

# EVERYDAY RESISTANCE

Life, Livelihood and Sexual Harassment



An Alternative Law Forum report



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# INTRODUCTION



## 1.1

### Intent of the project

Women workers in the unorganised sector<sup>1</sup> in India face several impediments to safe and dignified work, including low wages; poor working conditions; occupational hazards and workplace harassment, especially sexual harassment. Gender discrimination and sexual harassment at the workplace are widespread despite constitutional guarantees, the right to livelihood and specific laws prohibiting sexual harassment at the workplace. Legal remedies for sexual harassment at the workplace have largely been confined to the organised sector, while provisions for some sections of unorganised workers have remained largely unimplemented and other sections are not covered at all. Women workers in this sector have few means of grievance redressal to address workplace harassment. This violates the right to livelihood and right to equal employment opportunities. There has been a long history of engagement in these issues by women's movements and labour rights movements. There continues to be a need, however, to systematically document the factors which contribute to workplace harassment of women the extent to which redressal mechanisms exist, and the nature of their functioning, in order to work towards removing barriers and achieving women's right to equality, right to livelihood and a safe work environment.

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1. The terms 'Informal Sector' and 'Unorganised' Sector have been used interchangeably in this report.

In order to understand workplace harassment, the nature of the workplace itself and the specific conditions of work are important determining factors. The disclosures of sexual harassment in the academia, entertainment and media industry in India during 2017-18 (what is popularly called the #MeToo movement) made visible what had been known for long. But it is important to recognise that sexual harassment was an everyday occurrence for women in the unorganised sector workforce and very little was documented outside of textile industry.<sup>2, 3, 4</sup>

For the purpose of this study, domestic work and street vending were the two sectors identified as crucial in order to understand the complexities of addressing sexual harassment in the unorganised sector. These two livelihoods were selected because there is often no clearly demarcated workplace or clear employer-employee relationship. Existing mechanisms to address workplace harassment fail to adequately deal with the complexities of women's work in these two sectors. We expect that the findings of the study will specifically benefit women workers in these sectors in taking forward their articulation of their own experiences of workplace harassment, in order to move towards prevention and redress.

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2. Munnade and Sisters for Change, Eliminating Violence against Women at Work, 2016. file:///C:/Users/desk/Downloads/SFC-Munnade-Report-FINAL-080616-copy.pdf (accessed on October 1, 2019)

3. Human Rights Watch, Combatting Sexual Harassment in the Garment Industry. 2019. <https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry> (accessed on October 1, 2019)

4. PUCL, NLSIU, Vimochana, ALF et al 'Production of Torture'. 2015. [http://sanhati.com/wp-content/uploads/2016/07/Production\\_of\\_Torture.pdf](http://sanhati.com/wp-content/uploads/2016/07/Production_of_Torture.pdf) (accessed on October 1, 2019)

## 1.2

### Research question

The primary question for this research project is:

*What are the lacunae in the current laws relating to sexual harassment at the workplace in their framing, applicability and implementation in tackling sexual harassment faced by unorganised women workers, especially domestic workers and street vendors?*

## 1.3

### Research method

The methodology was designed to forefront the voices of women agricultural workers, sanitation workers, construction workers, domestic workers, street vendors with respect to the everyday sexual harassment they face, especially the manner in which their work is intrinsically tied with the workers' and their family's survival. It was felt important to speak to the workers themselves and their trade unions to understand the complexities of livelihood and forms of harassment.

### 1.3.1

#### Collaborating organisations

The study was conducted in sites where organisations have been in direct or indirect working relationship with the Alternative Law Forum (ALF). It was thought necessary to work with organisations on the ground to establish rapport while discussing the sensitive topic of sexual harassment, and also in case follow up of specific cases was required. We worked through the Stree Jagruti Samiti, Bengaluru; Jilla Beedhi Vyapari Sanghatanegala Okkuta, Sadhna Mahila Sangha ((Federation of Street Vendors' Unions in Bangalore District) and Association for Promoting Social Action (APSA).

### 1.3.2 Sample

The research sample was chosen through a snowball sampling process. The sample of domestic workers does not include live-in residential domestic workers who could not be accessed due to their restricted mobility and ability to meet outsiders. Snowball sampling (also known as chain-referral sampling) is a non-random sampling method. This sampling method involves primary data sources nominating other potential primary data sources to participate in the research i.e. snowball sampling method is based on referrals from initial subjects to generate additional subjects.<sup>5</sup>

### 1.3.3 Secondary data

We started by reviewing scholarly literature on the topic, mainstream media reports, and government reports. We also filed Right to Information (RTI) applications with the relevant state authorities to get access to complaints of harassment filed with the police and the Karnataka State Commission for Women. We looked at the existent legal framework available to address workplace harassment for women in the unorganised sector and the lacunae in each area.

### 1.3.4 Observation

We studied the nature and conditions of the workplace, by examining the provision of basic facilities such as shelter, toilets, safe drinking water, and

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5. <https://research-methodology.net/sampling-in-primary-data-collection/snowball-sampling/>

affordable and safe public transport, and how their absence contributes to or aggravates workplace harassment.

### 1.3.5

#### **Interviews and Focus Group Discussions**

We conducted interviews with individual women workers as well as focus-group discussions with larger groups of women workers. We also interviewed law enforcement officials to understand the factors contributing to harassment of women workers as well as impediments to justice.

The data was collected through 42 in-depth personal interviews (12 with domestic workers and 30 with street vendors) and three focus group discussions with domestic workers. The size of the group varied from 8-20 women participants. It was not feasible to conduct a focus group discussion with street vendors due to the challenges involved in getting them together in a group during their workday.

Personal interviews were also undertaken with police personnel, representatives of Vanitha Sahayavani (Women's Helpline), Karnataka State Department of Women & Child Development, Karnataka State Commission for Women, Office Deputy Director for Women and Child Welfare, Karnataka Government in order to understand how they deal with complaints of sexual harassment from workers in the informal sector and their knowledge of existing legal provisions.

### 1.3.6

#### **Informed consent and research ethics**

Consent for the interviews and group discussions was recorded on audio before the interview/discussion was started with respondent/s. The researchers also explained before every interaction, the purpose of the study and how the data collected would be used. It was clearly communicated to

participants that they had the option to not participate in the research and also to opt out at any point.

To ensure confidentiality, the report has anonymised all accounts shared by respondents. Additionally, the transcripts and audio files are handled only by the primary research team.

An approach of “do no harm” was adopted, keeping in mind the sensitive nature of the topic and the possibility that participants in the research might not want to disclose incidents in front of family members. We ensured that interviews and group discussions were conducted in absence of family members (husband, children etc.). In some cases, where it was needed, a member of the research team engaged in a conversation with family members present in the house, in another room/outside the house, to make the interviewee comfortable.

### 1.3.7

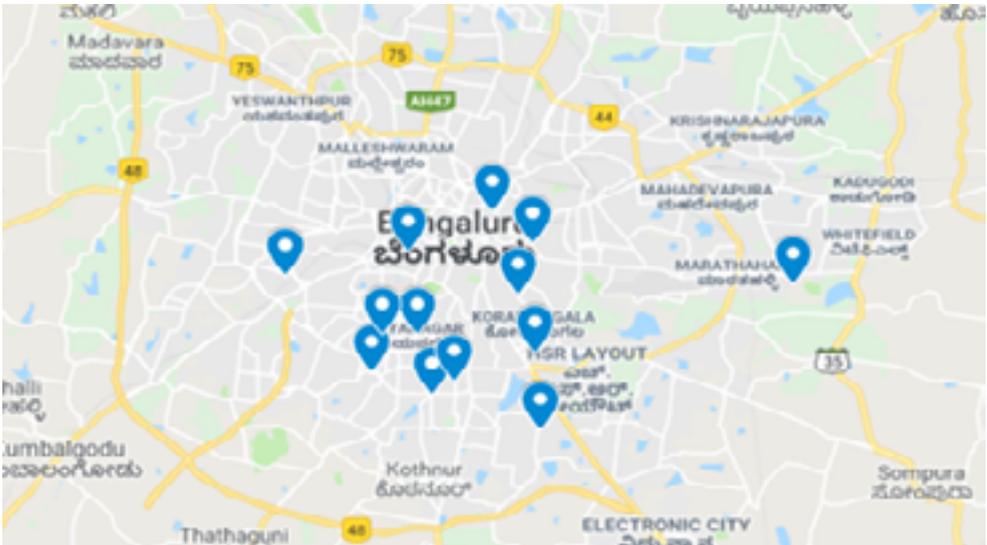
#### Study sites

The study locations were: Commercial Street, Begur Road, Ejipura, Vijaynagar, Madiwala Market, KR Market, LR Nagar, Bannerghatta, Jogupalya. The locations that were covered for the group discussions were: Begur Road, JP Nagar, Ragigudda, Jayanagar, Kaderenalli, Thyagarajnagar, Thubarahalli. (illustrated as pin-points in the next page).

