

CULMINATING REVIEW OF
OUR FOUR-YEAR STUDY:
2020-2023

2024 EDITION ●

STOP
SEXUAL
HARASSMENT
SMNFT

Review on the Application of The Sexual
Harassment of Women at Workplace
(Prevention, Prohibition and Redressal) Act,
2013 in the Formal and Informal Sectors.



About Us

Eight Goals One Foundation (8one)

Eight Goals One Foundation (8one) was founded to support the eight goals that the foundation has identified as crucial in its mission for humanity. These goals include - Well-being, Gender Equality, Peace, Environment, Hygiene, Nutrition, Education and Employment. It aims to affect pragmatic and sustainable progress across these goals with a focus on social development over other interpretations of the term 'development'.

In addition to grassroots programmes, the Foundation engages with governments, inter-governmental organisations as well as various civil society organisations, universities, and development agencies in India and across the world, for policy and social sector initiatives. 8one actively seeks and builds panoptic collaborations across demographics and geographies to create synergies for meaningful dialogue and action.

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CULMINATING REVIEW OF OUR FOUR-YEAR STUDY: 2020-2023

Review on the Application of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the Formal and Informal Sectors.

Publisher: 8one Books

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ISBN: 978-93-6699-246-4

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Printed and bound in New Delhi

First Edition: 2021

Second Edition: 2022

Third Edition: 2023

Fourth Edition: 2024

Acknowledgements

We extend our heartfelt thanks to the entire team who have worked tirelessly on this Review. Their collective efforts, dedication, and expertise have been the cornerstone of this publication, and it is with deep gratitude that we acknowledge their contributions.

Special recognition is due to Sudipta Kashyap, Surbhi Rawat, Kinshuk Kandpal, and Varanya Dwivedi for putting in the hours and their extensive work across all areas of this Review.

Our sincere gratitude goes to the volunteers from the Executive and Non-executive MBA batches of Jagdish Sheth School of Management (JAGSoM) for their relentless efforts. Their dedication in gathering data and reaching out to generate awareness on-ground has provided us with crucial insights, particularly in bringing to light the experiences of informal sector workers.

We are immensely thankful to Hrithika Veenus and Shivani Bagdai from TriChambers for granting us corporate access. Their support has been instrumental in enriching our understanding of workplace dynamics and the broader implications of sexual harassment in corporate settings.

Acknowledgement is also due to Aditya Awasthi, Angad Singh Malik, C. Karthika Sajeev, Daya Bhatt, Deven Merani, Isha Kakkad, Manvi Sherawat, Raghuram Alamuri, and Ramit Singh Chimni from the 8one team. Their exemplary work and insights have significantly contributed to the depth and breadth of this report.

We are profoundly grateful to UN Women and other notable organisations, including the Equal Employment Opportunity Commission (EEOC), the International Labour Organization (ILO), and the Global Alliance Against Traffic in Women (GAATW) who have actively and meaningfully contributed to the global discourse on workplace harassment.

Finally, our deepest appreciation goes to the inspirational women at WICCI and G100. Their dedication to creating safer and more equitable workplaces is truly commendable. We extend our utmost gratitude to Dr. Harbeen Arora for her visionary leadership and for providing a platform that continues to champion the rights and well-being of women in the workplace.

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1

Foreword



Aparna Nayyar

*Core Team Member,
Eight Goals One Foundation*

1. At the 8one Foundation, we have dedicated the last four years, from 2020 to 2023, to study a subject that sits at the very core of workplace integrity and dignity – the prevention of sexual harassment. With a consistent focus on highlighting the areas where the implementation of the Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act of 2013 (hereinafter referred to as, “the Act”) needs strengthening. With the help of this study, we have ensured to report our findings in ways that they be used as tools by every member of society to know of and exercise their rights. In doing so, we have fostered an environment of awareness and action. This edition of our Annual Review on the State of Sexual Harassment in India is not just a testament to our endeavours but a foot-in-the-door for future advocacy.
2. In talking about the Act, it is pivotal to address an aspect that has inadvertently become a barrier to the very cause we champion – the acronym “PoSH.” Language shapes perception, and unfortunately, “PoSH” carries connotations that dilute the gravity of the Act it represents, rendering it less effective and less relatable, particularly in the informal sector where the bulk of our workforce lies. Through our work, we have ensured that we steer away from using “PoSH” as an acronym to refer to the Act, which is also a principle that our team and each volunteer involved with the study have put into practice. Hence, each of our published work in this domain supports dispensing with “PoSH” in favour of the full title of the Act, reinforcing the earnestness and inclusivity required in our collective stride towards harassment-free workplaces in India.
3. Another significant aspect of our study has been mobilising the youth, especially university students who are preparing to become part of tomorrow’s workforce. Through a trifecta of student volunteers, educational institutions, and employees, we have disseminated surveys that have touched the ground, instilling awareness, and empowerment not just for the respondents but for each stakeholder involved in the study as well. We take pride in stating that our respondents are now equipped with the knowledge of their rights and the mechanisms at their disposal, thanks to the institutions that have echoed our cause in fostering this awareness.
4. As we unveil the fourth edition of our annual study, it is with the ambition of amplifying our reach, to spread more awareness, to knit more partnerships, and to instil actionable change. This Report synthesises our learnings from the past four years and delves into the nuances of strengthening the effectiveness of the Act in implementation. It is an invitation to individuals, institutions, and organisations to join hands with us, to be the agents of change in the realm of workplace sexual harassment.
5. This fourth edition of our Annual Review seeks to not just bookend the study we have conducted over the last four years but to become a springboard for future editions as well. Our comprehensive analysis aims to provide a foundation for ongoing and future research, ensuring that the efforts to combat workplace sexual harassment continue to evolve and improve. By documenting our findings and methodologies, we hope to inspire sustained attention and action, fostering a culture of continuous improvement in creating safer and more equitable work environments.

2

Executive Summary of the Review

6. Within this edition, we highlight the major findings from our surveys, acknowledging the positive developments while presenting loopholes and existing gaps in the on-ground implementation of the Act that prevent justice from reaching the last mile. Our Review not only identifies these critical issues but also offers suggestions to resolve many of these gaps at the levels of employees, employers, and organisations, institutions, and governments. By providing a detailed analysis and practical recommendations, we aim to equip all stakeholders with the tools and knowledge necessary to enhance the effectiveness of the Act and ensure comprehensive protection for all workers.
7. Sexual harassment at the workplace is not just a systemic concern but a concern for each individual in the workforce, regardless of the nature of their work. This Review seeks to encourage citizens to become more cognisant of the Act and take responsibility for ensuring that the workplaces they are engaged with are safe for everyone, irrespective of their background, role, or remuneration.

2.1

Exploring the Role of Corporates and the Judiciary

8. The first section of this Review focuses on two key aspects: the role of the judiciary in interpreting and enforcing the Act and the extent of corporate compliance. This section is crucial for understanding the evolving legal landscape and corporate practices related to the Act. Notably, the role of the judiciary has been pivotal in interpreting the Act and expanding its scope, ensuring broader protections for workers. For example, judicial interventions have clarified that harassment occurring outside traditional office environments, including digital workplaces, still falls under the purview of the Act. Such rulings are pivotal in adapting the Act to modern work environments, including the gig economy and remote working scenarios.

2.2

Observations from 2020-2022

9. This Review also presents insights gathered from surveys conducted over three years (2020-2022) with the assistance of student volunteers across India. The surveys aimed to gauge the on-ground implementation of the Act in both formal and informal sectors. Key observations include varying levels of awareness and compliance with the Act among corporate employees in the formal sector, and unique challenges faced by informal sector workers, such as lack of awareness, job security issues, and cultural sensitivities that hinder reporting harassment incidents.

2.3

Highlighting Areas for Improvement

10. After analysing the results of the surveys and reviewing the existing literature and research, we have highlighted systemic barriers preventing effective action against workplace sexual harassment. It discusses psychological factors behind inaction, barriers faced by targets and employers, and the impact of these factors on post-incident management. This section provides a detailed analysis of why incidents are underreported and the importance of building a supportive structure for targets of workplace sexual harassment.

2.4

Recommendations for the Road Ahead

11. The Review proposes actionable steps to enhance the implementation of the Act. Strengthening awareness and training programmes, enhancing support for informal sector workers, increasing accountability and transparency of Internal Committees, implementing stronger deterrents, broadening the Act's definition and scope, and addressing post-incident management are crucial recommendations. Furthermore, the Review calls for a cultural shift where respect, equity, and dignity are core workplace values.

3

Trends from 2020-2023

12. Our studies over the past four years have documented trends in workplace safety and sexual harassment prevention, aiming to empower individuals with a thorough understanding of their rights and responsibilities for fostering safer work environments. This section delves into two practical aspects of the Act: first, the role of the judiciary in interpreting and enforcing the Act, and second, the extent to which corporates in India have recognised and implemented the provisions of the Act.

3.1

The Role of Judiciary

13. The Act of 2013 was brought into practice to enable safer working environments across India regardless of the kind of work undertaken. Within the Act, there exist finer nuances which protect the rights of employees against sexual harassment. The interpretation of these finer nuances, as well as the interpretation of the Act in its entirety rests with the judiciary. In the ten years since 2013, various judicial pronouncements have enriched the understanding of the Act, addressed ambiguities, expanded definitions, and enhanced the delivery of justice to a broader range of citizens.
14. Initially, the intervention of the Supreme Court and subsequent drafting of the Vishaka Guidelines¹ laid the foundation for the Act, establishing a legal framework for addressing sexual harassment at the workplace. Since then, various judgments have contributed to the evolving understanding and implementation of the Act.

3.1.1

Hyper-technical Interpretation of the Act

15. By 2020, cases like *K. Karnamaharajan vs. The Registrar, Madurai Kamaraj University and Ors.*, along with *P. Govindaraju vs. The Monomaniam Sundaranar University Ors.*, illustrated the use of technicalities to dismiss appeals, potentially affecting the efficacy of the Act. These instances underscored the practical challenges in applying the Act, highlighting the need for guidelines that focus on its core aims and objectives rather than on procedural technicalities.
16. In the *Union of India vs. M.*² case, the Supreme Court observed that sexual harassment proceedings were being invalidated due to hyper-technical interpretations of service rules. The Court then underscored the importance of viewing the right against sexual harassment as an intrinsic part of the Fundamental Rights under Article 21 of the Constitution³, emphasising the necessity of a broader and more flexible approach to understanding and applying the provisions of the Act.

1 Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (n.d.). Wcd. [https://wcd.nic.in/sites/default/files/Handbook on Sexual Harassment of Women at Workplace.pdf](https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf).

2 Supreme Court says 'Courts Should Avoid Hyper-Technical Interpretation of Service Rules'. (2022, March 05). Poshatwork. <https://poshatwork.com/supreme-court-says-courts-should-avoid-hyper-technical-interpretation-of-service-rules/>.

3 Article 21: Protection of life and personal liberty.

3.1.2

Broadening the Definition of Sexual Harassment at the Workplace

17. By 2022, judicial interpretations of the Act had shifted towards a broader scope. Noteworthy cases such as Raj Kumari vs. The Chairman, Bank of Maharashtra and Ors., and Pawan Kumar Niroula vs. Union of India and Ors. showcased an expanded understanding of the coverage of the Act, thereby extending its protections to encompass a wider array of scenarios related to sexual harassment at the workplace.
18. Similarly, in the Sanjeev Mishra v. Disciplinary Authority and General Manager, Zonal Head, Bank of Baroda and Ors., the Rajasthan High Court noted that even if two employees are located in different locations and sexual harassment occurs outside of formal working hours, it would be considered as sexual harassment at the workplace⁴. The Court added that in a digital workplace setting, it would be impossible to say that two people were not working out of the same workplace merely because they were situated in two separate geographical locations⁵.

