and send it to the State Government. Further under Section 20 (b) the DO is also required to engage NGOs for generating awareness. Maintaining records and documentation of cases dealt by the LC, as well as receiving and

¹⁶The post of the District Officer is delegated typically to either the Collector (or Additional Collector) or the District Magistrate (or Additional District Magistrate) as per the provisions of the Act.

compiling annual reports and periodic planning of awareness programmes and trainings for greater outreach of the Act, require investment of time and energy.

Further LC members pointed out the need for one staff member to be present to receive complaints and speak with complainants. Since the LC comprises of members on voluntary basis, engaged in other work, at present there are no mandated “working hours” of the LC. Thus, LCs had varied schedules drawn up according to their convenience. It is not possible for members to be physically present every day at the district office. In Gurugram, LC members were present in the district office three days a week for a stipulated number of hours to receive complaints. In Faridabad and Gautam Buddha Nagar there were no such regular schedules for the LCs to be present in the district office or any specific allotted space. However, members stressed that it is important to appoint a person who can receive complainants/people with queries regarding the LC and the complaints procedure especially since the Act also requires for the LC to provide assistance in filing of complaints in case the complainant is unable to read and or write.

I can tell you that it is quite difficult for women, especially say a domestic worker to lodge a complaint at the Collectorate because the woman will not know who to go to since there is no assigned staff. She will be sent to the DM's office since they are the DO and some staff member over there will then take her complaint. Many times they end up filing it wrong or they lose the complaint. Now the woman has to again file a complaint for no fault of hers. So due to this many women actually give up on their complaints and don't follow up.

- Member, LC, Gautam Buddha Nagar

LC members in Gurugram and South East Delhi have in the past insisted on a staff member that could be stationed in the LC room during working hours to receive complaints, maintain case files and records, and speak with survivors who seek information among other responsibilities.

The intent of the Act necessitates that there be a publicised representative of the LC within the district office so complainants know whom to approach, regular trainings across board, in colonies, in worker areas, of the general public, constant monitoring of submission of annual reports as well as of compliance within workplaces. It is also clear that this is achievable only through a staff devoted to this full-time. But the Law does not provide for the district administration to hire any staff even at an administrative level.

In the absence of direct provisions for appointing staff members, we found that these responsibilities are further delegated to another staff member in the district administration, and in three (Gurugram, Faridabad and Gautam Buddha Nagar) out of five districts, it is the staff associated with the office of the ex-officio member, who is usually an appointee from the Ministry of Women and Child Development. In South East Delhi, it is the Secretary to the District Magistrate (the District Officer under the Act) who receives complaints. Duties related to the POSH Act will be a secondary concern for all of them as they are already burdened with other duties. This is problematic since it directly affects the quality of implementation.

For example, in Faridabad, the team of Child Protection Officers who perform these duties are already overworked with the responsibilities that came with their posts of CPOs.

I have to continuously work on arranging for training camps and awareness programmes on POCSO and JJ Act. There are also several other things that a CPO has to work on. And now with the POSH Act, I have to also figure out where the money will come from if we

want to make materials for trainings or if we have to arrange for a camp...it is additional work. I try my best to take out time at the end of all my POCSO/JJ trainings in schools and colonies to talk about the POSH Act.

–Child Protection Officer, Faridabad

Appointing of staff from other posts to this additional responsibility raises questions of overworking of staff, budgetary implications as well as clearly implying that LCs are a secondary priority.

On-ground Staff: Voluntary Nodal Officers

Section 6(2):*The District Officer shall 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 Local Complaints Committee within a period of seven days.*

A team of nodal officers appointed at smaller geographical locations, within blocks and wards are responsible for receiving complaints as well as outreach and dissemination of the law's provisions. While Section 6(2) of the Act outlines the responsibility of the nodal officers to only receive and forward complaints to the LC, in practice they may end up with more responsibilities. In Gurugram, nodal officers are required to arrange and execute awareness programmes in their area with workplaces as well as with workers from unorganised sectors; they are also required to engage with workplaces to ensure compliance. This translates into work that is full-time but there is no budgetary provision to pay nodal officers. Instead the work of nodal officers is delegated to workers who are already employed full-time elsewhere. The South East Delhi LC is an example of this. Here the team of nodal officers comprises of frontline health workers who are some of the most overworked and underpaid women 'volunteer' workers in the country. To burden them with more responsibilities without paying any additional wages amounts to severe exploitation.

It is however important to highlight that while nodal officers are being unfairly burdened with work, the work is necessary towards effective implementation of the Act. As mentioned earlier, there is a wide gap in terms of awareness among workers especially in the unorganised sector of the POSH law. Access to the LCs is also very low due to both lack of knowledge of its existence as well as physical distance in many cases. It is therefore necessary to have a dedicated point person at a smaller geographical level who is able to reach out to the women in their area regularly through trainings and awareness generation. This will also make it easier for women to raise their complaints due to ease of access as well as familiarity with the person.

Lack of Mental Health facilities

Whether at the workplace or elsewhere, sexual harassment often leads to mental health trauma for the survivor.

Whenever a complainant comes here, I sit with her and talk to her. She is often nervous and many times I need to provide her with emotional support.

– Staff at the Gurugram LC Office

Often LC members themselves may be qualified due to the nature of their work to provide the counselling support. But this is incidental, depending on the LC composition and the interest of the member since they are not required to provide this service. The recent Recommendation 206 accompanying ILO Convention 190 addressing violence in the world of work also highlights the need to provide support services to survivors of harassment. However at present there is no mandatory provision in the Act for referring survivors to counselling services.

Delinking of the labour department from a law concerning the workplace

As discussed earlier, there is no link with the labour department in the operationalization of this Act. In all five districts, LC members and ad-hoc staff were categorical in mentioning that none of the cases they received have been from the labour department. This either implies that complainants themselves make informed decisions about whom to approach in cases of sexual harassment and therefore knowingly refrain from approaching the labour department, or that complaints that reach the labour department do not reach the LCs. It will be presumptuous to assume the first scenario due to the lack of awareness about the Act itself among workers in both organised and unorganised sectors. In the case of the second scenario, the assumption that the cases are in fact solved in an unbiased manner within the labour department, may also be presumptuous considering the prevalent apathy of the entire machinery towards complainants and an understanding that sexual harassment complaints are “women’s issue” and not a “labour issue”, or not a matter for resolution within the industrial relations framework. Thus, the more likely scenario is, the silo that separates the departments leads to cases of workplace sexual harassment not being forwarded to the LCs. Perhaps the complainants are not even informed where to go to file their complaints of sexual harassment.

The other gap in the system is the absence of a comprehensive list of workplaces within each district with the District Officer. In order to ensure compliance, the District Officer requires the list of workplaces to monitor. The labour department should be able to furnish this information from its database of registered companies, factories, shops and establishments. However none of the districts surveyed (except in Gautam Buddha Nagar where the administration has procured a list of 24,000 workplaces through its own effort) have any such list or have made efforts to procure a list from the labour department.

Lack of accountability of central and state governments

The Act outlines key roles to be played by both the Central and the State government; the latter especially has a more significant role than the former. Specifically, with respect to maintaining data on the number of cases of sexual harassment at workplace that have been dealt with, the Act (Section 23) clearly mentions that it is the state government’s responsibility to maintain records.

Section 23: *The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.*

None of the interviewees across the five districts mentioned any record keeping by the state government. Ideally the data is received by the state governments through the compiled report of the annual returns submitted to the District Officer as per Section 21 (2) that states that, “*The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the*

State Government.” However, in all districts, while interviewees shared that they receive annual reports, the data is compiled and stored at the district level; no data is sent to the state departments of women and child welfare.

On speaking with the Delhi Department of Women and Child Welfare, researchers were told that since the Act clearly places the onus on the DO, therefore the DO is not mandated to report to the State government.

The department has never asked us for any data or reports till date. I can recall that once they had asked for some data for a specific reason. But it isn't a practice to ask for the annual report.

–District Administration, Faridabad

Further, neither the state nor the central government invest any time in monitoring the implementation through periodic guidelines and instructions. The implementation of this Act is thus dependent on the intent and interest of individuals in the absence of a structural ingrained system.

We do not receive any agenda or guidelines from the government on how to implement the provisions. Thus, there are no specific instructions from either the Centre or from the State department on how to conduct awareness trainings, or how many to conduct, where, with whom...so everything we've done so far has been our own initiative.

- LC Member

Table 4: Snapshot of the Current Committees in the 5 districts

Act Provisions/Other	Implementation				
	Gurugram	Faridabad	South East Delhi	New Delhi	Gautam Buddha Nagar
Section 5 -The District Officer will be either the DM/ADM or the Collector/Deputy Collector	Additional Deputy Commissioner	Deputy Commissioner	District Magistrate	District Magistrate	District Magistrate
Section 7 (1) - LCC Composition	No SC/ST/OBC representation	No SC/ST/OBC representation	On-paper representation of SC/ST/OBC, however the member is not active No lawyers/persons with legal background in the committee NOS were not notified either orally or through written means of their appointment	No NOS	No SC/ST/OBC representation No NOS Chairperson is rarely in the country as her work involves a fair amount of travel.
Section 6(2) - NOS will receive complaints and forward them to the LC	NOS are not given a written notification; only telephonic. They are given a card that identifies them as Nos (as per one NO)	No NOS Ex-officio member has delegated her responsibilities to a staff member in her department.	NOS are frontline health workers who have been trained by an NGO to spread awareness on the POSH Act in their areas		
	NOS are to conduct trainings in their designated areas and raise awareness They are to engage with the workplaces				

	and ensure compliance If after three notifications on compliance by an NO, the workplace is still in violation of the Act, it will be penalised.					
LC Meetings	Once a month	Four times in a year	No such rules	No such rules	Thrice in a year	
Clerical staff appointed	Staff of ex-officio member	Staff of ex-officio member	DM's secretary	No staff appointed yet	Staff of ex-officio member	
Sectors	Organised-cases against employers No cases of domestic workers	Organised-educational institutions No cases of domestic workers	Organised No cases of domestic workers 1 case where the women was from a security agency	Organised No cases of domestic workers	Organised No cases of domestic workers	
Section 21(2)- The DO will submit a brief report on the annual reports received to the State Government	Annual returns are sent to the LC. The staff at the office compiles them and maintains a record.	No report submitted till date. The State government hasn't asked for reports. The reports are compiled and kept with the CDPO department		No reports have been sent to the state department yet	No reports have been sent to the state department yet	No reports have been sent to the state department yet

4.1.3 Budgetary Provisions

Finding: The POSH Act, 2013 is marked by the absence of budgetary provisions towards implementation except for payment of fees and allowances to LC members. Even the latter has not been disbursed to any of the LC Members in four districts. The State's intent towards bringing about a transformation in any aspect is measured by the budgetary allocation towards the operation of policies targeted at the change. In this regard then there is a clear apathy of the government towards successful execution of the provisions of the Act.

Section 7(1):*The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.*

(4): The Chairperson and Members of the Local Committee other than the members nominated under clauses (h) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Section 8(1):*The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7.*

(2)*The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.*

(3)*The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.*

(4)*The accounts of the agency referred to in subsection (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.*

Allocation of funds for a policy or scheme is one of the foremost indicators of a government's intent towards its successful functioning.

