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“No #MeToo for Women Like Us”

Poor Enforcement of India’s Sexual Harassment Law



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Summary

For women like me, what is #MeToo? Poverty and stigma mean we can never speak out. There is no place safe for women like us. Not our workplaces, nor our homes, and not the road we take.

–Shalini (name changed), a domestic worker, Gurgaon, May 2020

In 1992, Bhanwari Devi, a government social worker in the north Indian state of Rajasthan, was gang-raped in front of her husband by higher caste neighbors angered by her efforts to stop a child marriage in their family.

Justice eluded Bhanwari Devi. A lower court acquitted the accused of rape and convicted them with lesser offenses for which they served nine months in jail. The appeal is still pending in the state’s High Court today, 28 years later. But public outrage and activism catalyzed by her ordeal paved the way for new legal protections against sexual harassment in the workplace for millions of Indian women.

After state authorities, her employer, denied responsibility because she had been attacked in her own fields, activists filed a public interest petition in the Supreme Court demanding that “workplaces must be made safe for women and that it should be the responsibility of the employer to protect women employee at every step.” Acting on the petition in 1997, the Supreme Court of India in *Vishaka v. State of Rajasthan* set out the “Vishaka Guidelines,” mandating that employers take steps to protect female employees from sexual harassment at the workplace and provide procedures for resolution, settlement, or prosecution. In 2013, India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act to protect workers in both formal and informal sectors.

The act was a significant legislative step for India but for most women workers in the country, especially those in the informal sector, the law exists only on paper. Government enforcement of this law is so poor that if the attack against Bhanwari Devi happened today, she would still be unlikely to get justice.

After the global #MeToo movement erupted in October 2017, with millions of survivors posting to social media about their own experiences of gender-based violence, many

women in India—mostly from the media and entertainment business, as well as others able to access social media in English—started using the hashtag to publicize their accounts of abuse. This led to new public scrutiny of high-profile male figures and led to some resignations and legal action. However, in part because it was led on social media, the #MeToo movement in India excluded women from the informal sector, where 95 percent of women are employed.

“The factory worker, the domestic worker, the construction worker, we have not even recognized the fact that they are sexually harassed and assaulted on a daily basis,” said Delhi-based lawyer Rebecca John. “But poverty leaves them no choice, they know whatever earning they make is far more important.” One woman, a domestic worker, told Human Rights Watch that sexual harassment in the workplace has become so normalized, women are simply expected to accept it:

Everyone thinks of harassment as trivial. “Just ignore,” is what everyone says. If it becomes too much, then I think it is better to report because the more you tolerate, the more it happens. But we are poor, and we are also afraid if we report our employers, they can file false charges of theft against us, so we are scared to raise our voices.

Based on 85 interviews with women working in both the formal and informal sectors, trade union officials, labor and women rights activists, lawyers, and academics, Human Rights Watch found limited government efforts to enforce the law and gaps in mechanisms to protect women in the informal or unorganized sector, such as millions of domestic workers and those employed by the government to implement various welfare schemes.

Although more women are speaking out against sexual harassment in the formal sector, and companies are slowly taking steps to comply with the law, activists said that women still find it difficult to report because of stigma, fear of retribution, and because they fear a drawn-out justice process that often fails them.

Law Against Sexual Harassment at the Workplace

In 1997, the Supreme Court introduced the Vishaka Guidelines. “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right,” the court said. However, the guidelines failed to explicitly address sexual harassment of women in the informal sector—a group now numbering some 195 million.

The 2013 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act widened the definition of the workplace and covered the informal sector, including domestic workers. Popularly known as the POSH Act, it provides protection to all workers in the public and private sectors including health, sports, education, or government institutions, and any place visited by the employee during the course of her employment, including transportation.

The law defines sexual harassment as physical contact and advances, or a demand or request for sexual favors, or making sexually colored remarks, or showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of sexual nature. Any of these acts whether direct or implied, constitute sexual harassment under the law. It provides an alternative to filing a criminal complaint with police, instead mandating employers to set up committees in case of a private company, or local government officials in case of the informal sector, to hear complaints, conduct inquiries, and recommend action to be taken against perpetrators. This can range from a written apology to termination of employment.

Women can still file police complaints under the Indian Penal Code dealing with sexual harassment or assault. But unlike a criminal case that could drag on for years, the complaints committees are expected to offer quick and effective remedy.

Under the POSH Act, every employer is required to constitute an Internal Committee (IC) at each office with 10 or more employees. For establishments where the IC has not been constituted because they have fewer than 10 employees, or if the complaint is against the employer, or for women working in the informal sector, the state government’s district officer or collector is required to form a Local Committee (LC) in each district and, if required, at the block level. The government is also responsible for developing training

and educational materials, organizing awareness programs, monitoring implementation of the law, and maintaining data on the number of cases of sexual harassment filed and resolved in the workplace.

Sexual Harassment at Work

A 2017 survey by the Indian National Bar Association of over 6,000 employees—the largest conducted so far in India—found that sexual harassment was pervasive in different job sectors, ranging from lewd comments to an outright demand for sexual favors. Most women, it found, chose not to report sexual harassment to management because of stigma, fear of retribution, embarrassment, lack of awareness of reporting policies, or lack of confidence in the complaints mechanism. It also found that most organizations still failed to comply with the law, or members of Internal Committees did not understand the process adequately.

There are no studies in India that document the extent to which sexual harassment in the workplace contribute to women leaving their jobs. “There are anecdotal sources,” said journalist Namita Bhandare who wrote a multi-part investigation series for *IndiaSpend*, a data journalism website, on this phenomenon. “Girls don’t want to talk about sexual harassment because they fear that their families will just ask them to stop working. There is no data or a substantive quantitative study on sexual harassment, and none at all in the informal sector.”

Garima (name changed), a nursing officer who had sought protection and redress from her employers at a government hospital, complained to the Delhi Commission for Women in 2019 about the proceedings of the Internal Committee. The committee, which was formed only after her complaint, consisted of people that were already aware of the problems but had failed to intervene because the accused was their supervisor. “When the medical superintendent accused in my case entered the room, all the committee members rose to greet him,” she told Human Rights Watch. “Their bias was very obvious. The Internal Committee worked to protect him.” Garima also alleged that committee members, who were employed at the hospital, threatened her to withdraw her complaint and did not provide her the final report of the investigation. The Delhi Commission for Women held a hearing for her and said they would forward her complaint to the district-level Local Committee for investigation. Garima said she was not called by the Local Committee for a

hearing. Instead, the commission informed her in February 2020 that the committee filed a final report quoting police officials saying she did not have enough evidence to prove her case. Said Garima:

If I did not need this job, I would not do it. Why should women have to work like this, in such a terrible environment? I have become an example for others to point out “See what happens? Nothing.” Sexual harassment is so normalized that other doctors tell me, “Why are you bothering to fight. This is childishness. We all deal with it, why cannot you?”

A Silent Crisis in the Informal Sector

Seven years after the 2013 law was enacted, the government has not published any data or information on the functioning or effectiveness of Local Committees that are responsible for dealing with sexual harassment complaints in the informal sector.

A 2018 study by the Martha Farrell Foundation and Society for Participatory Research in Asia based on Right to Information requests to 655 districts in the country found many districts had failed to establish the committees or constitute them in line with the legal provisions. Even where they existed, it is difficult to find any information on websites or public spaces displaying their names and location.

The study also found a lack of awareness regarding roles and responsibilities among the committee members, indicating a lack of capacity to handle sexual harassment complaints. Out of 655 districts in the country, 29 percent replied that they had formed Local Committees, while 15 percent had not done so. The majority, 56 percent, did not respond. By May 2020, even in the capital, Delhi, only 8 out of 11 districts had constituted Local Committees. Anagha Sarpotdar, chair of the Mumbai city district Local Committee since 2018, said that by May 2020, the committee had only received five complaints, all from the formal sector. She said:

There is no awareness about the Local Committees because the central government has not given any money to state governments to spread awareness. This is directly reflecting in low reporting. The implementation of the law has failed in the informal sector. Committee members are not

even paid travel fees in some cases. There is no money earmarked in the budget for the implementation of the POSH Act.

The central and state governments, which employ millions of women to implement schemes related to health, nutrition, education, and social welfare, have failed to take steps to protect these workers. The women are considered part-time or volunteers, earn low wages, and form part of the informal sector. This includes 2.6 million *anganwadi* (literally “courtyard shelter”) workers who work on early childhood care and nutrition under the government’s Integrated Child Development Services to provide food, preschool education, primary health care, immunization, and health check-up to children under 6 years and their mothers; over 1 million Accredited Social Health Activists (ASHA) who work as community health workers under the government’s National Rural Health Mission; and 2.5 million midday meal cooks who prepare the free lunches provided in government schools.

These women may face heightened risk of sexual harassment due to their work, but authorities’ failure to ensure that government institutions, such as schools and hospitals, have properly functioning Internal Committees, or that districts have Local Committees, has left these women without accessible channels for redress. For instance, Nisha (name changed), 36, an ASHA worker in Haryana, described how normalized and rampant sexual harassment can be:

When we go to the sub-center to work, sometimes when we are alone, our male colleagues comment on how we are dressed, ask personal questions about our husbands, and it becomes awkward. Sometimes, when we go to people’s homes to vaccinate children for polio, the young and old men crack jokes like, “Give us also two sips, we will also become young and virile.”

Ranjana (name changed), 45, is an ASHA worker and part of the ASHA workers’ union in Haryana. She said their work requires them to be on call even at night in case of emergencies, making them vulnerable to harassment: “There is no awareness or training from the government on the sexual harassment law, for instance, if something happens

how we should complain. They only tell us that if there is an emergency at any time, we have to respond to the call.”

Domestic workers are another significant category of workers who are especially at risk of sexual harassment and violence due to their isolation in private homes and their exclusion from many key labor protections guaranteed other workers. Despite a growing national and global movement to recognize domestic workers and bolster protections for their safety, India has not ratified the International Labour Organization’s Domestic Workers Convention.

For domestic workers, the 2013 POSH Act says that Local Committees have to refer the case to the police, leaving no civil remedy. Human Rights Watch has previously documented that women often face humiliation and mistrust at police stations when they go to complain of sexual violence, and that criminal cases can drag on in courts for years, leaving survivors vulnerable to threats and loss of work days when they attend hearings. This same phenomenon also makes most women domestic workers reluctant to complain. “Even in rape cases, women have such a difficult time filing a complaint,” said Nandita Bhatt, director of the Martha Farrell Foundation. “How would they file a complaint that an employer looked at them inappropriately?”

Shalini (name changed), 37, a domestic worker in Gurgaon, said she was sexually harassed for months by a security guard of the residential apartment complex where she worked as a part-time domestic worker. Shalini has been associated with the Martha Farrell Foundation for a few years now and is aware of the POSH Act, but she does not believe she would ever report a case:

People like me do not get justice. The Local Committee is so far away that I could not even think of going there, and I would definitely not go to the police. This law has not helped women like me. Even if you complain, nothing happens. Once we protested for a domestic worker who was beaten up, but the police put pressure on us to be silent. So, what is the point of going to the police? If we even think of complaining, employers would file false complaints against domestic workers and the police will keep the domestic workers all night at the station and harass them. Our lives have not improved because of the law.

Kainaat (name changed), 25, said that she was sexually harassed by a man old enough to be her grandfather when she was 17 and working as a domestic worker, living in her employer's home:

When his children and grandchildren would go out, he would purposely stay home and keep following me around. He would pat my back, but then his hands would wander. I tried to ignore. Once when he did this, there was no one at home so I went to the washroom and did not come out until others returned. I knew no one would believe me if I told them, so I kept quiet. That man used to tell me, "Wear a short dress, you will look better in it." I put up with it because I had to earn to support my family.

India's garment industry is the second largest employer of women in the country after the agricultural sector. Sexual harassment in Indian garment factories as well as the serious gaps in monitoring and addressing these abuses is disturbingly prevalent, say activists. Even though the industry largely employs women, the management remains mostly male. Women reported lewd comments, invasive questions about their sex lives, stalking, and propositions for sexual favors in exchange for a lighter workload and time off.

#MeToo and the Cost of Speaking Out

The "Me Too" movement in India has continued to comprise of a relatively small group flagging a pervasive problem because stiff barriers to reporting remain, including fear of reprisals and lack of awareness or trust in Internal Committees. Powerful men also use legal intimidation tactics to fend off their accusers.

For instance, as part of India's #MeToo movement, the most prominent allegations were against a minister in the ruling Bharatiya Janata Party (BJP)-led government. In October 2018, at least 20 women accused M.J. Akbar, then-minister of state for external affairs, of sexual misconduct over several years during his career as a newspaper editor.

Akbar denied the allegations and contended that they were malicious. He resigned as minister, but filed a criminal defamation case against Priya Ramani, a woman journalist who first wrote about his abusive conduct.

“I spoke the truth in the public interest and in the context of the #MeToo movement,” Ramani told a court in August 2019 in Delhi when deposing in the criminal defamation case against her, saying it “is an attempt to intimidate me by deliberately targeting me.” Ramani’s lawyer, Rebecca John, told Human Rights Watch that the defamation suit, pending at time of writing, had a chilling effect. “Many women have since come to me because they have been very worried about possible backlash they would have to face if they spoke out. It is evident no one is speaking about sexual harassment anymore. The moment came and went.”