3.1.3

Noteworthy Judicial Interventions 2020-2023

Key Focus Area of the Case	Title of the Case	Concerned Court	Year Pronounced	Summary
Reliability of Testimony	Bhuvan Chandra Pandey vs. Union of India and Ors.	Uttarakhand High Court	2020	Sole testimony of the target of sexual harassment can be taken into account and considered as proof during the investigation.
Expanded the Definition of Workplace	Sanjeev Mishra vs. Disciplinary Authority and General Manager, Bank of Baroda and Ors.	Rajasthan High Court	2021	Brought digital workplace settings under the purview of the Act. The court held that in a digital workplace setting, it would be impossible to argue that two people were not working out of the same workplace merely because they were situated in two separate geographical locations.
Guidelines to Protect the Privacy of the Parties in the Case	P vs. A and Ors.	Bombay High Court	2021	The guidelines primarily focused on protecting the privacy of the parties involved in the case and to anonymise their details.
Extension of the Act	Pawan Kumar Niroula vs. Union of India	Calcutta High Court	2022	Extended the Act to both educational and legal spheres, ensuring a safe and harassment-free learning environment for all students.
Expanded the Meaning of Constructive Dismissal	Ms. X vs. Registrar General, High Court of Madhya Pradesh and Another	Supreme Court	2022	The Court ruled that a resignation tendered as an outcome of a hostile work environment cannot be construed as voluntary and amounts to constructive dismissal.

4 POSH at Work. (2021, January 15). Harassment over Digital Platform - Rajasthan High Court. Poshatwork. <https://poshatwork.com/high-court-of-rajasthan-on-harassment-over-digital-platform/>.

5 Sharma, D. (n.d.). Sexual Harassment in the Virtual Workplace. Law. <https://law.dypvp.edu.in/plr/Publication/all-publication/Sexual-Harrasment-at-Work-Place-ver-2.pdf>.

Key Focus Area of the Case	Title of the Case	Concerned Court	Year Pronounced	Summary
Elaborated on the Definition of Natural Justice under the Act	Vimalkant Bhanuprasad Shrimali vs. IDMC Limited	Gujarat High Court	2022	The Court stated that respondents can submit written questions for cross-examinations of witnesses, and this shall be a part of the principles of natural justice.
Expanded the Definition of Workplace	Raj Kumari vs. The Chairman, Bank of Maharashtra and Ors.	Delhi High Court	2022	The court highlighted that sexual harassment is not limited to the four walls of an office premises. It extends to officials outside those premises who abuse their power and capacity to influence juniors and newcomers by making unwelcoming advances, requesting sexual favours, and making physical contact, or other sexually determined behaviour.
Applicability of the Act to the Film Industry	Women in Cinema Collective vs. State of Kerala	Kerala High Court	2022	Film houses fall under the ambit of the Act and film units with more than 10 workers need to establish IC.
Recognised Serious Lapses in the Enforcement of the Act	Aureliano Fernandes vs. State of Goa and Ors.	Supreme Court	2023	The SC issued directions to the stakeholders to ensure effective implementation of the Act.
Refused to Expand the Definition of 'Sexual Harassment'	Binu Tamta & Anr. vs. High Court Of Delhi & Ors.	Supreme Court	2023	The court refused to direct that "sexual harassment" be defined in gender-neutral terms and that "aggrieved woman" cannot be supplanted with "aggrieved persons" in the Act.
Courts should not get Swayed by Technical Procedural Matters	UNION OF INDIA vs. DILIP PAUL	Supreme Court	2023	The Courts should prioritise the overall case rather than focusing on the minor details of it and asserted the importance of the "No Evidence" principle.

3.2

Recognition of the Act and its Implementation by Corporates

19. The Act mandates corporates and organisations to proactively develop policies that prevent sexual misconduct and educate their workforce through regular awareness programmes. Moreover, corporates are required to display the punitive consequences of harassment visibly within the workplace, to deter misconduct and affirm their commitment to a zero-tolerance policy. This framework not only ensures compliance with legal standards but also fosters a preventive approach to workplace safety.
20. The following section outlines the role corporates have played in the adoption and implementation of the Act in their premises covering the guidelines within the Act as well as observations from our on-ground surveys from 2020 to 2023.

3.2.1**Establishing Internal Committees**

21. One of the commonly known provisions within the Act is constitution of an Internal Committee (IC) by organisations employing ten or more individuals. This committee serves as a dedicated forum for resolving complaints related to sexual harassment in the workplace. The IC is presided over by a senior woman employee, to resolve any complaints related to workplace sexual harassment⁶. By placing a senior woman at the helm, the Act also acknowledges the need for gender representation and empowerment in addressing such sensitive matters.
22. Beyond constituting an IC, organisations are required to develop and implement corporate policies aimed at preventing and addressing instances of workplace sexual misconduct effectively⁷. These policies serve as guiding frameworks, outlining undesirable conduct, reporting procedures, and avenues for redressal. Additionally, organisations are required to perform certain other incidental duties. These include organising workshops and awareness programmes at regular intervals for sensitising their employees as per the provisions of the Act⁸.
23. To ensure enough awareness among employees, organisations are required to prominently display the punitive consequences of sexual misconduct within the workplace⁹.
24. Organisations are also required to streamline and share the process followed by ICs for handling complaints of sexual harassment with their employees¹⁰. This ensures consistency, transparency, and fairness in the resolution process. Moreover, the Act mandates that workplace-based sexual harassment be considered as misconduct under service rules, emphasising the gravity of such matters within the organisational framework.
25. Failure to comply with the provisions of the Act, including the constitution of ICs or contravention of its mandates, exposes organisations to significant penalties. A fine of INR 50,000 serves as a financial deterrent, compelling adherence to the statutory requirements and fostering a culture of accountability¹¹.

3.2.3**Compliance at various Levels within Organisations**

26. Firms such as Complykaro, SamānaCentre, and Rainmaker, which advise companies on compliance with the Act, mention that there has been a 100-150% jump in sessions for blue-collar or third-party workers in 2022. Organisations, large corporates, small and medium enterprises, and even educational institutes are now looking beyond white-collar employees to drive awareness about the Act among

6 SINGH, A. (n.d.). Sexual misconduct at workplace and Indian corporates and securities law. Search. <https://search.informit.org/doi/epdf/10.3316/agispt.20230529089121>.

7 India Code. (n.d.). Section 19. Duties of employer. Indiacode. https://indiacode.nic.in/show-data?actid=AC_CEN_13_14_00009_201314_1517807327213.

8 Professional Utilities. (n.d.). Duties of Employer under PoSH Act. Professionalutilities. <https://professionalutilities.com/blogs/duties-of-employer-under-posh-act.php>.

9 Section 19(b) of POSH Act | Orissa High Court Urges Authorities To Watch over Sexual Harassment of Women in the Workplace And Its Prevention. (2023, September 28). Livelaw. <https://livelaw.in/high-court/orissa-high-court/orissa-high-court-grants-final-opportunity-central-government-state-government-section-19-posh-act-implementation-238882>.

10 India Code. (n.d.). Section 19. Duties of employer. Indiacode. https://indiacode.nic.in/show-data?actid=AC_CEN_13_14_00009_201314_1517807327213.

11 All you need to know about POSH Act. (n.d.). Elearnposh. <https://elearnposh.com/posh-act/#poshact-definitions>.

blue-collar workers and even third-party staff.

27. To effectively engage with blue-collar workers, there is a growing demand for e-modules and trainers proficient in local languages. This linguistic diversity acknowledges the varied backgrounds and cultural contexts of these workers, facilitating better comprehension and engagement with the material.

3.2.4

Sexual Harassment Policies outside Traditional Office Environments

28. Food delivery platform Swiggy reported implementing sexual harassment redressal policies specifically tailored for their delivery partners by launching the sexual harassment redressal policy for delivery partners in 2022¹².
29. However, the issue of workplace sexual harassment within the gig economy continues due to a lack of both awareness and accountability. When talking about the gig worker, cases involving the assault of or by such workers have either been dismissed internally or categorised as “non-labour issues” that are beyond the purview of aggregators¹³, despite the applicability of the Act to aggregator platforms.
30. Chapter 1¹⁴ of the Act consists of a section on ‘extended workplace’ which addresses the unique challenges posed by the mobile and scattered nature of gig and platform work. Through this provision it can be acknowledged that gig workers operate in diverse settings, including

customer households, vehicles, and other locations, which may not fit traditional notions of a workplace. By recognising these unconventional work environments, the Act aims to ensure that protections against sexual harassment extend to all workers, regardless of their work arrangements.

31. However, gig and aggregator platforms continue to avoid incorporating these protections into their terms of service. A critical analysis of the terms of service of major gig work platforms reveals the absence of workplace sexual harassment policies. These terms, which form the basis of contracts between workers, platforms, and customers, do not include essential provisions such as the formation of an Internal Complaints Committee (IC) or the establishment of first points of contact for addressing harassment issues¹⁵. This leaves gig workers vulnerable and without recourse in the face of harassment or assault.

3.2.5

Effects of Changed Work Environments during and after the COVID 19 Pandemic

32. After the resumption of in-office work following the removal of the pandemic status, there was an increase in the number of unresolved cases of sexual harassment at the workplace. Some of the reasons that have been reported for this change include most top companies mandating their employees to return to office full-time after the pandemic¹⁶. However, the response to these cases varies significantly between larger corporations and smaller companies.

12 Swiggy introduces sexual harassment policy for female delivery executives - Swiggy Diaries. (n.d.). Blog. <https://blog.swiggy.com/2022/11/21/swiggy-introduces-sexual-harassment-policy-for-female-delivery-executives/>.

13 Dasgupta, G. (2023, December 01). Why gig work platforms must implement India's workplace sexual harassment law. Scroll. <https://scroll.in/article/1058459/why-gig-work-platforms-must-implement-indias-workplace-sexual-harassment-law>.

14 India Code: Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (n.d.). India Code. https://indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362.

15 Sexual harassment of gig workers in India - Lexology. (n.d.). Lexology. <https://lexology.com/library/detail.aspx?g=07218e8f-6362-44ef-b218-62196284c6ed>.

16 Sultana, N. (2023, October 17). India Inc sees alarmingly high unresolved sexual harassment cases at workplace. Forbesindia. <https://forbesindia.com/article/take-one-big-story-of-the-day/india-inc-sees-alarmingly-high-unresolved-sexual-harassment-cases-at-workplace/89043/1>.

- 33. In larger companies, there tends to be a greater emphasis on delivering justice rather than simply reaching a quick resolution. These organisations often have well-established Human Resource (HR) departments and internal structures dedicated to handling complaints of sexual harassment. They are more likely to invest resources in conducting thorough inquiries, engaging in comprehensive investigations, and ensuring due process is followed. This commitment to transparency and accountability reflects a broader organisational ethos of upholding employee rights and fostering a safe and respectful workplace environment.
- 34. For smaller companies that may lack the resources or infrastructure to handle sexual harassment complaints, there may be a tendency to prioritise expediency over thoroughness. This can coerce complainants to accept settlements or informal resolutions to avoid prolonged conflict or reputational damage. While this approach may seem pragmatic in the short term, it can undermine the integrity of the investigative process and perpetuate a culture of impunity.