### 1.4

#### Challenges faced

1. The enquiry around sexual harassment was difficult, given the nature of the subject. The participants of the study were reluctant to speak about their personal experiences of sexual harassment because of the “shame” associated with it and possibly also because of the fear of repercussions. Rapport building and assurances of confidentiality were important in order to build trust.



The data was collected between August 2017 and January 2019.

2. Accessing study participants in a private space where they were free to talk about their experiences of harassment was also difficult. It was a struggle to get women aside for conversations lasting up to an hour, and the conversations were often interrupted by other members of the household in private settings and by neighbouring vendors in public settings. In both, the conversation was likely to attract the attention of men in the proximity of the interview site (husband, son, neighbouring male vendors).

3. Live-in residential domestic workers were excluded from the study due to difficulties of access, since they live and work round the clock within the four walls of their workplace and are rarely allowed to venture out. Initial efforts to interview them met with limited success as they were constantly under the supervision of their employers and could not engage in conversation especially related to the topic of study.

4. The study encountered differing notions of what constituted sexual harassment, as participants in the study had various understandings of sexual harassment, and often did not differentiate it from other forms of harassment they encountered at work.

5. Conducting focus group discussions with street vendors was a challenge due to the nature of their livelihood where customers were constantly present, thus making group discussions during the day unfeasible.

## CONTEXT



## 2.

### Context

With almost 90 per cent of its workers employed in the informal sector, India ranks the highest in informal employment in South Asia. Only 6.5 per cent are employed in the formal sector.<sup>6</sup> Informal sector workers are deprived of basic rights to security of employment, safety, health and others. According to some studies,<sup>7</sup> urban areas have a higher percentage of unorganised sector workers, with close to 65-70 per cent workers in the informal sector. Informalisation is more pronounced in the case of female workers, with 96 per cent of the female workforce being engaged in the unorganised sector as compared with 91 per cent males engaged in the unorganised sector.

In the informal sector, domestic work and street vending represent two large categories of employment. According to data from the National Sample

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6. ILO Report, "Women and Men in the Informal Economy – A Statistical Picture," 3rd Edition, (2018).

7. Kamala Kanta Mohapatra, "Women Workers in Informal Sector in India: Understanding the Occupational Vulnerability," International Journal of Humanities and Social Science, Vol. 2, No.21, November 2012.

<[http://www.ijhssnet.com/journals/Vol\\_2\\_No\\_21\\_November\\_2012/23.pdf?update/journals/Vol\\_2\\_No\\_21\\_November\\_2012/23.pdf](http://www.ijhssnet.com/journals/Vol_2_No_21_November_2012/23.pdf?update/journals/Vol_2_No_21_November_2012/23.pdf)>

Survey (NSSO Statistics 2011-2012, 68<sup>th</sup> round), over the last two decades, the domestic workers' sector has emerged as the second largest urban informal workforce (Chen and Raveendran 2011)<sup>8</sup>, next only to 'home based workers' (artisans and petty commodity producers). The NSSO states that 39 lakh people are employed as domestic workers by private households, of which 26 lakhs are female domestic workers. The total number of street vendors in the country is estimated at around 10 million and 40 per cent of all vendors are women.<sup>9</sup> Some studies estimate that street vendors constitute approximately 2 per cent of the population of a metropolis.

## 2.1

### Domestic Workers

According to a 2007 report by the National Commission for Enterprise in the Unorganised Sector<sup>10</sup>, domestic work is a female dominated area of work employing almost 90 per cent women or children (especially girls), ranging from ages 12 to 75 years. It is estimated that 25 per cent among them are below the age of 14 years. In Bangalore, women belonging to the Scheduled Castes (SC) form 75 per cent of domestic workers, 15 per cent of Other

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8. M.A. Chen, M. A. & G. Raveendran, Urban employment in India: Recent trends and patterns. *Margin: The Journal of Applied Economic Research*, 6(2), 159-179. // Chen, M. A. (2011). *Canadian Journal of Women and the Law*, 23(1), "Recognizing domestic workers, regulating domestic work: conceptual, measurement, and regulatory challenges," 167-184.

9. "Women Workers in Informal Sector in India" (ibid).

10. National Commission for Enterprises in the Unorganized Sector, "Report on conditions of work and promotion of livelihoods in the unorganized sector," August 2007. <[http://dcmsme.gov.in/Condition\\_of\\_workers\\_sep\\_2007.pdf](http://dcmsme.gov.in/Condition_of_workers_sep_2007.pdf)>

Backward Classes (OBC), 8 per cent from Scheduled Tribes (ST) and the rest belonged to the general category.<sup>11</sup>

This sector has remained outside the purview of most labour regulations<sup>12</sup> (Neetha N) as private households are not recognised as a workplace and also because of the informal nature of their employment relations. The draft National Domestic Workers Policy and the specific inclusion of domestic workers in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are positive steps towards recognising this sector as a workplace and the women working in it as workers.

The Draft National Policy on Domestic Workers<sup>13</sup> defines a domestic worker as – *“a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary or permanent, part time or full time basis to do the household work, but does not include any member of the family of an employer.”*

Under the ILO Convention 189<sup>14</sup> a domestic worker is defined as “any person engaged in domestic work within an employment relationship.” A domestic worker may be employed on a full-time or a part-time basis; may be

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11. M Madhumathi, “Women in Urban Informal Sector, A Study of Domestic Workers,” Abhijeet Publications, New Delhi, (2013).

12. “Women Workers in Informal Sector in India” (ibid).

13. Ministry of Skill Development and Entrepreneurship Report, “Human Resource & Skill requirements in the Domestic Help Sector,” Volume 7.  
<<https://nsdcindia.org/sites/default/files/Domestic-Help.pdf>>

14. C189 – Domestic Workers Convention, Convention concerning decent work for domestic workers, Geneva, (2011). <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189)> (last accessed on 27th August 2018)

employed by a single household or by multiple employers; may be residing in the household of the employer (live-in worker) or may be living in his or her own residence (live-out). A domestic worker may be working in a country of which she/he is not a national. India, as a founding member of the International Labour Organisation (ILO), affirms international conventions, protocols and recommendations on international labour standards and rights of workers including domestic workers. India is also a signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the United Nations Convention on the Rights of the Child (UNCRC). However, domestic workers – a majority of whom are women, have remained outside the realm of policy making on social and labour issues.

## 2.1.1

### **Types of Domestic Workers**

Types of domestic workers, based on the hours of work and nature of employment relationship:

a) Part-time workers: Domestic workers who work for one or more employers for a specified number of hours per day or specific tasks for different employers every day. They do not live with the employer and are not dependent on the employer for basic living requirements like food and shelter. They are more likely to be hired for specific segregated tasks like only cooking or only cleaning. However, the word ‘part-time’ is a misnomer as these workers are usually work for several hours and sometimes for a full day in different households.

b) Full-time workers: Domestic workers who work for a single employer every day for a specified number of hours (normally full day work) and who return home every day after work. They take care of a range of tasks, from cleaning, cooking, washing dishes, laundry, and any other household chores like taking care of children and elderly, taking children to and from school, shopping etc.

c) **Live-in workers:** Domestic workers who work full time for a single employer and stay in the house of the employer or in a dwelling provided by them (usually an outhouse or a “servant’s quarter”). They are expected to answer to the employer at any time of day or night. They are often expected to do all the domestic work ranging from housekeeping, baby-sitting, elder care, washing clothes, cooking, washing dishes, etc. They are dependent on their employers for food, shelter and healthcare. Most live-in domestic workers are migrants. In a study of domestic workers in Delhi<sup>16</sup> it was found that almost all domestic workers were migrants and 90 per cent were Christian tribal women. They are preferred due to perceptions of them as “simple, honest, obedient, and hardworking”... “and hence easier to control than their non-tribal counterparts”.<sup>17</sup>

## 2.1.2

### **Nature of Work**

The work entails household chores such as cooking, cleaning, baby-sitting, elder-care, house-keeping etc. Their wages are dependent on the kind of chores they perform at each household and how much time they spend in each household. Domestic workers are not recognised as ‘workers’ because their work is viewed as an extension of the gendered division of unpaid labour. This perception is even more stark in the case of Dalit women.<sup>18</sup> The lack of recognition of domestic work as productive work contributes

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16. N Neetha, “Migration of female bread winners: Migration and social networking of female domestics in Delhi, *Economic and Political Weekly*, 1681-1688, (2014).

