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Redefining the Role of Local Complaints

Committees

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Abstract

India has an overwhelming number of women in its informal sector. They represent the most marginalized and vulnerable section of the population. An often overlooked area has been the rampant presence of sexual harassment in the informal sector, which is the everyday reality for a lot of women but it often goes unreported. This often leads to the normalization of sexual harassment and unsafe working conditions for women. The institutions which have been set in place by the government to protect women from sexual harassment have very clearly failed them. Therefore there is an urgent need for an overhauling of the entire legal mechanisms.

This paper tries to capture the strengths and the problems related to the functioning of the Local Complaints Committees (LCC). The paper argues that the problems emerge in the clauses of the POSH act and the working of the LCC and hence the problems are structurally generated. In the end, it tries to give some policy recommendations which can be incorporated by the Central and State governments and the LCC. The reforms suggested, if effectively implemented, hold the potential to change the face of the workplaces for women in the informal sector.

Key Words: *Women, informal sector, sexual harassment, unsafe environment, POSH act, local complaints committee, redressal, reforms*

1.0 Introduction

While conversations around women breaking the glass ceiling by foraying into the workforce are celebrated, there still exists an elephant in the room that is seldom discussed, and even if it is, the hushed nature of the issue is exactly what gets overlooked and needs to be addressed. An act violating a woman's dignity questions her very basic fundamental right to equality, liberty, and life. Workplace harassment not only compromises opportunities for women to have economic independence but also makes the workplace hostile and unsafe for them, thereby hampering their chance at inclusive growth in a safe working environment.

What in 1997 came to be known as the Vishaka guidelines, formed to deal with cases of sexual harassment, were then superseded by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013, which included women working in the informal sector. In the informal sector, workplaces can be sites as private as households for domestic workers or as public as makeshift markets for street vendors.

There is not an ounce of doubt that it was a revolutionary judgment, in recognition of the crimes that women face in the informal sector and the patriarchal power structures that support them. Such crimes are not only grave violations of women's bodies but also highlight the amount of surveillance and control that women and their bodies are put through.

The purpose of this paper is to exclusively talk about the sexual harassment faced by the women working in the informal sector, with a focus on prevention, redressal, and prohibition as is promised by this law. There is also a need to engage with the guidelines, read between the lines and bring out the nuances. Hence, the paper tries to address what it perceives to be the inadequacies in the processes of the Local Complaints Committees (LCCs) in terms of the inquiries they conduct, the acts of conciliations, their effectiveness, and the need for these LCCs to engage with the other non-state actors to have a more meaningful impact. In the end, it will bring forth recommendations for the same.

An unsafe work environment is largely detrimental to an institution's culture as well. If sexual harassment cases continue to grow in numbers, there's a need to question the nature of the workplace and how the ethos and culture of a workplace can be improved so that the individuals grow in their lives and whether the POSH act ensures it or just provides the bare minimum security to women.

The vulnerability of women workers may exacerbate if they choose to raise their voice against acts of violence that they might face at the hands of their family members, employers, or the police, especially considering the different levels of dependency that they may have on their abusers. Violence, exploitation, and oppression then become a part of their daily lives and the worksite itself becomes embedded with sexual violence or threats suggesting the same. Hence, the larger question that looms in front of us is the gross normalization of workplace harassment as being something that needs to be swept under the carpet and society's constant need to control women and their narratives since time immemorial. The right to work in a safe environment is the bare minimum. It is worth ending this argument with questions that reside within us all— Why is sexual harassment still not a priority for the state? What is the complacent role that we as a society play to not oppose it?

2.0 Vishakha guidelines

The genesis of the Vishaka Guidelines lies in the gangrape of Bhanwari Devi, a Dalit woman who was employed by the state of Rajasthan in a women's development program. It was her job to spread awareness and prevent child marriage. While preventing the marriage of a nine-year-old girl she subsequently attracted the wrath of that community, which resulted in her being raped by five Gujjar men. This resulted in massive protests in Jaipur with people demanding justice for Bhanwari Devi. A coalition of feminist organizations like Vishaka and Women's Rehabilitation Group from Rajasthan and Jagori and Kali for Women from Delhi decided to support Devi in her fight for justice and redressal. They filed a writ petition demanding that the court recognize the employer's duty to protect its employees, prevent sexual harassment of women workers at the workplace, and find ways to enforce the fundamental rights. Before the passing of the Vishaka judgment, the only resort women had was to register a complaint under sections of the Indian Penal Code. (Bhat & Deshpande, 2017 p.3) There were no explicit guidelines on how organizations should prevent sexual harassment or provide relief when they fail to do so.

