
SEXUAL HARASSMENT AND WORKPLACE SAFETY IN THE INFORMAL SECTOR: LIMITS OF THE POSH FRAMEWORK

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ABSTRACT

Sexual harassment in the workplace in India is a widespread but under-reported dignity and equality violation, especially among women who are in the vulnerable type of employment. The passage of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was a crucial legislative move in enshrining preventative and redressal mechanisms and expanding the protection in both organized and unorganized sectors. Nonetheless, the scope of the statute in practice is still skewed, particularly in the informal sector which forms a significant part of the Indian labor force though its progressive aim. Employees of domestic help, agricultural labourers, street vendors, and gig employees typically do not work within institutional frameworks, which means that they are not well informed, lack mechanisms of complaints, and are more prone to exploitation.

This paper will discuss the structural and procedural constraints that are impeding successful application of the POSH framework in informal contexts. The study employs the doctrinal and analytical approach, which is based on statutory interpretation, judicial precedents and secondary sources to evaluate the disjunction between what the law provides and the ground realities. The results show that even though the law officially covers informal workers, its dependence on employer-led processes and ineffective local enforcement agencies seriously affect accessibility and efficacy. It is suggested in the paper that a more inclusive and context-sensitive approach to workplace safety should be adopted that can help to overcome socio-economic barriers and enhance accountability in institutions.

Keywords: Workplace, Sexual Harassment, Women, Workers, Institutional Accountability

INTRODUCTION

Sexual harassment at the workplace has become a pressing concern at the border of gender justice, labour rights, and human dignity, especially in developing economies like India where structural inequalities exist both in the formal and informal labour markets. Workplace sexual harassment is the sum of all unwelcome acts or behaviors of sexual character that degrade the dignity of an individual and either forms a hostile, intimidating or offensive atmosphere.¹ This issue was acknowledged as a violation of fundamental rights in India, particularly through judicial intervention, the milestone case of *Vishaka v. State of Rajasthan*², the establishment of a framework of legal action to prevent such abuse. This later resulted in the adoption of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, popularly known as the POSH Act.³ The law is a big move towards the provision of safe working conditions to the women as it requires preventive, prohibitory and redressal mechanisms in all work places.⁴ Nevertheless, even with its progressive approach, the law is not fully effective, especially when it comes to the huge informal sector in India.⁵

In India, the informal sector comprises a significant part of the labour force, including domestic workers, agricultural labourers, street vendors, construction workers, and, most recently, gig and platform-based workers.⁶ This is an industry where there are no formal contracts, job security, controlled working conditions, and institutional supervision. The high rate of expansion in this segment has been motivated by the liberalization of economies, urbanization and technological change, but it remains to be functioning mostly beyond the sphere of organised labour protection. This workforce is largely a portion of women who are frequently underpaid, precarious, and undervalued in society.⁷ Socio-economic vulnerabilities such as poverty, absence of education, and ingrained gender hierarchies often influence their employment terms.⁸ These not only expose them to more exploitation, but also restrict their

¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Act No. 14 of 2013, § 2(n).

² *Vishakha & Ors. v. State of Rajasthan & Ors*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932.

³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Act No. 14 of 2013.

⁴ *Ibid*, § 3,4,6,9,11.

⁵ Human Rights Watch, “No#MeToo for Women Like Us: Poor Enforcement of India’s Sexual Harassment Law”, available at: <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law> Last Visited: April 27, 2026.

⁶ *Supra* n.3, § 2(o) r/w 2(p).

⁷ *Supra* n.5.

⁸ *Ibid*.

capacity to pursue justice against the injustices in the workplace, such as sexual harassment.

The lack of formal redressal mechanisms of grievances and normalization of exploitative practices contributes to gender vulnerability in informal employment. Informal work places do not have Internal Committee as required by the POSH Act as opposed to formal establishments.⁹ Women in personal households, in the field, or as gig workers do not have a clearly defined employer-employee relationship, making it difficult to apply the provisions of the statutes.¹⁰ Also, social stigma, fear of revenge, economic dependence, and ignorance are other factors that deter harassment reporting.¹¹ Sexual harassment in this context is not only a personal complaint but a bigger structural inequality that lies within the socio-economic framework of informal labour markets.

It is against this context that a huge discrepancy arises between the legal framework that the POSH Act has laid down and its practical application on the ground. Although the Act applies to both the organized and unorganized sectors, the mechanisms put in place to enforce it are mostly geared towards formal workplaces. The use of Internal Committees assumes that there are formal organizations, which in many cases do not exist in the informal setting. In a bid to respond to this, the Act establishes the constitution of Local Complaints Committees (LCCs)¹² at the district level which is meant to serve workers in the unorganized sector. But practically, such committees are faced with the problem of lack of awareness, insufficiency of resources, bureaucratic inefficiency and inaccessibility.¹³ This leaves numerous workers in the informal sector virtually outside the protections that the law envisages.

The issue, however, is not that legal provisions are not there but that there are structural and institutional obstacles that impede their proper application.¹⁴ It is a disconnection between the promise of the normativity of the law and the realities of women in informal employment. The absence of institutional means, as well as socio-cultural limitations, preconditions a situation where legal rights are kept at the hypothetical level. This disjuncture highlights the necessity of a critical look at the POSH framework, especially in terms of its relevance and applicability

⁹ *Supra* n.3, § 4.

¹⁰ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759 : 1999 SCC (L&S) 405 (affirming broad construction of “workplace” and “employer-employee” nexus in harassment jurisprudence).

¹¹ *Supra* n.5.

¹² *Supra* n.3, § 4.

¹³ *Supra* n.5.

¹⁴ *Ibid.*

in the informal sector.¹⁵

With these issues in mind, the main aim of this study is to examine the legal and institutional framework that has been developed under the POSH Act and evaluate its effectiveness in dealing with sexual harassment at the workplace in the informal sector. The analysis aims at finding out the shortcomings of the current framework and specifically in the difficulties informal workers encounter in accessing redressal measures. In addition, it seeks to consider what reforms might be necessary to close the divide between law and practice and guarantee more inclusive and effective protection of vulnerable groups in the workforce.

Key questions are used to guide the research in an attempt to question the appropriateness and application of the POSH framework. It looks at the question of whether the legal provisions put in place are adequate to address the informal sector and the mechanisms in place under the Act are available and can act effectively. It also examines the legal, institutional and socio-cultural obstacles to the implementation of these protections. Special attention is paid to the analysis of the role and work of Local Complaints Committees, which play the key role in the redressal of complaints in the absence of formal workplace arrangements.

The paper is based on the assumption that even though the POSH Act is an initiative in defining a comprehensive and progressive law, it is not effective in defending women in the informal sector because of the systemic and structural constraints. These are low on implementation mechanisms, awareness, socio-economic factors and the natural problems of regulating informal employment relationships. The hypothesis indicates the larger issue of concern that legal reforms without the institution-supporting changes and socio cultural change might fail in their purpose.

The methodology is a doctrinal and analytical study based on the analysis of statutory provisions, judicial pronouncement, government reports and the scholarly literature. Important case laws that have explained the application and scope of the workplace sexual harassment laws are examined in an effort to analyze how the law in the field has been evolving. Furthermore, governmental and non-governmental organizations report empirically with respect to the operation of POSH framework and the difficulties encountered by workers in the informal sector. The analytical part entails a critical analysis of these sources in order to

¹⁵ *Ibid.*

establish gaps, discrepancies, and reform areas.

The study area is mainly limited to the Indian legal environment of sexual harassment in the workplace, particularly in the informal sector. It aims at giving an in-depth insight into the issues revolving around the application of the POSH Act in non traditional work environments. Nonetheless, the research has a number of limitations. Informal sector, by the very nature does not have reliable data and documentation and therefore, it is difficult to acquire accurate and comprehensive information. Also, informal employment is too varied to be able to generalize the findings to the various types of workers. Nevertheless, the research will provide valuable information on the gaps within the current framework and add to the current discussion on gender justice and labour rights in India despite these limitations.