3.2.6

Observations from our Survey of the Formal Sector 2020-2022

35. From 2020 to 2022, our surveys of the formal sector helped bring forward the extent to which formal sector organisations, especially corporate organisations were aware of and in compliance with the provisions of the Act. Some of these observations over the three years have been presented below.

36. Figure 2.2.6.1. shows the variation in the awareness of the existence of an Internal Committee (IC) amongst the employees of various corporate organisations. On average 68 per cent of employees, from the populations surveyed over the three years, were aware of an IC within their organisation. The year 2020 saw over 46 per cent of the surveyed employees stating, that they were either unsure of their organisation having an IC or there was no IC. This number, though smaller in comparison, stood at close to 22 per cent in the year 2022. For effective implementation of the Act across board, it is important that every organisation within the mandate of instituting an IC, not only constitutes one but ensures the awareness of the same to every employee.

Fig.2.2.6.1 Awareness of the existence of IC amongst corporate employees.

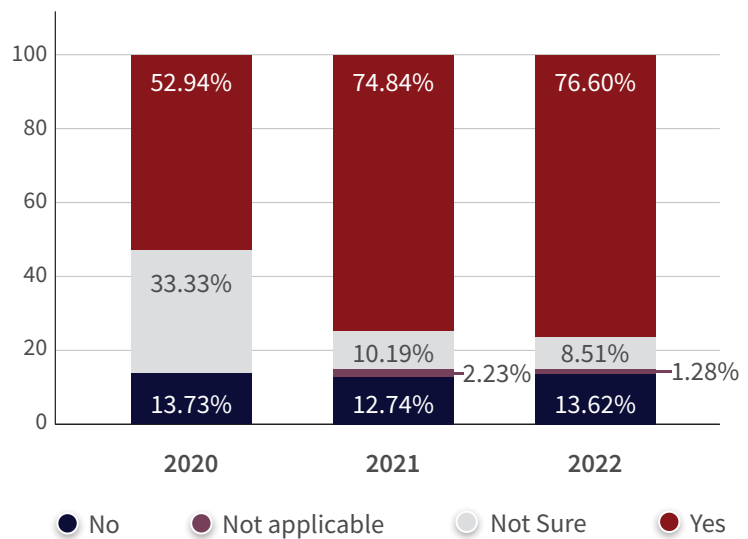
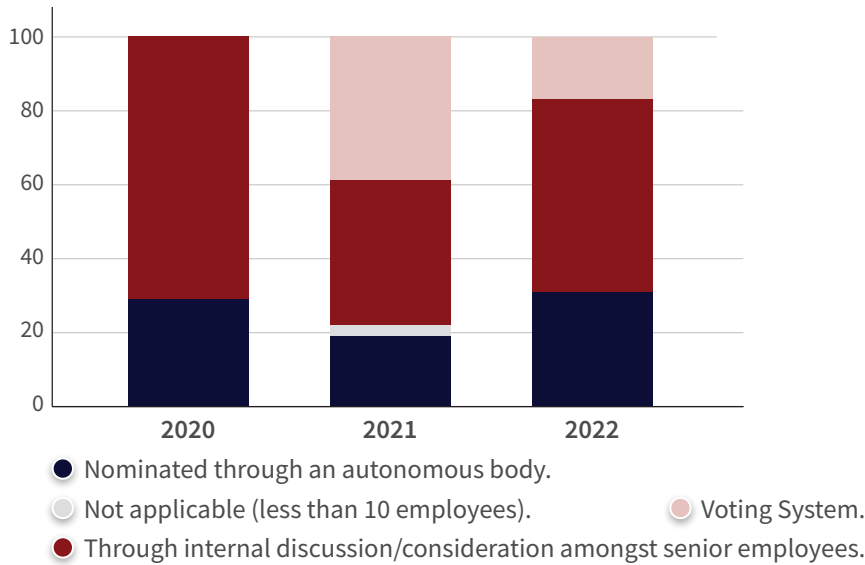
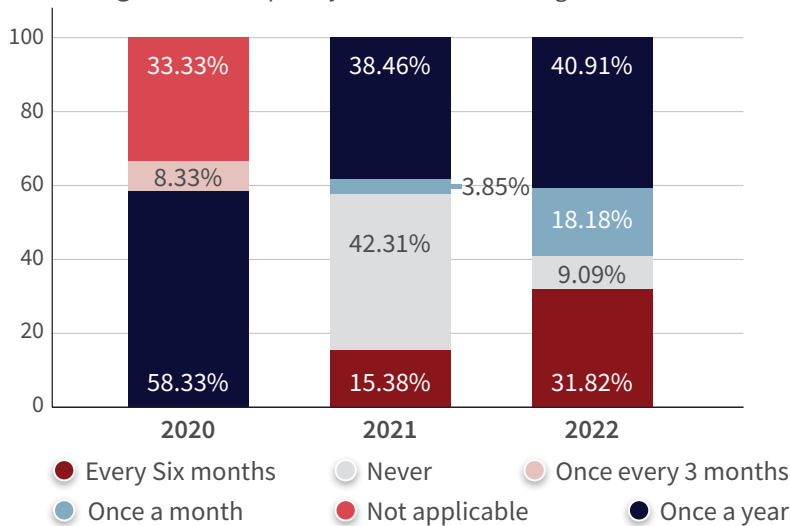


Fig.2.2.6.2 Awareness of the constitution of IC amongst employees.



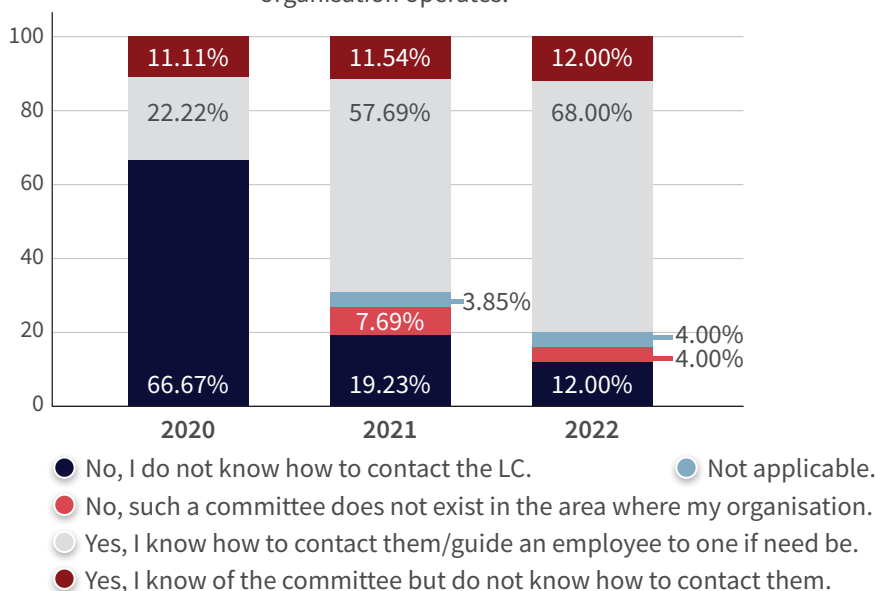
37. Transparency in the process of appointing IC members helps build trust and projects a safer environment for employees to work in. Figure 2.2.6.2. shows the variation in the manner of appointment of IC members within an organisation. Over the three years, maximum responses referred to the appointment of IC members through internal discussions amongst senior employees within the organisation as opposed to a more transparent system of nomination through autonomous bodies or voting.

Fig.2.2.6.3 Frequency of review of training material.



38. To maintain quality and consistency within the training material utilised to train the trainers within an organisation, regular revision is essential. This not only helps in maintaining a high standard of safety within a workplace, but helps employees stay up to date with the knowledge of their rights and how they can exercise them. Figure 2.2.6.3. represents the responses received to our surveys when leaders within various corporate organisations were asked how frequently the training material was reviewed. Across the three years, majority of the respondents stated that the training material was reviewed once a year (~46 per cent on average) while a significant number of respondents in 2021 and 2022 said the material was never reviewed (~25 per cent on average).

Fig.2.2.6.4 Awareness of LCs in the district in which the organisation operates.



39. In the absence of an IC, employees can contact the Local Committee (LC) within their district to seek redressal. For organisations which do not have an IC, it is important for the leadership to be able to make employees aware and when needed, guide them to the nearest LC which they can contact. When leadership within various organisations was questioned if they were aware of the local LC and if they could guide their employees to it, the population surveyed in 2020 had the least awareness of the same, with a majority stating they did not know (~ 67 per cent). In the population surveyed in 2021 and 2022, most individuals in leadership roles knew of the LC, yet there were close to 20 per cent respondents in 2021 and 12 per cent in 2022 who did not know.

Observations from Our Surveys

40. Over the three years from 2020 to 2022, our team conducted surveys with the assistance of 250 student volunteers across 22 states and union territories in India, gathering 28,903 unique responses to understand the on-ground implementation of the Act. The surveys, though a smaller component of our annual study, have empowered over 2,000 employees in various sectors by simplifying the response process for participants while maintaining thoroughness for volunteers.
41. The preparation for survey distribution involved comprehensive training of volunteers, who were educated on the nuances and psychological aspects of engaging with respondents effectively. This training ensured that interactions were informative, focusing on empowering respondents with knowledge of their rights and available support resources.
42. During data collection, the volunteers obtained consent, assured confidentiality, and respected the comfort levels of the respondents. The survey design avoided mandatory questions, fostering a non-intrusive and reassuring environment for respondents.
43. Upon completion of data collection, the responses were then analysed and presented across three editions of this Annual Review from 2020 till 2022. Based on the analysis done both quantitative and qualitative, various observations have been made. Two of these observations relating to the evolution of understanding of what accounts as a sexual harassment offense as well as the state in which the informal sector workers are, have been studied at length and have been discussed below.

4.1

Nature of the Offense

44. This section aims to provide a comprehensive understanding of the legislative framework governing workplace sexual harassment in India, emphasising the critical roles played by various legal provisions in shaping a safer work environment.

4.1.1

Background and Legal Framework

45. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, introduced in 2013, was specifically designed to address workplace sexual harassment in India. Prior to its enactment, such incidents were dealt with under sections 354, 354A, and 509 of the Indian Penal Code (IPC)¹⁷, which cover acts intended to outrage a woman's modesty and sexual harassment, respectively.

17 Is Section 509 of the IPC a Meaningful Provision in Current Times?. (2021, August 12). Poshatwork. <https://poshatwork.com/is-section-509-of-the-ipc-a-meaningful-provision-in-current-times/>

18 Munjal, D. (2023, May 15). Explained | What is the PoSH Act and why has the Supreme Court flagged lapses in its implementation? - The Hindu. Thehindu. <https://thehindu.com/news/national/explained-the-indian-law-on-sexual-harassment-in-the-workplace/article66854968.ece>.