A relic of the British colonial period, India’s criminal defamation law carries up to two years in prison and a fine. Criminal defamation, by virtue of the disproportionate penalty it imposes on speech, violates the right to freedom of expression as guaranteed under international law and should not be used as a legal response to complaints of sexual harassment. Civil defamation cases can also be used for intimidation. Other men accused of workplace sexual harassment in India have brought civil defamation cases against complainants.

In April 2016, the former chairman of the Intergovernmental Panel on Climate Change, R.K. Pachauri, filed a civil defamation case against one of the women who had accused him of sexual harassment. He also filed a case against her lawyer, Vrinda Grover, and included several media outlets in the suit, for publicly revealing the statements of the women who had accused him of sexual harassment. Grover said:

The issue has reached a new low, where the lawyer who is speaking in the public space is now being targeted.... This to my mind is an extremely dangerous direction in which things have been moved because the one area where we have been able to create support is the social space.... It is the social sphere that is critical to the process of change, where a different narrative develops, one that pays keen attention to women’s articulation of what is wrong with a lewd comment and why it’s not a minor “Eve-teasing” [euphemism used for public sexual harassment or assault] issue.

International Legal Obligations

India ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)—which has been interpreted to prohibit sexual harassment at work as a human rights violation—in 1993. India is also party to the International Covenant on Economic, Social and Cultural Rights, which says all workers are entitled to “[s]afe and healthy working conditions” and provides that states have a core obligation to prohibit sexual harassment at work through law, ensure appropriate complaints procedures and mechanisms, and establish criminal sanctions for sexual harassment.

In June 2019, the International Labour Organization (ILO) adopted a landmark treaty that established new global standards to prevent and respond to violence and harassment in the world of work. The Indian government, representatives of Indian workers’ groups, and representatives from India’s employers’ associations all voted in favor of the convention, but India has yet to ratify the treaty.

The treaty sets out minimum obligations for how governments should prevent and protect people from violence at work. This includes ensuring robust national laws against harassment and violence at work and adopting a gender-responsive, inclusive, and integrated strategy. The treaty requires prevention measures, including information campaigns, and special attention to sectors with heightened risk of violence and harassment. It also requires enforcement—such as inspections and investigations, and access to remedies for victims, including complaints mechanisms, whistleblower protections, and compensation.

Key Recommendations

The Indian government should take urgent action—in collaboration with state governments, civil society organizations, women’s rights activists, trade unions, private sector, and national and state commissions for women—to raise awareness about and ensure implementation of laws and policies that address sexual harassment in the workplace. The government should:

- Enforce the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, including monitoring the creation and effective operation of committees, carrying out inspections and investigations, sanctioning employers

who fail to comply, and ensuring access to remedies for victims, including complaints mechanisms, and compensation.

- Publish data on an annual basis on the number of sexual harassment cases filed and resolved by Internal and Local Committees, including the types of cases and resolution. Publish data on the number of employers sanctioned for non-compliance with the law.
- Ratify and implement the ILO Convention on Violence and Harassment, 2019, No. 190 and take steps toward effective prevention measures, including special attention to sectors with heightened risk of violence and harassment, such as domestic work.
- Conduct a nationwide audit on Local Committees and publish the results. The audit should assess how many Local Committees have been set up, their composition, nature of complaints received, orders issued, time taken for issuing orders, what kind of training and awareness raising programs, campaigns, and workshops they have held, and other related aspects of their responsibilities.
- Increase cooperation and dialogue with workers' organizations and civil society groups to address sexual harassment as a key workplace issue, and partner in information campaigns and reporting on effective enforcement of the law.

Methodology

This report is based on Human Rights Watch field research and 85 interviews conducted in India's Tamil Nadu state in January 2019, Haryana in August 2019, and Delhi between June and August 2019. Follow-up telephone interviews were conducted in May 2020, amid a nationwide lockdown to contain the Covid-19 pandemic.

Human Rights Watch interviewed about 50 people in Chennai, Tirupur, and Coimbatore districts in Tamil Nadu, including women employed in the garment factories, trade union officials, lawyers, women's rights activists, government officials, and representatives from factory owners' associations. In Haryana, we spoke with domestic workers and other women working in the informal sector, trade union officials, and women rights activists. Elsewhere, we spoke with lawyers representing women bringing sexual harassment claims, journalists, academics, women's rights activists, trade union officials, and members of Internal Committees and Local Committees.

The report also draws upon secondary literature, including research conducted by other rights groups and trade unions, media reports, government statistics, and court rulings.

Human Rights Watch wrote letters to the government of India's Ministry of Women and Child Development and Ministry of Labour and Employment, the National Commission for Women, and the National Human Rights Commission but has not received any response at time of writing.

Human Rights Watch, with the consent of the interviewees, received and has retained copies of relevant documents such as complaint letters and court documents. Interviews were conducted in Hindi or English. In Tamil Nadu, most interviews were conducted in Tamil through an independent interpreter.

For several people, the report uses pseudonyms and, on their request, identifying information has been withheld to protect their privacy and safety. Human Rights Watch provided no remuneration or other inducement to the interviewees.

I. Law Against Sexual Harassment at the Workplace

The hashtag #MeToo erupted globally in October 2017, highlighting the pervasiveness of gender-based violence in the world of work.¹ In India, the movement centered mainly on women in English-speaking media and in the entertainment business, who had access to social media to publicize accounts of workplace sexual harassment.²

Women's rights activists in India had long raised awareness and advocated around these problems long before the global #MeToo moment, leading to policies and laws to protect women workers from sexual abuse. However, these have remained poorly enforced by the government and largely ignored by employers.

Vishaka Guidelines

In September 1992, Bhanwari Devi was working as a *saathin* (friend) to promote the government's Women's Development Program in her village in Rajasthan state. Her job involved going door-to-door, and counseling women on a range of issues, including hygiene, and discouraging practices such as dowry, female infanticide, and child marriage. When she tried to stop the marriage of a 9-month-old baby belonging to the dominant Gujjar caste in the village, she was ostracized and then assaulted and gang-raped by members of the Gujjar community.³

The accused were acquitted by a lower court in Rajasthan and the appeal is still pending in Rajasthan High Court, 28 years later. However, her case spurred a movement and various activists and women's rights groups filed a public interest petition in the Supreme Court,

¹ The "Me Too" movement was coined in 2006 by activist Tarana Burke for a grassroots social movement in the United States against sexual harassment. In October 2017, public allegations by Hollywood actresses detailing decades of sexual harassment by film producer Harvey Weinstein sparked a global explosion of the #MeToo hashtag on social media, with survivors sharing personal stories. The movement's momentum, which continues today, amplified public debate and activism to end sexual harassment and violence in many countries. In March 2020, Weinstein was sentenced to 23 years in prison for rape and sexual assault. See Nisha Varia, "Weinstein Rape Sentence in US Boosts #MeToo Movement," Human Rights Watch, March 12, 2020, <https://www.hrw.org/news/2020/03/12/weinstein-rape-sentence-us-boosts-metoo-movement>.

² "#MeToo in India: A list of allegations as reported on social media, and followed up by Firstpost," *FirstPost*, November 25, 2019, <https://www.firstpost.com/india/metoo-in-india-a-list-of-allegations-as-reported-on-social-media-and-followed-up-by-firstpost-5359961.html> (accessed June 15, 2020).

³ Geeta Pandey, "Bhanwari Devi: The rape that led to India's sexual harassment law," *BBC*, March 17, 2017, <https://www.bbc.com/news/world-asia-india-39265653> (accessed August 6, 2019).

demanding that “workplaces must be made safe for women and that it should be the responsibility of the employer to protect women employee at every step.”⁴

As a result, in 1997 the Supreme Court laid down norms and guidelines in *Vishaka v. State of Rajasthan*, mandating that employers take specific steps to protect female employees from sexual harassment in the workplace and to provide procedures for the resolution, settlement, or prosecution of such crimes. “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right,” the judges ruled.⁵

The guidelines proposed a redress mechanism within the workplace in the form of a complaints committee. The committee would consist of employees and one external member and conduct hearings to address the complaints related to sexual harassment within an organization. However, the Vishaka guidelines failed to explicitly address sexual harassment of women in the informal sector.

Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013

In 2013, the Indian Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, popularly known as the POSH Act.⁶ The law expanded the definition of sexual harassment at work and the scope of application. It defines sexual harassment to include physical contact and advances, or a demand or request for sexual favors, or making sexually colored remarks, or showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of sexual nature. Any of these acts whether direct or implied, constitute sexual harassment under the law.

⁴ *Vishaka and Ors. v. State of Rajasthan*, Supreme Court of India, 1997, (7), SCC 323, August 1997, <https://indiankanoon.org/doc/1031794/> (accessed July 10, 2019).

⁵ Ibid.

⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, <http://wcd.nic.in/sites/default/files/Sexual-Harassment-at-Workplace-Act.pdf> (accessed July 10, 2019). The Ministry of Women and Child Development published a handbook detailing instances of unwelcome behavior that constitutes sexual harassment at the workplace. Government of India, Ministry of Women and Child Development, “Handbook on Sexual Harassment of Women at Workplace,” November 2015, <https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf> (accessed July 1, 2019).

Importantly, the law applies to all public and private employers and employees in both formal and informal sectors. The POSH Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status, including those working for salaries, daily wages, on an ad hoc or temporary basis, or as trainees or volunteers.⁷ It includes workers directly engaged through the principal employer or through contractors. The law recognizes women working in homes, such as domestic workers. The law applies to any place visited by the employee during her employment, including transportation.

As an alternative to filing a criminal complaint with police, the POSH Act mandates that employers or local government officials set up independent committees to hear complaints, conduct inquiries, and recommend action against perpetrators. Actions against those found responsible can range from a written apology to termination of employment. Women can still file police complaints under the Indian Penal Code dealing with sexual harassment or assault.⁸ But one of the reasons to set up complaints committees was to offer quick and effective relief unlike a criminal case, which could drag on for years. Also, it provided a civil remedy for women who may not want to access the criminal justice system or want to send perpetrators to jail but want to ensure a safe working space.

The POSH Act requires every private employer or company to constitute an Internal Complaints Committee—later changed to Internal Committee (IC) in 2016 through an amendment⁹—in each office with 10 or more employees. Employers are also required to provide a safe working environment in the workplace, prominently display the order constituting the IC and consequences of sexual harassment, and regularly organize workshops and awareness programs to sensitize employees regarding the law, as well as orientation programs for IC members.¹⁰

⁷ Ibid.

⁸ Criminal Law (Amendment Act), No. 13 of 2013, sec.354 A, [https://harsamay.gov.in/PDF/The_Criminal_Law_\(Amendment\)_ACT_2013.pdf](https://harsamay.gov.in/PDF/The_Criminal_Law_(Amendment)_ACT_2013.pdf) (accessed May 20, 2020). Sexual harassment is defined as an action by a man that includes physical contact involving unwelcome and explicit sexual overtures, demand for sexual favors, showing pornography against the will of a woman, or making sexually colored remarks. The penalty is imprisonment up to three years.

⁹ The Repealing and Amending Act, No. 23 of 2016, <http://egazette.nic.in/writereaddata/2016/169511.pdf> (accessed May 15, 2020).

¹⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, sec.19.

The Internal Committee should be headed by a woman employed in the workplace in a senior position, and at least half the members should be women. Two other members should be from among employees who preferably have experience in social work, a record in defending women’s rights, or have legal knowledge. One member should be from a nongovernmental organization or an association committed to the cause of women or a person familiar with issues relating to sexual harassment. All members are allowed to hold office no longer than three years.¹¹

For establishments where the Internal Committee has not been constituted because they have fewer than 10 employees, or if the complaint is against the employer, or for women working in the informal sector, the state government’s district officer is required under the POSH Act to form a Local Complaints Committee—changed to Local Committee (LC) through an amendment in 2016¹²—in each district and, if required, at the block level to receive complaints.¹³ The government is also responsible for developing training and educational materials, organizing awareness programs, monitoring the implementation of the law, and maintaining data on the number of cases of sexual harassment filed and disposed of in the workplace.

At least half the members of each Local Committee should be women and it should be chaired by an eminent woman who understands the rights of women workers. One member should be nominated from among women working in that district, and two members nominated from nongovernmental organizations (NGOs) who have experience working on women’s rights issues. Among NGO members, at least one should be a woman and one with qualifications in law. The committee should have a representative from the state government’s social welfare department, and one representative from the Dalit community. All members are allowed to hold office no longer than three years.¹⁴

The committees are required to complete inquiry into each case of sexual harassment within 90 days from the date the complaint is filed. After completion of inquiry, in the case of IC, the committee is required to send the report to the employer, and in the case of LC to

¹¹ Ibid., Act, sec.4.

¹² The Repealing and Amending Act, No. 23 of 2016, <http://egazette.nic.in/writereaddata/2016/169511.pdf> (accessed May 15, 2020).