CONCEPTUAL FRAMEWORK AND EVOLUTION

Workplace sexual harassment is a multifaceted issue that not only violates an individual's dignity but also principles of equality, justice and human rights.¹⁶ It refers to a broad range of unwelcome conduct of a sexual nature that has the purpose or effect of breaching a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It can take physical, verbal or non-verbal forms. Examples of physical harassment include unwelcome physical contact, including touching or groping. Sexual comments, jokes, or propositions, and non-verbal harassment includes gestures, the display of pornographic material, wolf-whistling, or any other form of sexual expression that is not verbal.¹⁷ There are also two main types of sexual harassment: quid pro quo and hostile work environment.¹⁸ Quid pro quo harassment occurs when sexual conduct is made a condition of employment, such as a hiring, promotion or termination decision.¹⁹ By contrast, a hostile work environment is created when unwelcome sexual conduct negatively affects a person's performance or creates an intimidating or hostile work environment.²⁰ These forms of harassment are not completely distinct and frequently co-exist in practice, suggesting that the legal approach should take a

¹⁶ *Supra* n.2.

¹⁷ *Supra* n.3, § 2(n).

¹⁸ *Ibid*, § 3. (Section 3 enumerates specific forms of harassment including physical, verbal and non-verbal conduct).

¹⁹ *Supra* n.3, § 3(2)(i)-(ii). (These sub-clauses refer to implied or explicit promises of preferential or detrimental treatment in employment as constituting sexual harassment).

²⁰ *Ibid*, § 3(2)(iv). (This provision refers to interference with the woman's work or creating an intimidating, offensive or hostile work environment).

holistic view of harassment.²¹

The development of the law dealing with sexual harassment in India has seen a progressive awareness of the issue as a fundamental rights violation.²² Until the late 20th century, there was no specific law to address workplace sexual harassment, and victims had to rely on general criminal laws, which were not suitable to deal with complexities of the workplace. This changed with the landmark case of *Vishaka v. State of Rajasthan*,²³ where the Supreme Court recognised the lack of legislative provisions and took matters into its own hands.²⁴ The case stemmed from the gang rape of a social worker, which brought into focus the predicament of women in the workplace and the inadequacy of the law to address the problem.²⁵ The Court upheld that sexual harassment is a breach of constitutional rights to equality, non-discrimination and life with dignity.²⁶

Lacking statutory provisions, the Supreme Court devised the Vishaka Guidelines, which established extensive measures aimed at preventing and addressing sexual harassment in the workplace.²⁷ These guidelines specified the setting up of complaints committees, stressed the role of preventive measures, and mandated the creation of awareness and a safe work environment by the employer.²⁸ Significantly, the Court invoked international treaties and standards, especially on gender equality and human rights, to support its actions.²⁹ The Vishaka Guidelines remained the norm until the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted which enshrined and built on these principles.³⁰ This was, therefore, a significant judgment in the history of Indian law, linking constitutional rights to the world of work.

The root of protection from sexual harassment lies in various constitutional provisions in the

²¹ *Supra* n.10.

²² *Supra* n.2.

²³ *Ibid.*

²⁴ *Ibid.* (The Court noted the absence of enacted law and proceeded to lay down binding guidelines under Articles 32 and 142 of the Constitution of India).

²⁵ *Ibid.* (The case arose from the gang rape of Bhanwari Devi, a social worker employed under the State of Rajasthan's Women Development Programme).

²⁶ *Ibid.* (The Court held the harassment to be in violation of the fundamental rights guaranteed under Articles 14, 15 and 21 of the Constitution of India).

²⁷ *Ibid.* (The Vishaka Guidelines, laid down under Articles 32 and 142, created comprehensive obligations for employers in both the public and private sectors).

²⁸ *Ibid.* (The Guidelines required employers to set up Complaints Committees, widely publicise the prohibition of sexual harassment, and take positive steps to create a safe working environment).

²⁹ *Ibid.* (The Court expressly referred to CEDAW and relevant ILO instruments to justify its interpretation of Articles 14, 15, 19 and 21 of the Constitution of India).

³⁰ *Supra* n.3.

Indian Constitution. Article 14³¹ assures equality before law and equal protection of law, which means that women must have the right to work in a place where they are free from discrimination and sexual harassment. Sexual harassment, which affects people on the basis of their gender, violates this equality. This is supported by Article 15, which prohibits discrimination on the basis of sex and allows for the State to make special provisions for women.³² This has been used to justify positive action to ensure gender justice, including workplace harassment laws.

Article 19(1)(g), which provides for the freedom to practice any profession or to carry on any occupation, trade, or business, is also engaged in sexual harassment cases. A hostile or unsafe working environment hampers the exercise of this right. The emotional toll of harassment can lead to a worker's resignation from their job or dissuade a person from taking up a particular profession.³³ Article 21, which enshrines the right to life and liberty, has been given an expansive interpretation by the courts to include the right to live a dignified life.³⁴ Sexual harassment, which impairs bodily and personal integrity, amounts to a violation of this right.³⁵ In cases like *Vishaka*, the Supreme Court has also stressed that the right to a safe workplace is a component of the right to life under Article 21.³⁶

International instruments have also played a crucial role in shaping the legal standards on sexual harassment in India.³⁷ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been instrumental in informing the conceptualisation of gender equality and state responsibilities. India acceded to CEDAW in 1993, thus undertaking to take all appropriate measures to eliminate discrimination against women in all fields, including employment.³⁸ The norms set out in CEDAW mandate the safe working environment, prevention of harassment and effective redressal mechanisms for any

³¹ Constitution of India, (1950), art. 14.

³² *Ibid*, art. 15 cl(1) and (3).

³³ *Supra* n.2. (The Court in *Vishakha* specifically observed that sexual harassment violates Article 19(1)(g) by impairing a woman's right to pursue her occupation freely).

³⁴ *Maneka Gandhi v. Union of India & Anr*, (1978) 1 SCC 248 : 1978 SCC OnLine SC 25.

³⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212 (The Court held that the right to life includes the right to live with basic human dignity and all that goes along with it).

³⁶ *Supra* n.2. (The Court held that gender equality and the right to live with dignity, both components of Article 21, are necessarily infringed by workplace sexual harassment).

³⁷ *Supra* n.2. (The Supreme Court noted the role of international instruments in its interpretive exercise).

³⁸ Convention on the Elimination of All Forms of Discrimination Against Women, (1979) 1249 UNTS 13; India ratified on 9 July 1993.

violations.³⁹ The Supreme Court in Vishaka specifically cited CEDAW to interpret the Constitution and to develop the guidelines, thereby incorporating international standards.⁴⁰

Besides CEDAW, a number of International Labour Organization (ILO) conventions and recommendations have also contributed to the development of global standards on workplace safety and dignity.⁴¹ The ILO has consistently stressed the need for safe and healthy workplaces, free from violence and harassment.⁴² While not all ILO conventions have been ratified by India, they provide valuable guidelines for policy and law-making. The acknowledgement of sexual harassment as a workplace risk is part of a global movement towards decent work and gender equality.⁴³

Thus, the interaction between the constitution and international commitments has played a vital role in the development of India's response to sexual harassment. The courts have been particularly active in interpreting fundamental rights in accordance with international standards, thus broadening the ambit of individual rights. This practice is part of a larger trend in Indian constitutional jurisprudence where international conventions serve as gap fillers and as a basis for interpreting fundamental rights.

The conceptualisation of sexual harassment in India is based on a holistic view of the phenomenon of harassment, the recognition of its implications on fundamental rights and the incorporation of international norms. The transition from a phase of legislative vacuum to a structured legal regime shows the dynamic nature of law in responding to societal needs. But the success of this structure is dependent on its implementation, particularly in those informal sectors where it may be weak. The recognition of sexual harassment as a violation of fundamental rights and human dignity provides a strong normative foundation, but translating this into meaningful protection for all workers remains an ongoing challenge.