What followed was the case of Vishaka and Ors vs The State of Rajasthan. With the help of international human rights law instruments, like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the court for the first time passed guidelines that came to be known as Vishaka Guidelines after the name of the feminist collective Vishaka. The court apart from the international treaties also used Articles 14 (fundamental right to equality before the law and equal protection of the laws), 15 (right to non-discrimination on grounds, including of sex), 19 (fundamental freedoms), and 21 (right to life and liberty) of the Constitution that is violated in the cases of sexual harassment. (Sarpotdar, 2020)

Article 14 meant that women have a right to work in a safe environment free from sexual harassment. (Sarpotdar, 2020) Article 15 meant sexual harassment is the result of the unequal power relations between men and women, so therefore sexual harassment is gender-specific. (Sarpotdar, 2020) Article 19 which guarantees equal opportunity to everyone is seen to be violated in the course of sexual harassment. (Sarpotdar, 2020) Article 21 guarantees that no person will be deprived of personal liberty at their workplace. (Sarpotdar, 2020)

Article 42 of the constitution guarantees humane conditions of work, thus if interpreted widely it is also guaranteeing redressal against sexual harassment. (Sarpotdar, 2020) The Vishaka judgment recognized that sexual harassment violated the constitutional guarantee of gender equality, and women's fundamental rights to live with dignity, to personal liberty, and to carry on any occupation. (Sarpotdar, 2020) Also, the fundamental duty of every citizen of India is that they must renounce derogatory practices that hurt the dignity of a woman. All these articles were used by the court to provide for vishakha guidelines. (Sarpotdar, 2020)

Passed in 1997, the Vishaka judgment, considered by many as a historic judgment, recognized the fact that Bhanwari Devi was harassed while she was at her workplace and the government of Rajasthan failed to provide her with a safe environment for her to work in. It also recognized that the workplace sexual harassment that women face is a direct attack on their fundamental 'Right to Equality' and 'Right to Life and Personal Liberty.'

The guidelines also make it compulsory for every organization to constitute an in-house Complaints Committee (CC) so that in cases where it fails to protect the safety of its employees, there is a mechanism already in place to provide redressal to the aggrieved women and appropriate action can be taken. Complaints Committees were designed as a civil redressal mechanism to avoid replicating the access barriers that the criminal justice system presented. (Kothawade, 2019) They also layout guidelines for organizations to play a more proactive role by spreading awareness about sexual harassment among their employees and by conducting workshops to make women aware of their rights.

However, when the Vishaka Guidelines were implemented, they were fraught with several difficulties and internal contradictions. Though women workers constitute a bulk of the labour workforce in the informal sector, the guidelines failed to recognize that workplaces could be outside a formal establishment, and hence, failed to address the rampant sexual harassment in the informal sector.

There was also a lack of incentives given to employers to implement the guidelines and set up committees. So, in a lot of organizations, either committee does not exist or they exist only on paper. Even in organizations where committees were constituted, the specific guidelines were not adhered to. For example, at least 50 per cent of members of the Complaints Committees must be women and further these committees should be headed by women.

Secondly, to prevent the personal biases of the employees or the employers from hindering the judgment of the CC and to ensure a fair hearing, the committee should involve a member from an NGO who has worked within a similar field. However, these guidelines were not followed by all organizations.

Sometimes the management may even intimidate and/or threaten the victims and the power dynamics of the workplace may work against women who lodge formal complaints against those who belong to the top rung of the organization.

Women will be raising their voices against sexual harassment despite the threat of losing their job or the aggrieved woman may never get a promotion or a potential backlash and injury from the organization itself. What we see is that most organizations want to bury the matter to not have the reputation of their company in the public or media or worse try to defame the woman itself. This tends to send a loud and clear message to all the women on how their complaints would be handled and serve as a deterrent to not report the harassment. The matter becomes even more complicated when the perpetrator is a part of the management and thus yields a lot of power. The scope of having an impartial inquiry becomes almost next to impossible. What we then come to realize is that the way complaints against sexual harassment are handled has a lot to do with how male privilege has become institutionalized in the organizations that now see women as provocateurs or manipulators for private/professional gains. (TEJANI, 2004, p. 4493)

Therefore, the committees that are in place are not even equipped to deal with the complaints that are lodged and follow the procedure and the due processes that the law requires them to. One of the major criticisms of the law has been the inclusion of action against false and malicious complaints under Section 14 of the act. Women are penalized and have to bear the threat of punishment in case they are unable to prove their complaints or the Complaints Committee comes up with an adverse finding against them. Even the Verma Committee Report had asked for its deletion, but the government ignored the recommendation and retained the provision. (*Why Laws Are Not Enough to Deal with Sexual Harassment*, 2019)

In light of all these loopholes, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted. This act came into place to rectify the mistakes of the Vishaka Guidelines.