¹³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, secs. 5 and 6.

¹⁴ Ibid, sec.7.

the district officer, who are expected to take action based on the report within 60 days of receiving it. The law also says the committees should provide counseling or other support services to the aggrieved employee.

The complaints committees have the powers of civil courts. They can summon any person, enforce their attendance, and record their statement during an inquiry.¹⁵ They can provide for conciliation before initiating an inquiry, if requested by the complainant. They can also demand any relevant document from the organization under inquiry. While the inquiry is pending, they can recommend the transfer of either the complainant or the respondent, recommend special paid leave for the complainant for a maximum period of three months, and prohibit the respondent from evaluating the performance of the complainant.¹⁶

If an employer fails to comply with the law, including constituting an Internal Committee, they can be punished with a fine up to 50,000 rupees (US\$700), and repeated violations may lead to higher penalties and cancellation of license or registration to do business.¹⁷ There is no centrally collated data on enforcement of the law, or cases resolved under it.

Verma Commission Recommendations on Weaknesses in the Law

In January 2013, a three-member commission headed by a former Supreme Court chief justice, Jagdish Sharan Verma, submitted a detailed report examining possible amendments to the criminal law to provide for quicker trial and enhanced punishment for sexual assaults against women.¹⁸ The commission was formed following widespread protests after the gang-rape and murder of a 23-year-old student, Jyoti Singh Pandey, in

¹⁵ Ibid, Act, sec.11(3)

¹⁶ Ibid, sec.12. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013, s.8, GSR 769(E), came into effect on December 9, 2013.

¹⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, sec.26 (1).

¹⁸ Report of the Committee on Amendments to Criminal Law, January 23, 2013, <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary> (accessed May 10, 2020). The committee made several important recommendations, including on police reform, educational reforms for greater gender sensitization, and electoral reforms. The report also recommended introducing new categories of sexual offenses, including stalking and voyeurism; amending rape laws to make marital rape an offense; increasing the punishment for rape; and reviewing security laws such as Armed Forces Special Powers Act, which provide effective immunity from prosecution.

Delhi in December 2012.¹⁹ The committee invited views and suggestions from civil society groups and received over 70,000 responses.²⁰

The committee's report also reviewed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 passed by the Lok Sabha (lower house of parliament) in September 2012 and concluded that "read as a whole, the Sexual Harassment Bill is unsatisfactory" and did not adequately reflect the spirit of the Supreme Court's *Vishaka* judgment.²¹ However, the Rajya Sabha (upper house of parliament) passed the bill a month after the committee's report, without taking any of commission's recommendations into account.²² The act came into force in December 2013.²³

The committee's biggest criticism was over the structure of Internal Committees, which it thought was counter-productive as "the in-house dealing of all grievances would dissuade women from filing complaints and may promote a culture of suppression of legitimate complaints in order to avoid the concerned establishment falling into disrepute." Instead, it recommended setting up a separate Employment Tribunal to receive and adjudicate all sexual harassment complaints.²⁴

Seven years later, significant evidence has accumulated to support the committee's concerns about a flawed reporting mechanism. "All the experience with the POSH Act shows us that the analysis in the Verma Committee report may have been right to criticize the law and ask for tribunals," said Mrinal Satish, a law professor at National Law University in Delhi and part of the research team that assisted the committee.²⁵ Senior

¹⁹ "Delhi gang rape case: Parliament session decision after Verma Committee report, says P Chidambaram," *Press Trust of India*, December 31, 2012, http://articles.economictimes.indiatimes.com/2012-12-31/news/36079350_1_special-session-parliament-p-chidambaram (accessed May 12, 2020).

²⁰ "India: HRW Letter to Justice Verma, Chair of the Commission on reforms on sexual assault and Former Chief Justice of the Supreme Court of India," Human Rights Watch news release, January 5, 2013, <https://www.hrw.org/news/2013/01/05/india-hrw-letter-justice-verma-chair-commission-reforms-sexual-assault-and-former>.

²¹ Report of Justice Verma Committee, Chapter IV, Sexual Harassment at the Workplace, para. 26 (accessed May 12, 2020).

²² Gargi Parsai, "Parliament passes Bill to prevent sexual harassment at workplace," *The Hindu*, February 26, 2013, <https://www.thehindu.com/news/national/parliament-passes-bill-to-prevent-sexual-harassment-at-workplace/article4455795.ece> (accessed May 12, 2020).

²³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2012, https://www.indiacode.nic.in/handle/123456789/2104?view_type=browse&sam_handle=123456789/1362 (accessed May 12, 2020).

²⁴ Report of Justice Verma Committee, Chapter IV, Sexual Harassment at the Workplace, para. 26(b) (accessed May 12, 2020).

²⁵ Human Rights Watch interview with Mrinal Satish, New Delhi, May 9, 2019.

advocate Vrinda Grover criticized the provision empowering the employer to nominate members of the Internal Committee, a change from the earlier Vishaka guidelines. “This is a huge setback,” she said, because it “presumes that the man at the top is inherently a good man. It cannot be a process of nomination.”²⁶

The Verma Committee report also recommended to delete section 10(1) of the bill, which provides for conciliation between the complainant and respondent. This, the committee said, violates the mandate prescribed by the Supreme Court in *Vishaka*, because “attempts to get justice cannot be muscled by attempts at conciliation.”²⁷

Section 14 of the law provides for punishing a woman if she is found to have filed a false or malicious complaint. The Verma Committee report called it a “completely abusive provision ... intended to nullify the objective of the law.”²⁸ Experts agreed with the committee’s conclusion. “This provision was added in law saying that it is to prevent misuse of law by women. However, I do not see any false cases by women. Instead, I see the employer using this provision to seek penalties against the complainant, as harsh as termination,” said Anagha Sarpotdar, chairperson of the Mumbai city district Local Committee.²⁹

This provision enables retaliation against the complainant as well as chills the environment for other women to come forward. In one instance, in May 2018, the Local Committee in Gurgaon, Haryana, decided to publicly display on its website the final order in a sexual harassment complaint by a woman employee against the managing director and human resources manager of a company. The committee said there was inconsistency between the complainant’s statements to her company’s Internal Committee and to the Local Committee, as well as a delay in reporting the incident. Therefore, it concluded that the complaint was false and recommended a written warning to the woman.³⁰ This illustrated the arbitrary use of section 14, wrote Sarpotdar, which “without deeper thought, can discourage and frighten potential complainants from reporting incidents of sexual

²⁶ Human Rights Watch interview with Vrinda Grover, New Delhi, August 30, 2019.

²⁷ Report of Justice Verma Committee, Chapter IV, Sexual Harassment at the Workplace, para. 21 (accessed May 12, 2020).

²⁸ *Ibid*, para. 22.

²⁹ Human Rights Watch telephone interview with Anagha Sarpotdar, May 21, 2020.

³⁰ “Complainant Warned in Sexual Harassment at Workplace Complaint by LCC Gurugram,” *Shonee Kapoor*, November 1, 2018, <https://www.shoneekapoor.com/complainant-warned-in-sexual-harassment-at-workplace-complaint-by-lcc-gurugram/> (accessed May 22, 2020).

harassment. It is imperative for the LC to understand that complainants may not always be able to provide direct evidence in support of their complaint.”³¹ The provision in law clarifies that inability to substantiate a complaint or provide adequate proof does not falsify a complaint.³²

The Justice Verma Committee report also noted the law lacked guidelines specifying training to the Internal Committee. This, it noted, was distinct to the composition of the Local Committee in which at least one member has to preferably have a background in law or legal knowledge.

In case of a complaint from a domestic worker, the law says that the Local Committee should forward it to the police within a period of seven days for registering a case under section 509 of the Indian Penal Code and any other relevant provisions.³³ Section 509 of the Indian Penal Code prescribes imprisonment of up to a year or fine, or both for insulting the “modesty of a woman.”³⁴ However, the law is silent on what the Local Committee should do in case the complainant does not want her case forwarded to the police and whether it should conduct an inquiry on its own.

The law also has other weaknesses say activists, principally that it treats sexual harassment at the workplace as a women’s issue, monitored by the Ministry of Women and Child Development instead of a labor issue, handled by the Ministry of Labour and Employment. “If you ask labor department officials about sexual harassment, they have little idea,” said Nandita Bhatt, director of the Martha Farrell Foundation. “For years, we worked to make this into a labor issue, but now it has become a women’s issue.”³⁵

Agreed Sonia George, a member of the national core team at the trade union Self-Employed Women’s Association (SEWA) also pointing out that the law fails to take the reality of informal sector workers into account:

³¹ Anagha Sarpotdar, “Examining Local Committees under the Sexual Harassment of Women at Workplace Act,” *Economic and Political Weekly magazine*, vol. 55, no. 20, May 16, 2020, <https://www.epw.in/journal/2020/20/review-womens-studies/examining-local-committees-under-sexual-harassment.html> (accessed May 19, 2020).

³² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, sec.14.

³³ Ibid., Chapter IV, Complaint, sec. 11.

³⁴ Indian Penal Code, Act No. 45 of 1860, sec.509, <https://indiankanoon.org/doc/68146/> (accessed May 19, 2020).

³⁵ Human Rights Watch telephone interview with Nandita Bhatt, May 13, 2020.

Sexual harassment at workplace is questioning the dignity of a woman at work. But there is no involvement of the labor ministry in implementing this law. Also, domestic workers have no proof of employment, no identity card, or contract. So, if something happens in a house where they work, she has no proof to show he is her employer. For many informal sector workers, their own homes are their workplaces. In these cases, domestic violence could turn out to be workplace violence. However, the act does not make that connection or address it in any way.³⁶

Government Initiatives

In 2017, the Ministry of Women and Child Development launched the Sexual Harassment Electronic Box, known as the SHe-Box, to provide a single window access facility to all women employed in any work—in the formal and informal sectors—to register a sexual harassment complaint online.³⁷ The platform forwards each complaint to the relevant Internal or Local Committee. In July 2019, the government told parliament, in response to a question, that the SHe-Box had received only 612 complaints in two years, most of them from private sector employees. According to the ministry, most complaints were from women who were not satisfied with the inquiries conducted by the Internal Committees or did not have faith in them.³⁸

Some states, such as Telangana, have also made it mandatory for all employers to register information about their Internal Committees on the SHe-Box.³⁹ Although the SHe-Box was initiated to ensure a timely resolution of cases, a Right to Information request in 2018 found that 70 percent of the cases filed with it were still pending.⁴⁰ There has been no audit of the mechanism and there is still little awareness about it.

³⁶ Human Rights Watch telephone interview with Sonia George, September 21, 2020.

³⁷ “SHe-Box Online Complaint Management System,” Government of India, Ministry of Women and Child Development, <http://www.shebox.nic.in/> (accessed May 20, 2020).

³⁸ Sumi Sukanya Dutta, “Disappointed with ICC, sexual harassment survivors turn to SHe-Box,” *New India Express*, <https://www.newindianexpress.com/nation/2019/jul/29/harassment-victims-turn-to-she-box-2010886.html> (accessed May 20, 2020).

³⁹ “Are you a workplace in Telangana with over 10 employees? Form an IC before July 15,” *NewsMinute*, July 1, 2019, <https://www.thenewsminute.com/article/are-you-workplace-telangana-over-10-employees-form-ic-july-15-104630> (accessed May 2020).

⁴⁰ Sanya Dhingra and Himani Chandna, “#MeToo: 70% of sexual harassment complaints filed with Maneka’s ministry yet to be disposed of,” *Print.in*, November 20, 2018, <https://theprint.in/india/governance/metoo-70-of-sexual-harassment-complaints-filed-with-manekas-ministry-yet-to-be-disposed-of/151706/> (accessed May 20, 2020).

In 2018, the government amended the Companies (Accounts) Rules, 2014, making it mandatory for companies to disclose the implementation of the Sexual Harassment Act in their directors' reports, which have to be filed annually by all registered companies.⁴¹

Following the #MeToo movement, the government formed a group of ministers in October 2018 to study and review the POSH Act. The group was reconstituted in July 2019 under Minister of Home Affairs Amit Shah, and reportedly finalized its recommendations in January 2020.⁴² The recommendations have yet to be made public.

Separately, the National Commission for Women also held regional consultations with women's rights activists, lawyers, and retired judges to review the existing provisions in the POSH Act and submitted its final recommendations to the Ministry of Women and Child Development in July 2019.⁴³ In the consultations, women's rights groups raised non-compliance of the law, including by government offices, and lack of data and monitoring on the Local Committees among other issues. Many groups recommended an audit of the Local Committees established under the law, as well as research to identify compliance with the law by government departments and ministries.

International Legal Obligations

India ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)—which obligates states to enact legislation and other measures to prohibit discrimination against women—in 1993.⁴⁴ The convention specifically provides for the right “to safety in working conditions.”⁴⁵ The UN Committee on

⁴¹ Government of India, Press Information Bureau news release, “Disclosure of compliance under the Sexual Harassment of Women at Workplace Act in the Annual Reports of Private companies now made Mandatory: Ministry of Corporate Affairs amends the Companies (Accounts) Rules, 2014,” August 13, 2018, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1542886> (accessed May 20, 2020).

