

WHO SAFEGUARDS A WOMAN'S RIGHT TO A SAFE WORKPLACE? A STUDY OF LOCAL COMMITTEES ACROSS INDIA USING RTI DATA

Research Report

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1. BACKGROUND

At the heart of workplace sexual harassment is situated the complex issue of power; power that has historically been in the hands of men. Knowing that they have unchecked and unfiltered power, men at workplaces are enabled to do as they please. This power also protects them from facing consequences or punishment to a large extent.

Women on the other hand have historically held less power or even been powerless, making them unable to push back. Often, women employees are expected to go along with such behaviour and conversations, which are laced with sexual innuendoes. The 'boys will be boys' approach which condones such behaviour and forces women to comply with it as a part of their working environments, is the repugnant core of misogynistic attitudes (Jaising 2015). In these unequal power relations, if we factor in issues of caste, class, religion, etc. women just keep getting pushed back further and further. Power imbalances leave those at the bottom of hierarchy ladder even more vulnerable.

Indira Jaising (2015) contends, "If behaviours that amount to sexual harassment at the workplace are not nipped in the bud, and the message of opprobrium send loud and clear from persons in authority, such behaviours will in time deteriorate to more violent expressions of sexual dominance, including sexual assault and rape." Jaising (2015) also points out that even if such behaviour does not escalate to violent intensity; it vitiates the working environment, increasing the anxiety levels of women employees, curtailing their productivity and creativity at the workplace. They are unable to participate equally at the workplace.

Sexual harassment of women at their workplaces is also a reality all over India. While it is a known fact that women in the formal sectors face such harassment, the sexual harassment of women in the informal sector has been relegated to the backburner. According to ILO estimates, currently 94% of the total women workers in India are engaged in the informal sector. Majority of them come from extremely resource-poor backgrounds and 50% of them are sole bread-winners of their families. They are often illiterate and unaware about the law, making it extremely difficult for them to speak against this form of harassment. They also fear loss of livelihood and the stigma associated with the issue, which further deters them from reporting such violence.

In India, the Sexual Harassment of women at workplace (Prevention, Prohibition, Redressal) Act was passed in 2013. It was passed by the Lok Sabha and the Rajya Sabha on 3rd September, 2012 and 26th February, 2013 respectively, and notified on 23rd April, 2013. It recognizes that sexual harassment results in the violation of a woman's fundamental right to equality under Articles 14, 15 and 21 - which provide for equality under the law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and protection of

life and personal liberty. The Act provides protection against sexual harassment of women at work and for the prevention and redressal of complaints of sexual harassment within the workplace. The Act uses the same definition of sexual harassment that was laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan* (1997), and is seen as an important step in addressing gender-based discrimination and violence in India, even if some legislative gaps remain as it protects only women (and not men) from sexual harassment at workplace (PRIA and ILO 2014).

The Act clearly defines and includes in its ambit both formal and informal workers. It mandates the constitution of an Internal Committee (IC) at the institutional level and a Local Committee (LC) at the district level for prevention, prohibition and redressal of sexual harassment. The constitution of LC and its effective functioning is of particular relevance for the informal sector. The provisions of the SHW Act extend to all the 9 crore women working in the informal sector in India. But despite having a law, a large majority of women are still regularly subjected to sexual harassment in all its forms in India.

2. ABOUT OUR WORK

Martha Farrell Foundation (MFF) and PRIA have been working with informal sector women workers in different parts of the country for the past two years. We attempt to create safe and dignified workplaces for these workers by collectivizing and sensitizing them about sexual harassment at workplace. It also focusses on strengthening the functioning of LCs to respond effectively to the grievances of informal sector women workers. In addition, other stakeholders like labour commissions, trade unions, district officials, academia, placement agencies and other intermediaries like civil society groups, media, etc. are also being engaged and sensitized on the issue. A number of workshops and interface events are being organized to enhance their understanding on the situation and issues related to sexual harassment in informal workplaces.

With its commitment towards building essential and critical knowledge around the issue of sexual harassment of informal sector women workers, MFF and PRIA has been gathering data, for the past two years, through various qualitative and quantitative methods. This report brings out the status of LCs in the country, how effectively they are functioning and to what extent they have been able to address the sexual harassment grievances of informal sector women workers. It has also been documenting the response of the LCs and other stakeholders in various districts to analyze the efficacy of redressal and preventive mechanisms and the gaps and loopholes in the implementation of the SHW Act 2013.