The bulk of the expenditure on schemes pertaining to women is not undertaken by the Union Government; states too do not allocate adequate funds to interventions to address gender concerns. This is reflected in both, the coverage and quality of services meant for women.

—Kanika Kaul, CBGA

This is glaringly true for the POSH law. There is no mention of funds except in Section 7 that provides for fees and allowances to the LC members for holding case proceedings. However the amount allocated for even this one provision is extremely low. In the POSH Rules, 2013 the allocation is a meagre amount of Rs. 250 for the Chairperson and Rs. 200 for other members in the form of travel allowance. For the external member of an IC, the rules allocate Rs. 200 which is to be paid by the organization. In four of the six districts covered by this research, even this paltry amount was not paid to any of the LC members, nor has the District Officer actually received any finances towards the payment of fees and allowances.

POSH Rules, 2013

Section 3(1): The Member appointed from amongst non-government organisations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

Section 5 (1): The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee

(2): The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committees and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

Apart from this, there is no other monetary commitment in the Act. Section 8 refers to a chain via which allocated finances are to flow from the Centre to the District Officer. However, in each sub-section the word 'may' used prudently in the drafting of the sentence, absolves the authorities from an absolute commitment towards allocation of funds.

Non-payment of allowances

Although there is provision in the Act towards paying allowances for the LC members as well as a clause that provides for fund delegation to the states, in all the districts surveyed for this research there has been no allocation of funds specifically for the implementation of the POSH law.

It is on me to figure out which project to take money out from if we need to design posters or other materials on the POSH Act. We don't get any separate funds dedicated to it.

-Staff from the Child Protection Department, Faridabad (delegated the responsibility of implementation of the POSH Act, 2013 in the absence of appointed staff)

No one has received any honorarium or travel allowance in this committee from 2016 till date, although this is mandated in the Act. Apart from this we also have to create materials like posters, pamphlets and so on for raising awareness. There is no money sanctioned for that. It is on the individual to even take the financial initiative. This can't be a sustainable way of doing things.

- Former Chairperson, LC, South East Delhi

On speaking with district administration staff including a District Officer, we found that the districts have not received any grants till date from the State, even though the Act mandates granting of funds to the district administration.

I don't think we have received any funds for this Act. In case any expenditure has been incurred we've spent it from some other budget head.

-District Officer, South East Delhi

Complex structure of fund flow

Even the generic clause dealing with funds is not without a complicated vertical flow between administrative levels. Clauses 2 and 3 of Section 8 states that,

Section 8

Clause (2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

Clause (3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

This is the only mention of an “agency” in the entire Act. The nature of this agency and its role and functioning other than as a vessel for transfer of funds is unclear. None of the interviewees in our research were able to shed light on this and were unaware that such an “agency” existed.

Interviews with officials in the Delhi DWCD pointed to the DO’s responsibility to arrange funds for the operation of the Act. According to them, the state government was not responsible for allocation of any budget to the districts. If neither the state nor the central government is responsible for allocation of budgets to support implementation of the POSH Act, how will the District Officer be able to provide funds for the same?

Another significant lacuna in the Act is the fact that apart from payment of allowances to LC members, there is no other financial grant outlined in the Act. This raises questions about access to essential resources such as infrastructure, hiring of paid administrative staff, allowances for nodal officers especially travel allowances and stipend for time spent doing the work, as well as funds required for training and awareness generation. Lack of clarity and funds could be a significant reason for LCs barely existing or functioning across the country.

Impact on essential infrastructural provisions

While not paying fees and allowances is in direct violation of Section 7 (4) of the POSH Act, the lack of a provision allocating budgets for other heads especially infrastructure was a concern raised by many of the interviewees. During the field work for this research, the Faridabad LC did not have any dedicated space for conducting investigations or internal meetings.

It is my headache to arrange for a room during inquiries or meetings. Most times it is very difficult to find a free room because this place is already overcrowded.

–Staff from the Child Protection Department, Faridabad

On the other hand, the Chairperson felt that the lack of infrastructure posed no challenge to the working of the LC. “*We are always given a room whenever we need to meet*”, she said.

Such contradictory statements however were common. Responses to the need for budgetary allocation, and infrastructural gaps as a consequence differed with respect to the individual’s role. It was certainly a key concern for persons responsible for handling logistics and everyday operations. LC members who are not involved in this routine aspect were indifferent. In Faridabad for example, the Chairperson of the LC while (acknowledging that the government had not provided the necessary finances), said that since none of the LC members had asked for their honorarium money, the committee could function without the government’s budgetary allocation. She was visibly unaware of the district staff’s issues with arranging for a room for investigations.

Similarly, in Gurugram although infrastructural gaps were flagged, the non-payment of honorarium and fees was not seen as a problem.

I don’t know about that [on the question of non-payment of honorarium]. I’ve never asked for it anyway. I don’t need it. It’s just a nominal amount anyway. So I prefer to just wave it off...for trainings, if it’s for a government department then we have space in Vikas Sadan and I do it for free as the LC member. Otherwise I train in companies and they have the finances to support that training.

–Member, LC, Gurugram

Such individual concerns, actually point towards a larger concern on a structural indifference to the POSH law, 2013. These responses are reflective of the intent with which the LCs currently function, welfare oriented rather than within a rights-based framework. Allocation of budgets and its utilisation as a practice irrespective of individual preferences and voluntary intent ensures a sustainable system instead of the current culture of working with the feeling of philanthropy.

Hiring of administrative staff

The necessity of a dedicated administrative staff has been highlighted in the previous section. It is also important therefore to highlight that at present the Act has no budgetary provisions that can allow the district administration to hire at least one staff member to deal with the day to day functioning of the LC.

4.1.4 Case related processes

Finding: Women workers especially domestic workers and labourers working in factories and home-based work are largely unaware of the POSH Act and its provisions. Even with knowledge of the Act, due to a paucity of publicly available information on LC members and its location, the first step of filing a complaint is harrowing and difficult for survivors.

With respect to the actual process of complaint and inquiry, none of the interviewees were willing to share any information regarding cases. Thus particulars of complaints or experiences are missing from this section. Among workers, all except for one had never filed or tried to file a complaint with the LC. This section largely highlights the glaring information gap that makes it challenging for complainants to approach the LC.

Lack of awareness among workers

I would say not even one percent of the unorganised sector workers knows about the Act.

-Member, LC, Gurugram

Section 20 (b) of the Act states that it is the duty of the District Officer to “*take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.*” Towards this, the central government has also empanelled 200 odd organisations and law firms to provide trainings and generate awareness on the POSH law and its provisions. But there is still enormous ground to cover in terms of dissemination of the existence of this Act among workers, especially in the unorganised sector.

Local committees in the districts surveyed have mostly been non-existent until 2015, and neither the district administration nor the state government have taken enough initiative in generating awareness on the issue. There seems to be no intent towards generating more awareness among workers in the unorganized sector.

By their own admission, Gautam Buddha Nagar’s focus has been on workplaces that are required to constitute ICs.

We have a list of around 24,000 companies working in Noida that we have drawn up. Of these only 2000 have employees more than ten. So, workplaces that require training aren’t many in comparison. We are anyway providing these companies with trainings by InterraIT every month.

-LC Member, Gautam Buddha Nagar

From media and NGO reports, this seems to reflect the situation in the rest of the country as well. Thus, women largely are still unaware of legal recourse to harassment they face at work, and men are yet to be sensitised on sexual harassment and its consequences at the workplace.

The 11 domestic workers we spoke to for the study were unaware of the POSH law or any law that guarantees them protection from sexual harassment at the workplace. Among the factory workers we spoke to only 2 of the 23 were aware of the Act. Of the two, one knew about it through her association with a local workers' rights group, while the other was aware of it through conversations with the former.

In places where any training has happened for unorganised sector workers or in workers' residential areas, it has been due to the active efforts of civil society organisations; this too of their own volition and not because the government has taken active/e steps towards engaging them. In Gurugram, POSHCA has in the past conducted trainings for domestic workers, gardeners and drivers, and they've also conducted trainings in parks in Wazirabad where women workers tend to congregate during breaks.

In all five districts, all complaints received in the LCs have been from the organised sector only. Interviewees from all the districts specifically mentioned that they have never received complaints from domestic workers thus undermining a key intent of forming LCs.

It is the responsibility of the District Officer, as the appointed Disciplinary Authority for the District, to ensure that every working woman – involved in both formal and informal work are aware of the Act and its provisions including where to report.

-Director, Martha Farrell Foundation

Barriers in access to justice

(i) Lack of functional Nodal Officers: If one moves past the first hurdle of awareness, and is actually cognizant of the Act and its provisions, the second hurdle is the lack of publicly available information about the LC and its location. As the Act has envisaged the process of receiving complaints, there is a relatively simple chain through which complainants can file a case. The complainant is required to approach the NO in her block/taluka/ward who then forwards the complaint to the LC. The complainant may also directly approach the LC. The first channel necessitates the presence of NOs, however we found that there are still districts like New Delhi, Gautam Buddha Nagar and Faridabad that have not appointed Nodal Officers. Even in districts that do have NOs like Gurugram, they are largely male officers making it difficult for women to approach them, or like the case of South East Delhi; where they were unaware of their appointment as NOs for more than a year. The absence of a response team of nodal officers on-ground is also evident by the fact that no LC member in Gurugram or South East Delhi mentioned complaints being forwarded to them by the NOs.

When the NO machinery is not functional, complainants who do not want to speak with the police or do not have access to email or other internet portals such as SHe-Box are compelled to directly approach the LC, which as the section below illustrates is also riddled with challenges. It is unrealistic to imagine that women workers from the unorganized sector, with little or no access to education and technology, and whose mobility is restricted due to economic and social reasons, will be able to proactively register complaints with ease just because a law exists – on paper!

(ii) Lack of Public Disclosure: For both groups of complainants who are either compelled to access the LC directly due to the absence of other means or who approach the LC directly of their own volition, easily accessible information of LC members and their location is crucial. Unlike an IC that is located within the confines of the workspace, the LC is spread across different geographies necessitating prior knowledge of its location for access. However, there is an abysmal lack of publicly available information on LC constitution. The Act and the movement behind its enactment recognised the trauma and deep persecution of sexual harassment survivors and thus endeavoured to provide a simpler, less harrowing mechanism to access justice through the ICs and LCs. However, in the absence of details on LCs such as member names, contact numbers, LC location among other things, even the first step of reaching the LC still remains fraught with a number of challenges.

Tracking down LCs of the districts surveyed proved challenging for the researchers of this study, even with complete access to the internet and all other forms of communication. Locating LCs in Delhi proved to be the most challenging as the Delhi DWCD officials refused to give the researchers basic information on constitution and member details of the LC across districts. Researchers were told to wait for the information to be uploaded on the website. Online, notifications of the constitution of three LCs could be found: South East, South and North districts. While the first LC was then easily located since the members were also from civil society organisations that researchers were familiar with, for the other two districts without any contact details, locating members was a challenge. Phone calls to the district office also proved unsuccessful as the staffs were unaware of the presence of the committee. Even physical trips to the district offices proved unsuccessful as there is no clarity among the staff about the LC or its constitution and functioning. RTI responses from only 6 of 11 districts were received in Delhi. Of these, only 3 districts provided names of LC members (New Delhi, East Delhi and South-West Delhi). Of these 3, only New Delhi had provided contact details along with names of LC members.