⁴² Vijaita Singh, “Centre for tougher law against sexual harassment at work,” *Hindu*, January 19, 2020, <https://www.thehindu.com/news/national/centre-for-tougher-law-against-sexual-harassment-at-work/article30601660.ece> (accessed May 22, 2020).

⁴³ Government of India, Ministry of Women and Child Development, “Annual Report 2019-20,” https://wcd.nic.in/sites/default/files/WCD_AR_English_2019-20.pdf (accessed May 22, 2020), chapter 10.

⁴⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, art. 2(b). India ratified CEDAW in July 1993.

⁴⁵ CEDAW, art. 11(1)(f).

the Elimination of Discrimination against Women, an international expert committee that monitors compliance with CEDAW, has said in a general recommendation that “[e]quality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.”⁴⁶

India is also party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which says that everyone has the right to the enjoyment of “just and favourable conditions of work,” including “[s]afe and healthy working conditions.”⁴⁷ The UN Committee on Economic, Social and Cultural Rights says in a general comment that states have a core obligation to define and prohibit sexual harassment at work through law, ensure there are appropriate complaints procedures and mechanisms, and establish criminal sanctions for sexual harassment.⁴⁸

In June 2019, the International Labour Organization (ILO) adopted a landmark treaty, the Violence and Harassment Convention, which establishes new global standards to prevent and respond to violence and harassment in the world of work.⁴⁹ The Indian government, representatives of Indian workers’ groups, and representatives from India’s employers’ associations all voted in favor of the convention.⁵⁰ The treaty is accompanied by a non-binding recommendation that provides additional guidance on the convention’s obligations.⁵¹

⁴⁶ UN Committee on Discrimination against Women (CEDAW Committee), General Recommendation No. 19, Violence Against Women, (Eleventh session, 1992), para. 17, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf (accessed May 18, 2020); see also CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/GC/35, July 26, 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en (accessed May 18, 2020).

⁴⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, art. 7. India ratified the ICESCR in April 1979.

⁴⁸ UN Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para. 48 <https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work> (accessed May 18, 2020).

⁴⁹ ILO Convention on Violence and Harassment, 2019, No. 190, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190 (accessed May 22, 2020).

⁵⁰ Final record vote on the adoption of the Convention concerning the elimination of violence and harassment in the world of work, International Labor Conference, 108th session, Geneva, 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711349.pdf (accessed May 22, 2020).

⁵¹ Violence and Harassment Recommendation, 2019, No. 206, International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:4000085:NO (accessed May 22, 2020).

The treaty includes psychological, physical, sexual, and economic harm in its definition of violence and harassment in the world of work and sets out minimum obligations for governments, including by ensuring robust national laws and adopting a gender-responsive, inclusive, and integrated strategy.⁵² The treaty requires prevention measures, including information campaigns, and special attention to sectors with heightened risk of violence and harassment.⁵³

It sets out standards for complaints mechanisms, monitoring, enforcement, and support for survivors. This includes dispute resolution mechanisms external to the workplace; courts or tribunals; and protection against retaliation. It also requires enforcement—such as inspections and investigations—and the recommendation provides guidance on incorporating these with the mandates of labor inspectorates and other relevant bodies. It also specifies access to remedies for victims, including complaints mechanisms, whistleblower protections, and compensation.⁵⁴

Governments that ratify the convention should require employers, where practicable, to adopt a workplace policy on violence and harassment, identify the risks of violence and harassment on the job and address them as an occupational safety and health issue, take prevention and control measures, and provide information and training to workers on these measures, including their rights and the responsibilities of their employer.⁵⁵ Countries that ratify the treaty agree to align their national laws to the treaty’s standards and will be periodically reviewed for their compliance by the ILO.

⁵² ILO Convention on Violence and Harassment, art. 1.

⁵³ *Ibid.*, arts. 4, 7-9.

⁵⁴ *Ibid.*, art. 10.

⁵⁵ *Ibid.*, art. 9.

II. A Silent Crisis in the Informal Sector

A 2017 survey by the Indian National Bar Association of over 6,000 employees—the largest of its kind conducted so far in India—found that sexual harassment was pervasive in different job sectors and ranged from lewd comments to an outright demand for sexual favors. Most women, it found, chose not to report sexual harassment to management because of stigma, fear of retribution, embarrassment, lack of awareness of reporting policies, or lack of confidence in the complaints mechanism. It also found that most organizations had failed to comply with the law or that members of Internal Committees did not understand the process adequately.⁵⁶

India has among the lowest female labor force participation among the G-20 countries, and according to the most recent data available from the World Bank, it fell from 37 percent in 2005 to 26 percent in 2018.⁵⁷ The vast majority of the women, 95 percent (195 million), are employed in the informal sector.⁵⁸ These include a range of functions from street vendors, domestic work, agriculture, construction, to home-based work, such as weaving or embroidery. Even though the 2013 POSH Act protects these women, the law is poorly implemented, especially for the informal sector.

Journalist Namita Bhandare, who wrote a multi-part investigation series for *IndiaSpend* on why Indian women are dropping out of the workplace, cited several factors.⁵⁹ Women find it very difficult to enter the workforce in the first place because of lack of agency, she told Human Rights Watch, still needing “permission of their fathers, their brothers, husband and in-laws to continue working.”⁶⁰ Many men in India consider it a matter of shame if the

⁵⁶ Indian National Bar Association and Netrika Consulting, “Garima: Sexual Harassment at Workplace,” 2017, <https://www.indianbarassociation.org/wp-content/uploads/2017/07/Garima-1INBAs-Book.pdf> (accessed May 7, 2020).

⁵⁷ World Bank, “Precarious Drop: Reassessing Patterns of Female Labor Force Participation in India,” April 2017, <http://documents.worldbank.org/curated/en/559511491319990632/pdf/WPS8024.pdf> (accessed May 10, 2020). Also see, “Labour Force Participation Rate, Total (% of total population ages 15+),” World Bank, 2018, <https://data.worldbank.org/indicator/SL.TLF.CACT.ZS> (accessed May 10, 2020). Nearly 20 million women quit jobs in India between 2004 and 2011, the last year for which the census data is available.

⁵⁸ UN Global Compact and Deloitte, “Opportunity or Challenge? Empowering women and girls in India for the Fourth Industrial Revolution,” 2019, https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/UNGCNI_black_final%20v6%20web%20high%20res.pdf (accessed May 11, 2020).

⁵⁹ Namita Bhandare, “Why Indian Workplaces Are Losing Women: Our Nationwide Investigation Begins,” *IndiaSpend*, August 5, 2017, <https://archive.indiaspend.com/cover-story/why-indian-workplaces-are-losing-women-our-nationwide-investigation-begins-53927> (accessed May 6, 2020).

⁶⁰ Human Rights Watch telephone interview with Namita Bhandare, May 8, 2020.

women in their family work. Responsibility for unpaid household work is a serious constraint for women to start jobs, or results in them dropping out.

While most experts also believe that security risks, including sexual harassment in the workplace, may contribute to women dropping out of the workforce, there are no studies that document it. “There are anecdotal sources,” said Bhandare. “Girls don’t want to talk about sexual harassment because they fear that their families will just ask them to stop working. There is no data or a substantive quantitative study on sexual harassment, and none at all in the informal sector.”⁶¹

Several trade unions, such as Centre of Indian Trade Unions (CITU) or Self-Employed Women’s Association (SEWA), have been working with women in both the formal and informal sectors to raise awareness about sexual harassment, the 2013 law, and complaint mechanisms. But activists say that women workers still lack a proper understanding of their rights and are uncomfortable discussing sexual harassment. Even in interviews with Human Rights Watch, several women preferred to tell stories of harassment as it happened to someone else or even engaged in victim-blaming, a narrative common in entrenched patriarchy.

But women also do not trust the system enough to complain, and as discussed later in this report, there have been several high-profile cases in which women who came forward with accusations have faced strong and public retaliation. Predominant social norms mean many must calculate the strong possibility of social stigma for uncertain redress. Sonia George of the trade union SEWA said that without protections in place, most women put up with abuses because they need the job:

Most women suffer in silence until it becomes unbearable, and then they just try to get another job. But in the informal sector, it is really hard for them to find work. They do not want to tell their families either because they are afraid that they will be prevented from working.⁶²

Government Failure to Establish Redress Mechanisms

⁶¹ Ibid.

⁶² Human Rights Watch telephone interview with Sonia George, September 21, 2020.

The central and local governments have failed to promote, establish, and monitor a central feature of the POSH Act—Local Committees.

A 2018 study by Martha Farrell Foundation and Society for Participatory Research in Asia based on Right to Information requests to 655 districts in the country found many districts had failed to establish the committees or constitute them in line with the legal provisions. Out of 655 districts in the country, only 29 percent replied that they have formed Local Committees, while 15 percent had not done so yet. The majority, 56 percent, did not respond. By May 2020, even in the capital, Delhi, out of 11 districts, only 8 had constituted Local Committees.⁶³ Even where committees existed, it was often difficult to find them. For example, many did not have information available on websites or in public displaying their names and location.

The study also found a lack of awareness regarding roles and responsibilities among the committee members, indicating a lack of capacity to handle sexual harassment complaints.

Seven years after the POSH Act, there is very little awareness about the Local Committees. But even if the workers know about them, access is a big problem, say rights activists. Anagha Sarpotdar, chairperson of the Mumbai city district Local Committee, said that since she took over in 2018, the committee has only received five complaints, all from the formal sector. The committees also lack infrastructure and resources, she said.

There is no awareness about the Local Committees because the central government has not given any money to state governments to spread awareness. This is directly reflected in low reporting. The implementation of the law has failed in the informal sector. Committee members are not even paid a travel fee in some cases. There is no money earmarked in the budget for the implementation of the POSH Act.⁶⁴

⁶³ Martha Farrell Foundation and Society for Participatory Research in Asia, “Who Safeguards a Woman’s Right to a Safe Workplace? A Study of Local Committees Across India Using RTI Data,” October 2018, http://www.marthafarrellfoundation.org/uploaded_files/pdf_files/1555302838_RTI%20Study%20PDF.pdf (accessed May 10, 2020).

⁶⁴ Human Rights Watch telephone interview with Anagha Sarpotdar, May 21, 2020.

Public Sector Example: Government Scheme Workers

Bhanwari Devi's gang-rape case starkly illustrated the government's failure as an employer to recognize, prevent, or respond to sexual harassment and violence at work, and set in motion events that finally led to the 2013 Sexual Harassment at the Workplace law.⁶⁵ But had it existed at the time, the law might still have proved ineffective because of its poor implementation, say women's rights advocates. "It was because of Bhanwari Devi that we find ourselves with a law that promises to ensure protection and justice for all working women, but the question to ask is, would Bhanwari Devi, were she to file a complaint today under this law, receive due justice?" said Bhatt.⁶⁶

Government schemes in India related to health, nutrition, education, and social welfare typically rely heavily on mobilizing local women who conduct outreach or provide services in their communities. Despite often being described as the "backbone" of these schemes, they are not treated as regular government employees. They are paid low wages and are treated as part-time workers or volunteers, leaving them as part of the informal sector. This includes 2.6 million *anganwadi* workers who work on early childhood care and nutrition as part of the government program Integrated Child Development Services (ICDS) to provide food, preschool education, primary health care, immunization, and health check-up to children under 6 years and their mothers; over 1 million Accredited Social Health Activists (ASHA) who work as community health workers under the government's National Rural Health Mission (NHRM); and 2.5 million midday meal cooks who prepare the free lunches provided in government schools.⁶⁷

These women often work in conditions that can heighten their risk of sexual harassment, including traveling house-to-house or between villages alone, discussing and promoting information about topics that can be sensitive, such as reproductive and sexual health, and a heavy financial reliance on their stipends or wages. In rural areas and conservative

⁶⁵ Anagha Sarpotdar, "Examining Local Committees under the Sexual Harassment of Women at Workplace Act," *Economic and Political Weekly magazine*, vol. 55, no. 20, May 16, 2020, <https://www.epw.in/journal/2020/20/review-womens-studies/examining-local-committees-under-sexual-harassment.html> (accessed May 19, 2020).

⁶⁶ Human Rights Watch telephone interview with Nandita Bhatt, May 13, 2020.

⁶⁷ Government of India, Ministry of Women and Child Development, Press Information Bureau news release, "Anganwadi Sevikas," July 12, 2019, <https://pib.gov.in/PressReleasePage.aspx?PRID=1578557> (accessed May 7, 2020). Government of India, Ministry of Family and Health Welfare, Press Information Bureau news release, "ASHA Workers," March 13, 2020, <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1606212> (accessed May 7, 2020). Government of India, Ministry of Human Resource Development, "Mid-Day Meal Scheme," http://mdm.nic.in/mdm_website/ (accessed May 7, 2020).

communities, the very act of working and interacting with men not part of their families or discussing taboo topics may expose these women to sexual harassment. Despite depending on and hiring a large female workforce to implement these government schemes, authorities have failed to ensure properly functioning complaint committees accessible to these workers.