³⁹ *Ibid.* (Article 11 of CEDAW specifically requires States parties to take appropriate measures to prevent discrimination against women in employment, including protection against sexual harassment).

⁴⁰ *Supra* n.2. (The Court held that in the absence of domestic legislation, the CEDAW obligations of India were to be read into the fundamental rights provisions of the Constitution).

⁴¹ International Labour Organisation, Violence and Harassment Convention (No. 190), 2019 (adopted 21 June 2019). (Convention No. 190 is the first international labour standard specifically addressing violence and harassment in the world of work).

⁴² *Ibid.*, art. 4 (Article 4 of the ILO Convention No.190 obliges member States to respect, promote and realise the right of everyone to a world of work free from violence and harassment).

⁴³ *Ibid.*, Preamble. (The Preamble recognises that violence and harassment in the world of work can constitute a human rights violation and is a threat to equal opportunities, and is unacceptable).

ANALYSIS OF THE POSH FRAMEWORK

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, marks an important milestone in the fight against workplace sexual harassment in India by codifying the preventive and remedial measures that were previously articulated in the Vishaka case.⁴⁴ The Act draws on the principles established in the Vishaka guidelines and aims to establish a legal framework for promoting a safe workplace for women.⁴⁵ One of the key aspects of the Act is its broad and inclusive definition of terms and coverage of employment contexts. The concept of an "aggrieved woman" has been defined in inclusive terms to cover not just women who are engaged in an employment relationship at a workplace but also those who may visit the workplace for any purpose, such as a client, customer or domestic worker.⁴⁶ This broad definition is based on the recognition that sexual harassment can occur in any workplace relationship, not just the employer-employee relationship. In excluding the need for a formal contractual relationship between the employer and the employee, the Act acknowledges the plight of women working in informal and precarious employment, though there are problems with the implementation of the Act in this sector.

The Act has an ambit that covers both the organized and unorganized sectors, thus recognising the diversity of the Indian labour market.⁴⁷ The Act includes establishments like government bodies, private firms, educational and health institutions, and goes on to include non-conventional workplaces, for example, dwelling places or houses in the case of domestic workers. Such a broad scope is essential in a country where a large number of women are working in unorganized sectors. Yet, notwithstanding this expansive statutory coverage, the law's effective ambit in the informal sector is curtailed in the face of various factors such as the lack of awareness, institutional mechanism and socio-economic barriers that women workers face.

One important institutional innovation under the Act is the Internal Complaints Committee (ICC), which is required to be set up by all employers with ten or more employees.⁴⁸ The Committee acts as the main platform for the redressal of complaints of sexual harassment at the workplace. It must be headed by a senior woman employee and shall have at least two

⁴⁴ *Supra* n.2.

⁴⁵ *Ibid.*

⁴⁶ *Supra* n.3, § 2(a).

⁴⁷ *Ibid.*, § 2(o).

⁴⁸ *Ibid.*, § 4(1).

members who are committed to the cause of women or have experience in social work, as well as an external member, belonging to a non-governmental organisation or association working in the field of sexual harassment.⁴⁹ The appointment of an external member is crucial as this is expected to maintain objectivity and provide for an independent inquiry. Where the number of employees is less than ten or where the employer is a respondent, the Act prescribes the constitution of a district level Local Complaints Committee (LCC).⁵⁰ The LCC is constituted to ensure redressal for women working in small establishments or in the informal sector. However, the efficacy of LCCs has been questioned due to factors like non-constitution, lack of training of members and the inaccessibility of women in rural and remote regions.

The responsibilities of employers under the Act are multifaceted, and demonstrate a tripartite duty to prevent, prohibit and redress sexual harassment. Prevention involves establishing a safe working environment that discourages inappropriate behaviour through awareness raising programs, training and sensitisation sessions and communicating policies against sexual harassment.⁵¹ Employers must prominently display the penalties for sexual harassment and the members of the complaints committee at the workplace. They need to conduct periodic training programs to sensitise employees about their rights and duties under the Act. Prohibition obligates employers to prohibit acts of sexual harassment in the workplace and take disciplinary action against the perpetrators. Redressal, meanwhile, requires employers to set up a fair, timely and confidential redressal procedure. This means ensuring the effective functioning of the Internal Complaints Committee, ensuring resources for investigation, and following up on the Committee's recommendations. Non-compliance with these obligations can attract penalties such as fines, and in the case of repeated non-compliance, even cancellation of the employer's business license.⁵² But in reality, many employers consider these duties to be compliance "box-ticking", which results in ineffective implementation and thwarts the purpose of the Act.

The Act sets up a redressal mechanism that seeks to establish a formal and time-bound procedure for dealing with sexual harassment. A female complainant must make a written complaint to the Committee within three months from the date of the incident (this time limit

⁴⁹ *Ibid*, § 4(2).

⁵⁰ *Ibid*, § 6(1).

⁵¹ *Ibid*, § 19.

⁵² *Ibid*, § 26.

may be extended in certain cases).⁵³ The Committee may opt for conciliation at the request of the complainant, but without a monetary part of the settlement being basis for conciliation. If conciliation is not successful or not requested, an inquiry is held. The inquiry must be conducted in a similar manner to disciplinary hearings and rules of natural justice, such as the right to be heard and the right to produce evidence, must be followed. The Act requires the inquiry to be conducted within 90 days and the report should be forwarded to the employer or district officer within 60 days.⁵⁴ While the inquiry is ongoing, the complainant can request provisional relief through transfer, leave or other mechanisms to safeguard her safety and well-being. Once the inquiry is complete, if the allegations are substantiated, the Committee may recommend a range of penalties from a written apology and warning, to termination of employment or reduction in salary. Despite the framework seemingly being solid, the process is often marred by procedural inadequacies, delays, and issues of bias or independence in the functioning of the committees.

The courts have played a vital role in strengthening the implementation of sexual harassment laws through interpretation. In the case of *Medha Kotwal Lele v. Union of India*,⁵⁵ the Supreme Court reiterated the need to adhere to the guidelines established in previous case law and mandated all states and institutions to adequately implement mechanisms to combat sexual harassment. The Court highlighted that failure to provide relevant complaint mechanisms and not constituting committees would be a breach of fundamental rights. This judgment helped to strengthen accountability and ensure that workplace environments promote gender equality and dignity. Likewise, in the case of *Apparel Export Promotion Council v. A.K. Chopra*,⁵⁶ the Supreme Court broadened the scope of sexual harassment by ruling that physical contact is not an essential element for an act to be considered as sexual harassment. The Court held that even attempts or acts that may create an intimidating, hostile or offensive work environment may constitute sexual harassment. This expanded understanding is important as it takes into account the emotional and psychological aspects of harassment, which are often ignored by legal approaches.

These judicial statements have helped to broaden the understanding of workplace sexual harassment and have shaped the statutory provisions of the 2013 Act. They emphasise the

⁵³ *Ibid*, § 9(1).

⁵⁴ *Ibid*, § 11(4) r/w § 13(1).

⁵⁵ *Medha Kotwal Lele & Ors. v. Union of India & Ors*, (2013) 1 SCC 311 : (2013) 1 SCC (Civ) 472.

⁵⁶ *Supra* n.10.

courts' active contribution to filling in the legislative gaps and ensuring the effective operationalisation of constitutional rights to equality, dignity and safe working environment. Nonetheless, while these developments have advanced the legal understanding and treatment of sexual harassment, there remain obstacles in translating legal protections into real outcomes for women, especially in the informal sector, where institutional mechanisms to address sexual harassment are weak and socio-cultural barriers exist to reporting incidents. The POSH framework, thus, is a progressive but emerging legal framework that needs to be constantly tracked, evaluated, and reformed for its effective implementation.