The Mysterious Case of the Vanishing North Delhi LC

Researchers faced roadblocks in locating members of the North Delhi district LC. The LC was constituted in the Alipur Sub Divisional Magistrate office (as per a staff at the district office). However, none (except one) of the staff spoken to in this office were aware of the committee or its constitution. The researcher, who went to locate the LC in Alipur, was asked to go to the first floor of the building by the SDM's Secretary; however, they were not given any clear directions as to which particular office or staff to communicate with. This caused them to spend a considerable amount of time searching in vain for no particular individual, only a vague idea of an LC. In the end they were told by one of the staff that while an LC was constituted and the notification for the same was also released by the Alipur office, however for the last one and a half years it was functioning out of the Narela Sub Division office. A trip to the Narela sub-division office however wasn't fruitful either since after much asking around, the researcher was told by the Tehsildar that the LC had been defunct for the last year and a half. He did not have any knowledge of who the members were or what the role of the committee was.

Interestingly the RTI response received from the North Delhi district was equally obfuscating. Two responses were sent from North Delhi. One was received from the Accounts Branch of the DM's office. Except for stating that there had been no budgetary allocation for the POSH Act, 2013 the response did not provide any other information. The second response was from the Department of Revenue, SDM Office, Narela. The letter stated that no information regarding the RTI questions was available with the office.

The Faridabad LC has created a Facebook page with names of the committee members. However social media and access to internet is still limited to only a very small section of women in our country. Even the Chairperson of the Faridabad LC mentioned that they hardly receive any complaints through email or social media. If one were to still assume that a complainant has social media access, there is no contact information provided on the page next to the names of the members. Thus if a complainant wishes to directly communicate with a member over the telephone, she does not have the option.

Accessing LC members without the help of the internet was not possible for the team of this research. In fact even with internet access, it was harrowing and exacting for the researchers to locate the LCs. To expect a woman, already harassed and possibly traumatised to go through the ordeal of locating these LCs through multiple rounds of back and forth between government buildings, giving up on work days and earnings seems rather insensitive and unfair.

The Law too lacks provisions concerning specific operational guidelines such as fixing when and where the committee can be accessed or guidelines that stipulate regular attendance of one or members at an allocated place that can be publicly accessed. The Law only mandates for members to meet during the instance of a case, however it remains unknown how the case can be filed at all when there is no actual place for the complainant to go for filing the case.

(iii) Existing LCs located in geographically distant areas: Physically accessing LCs is already an issue due to the absence of a fixed geographic space allocated to most LCs. Additionally, in districts such as Gurugram and Gautam Buddha Nagar, the present space of operation of LCs is not centrally located. For example, in Gurugram, the LC officially operates from the Vikas Sadan building located in Sector 11, Gurugram city. This is approximately 40kms from a village, Lohchab situated in south-west Gurugram and around 25 kms from Sohna, situated east of Lohchab.

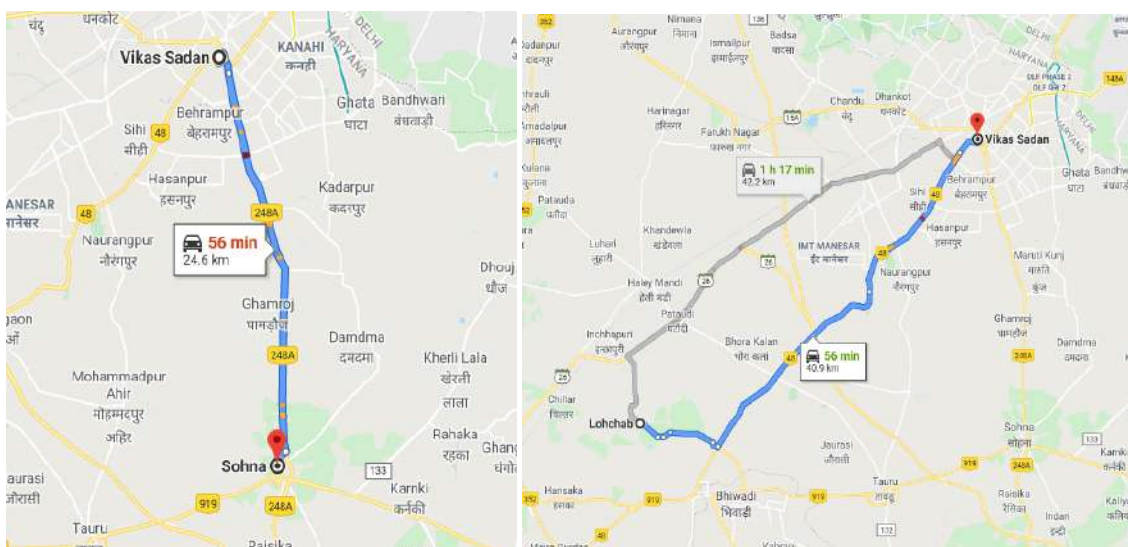


Image 3: Distance from Sohna to Vikas Sadan, Gurugram

Image 3: Distance from Lohchab to Vikas Sadan, Gurugram

Source: Google Maps

The LC in Gautam Buddha Nagar is situated in Surajpur at the Collectorate. This is approximately 46kms away from Jewar in the south of the district, and an equal distance from the industrial hub of Noida.

Interviewees shared that a concern especially for women from economically weaker sections of society is the cost of travelling long distances to register complaints.

Women have to go all the way to the Collectorate to file a complaint. It is really far from most parts of the district. It is difficult for anyone even with access to transport to keep travelling back and forth all the way to the Collectorate for meetings and inquiries.

- Member, LC, Gautam Buddha Nagar

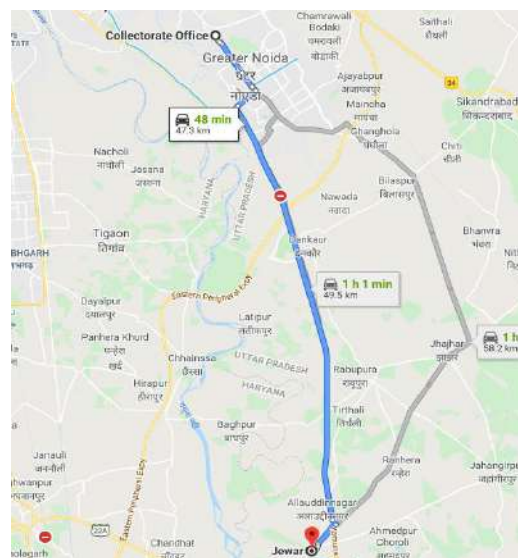


Image 5: Distance from Jewar to Collectorate Office, Gautam Buddha Nagar (Source: Google Maps)

To expect women, especially from the unorganised sector who rarely have the privilege of time, money and mobility to traverse such great distances to lodge complaints of sexual harassment is insensitive and unwise. It is almost as if the mere existence of a concrete space is enough work done by the government towards actually securing women's rights at their workplaces. Whether the multiple circumstances that cause and promote a culture of violence and harassment are addressed or not then, are hardly a concern.

Jurisdiction of LC Members

I have complainants come to me that should technically be going to their ICs. I don't have jurisdiction as an LC member, I cannot investigate. So, I send them back to the company's IC. Only once the IC has completed the process can I intervene, if at all.

-LC Member, Gurugram

It was evident during field work that a larger share of the cases received by LCs has been from workplaces with more than 10 employees, where the complaints are against colleagues and supervisors. But as quoted above, LC members have been clear that such cases are not under their

jurisdiction. For a complainant, reaching out to the LC then means a waste of time and energy and compounds their harassment as they are often sent back to their organisation's HR without being heard by the LC.

On the other hand, activists and experts argue that while the LC may not be an appellate body, the Law does provide a clear mandate for LCs to have power over all instances where ICs have not been constituted.

The LC is not an appellate body. It has no jurisdiction over ICs. According to the law it cannot intervene in workplaces with employees more than ten unless: the complaint is against the employer or in scenarios where the IC has not been set up yet by a workplace. But this is not common knowledge. At times LC's themselves don't know this. Either they do not intervene where they have the authority or they try to intervene in companies where ICs have been set up. The latter will ignore their inquiries because they know that the LC has no authority to do so.

- Esha Shekhar, Lawyer and Managing Trustee, Initiatives for Inclusion Foundation

This apparent confusion regarding the jurisdiction of LCs adversely affects the complainant more than any other stakeholder involved. Different interpretations of the law seem to exist that contradict each other. The language of the POSH law, in regards to outlining the jurisdiction of LCs may be a contributing factor to the confusion.

Section 6(1): 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 constituted due to having** less than ten workers or if the complaint is against the employer himself.

Section 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.

Section 6 of the Act, for example, specifically states that the LC will receive complaints from workplaces that do not have ICs due to its employee base being less than 10. Thus, solely based on this, the LC does not in fact have any power over any other case. However, Section 9 (1) of the Act on Complaint of Sexual Harassment may provide that scope of interpretation in its language. It simply states that a complainant may approach the LC if the IC is 'not so constituted', thus implying jurisdiction of LCs in cases from any workplace that simply has not constituted an IC.

Lack of awareness on the implementing authority for non-compliance penalisation

Once the committee (IC or LC) submits its report, their role ends there. That's the extent of their role. After that whether the employer follows the recommendations or not is not the committee's lookout. They have no further responsibility.

-LC Member, Gautam Buddha Nagar

During the research, responses across the board from LC and IC members pointed to the fact that as far as they were concerned, their role in a case ended after the submission of their recommendation report to the employer. Thus, in terms of actually enforcing the recommendations, the committee has no role to play. If the complainant continues to be aggrieved either by the findings or recommendations of the IC or LC, she can approach the courts for appeal or as per Rule 11, the appellate authority notified under Section 2(a) of the Industrial Employment (Standing Orders) Act, 1946. However, the latter provision is unclear.

The District Officer should be accountable for overseeing compliance of employers with the recommendations of the ICs/LCs as well as with other provisions of the law, and therefore take measures for non-compliance as outlined in Section 26 of the Act. However, in the five districts of the research, District Officers had not been monitoring or ensuring compliance. In the past six years there had been no penalty imposed on even one workplace in any of the districts for non-compliance. Since respondents acknowledged that there is still a long way to go to ensure compliance by all workplaces, it is surprising that no company has been penalised till date. The absence of an outlined mandate (under the duties of the DO) for the DO to be the implementing authority for penalisation provides a route to shirk off this responsibility, in effect rendering toothless, the provision of penalty.

4.2 Functioning of Internal Committees

This section presents experience of interviewees who are currently in ICs of different companies/organisations as external members and who trainers of IC members as well as responses from LC members in their engagement with ICs and companies. Wherever possible, data has also been supplemented with narratives from workers (in factories and domestic workers) interviewed for the study.