“I visited 27 government schools in Bihar but none of them had any form of Internal Committees,” said journalist Neha Dixit, who documented some cases of sexual harassment faced by midday meal workers in the state. “None of the 68 cooks I met were aware of any form of mechanism to deal with cases of sexual harassment.”⁶⁸

Nisha (name changed), 36, an ASHA worker in Haryana, described how normalized and rampant sexual harassment can be:

When we go to the sub-center to work, sometimes when we are alone, our male colleagues comment on how we are dressed, ask personal questions about our husbands, and it becomes awkward. Sometimes, when we go to people’s homes to vaccinate children for polio, the young and old men crack jokes like “Give us also two sips, we will also become young and virile.”⁶⁹

Ranjana (name changed), 45, is an ASHA worker and part of the ASHA workers’ union in Haryana. She said their work requires them to be on call even at night in case of emergencies. She told Human Rights Watch:

At night, sometimes the ambulance driver harasses us. Even doctors can harass sometimes. But the women are too scared to speak out because of stigma or fear of reprisals. Often, people cast doubt on our character saying, “She goes out at night and therefore must be promiscuous.” They do not see us with respect. There is no awareness or training from the government on the sexual harassment law, for instance, if something happens how we should complain. They only tell us that if there is an

⁶⁸ Human Rights Watch interview with Neha Dixit, New Delhi, June 6, 2019.

⁶⁹ Human Rights Watch interview with Nisha (name changed), Haryana, August 12, 2019.

emergency at any time, we have to respond to the call. Even if we tell them about our troubles, the officers say, “This is what you have been hired for. You have to deal with it.”⁷⁰

Some ASHA workers said they also received phone calls with lewd remarks from male relatives of the pregnant women they are supporting or in some cases, male colleagues.⁷¹ One midday meal cook recounted how a tailor with whom she worked to provide school uniforms, began calling on her phone late at night and harassing her. Another midday meal worker said she received phone calls from a clerk in the government education department after she met him at work.⁷²

Shanta (name changed), 38, an ASHA worker in Haryana, said even if they bring a complaint, they come under intense pressure from the family of the accused, society, and their own family to withdraw the complaint.⁷³ In January 2014, Shanta was called by a contractor at a construction site to help a woman who was about to give birth. She said:

We were told by our seniors that we had to accompany the patients to the hospital. So, I called an ambulance and we went to a hospital. But it had no facility, so we went to another hospital, but that had no staff. Finally, we went to a third hospital in a neighboring district. By that time, it was 11:30 p.m. and the ambulance driver offered to take me back home. He started joking with me on the ride back. He stopped on the way and got a glass of sugarcane juice which I refused to drink. It was past midnight by now and he tried to molest me. I fought him and managed to call my brother. I didn't say anything at home because I was scared but I called the medical in-charge and told him what happened. The staff and supervisors helped me, and we found the driver after three days. But then the police and other ASHA workers asked me to compromise. He apologized in front of dozens of ASHA workers and they asked me not to file an official complaint. But no

⁷⁰ Human Rights Watch interview with Ranjana (name changed), Haryana, August 12, 2019.

⁷¹ Human Rights Watch interview with six ASHA workers, Haryana, August 12, 2019.

⁷² Human Rights Watch interview with two midday meal cooks, Haryana, August 12, 2019.

⁷³ Human Rights Watch interview with Shanta (name changed), Haryana, August 12, 2019.

one told me that there was a law and I could file a complaint at a Local Committee.⁷⁴

Lakshmi Chillar, head of Sonapat district of women's rights group Akhil Bharatiya Janavadi Mahila Samiti, said:

There are no proper functioning committees to look into sexual harassment at any government schools, hospitals, police stations, or *anganwadi* centers in Haryana. We don't know of any Local Committees either. We do not even have awareness materials. When we attempt to talk to the women we work with about sexual harassment, they do not want to talk about it. They prefer to bury the matter because they think it is a matter of honor and they will be blamed for any complaint they make.⁷⁵

Effective enforcement of the law also means public awareness campaigns to change a dominant culture of victim-blaming that can make women reluctant to come forward even when they have information about where to go.

Weak Protections for Domestic Workers

Domestic workers in India, including caregivers, cleaners, and other household employees, are predominantly women. Domestic workers are often at especially heightened risk of sexual harassment at work due to their isolation in private households, the significant power imbalance between employers and domestic workers, and inadequate protections under labor laws. Despite many obstacles preventing survivors from making complaints, stories about rape of domestic workers regularly appear in the media.⁷⁶

⁷⁴ Ibid.

⁷⁵ Human Rights Watch interview with Lakshmi Chillar, Haryana, August 12, 2019

⁷⁶ For example see, "Man rapes domestic help with low vision in Ahmedabad," *Times of India*, December 25, 2019, <https://timesofindia.indiatimes.com/city/ahmedabad/man-rapes-domestic-help-with-low-vision/articleshow/72961234.cms> (accessed August 31, 2020); "Mumbai man arrested for rape of domestic help," *Indian Express*, November 10, 2018, <https://indianexpress.com/article/cities/mumbai/man-arrested-for-rape-of-domestic-help-5439932> (accessed August 31, 2020); "Delhi: Domestic worker accuses Army major of rape, blames him for role in husband's alleged suicide," *Scroll.in*, September 30, 2018, <https://scroll.in/latest/896426/delhi-domestic-worker-accuses-army-major-of-rape-blames-him-for-role-in-husbands-alleged-suicide> (accessed August 31, 2020); Ritu Sharma, "New Delhi domestic workers protest rape," *Union of Catholic Asian News*, July 22, 2016, <https://www.ucanews.com/news/new-delhi-domestic-workers-protest-rape/76658> (accessed August 31, 2020).

There are no reliable figures for domestic workers in India. While official statistics estimated 3.9 million domestic workers in 2019, both government and nongovernment sources believe the true numbers to be in the tens of millions, with the media commonly citing 90 million.⁷⁷

Domestic workers do not enjoy many of the same protections as other workers, for example, in relation to working hours and benefits. While several legislations, such as the Unorganized Social Security Act, 2008; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; and Minimum Wages Schedules notified in various states refer to domestic workers, the domestic workers' movement is calling for comprehensive, uniformly applicable, national legislation that guarantees fair terms of employment and decent working conditions.⁷⁸ India has also not ratified the International Labour Organization's Domestic Workers Convention, which obligates governments to extend equal labor protections to domestic workers as other workers, and to take effective measures to ensure domestic workers are protected against abuse, violence, and harassment.⁷⁹

The 2013 POSH Act says that Local Committees have to refer domestic workers' cases to the police, leaving no civil remedy for them. Most women working as domestic workers would face formidable barriers seeking redress through the police. As Human Rights Watch has previously documented, women often face humiliation, mistrust, and lack of assistance at police stations when they report sexual violence, making most reluctant to

⁷⁷ Domestic workers across the world: Global and regional statistics and the extent of legal protection, International Labour Organization, 2013, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf (accessed June 1, 2020). While it is not unusual to find discrepancies between official and unofficial estimates on the number of domestic workers, the case of India is particularly striking due to the magnitude of the difference, says the ILO. The media and NGOs frequently cite a figure of 90 million domestic workers for India. However, the primary source for this figure is not known. According to official National Sample Survey 2004-05, there were 4.2 million domestic workers while a government press release in 2019 estimated 3.9 million domestic workers. Most of these numbers are contentious, say experts. See also, Nitin Sinha, "Between Welfare and Criminalisation: Were Domestic Servants Always Informal?" *Wire.in*, March 26, 2020, <https://thewire.in/labour/domestic-servants-informal-workforce> (accessed July 22, 2020).

⁷⁸ United Nations in India, "Rights of Domestic Workers," <https://in.one.un.org/page/rights-for-domestic-workers/> (accessed May 7, 2020).

⁷⁹ ILO Convention on Domestic Workers, 2011, No. 189, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551460:NO (accessed May 11, 2020).

bring a complaint.⁸⁰ “Even in rape cases, women have such a difficult time filing a complaint, how would they file a complaint that an employer looked at them inappropriately?” Bhatt said. She added that another significant barrier is that criminal cases can drag on for years, leaving survivors at risk of intimidation by perpetrators and bearing the cost of lost workdays during hearings.⁸¹

Kainaat (name changed), 25, started laboring as a domestic worker when she was 12, after her family migrated from West Bengal to Gurgaon, about 25 miles from New Delhi, in search of work. For the first few years, as a child, she labored as a live-in domestic worker in various homes, suffering beatings and threats. In 2012, when she was 17, an older man sexually harassed her. She moved out and now works as a part-time domestic worker in multiple workplaces but lives in her own home. She said:

When his children and grandchildren would go out, he would purposely stay home and keep following me around. He would pat my back, but then his hands would wander. I tried to ignore. Once when he did this, there was no one at home so I went to the washroom and did not come out until others returned. I knew no one would believe me if I told them, so I kept quiet. I told the other domestic worker and she said he harassed her, too. But she was part-time so did not have to deal with it at the same level. She also never said anything because she needed the job. That man used to tell me, “Wear a short dress, you will look better in it.” I put up with it because I had to earn to support my family. But I finally quit because I was so frustrated and decided not to work as a live-in maid anymore.⁸²

Kainaat finally found the courage to speak out, after meeting with activists who encouraged the use of art as part of a participatory research project in 2018.⁸³ She is now

⁸⁰ Human Rights Watch, “*Everyone Blames Me*”: *Barriers to Justice and Support Services for Sexual Assault Survivors in India*, (New York: Human Rights Watch, 2017), <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>.

⁸¹ Human Rights Watch telephone interview with Nandita Bhatt, May 13, 2020.

⁸² Human Rights Watch telephone interview with Kainaat (name changed), May 18, 2020.

⁸³ Martha Farrell Foundation, PRIA, and Trinity College Dublin, “Participatory Research Study into the Sexual Harassment of Domestic Workers in Gurgaon and South Delhi, India and the #MeToo Movement,” September 2018, http://www.marthafarrellfoundation.org/uploaded_files/pdf_files/1540468232_Kelly%20Report.pdf (accessed May 10, 2020).

part of the awareness raising campaigns about sexual harassment organized by the Martha Farrell Foundation and understands the law. But she says that does not really change anything. “It is a question of honor for women,” Kainaat said. “If I report any such incident, I might lose my job. And it is always the girl who is blamed.”⁸⁴ Kainaat had heard of the #MeToo movement as part of community workshops and meetings. “Me Too has to be for every woman but people like me are not heard in this movement,” she said.⁸⁵

Others also told Human Rights Watch that the #MeToo movement had not helped them. Shalini (name changed), 37, also a domestic worker in Gurgaon, said:

For women like me, what is #MeToo? We cannot even speak out at home, how are we going to speak out openly? There are numerous women like me trapped in this rut. We cannot get out. We have to choose our children’s future. Poverty and stigma mean we can never speak out. There is no place safe for women like us. Not our workplaces, nor our homes, and not the road we take.⁸⁶

Shalini was sexually harassed for months by a security guard of the residential apartment complex in Gurgaon where she worked as a part-time domestic worker. She migrated to Gurgaon from a small village in Bihar 13 years ago. She told Human Rights Watch she hated even stepping out of home in the early years:

When I started work, I used to be scared of even leaving home. I used to feel like crying because of harassment from taxi and auto rickshaw drivers on my way to work. In the residential colony where I worked, the guard would harass me. He would say he loved me. He would wait by the elevator at the end of my shift and when I was alone in the elevator, he would make lewd remarks. I told my husband, but he did not take me seriously. One day, it went too far when the guard took out money, forced it into my hands and asked me to go with him. That day I cried endlessly when I went home and told my husband I wanted to go back to the village. My husband and

⁸⁴ Human Rights Watch telephone interview with Kainaat (name changed), May 18, 2020.

⁸⁵ Ibid.

⁸⁶ Human Rights Watch telephone interview with Shalini (name changed), May 18, 2020.

my brother-in-law went to the colony and complained to the head of security whom they knew, and the guard was quietly transferred. If my employers had come to know, they would have likely blamed me. That is why I kept quiet.⁸⁷

Shalini said that live-in workers had it much worse:

In one place, where I used to cook, the husband and wife used to behave badly with the live-in maid who used to clean. The woman used to beat her, and the husband would take her by hand in the room. She was about 14 or 15 years old, from Jharkhand state. I left the job after a few months because I did not like the way they behaved. That girl used to come to me but could not tell me anything. She was always very scared.⁸⁸

Shalini has also been associated with the Martha Farrell Foundation for a few years and is aware of the POSH Act but she does not believe she would ever report a case:

People like me do not get justice. The Local Committee is so far away that I could not even think of going there, and I would definitely not go to the police. This law has not helped women like me. Even if you complain, nothing happens. Once we protested for a domestic worker who was beaten up, but the police put pressure on us to be silent. So, what is the point of going to the police?

Alka (name changed), 27, was sexually abused when she first started working as a domestic worker at age 10. She said:

I was so young I did not even know what is right, what is wrong. The employer, he was a doctor, he grabbed my hand and made me sit in his lap. He told me he will give me sweets. I felt really scared and uncomfortable. So, I ran away and quit. I did not say anything at home because I was too

⁸⁷ Ibid.