THE INFORMAL SECTOR IN INDIA

India's informal sector is a multifaceted, large part of the economy and it includes a broad array of jobs that are not regulated by formal institutional structures.⁵⁷ This sector lacks formal employment contracts, social security and workers' rights that are generally afforded in the formal sector.⁵⁸ While there is no universally agreed-upon definition, the informal sector is typically defined as an economic sector that is not regulated or protected by the state or formal labour laws.⁵⁹ In India, this sector employs a large proportion of the population and is integral to the country's productivity and livelihoods.⁶⁰ The informal sector is broad and includes domestic workers, street vendors, agricultural labourers and, most recently, gig economy workers, all of whom contribute to the economy but who are largely invisible as far as legal formalisation and protection is concerned.⁶¹

One of the largest sub-sectors of the informal sector is domestic workers. They are largely involved in domestic work, cleaning, cooking, child care and elderly care. While the work they perform is essential, domestic workers typically work in private spaces, making them difficult to regulate.⁶² Their work is often based on oral contracts, with little or no paperwork, which

⁵⁷ International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* 13 (ILO, Geneva, 3rd edn., 2018).

⁵⁸ The Unorganised Workers' Social Security Act, 2008 (Act 33 of 2008), Preamble; National Commission for Enterprises in the Unorganised Sector (NCEUS), "Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector" 3 (Government of India, 2007).

⁵⁹ *Supra* n.1; International Labour Organization, *Resolution Concerning Statistics of Employment in the Informal Sector*, 15th International Conference of Labour Statisticians (ILO, Geneva, 1993).

⁶⁰ NCEUS, "Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector" 1–2 (Government of India, 2007).

⁶¹ S.K. Wadhawan, "Unorganised Labour: Challenges before the Law" 44 *Journal of Indian Law Institute* 537 (2002).

⁶² The Code on Social Security, 2020 (Act 36 of 2020), § 2(24) (defining "home-based worker" and "unorganised worker"); ILO Convention No. 189 on Decent Work for Domestic Workers (Geneva, 2011) (India is a signatory but has not ratified).

makes them susceptible to mistreatment, underpayment and even slavery.⁶³ Their vulnerable position is compounded by the absence of standardised work conditions and regulation. Similarly, street vendors are another important sector of the informal economy. They are involved in small-scale retail sales, often operating in public places without official permits or proper protection against eviction and harassment.⁶⁴ They offer low-cost products and services to city dwellers, but face precarious working conditions due to uneven policy enforcement and regular clashes with authorities.⁶⁵

Farm labourers form a significant part of the rural informal sector. They are often engaged in seasonal or daily wage labour without employment security and institutional support.⁶⁶ Their employment is physically taxing and highly dependent on the weather and market forces. The lack of contracts and social protection makes agricultural labourers vulnerable to economic shocks and indebtedness. The rise of the gig economy in recent years has further contributed to the informal sector. Gig workers, such as food delivery workers, ride-sharing drivers and freelance service providers, are employed through platforms that contract them as independent workers.⁶⁷ Such a classification enables companies to avoid labour law and creates a workforce without job security, health provisions, and legal protections in the event of disputes. Socio-economic vulnerabilities and lack of protection are common in the informal sector and are also evident in the gig economy, despite its digital nature.

There are many socio-economic vulnerabilities associated with the informal sector. Lack of job security is one of the biggest problems for informal workers. Work in the informal sector is frequently precarious and intermittent, with workers depending on day-to-day or short-term work for their subsistence. This makes it challenging for workers to make long-term plans or to survive economic downturns. The absence of contracts also exacerbates this problem, with workers lacking legal protections in the face of unfair dismissal or withheld wages. Lack of social insurance arrangements such as health insurance, pensions, and paid holidays also make

⁶³ Kamala Sankaran, "Informal Economy, Own Account Workers and the Challenge for Labour Law" 47 *Journal of Indian Law Institute* 191, 196 (2005).

⁶⁴ The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Act 7 of 2014), § 3 (providing for survey and issuance of certificates of vending); Standing Committee on Urban Development, "Report on Implementation of the Street Vendors Act, 2014" 12 (Lok Sabha Secretariat, 2021).

⁶⁵ *Ibid* (Standing Committee Report) at 14–15.

⁶⁶ The Minimum Wages Act, 1948 (Act 11 of 1948), § 2(i) (defining "scheduled employment" to include agricultural work).

⁶⁷ *Supra* n.62, § 2(35) (defining "gig worker" as a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship).

informal workers particularly vulnerable in times of illness, injury or retirement.⁶⁸

Lack of education and awareness is also a key factor in maintaining the exploitation of informal workers. A significant number of workers in the informal sector lack access to education and information, which limits their awareness and understanding of their rights. This leads to acceptance of substandard working conditions and inhibits workers from accessing legal redress. Moreover, the intricate nature of laws and lack of accessibility to mechanisms that redress grievances pose further challenges for the informal sector.⁶⁹ Even in the presence of laws and regulations, without effective implementation and public awareness, the benefits of these remain inaccessible.

A power imbalance is another characteristic of the informal sector. The employer-employee relationship is often marked by marked economic and social inequalities. Employers, as providers of work and income, are able to set working conditions with little recourse. This is especially true in industries like domestic work, where the private nature of the work environment makes it difficult to monitor. Employees are often reliant on employers for not only employment but also housing and basic living requirements, locking them in a powerless position. For gig workers, the power imbalance takes the form of algorithmic management, whereby online platforms manage tasks, pricing and performance reviews, severely curtailing worker autonomy.

The feminisation of informal work further complicates the issues facing informal workers. Women make up a large share of the informal workforce, often in sectors like domestic work, agriculture and home-based manufacturing. These are often low-status and low-paid jobs, reflecting the societal undervaluing of women's work. Women informal workers are also disproportionately affected by forms of discrimination, including gender wage gaps, lack of access to resources and mobility. The combination of gender and informality poses specific risks, regarding sexual harassment and abuse.

In many cases, informal women workers are operating in environments where formal channels for redress are absent, making it challenging to address and prevent harassment. Lack of institutional backing, social stigma and the fear of retaliation hampers women's willingness to

⁶⁸ Jasoon Chelat, "From 'Gig Work' to Algorithmically Mediated Work: Shifting the Focus to Technological Control in Work Regulation" 20 *Indian Journal of Law and Technology* 1, 4 (2024).

⁶⁹ *Supra* n.58, § 3 (mandating welfare schemes on life and disability cover, health and maternity benefits, old age protection); *see also* Kamala Sankaran, *supra* note 7 at 199.

report harassment. In industries like domestic work, the private nature of the workplace adds to these difficulties, as workers may be isolated from their colleagues and peers. Or women in street vending or agriculture may experience harassment in public or semi-public environments with few avenues for redressal. The informal nature of their work may compel them to accept these conditions in order to earn a living.

Furthermore, the "second shift" of paid and unpaid work also impacts women in the informal sector.⁷⁰ Beyond their livelihood activities, women generally shoulder the responsibility for domestic work and care work, which restricts their opportunities to improve their work conditions or participate in training. This creates a vicious cycle of economic vulnerability and exclusion, contributing to gender inequalities in the labour market. The absence of gender-sensitive policies and measures to cater to the needs of women informal workers further highlights the systemic problems.

Finally, the informal sector in India is a wide and varied sector that significantly contributes to livelihoods and the economy. Yet, its informal status places workers at risk of various socio-economic challenges, such as job insecurity, limited awareness and power imbalances. The feminised nature of informal sectors also exacerbates these issues, underscoring the need for a more gender-responsive and inclusive legal framework. To overcome these challenges, it is not sufficient to provide legal protection but also to provide effective means for their enforcement.