17. N Rao, “Respect, Status and domestic work: Female migrants at home and work,” *European Journal of Development Research*, 23: 758-773, (2011).

18. Shraddha Chitageri, “Articulations of injustice and the recognition–redistribution debate: locating caste, class and gender in paid domestic work in India,” *Law, Social Justice & Global Development Journal* 1, (2007).

to the work being categorised as “unskilled”, under-valued, irregular and low-wage. The wage structure varies between regions, and even between areas within the same town/city) with no standardised wage structure being in place. Additionally, they have no standardised working hours, and lack negotiating capacity. They are deprived of earned leave, maternity leave, and are vulnerable to sexual harassment. A study<sup>19</sup> (2017) in Bangalore found that around 10,000 women from Tamil Nadu, Kolar, Bangarpete and Andhra (eastern line), travel every day to Whitefield, KR Puram, Bengaluru East and Cantonment (in Bangalore city) to work as housemaids, vegetable vendors or canteen assistants. Domestic workers earn around Rs. 3,000 to Rs. 3,500 per month from each house. The study shows that women prefer domestic work over work in garment factories, where the shifts are long, from 8 am to 5 pm, which makes the commute back home more challenging.

### 2.1.3.

#### **Profile of domestic workers**

Most domestic workers have low education levels. Studies have found that the majority, 83 per cent, have finished only up to middle school or less.<sup>20</sup> While women domestic workers in this study belonged to all social groups - OBCs 32.4 per cent, SCs 31.2 per cent and upper castes 28.4 per cent, it is clear that caste is correlated with domestic work. Raghuram P (2001)<sup>21</sup> has

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19. P. Raghuram, “Caste and gender in the organisation of paid domestic work in India,” *Work, Employment and Society*, Volume 15, Issue 3, 1 September 2001. <<https://www.cambridge.org/core/journals/work-employment-and-society/article/caste-and-gender-in-the-organisation-of-paid-domestic-work-in-india/CDB8ED62EBBE1D3F8A51D6F569274A65>> (last accessed on 3rd September 2018)

20. Ibid.

looked at how caste and gender operate in the organisation of paid work and found hierarchies based on conditions of work, wages and nature of tasks to be performed. Caste-based discrimination can play out in various forms, like hiring only dominant caste workers for cooking and oppressed castes for cleaning; not allowing workers to use toilets or accessing certain areas in the house (such as places of worship); segregated utensils, etc.

Said one domestic worker during an FGD, “They do ask about caste especially for those who come to cook. Many people lie about their caste when joining work saying they are [upper caste] brahmins, gowdas and lingayats.”

Migrants form a large percentage of domestic workers as they migrate in search of livelihoods.<sup>22</sup> Some of these are also women who have been trafficked from villages to the cities, although data on these cases is scanty. Many women migrate from villages to do domestic work and this can take two forms – interstate and overseas (mostly the Middle East and parts of Europe, UK & US). Studies have found that domestic workers are largely migrants, forced to seek employment in metros due to unemployment, poverty, agricultural losses, mortgaged land, siblings to be married, widowhood, caste-discrimination, death or sickness. Many young girls

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21. P Raghuram, “Caste and gender in the organisation of paid domestic work in India,” *Work, Employment and Society*, Volume 15, Issue 3, 1 September 2001. <<https://www.cambridge.org/core/journals/work-employment-and-society/article/caste-and-gender-in-the-organisation-of-paid-domestic-work-in-india/CDB8ED62EBBE1D3F8A51D6F569274A65>> (last accessed on 3rd September 2018)

22. N. Neetha and Rajni Parliwala, “The absence of state law: Domestic workers in India,” *Canadian Journal of Women and Law*, 23(1), January 2011.

desirous of experiencing city life and the possibility of higher earning, are brought in by relatives, neighbours or friends from the same religion, community or caste.<sup>23</sup> Migrant workers are typically live-in and therefore more vulnerable to physical and/or sexual abuse, long hours of work, poor salaries etc. This category of workers also cannot rely on community support in times of distress.

## 2.2

### Street vendors

A city is incomplete without its markets. Indeed, the essence of a city is its markets with their complex sociocultural interactions. Street vendors are an integral part of a city, where goods and services are sold on the streets, making them accessible, at affordable prices. Street vending is a preferred form of livelihood for migrants who move to urban areas for reasons of drought, agricultural crisis, caste-discrimination, widowhood, unemployment, etc. Street vending as a livelihood option also allows independence and an additional source of employment. Several street vendors are educated youth, who have not been able to find employment otherwise.

Despite being integral to the urban economy and socio-cultural life of cities, street vendors face discrimination and marginalisation. They frequently face harassment at the hands of the police and the municipal authorities who perceive them as “illegal” or as “encroachers” and often conduct eviction drives, where their goods are destroyed or seized. The government authorities also demand bribes from street vendors on a daily basis.

Recognising the need to protect the livelihood of street vendors, the National

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23. S. Menon, “The domestic worker informal sector: An intersection of caste, religion and language,” Sanhati, 27 October 2010.

<<http://sanhati.com/excerpted/2898/>>

Urban Street Vendor Policy was formulated in 2004. It was subsequently updated and re-published as the National Street Vendor Policy in 2009. The policy document calculates the population of street vendors at an average of 2.5 per cent of a city's population. The National Census 2011 put the national urban population at 377 million. Assuming that the urban population now stands at around 430 million, there are an estimated 10 million street vendors. The NSSO (2011-12) data shows that about 3.33 million persons (urban and rural) are involved in street vending as their primary occupation. Around 1.18 million households are dependent on this sector as their primary source of income.<sup>24</sup>

## 2.2.1

### Types of street vendors

The Street Vendors (Protection of Livelihood and Regulating Street Vending) Act, 2014 (hereinafter the Street Vendors Act, 2014) defines a street vendor as follows:

*“Section 2 (l) – “street vendor” means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words “street vending” with their grammatical variations and cognate expressions, shall be construed accordingly.”*

The definition of street vendors according to global research and policy

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24. Ramanath Jha, “Strengthening urban India's informal economy: The case of street vending,” Observer Research Foundation, 25 July 2018.

<<https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>>

network, Women in Informal Employment: Globalizing and Organizing (WEIGO)<sup>25</sup> is as follows:

*“Broadly defined, a street vendor is a person who offers goods or services for sale to the public without having a permanent built-up structure but with a temporary static structure or mobile stall (or head-load). Street vendors could be stationary and occupy space on the pavements or other public/private areas, or could be mobile, and move from place to place carrying their wares on push carts or in cycles or baskets on their heads, or could sell their wares in moving buses. The Government of India has used the term ‘urban vendor’ as inclusive of traders and service providers, stationary as well as mobile, and incorporates all other local/region specific terms used to describe them.”*

The two types of street vendors envisaged in the Street Vendors Act, 2014 are:

- (i) “Mobile vendors” (Section 2 (d): street vendors who carry out vending activities in designated areas by moving from one place to another place vending their goods and services;
- (ii) “Stationary vendors” Section 2 (k): street vendors who carry out vending activities on a regular basis at a specific location.

However, street vendors can also be categorised on the basis of the duration spent in vending:

- (i) Part-time vendors who vend goods for a specific and limited time of the day, and hold petty jobs in the rest of the time;
- (ii) Seasonal vendors who sell seasonal items and appear during the season;
- (iii) Mobile-stationary vendors who are mobile vendors for some part of the day and become stationary for the rest of the day.

Street vendors can also be categorised into those who sell perishables such as

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25. Women in Informal Employment: Globalizing and Organizing (WIEGO), “Street Vendors in India.” <[https://www.wiego.org/informal\\_economy\\_law/street-vendors-india](https://www.wiego.org/informal_economy_law/street-vendors-india)>

fruit, greens and vegetables, and non-perishables like clothes, food, plastic items, accessories (jewellery and chappals), etc.

## 2.2.2

### Nature of Work

Lack of employment, poverty, low education and low skills makes street vending an attractive livelihood option for both men and women migrants in urban areas.<sup>26</sup> The National Commission for Enterprises in the Unorganised Sector (NCEUS, 2007) has categorised workers according to the level of income and found that 75 per cent self-employed workers belong to the poor and vulnerable group and only around 25 per cent belong to the high income group. In the category of self-employed workers based on income, street vendors were located in the low-income self-employed group. According to a 2017 study<sup>27</sup> conducted in Mumbai, a majority of urban informal workers, including women vendors live in slums and poorer areas of the city and do not have adequate living space. Vendors, most of whom are women, sell fruit and vegetables and start work around 5 AM and continue till around 12 AM, usually working every day of the year. It was also found that the street vendors pay 15-20 per cent of their daily income as bribes to the local police and municipal corporation officials.