As a part of this study, from September 2016 – March 2017, MFF and PRIA filed RTI queries regarding the status and constitution of LCs in 655 districts of the country (explained below in section 4). This report brings out the salient findings from the data received as a result of

the RTI query filed. The findings establish the almost defunct nature of LCs in India, the improper constitution of membership and lack of awareness regarding roles and responsibilities among the membership.

3. WHAT IS A LOCAL COMMITTEE?

As per the Section 6[1] of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, "Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Committee" to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself." The Act specifically defines the workplace in Section 2 and includes the unorganized sector and dwelling places and houses in the definition of the workplace in Section 2[p] and Section 2[0(vi)] respectively.

The Constitution of the LC is required to be as following:

- a) Chairperson nominated from amongst the eminent women in the field of social work and committed to the cause of women
- b) Member nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district
- c) Two members nominated from amongst such NGO/associations/persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that:
 - At least one must be a woman
 - At least one must have a background of law or legal knowledge
- d) Ex Officio member - The concerned officer dealing with social welfare or women and child development in the district
- e) One of the nominees shall be a woman belonging to the SC/ST/OBC/Minority community notified by the Central Government.

All member hold office for a period of up to three years.

The Act mandates the District Officer to appoint one nodal officer at the block/tehsil/taluka level to forward complaints to the LC. These nodal officers are to act as first points of contact, who will receive information about such instances of violence in the unorganized sector workplaces, report them and sensitize and generate awareness in their communities. Additionally, the District Officer is also responsible for providing a detailed framework for redress and to ensure that all the LC members are trained in both skill and capacity to carry out a fair and informed inquiry into a complaint of sexual harassment at workplace. An absence of such training will lead to unequal and unfair results, which can cost employers, employees, complainants as well as respondents.

The Act mandates the District Officer to conduct regular awareness and sensitization sessions for the workers and the employers to make them aware about the issue and provisions of the act. They are supposed to effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, create forums for dialogue through Panchayati Raj Institutions, Women's Groups, Urban Local Bodies or like bodies, as appropriate and widely publicize names and contact details of LC members.

While ICs are now a fairly known concept, with various formal organizations having constituted them, the LCs still remain under analysed. One of the biggest reasons is the lack of awareness regarding LCs and how to locate them. For locating LCC or one of its members, one can adopt following measures:

- Contact the District Officer's office
- Contact One Stop Centre/Women Helpline (toll free through 181, 100 etc.) functioning in your district/State
- Contact the State Commission for Women
- Contact the State Department of Women and Child Development/department looking after women issues

4. THE RTI QUERY

The ways enlisted above seemingly simple are anything but. As stated previously, MFF and PRIA have been actively engaged gathering information on LCs across the country and seeing if there is a meaningful compliance of the Act.

To find about LCs and their work, MFF and PRIA used the most powerful tool available to the ordinary citizen – the Right to Information Act 2005. The RTI queries were filed between September 2016 and March 2017.

Under RTI, we filed for information on LCs first with the District Administrations across the country. After the non-receipt of replies from the District Administrations, subsequent RTI queries were filed in state departments of Women and Child Development (barring the state of Jammu and Kashmir, union territories of Lakshadweep, Andaman and Nicobar and Daman and Diu). First appeals were also filed in 30% of the districts.

The RTI query asked for:

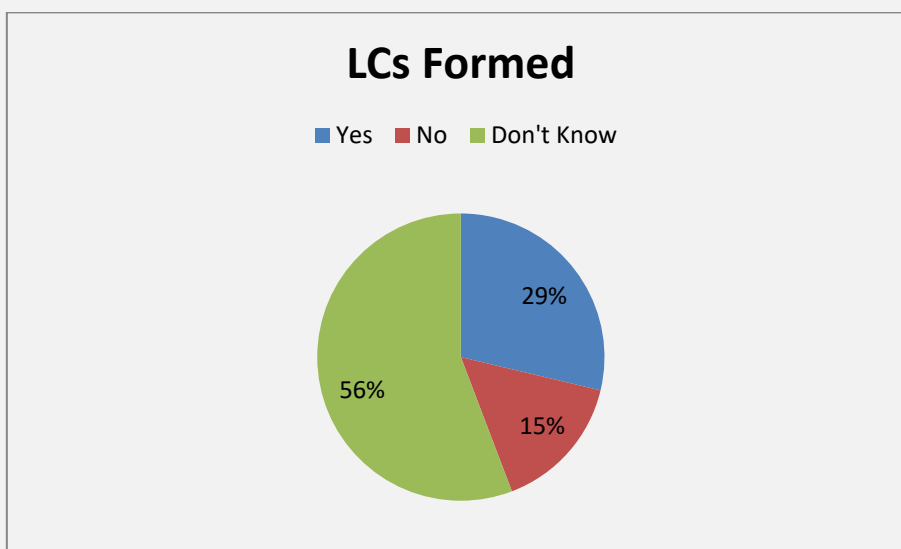
- How many LCs are constituted in the State?
- Please provide district wise details of:
 - a. Composition of LC