LIMITATIONS OF THE POSH FRAMEWORK IN THE INFORMAL SECTOR

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,⁷¹ also referred to as the POSH Act was passed with the purpose of ensuring a good and safe working environment to women by ensuring that cases of sexual harassment are prevented and addressed.⁷² Although the Act is well designed and broad based in that it has made its application to both the organized and unorganized sectors, its application in the informal sector has exposed its structural and functional weaknesses. These are based on the nature of informal employment such as the absence of formal organizational frameworks, lack of responsibility

⁷⁰ Arlie Hochschild and Anne Machung, *The Second Shift: Working Families and the Revolution at Home* 3–4 (Penguin Books, New York, 2nd edn., 2012); Government of India, Ministry of Statistics and Programme Implementation, *Time Use Survey 2024* 18 (MOSPI, New Delhi, 2024) (reporting that women spend an average of 426 minutes per day on unpaid domestic and care work).

⁷¹ Act 14 of 2013.

⁷² *Supra* n.1.

on the part of the employer, socio-economic weaknesses, and the deep-rooted social inequalities. Consequently, the legal security of the POSH framework is still a very far-fetched reality to a significant percentage of women employees in India.

The absence of institutional mechanisms, especially the absence of Internal Complaints Committees is one of the most basic constraints of the POSH framework in the informal sector. According to the Act, an Internal Complaints Committee should be constituted in all workplaces with ten or more workers.⁷³ Nevertheless, informal workplaces like households that hire domestic workers, small farms, street-based jobs, and websites that employ gig workers generally fail to reach this level or are not recognized as workplaces. As a result, the necessity to create an Internal Complaints Committee becomes virtually inapplicable. In many instances where informal sector employers hire more workers than the recommended limit, they tend to non-compliant either because they are not aware of the laws or because of non-regulatory measures or simply because they do not want to accept the law. The lack of such committees denies the women workers an immediate, convenient, and workplace-based grievance redressal system which would compromise the preventive and remedial goals of the Act.

To counter the drawbacks of Internal Complaints Committees in disorganized workplaces, the POSH Act also gives way to the creation of Local Complaints Committees at the district level to handle grievances of women who work in the informal sector.⁷⁴ The operation of these Local Complaints Committees has not been very effective though. The main problem is that these committees have not been well implemented in districts. Local Complaints Committees in most areas do not even exist or they are only on paper without sufficient infrastructure, trained staff and clarity of operation. Where they do exist, and where such committees are operational, they are often overwhelmed with administrative inefficiencies, scarcity of resources and limited jurisdictional clarity, which impede their ability to respond effectively to complaints.

The ignorance about the existence and the role of Local Complaints Committees is another issue that aggravates the problem. Women in the informal sector, especially the illiterate or those in the marginalized groups are less aware of their legal rights as stipulated in the POSH Act or the redressal mechanisms. Information sharing about these committees has been sub par and

⁷³ *Supra* n.48.

⁷⁴ *Supra* n.50.

little outreach or contact with vulnerable groups is being reached. Additionally, accessibility remains a significant challenge. Local Complaints Committees are usually situated at the district headquarters, which might be far apart the place of work or home of informal workers. To women with financial limitations, transport, and family limitations, using these committees is an overwhelming challenge. This way, the desired system of decentralized grievance redressal does not fulfill its role appropriately.⁷⁵

Procedural barriers are also very important in curbing the effectiveness of the POSH framework in the informal sector. The procedures of complaint in the Act are associated with a number of formalities such as filing of written complaint within a stipulated period of time, attending investigations and providing evidence.⁷⁶ To the women in the informal sector, most of whom might be illiterate or not conversant with the legal processes, these demands can be daunting. The burden to present the harassment experience using formal legal terminology and the challenges of going through bureaucracies tend to scare off the victims of harassment in filing complaints. In addition, the strict deadlines dictated in the Act fail to consider the psychological trauma, fear, and social pressures that can slow down reporting.

Fear of retaliation is another significant procedural barrier. In the informal work environment, the employer-employee relationship is usually based on dependency and power imbalance. Women employees can depend on their employers to provide livelihood, shelter or social security, and hence can be exploited. Complaining of being sexually harassed may result in instant firing, denial of salaries and other retaliation. Several factors make women accept harassment without alternatives since there are no formal employment contracts or legal provisions against unfair dismissals, and therefore they may lose a source of livelihood. This fear is worsened by the fact that there are no good systems of witness protection and support.⁷⁷

There is also social stigma that discourages women to report cases of sexual harassment. In most societies, any talk about matters touching on sexual behavior is a taboo and victims of harassment are mostly victim-blamed and their character attacked. Women can be afraid to lose

⁷⁵ *Supra* n.10. (The Supreme Court reaffirmed that ensuring women's access to a safe working environment is integral to their rights under Articles 14, 19 and 21 of the Constitution, underscoring that procedural inaccessibility defeats the rights framework).

⁷⁶ *Supra* n.50. (The provision requires the written complaint to be filed within three months from the date of the incident or the date of the last incident in the case of a series of incidents).

⁷⁷ *Constitution of India*, 1950, art. 21. (The right to life and personal liberty, including the right to livelihood, is violated where workers are coerced into silence under the threat of retaliatory dismissal, a right the POSH Act's non-retaliation provisions were meant to protect).

their reputation, social rejection or negative impact on their families. The responsibility of upholding family honor is skewed towards women in patriarchal societies, something that demotivates them to forward their complaints. This cultural setting is a great disappointment to the reporting and redressal procedures as envisioned by the POSH Act.

The other important drawback of the POSH framework to the informal sector is the issue of enforcement. The Act is greatly based on employer-led compliance and self-regulation, which is weak in informal arrangements where employers are not registered or controlled. The mechanisms to monitor adherence to the provisions of the Act especially in respect to the awareness programs, formation of committees, and prompt redressal of complaints are absent. Government officers tasked with the responsibility of ensuring implementation are usually constrained in terms of resources and are not able to make periodic checks or audits.

The low responsibility of employers also contributes to the problems in enforcement. In the informal sector, the employer is sometimes an individual or small organization that is out of the reach of any formal system of regulation. The fact that there are no penalties that can be imposed in case of non-compliance or the fact that the current penalties are not enforced enables employers to escape their obligations under the Act. Furthermore, the nature of informal employment is temporary, and it is hard to have employer liability or take legal action. The privacy of the workplace (i.e. the house) is another challenge in collecting evidence and intervention by law enforcers in situations involving domestic workers.

The vulnerability of women in informal settings has been on a number of occasions pointed out by the judicial observations albeit indirectly.⁷⁸ In the case *Independent thought v. Union of India*,⁷⁹ the Supreme Court touched upon the problems of child marriage and marital rape, saying that the dignity and bodily autonomy of young girls should be protected. Although the case does not directly relate to the sexual harassment in the workplace, it highlights the socio-legal environment, in general, where women, especially marginalized ones, are systemically vulnerable. The ruling indicates judicial awareness of how gender, age, and socio-economic status intersect to influence the experiences of women with exploitation and abuse. These observations can be applied to the constraints of the POSH framework by showing that a more context-sensitive and nuanced approach to sexual harassment in informal settings is required.

⁷⁸ *Supra* n.1.

⁷⁹ *Independent Thought v. Union of India*, (2017) 10 SCC 800 : (2018) 1 SCC (Cri) 13.

Intersectionality is a key concept in the examination of limitation of the POSH framework in informal sector. Female workers do not exist as a homogeneous group; their experiences are determined by various and intersecting identities, such as caste, class, religion, and status of migration. Women in the lower castes or with poor economic backgrounds, find themselves in the worst kind of informal jobs where they are more at risk of exploitation and are less likely to access the legal justice. Gender based harassment can be compounded with caste based discrimination and this results in more forms of vulnerability that are not well addressed under the POSH framework.

There are other problems affecting migrant women workers because of their displacement, absence of social support networks, and not knowing the local legal system. Their inability to seek redress is further limited by language barriers, absence of documentation and fear of authorities. Migrant workers are in most situations hired via intermediaries or contractors and so, identification of the employer and assigning responsibility is difficult. The POSH Act fails to cater to these complexities, leaving this section of the workforce unprotected.