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26. Bhowmik & K. Sharit, "Hawkers and the urban informal sector: a study of street vending in seven cities," National Alliance of Street Vendors in India (NASVI), May 2001. <<http://www.wiego.org/sites/default/files/publications/files/Bhowmik-Hawkers-URBAN-INFORMAL-SECTOR.pdf>> (last accessed 25.2. 2014)

27. Debdulal Saha, "Conditions of 'decent working life' of street vendors in Mumbai," Tata Institute of Social Sciences, (2018).

<<https://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper27c.pdf>>

In a study<sup>28</sup> conducted across eight Indian cities commissioned by the National Association of Street Vendors of India (NASVI), a common feature that emerged was harassment and threats directed towards female street vendors in the different research sites across the country. In the study, Reena, a former street vendor who is now a volunteer at the Self Employed Women's Association (SEWA), stated that for female street vendors, safety is one of the foremost concerns. "There are markets that are set up early in the morning and go on till late at night. In such places, nobody talks about the protection of women who come to the market," she said. Specifically, Reena points out that women are subjected to harassment by police and contractors who demand bribes. Policemen in India are known to extort "hafta" — weekly bribe or protection money — from these vendors to allow them to conduct business. Many times, the street vendors have to change locations at short notice because of harassment by the police or local goons. On many occasions, the police refuse to return the goods they seized from the vendors, leading to financial losses and distress for the vendors. Furthermore, there is a level of hooliganism in public markets which makes the environment inhospitable for women.

For street vendors, their workplace is a public place, where sexual harassment is common. Therefore, the overlap of a public place as a workplace makes it complex for street vendors to mitigate sexual harassment at workplace.

According to a study by Jagori<sup>29</sup> conducted in Kerala to assess safety in public places, verbal and visual abuse was the most common form of sexual harassment as reported by 80 per cent respondents, followed by physical harassment (60 per cent), whereas 26 per cent reported stalking and 21

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28. Bhowmik and Sharit K. op cit.

per cent flashing. Street harassment is something most women deal with on a daily basis. Catcalls, leering, groping, stalking, public masturbation, and anti-women comments are demeaning, annoying, and sometimes threatening and scary. Very often incidents and experiences of street harassment are silenced and dismissed as a trivial annoyance, or even portrayed as a “compliment”. Sexual harassment in the form of unwelcome intrusion or attempt to intrude upon a woman’s attention with language or action that is explicitly or implicitly sexual. Such language includes, but is not limited to, references to male or female genitalia or to female body parts or to sexual activities, solicitation of sex, or reference by word or action to the target of the harassment as the object of sexual desire, or similar words that inflict injury. It can be through looks, words, or gestures that the man asserts his right to intrude on the woman’s attention, defining her as a sexual object, and forcing her to interact with him. Street vendors routinely go through these experiences because of the nature of their work and workplace.

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29. SAKHI Women’s Resource Centre SAKHI & Anweshi Kozhikode & Jagori J & UNWOMEN UN, “Are Cities in Kerala Safe for Women? Summary of the Research Findings of the Study Conducted in Thiruvananthapuram and Kozhikode Cities, Kerala,” SAKHI Women’s Resource Centre, Working Papersid:4572, eSocialSciences, (2011).



## **LEGAL FRAMEWORK**



### 3.1

#### **History of the campaign to tackle sexual harassment at the workplace**

The women's movement has long struggled against violence against women in various spheres – the private, the public and at work – from rape and domestic violence to 'sati' and sex selective abortion. Since the 1980s, women's groups have drawn attention to the serious nature of sexual harassment. Dismissed as "light flirtation" or "casual jokes" the very term "eve teasing" was a denial of the debilitating effect of sexual harassment. In addition to the deep impact on the individual psyche of the target of sexual harassment, an unhealthy environment prevails at a workplace where sexual harassment is rampant and condoned.

The impetus for a legal intervention to tackle sexual harassment came after the gang-rape of Bhanwari Devi, a village level worker (sathin) in a government women's development project in Bhatari village of Rajasthan in 1992. As part of her work of preventing child marriage in her district, she had to visit families and raise awareness about the issue, particularly during the festival of Akha Teej, considered auspicious for weddings. She

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30. Saheli newsletter September, 1997. Available at <https://sites.google.com/site/saheliorgsite/violence/sexual-harrassment/sexual-harassment-at-the-workplace> (accessed on Sept 30, 2019)

and her family faced intense harassment, ostracism and social boycott due to her work which angered the local elite. On May 22, 1992 while she and her husband were working on their farm, they were accosted by five upper caste men who beat up her husband and gang-raped her. Bhanwari, like most women in rural areas, faced many impediments while trying to report the rape and have a medical examination conducted, thus leading to poor quality of physical and forensic evidence to establish rape. The rape case still drags on in appeal after the main accused were acquitted by the district court in 1995, which observed that the rapists were middle-aged and respectable persons of a higher caste who could not have raped a lower caste woman.

### **Shift in jurisprudence**

Notably, however, Bhanwari Devi's lack of security at work triggered a campaign that led to a radical shift in jurisprudence regarding the law on sexual harassment at the workplace. This approach went beyond individual violation and embedded itself in international law and constitutional guarantees of rights rather than notions of propriety, modesty or honour. It was based on a judicial recognition of the vulnerable position of unorganised women workers, especially those in rural settings.

In response to a writ petition filed by Vishaka and women's groups, the apex court issued the landmark Vishaka Guidelines on Sexual Harassment at the Workplace in 1997. The Supreme Court declared, "sexual harassment at the workplace is violative of Article 14 of the Constitution which guarantees the Right to Equality as well as Article 19 which guarantees the Right to Practice any Profession, trade or business.

Since the right to work depends on the availability of a safe working environment, and the Right to Life (Article 21) means a life with dignity, the hazards<sup>31</sup> posed by sexual harassment need to be removed for these rights to have any meaning."

## Constitutional guarantees and international conventions

*Vishaka v. State of Rajasthan* has been described as “one of the more notable successes of judicial action in redressing violence against women,” and was recognised by the CEDAW Committee as a “landmark judgment [in India’s] tradition of public interest litigation.” The *Vishaka* judgement filled a void in domestic litigation and upheld women’s constitutional rights by directly applying the provisions of CEDAW to enact guidelines against sexual harassment in the workplace. “The case represents a leap forward for PIL, domestic application of international law, and gender equality in India,” says legal researcher Avani Sood.<sup>32</sup>

The Supreme Court guidelines also relied on India’s responsibilities under the Convention on Elimination of all forms of Discrimination against Women (CEDAW), which India had ratified in 1993<sup>33</sup>, and also the International Labour Convention on Discrimination (Employment and Occupation) Convention (No. C111).<sup>34</sup>

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31. *Vishaka and others V. State of Rajasthan and others*. (AIR 1997 SUPREME COURT 3011).

The case was filed in 1992 by five women’s groups: *Vishaka*, *Mahila Purnvas Samou*, *Rajasthan Voluntary Health Association*, *Kali for Women*, and *Jagori*— against the State of Rajasthan, its Women and Child Welfare Department, its Department of Social Welfare, and the Union of India.

32. Sood, Avani Mehta, “LITIGATING REPRODUCTIVE RIGHTS: Using Public Interest Litigation and International Law to Promote Gender Justice in India”, Center for Reproductive Rights, 2006.

33. <https://www.un.org/womenwatch/daw/cedaw/states.htm>

34. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111)

## **Violation of fundamental rights**

Through these guidelines, the Supreme Court of India recognised sexual harassment at the workplace as not only personal injury to the affected woman, but also a violation of fundamental rights.

The Supreme Court guidelines made employers and institutions responsible for implementing both preventive and remedial measures to make the workplace safe for women.