- b. Names and contact details of committee members
- c. The official address of the LC
- d. The official timing of the Committee for public dealing
- e. No. of cases received, no. of cases resolved and in process
- f. No. of meetings of LC that have been held so far
- Provide details of nodal officer appointed in each block, tehsil or taluka along with the notification for their appointment by the state government
- Details of awareness programs on gender and sexual harassment conducted in the district.

5. SALIENT FINDINGS:

I. How many LCs are constituted in the States?

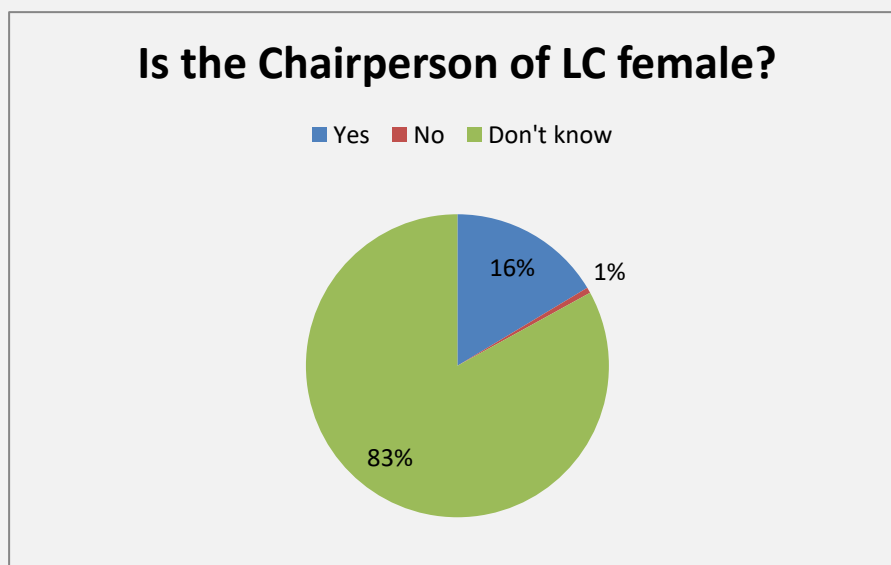
Out of 655 districts in the country, 29% replied that they have formed the LCs. 15% districts have still not formed the LC (though, the State Government of Bihar claimed that they are in the process of constituting LCs in 38 districts of the state) and 56% of the districts chose not to respond the RTI query.



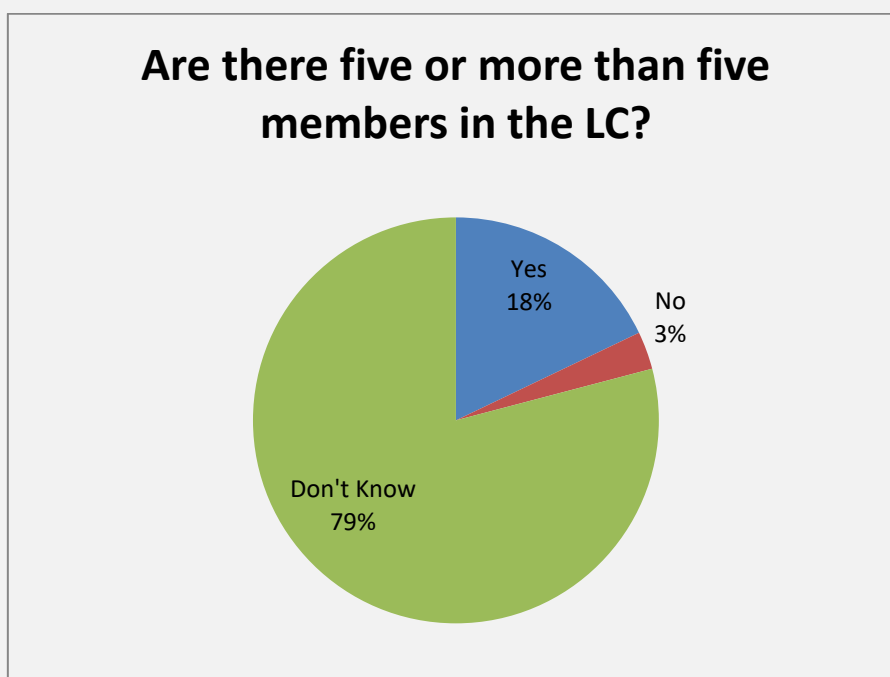
II. Details of Composition:

The Section 7(I[a]) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act 2013 states, "A Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women". As mentioned in the previous section, the RTI query explicitly asked the districts to furnish information about the composition of their LCs. Of the 29% districts that replied that they have constituted a LC, only 16% of them replied in an affirmative that they have a female Chairperson. One percent of them did not have a female chairperson and the rest did not

respond. Four districts, one each in Jharkhand, Uttarakhand and two in Punjab have male chairpersons.

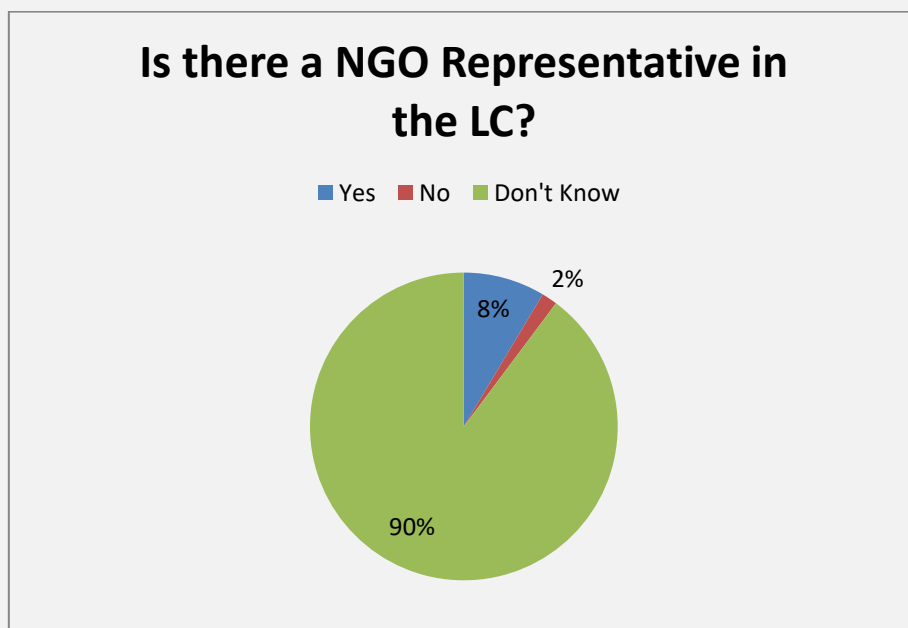


The Section 7(l) of the Act mandates that there needs to be at least five members to constitute a LC. Of the 29% districts that responded that they have constituted a LC, only 18% have five or more than five members in the LC. 20 districts have less than four members in the LC and the status of the rest is unknown.