3.0 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Amendments

After a decade of intense struggle by the women's movement, the government finally realized that not only was there low compliance to the Vishakha Guidelines in the organized sector, there was also the problem of rampant sexual harassment in the unorganized sector, which remains completely outside the ambit of Vishakha Guidelines. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also known as the POSH Act was implemented on December 9, 2013, by the Ministry of Women and Child Development. The objective of this act was to make workplaces safer for women and to fill the gaps left by the Vishakha Guidelines. The POSH Act is gender-specific and only protects women and not men from sexual harassment. If a man is a victim of sexual harassment he cannot invoke POSH, he has to depend on the policies of the company where he works for appropriate action and redressal.

The act acknowledges that sexual harassment is a direct attack on women's fundamental right to life and their right to live with dignity. It also acknowledges that in any given workplace, there are unequal power relations that are inherent and which would place women in a subordinate position. (Sarpotdar, 2020) The POSH Act covers both organized and unorganized sectors under its ambit. It has two components: Internal Complaints Committees similar to in-house complaints committees and Local Committees. A woman can approach a Local Committee if the complaint is against the employer itself or if the workplace has fewer than 10 employees or if the complaint needs adjudication or if the woman is from the unorganized sector.

The act defines the "unorganized sector" to include enterprises owned by individuals or self-employed workers that are engaged in the production or sale of goods or services of any kind and that employ less than 10 workers. Another definition to understand the complexity of the unorganized sector would be that the unorganized sector is one in which women do the arduous work as wage earners, piece-rate workers, casual labour, paid and unpaid family labour, and whose economic and social conditions are dismal (National Commission on Self Employed Women and Women in the Unorganised Sector 1988). (Sarpotdar, 2020)

The definition of the word ‘unorganized’ is kept broad and comprehensive to include a wide variety of workers engaged in different sectors. In India, a vast majority of workers in the informal sector are overwhelmingly women. 95 per cent (195 million) are employed in the informal sector. (Human Rights Watch, 2020) This would include domestic workers, street vendors, garment factory workers, construction and agriculture workers, home-based workers, etc. (Human Rights Watch, 2020) There are also 2.6 million women employed by the government’s integrated child development services for early childhood care, 1 million accredited social health activists also known as ASHA workers who work as community health workers, and 2.5 million midday meal cooks who prepare mid-day meals for children in schools. (Human Rights Watch, 2020)

Many women in the informal sector are unable to report sexual harassment because of the fear of losing their only source of livelihood. Sometimes, it is because they fear stigma, retribution and are not aware of their rights. Most women would therefore suffer in silence or would try to find another job. (Human Rights Watch, 2020)

In the data published by the Ministry of Women and Child Development, the number of cases of sexual harassment in the workplace recorded a jump of 54% from 2014 to 2017. (Karan, 2018)

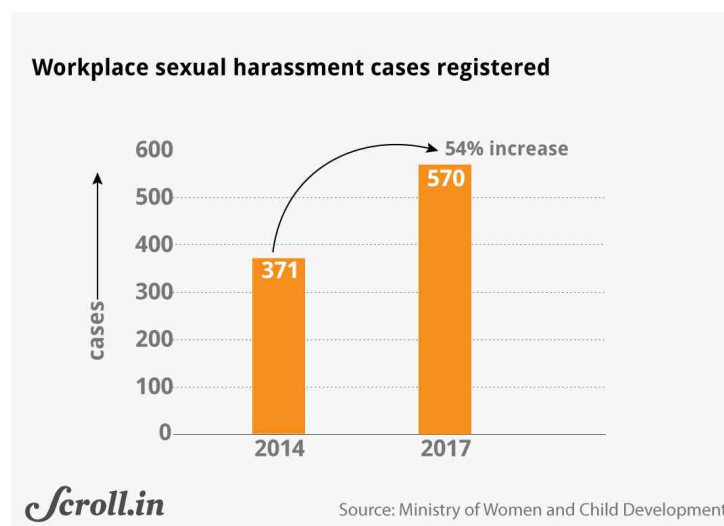


Figure 3.1: The increase in the registration of sexual harassment cases in 2014 and 2017. Source: Scroll, 2018.