According to Naina Kapur, lead instructing counsel in the Vishaka case, “In treating sexual harassment at work as a systemic concern, driven by human perceptions, Vishaka evolved the law as a means to change the way we look at harm as others live and experience it. Sexual harassment was about equality and loss of dignity. Systems (in this case, workplaces) had to assume a shared responsibility to foster change through prevention. That is the goal of equality- preventing the harm from taking root.”<sup>35</sup>

## **Obstacles to implementation of Vishaka**

However, the onus on the employer, while a breakthrough in an understanding of the responsibilities of employers towards their employees, proved to be difficult to implement as it assumed goodwill on the part of employers. The guidelines did not bring about major change as complaints committees were either not instituted (in case of private institutions) or were instituted only on paper (in the case of public institutions).<sup>36</sup>

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35. [http://nainakapur.blogspot.com/2009/03/aspirations-of-law\\_03.html](http://nainakapur.blogspot.com/2009/03/aspirations-of-law_03.html) (accessed September 30, 2019)

36. “Sexual Harassment at the Workplace,” *Economic and Political Weekly*, Vol. 43, No. 26/27, June 28 2008, pp. 6-27.

Factors like hierarchy within the workplace, influence and power of the accused, likelihood of dismissal from work upon complaint, caste and class vulnerabilities of the complainant<sup>37</sup> continued to prevent victims of sexual harassment from filing complaints.

The experience of women's groups in different parts of the country, as well as studies<sup>38</sup> carried out by researchers came up with the same findings: not many institutions had set up mechanisms like complaint committees to tackle sexual harassment. And where the committees did exist, their functioning for the most part was limited and ineffective. Recommendations of the committees were not implemented because service rules had yet to be amended as directed by the guidelines since employers were simply taking the initiative and were not facing any liability for dereliction of duty. The lacuna in implementation was quickly identified by women's groups who were trying to make the guidelines work and barely two years after the Vishaka guidelines were issued, there was a legal intervention to ensure its effective implementation. Filed in 1999, the Medha Kotwal petition urged the apex court to intervene to ensure compliance and proper implementation of Vishaka. More than a dozen years later, in its judgement in 2012, the court held the view that the guidelines must not remain "symbolic" and ordered States and other relevant authorities to set up mechanisms for the effective functioning of the guidelines until such time as a legislative framework was evolved.<sup>39</sup>

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37. Chaudhari Paramita, "Sexual Harassment at the Workplace: Experiences with Complaints Committees," *Economic and Political Weekly*, Vol. 43, No. 17, Apr. 26 - May 2, 2008, pp. 99-106.

38. Paramita Chaudhuri. "Sexual harassment at the workplace: Experiences with Complaints Committees". *Economic and Political Weekly* Vol. 43, No. 17 (Apr. 26 - May 2, 2008), pp. 99-106.

39. Medha Kotwal Lele & Ors vs U.O.I. & Ors, 2012 <https://indiankanoon.org/doc/48293767/> (Accessed on September 30, 2019)

## **Inclusion of domestic workers**

The interim saw several consultations amongst women's groups and labour rights groups to broaden the definition of "employee" and "workplace" in a proposed Bill on sexual harassment.

The National Commission for Women (NCW) too deposed before the Standing Committee in August, 2011. The NCW reiterated its recommendation for the inclusion of "domestic workers" in the definition of "employee" and the inclusion of "house of dwelling place" in definition of "workplace". The Member-Secretary, NCW pointed out that there were changes in the final draft introduced in the Parliament when compared with its draft bills, 2006 and 2010. "A domestic worker was included under the definition of employee. Similarly, the definition of workplace included the house or dwelling place. In the proposed Bill, domestic workers have been specifically excluded from the Bill."

## **Domestic work is work**

Significantly, though the Government of India voted in favour of the ILO Convention 189 for Decent Work for domestic workers and endorsed house as a workplace, the Ministry justified the exclusion of domestic workers from the purview of the Bill: "Domestic workers had consciously been kept out of the ambit of the proposed law as there would be practical difficulties in applying the law within the household, especially as no code of conduct could be laid down within the household. Moreover, there was no policy for domestic workers yet which laid down their terms and conditions of service and security of work. Domestic work being a poorly regulated sector, there was a real concern that domestic workers taking recourse to this law may increase their vulnerability."<sup>40</sup>

Meanwhile, associations and unions working with domestic workers across the country lobbied with the Ministry through a postcard campaign with over 5000 postcards. The main thrust of the campaign was: "Domestic

work is work and domestic workers are workers” and should be specifically included in the Bill. Signature campaigns and representations from the Bihar Domestic Workers’ Welfare Trust and the North-east Regional Domestic Workers’ Movement underlined the need to include domestic workers within the ambit of the Bill.<sup>41</sup>

### **The home as a workplace**

Courts also weighed in on the need to have an expanded definition of “workplace. In *Saurabh Kumar Mallick v. Comptroller & Auditor General of India* the Delhi High Court observed that “the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression ‘office.’”<sup>42</sup>

The National Advisory Council (NAC) had also brought up the need to include domestic workers within the purview of the Bill and raised the issue at a Consultation organized jointly by the UNDP and UN Solutions Exchange, in February 2011.

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40. Report of the Department-Related Parliamentary Standing Committee on Human Resource Development Two Hundred Thirty-Ninth Report On The Protection Of Women Against Sexual Harassment At Workplace Bill, 2010. The report was presented to the Rajya Sabha on 8th December, 2011 and tabled in the Lok Sabha on 8th December, 2011. <http://www.prsindia.org/uploads/media/Sexual%20Harassment/SCR%20Protection%20of%20Women.pdf> (Accessed October 9, 2019)

41. Ibid Pg. 18.

42. WP(C) No. 8649/2007 *Saurabh Kumar Mallick vs. The Comptroller & Auditor General of India and Another*

Given widespread support –including from representatives of state governments like Punjab and Gujarat and the National Commission for Enterprises in the unorganized sector – to the need to include domestic workers in the new Bill, the Standing Committee threw its weight behind such an inclusion. “The Committee is in full agreement for inclusion of domestic workers within the ambit of the proposed Bill. Expecting such a vulnerable group to take recourse to IPC in a sexual harassment case cannot be considered viable. The Standing Committee believes that privacy of a household cannot be an excuse to shield uncalled for acts against this category of women workforce. The Committee is of the view that innovative thinking is required for making the inclusion of domestic workers possible.” The Standing Committee went on to recommend to the Ministry the deletion of the words “but does not include domestic workers working at the home” from the definition of the term ‘employee’ in the 2010 draft of the Bill (Pg 30).<sup>43</sup>

### **Verma Committee weighs in**

The report of the Committee on Amendments to Criminal Law, more popularly known as the Verma Committee, set up in the immediate aftermath of the gang-rape of a student in a Delhi bus in December 2012, was aware that the ‘Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 had already been passed in the Lok Sabha in September 2012. The Committee said, “It is also proposed that domestic workers should also fall within the ambit of the proposed legislation. This would facilitate protection from situations where their wages are withheld arbitrarily as also to provide a basis for monetary compensation in the event of sexual harassment/assault besides steps taken under the general criminal law. Since education and behaviour at home is the most valuable form of learning, we feel that providing dignity to domestic workers is one of the most effective ways to humanize the treatment meted out to those of lower castes or economic class. We note that the present Sexual Harassment Bill does in fact cover domestic workers. We only reiterate the need for such protection to

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43. Ibid Pg 20-21

highlight the importance of covering every single female member of the national workforce.”<sup>44</sup>

In fact, in 2013, the Verma Committee was of the view that “the present structure mandating the setting up of an Internal Complaints Committee to which any complaint must be filed is counter-productive to the ends sought to be met. While each employer may opt for an internal mechanism for redressal of complaints of sexual harassment, it would better serve the ends sought to be achieved to set up a separate Tribunal to be termed as the Employment Tribunal to receive and adjudicate all complaints.”

Commenting on the conspiracy of silence around sexual harassment, the Verma Committee said, “It is our apprehension that 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.”

Recommending an independent Employment Tribunal to deal with sexual harassment, the Committee recommended that the proposed Employment Tribunal’s operation should not be “trammelled by the application of complex procedures found in civil suits under the CPC or allied legislation. We therefore suggest that the Tribunal ought to follow a summary procedure for the disposal of complaints so as to expedite the resolution of disputes. It is apprehended that if the complaint of sexual harassment is tried as a full blown civil trial then the parties concerned will be adversely affected in the workplace for a prolonged period of time which can cause a prejudicial effect to both or either party.”<sup>45</sup>

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44. <http://www.prsindia.org/uploads/media/Justice%20overma%20committee/js%20verma%20committe%20report.pdf>

45. <http://www.prsindia.org/uploads/media/Justice%20overma%20committee/js%20verma%20committe%20report.pdf>

## Civil law: a few steps back

Despite incorporating an expanded definition of work and workplace, the civil law that was enacted after years of engagement with women's groups, did not reflect the underpinning of Vishaka: the foundation of notions of Constitutional equality. Hastily passed in Parliament in March 2013, in the aftermath of the gruesome gang-rape of a young woman in a Delhi bus in December 2012, the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2012 is a poorly drafted piece of legislation that goes back on the philosophy of Vishaka with its emphasis on prevention and creating awareness.