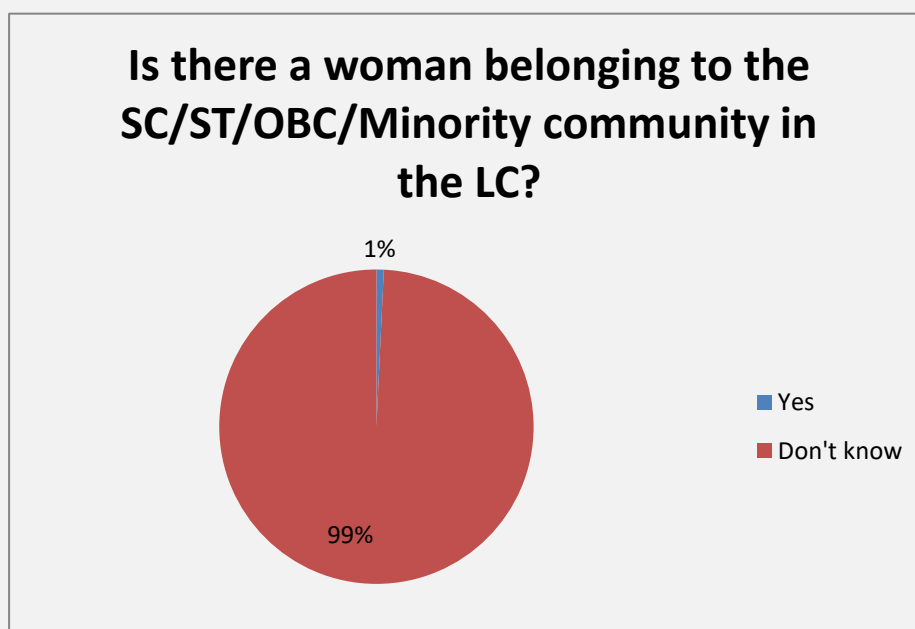


The Section 7(l[c]) of the Act states, “two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual

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". Only 8% of the districts that have constituted a LC responded that they have a NGO representative in the LC. 11 districts have no NGO representation and the rest chose not to respond.

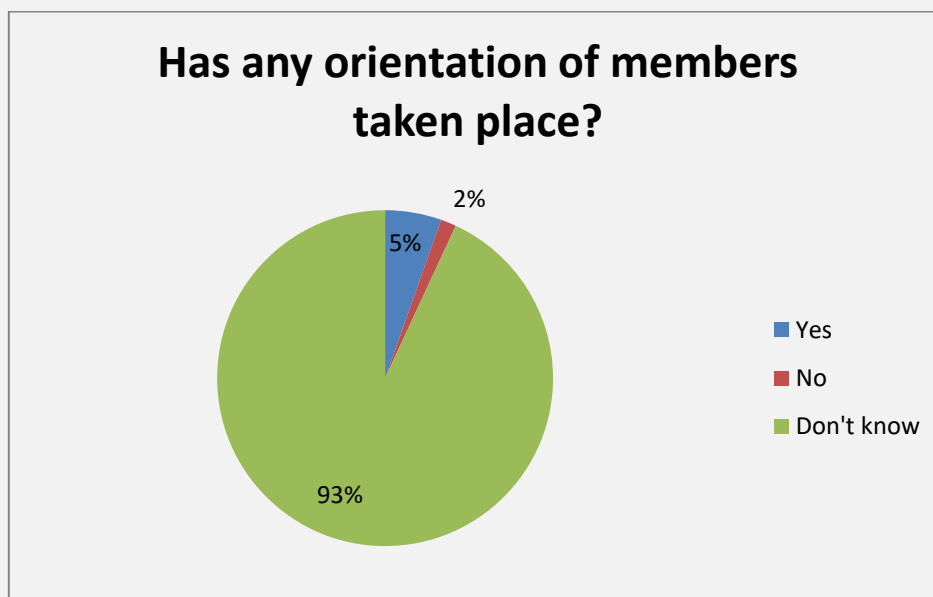


Section 7(I[c]) also mandates representation from a woman from SC, ST, OBC or minority community. 97% of the districts with LCs failed to provide information on SC/ST/OBC/Minority community membership. Only one percent of the districts with LCs replied in an affirmative.



III. Have any orientation programs of members taken place?

Section 24(b) of the Act mandates the “Appropriate Government¹” to, “formulate orientation and training programmes for the members of the Local Committee”. Only an abysmal 18% of the districts with LCs have received any orientation programme for their members. 2% of them replied in negative and the rest did not reply. Also, the districts that have constituted a LC, only 11% of them responded that they have received cases of sexual harassment at workplace.



The State’s reluctance to share/disseminate information on their LCs speaks volumes. Under RTI, these districts are mandated to share the requested information, yet they did not comply. Only eight states provided information while others kept pushing the application to other departments quoting it was out of their jurisdictions areas. According to the RTI Act,

¹ The Chapter 1 of at Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 provided the important definitions concerning the act, which also includes the definition of “Appropriate Government. It states:

“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

In context of LCs, the appropriate government is seen as the State Government. It is the responsibility of the State Governments to monitor the implementation of the Act, develop relevant education and communication material and train the members of the LC. The State Governments are also responsible for the appointment of the District Officer. This District Officer could be a District Magistrate, Additional District Magistrate, District Collector or Deputy Collector. Therefore, until such a notification is issues, it would be quite contrary to bureaucratic etiquette and culture for any such officer to take a proactive initiative in the matter (Jaising, 2015, P. 154).

failure to provide information within the specified period is deemed to be refusal, to give the information that has been requested. It also showcases how hard it will be for an aggrieved woman to look for LC for filing any complaint.