4.2.1 Workplaces yet to constitute Internal Committees (IC)

None of the districts surveyed in this research have been able to enforce full compliance of all workplaces in even the first step of constituting an IC. This is especially the case in smaller workplaces. According to the Chairperson of the Faridabad LC, large multinational companies and export houses especially in the garment industry have been quick to adopt the necessary mandate of the POSH law. These companies operate within a global compliance environment and as such are mandated to follow high codes of conduct with regards to workplace sexual harassment.

The codes of conduct of many international garment brands now specifically mention protection from workplace sexual harassment. The recent ILO Convention 190 too now recognises workplace violence. Writing for the *Mint*, Alex (2018) reported that bigger companies have put in place most of the systems and processes required to comply with the law. Multinational companies and corporate houses tend to report this as an indicator of a safe and gender-just working environment for global compliance, however the small and mid-sized companies have been slower to embrace these measures he reported. He also shared that in the absence of global pressure for compliance, small and mid-sized companies mostly flouted the provisions of the POSH law. According to Alex these companies do not fear government authorities checking on compliance either because of their small size or because the government is not serious about enforcement.

In the limited sample surveyed in this research, it appeared that organisations that work on POSH law trainings and compliance measures tend to focus their energies on larger MNCs, export houses

and the corporates. There is no engagement with smaller factories, companies and government offices and institutions such as hospitals, schools and colleges. The reasons for this could be as simple as a high demand by MNCs for such training to comply with global pressures of strict measures on workplace sexual harassment and the ability of such institutions to pay for the trainings and compliance measures.

While almost all factories in Faridabad are compliant, it is the garment export houses that are the first to fulfil all requirements. This is because they also operate within a global framework where such measures are necessary.

-LC member, Faridabad

This has created a market for such NGOs and legal consultancies to provide trainings, and support paperwork for the companies. However in the absence of global compliance pressures, smaller factories and companies have not sought such trainings or support.

While acknowledging that global compliance pressures felt by large companies may drive them to take active cognisance of national laws, it is also important to address the failure of the national machinery to ensure compliance in workplaces that are not bound by external regulations. The POSH Act, 2013 is supposed to address not just Redressal but also Prevention and Prohibition. As such it is the duty of the District Officer, as a representative of the state, to guarantee safe and secure working spaces for all women working in their district. The failure to establish minimum standards of safety across all workplaces till date reflects lack of seriousness on the part of governments to create safe and non-hostile work environments for women.

4.2.2 Increase in POSH trainings but only for larger companies

A study among women managers in both public and private enterprises found that only adopting policies that prohibit sexual harassment does not necessarily build a non-hostile work environment (Sahgal and Dang 2017).

As discussed above there has been a steady increase in the number of trainings conducted on the POSH law, in workplaces, especially in the private sector¹⁷. In fact after 2013 the number of organisations working on sexual harassment at the workplace, specifically on training of IC members and workplaces has seen a sharp rise. As of November 2018, the Ministry of Women and Child Development empanelled 223 organisations and law firms to provide training on the POSH law and sexual harassment¹⁸. Some of the LC members we spoke to were themselves either heading such organisations or were employed in them and have all worked with large companies and export houses.

We did our first training on the Act in 2014. Since then we have been working with many companies and factories across Delhi and NCR to provide training on the provisions of this Act. We've trained both management and workers. With workers, we try and employ creative methods like street plays.

-Founder, Aider

¹⁷ <https://economictimes.indiatimes.com/markets/stocks/news/is-india-inc-getting-better-sensitized-on-sexual-harassment/articleshow/65804689.cms>

¹⁸ <https://www.vantageasia.com/firms-empanelled-awareness-harassment-laws/>

Responses to the question on challenges that arise due to non-availability of funds also highlighted that most LC members who did engage in provide trainings, did so with larger companies who could provide for the necessary infrastructure as well as fees for the trainings.

Budget is not a concern because the trainings I do are for companies that will be able to bear the cost of the training including paying for the facilitator.

-Member, LC, Gurugram (also part of an empanelled organisation for imparting training programmes on the POSH Act, 2013)

In Gautam Buddha Nagar, the district administration has delegated the responsibility of trainings to a private company InterraIT, Noida.¹⁹ The company hosts monthly trainings on POSH at their office. The participants are sent by the district administration. At the time of our interview the previous two trainings had participants from the management of big firms in Noida.

4.2.3 Inconsistent data regarding the constitution of ICs

It is also difficult to estimate the percentage of workplaces that are compliant in each district due to lack of available data. In all the five districts, there was no comprehensive list of workplaces within the district that could be used by the DO for monitoring and compliance. Apart from Gautam Buddha Nagar, none of the other district administrations had made efforts towards procuring such a list. Here, recently, the district administration had drawn up a list of 24,000 workplaces in Noida of which 2000 had more than ten employees. At the time of the interview, the ex-officio member shared that they were going to use the list as a base for conducting trainings for the 2000 companies with more than ten employees.

In Gurugram and South East Delhi, on the other hand there seemed to be no urgency in maintaining an exhaustive list of workplaces.

We don't have any such list as far as I know. When a case comes up we inquire into the company if required, but otherwise I don't see the need. No active work is done on checking factories and companies for compliance. Anyway, all Nodal Officers are told to monitor all the workplaces within their allotted area.

-Member, LC, Gurugram

In the absence of information on the total existing workplaces in a district, the District Officer has no means of monitoring submission of annual reports and checking compliance. It is impossible to estimate how many workplaces have constituted ICs since one is dependent only on the numbers reflected by the companies that have submitted annual reports.

4.2.4 Conflict of interest within the Internal Committees

External members of ICs, interviewed for this report were members of ICs in companies where they had also trained employees and managerial staff. Such interviewees were heads of POSH compliance consultancies/legal firms that undertook POSH compliance trainings as their key service delivery. These trainings therefore involved financial transactions with the companies as their clients. Inclusion of an individual in the IC, with whom the company has a client-service provider relationship, may be problematic as it raises issues of conflict of interest.

¹⁹ The company website describes itself as – “We are a Silicon Valley based IT services organization that provides cutting-edge business and technology solutions, as well as immersive digital experiences to our clients around the world.” About Us at <https://www.interrait.com/>

In an environment where relations between workers and the management are fraught with mistrust, approaching a management-constituted committee especially on sexual harassment is already difficult for a woman worker. Most committee members interviewed for this report (both LC and IC), also agreed that women find it difficult to speak about their sexual harassment experience.

Women don't generally go to the committees with their complaints. It is difficult for them to report incidents. They may be more trusting if there are women in the committee.

–Founder, Aider

The presence therefore of a member who may have been a service provider to the company may be viewed by workers as a 'management representative' rather than as a neutral member of the IC as envisioned in the law. However none of the IC members interviewed viewed this to be an issue.

No, why will this be an issue. I am on several ICs and have also trained employees and management in the same companies. Why should the workers have any issue if I have provided a service to the company or not? That should not pose any clash with respect to my role in the IC.

- External IC Member, Faridabad

4.2.5 Appearance of bias among committee members and POSH experts

It is necessary to remember that unlike other cases here it is the impact and not the intent that matters.

-Member, LC, Gurugram

The POSH Act, 2013 is unique in the manner in which it upholds legally the complainant's cause and shifts the burden of proof onto the respondent. This is in keeping with legal amendments in rape laws resulting from struggles and demands of the women's movement in the 1980s and their demand for the same during consultations for drafting a sexual harassment law in the 1990s. Thus, it is for the respondent to prove their innocence and not for the complainant to prove that the harassment occurred. This provision also strengthens the position that a woman's experience of sexual harassment is independent of the intent of her harasser. It is the 'impact' of the act of harassment as felt by the complainant as opposed to the intentions (however innocent) of the respondent.

As such committees that undertake inquiries into cases of workplace sexual harassment are required to do so keeping in mind the above principle. However a significant share of responses from external members of ICs as well as LC members seemed to suggest that most are still of the opinion that, "*women misuse the Act*" and/or "*sexual harassment complaints are a way of extorting money or hiding her below par performance at work*".

Perspectives like the above are common place in the patriarchal social fabric, however when they creep into proceedings, civil or criminal, it raises doubts regarding the impartiality of those adjudicating the case. Interestingly while members of LCs and ICs were quick to tell our researchers that they could not reveal or share details of cases due to issues of confidentiality, they were keen to share details of cases where they had been able to prove a false complaint. This clearly indicates bias against complainants. Even interviewees who are 'experts' on the POSH law and give trainings to IC members and companies (employees and management) on the law mentioned that women have been using the Act unfairly to their advantage and falsely implicating colleagues/superiors with whom they may have work related issues. Since a considerable portion of workplace sexual harassment training needs to be on sensitivity, power inequality (at the workplace as well as

historically in social relations of gender, caste, religion, geographical location, class) and the complex nature of the issue, it is questionable whether these trainings are in fact furthering the cause for women workers and a safe workplace.

4.2.6 Lacunae in setting up competent ICs

As the primary unit for grievance redressal in case of workplace sexual harassment, the role of the IC as the investigating agency is one of high accountability. Participants in this research who were also external members of ICs or had experience in training ICs of different organisations were of the opinion that most IC members lack knowledge of legal procedures and processes of inquiry. As a result, often they either conduct inquiries without adhering to the required legal procedures or end up submitting reports of questionable quality. In such cases while the IC washes its hands off the case after submitting the report, it is the complainant for whom the harassment does not end since now she has to follow the process of appeal to higher authorities for accessing justice.

If you look at the cases that have gone to the court in the past few years, it'll be the ones where the IC didn't handle the case properly...they didn't cross examine, they didn't share the complaint with the respondent, they didn't share the report with the complainant...whether it is the complainant or the respondent who then takes the case to the court, the point of the Act is lost if the complainant finally has to go through the whole ordeal of court proceedings.

–Member , LC, Gurugram

While the lack of training of IC members is partly responsible for the state of affairs, it may also be true that in many companies much of the procedural lapses are purposeful and a management strategy to either further victimise the complainant or to not act in favour of her. Perna²⁰ who worked in a small electrical product manufacturing factory had an experience with an IC that was biased in favour of management.

I had complained about my manager to the committee madam....At the time when I had complained, I did not know she was in the committee, I only knew her as the senior person. But when later I found out about what the committee is supposed to be and that she was in the committee I was surprised that they hadn't inquired into my case and held an investigation. When the committee was asked about it they said we didn't do anything because she hadn't submitted a written complaint. How is this fair? I had no idea that I was supposed to do that in the first place? Wasn't it her responsibility to have told me about it?

-Perna

A key gap therefore is also the absence of worker representation in the ICs. Most interviewees who are part of ICs in factories shared that there were no representatives of trade unions or workers' associations, not even of a works committee, to represent workers in the ICs.

4.2.7 Responsibilities and duties of employers are vague and open to interpretation

Sections 19(g) and (h) of the Act provide that every employer is obligated to provide assistance should the woman choose to proceed to file a criminal complaint under the Indian Penal Code or any

²⁰ All names of workers interviewed have been changed to maintain confidentiality.

other applicable law. This provision is vague as it does not outline standards to hold employers accountable for not having taken 'enough' measures to assist complainants.