⁸⁸ Ibid.

afraid to tell anyone. Also, because no one really cares to understand girls, it was better to just quit the job.⁸⁹

Alka says that sexual harassment in the workplace has become so normalized, women are simply expected to accept it. “Everyone thinks of harassment as trivial. ‘Just ignore,’ is what everyone says. If it becomes too much, then I think it is better to report because the more you tolerate, the more it happens.”⁹⁰

The threat of retaliation from their employers, including spurious charges of theft, prevents many domestic workers from bringing complaints to the police. Alka said, “We are poor, and we are also afraid if we report our employers, they can file false charges of theft against us, so we are scared to raise our voices.”⁹¹ Shalini said, “If we even think of complaining, employers would file false complaints against domestic workers and the police will keep the domestic workers all night at the station and harass them. Our lives have not improved because of the law.”⁹²

⁸⁹ Human Rights Watch telephone interview with Alka (name changed), June 13, 2020.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Human Rights Watch telephone interview with Shalini (name changed), May 18, 2020.

III. #MeToo and the Cost of Speaking Out

The 2013 law against sexual harassment and the #MeToo movement have led to growing awareness about the prevalence and forms of sexual harassment and the responsibilities that governments, employers, and the public have to prevent and respond. But survivors of harassment and violence in the world of work confront strong barriers to reporting, including fear of reprisals, and a lack of trust in Internal Committees and other justice mechanisms. Several high-profile cases involving the use of criminal defamation suits has reinforced this risk-benefit calculus.

Lack of Trust in Internal Committees

While most companies have Internal Committees (ICs), experts say, many of them are merely to show compliance with law on paper, and not a true commitment to making change in the culture of their workplace. Of particular concern is the conflict of interest that employers may have when constructing Internal Committees or dealing with specific complaints. Maya John, a women's right activist and teacher at Delhi University, who has served on Internal Committees, said:

There is something intrinsically problematic in the way this law is envisaged—the internal inquiry. The same company which has directly or indirectly set up the environment for sexual harassment is the one setting up and nominating members for the Internal Committee. How will this magically work toward gender equality? In most places, we find ICs are formed quickly when a case is reported. Many of us are part of the ICs. It is a frustrating exercise because the culture in most of our workplaces is that complaints are trivialized and there is character assassination. Despite all the animosity, even if the IC gives a [correct] decision, it is still up to the company or the employer to decide to implement it.⁹³

Aarti (name changed), served as an external member of an Internal Committee at a government-owned bank in Jaipur in 2014. She served on the committee for a year but in that time, was only invited to one meeting. She said:

⁹³ Human Rights Watch interview with Maya John, New Delhi, June 3, 2019.

There was an old complaint of sexual harassment by a woman employee. The other committee members, who were employees of the company, told me that the matter was resolved as it was over some minor confusion. We were two external members. We asked to speak to the complainant, but they said that they would have her present for the next meeting. But then there were no more meetings the rest of the year.⁹⁴

At the time that Aarti was asked to join the Internal Committee, she says she had little information about the law. She headed the women's wing of a network, aimed at furthering the interests of businesses. However, she also ran a nongovernmental organization to work toward empowering women. She said:

I do not have a legal background. I have worked for women's empowerment but not on sexual harassment issues. Once I was appointed, I googled about the law and I only knew vaguely what an Internal Committee and an external member's role is. I did not receive any training or awareness by the organization on this either.⁹⁵

Many employers have done little to fulfill their other duties to create a safe workplace, including by raising awareness about what constitutes sexual harassment, consequences for such behavior, and provisions in law. Nor is there proper government monitoring of compliance. Vrinda Grover, a lawyer whose expertise includes helping women pursue sexual abuse complaints, said:

There has been a reductionist approach in interpreting the law. The statute talks of monitoring by the state, but it does not monitor. The state rigorously monitors many aspects of industry but does not monitor this. It shows that the state attaches very little value to ensuring a safe environment at the workplace.⁹⁶

⁹⁴ Human Rights Watch interview with Aarti (name changed), Jaipur, May 21, 2020.

⁹⁵ Ibid.

⁹⁶ Human Rights Watch interview with Vrinda Grover, New Delhi, August 30, 2019.

Lack of Proper Investigations, Reprisals

In recent years, there have been several prominent cases of women coming forward with complaints against men in senior positions, and encountering backlash, including threats, intimidation, retaliation, attempted bribes, gaps, and bias in legal procedure, and stigma. These produce a chilling effect preventing other victims from coming forward.

Case of a Chief Justice

In April 2019, a former junior assistant to Supreme Court Chief Justice Ranjan Gogoi filed a complaint with 22 Supreme Court justices, accusing him of sexually harassing her in 2018. In response, Justice Gogoi convened an urgent three-judge bench the next day to hear the matter without notifying her. Justice Gogoi also personally presided over the hearing, reframing the complaint as an attack on judicial independence and rejecting the allegations.⁹⁷

The Indian Supreme Court Bar Association and the Supreme Court Advocates on Record Association criticized the proceedings and order, saying that they flouted procedure established by law.⁹⁸ Human rights activists, women lawyers, and women's rights groups in India issued a public statement and letter calling on the Supreme Court to create a special committee to carry out an inquiry.⁹⁹ After the public outcry, Justice Gogoi asked the second senior-most judge, Justice S.A. Bobde, to determine how the Supreme Court should proceed, and he set up a three-judge inquiry committee. However, in May 2019, the committee cleared Justice Gogoi of sexual harassment allegations, saying it found “no substance” in the complaint.¹⁰⁰

The woman's complaint had outlined not just complaints of sexual harassment, but also recounted a series of subsequent workplace suspensions and dismissals of her and her family members between October 2018 and April 2019, including a criminal case of alleged

⁹⁷ “India: Sexual Harassment Case Against SC Chief Justice,” Human Rights Watch news release, April 25, 2019, <https://www.hrw.org/news/2019/04/25/india-sexual-harassment-case-against-sc-chief-justice>.

⁹⁸ “Sexual harassment case against CJI: SC lawyers cite ‘procedural impropriety by Ranjan Gogoi,’” *Financial Express*, April 23, 2019, <https://www.financialexpress.com/india-news/sexual-harassment-case-against-cji-sc-lawyers-cite-procedural-impropriety-by-ranjan-gogoi/1556105/> (accessed May 16, 2020).

⁹⁹ “Full text: Arundhati Roy, Medha Patkar and others seek independent inquiry in CJI harassment case,” *Scroll.in*, April 22, 2019, <https://scroll.in/latest/920975/full-text-arundhati-roy-medha-patkar-and-others-seek-independent-inquiry-in-cji-harassment-case> (accessed May 16, 2020).

¹⁰⁰ “‘Scared, Dejected’, Says Ex-Staffer after Panel Finds ‘No Substance’ in Complaint Against CJI,” *Wire.in*, May 6, 2019, <https://thewire.in/law/in-house-committee-cji-gogoi-no-substance> (accessed May 12, 2020).

bribery for which she was arrested in March 2019. Unable to cope with the harassment and fearing for her family's safety, the woman said, she finally broke her silence to file a complaint.¹⁰¹ Following the inquiry committee's clearing Justice Gogoi, the woman said she was completely disheartened. "I have lost my job, I have lost everything." she said.¹⁰²

In January 2020, two months after Justice Gogoi had completed his term and retired, she was reinstated in her earlier job.¹⁰³

Case of Medical Superintendent

Garima (name changed), 32, a nursing officer at a government hospital in Delhi, said she has learned it is futile to complain of sexual harassment against a powerful man and only the woman who complains faces the consequences. In early 2019, Garima's hospital got a new medical superintendent. Garima told Human Rights Watch he started making her uncomfortable from the first meeting in February 2019:

He said, "I don't talk from such a distance. Come sit next to me." And he was staring at me. I told him let us discuss work because I was feeling very uncomfortable. But he said, "Work later, first personal. Why are you not married until now? Let me tell you what your needs are. You are not even aware." So, I interrupted him, but he kept touching me on my shoulder. When I shrugged him off, he asked me to meet him later after my shift. "Don't come in your uniform. I want to talk to you. Take my number. Call me," he said.¹⁰⁴

Garima said she was really angry and wanted to bring a complaint but did not believe there would be any action against such a senior officer. She said he continued to speak to her inappropriately, make personal remarks, and touching her. "He would say things like: 'Tell

¹⁰¹ Ajoy Ashirwad Mahaprashasta, "Former Supreme Court Employee Alleges Sexual Harassment by Chief Justice Gogoi," *Wire.in*, April 22, 2019, <https://thewire.in/women/former-supreme-court-employee-alleges-sexual-harassment-by-chief-justice-gogoi> (accessed May 12, 2020).

¹⁰² Ajoy Ashirwad Mahaprashasta, "Interview: 'I Have Lost Everything' Woman Who Alleged Sexual Harassment by CJI Gogoi," *Wire.in*, May 9, 2019, <https://thewire.in/women/chief-justice-ranjan-gogoi-sexual-harassment-supreme-court> (accessed May 15, 2020).

¹⁰³ Aneesha Bedi, "Woman who accused CJI Gogoi of sexual harassment goes on leave after getting back SC job," *Print.in*, January 22, 2020, <https://theprint.in/judiciary/woman-who-accused-cji-gogoi-of-sexual-harassment-goes-on-leave-after-getting-back-sc-job/352924/> (accessed May 15, 2020).

¹⁰⁴ Human Rights Watch interview with Garima (name changed), New Delhi, August 22, 2019.

me what kind of man do you want? Like me?” she said.¹⁰⁵ Garima is the primary caregiver for her mother who is ailing and so she said she could not quit even though she did not want to continue working there.

Following another uncomfortable meeting in March 2019, Garima spoke to the additional medical superintendent, but he refused to listen to her complaint and asked her to stay quiet. So, the same month, she filed a complaint with the Delhi police helpline for women and with the public grievance monitoring system of the Delhi government.¹⁰⁶ Aware of the #MeToo movement, she also took to social media to share her experience, more as a plea for help from the authorities and for support from others in the hospital.¹⁰⁷ The All India Government Nurses Federation also wrote to the Delhi government to investigate the matter.¹⁰⁸ The health department immediately ordered her complaint to be investigated by an Internal Committee.¹⁰⁹ In April, she was summoned before the hospital’s Internal Committee, which she said was formed only after the health department asked the matter to be investigated.

She said she did not trust the committee. It consisted of people that were already aware of the problems but had failed to intervene because the accused was their supervisor. “When the medical superintendent, accused in my case, entered the room, all the committee members rose to greet him,” Garima said. “Their bias was very obvious. The Internal Committee worked to protect him.”¹¹⁰ She wrote a letter to the committee in May 2019 asking for a copy of her statement, the name of members, and the details of the proceedings. She also alleged that committee members, who were employed at the hospital, had been threatening her to withdraw her complaint.¹¹¹ But she was not given any further information or even the final report, and therefore remains unaware of the committee’s findings.

¹⁰⁵ Ibid.

¹⁰⁶ Copy of complaint on file with Human Rights Watch.

¹⁰⁷ Facebook post of Garima (name changed), March 2019. Copy on file with Human Rights Watch.

¹⁰⁸ Letter from All India Government Nurses Federation to Chief Minister Arvind Kejriwal, March 2019. Copy on file with Human Rights Watch.

¹⁰⁹ Letter from Minister in-charge of Health Satyendar Jain to principal secretary (health), Government of Delhi, March 2019. Copy on file with Human Rights Watch.

¹¹⁰ Human Rights Watch interview with Garima (name changed), New Delhi, August 22, 2019.

¹¹¹ Letter from Garima (name changed) to the Internal Committee, May 2019. Copy on file with Human Rights Watch.

Meanwhile, the police came to the hospital and asked her to compromise, saying the medical superintendent was ready to apologize. “They told me, ‘Just let it go. You are unmarried, you should understand. It is easy to complain but difficult to fight,’” she said. Garima said the medical superintendent promised to give her a promotion and perks, but she refused to withdraw her complaint. “They kept trying to put pressure on me and my family, including by sending hospital staff to my house to convince us to take the complaint back,” Garima said. Soon, she said, her workplace became even more hostile. She started to be given evening and night shifts at the hospital instead of her regular day shifts and did not receive salary increments due to her. The police also did not file a First Information Report (FIR) required to begin an investigation.

In July 2019, Garima said a senior police official told her, “You are like a child. This is normal. This happens with everyone. Become strong. Learn to tolerate it.”¹¹²

In 2019, Garima reached out to the Delhi Commission for Women (DCW), telling them about the sham proceedings of the Internal Committee. DCW held a hearing for her and told her that they were forwarding her complaint to the district level Local Committee for investigation. Garima said she was not called by the Local Committee for a hearing. Instead, she was told by the DCW in 2020 that the committee filed a final report quoting police officials saying she did not have enough evidence to prove her case.¹¹³

A year later, there has been no justice for Garima. She told Human Rights Watch:

If I did not need this job, I would not do it. Why should women have to work like this, in such a terrible environment? I have become an example for others to point out see what happens—nothing. Sexual harassment is so normalized that other doctors tell me, “Why are you bothering to fight. This is childishness. We all deal with it, why cannot you?”¹¹⁴

Defamation Suits and “Gag Orders”

¹¹² Human Rights Watch interview with Garima (name changed), New Delhi, August 22, 2019.