Martha Farrell foundation published a report in which it recorded responses from 291 domestic workers from Delhi and found that a third of the respondents had faced some sort of sexual harassment. (Karan, 2018)

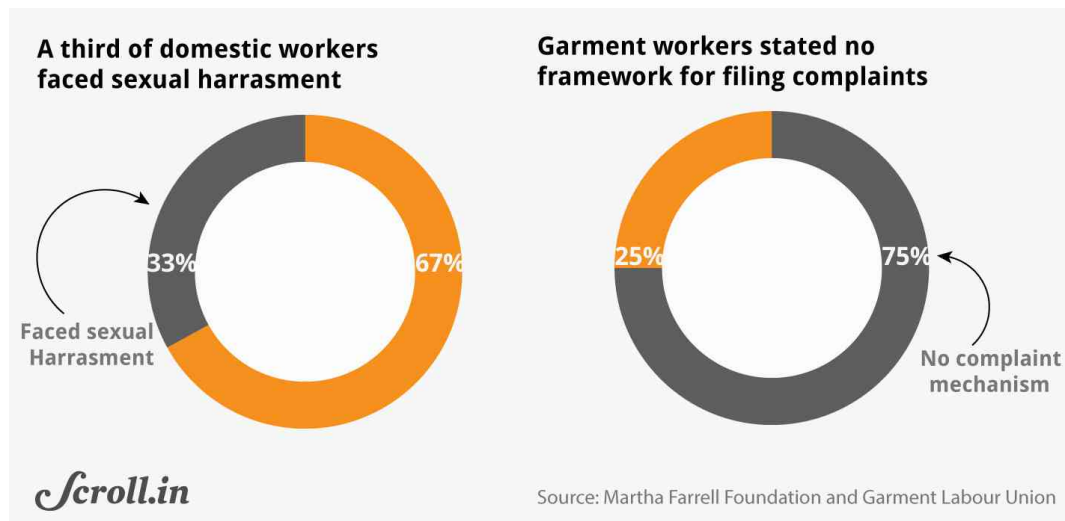


Figure 3.2: Women in the informal sector face sexual harassment. Source: Scroll, 2018

A 2012 report by Oxfam said that women in the informal workplaces are more vulnerable to face sexual harassment as compared to the organized sector. According to the report 29% of labourers, 23% of domestic workers, and 16% of small-scale manufacturing workers were vulnerable to sexual harassment as compared to the unorganized sector. (Karan, 2018)

A 2015 report by the Garment Labour Union showed that 14% of women garment workers in Bengaluru had been raped or forced to commit a sexual act. It also pointed out that 75% of the garment workers reported that there was no complaint mechanism for employees, while 65% said they did not believe they could get justice because they were too poor. (Karan, 2018)

In the complaints registered with the National Commission for Women (NCW), there was an increase in complaints registered under the category 'Sexual Harassment includes Sexual harassment at Workplace'. The data indicating several such complaints registered during the last three years are given below: (Ministry of Women and Child Development, 2019)

Year	2016	2017	2018
No. of cases	539	570	965

The number of cases reported under the specific category of complaints of ‘Sexual Harassment of Women at Workplace at National Commission for Women (NCW). The Ministry of Women and Child Development, Government of India has developed an online complaint website titled Sexual Harassment electronic–Box (SHe-Box) for registering complaints related to sexual harassment at the workplace by women, including government and private employees. (Ministry of Women and Child Development, 2019)

Sexual harassment is defined as any unwanted physical contact, a demand for sexual favours, making sexual remarks, or any other unwanted physical verbal, or nonverbal remark is considered sexual harassment. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013*, 2013)

The act defines ‘employee’ in the most comprehensive way, including women from both organized and unorganized sectors. ‘Employee means a person employed at a workplace for any work on a regular, temporary, ad hoc, or daily wage basis, either directly or through an agent, whether for remuneration or not, or working voluntarily or otherwise. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013*, 2013) A wide-ranging definition of the term ‘employee’ means that people working in different enterprises under the unorganized sector have access to redressal in case of sexual harassment.

The bill also has a wide-ranging scope of interpretation of the word ‘workplace.’ Apart from the organized spaces, the ‘workplace’ also includes unorganized spaces like enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, environmental, industrial, health services or financial activities. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013*, 2013)

Most importantly any place visited by the workers including transportation provided by the employer during their employment will also be counted as a workplace. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013, 2013*)

To protect domestic workers from sexual harassment and to provide them with an appropriate legal recourse, the bill specifically mentions households. Because of the perceived nature of the household, as a place which is seen as private and isolated, the bill mentions that households can also be a site of the workplace for domestic workers and therefore, a domestic worker has a full right to redressal if they happen to face any form of the sexual harassment at their workplace. The domestic worker is also defined in the Act as any woman who is employed to do the domestic work in any household and technicalities like the method of payment, duration of her tenure and if she has been directly employed or employed through an agent does not change her status as an employee of that household owner or the person enjoying the benefits of her work. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013, 2013*)

4.0 Local Complaints Committees at the District Level

4.1 Role and Powers of the Local Committees

The POSH act of 2013 mandates that the district administration has to constitute a Local Complaints Committee (LCC) in each district to focus on cases where the complaints are lodged against the employer themselves or units with less than 10 employees. This is especially important for women in the unorganized sector.