In neither the Act nor the Rules is the 'assistance' to be provided defined; should the employer provide monetary assistance, should the complainant be provided psycho-social support, counselling, therapy or should she be given legal support? In the absence of these details, it is left entirely to the employers' discretion to decide on the support and assistance that they wish to provide to the complainant (PR and Pullat 2017).

5. Workplace sexual harassment: workers' voices

In sectors that completely lack transparency and procedure in recruitment, conditions of employment and remuneration, the vulnerability of women workers is compounded by their situation as women, with gender discrimination slipping easily, and often, into sexual harassment, and any resistance or confrontation leading immediately to loss of employment in an already precarious survival scenario.

-Kannabiran, 2007

Interviews and discussions with factory and domestic workers only confirmed what is already widely known, that sexual harassment and abuse is common and more often than not the culture of impunity not only promotes perpetrators but also utilises sexual harassment as a tool for 'disciplining' women workers. The following section highlights the observations and findings from interviews and focus group discussions conducted with women who work in both small and large factories as well as domestic workers.

5.1 Sexual harassment is frequent and common at workplaces

Sexual harassment is a common occurrence and is not an isolated incident in most workplaces. Although most workers hesitated to share personal experiences or details related to specific incidents of harassment, they largely agreed that harassment occurred regularly in their workplaces, in factories or employers' homes.

In one of the FGDs with domestic workers, participants shared that it was common knowledge that most male employers are likely to see them as sexual objects, a fact known even to the women in households. *"Domestic workers who dress up, wear make-up are less likely to get employed. Most malkins (woman employers) tell us not to wear make-up and lipsticks to work. They are scared that their men will get attracted to us."*

Except for 2, none of the 34 workers who participated in FGDs or IDIs were aware of the POSH law, 2013 or of any law that protects them against workplace sexual harassment. The two who were aware of the law knew of it because of their association with a Gurugram based workers' collective that had supported them during their experiences of harassment at their workplaces.

None of the factory workers our researchers spoke to were aware of an IC or any Complaints Committee in their companies meant specifically to address workplace sexual harassment. This included the two workers who had previously worked in a reputed garment export factory. Both workers had experienced varying forms of sexual harassment due to which they were either forced to leave or were fired. This happened in 2015-16; over 2 years after the enactment of the law and the company had still not constituted an IC. Subsequently it seems ICs were constituted in all their units as per information on the company website.

Another set of four workers did not know of the IC as a formal, legally mandated committee but shared that the factories they worked in had committees where they are asked to share any issues they have at the workplace. Two of the four shared that they only knew about such committees because their supervisor is part of the committee.

Workers we spoke to worked in both large and smaller factories across Gurugram and Faridabad. Most factories are therefore in direct violation of the POSH law that requires them to not only

constitute ICs but under Chapter VI on Duties of Employers to also train workers on the Act and to display the names of the IC members in a prominent place in the workplace.

Section 19

(b): *display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee under subsection (1) of section 4*

(c): *organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed*

5.2 Experiences of factory workers

The kinds of harassment faced by women workers in both large and small factories, ranged from verbal harassment such as remarks directed at the woman's body, to stalking, threats, intimidation, as well as insinuation for establishing sexual relationships.

In the factory I used to work in before, the boys were very bad. I have had to face harassment every day of my work there. They would pass comments at what I was wearing; sing songs every time I would walk past them; crack jokes...they even spread rumours about me.

-Nisha

Interviewees shared that many times male co-workers would also stalk them and harass them with marriage proposals. Men who were in a position of power over women, such as supervisors or contractors, resorted to more than verbal harassment and stalking and often proposed quid pro quo arrangements. Women shared experiences of propositions to establish sexual relationships in exchange for benefits at work such as increased overtime work, lighter targets and so on. Upon refusal, the perpetrators often resorted to retaliation such as spreading rumours or firing them. Often when supervisors or contractors engaged in cracking jokes or passing comments on a woman worker, other male colleagues were also encouraged to join in, thus creating a hostile work environment.

My manager used to call women to his cabin during work hours to establish physical relationships with them. He has told me also that if I listened to him then it would be beneficial to me...he would give me more overtime work. He even shifted my table and placed it in front of his cabin.

-Naina

Incidents of harassment by male colleagues were mostly narrated by younger girls while those by supervisors and managers were narrated by older women. Unfortunately, we do not have sufficient data to throw more light on this or corroborate this anecdotal finding. We flag it here for further investigation.

5.3 Informal mechanisms in smaller factories

Although most of the workplaces where the interviewees work/have worked have not complied entirely with the POSH law, our field research showed that some small factories have created informal mechanisms to deal with sexual harassment. One worker shared that in her factory it is the

owner's wife who informally deals with cases of harassment at work. It was unclear from the FGD if the wife had any official role in the factory. The factory employs around 25-30 workers, most of whom are women. If there is any incident of harassment, workers are told to report it to the owner's wife who then either berates the perpetrator or fires him.

Another worker shared that she was happy in her workplace because the owner has given them the freedom to physically hit any person who harasses them.

Our employer has told us that if any boy tries to misbehave with us then give him a tight slap first and then come to me.

-FGD Participant

The limited, positive aspect of such informal practices is that workplaces recognise and address the issue, largely in a manner favouring the complainant. However, it also points to a problematic trend of individual responses to a systemic issue. Workplace sexual harassment is an institutional concern, and therefore requires a redressal framework that is anchored in a systemic and institutional response, rather than ad-hoc individual responses that do not follow principles of natural justice, and due process and do not protect the rights of the respondent. Furthermore, without formal processes to protect the safety and employment of the complainant, there is a greater risk of her being fired especially where the perpetrator may be at a higher post than her.

Such mechanisms also reflect the prevalence of a family environment in what should otherwise be a professional space. An older FGD participant who had worked for nearly 15 years in a small factory, shared that she was now regarded as the one who will 'take care' of all the young girls in case of any incident of harassment. Studies have shown that often on the shopfloor a common method to prevent workers from recognising a violation of their rights is by creating a feeling of family (Peoples Union for Civil Liberties (PUCL) 2016; Sisters for Change 2016). Similar to the dynamics in families and in homes, violence is normalised and justified in the guise of family ties and emotions, making it more difficult for women to complain about harassment of exploitative working conditions.

5.4 Limited understanding of sexual harassment

Almost all the domestic workers we spoke to acknowledged that they had heard of incidents of harassment, but said in the same breath that they had not themselves experienced harassment at work. Such 'othering' of the experience is common and is rooted in complex factors of shame and fear of loss of employment.

The workers we spoke with were part-time domestic workers, living with their own families. It is possible that sexual harassment is more frequent and overt among full-time workers living in the employer's house. The incidents of harassment shared by the domestic workers we spoke to were of full-time, live-in domestic workers. Even among the interviewees there was a sense that 'girls from Jharkhand' who work as live-in domestic workers have bad working conditions and therefore may be more vulnerable to incidents of sexual harassment.

There are girls who come from Jharkhand, through agencies. They are made to stay in their employer's homes. But they are treated very badly. They are not given proper food or a place to sleep. Their living conditions are very bad. Who knows maybe such incidents [sexual harassment] happen to them? They won't even be able to tell anyone about it.

-FGD Participant

The increased vulnerability of full time, live-in domestic workers who are primarily migrants starts at the source of migration given that most of it is distress migration. At the destination their vulnerability is compounded due to lack of support systems and isolation without communication with any external persons. Part-time workers on the other hand may have a more solid support base in the form of family and community members, including other domestic workers in the surrounding neighbourhood. A member of the New Delhi LC who has previously worked with domestic workers also shared that part-time workers have the scope of leaving one job and finding another while full-time workers do not have the same opportunity, compounding their vulnerabilities.

Both stories recounted by the FGD participants were of extreme sexual violence amounting to rape of live-in domestic workers by their male employers, and they shared these stories only after much probing. It is interesting to note that while only extreme violence such as rape or physical molestation were acknowledged as “sexual harassment” (not sexual assault) by workers, during FGDs they did highlight the prevalence of staring, cracking of jokes, subtle insinuation by male employers. But these were only shared within the group in passing and not recognized as experiences of sexual harassment. This indicates both the normalization of harassment as well as the need for greater awareness among workers on what constitutes sexual harassment, and a violation of their rights.

5.5 Linkages with precarity of employment and undervaluing of women’s work

Women’s work is still largely underpaid, irregular, precarious, and undervalued. Incidents of harassment shared by the women we spoke to point indicated a correlation between the precarious nature of employment and the worker’s vulnerability to violence and sexual harassment.

Women workers shared that male colleagues, supervisors, bosses - all with more power - would exploit their vulnerability arising from poverty and precarity of their employment. Various examples included a supervisor proposing a worker increased overtime work in exchange for sex, or spreading rumours about her at the workplace to humiliate her, or firing her on a whim if she raises her voice against him because she is not a permanent worker. Harassment was compounded by the lack of employment choices, need to earn a livelihood, and a stressful and hostile work environment in which women worked. Transformative change will require a drastic change in power dynamics and patriarchal disposition with which women’s labour and bodies are viewed.

In the factory, most of the work is done by male workers. Most work involves lifting a lot of heavy weight and women can’t do this kind of work. Therefore, for factories the male workers are obviously of more consequence. Why will they listen to me then? If I complain and they fire me then there won’t be much repercussion on the work, however if they remove the perpetrator then it will probably affect their work. That is why even if I am right and he is wrong, I am the one whom they will fire.

–FGD Participant

Occupational segregation, devaluing women’s work and contribution, not seeing women as proficient and efficient workers with skills, are all expressions of a gender hostile environment and forms of gender-based violence. There is a tendency to value male workers as more important to the factory than women. To create a non-hostile work environment it is important to also address these discriminatory practices and cultures so that women feel confident and valued as workers.

5.6 Women prefer not to complain as the outcome is rarely in their favour

Social stigma and humiliation are established causes for low reporting of sexual harassment incidents. This is compounded by the fact that women's complaints are rarely taken seriously especially if the complaint is of sexual harassment. Her actions will be devalued, and in addition, complaining can result in job loss which is devastating for an already economically and socially vulnerable person.

Interviewees were largely of the opinion that complaining about perpetrators rarely led to favourable outcomes for the complainant. Through personal experience as well experiences of co-workers they narrated how in most instances it was the complainant who was either fired or forced to quit their jobs; while the perpetrators were hardly ever punished.

In all the cases that have come to me, either the woman has been fired or she has quit her job. The quitting is also forced and equivalent to firing. Which woman then will want to complain?

- Chairperson, LC, Gurugram

Four interviewees who recounted their experiences of complaining to senior management had to ultimately leave their jobs. Often, when women complain or refuse propositions they are subjected to further victimisation. A common method on the factory shop floor is that supervisors change the task or line the woman is working on, forcing her to operate on a new machine or in a different task. Since it takes time for a worker to get used to a new machine or a new task, they often fail to meet production targets. This provides an excuse for their dismissal from the job. In other instances, perpetrators resort to revenge tactics by spreading rumours about the woman, subjecting her to shame and humiliation leading her to finally quit.