46. IPC Section 354 seeks to punish anyone who assaults or uses criminal force on a woman intending to outrage her modesty, with imprisonment up to five years and fines, while IPC Section 354A specifies four acts as constituting sexual harassment, including unwelcome physical contact, demands for sexual favors, showing pornography against a woman's will, and making sexually coloured remarks. The penalties vary from one to three years of imprisonment along with fines depending on the act committed. Section 509 penalises any act intended to insult the modesty of a woman through words, gestures, or actions, carrying a penalty of up to three years in prison and/or a fine. Of these, Section 354 is a non-bailable offense while Sections 354A and 509 are bailable.
47. The Act of 2013¹⁸ on the other hand, broadens the scope to include a variety of situations that constitute sexual harassment at the workplace. It identifies specific scenarios such as implied or explicit promises of preferential or detrimental treatment, threats about employment status, interference with work, and creating a hostile work environment as sexual harassment. The Act also mandates the creation of Internal Committees (ICs) in every organisation employing ten or more people, ensuring that employees have a formal mechanism for addressing their grievances.
48. Additionally, the Act establishes a formal process for handling complaints and sets forth detailed preventive measures. This includes obligating employers to conduct awareness programmes and ensuring clear communication about the penalties for non-compliance, which can range from fines to disciplinary actions.

4.1.2

Comparison between the Act of 2013 and the Indian Penal Code

Aspect	IPC Sections 354 & 354A	Act of 2013
Definitions	Section 354: Addresses assault or criminal force aimed at outraging a woman's modesty.	Section 2(n): Includes a broad spectrum of unwelcome acts from physical contact to making sexually coloured remarks.
	Section 354A: Defines sexual harassment including physical contact, unwelcome sexual advances, and sexually coloured remarks.	Section 3: Elaborates on behaviors that contribute to a hostile work environment interfering with an individual's work.
Penalties	Section 354: Imprisonment from one to five years and fines.	Requires appropriate disciplinary action after an inquiry, which can vary from reprimands to termination depending on the severity and organizational policies.
	Section 354A: Imprisonment up to three years, or fines, or both. Offences under clause (4) can lead to imprisonment up to one year or fines, or both.	Non-compliance with the Act's provisions can result in a fine of INR 50,000.

Aspect	IPC Sections 354 & 354A	Act of 2013
Scope and Application	Applicable universally, not limited to workplace scenarios. Covers acts that might happen in any location.	Specifically designed to address sexual harassment in the workplace. Covers all employers and employees across sectors, including informal work environments.
Legal Framework	Criminal framework under IPC. Includes provisions for more immediate and punitive actions.	Civil framework that focuses more on prevention and redressal within the organizational setting. Mandates formation of Internal Complaints Committees.
Implementation	Criminal complaints lead to judicial proceedings which can result in incarceration and fines as deterrents.	Encourages organisations to develop internal protocols and conduct awareness programmes. Requires regular workshops and visible posting of punitive consequences within the workplace.

4.1.3

Notable Judicial Pronouncements

49. The following judgements collectively advanced the legal framework, leading to a more comprehensive understanding and stricter enforcement of laws against workplace sexual harassment in India.

- i. **The State of Punjab vs. Major Singh (1967):** This case clarified that not all physical contact, like touching a woman's waist, constitutes an offence under Section 354 unless there's specific intent to outrage her modesty.
- ii. **State of Maharashtra vs. Madhukar Narayan Mardikar (1991):** The Supreme Court defined "outraging the modesty of a woman" to mean that the act must be likely to or actually offend a woman's modesty.
- iii. **Rupan Deol Bajaj vs. K.P.S. Gill (1995):** Highlighted deficiencies in IPC Sections 354 and 509 when a senior IAS officer was sexually harassed. This case underscored the need for specific laws on sexual harassment, influencing subsequent legal reforms.
- iv. **Vishaka vs. State of Rajasthan (1997):** Following an incident of workplace sexual harassment, the Supreme Court established the

Vishaka Guidelines to prevent and address such incidents, paving the way for the Act of 2013.

- v. **Apparel Export Promotion Council vs. A.K. Chopra (1999):** The Supreme Court expanded the definition of sexual harassment, asserting that physical contact is not necessary for an act to be considered harassment.
- vi. **Medha Kotwal Lele and Ors vs. Union of India & Ors (2013):** This case emphasised the mandatory implementation of the Vishaka Guidelines by all states, clarifying that non-compliance could lead to legal recourse at the High Courts.

4.2

State of the Informal Sector Workers

50. While our studies have only been able to cover the informal sector since 2021 due to the pandemic related restrictions in 2020, there is enough to take note of. Some of this is evident from the data we have collected and others from the lived experiences of these workers. A few major challenges faced by workers in the informal sector have been mentioned in this section along with their lived experiences.

4.2.1

Challenges in Reporting the Incident

51. **Lack of Awareness:** Most informal sector workers are unaware of the provisions of the Act often due to limited outreach and language barriers.
- “There was a young girl at my workplace who told me that she had been harassed multiple times by the man she worked for as domestic help. She was helpless and hopeless after losing her family because of which she had to work. After a few months, she finally lost hope of someone helping her and so she quit working for him.” (2021)
 - “As a male, my understanding of sexual harassment is limited to inappropriate physical actions.” (2022)
52. **Nature of Employment:** Workers in the informal sector often have undocumented employment arrangements which makes it challenging for targets to prove that they were employed by the accused. This, in turn, deters targets from approaching authorities and seek redressal.
- “A senior male member of the household in my workplace was being offensive and making sexual remarks. The man called me “baby” against my choice and gave me lewd looks that made me uncomfortable. He also made absurd comments about the clothes I wore. I quit a few days later and found out that the house was ill-famed for this reason. I did not file a complaint.” (2021)
 - “I experienced some sexual advances from a man in whose

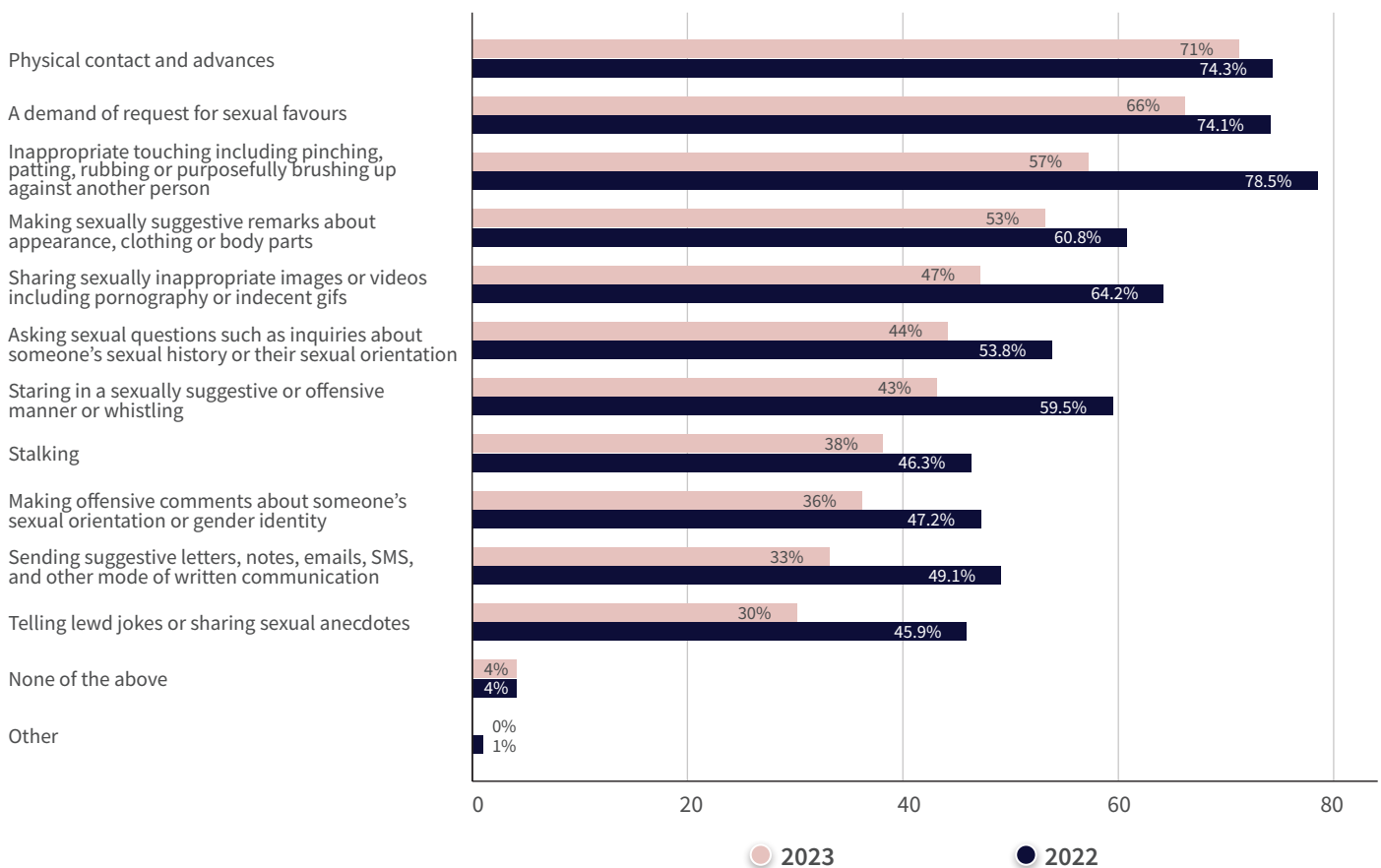


Fig. 4.2.1.1 When asked what they considered sexual harassment, most respondents chose more overt and physical actions as sexual harassment as opposed to the covert and non-physical. This highlights the lack of awareness of what can be considered an act of sexual harassment.

house I used to work as a maid. I then quit my job in their house and never spoke about it to anyone, let alone file a complaint.” (2021)

- iii. “I filed a complaint against my landlord, who I also used to work for as a domestic worker. He used to come to my room when my husband was not at home or while I was bathing. After telling my husband about this we left his house and filed a complaint. He was taken under custody and was charged a fine as well but then was left on bail. He was given bail after a week, but I have no idea about the fine charged or anything. I felt we were left unaware of the process of the jurisdiction. We were not even informed about his fine or when he was released.” (2021)

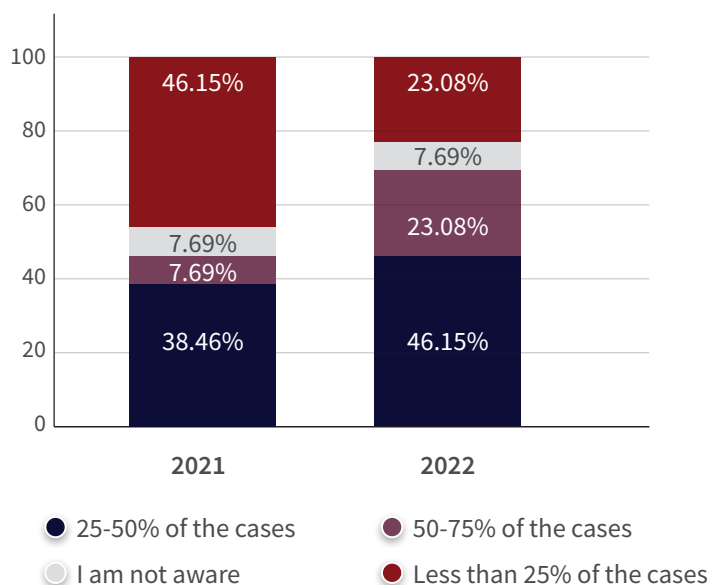
53. **Job Security and Fear of Retaliation:** Workers in the informal sector are afraid of retaliation from their employers, if they file a complaint. Job insecurity and absence of alternative employment opportunities makes these workers reluctant to report incidents of sexual harassment since access to basic livelihood is more urgent a requirement for them.