According to the law, it is the district officer's responsibility to constitute an LCC in their district. An officer at the post of a District Magistrate or Additional District Magistrate, or the Collector or Deputy Collector is to be notified as 'District Officer.' A district is still geographically very spread out. To ensure smooth functioning, the District Officer has to designate one Nodal Officer in every block, taluka, and tehsil in rural or tribal areas. In an urban area, a Nodal Officer has to be appointed for every ward or municipality.

The Nodal Officer's primary responsibility is to receive complaints and forward the same to the concerned LCC within seven days. The jurisdiction of the LCC applies to the areas of the district where it is constituted. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013, 2013*)

The LCC has to have a minimum of 5 members. Four are appointed by the district officer and one is a default member. The committee shall consist of a Chairperson who is an eminent woman in the field of social work and is committed to the cause of women; one member is to be nominated from amongst the women working in the block, taluka, tehsil, ward, or municipality in the district; two members, of whom at least one shall be a woman, is to be nominated who is working in a non-governmental organization committed to the cause of women or a person familiar with the issues relating to sexual harassment. At least one of the nominees must, preferably, have a background in law. It is also important 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 some other minority community. Lastly, the default member is an officer dealing with social welfare or women and child development in the district, who shall be an ex officio member. Each of the members has a tenure not exceeding three years from the date of their appointment. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013, 2013*)

The duties of the LCC are the same as that of an ICC. The members of the LCC have the responsibility of conducting an inquiry when a complaint of sexual harassment has been lodged. It also has to make an official final report which suggests assistance that is to be given to the aggrieved woman and penalties to the employer. Lastly, each year, it has to prepare an annual report on the functioning of the LCC, which is evaluated on various criteria such as the number of complaints received, the number of complaints disposed of, the number of cases that are pending for more than 90 days and the number of workshops and programs carried out to generate awareness about sexual harassment. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013, 2013*) However, the LCC yields a lot more power as compared to the ICC whose powers are limited only to that organization.

The recommendations of the LCC have legal sanctions. The LCC has powers that are comparable to that of a civil court for the redressal and resolution of complaints. When conducting an inquiry, the LCC can summon any person before it and enforce and record their attendance. The LCC is constituted with the power to demand any document which the LCC deems relevant to the inquiry. (Sarpotdar, 2020)

At the request of the aggrieved woman, the LCC can choose to settle the case through conciliation. It saves the complainant the time and the energy from time-consuming legal procedures that involve cross-examination and demand them to support their complaint. Conciliation works excellently as an out of court method of settlement for hostile members. The members of the local committee act in the interest of the victim on terms that are mutually acceptable to both. This can range from a verbal apology to the aggrieved woman or a verbal warning to the perpetrator by the members of the LCC or the transfer of either of them. However, as mentioned earlier, conciliation is only used at the request of the aggrieved woman. If the victim does not want to avail of the option of conciliation, the case is then moved for inquiry. Also, if the conditions of conciliation are breached then the case is reopened for inquiry. (Sarpotdar, 2020)

While the inquiry is pending, the LCC can transfer either the complainant or the respondent, recommend special paid leave for the complainant for a maximum period of three months, and prohibit the respondent from evaluating the performance of the complainant. After the completion of the inquiry, the district officer is supposed to provide a report of LCC'S findings to the employer and the involved parties and this should be done within 10 days. (Sarpotdar, 2020) In case the LCC concludes that there is not enough evidence to substantiate the aggrieved woman's complaint then it shall recommend to the district officer and the employer that no action is needed to be taken in this case.

However, if the LCC reaches the conclusion that the allegations made against the perpetrator have been having proved to be true with substantial evidence then the LCC are vested with the power to demand compensation on grounds of the mental trauma and pain suffered by the aggrieved woman, the medical expenses incurred by the victim, the loss of the career opportunity due to this incident, the financial status of the perpetrator and finally the feasibility of the payment either in instalments or in a lump sum.