Managements devise many ways to get rid of the complainant...they'll suddenly give her an unachievable target and then fire her because she won't be able to meet it; make excuses that she uses the toilet too often or speaks on the phone too often...once they had planted clothes in a woman's bag and pretended that she was trying to steal from the company and then fired her.

- Naina

I had complained to my employer about a colleague who used to stalk me and harass me. But my employer didn't take any action and instead the colleague also found out somehow that I had complained. After that he threatened to kill me and would show up at my house with a group of other boys. No action was taken against him and I had to finally quit my job.

- Nisha

No one will listen to me if I complain about my contractor. My employer had told me that if I have a problem with him then I can leave the company...if I say one thing about my contractor to my employer, the contractor will come up with four other issues about me and tell my employer. He will spread rumours about me in the entire factory. Ultimately either I suffer quietly and keep working or I quit if I can't take it anymore. There is no justice for me.

- Seema

An LC member of the New Delhi district shared that in their experience the LC largely received complaints from the organised sector where women felt that the ICs would be biased.

We get complaints from women who feel that their ICs did not do them justice or that the IC is only on paper and therefore a management tactic to evade the actual issue.

-Member, LC, New Delhi

A consequence of not just the experience of harassment but also the process of further victimisation is the acute mental health trauma undergone by women. Discussions with workers revealed that survivors deal with a range of mental health issues including deep depression, anxiety and fear. Nisha, shared dealing with constant fear after facing threats to her life, *“Anywhere I’ve worked after that, I have been scared to even use the loo on my own, lest someone follows me there.”*

Seema shared feeling ashamed and losing confidence after her harasser spread rumours about her. *“I was blamed for the whole incident. Everyone including my co-workers pointed fingers at my character and kept talking about me behind my back. I went through a lot more harassment because of this. I was depressed and sad and couldn’t bear to work in that factory anymore.”*

5.7 Lack of available support systems

Interviewees also shared that women find it difficult to report harassment as they feel unsupported. Survivors like Seema and Naina were subjected to further harassment by their women colleagues either explicitly through cracking of jokes and comments directed at their ‘immoral’ behaviour or implicitly by remaining silent and not standing with them against the perpetrator.

On the other hand, a few interviewees shared that it was also challenging to stand up for other complainants since workers who supported complainants were also subjected to victimisation. In the absence of systems that offered them security from such hostility workers refrained from supporting others.

I had complained to the madam about the master tailor once when he had commented on a girl after she had come back from the toilet. The master tailor was berated by madam after I complained. At this he was very angry and asked who had complained against him. The other women workers told him it was me. He then started to victimise me and kept changing my line every other day so that I couldn’t work properly. Not only did the women workers not stand by my side, they also laughed at me for making an issue out of what the master tailor had done. According to them I always have a problem with everything.

-Meena

5.8 Women feel dispensable and less valued as workers

In the factory, most of the work is done by male workers. Most work involves lifting a lot of heavy weight and women can’t do this kind of work. Therefore, for factories the male workers are obviously of more consequence. Why will they listen to me then? If I complain and they fire me then there won’t be much repercussion on the work, however if they remove the perpetrator then it will probably affect their work. That is why even if I am right and he is wrong, I am the one whom they will fire. –FGD Participant

Occupational segregation, devaluing women’s work and contribution, not seeing women as proficient and efficient workers with skills, are all expressions of a gender hostile environment and forms of gender-based violence. Hence there is a tendency to value male workers as more important to the factory than women. To create a non-hostile environment within the workplace it is important to also address these discriminatory practices and cultures so that women feel confident and valued as workers.

5.9 Workplace sexual harassment seen as an interpersonal issue between individuals

Women's experiences ranged from being harassed by one colleague or supervisor to multiple perpetrators across factories and workplaces. However, interviewees viewed workplace sexual violation as an issue of the individual perpetrator rather than an organisational failure to provide a safe workplace. Gender based sexual violence that women experience in everyday life is so pervasive and normalized that most often women do not think of it as a responsibility of their employer to provide a safe and dignified work environment.

It is unsafe for women everywhere, in buses, on the road...we will be harassed because there are men who view us with bad intent. So yes, even when we go to work, things like that happen.

–FGD Participant

Since women deal with a continuum of violence across their natal and marital homes and the public sphere, they do not view it as a phenomenon unique to the workplace unlike issues of low wages, withholding of wages, withholding of leaves and so on. It is therefore difficult for women workers to organically view protection from sexual harassment as a right within their workplace to be guaranteed by the organisation.

6. Conclusion and Recommendations

6.1 Existing Concerns with the POSH law 2013 and its Implementation

The institutional failure to create safe workplaces that guarantee women freedom from discrimination and sexual harassment is stark in both the organised and unorganised sector. The POSH law, in its provisions has only, mildly at best, pointed to basic requirements to be fulfilled by the employer in ensuring a violence free working space. The law continues to be riddled with concerns such as the exclusion of important provisions for implementation as well as the hazy and often ambiguous language of the Act which leaves room for interpretation.

The following are some of the key concerns with the law and its implementation that emerge from the findings of this report.

6.1.1 Lack of Budgetary Provisions

The entire machinery created through this law has so far been operating largely without any budgetary provisions. Even the nominal amount to be paid as allowance for certain members of the LCs is drawn from other budget heads in the district. Without funds the implementation has greatly suffered due to inadequate and often absent infrastructure and human resources.

6.1.2 Absence of Dedicated Staff to Implement Provisions

The law at present rests largely on the shoulders of voluntary workers who work over and above their existing responsibilities to implement the provisions. Not only does this imply labour violations by creating a pool of workers who perform essential roles without pay, it also creates workers who are overburdened and over worked. This raises questions on the quality of service provided to complainants in their access to justice.

6.1.3 Ineffective Awareness Generation

The effective implementation of the law necessitates large scale awareness on workplace sexual harassment and its implications. However, there is no clear mandate that either pushes the state government or the district administration to ensure awareness generation across sectors. At present the thrust of trainings is focussed on big companies and corporate houses. While any effort towards greater awareness and implementation of the Act is welcome, the efforts need to also be measured against their impact. Even after the thrust of trainings focussing on large companies and factories, not much has changed with respect to workplaces becoming safer for women, especially women from more vulnerable classes and caste; except for constituting an on-paper IC. Thus, the benefits reaped are by the newly formed NGOs and legal consultancies, while the culture of silence and unfair labour practices around workplace sexual harassment continues unabated. Additionally, with no focus on smaller companies by either the government or civil society organisations, smaller factories and companies lack even on- paper compliance with the law.

6.1.4 Absence of Standard Operations Procedure

At present the functioning of LCs and ICs do not follow any standard operating protocol. The identification, selection, training of members as well as the committees' operational schedules follows no parity within a district as well as across districts and states. In the absence of basic

guidelines that are mandated to be maintained across districts and states, the machinery created by the law is erratic and its efficiency incidental.

6.1.5 Ineffective Machinery for Ensuring Compliance

It appears that ensuring compliance with the law has been a challenge across different levels of the machinery. Whether it is to ensure all workplaces constitute functional ICs (and LCs), that inquiries are conducted and reported according to protocol, or, and most importantly that employers follow the recommendations of the IC/LC reports. The provision of penalty including monetary penalty is rarely (and in the case of the district offices explored in the study, never) imposed and in the absence of a strict monitoring system, defaulters slip through the cracks.

6.1.6 Workplace sexual harassment yet to be recognised as a labour rights violation

The POSH law, 2013 unlike other legislations on violence against women, specifically addresses workplace violence. It protects a woman's right to work, guarantees her access to a safe, non-hostile working environment and gives access to redressal in case her ability to work and/or her work itself is hindered due to sexual harassment. Thus, unlike sexual harassment and violence in the larger public and private sphere, this legislation specifically addresses it in the context of the workplace. It is therefore for all intents and purposes a law that protects her labour right. However, it is yet to be brought under the purview of the Ministry of Labour and Employment (MoLE). Article 10 (h) of the recently adopted ILO Convention 190 (2019) recognises this need and calls for involvement of labour inspectorates in dealing with violence and harassment at the workplace.

While the Act guarantees women workers protection from workplace sexual harassment, it falls short in adequately holding the organization responsible for providing a safe non-hostile work environment and failure to do so is not coded as an unfair labour practice under labour laws for which the organization can be held legally accountable. Addressing workplace sexual harassment as an institutional responsibility and allowing workers to hold the organization legally accountable for it requires a more robust framing than currently available in the POSH Act. The distancing of the POSH law from worker representation in either the IC or the LC adds to the disconnect of this law from labour rights regulations.

6.2 Recommendations

In its current mode of operation, the Act largely serves to address individual acts of harassment and has failed to build and strengthen institutional accountability for providing a safe, dignified, non-hostile workplace for workers experiencing gender based violence and harassment. In order for organisations to take cognizance of this and formulate internal policies for creating a non-hostile environment, monitoring and compliance needs to be strengthened urgently. The issues flagged in this research are not isolated and require holistic redressal to ensure that the spirit of the law is upheld via effective implementation.

Recommendations are aimed at effective translation of the intent of the law to uphold the constitutional rights of safety and dignity of work and at work, for women.

Situating the Act within labour regulations

- In addition to having a separate POSH law (such as the 2013 law under review) that addresses all kinds of workplaces, coding sexual harassment as unfair labour practice under the Second Schedule of the Industrial Relations Code 2020 will strengthen legal accountability of institutions covered by the industrial disputes law and allow complainants multiple avenues for redressal of victimization that invariably follows a complaint of sexual harassment. In fact, as it is a workplace related concern, the POSH Act should necessarily be jointly implemented by the Ministry of women and Child Development and the Ministry of Labour and Employment. The 2006 SC order for all Labour Commissioners to be responsible for the cases of workplace sexual harassment should be followed.
- **Audits and inspections** of factories and workplaces performed by the labour department should also include monitoring of POSH Act compliance.
- The implementing authority should be the labour department in each state.
- **Labour representation in committees:** Revive the recommendations of various committees and ensure inclusion of workers representatives and trade union representatives in ICs and LCs. Additionally, LCs should be mandated to include one member from a domestic workers' collective as it is one of the largest constituencies it caters to.

Budgetary Provisions:

- The operationalising of the Act requires a budget. In order to hire staff, conduct large scale dissemination, trainings and sensitisation, the Act requires provisioning of a dedicated fund.
- Fees and allowances for IC and LC members needs to be reviewed and increased to cover not just travel, but also compensation for the time given to the work of the committees.

Including Provision for Appointing Staff:

- The work of the Nodal Officers as the first touch point for complainants is extremely important, especially due to the existing challenges of access and awareness. The nature of their work therefore is more regular than voluntary. Their labour needs to be recognised by giving them a salaried status mandated within the Act.
- A **full-time administrative staff** in each district to help complainants with filing complaints, maintaining documentation, filing annual reports and most importantly be a face of the LC in the absence of the LC members themselves.

Mental health support: Survivors, both in the organised and in the unorganised sector, require not just legal aid but also counselling support. The Rules should include guidelines for protocols that call for workplaces as well as the district administration to link complainants with support structures for violence survivors such as counsellors in shelter homes, one stop crisis centres, 181 helpline or local government hospitals.