Likewise, women who do gig and platform based work are in a regulatory grey zone in which the old definitions of employer-employee do not apply. The lack of legal acknowledgment of such relationships hinders the use of the POSH framework and introduces uncertainty on who should prevent and respond to sexual harassment. Such dynamic character of work requires some reconsideration of the current legal frameworks to make them relevant and effective.

Although POSH Act is a major milestone in combating sexual harassment in the work place, especially in the informal sector, its operations are limited due to various structural, procedural and cultural constraints. The lack of institutional mechanisms like Internal Complaints Committee, ineffective Local Complaints Committee, the procedures, difficulties in enforcing the Act and the intersectional vulnerability of women workers all negatively impact on the Act implementation. To resolve these constraints needs a multi-faceted strategy that entails fortification of institutional structures, improving awareness and access, streamlining processes, promoting accountability, and incorporating an intersectional approach in policy making. In the absence of these, the aim of ensuring a safe and fair working environment to all women regardless of the type of work they are engaged in will be elusive.

COMPARATIVE ANALYSIS

Comparative study of legislations dealing with workplace sexual harassment shows that there are convergences and divergences in the way jurisdictions think of the responsibility of the

employer, the institutional processes and the level of protection, and the results can be used to enhance the Indian system. Sexual harassment in the United States is considered as a case of Title VII of the Civil Rights Act of 1964, which forbids any employment discrimination patterns regarding sex.⁸⁰ Sexual harassment has been clearly enshrined as a type of sex discrimination by judicial interpretation, including landmark cases like *Meritor Savings Bank v. Vinson*,⁸¹ and *Faragher v. City of Boca Raton*,⁸² to include quid pro quo harassment and hostile work environment. One salient characteristic of the U.S. system is the doctrine of employer liability to differentiate among harassment by supervisors and co-workers.⁸³ Employers are vicariously liable to supervisor harassment leading to a tangible employment action, and in instances where there is no such action, employers may affirmatively defend themselves by proving that they took reasonable care to prevent and immediately remedy harassment and that the employee failed to avail himself of preventive or remedial opportunities unreasonably.⁸⁴ This strategy will encourage employers to put in place strong internal complaint systems, regular training and anti-harassment policies. Critics, though, claim that turning to internal grievance systems can put vulnerable employees, especially those in precarious or informal jobs, at a disadvantage, as they might fear reprisal or be unaware of their rights.

Equality Act 2010 in the United Kingdom gives a legal structure in which most anti-discrimination legislation is amalgamated and further expressly outlaws harassment based on any of the protected characteristics such as sex.⁸⁵ The Act broadens the definition of harassment to encompass unwanted conduct that infringes the dignity of the person or causes an intimidating, hostile, degrading, humiliating or offensive working environment.⁸⁶ The liability of the employer according to the laws of the UK is also quite strict; the employers are also vicariously liable to the act of harassment and discrimination perpetrated by their employees during the employment period unless the employer can prove that he did all the possible to avert the act.⁸⁷ This reasonable steps defense puts an active duty on employers to take effective preventive action, including clear policies, training programs, and immediate investigation

⁸⁰ The Civil Rights Act, 1964 (Pub. L. 88-352, 78 Stat.241), Title VII, § 703(a).

⁸¹ *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

⁸² *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

⁸³ *Ibid*; *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

⁸⁴ *Ibid*.

⁸⁵ The Equality Act, 2010 (c. 15) (UK), § 26.

⁸⁶ *Ibid*, § 26(1)(b).

⁸⁷ *Ibid*, § 109.

procedures. It is interesting to note that recent trends in the UK have prompted a more proactive preventive responsibility, as suggestions and legislative reforms seek to place a more explicit responsibility on employers to avoid sexual harassment, instead of simply reacting to allegations. Although the UK framework has a broad scope, there is still a difficulty in ensuring proper enforcement, especially to workers in non-standard types of employment, including gig workers and zero-hour contract employees, who might not be subject to a more traditional employer-employee relationship.

The Convention No. 190 on Violence and Harassment, adopted by the International Labour Organization in 2019, is a major step towards acknowledging the right of all to a violence- and harassment-free world of work.⁸⁸ The Convention uses a broad and encompassing definition of the world of work, such that it encompasses not just the traditional workplaces but also any and every place where work-related activities take place including commuting and digital places.⁸⁹ It directly acknowledges the fact that women and other vulnerable population are hit often and requires a gender-sensitive approach. Significantly, Convention No. 190 offers protection to every worker, regardless of their contractual relationship, the informal sector, domestic workers, interns, volunteers, and job seekers.⁹⁰ It highlights that there is a mutual duty of governments, employers and workers to prevent and deal with harassment, requiring that they implement comprehensive policies, awareness campaigns, easy to use complaint systems, and effective solutions. The Convention also emphasises the need to tackle some of the underlying risk factors, including power imbalances, inequality based on gender, and precarious employment circumstances. Although the Convention is a global standard, its success is based on the ratification and implementation by the member states and most countries, and India is no exception, are not fully compliant with its provisions within their domestic laws.

Comparative analysis of these frameworks brings out some lessons that India can learn in enhancing its strategy towards sexual harassment at workplace especially in the informal sector. Although the Indian law is progressive in its acceptance of sexual harassment and the creation of Internal Complaints Committees and Local Complaints Committees,⁹¹ it has the major setback in the implementation, particularly with regard to employees who are not

⁸⁸ International Labour Organization, *Violence and Harassment Convention*, 2019 (No. 190), art. 1.

⁸⁹ *Ibid*, art. 3.

⁹⁰ *Ibid*, art. 2(1).

⁹¹ *Supra* n.3, §4,6.

employed through formal structures. Among the lessons imparted by the United States and the United Kingdom is the focus on the responsibility of employers and the development of effective incentives to take preventive measures. India might positively affect the strengthening of the employer liability standards and make compliance not only procedural but also substantive and regularly monitored and enforced. Moreover, the idea of a reasonable steps defense, which exists in the UK, may be modified to help employers embark on proactive action at the same time hold anyone accountable.

The other important lesson that arises is related to the ILO Convention No. 190⁹², especially its inclusive and broad definition of the world of work. The legal system in India needs to shift its focus off the formal workplace and its realities of informal employment, where institutions are frequently lacking. The improvement of the operation of Local Complaints Committees, their increased accessibility and the provision of sufficient resources and training are crucial measures in this direction. Additionally, community-based interventions and awareness campaign is essential to empower informal sector workers who might not be aware of their rights and who may be intimidated by the prospect of social or economic consequences.

Moreover, the comparative frameworks accentuate the essentiality of a preventative, as opposed to a strictly reactive, approach. Although the law of India requires awareness and training, enforcement of the practices is not consistent. Based on experiences in other nations, India can institutionalize routine training sessions, inculcate gender sensitization in school curriculums, and instill a culture of zero tolerance against harassment. The use of technology as a means of supporting reporting and monitoring systems could also be considered to bridge access gaps.

The comparative analysis underscores the importance of the holistic and intersectional approach that involves consideration of the structural factors that lead to vulnerability, including gender inequality, economic insecurity, and social stigma. Legal changes should be supported with more extensive socio-economic policies that empower the disadvantaged workers and diminish the power disparities. In this respect, harmonizing domestic legislations with international provisions, specifically those provided in Convention No. 190, would not only enhance the legal framework, but also be an indication of commitment towards the

⁹² *Supra* n. 88.

provision of dignity and safety to all employees.