If the compensation is not paid the LCC can forward the concerned district officer the sum. With such enormous powers vested in the LCC, it is expected that the LCC would play a substantial role in the prevention and the redressal of sexual harassment in cases where the complainant is against the employer itself if the organization is less than 10 people.

4.2 Drawbacks of Local Complaints Committees

4.2.1 Low levels of awareness, less number of LCCs constituted

Firstly, in many places, Local Committees simply do not exist, and even if they do in major cities like Mumbai and Delhi, the general public has no information about them. The Central and State Governments have failed to establish LCCs to receive complaints of sexual abuse. Moreover, there is a dearth of data on how many LCCs have been constituted all over India and we also have no information on the working of these LCCs, i.e., no data on how effective they are.

The Martha Farrell Foundation conducted a study in 2018 and requested 655 districts in the country regarding the establishment of LCC in their districts. The study found that many districts had failed to establish the committees and in the districts where the LCC was constituted there existed no public information either on websites or public spaces displaying their names and location. Out of 655 districts in the country, 29 per cent replied that they had formed Local Committees, while 15 per cent had not done so. The majority, 56 per cent, did not respond. By May 2020, even in the capital, Delhi, only 8 out of 11 districts had constituted Local Committees. (Human Rights Watch, 2020)

4.2.2 Ambiguity in the definition of the term ‘employer’

As already stated, LCC handles complaints of sexual harassment when the complaint is against the employer. Most of the unorganized sectors do not have ICC in place. The employees have no awareness that they can complain about sexual harassment. So either the ICC are non-existent or they simply refused to conduct a non-biased inquiry which more often than not led to the ICC siding with the perpetrator. So this is where the role of LCC becomes very important. Since it is an outside organization it has no pressure to rule in the favor of the perpetrator.

Moreover, it becomes difficult for women in the unorganized sector to complain because, in the unorganized sector with very vulnerable labour that gets extremely low wages, with no social security with long working hours, the chances of the exploitation of women become exacerbated. However, this is where the power of LCC becomes a double-edged sword. There are ambiguities in the definition of an ‘employer.’

According to the act, an employer is any such person who is the head of a department, organization, undertaking, establishment, enterprise, institution, office, branch or unit, or officer of an appropriate government or local authority is an employer. (*THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013, 2013*)

However, this definition has been interpreted differently by the court. For example, in the case of *aya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University 2014* the Bombay high court ruled that the respondents working in various categories either managerial, administrative, or supervisory are answerable for any lapse or wrong on their part to the management. This means that they would be considered as employees and not employers. (Sarpotdar, 2020)

This has a direct effect on the jurisdiction of the LCCs and the types of cases that they can conduct inquiries. This lack of clarity on who is considered an employer and who is considered an employee result in their power being curbed and rendering the LCC less effective. (Sarpotdar, 2020)The number of cases that will now fall under the jurisdiction of the LCC will now drastically be reduced. If the respondent fits into the category of the employer only then the LCC can conduct an inquiry.

4.2.3 Lack of awareness generation programs

In 2016, the role of the Local Complaints Committee was expanded to not only be a complaint resolving apparatus and thus its name was changed from local complaints committee to local committees. Instead of just passively waiting to receive complaints it will now take a more dynamic role in the prevention of sexual harassment. Now it also has to work towards generating awareness about the prevention of sexual harassment, the duties of the employer, and the rights of the women workers if they face sexual harassment.

There are very low levels of reporting of sexual harassment at the workplace. This can be attributed to several reasons like lack of confidence in the mechanisms to be able to provide justice, low awareness amongst women workers about their rights, fear of stigma, and fear of losing their job. This becomes particularly accentuated in the unorganized sector because of the precarity of the work and since the majority of them are daily wage earners they have a greater fear of losing their source of livelihood. Hence there are even lower levels of reporting of sexual harassment in the unorganized sector but they do not represent the ground reality.

Since no awareness generation programs are being conducted by the local committees and people in the unorganized sector have low levels of literacy this could be the major reason why sexual harassment in the unorganized sector goes unreported. (Sarpotdar, 2020) The most important result of carrying out these awareness generation drives would be that it would raise the level of confidence that the women workers have in local committees as an institution. Women most often do not report because of a lack of confidence in the redressal mechanism. But through these awareness drives the LCC will actively cultivate and win the faith and confidence of women workers. Increasing the level of confidence and faith of the women workers in LCC will have a direct impact on the low levels of reporting that is usually witnessed in cases of sexual harassment. But unfortunately, most LCC including the ones constituted in major cities like Delhi and Mumbai do not have adequate funds or monetary support from the central and the state government to be able to conduct such outreach and awareness generation programs.