Awareness Generation and Public Disclosure:

- Specific provisions for disseminating information regarding the location of the LC and members of the LC should be included in the Rules. This should be over and above disseminating information online as access to the internet and digital literacy is not widespread in this country. Other popular means of mass public communication such as television, radio and PA systems in train stations, bus terminals may be used for disseminating information of district level LCs.
- Awareness generation regarding the Act and its provisions must be scaled up exponentially both in workplaces as well as in areas with dense population of workers. To reach out to domestic workers and create safer workplaces for them, Resident Welfare Associations can be engaged.
- The dissemination material should be multi-lingual and take into account contextual vocabularies/aesthetics making it easier for people across demographics to relate to it.

Detailed Standard Operation Procedure:

- The Rules on constituting the IC and LC should include guidelines outlining the process of selection and identification of members especially for the local committees where the members are chosen largely from the public domain.
- Specifically for LCs, the Rules should define working hours and place of operation so that it is universally known. In the absence of this, currently much time and energy is spent in locating LCs and their members.
- The Rules should also detail guidelines on training of committee members including refresher courses on not just the POSH Act but other linked issues such as labour and gender rights, law and mental health. Trainings should specifically focus on engaging with survivors of harassment in order to ensure further traumatising and harassment of the complainant.

Authority for implementation of penalty provisions: The Act should be amended to include a section clearly defining the implementing authority for penalty provisions in each district.

Audit mechanism for checking compliance: The Rules should include clear guidelines on the mechanism for monitoring compliance including audits.

6.3 Conclusion

We are grateful to all working women, who fight their battles, at much personal cost, to make all our workplaces safer and free from discrimination.

The struggle to address sexual harassment at the workplace has spanned several decades and we are still far from achieving a satisfactory system that protects a woman's right to a safe and dignified workspace. In addition, given the fact that the majority of women in India are employed in the unorganized sector, without a clear employer-employee relationship, we still have a long way to go in ensuring a legal system that addresses their needs for a safe and dignified workspace. The women's movement has given us the law, and it is now a collective responsibility of employers, trade unions and workers' movements to take cognizance and responsibility to make the law work for the most vulnerable people, within the workplace.

This study is an attempt to understand the workings of the sexual harassment law and identify gaps so that we may collectively begin to strengthen the law and its implementation. We hope that the study is useful for law makers, implementing agencies, women's movements, trade unions, workers collectives and civil society organizations to understand and address the gaps in order to realize the constitutional ideal of equality at the workplace. A safe, dignified, non-discriminatory workplace is the minimum that all workers have a right to.

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Annexures

A. Tables

Table I: Evolution of the POSH Act, 2013

Section/Theme (as per the 2013 Act)	Vishaka Guidelines (part of the Vishaka Judgement passed on 13.08.1997)	Bill 2010 as introduced in the Lok Sabha in December 2010	2011 Standing Committee Recommendations published on 30.11.2011	Bill 2012 as passed by the Lok Sabha on 03.09.2012 submitted on 23.01.13	Verma Committee Recommendations	POSH Act 2013, enforced on 09.12.13	NCW Committee 2018 (formed in the wake of the #MeToo movement in India) concerns
Purpose	Guidelines to protect the fundamental rights of women against sexual harassment at workplace- addressed prevention and redressal till the passing of a law	Protection of women against SH@W	Committee felt that that a provision to look at cases of sexual harassment against men may be explored. Also recommended adding a specific clause on victimisation	No provision added	Felt that the bill was unsatisfactory and did not reflect the spirit of the Vishaka judgement	No change	No specific input
Reference to International/ National laws	Referred to the Beijing Statement, CEDAW	Referred to CEDAW		No use of the term "victimisation" in the bill		No change	

<p>Section 2(a)- Definition of "aggrieved woman"</p>		<p>Included employee, student, research scholar and patient- covers all women at the workplace whether employed or not</p>	<p>Committee recommended including situations of "victimisation" as there is a tendency of employers to dismiss the employee</p> <p>Specifically including domestic workers with the caveat that they should be covered only under employee (friends/acquaintance s can seek a separate judicial intervention)</p>	<p>Did not include situations of victimisation.</p> <p>Included domestic workers only as employees</p>	<p>No change</p>	<p>No specific input</p>
<p>Section 2(f)- Definition of employee</p>	<p>No definition</p>	<p>Specifically excludes domestic worker working at home Includes all other kind of employees</p>	<p>The Committee recommended that domestic workers be included within the ambit of the Bill.</p>	<p>Includes a separate definition of domestic workers</p>	<p>No change</p>	<p>No specific input</p>

<p>Section 2(g)- Definition of employer</p>	<p>No definition</p>	<p>Does not specifically mention domestic work employment For government workplaces- head/authorised officer Other cases the person responsible for management, supervision and control</p>	<p>Parity to be kept between government and private sector- heads of private workspaces to be liable Recommended including clause on contractors Since domestic workers are included as employees, house owners should also be added under employers</p>	<p>Does not include heads of organisations but explains "management" as "the person or board or committee responsible for formulation and administration of policies of the organisation." Includes person discharging contractual obligations and person or household employing a domestic worker</p>	<p>No specific input</p>	<p>No change</p>	<p>No specific input</p>
<p>Section 2(n)- Definition of Sexual Harassment</p>	<p>Extended sexual harassment at the workplace to be any act that creates a hostile work environment</p>		<p>Recommended that the words 'verbal, textual, physical, graphic or electronic actions' be added in the definition.</p>	<p>No change</p>	<p>Recommended detailing the term "unwelcome" to include subjective perceptions in</p>	<p>No change</p>	<p>No specific input</p>

<p>Section 2(o)- Definition of Workplace</p>		<p>Bill also includes any place visited during course of work</p>	<p>Include house/dwelling place since domestic workers are included</p> <p>Also include vehicles being provided by the employer</p> <p>Also recommends adding a definition of "hostile work environment"</p>	<p>First two recommendations included</p>	<p>No specific input</p>	<p>No change</p>	<p>No specific input</p>
			<p>It recommended that employers expressly include sexual harassment in the definition of misconduct.</p>	<p>the interest of the complainant. The committee recommended including the following sentence after the definition: <i>"Explanation: In determining whether the behaviour or act complained of is unwelcome, one of the factors to be given due weight shall be the subjective perception of the complainant."</i></p>			

Constitution of Complaint Committees	Constitution of committees to look into matters for redressal	To be constituted at all offices and branches, both government and private.	<p>Committee recommended that in order to make the Internal Complaints Committee more effective, a provision be provided specifying the circumstances under which the constitution of this committee could be exempted, since it may not be feasible to form committees at all units</p> <p>Proposed that an employer could be required to provide details of cases of sexual harassment against men in the annual report</p>	No change	Expressed reservations against conferring civil court powers to ICCs since the members were not required to have a legal background (unlike the composition of the LCCs)	No change	
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<p>Section 4(2)- Composition of the (Internal) Complaints Committees</p>	<p>Complaints committee to be : Headed by a woman More than half of the members should be women Should have an external member to ensure impartial proceedings- preferable from an NGO; someone who is familiar with the issue of sexual harassment</p>	<p>Chairperson-employee, senior woman At least two members from employees committed to the cause of women One external At least half of the committee should be women NCW recommended including trade union representatives/worker s associations in interest of employees</p>	<p>The committee agreed with NCW's the inclusion of trade union representative "The Committee recommends to the Ministry for exploring the possibility of including representatives from trade union/employee association/student union/welfare officers." Recommended increasing strength of the ICC to an odd number to facilitate decision making Flags the non-requirement of a member with a legal background as coming on the way of performing the duties of a civil court. Recommends mandatory training of members</p>	<p>Adds section on disqualification of members Does not accept recommendation of including trade union members/workers associations and instead recommends a "person familiar with the issues relating to sexual harassment" Adds training of members under duties of employers</p>	<p>Flagged the concern that women might not file complaints with ICCs since they were comprised of company employees, instead suggested a separate body - Tribunal that could deal with all the cases of SH@W</p>	<p>No change</p>	
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<p>Section 5 and 6-Constitution of Local Complaint Committees</p>	<p>No provision</p>	<p>To be constituted at every district and additionally also at the block level by the DO</p>	<p>The Committee was of the opinion that it may not be feasible to have an additional Local Complaints Committee in every block or ward. It was of the view that district level committee could handle such cases.</p> <p>Also flagged that as the DO has many other responsibilities they might not consider this priority</p> <p>Recommends inclusion of SCW to handle cases against employers</p>	<p>Restricts the LCC to a district level committee and appoints NOs at block/taluka/ward/tehsil level</p> <p>No change</p> <p>No change</p>	<p>Stated that the bill had ambiguous guidelines on constituting LCCs.</p>	<p>No change</p>	<p>No specific input</p>
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Section 7 - Composition of the Local Complaints Committees		Chairperson-woman committed to the cause of women One woman working in the block/district Two members, of whom at least one shall be a woman, and one with legal knowledge/lawyer from amongst such NGOs/associations committed to the cause of women	Emphasised the need to include workers' representation: " <i>The Committee supports the inclusion of representative of trade union or employee association and recommends to the Ministry to incorporate this category of members in the LCC in order to have a broad-based membership protecting the interests of the victim as a woman as well as an employee.</i> "	Included SC/ST/OBC Substituted PO with ex-officio member from Social welfare or women and child department Did not include trade union representatives Added grounds for disqualification	No specific input	No change	No specific input
		<p>Flagged that POs already have a well defined mandate and to therefore reconsider their inclusion in the committee</p> <p>Recommended inclusion of SC/ST/OBC</p>					

<p>Section 20- Role of DO</p>		<p>To monitor submission of LCC and ICC reports</p>	<p>Recommended that the duties of the DO should be on the same lines as the employer. Also recommended adding that as the DO is mandated to set up the LCCs for effective functioning, the absence of the necessary resources that should be provided to them for conducting inquiries will lead to denial of justice</p>	<p>Removes monitoring of ICC from the duties of the DO. No other changes made</p>	<p>No specific input</p>	<p>No change</p>	<p>No specific input</p>
<p>Sections 9,10,11,12,13 and 15- Complaint and Redressal</p>	<p>No specifications provided</p>	<p>Bill does not specify any time limit within which the complaint has to be filed. The Bill provided for conciliation if requested by complainant, otherwise an inquiry</p>	<p>The woman should be able to also approach the SCW if complaint is against the employer The Committee recommended that a reasonable time limit be specified. Conciliation should be open only in case of a minor offence with the caveat that there should in fact not be</p>	<p>A time limit of three months from the date of the incident was included for filing the complaint with an extension of three months Added that monetary settlement cannot be the terms of a conciliation</p>	<p>Recommended deleting Section 10 (1) which talks of conciliation. "There are certain areas, such as contractual matters where there could be conciliation, but in matters of harassment and humiliation of women an</p>	<p>No change</p>	<p>Inclusion of past incidents (Justice Manohar) Conciliation clause needs to be reviewed</p>

				any monetary settlement as that would trivialise the offence. Inquiry be made in accordance with the service and conduct rules. The term "damages" should be used in place of "compensation". Recommended that a call for action or liability should be included on the employer in case the inquiry is not completed within the 90 stipulated days	No other changes made	attempt to compromise the same is indeed yet another way in which the dignity of women is undermined. Recommended that till the inquiry is complete, the complainant and the accused should not be compelled to work together	No specific inclusion of this	
Section 8- Grants	No specific input	Central govt to State govt. State govt. may identify an agency and transfer the funds to that agency. The agency then will disburse the funds to the DO	No recommendations	No change	No change	No recommendations	No change	No specific input