- i. “I never complained about the harassment because it was not very prominent. And I could lose my job. That was before I started working here for the hospital. Now that I think of it, I feel like I should have done something.” (2021)
- ii. “I have never experienced such harassment in the workplace, but I have seen my female coworkers (other construction workers) being stared at or being passed sexually inappropriate comments. I tried to intervene once when it became physical and eventually the blame was put on the female target by the contractor, and she was warned that she would lose her job.” (2021)

54. **Financial Barriers:** Women working in the informal sector often come from deprived financial backgrounds. This makes them continue an employment despite experiencing sexual harassment quid pro quo or in return for higher pay and opportunities.

- i. “There was a college student who used to give me a lot of his underwear – he made me pack those dirty underwear one by one to get them washed. I used to feel humiliated by that. I didn’t take any step against him because I believe this is an everyday problem, and I cannot get away from it as it is my only source of putting food on the table.” (2021)
- ii. “As a tailor, I encounter inappropriate behaviour and lewd jokes from male clients and young boys during measurements. I felt compelled to accept this as normal for a street-side vendor and did not act due to my financial status.” (2022)

Fig. 4.2.1.2 When NGO representatives were asked if informal sector targets were financially dependent on the harassers, over 38 and 46 per cent of the surveyed population said it was so in 25-50 per cent of the cases in 2021 and 2022 respectively.



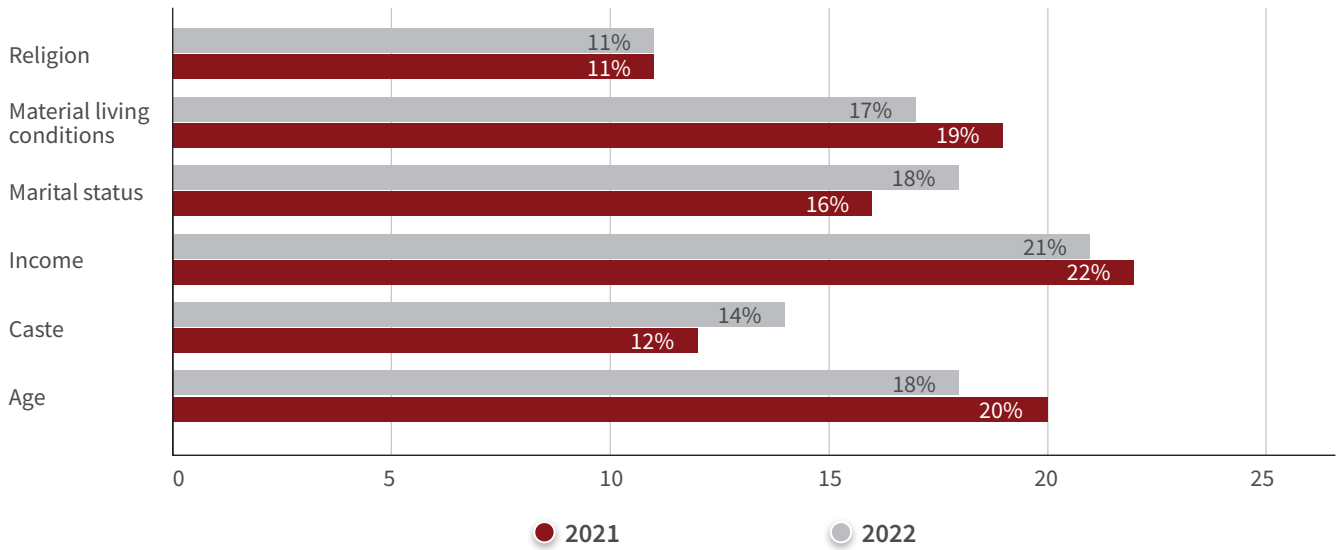
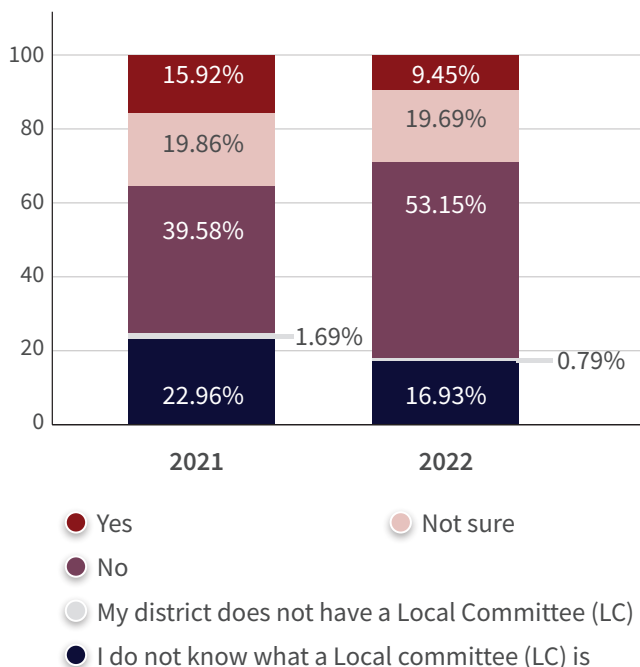


Fig. 4.2.1.3 In both years, when asked what they felt were factors that made one prone to becoming a target of workplace sexual harassment, income was the highest preferred reason.

Fig. 4.2.2.1 In both years, only a small majority of respondents were aware of the existence of a Local Committee (LC) in their district.



55. **Cultural Sensitivities:** Societal norms and practices can also discourage targets from speaking about incidents of sexual harassment at work due to fear of stigmatisation and social isolation by their communities.

- i. “I don’t want to complain because I don’t want to be a socially unacceptable person.” (2021)
- ii. “Originating from Nagaland, I have held various jobs and delivered food for a Chinese restaurant over three years. I faced sexual propositions from individuals of both genders, exploiting my Northeastern heritage. Despite dismissing these advances as acts of desperation, they left an impact”. (2022)

4.2.2

Challenges in Registering Complaints

56. **Limited Resources:** Informal sector establishments often have limited resources for implementing and maintaining a robust IC which can impact the ability of the committee to function effectively. For instance, some organisations may not provide clear information on how to file a complaint, required documentation for filling a complaint, or the role of LC.

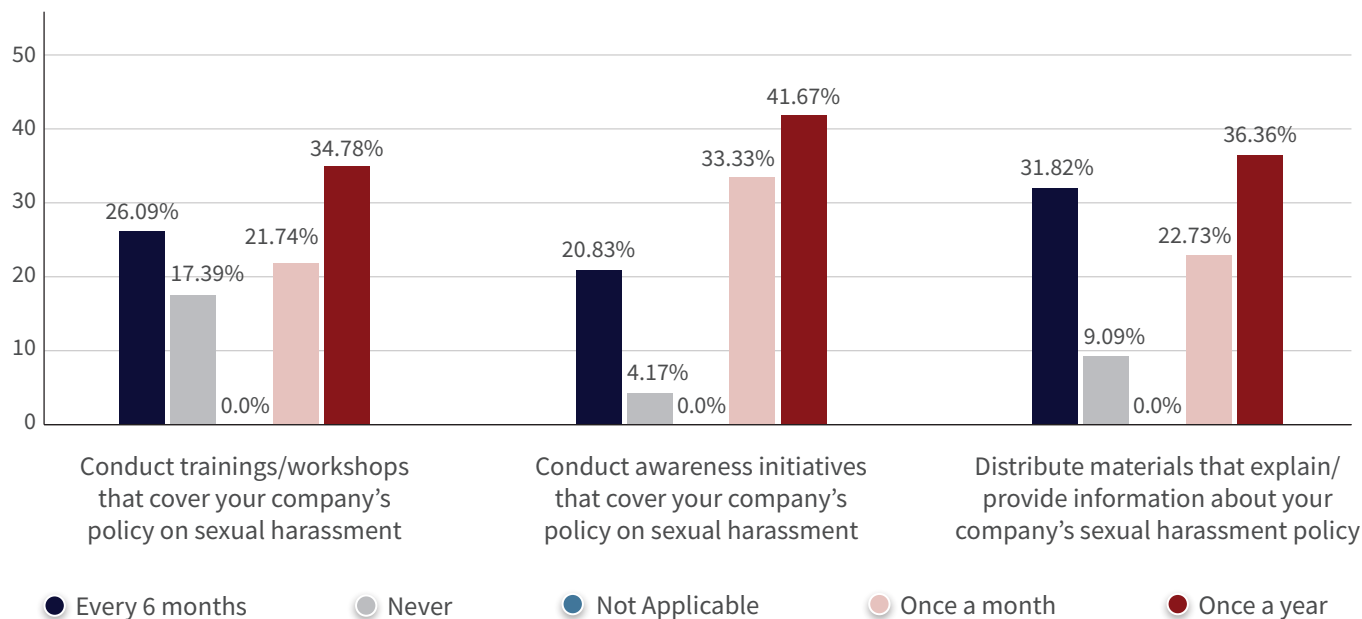


Fig.4.2.2.2 When formal sector employees were asked of the frequency with which their organisation conducted trainings and awareness workshops related to the workplace sexual harassment, a significant number of respondents said, “Never” while majority said, “Once a year” across 2020 to 2022.

- i. “I have not filed a case because I believe it won’t show any result and only a few months are left for my contract to end.” (2021)
 - ii. “I complained to my supervisor of the behaviour of a particular man. The supervisor did not pay heed at first, but after multiple women complained of the same thing, he had to fire the offender.” (2021)
57. **Inadequate Training of the IC and LC Members:** ICs and LCs in the informal sector are often ignored by the traditional authorities which hinders their capacity to receive adequate training, conducting investigations, and ultimately ensuring a fair and impartial redressal process for workers in the informal sectors.
- i. “After experiencing sexual harassment, I filed a complaint. Although it was received by the authorities, no action has been taken yet”. (2022)
 - ii. “I did not want to spoil my name but I had to continue working to support my family. So I decided to approach my Supervisor and he asked what happened, then he took the time to clear the issue. The individual was removed and shifted to a different location.” (2021)
58. **Unsupportive Work Culture:** A target may also hesitate to report the incidents if the workplace has a culture that does not encourage social cohesion, open communication, does not prioritise the prevention of sexual harassment or fails to address complaints effectively.
- i. “I work as a house help. My employer is a 40-year-old bachelor. I have often been through situations in which he asked for sexual favours and touched me inappropriately. I did not file a complaint against him with the local authorities because I am afraid.” (2021)
 - ii. “No action was taken so far. I am still working at the same site, in order to sustain my livelihood

- and generate income to support my family.” (2021)
59. **Confidentiality Concerns:** Women may also often hesitate to report the incidents of sexual harassment due to the worry of confidentiality of her complaint and fear that the information may not be kept private.
- i. “When I was working at a construction site, the employer used to suggest that I be sexually involved with him to make extra money. He used to threaten me by saying that if I rejected it, I would lose my job and reputation around my co-workers and family members.” (2022)
 - ii. “I remained silent about my experience to avoid societal defamation.” (2022)
 - iii. “I was married at the age of sixteen and had a daughter when I was eighteen. After I shifted to my husband’s house, I started working as a domestic helper. But after four years of my marriage, my husband passed away and we were suffering financially and mentally. The place where I used to work as a domestic helper was a family of three. The male member of that family always used to look at me in a very wrong way, whenever his wife was not home he used to come into the kitchen and try touching me in an inappropriate way. I warned him multiple times and even warned him to inform his wife, but he said that if I told anyone about this, he would have me fired. He then mentally tortured me by repeatedly telling me to stay quiet and continue working at his house otherwise my daughter and I will die. I always wanted to complain but I couldn’t because he was a very well-known local politician and could make my daughter and my life worse. I was very stressed but felt too scared to do anything because the harassment continued. I even tried giving up my life but the thought of my daughter stopped me. I didn’t share any of this with anyone for a few months, after which I decided to leave my hometown and shift to another village without any financial support. I stayed on the footpaths for many months until I could save some money and built a tamboo (tent) where I stay with my daughter now.” (2021)
60. The experiences shared by informal sector workers from diverse backgrounds illustrate the realities of workplace harassment, cultural exploitation, and the barriers to achieving justice. These personal accounts underscore the critical need for safe and inclusive work environments, where targets can voice concerns without fear of retaliation. They also highlight the urgent necessity for systemic reforms to ensure accountability and justice, reinforcing the importance of effectively implementing the Act to create safer work environments across the country.