ROLE OF JUDICIARY AND POLICY GAP

The contribution of the judiciary towards solving the issue of sexual harassment in the workplace in India has been transformational and groundbreaking, especially in creating the legal and institutional structure that is presently in existence. Judicial activism has been instrumental in acknowledging sexual harassment as denial of fundamental rights, thus adding to the areas of constitutional protection that can be enjoyed by women.⁹³ The judiciary had to fill the gap in the law by progressive interpretation of the constitutional provisions including the right to equality, life, and dignity before 2013 when specific legislation was created to address the legal vacuum.⁹⁴ *Vishaka v. State of Rajasthan* was a landmark case when the Supreme Court established a series of guidelines to stop and address sexual harassment at work.⁹⁵ These codes not only established the definition of sexual harassment, but they also set responsibilities upon employers to establish the redressal mechanisms of complaints, and in this way, the preventive measures became institutionalized.⁹⁶ This court action was an example of how courts can take a proactive role in shaping policy in reaction to acute social problems, particularly where the legislature is slow.⁹⁷

Later cases helped to build on this framework, adding to the responsibility of the employers and the significance of safe working environment.⁹⁸ The judiciary has repeatedly made it clear that there can be no equality between genders unless women are free to work without fear of harassment or discrimination. The meaning of workplace and employee has also been broadened by the courts to encompass a broad spectrum of employment relationships in an attempt to extend protections to the vulnerable groups.⁹⁹ Nonetheless, even with such progressive interpretations, the influence of judicial activism is not evenly spread, especially

⁹³ *Supra* n.10. (The Supreme Court held that every act of sexual harassment in the workplace violates the fundamental rights of women under Articles 14, 19, and 21 of the Constitution of India); Constitution of India, 1950, arts. 14,19,21.

⁹⁴ Constitution of India, 1950, arts. 14,19,21; *Supra* n.1. (the Supreme Court read the right to work with dignity into the guarantee of equality and the right to life, filling the then-existing legislative vacuum).

⁹⁵ *Supra* n.1.

⁹⁶ *Ibid*, (The guidelines imposed obligations on employers to prohibit sexual harassment, establish complaints committees, and notify employees of the prohibition).

⁹⁷ Upendra Baxi, "Judicial Activism and Judicial Restraint" 23 *Journal of Indian Law Institute* 177 (1981)

⁹⁸ *Supra* n.55. (The Supreme Court, noting persistent non-compliance with the Vishaka guidelines across states, issued further detailed directions to ensure the effective implementation of the framework for prevention and redressal of workplace sexual harassment).

⁹⁹ *Supra* n.10; Constitution of India, 1950, art. 15(3) (permitting special provisions for women).

in the area of informal sector, where there are ineffective or absent enforcement mechanisms. Although courts have made directives and guidelines, their enforcement is mostly left to the executive agencies and the local authorities, who are either unwilling or incapable of effectively enforcing them.¹⁰⁰

Among the most prominent issues is the loopholes in the application of the legal framework. Despite the fact that the passage of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was a direct result of judicial activism,¹⁰¹ its application in practice has been uneven across various industries. Even in the organized sector, bigger institutions might have Internal Complaints committees and formal procedures but even there, compliance is normally superficial. Conversely, the informal sector experiences much greater challenges because of lack of organized workplaces, ignorance and socio-economic vulnerability of employees. The Local Complaints Committees, which were conceived to be a way of workers lacking access to an institutional way, have failed to work well in most of the districts. Lack of funding, untrained staff, and outreach have all been serious obstacles to their availability and performance.¹⁰²

These difficulties are further worsened by the absence of a standardized application of such laws. The implementation of the law has been applied differently by different states and by different districts hence the difference in protection and redressal. There is no adequate monitoring or accountability system to check that the employers are adhering to statutory requirements in most instances. Checks and audits are uncommon and there are hardly any penalties to non-compliance.¹⁰³ This puts it in a situation where there is a paper presence of legal provisions but which do not translate into substance in protecting victims. In addition, the bureaucracies of making complaints, fear of retaliation and stigmatization of victims make many women avoid justice. The judiciary, though proactive, can only do so much and only adjudicate cases presented to it and is unable to act systematically unless all three branches of

¹⁰⁰ *Supra* n.55. (The Court directed that all public and private sector organizations must establish complaint mechanisms, extending the protection of the Vishaka guidelines to a wide range of employment relationships).

¹⁰¹ *Ibid*, (The Court specifically criticized state governments and district authorities for their failure to enforce the Vishaka guidelines and directed effective implementation); Namrata Vyas, "Implementation of Sexual Harassment Law in India: Gaps and Challenges" 56 *Journal of Indian Law Institute* 421 (2014).

¹⁰² *Supra* n.3, Preamble. (The Act was enacted to supersede the Vishaka Guidelines and provide a statutory framework for prevention, prohibition, and redressal of workplace sexual harassment); *Supra* n.1.

¹⁰³ *Supra* n.3, §6-11 (Local Complaints Committees); Anuja Agrawal, "Gendered Workplaces: Ethnography of Public and Private Spaces" 38 *Sociological Bulletin* 193 (1989); Prabha Kotiswaran, "The Sexual Harassment of Women at Workplace Act, 2013: A Feminist Assessment" *Annual Survey of Indian Law* 249 (2013).

government work together.

Government role therefore plays a pivotal role in closing these gaps in policies and making the legal framework implemented effectively. This does not simply entail passing of laws, but also establishing strong institutional mechanisms, provision of sufficient resources, and periodic monitoring and evaluation.¹⁰⁴ The need to create awareness campaigns is critical in informing the employer and the employees of their rights and duties. The quality of redressal mechanisms can be enhanced through training programs of members of complaints committees, and law enforcement officials. Also, streamlining of processes and making them easier, especially the ones used by informal sector workers can help to promote more reporting and accountability. The government should also make sure that the information about complaints and how they are solved should be systematically gathered, and analyzed to see patterns and areas that should be interfered with.

Non-governmental organizations have been complementary to these problems, especially to access marginalized and vulnerable groups. NGOs can be seen as facilitators, offering legal advice, counseling, and help to those victims who otherwise would be unable to access the formal legal process. They are also significant in raising awareness, policy reforms, and holding institutions accountable.¹⁰⁵ In the informal sector where the state mechanisms are most of time ineffective or non-existent, NGOs can be an invaluable assistance to workers in cases of harassment. Their grassroots presence is able to reveal issues that might not be evident on the policy level and promote more inclusive and responsive solutions.

In spite of these, there are still huge gaps in providing a safe and fair working environment to all women. The disconnect between what is pronounced on the judicial level and what is implemented on the ground level shows that a more holistic approach that incorporates all stakeholders is necessary. Although the judiciary has provided a solid foundation by its active interventions, it is up to the government, employers and the civil society to translate the principles into practice. Better coordination among these actors, accountability and focus on the needs of vulnerable employees are all necessary measures to fill the gaps that exist in current policies. With long-term and concerted action, and only then with the promise of the

¹⁰⁴ *Supra* n.3, § 26 (penalty for non-compliance by employer, providing for a fine up to rupees fifty thousand). (The lack of routine inspection and audit mechanisms renders even available penal provisions largely ineffective in practice.)

¹⁰⁵ *Supra* n.55. (The Supreme Court emphasized that the responsibility to operationalize the redressal framework rests primarily on the executive arm, including state governments and district-level authorities.)

legal protections in practice, not just the theoretical claim to a safe workplace will be guaranteed to all.

REFORMS AND RECOMMENDATIONS

The continued existence of sexual harassment in the workplace of the informal sector in India reveals the necessity of structural, legal and policy based reforms that transcend formalistic compliance and goes beyond formalistic compliance towards ground realities. Although the current legal framework offers a base, its success is also highly watered down by the implementation, accessibility and awareness loopholes. As such, a wholesome reform agenda should aim at empowering institutional controls, streamlining processes, broadening coverage, and capitalizing on technology to guarantee meaningful protection to vulnerable workers.

Among the most important reforms is the empowerment of the Local Complaints Committees (LCCs) that is the main redressal institution of women in the informal sector. Although LCCs have statutory significance, they tend to be dysfunctional, under-resourced, or non-existent, especially in the rural and semi-urban locations. To build these committees, a multi-pronged strategy is necessary, which involves the right constitution at the district level, sufficient funding and periodic check-up by the state authorities. Recruitment of members should also be gender sensitive, legally conscious and independent to facilitate fair and balanced proceedings. There should be regular training programs that would equip LCC members with skills required to effectively and sensitively handle complaints. Moreover, accountability and trust of people can be increased by transparency in their operations such as keeping records and publishing annual reports. Informal workers can hardly enjoy the benefits of legal protection till strong LCCs are created.