¹¹³ Ibid.

¹¹⁴ Ibid.

Powerful men also use legal intimidation tactics to fend off their accusers. As part of India's #MeToo movement, the most prominent allegations were against a minister in the ruling Bharatiya Janata Party (BJP)-led government. In October 2018, at least 20 women accused M. J. Akbar, then-minister of state for external affairs, of sexual misconduct over several years during his career as a newspaper editor.¹¹⁵ Akbar denied the allegations and contended that they were malicious.¹¹⁶

Numerous journalists petitioned the prime minister and the president of India to intervene and ensure an independent investigation.¹¹⁷ But despite its public pledges to protect the rights of women and girls, when faced with allegations against one of its ministers, the government failed to speak publicly on the case.

Akbar eventually stepped down but filed a criminal defamation case against Priya Ramani, a prominent woman journalist who first wrote about him.¹¹⁸ With the backing of one of India's top law firms, Akbar brought a criminal investigation to bear against Ramani.

"I spoke the truth in the public interest and in the context of the #MeToo movement," Ramani told a court in Delhi when deposed in the criminal defamation case against her. "This is a false and malicious case filed to create a chilling effect among all the women who spoke out about their experiences of sexual harassment at the hands of Mr. Akbar. It is an attempt to intimidate me by deliberately targeting me. The complainant seeks to divert attention away from the serious allegations of sexual misconduct against him and the public outrage that followed."¹¹⁹ The case was pending at time of writing.

¹¹⁵ "MJ Akbar Resigns After Over 20 Women Accused Him Of Sexual Harassment," *NewsCentral24x7*, October 17, 2018, <https://newscentral24x7.com/breaking-mj-akbar-resigns-after-over-20-women-accused-him-of-sexual-harassment/> (accessed May 20, 2020).

¹¹⁶ "MJ Akbar rejects sexual harassment allegations as 'false', threatens legal action," *Hindustan Times*, October 14, 2018, <https://www.hindustantimes.com/india-news/mj-akbar-to-take-legal-action-on-sexual-harassment-allegations-against-him/story-939UPIeH9fz9Kqfz5boPHN.html> (accessed May 20, 2020).

¹¹⁷ Network of Women in Media, "MJ Akbar must step down and submit to investigation of sexual harassment charges," October 15, 2018, <http://www.nwmindia.org/component/k2/mj-akbar-must-step-down-and-submit-to-investigation-of-charges-of-sexual-harassment> (accessed May 20, 2020).

¹¹⁸ "#MeToo: MJ Akbar files criminal defamation case against woman journalist who accused him of sexual harassment," *Indian Express*, October 15, 2018, <https://indianexpress.com/article/india/metoo-mj-akbar-files-criminal-defamation-case-against-woman-journalist-who-accused-him-of-sexual-harassment-5402897/> (accessed May 21, 2020).

¹¹⁹ Gaurav Sarkar, "I spoke the truth': Priya Ramani says she'll lead evidence in her defence against MJ Akbar," *NewsLaundry*, August 23, 2019, <https://www.newslaundry.com/2019/08/23/priya-ramani-section-313-statement-mj-akbar> (accessed May 12, 2020).

Ramani's lawyer, Rebecca John, told Human Rights Watch the defamation suit had a chilling effect. "Many women have since come to me because they have been very worried about possible backlash they would have to face if they spoke out," she said. "It is evident no one is speaking about sexual harassment anymore. The moment came and went."¹²⁰

A relic of the British colonial period, India's criminal defamation law carries up to two years in prison and a fine.¹²¹ Criminal defamation, by virtue of the disproportionate penalty it imposes on speech, chills freedom of expression as guaranteed under international law and should not be allowed to be used as a legal response to complaints of sexual harassment.¹²²

The United Nations special rapporteur on freedom of expression has recommended that criminal defamation laws be repealed and replaced with civil defamation laws.¹²³

But civil defamation cases can also be used for intimidation. Other men accused of workplace sexual harassment in India have slapped women complainants with civil defamation cases. For instance, in October 2018, actor Alok Nath's wife filed a civil defamation suit against writer and producer Vinta Nanda, who accused Nath of raping her in 1999.¹²⁴ However, in January 2020, Nath's wife withdrew the case.¹²⁵

In April 2016, former chairman of the Intergovernmental Panel on Climate Change, R.K. Pachauri, filed a civil defamation case against one of the women who had accused him of sexual harassment, and her lawyer, Vrinda Grover. He also included several media outlets

¹²⁰ Human Rights Watch interview with Rebecca John, New Delhi, August 30, 2019.

¹²¹ Indian Penal Code, 1860, secs. 499 and 500, <http://indiankanoon.org/doc/1041742/> (accessed May 21, 2020).

¹²² Human Rights Watch, *Stifling Dissent: The Criminalization of Peaceful Expression in India* (New York: Human Rights Watch, 2016), <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india>

¹²³ Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, UN Doc. A/HRC/20/17, June 2012.

¹²⁴ Diwakar Sharma, "Mumbai: Alok Nath's Wife Ashu Slaps Defamation Case Against Vinta Nanda," *Mid-day*, October 17, 2018, <https://www.mid-day.com/articles/mumbai-alok-naths-wife-ashu-slaps-defamation-case-against-vinta-nanda/19888190> (accessed September 22, 2020).

¹²⁵ *Ashu w/o Alok Nath v. Vinta Nanda*, Civil Suit no. City Civil Court at Dindoshi, Mumbai, 3066 of 2018, January 27, 2020, https://services.ecourts.gov.in/ecourtindia_v4_bilingual/cases/display_pdf.php?filename=/orders/2018/200502030662018_1.pdf&caseno=Civil%20Suit/203066/2018&cCode=3&appFlag=&normal_v=1 (accessed September 22, 2020).

in the suit for publicly revealing the statements of the women who had accused him of sexual harassment.¹²⁶ Grover said:

The issue has reached a new low, where the lawyer who is speaking in the public space is now being targeted.... This to my mind is an extremely dangerous direction in which things have been moved because the one area where we have been able to create support is the social space.... It is the social sphere that is critical to the process of change, where a different narrative develops, one that pays keen attention to women's articulation of what is wrong with a lewd comment and why it's not a minor "Eve-teasing" issue [euphemism used for public sexual harassment or assault].¹²⁷

Legal systems should ensure that civil defamation actions cannot be misused as tools to intimidate critics of powerful people into silence. These should be appropriately tailored to weigh the public interest in seeing important allegations brought to light.¹²⁸

Besides filing defamation suits, men accused of sexual harassment have also increasingly sought injunction or "gag orders" by courts to restrain the media from reporting on the cases against them. For instance, in January 2014, Justice Swatanter Kumar, a former judge of the Supreme Court, who went on to become the chairperson of the National Green Tribunal, obtained a gag order from the Delhi High Court, restraining media from

¹²⁶ Avantika Mehta, "Pachauri drags media houses, lawyer Vrinda Grover to court," *Hindustan Times*, April 12, 2016, <https://www.hindustantimes.com/india/pachauri-drags-media-houses-lawyer-vrinda-grover-to-court/story-kTujcEelc4xCATnumYyIbl.html> (accessed May 15, 2020).

¹²⁷ Urvashi Butalia and Uma Chakravarti, "The Limits of Law: Interview with Vrinda Grover," in *Breaching the Citadel: The India Papers I*, ed. Urvashi Butalia and Laxmi Murthy, (New Delhi: Zubaan, 2018), chapter 10.

¹²⁸ The UN special rapporteur on freedom of expression has stated that defamation suits should be limited to the reputational harm wrongly suffered, and financial sanctions should not be so large as to have a chilling effect on speech. See UN Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Abid Hussain, UN Doc. E/CN.4/1999/64, January 29, 1999, para. 28(a),(b),and (h), <https://undocs.org/en/E/CN.4/1999/64> (accessed September 15, 2020). The UN Human Rights Committee says in a general comment, "with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence." UN Human Rights Committee, General Comment No. 34 (2011) on freedoms of opinion and expression (art. 19 of the International Covenant on Civil and Political Rights), para. 47, <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (accessed September 21, 2020).

publishing allegations of sexual harassment made by an intern against him.¹²⁹ In October 2014, the Supreme Court passed a similar injunction against media from reporting on sexual harassment allegations against a judge of the Madhya Pradesh High Court by a woman district court judge.¹³⁰

Pachauri also sought an injunction on reporting on the case of sexual harassment against him. While an interim order by a civil court in Delhi ordered all media to use disclaimers while reporting on his case, in February 2018 the court overturned its earlier order, saying, “Such restraint, as sought, not only amounts to enforcing a gag order upon the media but at the same time prevents the right of public to be kept updated about the developments—their right to know is infringed or trampled upon.”¹³¹

Private Sector Example: Garment Factory Workers

India’s garment industry is the second largest employer of women in the country after the agricultural sector. Human Rights Watch has previously documented sexual harassment in Indian garment factories, as well as the serious gaps in monitoring and addressing these abuses.¹³² Even though the industry largely employs women, the management remains mostly male. Women reported lewd comments, invasive questions about their sex lives, stalking, and propositions for sexual favors in exchange for a lighter workload and time

¹²⁹ “Gag order in Swatanter case mockery of the rule of law: Editors Guild,” *Times of India*, January 18, 2014, <https://timesofindia.indiatimes.com/india/Gag-order-in-Swatanter-case-mockery-of-the-rule-of-law-Editors-Guild/articleshow/28977317.cms> (accessed May 15, 2020).

¹³⁰ Apoorva, “Supreme Court gags media from reporting MP judge sexual harassment case,” *Livemint*, October 28, 2014, <https://www.livemint.com/Politics/Lcsq8tvm5VHNJLmvg95xIN/Supreme-Court-gags-media-from-reporting-MP-judge-sexual-hara.html> (accessed May 15, 2020).

¹³¹ *Rajendra Kumar Pachauri v. Bennett, Coleman and Company Ltd. & Ors*, CS No. 57510/16, Patiala Court, New Delhi, February 13, 2018, <https://counterview1.files.wordpress.com/2018/02/order-39-judgment-rk-pachauri.pdf> (accessed July 24, 2020). See also, Abhishek Angad, “RK Pachauri case: Judge overturns order on reporting by media,” *Indian Express*, February 14, 2018, <https://indianexpress.com/article/cities/delhi/pachauri-case-judge-overturns-order-on-reporting-by-media-5062949/> (accessed May 15, 2020).

¹³² Human Rights Watch, *Combating Sexual Harassment in the Garment Industry* (New York: Human Rights Watch, 2019) <https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry>. There are some best practices in the industry like the Lesotho Plan—a legally binding agreement in Lesotho garment factories—to end gender-based violence in the workplace. This includes establishing an independent organization to investigate issues, fully empowered to determine remedies; creating a clear code of conduct on unacceptable behaviors and a system for reporting abuse—with garment workers as full participants in creating, implementing and monitoring it; and establishing an education and awareness program that goes beyond the typical harassment and gender violence training. It will be comprehensive and get at the root causes of gender discrimination and violence against women. See Tuna Connell, “Lesotho Plan Has All Elements to End Gender-Based Violence at Work,” *AFL-CIO*, August 20, 2019, <https://aflcio.org/2019/8/20/lesotho-plan-has-all-elements-end-gender-based-violence-work> (accessed September 23, 2020).

off.¹³³ These jobs provide a key source of income for women and their families, significantly more than other available employment options, such as domestic work and farming, putting additional pressure on women to endure abuse to avoid losing their jobs.

Sujata Mody, president of Garment and Fashion Workers Union (GAFWU) and national secretary of New Trade Union Initiative, says harassment is normalized in the factories:

Sexual harassment may not be so much propositioning or touching without consent but more in terms of creating an extremely hostile work environment where women are derided, screamed at, spoken down to, humiliated, treated as inferior or incompetent by virtue of being women. Managers and superiors create this to enable them to control the shop floor. This could involve playing politics of “bad woman, good woman” to isolate any outspoken women who are confident and self-assured so as to ensure that other women would not associate with her. They spread false information about the confident woman, about her relationships on every shop floor, through women who would help spread these rumors. This sort of politics operates throughout all the factories.¹³⁴

Salma (name changed), 23, a garment factory worker in Tirupur, said female workers often face verbal abuse, including sexualized humiliation by their supervisors, especially to goad them into working faster. She said:

This is because they know that we will not tell anyone. If we tell anyone at home, our families will make us quit. And if we complain at work, we will lose our job. Our families and co-workers will also blame us. We don't feel comfortable talking about it, even among ourselves, because someone might rat us out.¹³⁵

A complaint about a hostile work atmosphere characterized by sexually offensive comments by a senior manager sent by 11 women working in a factory in southern India

¹³³ Ibid. Human Rights Watch interview with Roja R. (name changed), garment worker, Mysore, May 10, 2018. Human Rights Watch group interviews with 3 women workers and 5 women workers from the same factory, Mysore, May 11, 2018.