That the situation did not notably change for women facing sexual harassment at the workplace is due to various reasons. One main reason was the non-establishment of ICCs,<sup>46</sup> the hierarchy at workplaces; power and influence of the respondent; repercussions of complaining,<sup>47</sup> caste and class vulnerabilities of the complainant, etc. There were also problems associated with the procedure of filing the complaint. In cases where there was no ICC, or a complaint was filed against some influential person of the organisation, it was mostly the case that the complainant would be terminated.<sup>48</sup>

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46. Naina Kapur, "Workplace Sexual Harassment: The Way Things Are," *Economic and Political Weekly*, Vol. 48, No. 24, 15 June 2013, pp. 27-29.

47. Paramita Chaudhari, "Sexual Harassment at the Workplace: Experiences with Complaints Committees," *Economic and Political Weekly*, Vol. 43, No. 17, Apr. 26 - May 2, 2008, pp. 99-106.

48. Sheba Tejani, "Sexual Harassment at the Workplace: Emerging Problems and Debates," *Economic and Political Weekly*, Vol. 39, No. 41, Oct. 9-15, 2004, pp. 4491-4494.

## 3.2

### **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2013 (hereafter SH Act) passed by the Lok Sabha on 3 September 2012 and in the Rajya Sabha on 26 February 2013. The Bill received the assent of the President on 23 April 2013 and came into force from 9 December 2013. Superseding the Vishaka guidelines issued by the Supreme Court of India in 1997, the Act aims to “provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment”. As applied to domestic workers and street vendors, certain concerns were noted in individual interviews and focus group discussions conducted as part of the present study:

#### **Definition of sexual harassment at the workplace**

Like Vishaka, the SH Act describes sexual harassment as any behaviour that includes:

- (i) physical contact and advances;
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature

The SH Act also include the following instances in its definition of sexual harassment:

- (i) implied or explicit promise of preferential treatment in her employment: or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status: or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety

## Definition of aggrieved woman

Section (2) defines an aggrieved woman who is protected under the Act:

(a) “aggrieved woman” means- (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

Concern: While the definition specifically includes domestic workers but does not include street vendors specifically.

## Definition of workplace

The workplace under the Act is defined as a department, organisation, establishment, enterprise, institution, office, unit in the public or private sector, society, trust, non-governmental organisation organisations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also includes ‘a dwelling place or a house’. It also includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment. In order for a woman to claim protection under the SH Act, the incident of sexual harassment should have taken place at the ‘workplace’.<sup>49</sup>

Concern: For street vendors, the definition of workplace is unclear.

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49. Nishith Desai Associates, “India’s Law on Prevention of Sexual Harassment at the Workplace,” October 2018.

## Redressal mechanism

Section 4 of the Act provides for Internal Complaints Committee (ICCs) that will include one presiding officer - a senior level woman employee, two or more members from amongst the employees (who are committed to cause of women or with experience in social work or have legal knowledge), and one external NGO member committed to the cause of women. 50 per cent of the members of ICC have to be women. According to the Act a workplace requires 10 or more employees in order to create an ICC. For workplaces that have less than 10 employees or the unorganised sector where there are no proper administrative structures in place, Section 6 of the Act provides for Local Complaints Committees (LCC) to look into complaints of sexual harassment. LCCs must have a Chairperson who should be an eminent woman with social work background, one of the member must be a local women nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district and two members from NGOs committed to the cause of women, one of whom should be a woman.

Concern: There was very little knowledge or awareness about the existence of the LCC at all, leave aside its proper functioning. The LCC was not viewed as a body to which complaints could be taken.

## Complaints procedure

According to the Act, an aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the IC or LCC, within three months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. In instances where sufficient cause is demonstrated by the complainant for the delay in filing the complaint, the ICC/LCC may extend the timeline for filing the complaint, for reasons to be recorded in-

writing. The law also makes provisions for friends, relatives, co-workers, psychologist and psychiatrist, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.

Concern: The LCCs under the Act have not been properly set up by the local governments, and even if they are, they are practically dysfunctional.

Further, the limitation period under Section 9 of the Act is unreasonable due to the mental trauma and pressure a victim faces involving cases of sexual harassment especially by employers or those with higher social capital. Creating such a bar on complaint mechanism further defeats the object and purpose of the Act. This provision must be removed so that when the victim does wish to speak about any such incident of harassment, it is not rendered impossible by the law.<sup>50</sup>

The emphasis on dealing with complaints and lack of focus on prevention and awareness is another concern. There are no consequences in situations where an employer fails to 'organise workshops and awareness programmes at regular intervals' to create awareness and sensitise the employees about the remedies in cases of sexual harassment. Furthermore, 'regular intervals' is not qualified further, allowing this provision to be misused.<sup>51</sup> In the case of street vendors with no clearly defined employers, and domestic workers with single or multiple employers, this important provision regarding awareness and prevention has no scope to be implemented.

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50. Nishit Desai Associates, "India's Law on Prevention of Sexual Harassment at Workplace," October 2018.

<[http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Prevention\\_of\\_Sexual\\_Harassment\\_at\\_Workplace.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf)>

51. Id.

## Conciliation, interim relief and penalties

The Act also provides conciliation between parties through the efforts of the ICC or LCC on the request of the aggrieved woman. The Act provides for interim relief for the complainant such as transfer and grant of leave up to a period of 3 months. Punishment under the Act includes prescribed punishment under the service rules of the organisation; disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service in case of organisations without service rule, deduction of compensation payable to the aggrieved woman from the wages of the respondent and compensation (based on the i. mental trauma, pain, suffering and emotional distress caused to the aggrieved employee; ii. the loss in career opportunity due to the incident of sexual harassment; iii. medical expenses incurred by the victim for physical/ psychiatric treatment; iv. the income and status of the alleged perpetrator; and v. feasibility of such payment in lump sum or in instalments) the failure to pay IC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

Concern: The provision for conciliation might contribute to a situation where sexual harassment is not brought before a competent forum.<sup>52</sup>

When women are not aware of the remedies available to them to redress complaints of sexual harassment, under Section 10 the matter can further be kept under wraps and “settled”. Further, there is no time period in which the settlement is reached neither there lies an appeal against such conciliation under Section 10, for cases in which a woman is forced to compromise and decides later to take action.

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52. Supra 9.

The experiences of domestic workers and street vendors while dealing with pervasive sexual harassment at work documented in this study makes it clear that the promise of law has yet to be fulfilled.

“The absence of either urgency or an enhanced vision by the legislature gave us a diluted version of Vishaka. A dilution which traditionally allows sexually inappropriate conduct to fester and eventually escalate into rape. That is how it began in Bhanwari’s case and was replicated in Nirbhaya. At the same time legislation, flawed or otherwise, cannot excuse us from implementing change, one which calls upon our own willingness to connect the dots. At most, legislation has reignited attention towards the plague of workplace sexual harassment. Owning the Constitutional sub-text, and to make it work is our job,” says Naina Kapur.<sup>53</sup>

### 3.3.

#### **Criminal law provisions in the Indian Penal Code**

There are several provisions in the Indian Penal Code, 1860 (IPC) that declare certain acts to be offences of “sexual harassment” and prescribe punishment. These are as follows:

Section 509 IPC provides that “whoever, with an intention to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

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53. Kapur, N. ‘Vishaka and Since: Some Reflections’ in Making Gender Count: Towards Visibility, Equity and Safety, publication released at the 14th National Meeting of the Network of Women in Media, India. February, 2019.

In order to apply the aforesaid provisions (a) there must be intention to insult the modesty of any woman; (b) such insult must be carried out by (i) uttering any words, (ii) making any sound or gesture, (iii) exhibiting any object, (iv) such utterances, making or exhibiting, or use of words must be intended that such words or sound shall be heard by such women or object shall be seen by such women or intrudes upon the privacy of any woman.<sup>54</sup>

Section 294 IPC also prescribes penalty for similar acts. It provides that whoever tends to annoy others, does any obscene act in any public place, or sings, recites or utters any obscene song, or words in or near any public place shall be punished for 3 months with fine.

Section 292 A IPC punishes printing etc. of grossly indecent or scurrilous matter or matter intended for blackmail.

Section 354 (pre-amendment) prescribed punishment with imprisonment of either description for a term which may extend to 2 years or fine or both, for one who assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he shall thereby outrage her modesty was amended in 2013.