Need for Change

61. To effectively enhance the implementation of the Act, it is crucial to first identify areas requiring change. Addressing workplace sexual harassment involves understanding the barriers to action by various stakeholders, examining the consequences following an incident, and assessing the outcomes after case decisions. The upcoming sections will delve deeper into these three critical areas, aiming to provide a comprehensive analysis of the necessary changes to ensure safer workplaces for everyone.

5.1

Psychology Behind Inaction

62. A workplace is a shared physical or digital area, that flows from a formal relation between an employer and employee, based on the terms of the contract of employment. These terms of contract delineate the roles and responsibilities of the parties engaged in that employment and carry legal weight, that binds both parties to their respective obligations. Such an arrangement, although true for formal sector employment, does not often exist in the informal sector. As discussed in Section 3, the informal sector lacks formal work arrangements, creating additional challenges for the target when reporting incidents of sexual harassment.

63. From data and information gathered during our surveys of both the formal and informal sectors, and after a literature review of the reported cases in this matter, it is evident that targets hesitate in taking action. When targets do act, there exist factors that prevent other stakeholders such as the employer, members of ICs, LCs, HR personnel from taking action. Some of these factors have been discussed below.

5.1.1

Factors Preventing Targets from taking Action

64. **Fear of Retaliation:** The target of sexual harassment may harbour a fear of retaliation or revenge from the harasser, which can inhibit them from reporting the incident. Such fear may encompass concerns about loss of their job, denial of promotions or salary increments, being shamed in the industry by their superior, and losing credibility or being labelled as a troublemaker¹⁹. Targets may also fear harm to their own life or to their family by the harasser.

65. **Self-Doubt:** Another significant factor contributing to inaction can stem from instances where the target may have been incapacitated by drugs or alcohol during the harassment²⁰. In such cases, the recollection of the incident may be hazy, leading the target to question the validity of their own claims. This self-doubt can sow seeds of disbelief and cast doubt on the target's own sanity, acting as a barrier to reporting the incident.

19 Kosuri, M. (2023, May 18). Me Too | Why don't women report sexual harassment or assault. Mywellnesshub. <https://mywellnesshub.in/blog/me-too-why-dont-women-report-sexual-harassment-or-assault/#:~:text=Fear of the repercussions is,a troublemaker, fear the industry.>

20 Kosuri, M. (2023, May 18). Me Too | Why don't women report sexual harassment or assault. Mywellnesshub. <https://mywellnesshub.in/blog/me-too-why-dont-women-report-sexual-harassment-or-assault/#:~:text=Fear of the repercussions is,a troublemaker, fear the industry.>

21 Power Dynamics. (n.d.). Managementconsulted. <https://managementconsulted.com/power-dynamics/#:~:text=There are many different power,tell others what to do.>

66. **Power Dynamics:** In a traditional workplace, power dynamics can stem from formal authority²¹ where power and decisions flow from top to bottom. In workplaces where a rigid hierarchy exists, a target can feel intimidated to report a case of harassment, fearing retaliation. This power dynamic can also exist between employees of different levels of seniority and between management and the employees, restricting open and honest conversations.
67. **Cultural Norms:** Section 3 highlighted the cultural sensitivities that may serve as a barrier to a target speaking out against sexual harassment. Fear of social stigmatisation and potential isolation, both within the workplace and at home, looms large in the minds of targets. Many lived experiences mentioned how targets chose to move on rather than complain against the harasser. This culture of shame is inherent in society, which rests on the shame of the target and not the guilt of the perpetrator.
68. **Lack of Trust:** Within the dynamics of office politics and toxic work environments, trust issues prevent targets from confiding in their colleagues. This can stem from experiences where despite complaining against the harasser, no action was taken, or the matter was dismissed. There may also be a lack of trust in the official procedures and fear that personal information may be leaked, which can lead to social ostracisation, as discussed above.
69. **Trauma:** The trauma that a target may go through due to being harassed, can inflict lasting effects on them, potentially leading to Post Traumatic Stress Disorder (PTSD), a psychological disorder that can occur when an individual experiences a traumatic event. The symptoms of PTSD can include a persistent feeling of fear or being in danger, social anxiety, and a feeling of reliving the incident even with a slight trigger of a similar situation²². Such fear and sense of vulnerability may render the target hesitant to report the case of harassment.
70. **Self-Blame:** A target of sexual harassment can succumb to a cycle of self-blame, fuelled by internal doubts and societal pressures²³. They can internalise the feeling of culpability and convince themselves that they somehow invited the harasser and that they should have known better. It is also characterised by a denial of the situation and even minimalisation of the entire incident, wherein a person tries to brush away the truth and move past it. This can invariably prevent them from reporting the incident and seeking justice.
71. **Fear for the Offender:** Often, the offender is a known colleague of the target or a previously trusted authority figure at the workplace. Thus, when faced with sexual harassment, the target may experience conflicting emotions, including sympathy towards the offender, and may be reluctant to label them as an offender²⁴. This misplaced compassion further perpetuates the discrimination against the target and can give a free hand to the offender.

22 Aspire Counseling. (n.d.). Why do Women Wait to Report Sexual Assault . Aspirecounselingmo. <https://aspirecounselingmo.com/blog/women-wait-report-sexual-assault-rape>.

23 Kosuri, M. (2023, May 18). Me Too | Why don't women report sexual harassment or assault. Mywellnesshub. <https://mywellnesshub.in/blog/me-too-why-dont-women-report-sexual-harassment-or-assault/#:~:text=Fear of the repercussions is,a troublemaker, fear the industry>.

24 Elsesser, K. (n.d.). The Dark Side Of Empathy: Why Women Are Blamed For Being Sexually Harassed. Forbes. <https://forbes.com/sites/kimelsesser/2019/08/27/the-dark-side-of-empathy-why-women-are-blamed-for-being-sexually-harassed/?sh=71e5beb649de>.

5.1.2

Factors Preventing Employers from taking Action

72. **The Bystander Effect:** The bystander effect occurs when the presence of other people around discourages an individual from intervening or taking action to aid another person in need of help²⁵. In such a scenario, the bystander looks up to others to help the person in need and may deny the responsibility themselves²⁶. Thus, when an employee faces sexual harassment, the other employees or the management may absolve themselves of the duty to help the target, thinking others will intervene. This ultimately leads to a lack of a support system for the target in the workplace.
73. **Reputation Concerns:** Often, the management of an organisation can be reluctant to address complaints of sexual harassment to shield the reputation of the organisation. This apprehension may manifest in delaying or downplaying the severity of the incident or pressuring the target to retract their complaint²⁷. In the pursuit of preserving the public perception of the organisation, employers may minimise the gravity of the situation or underreport it, exacerbating the challenges faced by the target seeking recourse.
74. **Misplaced Loyalty:** In a corporate setting with a hierarchical structure, allegiance to the organisation often supersedes concern for individual employees²⁸. Consequently, C-suite management may prioritise interests of the organisation over facilitating

a fair investigation, or providing support to targets of harassment. This deters reporting of instances of sexual harassment, as employers may downplay or deny the validity of the claims made by the target to safeguard organisational interests.

75. **Financial Concerns:** Some organisations may struggle with inadequate financial resources to effectively implement and maintain robust ICs or provide comprehensive training to employees and employers in accordance with legal mandates²⁹. This financial constraint can hinder the establishment of a supportive framework for addressing instances of sexual harassment within the workplace.
76. **Power Dynamics:** Power dynamics within the organisational hierarchy can serve as a significant barrier to addressing complaints of sexual harassment³⁰. Such dynamics can manifest in relationships between the IC/HR department and senior management, or between management and employees. In instances where senior employees abuse their authority to engage in quid pro quo harassment, targets may feel compelled to endure such behaviour out of fear of retaliation or social isolation.

5.2

Post-Incident Management

77. The on-ground reality of post-incident management of sexual harassment in Indian workplaces

25 Bystander Effect | Psychology Today. (n.d.). Psychologytoday. <https://psychologytoday.com/us/basics/bystander-effect>.

26 Harvard Business Review. (2016, October 04). Why We Fail to Report Sexual Harassment. Hbr. <https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment>.

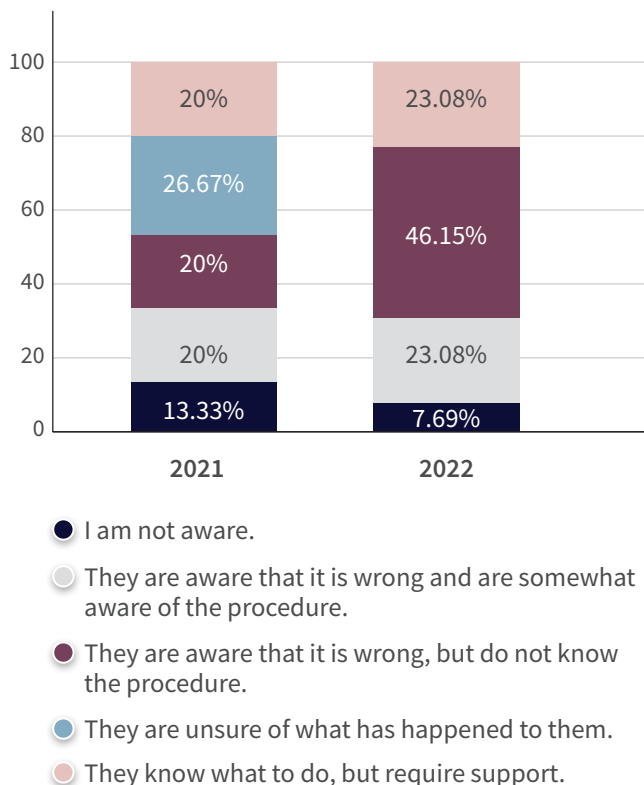
27 Why Sexual Harassment Persists and What Organizations Can Do to Stop It. (2017, December 21). Hbr. <https://hbr.org/2017/12/why-sexual-harassment-persists-and-what-organizations-can-do-to-stop-it>.

28 Harvard Business Review. (2016, October 04). Why We Fail to Report Sexual Harassment. Hbr. <https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment>.

29 Sharma, T. (2020, March 30). Ultimate POSH Guide for IC Members - eLearnPOSH. Elearnposh. <https://elearnposh.com/ultimate-posh-guide-for-ic-members/>.