Rights of the accused	No Specific provisions	No specific provisions	The Bill does not specify any provision relating to the rights of the accused. The Committee recommended that an appropriate procedure be included in the Bill to ensure a free and fair trial for the accused.	No provisions included	No specific input	No change	No specific input
Section 14- Penalisation of false complaints	No provision	Penalises complaints that are falso or malicious	Committee recommended that a distinction be made between false and malicious complaints. It recommended that there should be no punishment for a false complaint. However, if it was filed with a malicious intent, then action should be considered.	Amends it to penalise complaints made with malicious intent or if made with knowledge that it was a false complaint	Disagreed with penalising false complaints. <i>"We think that such a provision is a completely abusive provision and is intended to nullify the objective of the law. We think that these 'red-rag' provisions ought not to be permitted to be introduced and they show very little thought."</i>	No change	No specific input

<p>Section 26- Penalty for non- compliance</p>	<p>No specific input</p>	<p>Fine of upto Rs. 50,000 for non-compliance as well as cancellation of licence/registarion of business for repeat offenders</p>	<p>The Committee stated that while a strong deterrent was required, cancellation of the license would harm the interests of people associated with the business. Recommended that the provision be modified to safeguard the interests of other employees and dependents.</p>	<p>No change</p>	<p>No specific input</p>	<p>No change</p>	<p>Act unclear on authority for implementaton including monitoring authority in case of corporates Both monitoring and appellate authority must be established</p>
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Table II: Responses to RTIs

RTIs that requested information related to provisions outlined in the Act for LCs and ICs were filed in all 3 states with the concerned Women and Child Department. In Haryana and Uttar Pradesh, the information was sought for the study districts of Gurugram, Faridabad for the former and Gautam Buddha Nagar and Ghaziabad for the latter. In Delhi, information was sought for all 11 districts.

Responses to the RTIs were received only from **Gurugram (Haryana) and six districts in Delhi (New Delhi, East Delhi, Central Delhi, South-West Delhi, North Delhi, and North-East Delhi).**

North-East Delhi district's response to all but one question was "no information available"; while for Central Delhi a letter was received of the transfer of the RTI from the Office of the SDM (Patel Nagar) to the SO, Admin Branch.

For North Delhi district, two responses were received. One response was received from the Accounts Branch of the DM's office. Except for stating that there had been no budgetary allocation for the POSH Act, 2013 the response did not provide any other information. The second response was from the Department of Revenue, SDM Office, Narela. The letter stated that no information regarding the RTI questions was available with the office.

The table below summarises the information received from Gurugram and the other three districts of Delhi. Only those heads for which information was provided has been added to the table.

The information was sought for the period 2016-2019.

	Gurugram	New Delhi	East Delhi	South-West Delhi
Constitution of LC	Criteria and process of selection was responded to by attaching Section 7 of the POSH Act. No SC/ST/OBC member Names of committee members Names of LC members Notifications attached of appointment of LC members and Nodal Officers of current committee	Criteria and process of selection was responded to by attaching Section 7 of the POSH Act. Names and contact details of committee provided No NOs appointed No other information given	Notification regarding the appointment of the LC in 2016 attached containing member names attached with no contact details Notification regarding the appointment of NOs in 2016 with names and no contact details No other information available	Notification regarding the appointment of the LC in 2017 attached containing member names attached with no contact details No other information given
Training of LC members and NOs by	No trainings done between 2016-2019	No trainings done between 2016-2019 Trainings are in the	No information available	No information given

the state government		pipeline for LC members and district administration staff		
Official address of LC for public dealing	Vikas Sadan, Gurugram	District Office Mondays to Friday 9:30a.m. to 6:00p.m.		No information given
Budget Allocation	No allocation	No information given	No information given	No information given
Complaints received by LCs	No complaints from domestic workers	2018-	No complaints received from 2015 till September 2018	No information given
Annual reports received by DO workplaces	2016-80 2017-1680 2018-1200	No information given	No information given	No information given
Penalisation for compliance	None	No information given	No information given	No information given
Notifications for compliance sent put by DO	2018-1001 2019-49	No information given	No information given	No information given
Number of inspections conducted as per section 25(b)	None	No information given	No information given	No information given

B. Sample RTI Form

B.1 RTI Form on Information Related to Functioning of LCs

Dear Sir/Ma'am,

Requesting Information Under the Right to Information Act, 2005

Kindly give me the following information and documents under the Right to Information Act via speed post or email at the address given below:-

Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [henceforth the Act], kindly provide the following:

1. A contact list of all District Officers notified under Section 5 of the Act for all districts of in the state
2. For the following districts please share Composition of Local Committee (LC) as constituted under Section 7(1):

District	Chairperson S. [7(1)(a)]		Member from block, taluka or municipality S. [7(1)(b)]		Member drawn from NGO or legal background S. [7(1)(c)]		Member drawn from SC/ST background S. [7(1)(c)]		Ex officio Member S. [7(1)(d)]	
	Name	Ph/Email	Name	Ph/Email	Name	Ph/Email	Name	Ph/Email	Name	Ph/Email
Name										

3. The official address and official timing of the LC office for public dealing
4. Please share a copy of the notification detailing the procedure for constitution of the LC in each district
5. Please share the criteria on which members were appointed
6. Number of trainings that your department has organized for members of LCs as per Section 24(b) of the Act

District	No. of trainings in 2016	No. of trainings in 2017	No. of trainings in 2018	No. of trainings in 2019
Name				

7. Number of nodal officers appointed in each block, tehsil or taluka along with the notification for their appointment by the state government under Section 6(2) of the Act

District	No. of nodal officers appointed in 2016	No. of nodal officers appointed in 2017	No. of nodal officers appointed in 2018	No. of nodal officers appointed in 2019
Name				

8. Number of trainings that your department has organized for nodal officers

District	No. of trainings in 2016	No. of trainings in 2017	No. of trainings in 2018	No. of trainings in 2019
Name				

9. Budget allocated to the DO of each district as per Section 8(1) of the Act

District	Budget allocation in 2016	Budget allocation in 2017	Budget allocation in 2018	Budget allocation in 2019
Name				

10. As per Section 22 (and Rule 14) kindly provide the following information about complaints

D i s t r i c t	Number of complaints of sexual harassment received by LC in				Number of complaints disposed off by LC in				Number of cases pending for more than 90 days in				Number of cases adjudicated through counselling by LC in				Number of cases in which guilty decision was taken by LC in				Nature of action taken by employer or DO (Action taken report) in each complaint in			
	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	6	7	8	9	6	7	8	9	6	7	8	9	6	7	8	9	6	7	8	9	6	7	8	9
N a m e																								

11. Please provide a copy of the annual report submitted by the district LCs to the MWCD for the years 2016, 2017, 2018, 2019.

The requisite fee is being paid vide postal order no. _____ Rs. 10/-. I am not aware of the payee details. Kindly fill the appropriate details in the as it is the duty of Public Information Officer to provide reasonable assistance under 5 (3) of the RTI act to applicant.

B.2 Sample RTI Form on Information Related to the DO's Office

Dear Sir/Ma'am,

Requesting Information Under the Right to Information Act, 2005

Kindly give me the following information and documents under the Right to Information Act via speed post or email at the address given below:-

Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [henceforth the Act], kindly provide the following:

1. In the following districts:

District	No. of organizations to whom notices were sent by DO in 2016, 2017, 2018, 2019 to form IC in their establishments				No. of organizations that submitted IC reports to DO as per Section 21(1) of the Act, in 2016, 2017, 2018, 2019				No. of organizations whom DO penalized for violating Section 21(1) of the Act, in 2016, 2017, 2018, 2019			
	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
Name												

- Please share copies of notices/circular sent by DO to employers regarding constitution of IC in their establishments.
- Please share copies of reports sent by DO to the State Government as per Section 21(2) of the Act for the years 2016, 2017, 2018, 2019.
- In the following districts please share data on number of organizations penalized as per Section 26 of the Act:

District	No. of organisations penalised for violation of Section 26(1)(a) [non constitution of IC]				No. of organisations penalised for violation of Section 26(1)(b) - for violations of Section 13 [inquiry reports of IC to be sent to LC or district officer]				No. of organizations penalized for violation of Section 26(1)(b) - for violations of Section 14 [punishment for false or malicious complaints]				No. of organizations penalized for violation of Section 26(1)(b) - for violations of Section 22 [non submission of annual reports by employer to LC/District Officer]				No. of organizations penalized for violation of Section 26(1)(c)				No. of organizations penalized in for violation of Section 26(2)			
	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
Name																								

5. Number of inspections conducted by state government in the districts under Section 25(b) of the Act in years 2016, 2017, 2018, 2019

District	No. of inspections conducted by LC under Section 25(b) in years 2016, 2017, 2018, 2019			
	2016	2017	2018	2019
Name				

6. **Under Section 11 of the Act**, (a) how many complaints were **submitted by domestic workers** in the districts in years 2016, 2017, 2018, 2019; (b) how many such complaints were forwarded to the police; (c) police how many resulted in the registration of case under Section 509 of the Indian Penal Code or any other relevant provisions of the Code.

District	No. of complaints submitted by domestic workers under Section 11 in years 2016, 2017, 2018, 2019; complaints forwarded to police; resulted in the registration of case under Section 509 of the Indian Penal Code (IPC) or any other relevant provisions of the Code											
	2016			2017			2018			2019		
	C o m p l a i n t s r e c e i v e d	C o m p l a i n t s f o r w a r d e d t o p o l i c e	Com pl a i n t r e s u l t e d i n c a s e u n d e r S 5 0 9 (I P C) e t c.	C o m p l a i n t s r e c e i v e d	C o m p l a i n t s f o r w a r d e d t o p o l i c e	Com pl a i n t r e s u l t e d i n c a s e u n d e r S 5 0 9 (I P C) e t c.	C o m p l a i n t s r e c e i v e d	C o m p l a i n t s f o r w a r d e d t o p o l i c e	Com pl a i n t r e s u l t e d i n c a s e u n d e r S 5 0 9 (I P C) e t c.	C o m p l a i n t s r e c e i v e d	C o m p l a i n t s f o r w a r d e d t o p o l i c e	Com pl a i n t r e s u l t e d i n c a s e u n d e r S 5 0 9 (I P C) e t c.
Name												

The requisite fee is being paid vide postal order no. _____ Rs. 10/-. I am not aware of the payee details. Kindly fill the appropriate details in the as it is the duty of Public Information Officer to provide reasonable assistance under 5 (3) of the RTI act to applicant.



ARA