As per the Criminal Law (Amendment) Act, 2013, Section 354 was amended to specifically mention “sexual harassment”, and new provisions on disrobing, stalking and voyeurism were introduced. The amended provision reads:

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54. S. C. Srivastava, “Sexual Harassment of Women at Workplace: Law and Policy,” Indian Journal of Industrial Relations, Vol. 39, No. 3, Jan., 2004, pp. 364-390.

**354A: Sexual harassment and punishment for sexual harassment.**

- I. A man committing any of the following acts—
- i. physical contact and advances involving unwelcome and explicit sexual overtures; or
  - ii. a demand or request for sexual favours; or
  - iii. showing pornography against the will of a woman; or
  - iv. making sexually coloured remarks.

The penalty for a man found guilty of offences (i) to (iii) is rigorous imprisonment for up to three years, a fine, or with both. For the offence specified in clause (iv) the penalty is imprisonment of either description for a term up to one year, or with fine, or with both

**354B: Assault or use of criminal force to woman with intent to disrobe.**

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

**354C Voyeurism:** Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

The provision defines a “private” act<sup>55</sup> and also explains<sup>56</sup> layers of consent, where there might be consent for the capture of images but for their dissemination.

### 354D Stalking:

#### i. Any man who—

i. Follows a woman and contacts, or attempts, to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

ii. Monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

This provision makes an exception if the man can prove that the conduct was intended to detect a crime, or it was under the provision of a law or justified due to particular circumstances.

The penalty for stalking is imprisonment for up to three years, and fine; and for a term up to five years for a second or subsequent conviction and also a fine.

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55. Sec 354 C. Explanation I.— For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

56. Sec 354 C. Explanation 2.— Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

### 3.4

#### Cases of sexual harassment including sexual harassment at Workplace<sup>57</sup>

Year	2016	2017	2018	2019
Number of cases	539	570	965	19

These figures are underreported as most cases in the unorganised sector, many of whom involve women workers, go unreported. An analysis of government data from the National Family Health Survey (NFHS) 2015-16, released in 2018, provides estimates and trends in under-reporting of crimes by comparing data on actual experiences of crime victims with that of crimes recorded by the police, and compiled by the National Crime Records Bureau. Only a minuscule percentage of incidents of sexual violence is reported to the police. An estimated 99.1 per cent of cases of sexual violence are not reported.<sup>58</sup>

According to data in the National Crimes Records Bureau, 2017<sup>59</sup> sexual harassment figures as one of the most significant crimes against women. Of the total IPC crimes against women, a majority were registered under 'Cruelty by Husband or His Relatives' (33.2%) followed by 'Assault on Women

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57. Press Information Bureau, Ministry of Women and Child, "Cases of Sexual Harassment including Sexual Harassment at Workplace," 8 February 2019.

<<http://pib.nic.in/newsite/PrintRelease.aspx?relid=188271>>

58. <https://www.livemint.com/Politics/AV3sIKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html>

59. <http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf> (accessed on Oct 22, 2019)

with Intent to Outrage her Modesty' (27.3%) under Sec 354 and Sec 509, 'Kidnapping & Abduction of Women' (21.0%) and 'Rape' (10.3%).

The current study is an attempt to examine the potential and problems of the law –both civil and criminal– on sexual harassment at the workplace as it pertains to two sectors of unorganised workers.

## 3.5

### Relevant policy

#### 3.5.1

#### **The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014**

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 upholds the right of a street vendor to vend, defines a street vendor, seeks to prevent street vendors' evictions and regulate street vending through distribution of certificates and allotment of designating zones for vending through establishment of Town Vending Committees (TVC). The Act encompasses prevention of harassment of street vendors who are vending as per the terms and conditions of the vending certificate provided for under the Act. The Act covers harassment of vendors by any lay person or police or any other authority exercising powers under any other law. However, the Act does not provide for any specific protection against sexual harassment.

### 3.5.2

#### **The National Policy for Domestic Workers (Draft Bill)**

The Ministry of Labour & Employment<sup>60</sup> is considering the formulation of a National Policy on Domestic Workers which is in the draft stage. The Draft establishes domestic work as a legitimate labour market activity undertaken in an employment relationship, acknowledges the rights of domestic workers as workers and affirms the application of fundamental principles enshrined in the Constitution with regard to livelihood and rights at work to domestic workers. The Policy also recognises the importance of the profession, the particular nature of the work, and the vulnerability of the workers; and lays down mechanisms to enable domestic workers to receive benefits equivalent to that laid down for other workers under various laws. The salient features of the proposed draft National Policy on Domestic Workers are:

- (i) Inclusion of domestic workers in the existing legislations
- (ii) Domestic workers will have the right to register as unorganised workers, thus enabling access to rights and benefits.
- (iii) Right to form their own associations/unions
- (iv) Right to minimum wages and access to social security
- (v) Right to enhance their skills
- (vi) Protection of domestic workers from abuse and exploitation
- (vii) Domestic Workers to have access to courts, tribunals for grievance redressal
- (viii) Establishment of a mechanism for regulation of private placement agencies.
- (ix) Establishment of a grievance redressal system for domestic workers.

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60. Press Information Bureau, Ministry of Labour Employment, Government of India.  
<<http://pib.nic.in/newsite/PrintRelease.aspx?relid=187222>>

### 3.5.3

#### The National Policy on Safety, Health and Environment

According to Section 1.7 of the National policy on Safety, Health and Environment at Workplace, Ministry of Labour and Employment lays down the need to pay particular attention to the hazardous operations and of employees in risk-prone conditions “such as migrant employees and various vulnerable groups of employees arising out of greater mobility in the workforce with more people working for a number of employers, either consecutively or simultaneously”.

One of the goals of the policy is to lay down a statutory framework on occupational safety and health in respect of all sectors of industrial activities including the construction sector. However, it does not mention domestic work or street vending specifically, or any other kind of informal work that is not categorised as industrial work.

The same policy document, in its fourth section, the action program, mandates that wherever necessary, time bound action program would be initiated *“by effectively enforcing all applicable laws and regulations concerning safety, health and environment at workplaces in all economic activities through an adequate and effective labour inspections system”*.

It is important to note that such a labour inspection system currently does not exist for Domestic Workers and Street Vendors, and this reasserts a systemic exclusion of the target groups from access to a workplace that is held accountable by a legal system. The document goes on to mention that a national standard needs to be developed, covering all economic activities and it must be followed by ensuring awareness of and accessibility to the applicable policy, documents, codes regulations and standards. Even in the formal sector, the number of labour inspectors has been reduced and their powers too curtailed. The diminished oversight and regulation by the government of labour standards even in the formal sector has a ripple effect on the informal sector where even basic protections do not exist.

## 3.6

### Other platforms for redressal

#### 3.6.1

#### Bangalore Metropolitan Transport Corporation (BMTc )Women's Safety Committee:

The working class in the city depends on public transport to commute to workplaces across the city. Street vendors use buses to ferry their goods from wholesale markets to their vending areas, farmers bring their crops to sell in the cities using buses as commute. Domestic workers also use buses as their primary mode of transport between their residences and the workplace, or from one workplace to another. It is therefore important to look at safe transport to and from the workplace for these women workers, and courts too have acknowledged that safe transport is an integral part of realising right to livelihood.<sup>61</sup>

According to a survey by the city-based community of bus commuters, the Bangalore Bus Prayanikara Vedike (BBPV),<sup>62</sup> conducted in 2012-13 of 2,647 women in Bangalore, 1,803 cases of harassment in buses were reported. That is, an astounding. 69 per cent of the women reported being sexually harassed in buses.

The harassment took the following shapes:

- Use of vulgar language
- Staring pointedly

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61. General Manager, B.E.S.T. v. Mrs. Agnes, 1963, 1964 AIR 193.

62. Blorebusvedike, Sexual Harassment on BMTc Buses, "Homepage," 22 February 2014.

<<https://blorebusvedike.wordpress.com/2014/02/22/sexual-harassment-on-bmtc-buses/>>

- Physical attacks such as touching, feeling; grabbing;
- Exposure of genitals;
- Stalking and
- Taking photographs or videos without consent.

The survey found that sexual harassment is faced not only by passengers, but also by women conductors. According to 2013 media reports<sup>63</sup> BMTC planned to set up a committee to look into the complaints pertaining to sexual harassment of women passengers in city buses. After a furore by bus commuters in Bangalore, the BMTC set up a Women's Safety Committee to address cases of sexual harassment that occurs on buses. However, the details of the committee and the current status of its functioning are unclear.