Experience has also indicated that putting the executive machinery in place for an implementation of social welfare legislation is often so low on the priority of the executive, that it requires considerable effort from the civil society and directions from the courts to commence implementation. In case of Sexual Harassment of Women at Workplace Act, considerable responsibility rests with State Governments, including the appointment of District Officers (without which, the LCs cannot be constituted). The Act does not provide for an Appellate Authority in case of non-action. While these duties and obligations are statutory in nature, they do not invite any consequence if not complied with (Jaising 2015; P. 156).

In such a scenario, it becomes extremely difficult to prompt State Governments and District Officers to act, properly constitute LCs and ensure their smooth functioning. The RTI data is a glaring example of this; despite the passage of the law five years ago, the State Governments and Districts Authorities are largely unaware (or unconcerned) about their roles and responsibilities and in large numbers, chose not to reply to the RTI query. In spite of appeals made to various departments the information remains scarce, showing how it isn't an issue on top of priority list for the government. Information on who is the District Officer or how to reach nodal officers is also vague. Even with districts that provided information of LCs, there were a number of discrepancies and a number of aspects of the Act that have been found left out or not fully complied with.

6. CONCLUSION

With 94% of Indian female labour force in the informal sector, the meaningful implementation of this Act is a crucial step towards their dignity and safety at the workplace. The Act provides “protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment”. Therefore, the Government's job does not stop at mere constitution of the LCs, but to disseminate awareness on the issue and take steps towards prevention of sexual harassment at workplace.

Majority of the women in the informal sector are illiterate and remain unaware of the Act. They are even unaware of what constitutes sexual harassment at workplace and even if they recognise it, the stigma associated with it is such that they refrain from making any complaints. They are also face with the constant fear of losing their job and suffer in silence for the sake of their families. Quid pro quo situations of sexual harassment at informal workplace in the form of verbal, nonverbal, visual and physical sexual advances, is an

everyday reality that they live with. It is because of this very vulnerability of informal sector women workers that this Act becomes highly important. According to the RTI data received only 11% of the districts with LCs formed have received any sexual harassment complaints. This underreporting establishes how fearful or stigmatised women are to file complaints or how unaware they remain of their legal rights.

MFF and PRIA, during the course of their work with domestic workers in Delhi, India's capital territory, found the status of LCs in Delhi way below par. Out of 11 districts in Delhi, only two have constituted LCs. The South East Delhi LC was formed as a result of MFF's partnership with district administration of South East Delhi. To ensure 100% meaningful compliance of the law from bottom-top, frontline workers like Aanganwadi Workers, ICDS supervisors, CDPOs and union members are being trained and capacitated in the district. Their preparedness as first points of contact is necessary for preventing and reporting sexual harassment in the informal sector and for generating awareness in the communities.

Our experience also indicated that there are fault lines in both the implementation and monitoring of this Act. Firstly, there is no awareness generation on sexual harassment, the Act and LCs amongst the informal sector workers. Secondly, there are still a large proportion of districts with no LCs. Thirdly, even if districts have LCs, they are hard to be found with no information on websites or public displaying of their names and location. And lastly, even if an aggrieved woman finds her respective LC and makes a complaint, the members themselves do not have the capacity to handle such complaints.

It's apparent that the Government needs to come up with a better monitoring system for the Act. Formation of LCs and awareness generation programmes need to go hand in hand. Informal sector workers are already in a vulnerable position and this vulnerability should not be allowed to be exploited further. Prompt and concrete actions need to be taken. Concerned departments should publicize the status of LCs in their districts and ensure that they are easy to find. Proper capacity and institution building is also required to ensure that the women in informal sectors are given dignity and protected from harassment. Safe workplace is a right; let's not make it a privilege.

~ Written by Drishti Chhibber, ex-intern, MFF and Neharika Mahajan, Senior Programme Officer, MFF

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