¹³⁴ Human Rights Watch interview with Sujata Mody, Chennai, January 25, 2019.

¹³⁵ Human Rights Watch interview with Salma (name changed), Tirupur, Tamil Nadu, January 27, 2019.

stated: “We are 11 of us who have come together and complained. Please help us. We cannot put our names down because we are scared and want to live and work. They won’t let us be if we put our names down. We want justice.... Is it our fault that we are poor?”¹³⁶

Mody said there are serious barriers to collective bargaining and organizing by trade unions in these factories, which leaves workers without the critical support needed to get information about their rights and come forward with complaints—further enabling an environment where sexual harassment can flourish and limiting avenues for redress. She said Internal Committees in the factories are arbitrary, exist mostly on paper, and there is no monitoring or accountability for these committees by local government or international brands or auditors. “These committees are basically organized by human resource departments which are accountable only to their management. So, an external member’s appointment, as mandated by law, is only as long as the company is comfortable with that external nominee,” she said.

Companies rarely address sexual harassment robustly in their monitoring. A 2019 Human Rights Watch report reviewed more than 50 social audits of garment factories from India, Bangladesh, and Pakistan from between 2016 and 2018.¹³⁷ These factory inspections are typically carried out by third party auditors. In most of these reports, analysis of sexual harassment was either minimal or completely missing. Only one report from India made a passing reference to a legally mandated POSH committee in the workplace and did not evaluate its effectiveness.

A management consultant working on labor rights and social compliance in the garment sector in Tamil Nadu and Karnataka said while factories that make garments for export have Internal Committees—typically under pressure from international brands expecting compliance with the law—those supplying to local brands have not complied. Even where they are formed, the committees exist only to satisfy brands, but rarely function properly. “The enforcement by government authorities is zero,” he told Human Rights Watch.¹³⁸

¹³⁶ Human Rights Watch, *Combating Sexual Harassment in the Garment Industry* (New York: Human Rights Watch, 2019) <https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry>. Letter written by 11 anonymous women workers, undated. Copy on file with Human Rights Watch. Human Rights Watch group interview with union federation officials from Garment Labour Union, Bangalore, May 9, 2018.

¹³⁷ Human Rights Watch, *Combating Sexual Harassment in the Garment Industry* (New York: Human Rights Watch, 2019).

¹³⁸ Human Rights Watch interview with a management consultant, Tirupur, Tamil Nadu, January 28, 2019.

I. Poongothai, district social welfare officer in Tirupur district responsible for implementing the law against sexual harassment in the workplace, said government offices in the district formed their Internal Committees only in 2018, nearly five years after the law came into effect. She told Human Rights Watch that there was little monitoring of the Internal Committees in factories, even though they were aware of shortcomings in compliance. “We have very limited capacity. It is not possible to monitor the Internal Committees.” Most companies have at least one person from management in these committees, which she said, acts as a deterrent for women to speak out.¹³⁹

She also acknowledged that information about Local Committees had yet to reach the informal sector. The lack of sexual harassment complaints from any of the factories or in the Local Committee suggest that they are ineffective, she said.

It is such a major industry, so many women working, but not a single complaint. We have begun to get annual reports from factories but there is nothing in them [about sexual harassment]. It is annoying. There is no complaint in the Local Committee either. No one wants to talk about sexual harassment because of fear of losing jobs. Social mindset has to change; mainly men, but also women so that they know it is okay to speak up.¹⁴⁰

Women working in these garment factories often do not have a good understanding of what constitutes sexual harassment or their legal rights, and management directives may have further distorted the view. Instead of focusing on their legal rights, such “trainings” may instead perpetuate harmful stereotypes and victim-blaming attitudes. For example, in Tirupur district, several women working in garment factories said they had attended a talk in the factory about “safety and women’s problems.” A 28-year old worker said, “A lot of girls talk to young men, fall for them, and then are cheated. This talk made me realize if we are careful, this will not happen.”¹⁴¹

¹³⁹ Human Rights Watch interview with I. Poongothai, Tirupur, Tamil Nadu, January 28, 2019.

¹⁴⁰ Ibid.

¹⁴¹ Human Rights Watch interview, Tirupur, Tamil Nadu, January 27, 2019.

Such victim-blaming attitudes are also held by employers. Selvaraju Kandaswamy, Coimbatore-based general secretary of South Indian Manufacturers Association, which has 700 members, dismissed any existence of sexual harassment in garment factories. He told Human Rights Watch:

There are challenges because of the girls themselves and because of smartphones and internet.... Managing the girls today is the biggest problem. Most of the girls attract the boys, fall in love. They are getting undisciplined because of the phones. They themselves are the problem.¹⁴²

Rita (name changed), 43, worked at a factory in Tirupur supplying to international brands until three years ago, and had been part of an Internal Committee there. She said she received some training as part of the committee but there was no awareness program for workers, and the committee she joined never received a formal complaint:

In most factories, including mine, if a young woman worker complains, the older workers will collectively ensure that she quits. Women are also very afraid to speak out because they know it will become a bigger issue and they are also worried about it getting back home as they will be scolded by their families.¹⁴³

¹⁴² Human Rights Watch interview with Selvaraju Kandaswamy, Coimbatore, Tamil Nadu, January 29, 2019.

¹⁴³ Human Rights Watch interview with Rita (name changed), Tirupur, Tamil Nadu, January 28, 2019.

Recommendations

The Indian government should take urgent action—in collaboration with state governments, civil society organizations, women’s rights activists, trade unions, the private sector, and national and state commissions for women to ensure the implementation of laws and policies that address sexual harassment at the workplace. It should also enact key reforms to protect freedom of speech and prevent abuse of the law that results in silencing survivors of sexual harassment and violence.

To the Central Government

- Enforce the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, including monitoring the creation and effective operation of committees, carrying out inspections and investigations, sanctioning employers who fail to comply, and ensuring access to remedies for victims, including complaints mechanisms, and compensation.
- Disseminate information about the SHe-Box and support an independent audit to improve its effectiveness, including a time-limit for resolution so complaints are not left pending.
- Publish the recommendations by the taskforce headed by the home minister, formed in July 2019 to study and review the POSH Act, and invite public comments.
- Ratify and implement the ILO Convention on Violence and Harassment, 2019, No. 190, and take steps toward effective prevention measures, including information campaigns, and special attention to sectors with heightened risk of violence and harassment.
- Ratify and implement the ILO Convention on Domestic Workers, 2011, No. 189.
- Allocate adequate budget and resources to ensure effective implementation of the POSH Act.

To the Indian Parliament

- Repeal section 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which provides for punishing a woman for filing a false or malicious complaint.

- Repeal section 10 of the POSH Act, which provides that, on receipt of a complaint of sexual harassment, conciliation must be attempted between the complainant and respondent.
- Amend section 6(2) of the POSH Act to create sub-committees of the Local Committees at block, taluka, and tehsil levels in rural areas and wards, or municipalities in urban areas, to receive complaints from women.
- Amend section 11 of the POSH Act to ensure that domestic workers have the same access to time-bound justice in cases of sexual harassment in the workplace through the Local Committees, as do other workers.
- Repeal sections 499 and 500 of the Indian Penal Code to eliminate the offense of criminal defamation. Defamation should be solely a civil matter. In the meantime, ensure that criminal defamation is not used as a legal response to complaints of sexual harassment.

To the Central Government and State Governments

- Commission independent studies—both qualitative and quantitative—on the prevalence and forms of sexual harassment in the workplace in both the formal and informal sectors, information about rights, perceived barriers to making complaints, and factors that enable effective functioning of committees. Disseminate the results widely.
- Provide trainings, create information materials, and conduct public awareness campaigns to local government officials, employers, and Resident Welfare Associations to increase awareness about sexual harassment, fight victim-blaming attitudes, and disseminate information on the rights of domestic workers and responsibilities of employers and government.
- Improve training and accountability mechanisms to sensitize police officers and judicial officials on the proper handling of cases of sexual harassment, including recording complaints, treating victims respectfully and referring them to services, investigation techniques, and avoiding victim-blaming.
- Support the formation and free functioning of workers’ organizations, including trade unions, given the important role they play in disseminating information about workers’ rights and providing critical support to bring complaints forward.
- Ensure that SHe-Box is available in regional languages and is accessible to all women workers, including informal workers.

On Internal Committees

- Ensure every company over 10 employees has an Internal Committee, established in line with the law, and submits information on the meetings held, cases received, orders issued, and measures taken to raise awareness about the issue among all employees in its annual report.
- Set up a monitoring mechanism for the committees.
- Ensure regular training for all committee members to sensitize them on how to handle sexual harassment complaints and familiarize them with the legal provisions.
- Publish data, on an annual basis, on the number of sexual harassment cases filed and resolved by Internal Committees, including the types of cases and resolution.
- Publish data annually on the number of employers sanctioned for non-compliance with the law.

On Local Committees

- Conduct a nationwide audit on Local Committees and publish the results. The audit should assess how many Local Committees have been set up, their composition, nature of complaints received, orders issued, time taken for issuing orders, what kind of training and awareness raising programs, campaigns, and workshops they have held, and other related aspects of their responsibilities.
- Set up Local Committees in every district and constitute them in line with the 2013 law. Ensure they are adequately resourced and have earmarked budgets to conduct awareness programs and campaigns to help in both preventing sexual harassment and breaking the silence around speaking out about it. They should be accessible to workers from the informal sector.
- Amend the composition of the Local Committees to ensure there is at least one representative from the informal sector.
- Conduct regular trainings for committee members, district magistrate, and other relevant officers in district administration.
- Set up a monitoring mechanism for Local Committees and publish regular reports to ensure transparency and accountability.

- Increase cooperation and dialogue with workers’ organizations and civil society groups to address sexual harassment as a key workplace issue, and partner in information campaigns and reporting on effective enforcement of the law.
- Ensure training for employers, government officials, and other stakeholders—such as Resident Welfare Associations in the case of domestic workers—on their duties under the law.
- Improve training and accountability mechanisms for police officers and judicial officials on the proper handling of cases of sexual harassment, including sensitive treatment of complainants, methods for proper investigation, and addressing bias from harmful and discriminatory social norms.
- Provide free legal aid to informal workers to support their complaint process.

To Private Employers in India and Foreign and Domestic Companies Doing Business with Them

- In line with the guidelines set out in the ILO Violence and Harassment Convention, adopt and implement, in consultation with workers, a workplace policy on violence and harassment; assess the risks of sexual violence and harassment associated with the work and take measures to prevent and control them; and provide training to workers on their rights, identified risks, available protection measures, and grievance mechanisms.
- Carry out sector-specific studies to examine gender-based violence and harassment at work to identify patterns and effective prevention and response measures. Ensure that women workers, unions, and local women’s rights groups with experience in tackling workplace harassment are actively involved in designing the studies and are able to provide information safely. These studies should allow women and union leaders to give confidential feedback about any complaints systems at work, ease of access and use of such mechanisms, and anti-retaliation protection measures.
- Acknowledge serious limitations of relying on social audits to detect and respond to gender-based violence in the workplace. Work with unions, workers’ organizations, and local women’s rights groups to create reliable, accessible, and confidential monitoring and complaints mechanisms.
- Facilitate workers’ organizations, including trade unions, to disseminate information about workers’ rights, gender-based violence, and harassment at work

- among both men and women, and provide critical support to bring complaints forward.
- Learn from, adapt, and implement emerging best practices for detecting and responding to workplace harassment, including developing enforceable binding agreements between workers' and women's rights groups and companies.

To the United States, United Kingdom, European Union, Australia, Canada, Other Concerned Governments, Foreign Donors, and Aid Agencies

- Encourage the Indian government to respect its international commitments to implement laws toward making workplaces safe for women.
- Provide support to local civil society groups and women's rights organizations to undertake periodic quantitative and qualitative studies on sexual harassment at the workplace, including its prevalence, efficacy of implementation of laws and policies, and access to justice for women.
- Support initiatives to increase awareness of sexual harassment in the workplace among all workers and engage both men and women in prevention and response efforts.

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“No #MeToo for Women Like Us”

Poor Enforcement of India’s Sexual Harassment Law

In 2013, India’s parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, known as the POSH Act, to ensure a safe work environment for women. Yet following the global #MeToo movement that emerged in 2017, many Indian women stepped forward to speak out publicly on the pervasive and often rampant sexual abuse in the workplace. The movement was led on social media, which effectively excluded women from the informal sector, which employs 95 percent of all women workers in India.

“No #MeToo for Women Like Us” examines the enforcement of the POSH Act particularly in the informal sector and finds that millions of women are left vulnerable due to gaps in protection mechanisms and lack of access to a remedy. India’s central and local governments have failed to properly promote, establish, and monitor a central feature of the law—committees responsible for dealing with sexual harassment complaints in the informal sector. These include domestic workers and those employed by the government to implement health, nutrition, education, and social welfare programs.

Human Rights Watch calls on the Indian government to full enforce the POSH Act and ratify the International Labour Organization’s Violence and Harassment Convention, a landmark treaty that establishes global standards to prevent and respond to violence and harassment in the workplace.



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