4.2.3 Protection provided to domestic workers by LCCs

Another major issue with the POSH is how it fails to give the same level of protection to domestic workers that it gives to other women workers. Domestic workers are a very vulnerable and marginalized category of workers in terms of the low wages that they earn, the nature of work that they do. Their workplace is homes of people which is a very private and isolated place which especially puts them at a very high risk of sexual violence. They are not even recognized as workers in India which means that they are not even given the major social security which is given to the majority of workers under the labour laws.

If any domestic worker faces any sexual harassment at their workplace the POSH act states that the LCC will have to refer the case to the police. (Human Rights Watch, 2020) This acts as a double-edged sword. The domestic workers who are mostly women in India are migrant workers who come from poorer states without proper documentation. Most domestic workers are Dalits who are landless and illiterate which makes them highly vulnerable. Domestic workers regularly face threats, physical violence, and even sexual harassment at the hands of police because they are simply poor.

Because of these incidents, there is often a low level of trust in the police by domestic workers. (Human Rights Watch, 2020) So when reporting the case of sexual harassment not only would that act as a deterrent for the domestic workers even the police's response could anywhere be from threats to not file the case, intimidation, or simply just not taking an action. The criminal case could drag on for years wasting the already poor's domestic workers' money and resources. This is especially to be kept in mind because to attend court hearings they would have to miss out on their work. This could also act as a deterrent to domestic workers.

4.2.4 Time limitations to file complaints

There has been another major issue with the POSH act which has to do with the time limit imposed on the victims if they do happen to face sexual harassment. The only time that this did come into the public knowledge via media is when the Delhi high court rejected the LCC's claim that the only reason that it could not hear a sexual harassment complaint was that it had already exceeded the stipulated time for filing a complaint about sexual harassment. (Sarpotdar, 2020) According to the act, the aggrieved woman must complain exactly within three months of the incidents. The Delhi court although directed the LCC to hear the claim but the point to be noted here is that the dismissal of the complaint shows the lack of understanding of sexual harassment by the LCC. What we need is a more nuanced understanding of sexual harassment and how it can affect the victims. Instead of applying the law mechanically and viewing things in black and white fashion, it is pertinent that the LCC try to understand the bigger picture which prevents women from reporting. (Sarpotdar, 2020)

It is important to look into the reasons for the delay in complaining first and then decide the applicability of the law.- whether the clause of the period should be used to not hear a victim's complaint. The LCC needs to take into account the actual reasons like losing their job, fear of stigma, and embarrassment that prevent women from reporting sexual harassment. By working in an extremely stringent fashion it is only discouraging other women to not report the sexual harassment that they might have faced. (Sarpotdar, 2020) But by interpreting the law more liberally will acknowledge the actual unequal power relations that exist in a workplace

4.2.5 The Issue of False Complaints

Last but not least there is a very tricky clause in the POSH act which states that if the LCC finds that the complaint was false it can recommend actions against the woman to the District officer or the employer. The LCC in the Gurugram used this clause and displayed it on the website along with an order regarding a false complaint. (Sarpotdar, 2020) The order stated the LCC's recommendation of issuing a written warning against the complainant for lodging a false complaint of sexual harassment. This was the penalty for lodging a bogus complaint. The LCC reached this conclusion because of the disparity that is found in the statements given to LCC and the company's IC including the time it took in reporting the incident.

This was just one incident that came into public knowledge. If this provision is used hastily by the LCC then in the future it could act as a major impediment to women for reporting sexual harassment.

There is a difference between the inability to corroborate your complaint with appropriate evidence and intentionally filing a spurious complaint with malicious intent. (Sarpotdar, 2020) This has already been stated in section 14 of the act. Keeping in the mind the already low levels of reporting, this should be used only after considerable inquiry and restraint. (Sarpotdar, 2020)

5.0 Recommendations

This paper would try to make recommendations to different levels of government machinery like the Central government, the State governments, and the Local Complaints Committees. The recommendations have been collated from the human rights watch study conducted in 2020 (Human Rights Watch, 2020)