30 Cyril Amarchand Mangaldas. (2022, December 15). POSH Act - Implementational Challenges | India Corporate Law. Corporate. <https://corporate.cyrilamarchandblogs.com/2022/12/posh-act-implementational-challenges/>.

Fig. 5.2.1 When NGO representatives were asked if workers in the informal sector were aware of the laws against sexual harassment, in both years they stated that a vast majority were unaware of either their rights, who to reach out to, or what sexual harassment constituted.



as observed from 2020 to 2023 shows that organisations have been working towards building supportive structures. However, there is recognition that much needs to be done to strengthen these frameworks to ensure targets and all parties involved feel supported throughout the process, including after its conclusion. Some of the areas that need strengthening in the process of post-incident management are discussed below.

78. Underreporting of Incidents:
On many instances, the incidents

of sexual harassment are either underreported by the targets or downplayed by the management themselves. Additionally, the management of the company can also try to downplay the incident as a mere accident or unintentional, which can discourage the target from moving ahead with the complaint. Such scenarios can lead to several unreported incidents as well.

79. Awareness: According to our study in 2022 (Figure 3.2.2.2.), 17.39 per cent of the surveyed corporate heads mentioned that there are no training workshops to create awareness on the Act and 9.09% mentioned that there is no distribution of materials that explain/provide information about their company's sexual harassment policy. Additionally, the prevailing understanding is that sexual harassment is a women's issue and not something that affects all persons irrespective of their gender.

80. Lack of Evidence: The Act has guidelines towards what can be considered as evidence by the IC while deciding on cases of sexual harassment in the workplace³¹. The interpretation of what constitutes evidence under the Act has also evolved with the help of judicial pronouncements such as in the *Medha Kotwal Lele v. UOI, 2012*³². This evidence includes eyewitness, circumstantial evidence, character evidence, documentary evidence, and hearsay witnesses. Despite these provisions, the anonymity of the witnesses³³ is often compromised, which endangers their position in the organisation. Another challenge is the absence of evidence or reliable evidence. For instance, there can be circumstances where the incident happened while no other colleagues,

31 Tandon, H. (2023, April 26). Evidence - In Accordance To The Sexual Harassment Act - Prevention of Sexual Harassment, Inclusive Diversity, Employee Assistance Program | CecureUs | Chennai. Cecureus. <https://cecureus.com/evidence-in-accordance-to-the-sexual-harassment-act/>.

32 Case Summary in *Medha Kotwal Lele vs. Union of India*. (n.d.). Equalrightstrust. <https://equalrightstrust.org/ertdocumentbank/Case Summary Medha Kotwal Lele Vs Union of India October 2012.pdf>.

33 Raj, P. (2023, August 17). What Is Anonymity of Witness Under the POSH Act as per Latest Judgement. Vakilsearch. <https://vakilsearch.com/blog/anonymity-of-witness-under-the-posh-act-as-per-latest-judgement/#:~:text=The anonymity of witnesses refers,the accused or their associates.>

staff, or CCTV cameras were around. In such a scenario, the target can struggle to establish the reliability of their accusation.

81. **Bias and Prejudice in Handling Complaints:** Instances of bias and prejudice can mar the impartial handling of sexual harassment complaints by IC or LC members³⁴. These biases can manifest in the form of favouritism towards the target, disregarding the possibility of false accusations, or scepticism towards the complainant if members have any preconceived notions about them or the accused. Furthermore, if the complaint is against a C-suite-level employer, then the IC and LC members may attempt to hush the complaint or coerce the target into a compromise.

5.3

Post-Decision Management

82. This section addresses the complexities of managing workplace situations following a decision in a sexual harassment case. Despite resolutions, the sensitivity of such matters can give rise to additional issues that affect all involved parties. Here, we explore the potential challenges in handling the aftermath of a decision effectively.
83. **Lack of Follow-ups:** The journey of seeking redress or getting justice after being sexually harassed can be exhausting and emotionally taxing for a woman. However, there exists no such follow-up guidelines or SOPs where the office authority can be constantly in touch with the woman to reassure her of her safety and well-being at the workplace. Furthermore, there often seems to be
- a lack of a support system for women in the workplace due to a toxic or competitive culture. All these factors have a deep impact on the well-being of the woman and can lead to PTSD despite securing justice for the wrong committed against her.

5.3.1

Issues Arising Post-decision

86. **Fear of Retaliation:** After a decision has been taken, the target remains vulnerable to potential retaliation and harm from the harasser instilling a lingering sense of insecurity and fear³⁵. The retaliation can be a backlash in the form of maligning their image at the workplace or wider social circles, or physical harm to them or their family. If the harasser was a C-suite management employer, then retaliation can also be in the form of making the working conditions tougher for the target by imposing longer working hours or unjust work burdens.
87. **Recurrence Prevention:** The Act considers 'prevention' of sexual harassment as one of the core pillars for ensuring a safe workplace for all. It is enforced by adequate training for the IC members, awareness sessions for the employers and employees, and the establishment of a robust redressal forum. However, some workplaces tend to prioritise redressal-seeking mechanisms over measures aimed at preventing the recurrence of sexual harassment incidents, utilising most of their resources for the former. According to our survey in 2022, 17 per cent of the surveyed corporate heads mentioned that their organisation 'Never' conducts training or workshops that covers the policy of sexual harassment of their organisation.

34 Venkataraghavan, S. (n.d.). Preventing Bias and conflict of interest of the Internal Committee: Part 1. Serein. <https://serein.in/preventing-bias-and-conflict-of-interest-of-the-internal-committee-part-1/#:~:text=To ensure that this power,in the process of inquiry>.

35 ungender. (2022, July 28). How Retaliation affects reporting Sexual Harassment at Workplace?. Ungender. <https://ungender.in/retaliation-and-sexual-harassment-at-workplace/>.

88. **Transparency Concerns**³⁶: The Supreme Court and various High Courts have raised concerns regarding the transparency and accountability of ICs and LCs, as well as the management structures within organisations³⁷. These issues arise from various factors, including the lack of democratic election processes for selecting IC/LC members, opaque procedures employed when handling cases involving senior management employees, and failure to adhere to legal requirements such as allowing cross-examination and providing access to case documents for both parties.
89. **Decline in Work Productivity**: Instances of mental harassment, such as hostility, isolation, gaslighting, or coercion to quit, inflicted upon a target, particularly when the accused holds a management-level position, instils a sense of fear and reluctance to report in other employees of the organisation. This distress impairs their workplace performance, leading to a decline in productivity³⁸.
90. **Creating an Atmosphere of Hostility and Mistrust**: When an incident of workplace harassment is reported, the entire workplace gets affected. The fallout from such incidents erodes the camaraderie and cohesion among employees, giving rise to a work culture which is unhelpful towards both the target and the accused. This breakdown of workplace cohesion not only undermines employee morale, but fosters an environment of tension and discord as well.

5.3.2

Impact of the Decision on the Workplace

89. Once a decision is taken by IC/LC, whether it is in favour of the target or against them, there can arise multiple repercussions for the workplace. Some of the untoward consequences have been discussed below.

36 LexPOSH. (2023, April 01). 10 Common Mistakes of IC Members. LinkedIn. <https://linkedin.com/pulse/10-common-mistakes-ic-members-under-posh-act-lexposh>.

37 SS Rana . (2023, August 04). Standard Chartered Bank pulled up by Delhi Court for Lapses in POSH Inquiry - Lexology. Lexology. <https://lexology.com/library/detail.aspx?g=e29a98e8-f7e4-4f8a-838b-d6fb7fb54f01>.

38 How Sexual Harassment Affects the Workplace. (n.d.). Easyllama. <https://easyllama.com/blog/how-sexual-harassment-affects-workplace/>.

Suggestions

92. This section presents suggestions to enhance the on-ground implementation of the Act to ensure safer workplaces for all. Throughout previous sections, we have identified both strengths and challenges within the existing framework, noting gaps that hinder the functionality of the Act for the wider population. While the Act is a robust tool, refining its implementation on the ground can significantly increase its effectiveness. These recommendations are grounded in research and analysis conducted over four years, incorporating insights from respondents across both formal and informal sectors as well. Here, we propose practical changes informed by our comprehensive study of workplace sexual harassment.

6.1

Solving for the Paradox of Evidence

93. The Act does not have a strict and comprehensive definition of what constitutes evidence to prove the incident of sexual harassment. Additionally, the Act falls under civil jurisdiction and not under the ambit of the Indian Evidence Act of 1872. Due to this, the onus of admitting reliable sources of evidence, judging their admissibility, and conducting a fair process lies on the ICs, LCs, and the discretion of the members of these committees. Some of the ways in which the resulting paradox of evidence can be resolved are discussed below.

6.1.1

Addressing the Lack of Evidence

94. To ensure that a lack of evidence does not hinder the process of justice for the target, the IC/LC can play a proactive role during the proceedings. To begin with, the target can be made aware of their rights, the inquiry can be initiated on the sole basis of the testimony of the target, and documented evidence or a witness can be considered an add-on instead of a prerequisite³⁹. Additionally, the IC/LC can consider the likelihood that sexual harassment took place in the circumstances outlined by the target as part of the evidence⁴⁰.

6.1.2

Securing the Privacy of the Target

95. Ensuring the security and anonymity of the witnesses and protecting the identity of the target are paramount to a fair and just process for all parties involved⁴¹. Furthermore, adequate, and regular training of all employees, members of the IC/LC, HR personnel is also necessary to educate them on the various forms of evidence that can be considered by the inquiring committee at the time of investigation and decision making. Finally,

39 Pant, B. (2023, January 05). Evidence under the PoSH Act: What do I need to know? - Serein. Serein. <https://serein.in/evidence-under-the-posh-act-what-do-i-need-to-know/>.

40 Preponderance of Possibilities - Metis POSH Consulting Service LLP. (2022, April 27). PosH. <https://posh.metisindia.com/preponderance-of-possibilities/>.

41 Raj, P. (2023, August 17). What Is Anonymity of Witness Under the POSH Act as per Latest Judgement. Vakilsearch. [https://vakilsearch.com/blog/anonymity-of-witness-under-the-posh-act-as-per-latest-judgement/#:~:text=The anonymity of witnesses refers,the accused or their associates.](https://vakilsearch.com/blog/anonymity-of-witness-under-the-posh-act-as-per-latest-judgement/#:~:text=The%20anonymity%20of%20witnesses%20refers,the%20accused%20or%20their%20associates.)

regularly revising the training material used and incorporating the latest jurisprudential trends can help all employees and committee members remain up to date with their rights and responsibilities.

6.1.3

Process of Cross-Examination

96. The IC/LC can also proactively ensure that there is a robust system of cross-examining⁴² the target as well as the accused. Both parties need to be given a chance to submit the written question to the other to ensure that the proceedings do not support one or the other unfairly. Although these provisions are already mentioned in the Act, in many circumstances, one or both parties may not be aware of their right to cross-examine the other party. Thus, the IC/LC needs to step in and make both parties aware of their rights at the outset.

6.1.4

Providing Support to the Target

97. Along with spreading awareness and ensuring procedural integrity, the IC/LC can also focus on putting in place a robust support system for the target by providing confidential counselling sessions to them by an external expert, legal support if the target chooses to opt for filing a case in a court of law, and written assurance of non-retaliation.