It is also crucial that the complaint system should be simplified, and now it is a major obstacle that prevents victims in the informal sector. The formalities involved such as written complaints, strict schedules and formal inquiry procedures usually scare away women who might be illiterate, unknowledgeable about their rights or even fearful of being punished. Reform needs to be directed to make the process of complaints more accessible and easy to use. This involves openness to oral complaints, third-party reporting, where the NGOs or representatives of the community can bring complaints, and loosening the strict procedural conditions. Designing the process must be in a way that facilitates the socio-economic realities of informal workers and that the process is confidential and does not lead to victimization.

Moreover, the services of legal aid and counseling at the early stages may empower the victims to take the first steps and raise their complaints without fear and misunderstanding.

Awareness campaigns are key to the gap between what is stated in the law and what is being implemented. A large percentage of those in the informal sector do not know their rights according to the law or how they can seek redress. Awareness campaigns should be done at grassroots level and with the help of local languages and culturally acceptable means like community meetings, street plays, radio programs and even through mobile outreach campaigns. These campaigns can be further empowered by working with local self-government bodies, women and trade unions and non-governmental organizations. The informal sector employers and contractors should also be sensitized on their role such as the prevention of harassment and facilitation of complaint mechanisms. Awareness should not be an exercise but a sustained process with the idea of trying to ensure that there is a culture of dignity and respect in the workplace.

The introduction of gig and platform workers into the sphere of legal safeguarding against sexual harassment is another important sphere of reform. As the gig economy expands at an incredible rate, many women are participating in platform work (delivery services, domestic help, and freelance jobs). Regardless, their indeterminate employment status tends to bar them the protection of traditional labour laws. Legal changes should acknowledge the existence of gig workers as a separate group and apply anti-harassment laws to the workplaces of platforms. This involves placing responsibility on platform firms to set up grievance redressal systems, safe working environments, and promptly respond to complaints. The lack of such protections does not only expose gig workers to exploitation, but it also negates the bigger agenda of providing safe working environments to everyone.

Gender-sensitive labour policies need to be developed to deal with structural injustices that foster workplace harassment. The nature of work of the informal sector workers is usually marked by power inequities, no job security, and no form of regulation. Labour policies should be aimed at these weaknesses by ensuring that they encourage fair wages, social security benefits and safe working conditions. Incorporation of gender views in labour laws can aid in the identification and reduction of female worker specific risks. An example is that policies must enforce safe transportation, adequate sanitation facilities and mechanisms to overcome harassment in decentralized work places like homes and fields. Also, the intersectionality of

gender and caste, class and migration status should be considered so that the policies can be comprehensive and sensitive to the various experiences of vulnerability.

Implementation of digital reporting systems is a radical change of reform that can contribute greatly to increasing access to justice by informal workers. The barriers which may be geographical, social and procedural can be overcome using technology through giving confidential and easy to use platforms to report harassment. Victims can complain, monitor their status, and seek help without having to be physically present, and this can be facilitated through mobile applications, helplines, and online portals. These should be developed in a multilingual format, user-friendly interface, and enable data privacy and safety. It is possible to collaborate with government agencies and civil society organizations that may help to popularize digital tools. Yet, it is also vital to consider the digital divide and make sure that employees receive the required equipment and get digital literacy skills. The technological systems need to be supplementary and not substituting the traditional systems as no worker should be left out because of the technological barriers.

Besides these particular reforms, a wider change of perspective is needed to tackle sexual harassment at work in the informal sector. This involves the shift of a reactive model to a preventive one whereby the focus is made on the establishment of safe and inclusive workplaces instead of simply responding to complaints once they have been reported. Frequent monitoring, data gathering and evaluation of the impact can be used to address the gaps and make policy decisions. Judiciary is particularly important in the interpretation of laws which should occur progressively to make sure that the rights of informal workers are not compromised. Meanwhile, the government, civil society, and private stakeholders should cooperate in order to develop a coherent and efficient response.

To resolve the limitations of the existing framework, a holistic and inclusive reform strategy to focus on accessibility, accountability, and awareness is needed. Some of the important steps towards this direction are strengthening Local Complaints Committees, streamlining complaint processes, increasing awareness, identifying new types of employment, making policies gender sensitive and using digital technology. When properly enacted, these reforms will help in closing the gap between law and reality wherein the right to safe and dignified working environment would no longer be a mere statutory declaration but a reality to all employees in the informal sector.

CONCLUSION

The paper has discussed the legal and institutional framework that regulates sexual harassment in the workplace in India with a special emphasis on women in the informal sector. It concludes that although the understanding of sexual harassment as a form of violating fundamental rights has changed considerably since the landmark ruling in *Vishaka v. State of Rajasthan*, the shift towards statutory protection of the right under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, has failed to deliver protection to all types of workers. The study points out that the informal sector that forms a huge portion of the workforce remains structurally disadvantaged because of lack of awareness, lack of employer-employee relationship and access to institutional grievance redressal systems. Even though the Act officially includes within its coverage the unorganized sector, the use of Internal Complaints Committees and Local Complaints Committees has not been effective in practice, especially in areas where workplaces are decentralized, unregulated, or privately owned.

The analysis also shows that the complexities of the procedures, socio-economic susceptibilities, and cultural stigma are considered to play a major role in discouraging sexual harassment reporting in informal situations. Women who work as domestic workers, agricultural workers and gig workers are victims of power imbalance which prompts them not to seek legal redress. Weak monitoring mechanisms and lack of accountability at the district level make the implementation gaps compound as Local Complaints Committees are either non-functional or inaccessible. This has made the pledge of safe working environment more of a dream to a large number of the female workforce. The courts, such as in *Medha Kotwal Lele v. Union of India* have long been highlighting the need to ensure good enforcement but because of the systemic barriers, it is clear that the intent of the law is not enough unless accompanied by solid institutional backing.

Simultaneously, the paper recognizes that the POSH Act is a forward-thinking legal framework that has contributed to the discussion of dignity at the workplace and gender justice in India to a considerable degree. The law has provided a much-needed platform to curb misconduct at workplaces by clearly defining sexual harassment, requiring preventive actions, and establishing the responsibility of employers to this problem. Its design however indicates an implicit supposition of organized workplaces and recognizable employers, restricting its application in informal use. Such disparity between legal inclusion and actual access also

highlights the necessity to get beyond a one-size-fits-all framework and implement a more complex strategy that takes into consideration the realities of informal work.

The results indicate that structural changes that would enhance the implementation framework of the law are urgently needed. This involves re-establishing Local Complaints Committees by funding them, training and supervising them and streamlining the procedures of complaints to make them more accessible to the marginalized workers. Urgent improvement of awareness by means of targeted outreach programs, especially in rural and semi-urban regions, where the knowledge of legal rights is low, is also needed. The effectiveness of redressal systems can be enhanced by adding digital reporting systems, increasing the role of civil society organisations and providing better coordination between labour authorities and local governance institutions. Notably, the reforms should target the systemic socio-economic factors underlying the vulnerability such as job insecurity, absence of social protection, and systemic gender hierarchies.

Finally, the challenges of workplace safety of women in the informal sector should be addressed by a transition towards the formal equality to substantive equality. Legal protection must be accompanied by practical accessibility, institutional responsiveness, and social empowerment. It should not just be the presence of a legal system but its practical application in the lives of people it is aimed at saving. The process of closing the divide between law and lived experience requires a long-term effort on the part of the state, the judiciary, the employers and the society. Such an all-encompassing, all-inclusive strategy is the only way the dream of dignity, safety and equality at the workplace can be successfully achieved by all women regardless of the type of employment they do.