- The central government should first see the proper implementation of POSH which includes the creation of LCC at every district and the effective functioning of these LCCs. (Human Rights Watch, 2020)
- The central government should actively carry out information drives about (Sexual Harassment electronic) SHe-Box. SHe-box is a website which gives access to all the women whether they are in an organized or unorganized sector to register sexual harassment complaint. (Human Rights Watch, 2020)
- It should also have a time limit for the resolution of the complaints so the complaints are not left pending. (Human Rights Watch, 2020)
- Since literacy would be a barrier for women in the informal sector, the government should devise innovative ways to make it accessible to informal workers. (Human Rights Watch, 2020)
- The state government should conduct a nationwide audit every year on Local Complaints Committees. The audit should judge the number of Local Committees that have been set up, their composition, the nature of complaints received from both the organized and the unorganized sector to see how accessible it is for people in the unorganized sector, orders issued, time is taken for issuing orders, what kind of training and awareness-raising programs, campaigns they have held (Human Rights Watch, 2020)
- The central government should also allocate more budget and resources to effectively tackle the problem of sexual harassment and see the proper implementation of the POSH act and they have enough budgets to conduct awareness programs and campaigns to help in both preventing sexual harassment(Human Rights Watch, 2020)
- The central government should also amend the POSH act to create sub-committees of the Local Committees at every level of the government in both the rural and urban areas to receive complaints from women. (Human Rights Watch, 2020)

- POSH Act should ensure that domestic workers have civil remedies available to them in cases of sexual harassment in the workplace through the Local Complaints Committees, as do the other workers. So instead of forwarding the case of sexual harassment to the police, even these cases should fall under the purview of LCC itself. (Human Rights Watch, 2020)
- The composition of LCC does not have any representative from the informal sector. So there should at least be one woman from the informal sector. (Human Rights Watch, 2020)
- The lack of official data on sexual harassment which is rampant in the informal sector is quite serious and should be taken up by the government. The government should conduct official studies to take notice of the forms and nature of sexual harassment that is rampant in the informal sector, study the barriers which prevent women from making complaints, and factors that would enable effective functioning of committees. (Human Rights Watch, 2020)
- The LCC should educate and create awareness amongst police officers and judicial officials on the proper handling of cases of sexual harassment, including recording complaints, treating victims respectfully, and avoiding victim-blaming. (Human Rights Watch, 2020)
- This training could also be extended to local government officials, employers, and Resident Welfare Associations, district magistrates, and other relevant officers in district administration to increase awareness about sexual harassment, fight victim-blaming attitudes. This could be complemented by public awareness campaigns and making the information materials provided in the training public. (Human Rights Watch, 2020)
- The local complaints committees should firstly provide free legal support to the women in the informal sector. This should be done to not only make them aware of their rights but also to help them if they do wish to register a complaint. (Human Rights Watch, 2020)

- The local complaints committee should make it their priority that they increase the cooperation between the state and the non-state actors to address workplace sexual harassment. This could include women activists, women lawyers, civil societies, NGOs, trade unions, labour unions, informal collectives of women, etc to not only increase the dialogue between them but also to disseminate information about the functioning of the LCC through them. (Human Rights Watch, 2020)
- When conducting the awareness generation programs a vibrant collaboration with them would be the most fruitful because these organizations would help the LCC to disseminate information about the worker's rights, the procedure to complain, what constitutes sexual harassment, etc. These organizations could also provide critical feedback to the LCC about how effective the functioning of LCC is on the ground level. (Human Rights Watch, 2020)

6.0 Conclusion

This paper at first laid a brief history of the Vishaka Guidelines along with its drawbacks. One of the major drawbacks was that the guidelines failed to recognize the rampant sexual harassment in the informal sector. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also known as the POSH act came into place to rectify the mistakes of the Vishaka Guidelines. The POSH Act covers both organized and unorganized sectors under its ambit.

The POSH act of 2013 mandates that the district administration has to constitute a Local Complaints Committee (LCC) in each district to focus on cases complaints lodged by women in the unorganized sector. The members of the LCC have the responsibility of conducting an inquiry when a complaint of sexual harassment has been lodged. It also has to make an official final report which suggests assistance that is to be given to the aggrieved woman and penalties to the employer.

But unfortunately in many places, Local Committees simply do not exist, and even if they do, the general public has no information about them. There is also a lack of clarity on who is considered an employer and who is considered an employee and this leads to the powers of LCCs being curbed. Since no awareness generation programs are being conducted by the local committees, this could be a major reason why sexual harassment in the unorganized sector goes unreported. The POSH act also fails to give the same level of protection to domestic workers that it gives to other women workers. The act states that if the LCC finds that the complaint lodged was false it can recommend actions against the woman. If this provision is used hastily by the LCC then in the future it could act as a major impediment to women for reporting sexual harassment. We need the government to amend the law and make suitable changes keeping in mind the limitations of LCC.

Although the focus of this paper was majorly on the legal aspects of the issue, but in the end, it states that it is important to go beyond the law and explore options of how non-state actors can come together and devise ways to prevent sexual harassment. At the end of the day, laws can only grant one their rights but what's more important is how the civil society actors come together to claim those rights through active participation and mobilization.

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