6.2

Independence and Involvement of the IC

98. The IC always needs to be at the forefront, leading the charge to

ensure that the workplace remains harassment-free. At the same time, this independence assures the members of IC to act in accordance with the mandate of the Act without worrying about the reputation of the organisation, thereby ensuring a just and fair process of inquiry and decision making. Some of the ways in which this can be achieved are discussed below.

6.2.1

Training and Sensitisation of IC Members

99. Organisations can enhance the effectiveness of ICs by developing a robust training and sensitisation programme that goes beyond merely fulfilling the legal requirements of the Act. It is crucial to incorporate an understanding of the psychological impacts on harassment targets into these sessions. Comprehensive training should cover psychological and mental health aspects, and could be facilitated by external experts or psychologists, to ensure depth and accuracy in the material presented.

6.2.2

Awareness Creation by the IC

100. There can be greater involvement of the ICs in the workplace to create awareness about the Act. These can include arranging regular awareness sessions for the employees and the management, displaying posters about workplace sexual harassment, the repercussions of untoward behaviour⁴³, displaying the names of the members of the ICs as well as how to get in touch with them. ICs can also draft annual reports highlighting the compliances under the Act and what steps the organisation has taken to follow them.

42 AZB . (2023, July 26). Decoding the Principles of Natural Justice in a POSH Inquiry. Azbpartners. <https://azbpartners.com/bank/decoding-the-principles-of-natural-justice-in-a-posh-inquiry/>.

43 Sreenivasan, M. (2021, July 07). 7 Steps Towards POSH Compliance for an Early-Stage Business. Elearnposh. <https://elearnposh.com/posh-compliance-for-an-early-stage-businesses/>.

6.2.3**Going beyond the Legal Mandate**

101. Legal compliance should not be the only prerogative of the IC. These committees can also focus on improving the overall well-being of the employees and the culture of the organisation⁴⁴. To ensure a healthy workplace, the IC and HR personnel can go beyond legal compliances and play an active role in navigating the conflicts at the workplace in a healthy way. These measures can include having gender-neutral policies for the workplace, regular team-building workshops, and a focus on the mental and physical well-being of the employees.

6.2.4**Increasing Budget Devolution to the IC**

102. The organisation can increase the budget devolution to the ICs which can then be utilised for adequate training of the members, seeking legal consultation and external support when required, and for the daily administrative procedures and support.

6.2.5**Holding the ICs Accountable**

103. In addition to the measures suggested previously, an annual external auditing of the ICs to establish their accountability and procedural transparency can be made part of the organisation's pledge to ensure a safe workplace. There can also be internal feedback loops in the organisation to gather the opinions of employees on the efficiency of the IC and take in their suggestions on what can be improved.

6.3**Supporting the LCs**

104. Our study over the last four years has helped bring to the fore issues affecting the informal sector workforce. From increased vulnerability due to socio-economic status to a lack of adequate support systems, it is imperative that LCs be supported and empowered to ensure justice and fairness. Some of the ways in which this can be achieved are mentioned below.

6.3.1**Providing Resources to the LCs**

105. The process of empowerment can start from providing adequate resources to the LCs in terms of workforce, external consultants, and legal aid, as well as financial support. The budget support can be a priority since the existing LCs are dependent on the local authorities, including District Officers, to get funds for their functioning.

6.3.2**Collaborating with Stakeholders**

106. Support channels can be created through which collaboration between corporates, NGOs, and the Government bodies can be set up. Such a collaboration can enable LCs in increasing their outreach, being up to date with the latest developments in the space of workplace sexual harassment, and to adequately train and sensitise their members.

6.3.3**Establishing Accountability of the LCs**

107. Like for the ICs, similar accountability mechanisms can be established

⁴⁴ ungender. (2023, September 15). How to go beyond POSH compliance and improve employee well-being?. Ungender. <https://ungender.in/improve-employee-well-being/>.

for the LCs which can involve annual reports, external auditing, feedback mechanisms, and performance reviews. The annual report mentioned here can include information about the LC members, the number of cases handled, timelines of the cases, outcomes, and data to portray the demographic information of the women who approached the LC.

6.3.4

Streamlining the Process of Filing Complaints

108. The LC can ease the process of filing complaints by providing employees with templates for filing complaints or assistance with the same, especially in regional languages or in cases where targets are not literate enough to do so. Such readily available templates can reduce the burden on the employees and make the process of filing complaints smoother and more streamlined.
109. The LC can also have a pre-concurred checklist that it can follow while receiving a complaint of sexual harassment and while adjudicating on it. This checklist can be based on the guidelines within the Act as well as policies of the concerned organisation when applicable and available.

6.4

Recommendations from our Previous Editions

6.4.1

Changes in the Definition of the Act

110. The current definition of ‘workplace’ and ‘employee’ can be expanded to make it more inclusive. While making these changes, the digital workplaces can be taken into consideration, while making the policy gender-neutral and increasing the time

period for filing a complaint from the current 6 months to at least 12 months or more.

6.4.2

Ensuring a Robust Internal Committee (IC)

111. Training members of the IC on the full scope of powers and processes and ensuring that the members have standard written procedures constantly available to them under the Act is imperative.
112. The organisation can also ensure having an independent IC separate from the HR department as it would ensure more specialisation regarding the Act and less burden on the HRs.
113. To ensure the smooth and efficient functioning of ICs and LCs, it is also crucial to have certain checks and balances on the IC via reviewing the functioning, composition, and experience of the members of these committees.

6.4.3

Protecting Third Party Employees

114. The roles of ICs also extend to ensuring employees are safe when engaging with third parties as part of their responsibilities. The need to engage with third parties is often due to the business needs of the firms and the responsibility to redress such claims can fall upon them too.

6.4.4

Implementation of SHe-Box

115. Organisations can take forward the initiative of the government and implement SHe-Box as a company-wide online portal. The portal can be accessible to only the HR and the IC members, and one can track the status of their complaints on the same. Further, complaints can also be filed anonymously by the

targets to protect their privacy and ensure that one is not subjected to any harassment post-filing of the complaint.

6.4.5

Role of the State

116. The state can appoint an ombudsman, a public advocate, who checks on the government/organisation's activities, identifies systemic concerns, and is not biased.
117. The State can make checking the implementation of the Act an essential part of the Annual Review of district officers. Whilst making any interference for the on-ground implementation, the MPs of the constituencies could be required to

possess the data on the functioning of the LCs in their districts, via mandatory engagements with the respective district officer.

6.4.6

Having a Strong Deterrent

118. The standard fine under the Act is currently INR 50,000⁴⁵. However, this is usually a weak deterrent for any organisation with more than ten employees. Therefore, the fine can increase significantly, which may provide a stronger deterrent to the organisation to not violate the necessary prerequisites under the Act, including establishing an IC, regular training of the employees, and a fair process to seek redressal, among others.

⁴⁵ Section 4(1), the Act of 2013

7

Conclusion

119. As we draw the curtain on the first four-year cycle of our continuing review of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013, it is important to encapsulate the multi-faceted dimensions explored and the path forward in addressing workplace sexual harassment in India. Over the last four years, from 2020 to 2023, we have dedicated ourselves to the meticulous study of this critical issue, uncovering systemic barriers, documenting progress, and advocating for more robust implementation mechanisms. While our work is not done yet, we take cognisance of the various developments that are continuing in this area.

7.1

Reflection on Key Findings

120. Our analysis has revealed several persistent challenges and emerging trends in the enforcement of the Act. The reluctance of informal sector workers to report incidents, primarily due to fear of retaliation and financial insecurity, remains a significant barrier. This reluctance is compounded by a lack of awareness about legal rights and available recourse. For instance, many respondents expressed fears of job loss or retaliation if they reported harassment, highlighting the need for more supportive workplace cultures and robust protection mechanisms.
121. In the formal sector, while awareness and implementation of the Act are relatively better, there are still gaps in consistent enforcement. The presence of Internal Committees (ICs) across organisations varies, with some failing to conduct regular training or awareness programmes. Our surveys indicated that 17 per cent of corporate heads acknowledged never conducting training or workshops on their sexual harassment policies, underscoring the need for mandatory, periodic sensitisation sessions.
122. The judiciary has played a crucial role in interpreting and expanding the scope of the Act, ensuring broader protections for workers. Noteworthy judicial interventions have clarified that harassment occurring outside traditional office environments, including digital workplaces, still falls under the purview of the Act. Such rulings are pivotal in adapting the Act to modern work environments, including the gig economy and remote working scenarios.

7.2

Recommendations for Future Action

123. **Strengthening Awareness and Training Programmes:** The foundation of a harassment-free workplace lies in continuous education and awareness. Organisations can implement mandatory training sessions that cover the psychological impacts of harassment, legal rights, and reporting mechanisms. These sessions can be conducted by external experts to ensure objectivity and depth of understanding.
124. **Enhancing Support for Informal Sector Workers:** Given the vulnerabilities faced by informal sector workers, it is crucial to establish Local Committees (LCs) that are well-resourced and accessible. This includes providing legal aid, financial support,

and collaboration with NGOs and government bodies to ensure comprehensive support systems. Streamlining the process of filing complaints through readily available templates and assistance can significantly reduce barriers to reporting.

125. **Increasing Accountability and Transparency:** Organisations can hold ICs accountable through regular audits, feedback loops, and performance reviews. Transparency in handling complaints, ensuring that both parties are informed of their rights, and adhering to principles of natural justice are essential for maintaining trust in the process.
126. **Implementing Stronger Deterrents:** The current financial penalties under the Act are insufficient for larger organisations. Increasing fines and introducing additional punitive measures can serve as stronger deterrents against non-compliance. Furthermore, ensuring that ICs operate independently of the HR and other departments can mitigate conflicts of interest and enhance the credibility of the investigation process.
127. **Broadening the Definition and Scope of the Act:** Judicial interpretations have already begun to expand the scope of the Act to include digital workplaces and gig economy platforms. It is recommended that legislative amendments formally incorporate these changes, ensuring comprehensive coverage across all work environments.
128. **Addressing Post-Incident Management:** Ensuring that targets of harassment receive continuous support post-incident is crucial for their recovery and reintegration into the workplace. Establishing guidelines for follow-ups, providing psychological support, and creating a non-hostile work environment are

essential steps in this direction. This support system should also address potential retaliation and ensure that the safety and well-being of the target are prioritised.

129. **Encouraging a Cultural Shift:** Finally, addressing workplace harassment requires a cultural shift that transcends legal compliance. Organisations can foster an environment where respect, equity, and dignity are core values. This involves promoting gender-neutral policies, encouraging open communication, and creating an inclusive work culture that proactively prevents harassment.

7.3

Moving Forward

130. The insights gained from the past four years underscore the complexity and urgency of addressing workplace sexual harassment. The effectiveness of the Act hinges on rigorous implementation and continual adaptation to evolving work environments. As we move forward, collaboration between stakeholders—government, corporates, NGOs, and the judiciary—is paramount. By working together, we can ensure that workplaces across India are not only compliant with the law but are truly safe and dignified environments for all employees.
131. This fourth edition of our Annual Review serves as both a reflection of past efforts and a blueprint for future action. It is our hope that the findings and recommendations presented herein will encourage further commitment and inspire concrete steps towards eradicating workplace sexual harassment. The journey towards creating safer workspaces is ongoing, and with collective effort, we can achieve a future where every individual can work without fear, with dignity and respect.



ISBN 978-93-6699-246-4



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