### 3.6.2

#### **BBMP Committee**

The Bruhat Bengaluru Mahanagara Palike (BBMP), the urban local body looking into the administration of Bangalore city has an anti-sexual harassment committee in place to look into instances of harassment experienced by BBMP employees. The committee is functional and it had received five complaints within six months of formation in 2017.<sup>64</sup> One of these complaints was of very serious nature, involving a BBMP contractor

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63. Smriti Sharma Vasudeva, "BMTC to form committee for safety of women commuters," Deccan Herald, 11 November 2013.

<<https://www.deccanherald.com/content/368205/bmtc-form-committee-safety-women.html>>

64. Niharika Alva, "BBMP's sexual harassment panel gets 5 complaints in 6 months," Times of India, 28 December 2017.

<[http://timesofindia.indiatimes.com/articleshow/62274837.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/62274837.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)>

who chased, abused and assaulted women pourakarmikas (sanitation workers) in KR Puram, and also threatened to sexually assault them with an iron rod. BBMP workers (either outsourced or permanent) harassed in anyway can file a complaint with this committee which will conduct an inquiry and hand over the matter to police in serious cases.

The BBMP anti-Sexual Harassment Committee is important in this context, as it addresses sexual harassment complaints of various categories of informal sector workers like sanitation workers, link workers and other scheme workers.

### 3.6.3

#### **Vanitha Sahayavani**

Established in 1999 by the Bengaluru City Police, the mandate of the Vanitha Sahayavani (Women's Helpline) is to provide immediate rescue and support for women in distress. They provide free tele-counselling, police assistance, crisis intervention, rescue in case of domestic violence, harassment and/or abuse. Recently the helpline itself has been targeted by obscene calls, as reported in media<sup>65</sup> causing trauma and distress to the women counsellors attending to these calls. However, no complaint was registered in this regard.

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65. New Indian Express, "Bengaluru police harassed with obscene calls," 31 March 2017.

<<http://www.newindianexpress.com/cities/bengaluru/2017/mar/31/helpline-workers-with-bengaluru-police-harassed-with-obscene-calls-1588035.html>>

### 3.6.4

#### Redressal from Courts

Even after the passing of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the judicial trend has been mixed when it comes to women seeking redressal for sexual harassment at workplace in the court of law.

Some cases are discussed below to understand the pattern of rulings arising from various issues under the Act:

##### 1. Definition of sexual harassment

*KP Anil Rajagopal v. State of Kerala, 2015*

In this case the High Court of Kerala held that in order to constitute an offence under the POSH Act, 2013, the harassment must be of sexual nature including allegations of promise, threat or an offensive or hostile work environment towards female employees.

##### 2. Definition of sexual harassment

*Shanta Kumar v. Council of Scientific and Industrial Research (CDIR) & Ors, Delhi High Court ((2018) 156 FLR 719*

The petition was dismissed on the grounds that the complaint filed does not anywhere mention sexual behaviour. The act of dragging and altercation with abusive language does not necessarily qualify to be 'sexual harassment' as there must be physical contact with an undertone of sexual inference to fall under the purview of POSH Act, 2013.

##### 3. Proceedings of the ICC

*Vidya Akhave v. Union of India, Department of Women & Children & Ors(2017 LLR 357)*

The High Court while dismissing the petition concerning improper proceedings by the Internal Complaints Committee (ICC) held that it cannot interfere in the proceedings of the committee by way of re-appreciating the

evidence. Just because there are two different views possible, the court is not expected to try the case. Moreover, considering that the fair opportunity to both of the parties was given, principles of natural justice have been duly followed and the punishment is adequate under the act.

#### 4. Constitution of the ICC

*Ashok Kumar Singh v University of Delhi [2017(155) FLR610]*

The petitioner contended that ICC had not been properly constituted and the conducted proceedings were against the principles of natural justice. The court allowed the petition and held that ICC while holding an enquiry should consider aspects such as properly notifying the relevant parties, initiating the enquiry within two weeks after examining the complainant's witnesses, personal hearing and completing the proceedings within three months.

#### 5. Composition of the ICC

*Somaya Gupta v Jawaharlal Nehru University and another, 2018VIIIAD(Delhi)259*

The court rejected the claim of petitioner based on the apprehension of bias in the committee. The appointments in the ICC can only be challenged when there is evidence supporting the same.

#### 6. Bias in selection of the ICC

*Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University, Bombay High Court (2014 SCC OnLineBom 814)*

In this case, the court allowed the petition questioning the constitution of committee based on the fact the people in the committee share a relationship with the employer. Moreover, it was noted that the committee itself was also constituted by the employer and it is bound to provide a favourable decision. The court also broadened the definition of "aggrieved woman" by mentioning that it is not limited to only a contract of employment.

## 7. Competence of the ICC

*Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors.* (2015 SCC OnLine Del 11026)

The court dismissed the petitioner's claim of an unjustified termination by the ICC on the grounds that the ICC has the competence to pass such an order and was properly constituted. The decision was based on an impartial procedure conducted on the basis of the complaint made by the petitioner.

## 8. Legal validity of ICC findings

*Sarita Verma vs. New Delhi Municipal Corporation and Ors.*, 2016(4)SCT33(Delhi)

The court held that the findings of the ICC cannot be ignored by the respondent on vague and general grounds and such impugned order falls outside the settled position of law as enunciated by the apex court in the case of *Medha Kotwal Lele and Others Vs. Union of India*. The court allowed the writ petition and held that fresh decision within a period of four weeks must be made within bounds of the law.

## 9. Natural justice and ICC proceedings

*Shital Prasad Sharma v. State of Rajasthan & Ors.*, 2018(2)SCT565(RH)

The court found that the Committee acted within its mandate to take cognizance of the complaints made by three women as complaints were already addressed to various departments and the procedure adopted by the Committee does not vitiate the POSH Act, 2013. Further, there can be no question over the appointment of Presiding Officer as she was a senior level officer. However, the procedure followed during the proceedings such as the petitioner was not given an opportunity to cross-examine the witness and the statements of complainants were recorded in the absence of the petitioner violates the principles of natural justice. The court while allowing the petition held that the termination of the petitioner was not the only decision which could have been taken on the basis of the sexual harassment report. The court while considering the principles of natural justice held that the termination of the petitioner was unjustified and therefore set it aside.



## **FINDINGS**



## 4.1

### **Audit of the workplace**

We conducted interviews with domestic workers and street vendors to understand how they view their workplace in terms of safety. We also recorded observations of their physical workplaces wherever possible. We asked questions about their daily commute to understand the safety of access to their workplace.

Following data collection, we analysed it for a range of physical and social characteristics that make a workplace safe or unsafe. We also audited different types of vending spaces during the course of our interviews by a walkthrough of the physical space to evaluate it for risks associated with work and also with the aim of identifying ways to make it safer. The street vendors in the study sold items like flowers, greens (soppu), amla (nellikai), peanuts, raw mango, fruit and vegetables and jewellery.

In case of domestic workers, we did not walk through the workplace of our interviewees (which are private households) and instead relied on their first-hand accounts. This method of data collection, that relies primarily on asking specific questions about the workplace, is based on the premise that users of a space understand it the best and one can delve into their knowledge and experience to draw insights. Following are some recurring themes from our interviews and conversations that contribute to workplace harassment and create risks for women workers:

## Audit findings

Themes	Domestic workers	Street vendors
<p>Commute to Work or Work related travel</p>	<p>Domestic workers, especially part-time workers are required to travel both short and long distances at all hours of the day and night as residential spaces are segregated due to class and caste factors, where they are often not able to find affordable homes.</p> <p>Some domestic workers take shared-autorickshaws as they find the bus expensive and inconvenient to commute shorter distances.</p> <p>Absence of proper transport facilities, public bus routes and roads, or street lights make them vulnerable to sexual harassment, assault and even rape in some instances.</p> <p>In instances where women walk to nearby apartment complexes for domestic work, the roads are missing street lights.</p>	<p>Street vendors travel short and long distances with goods at early hours and late nights.</p> <p>Street vendors rely on the bus to get to the market and wholesale market.</p> <p>Bus stops are not well lit.</p>

Themes	Domestic workers	Street vendors
<p>Access to basic facilities like toilets and drinking water</p>	<p>There was no access to drinking water in most houses that they work in</p> <p>Access to toilet is always a challenge. Employers do not allow domestic workers to use their toilets, despite the fact that the domestic workers are required to clean the toilets.</p> <p>Some employers have an unused room or servant quarters, for the help in their apartments and allow the domestic worker to use the separate toilet in that case.</p> <p>All domestic workers that do not have access to toilets at their workplace, need to walk a long distance to access a public toilet, or come back home to relieve themselves during their workday, causing loss of productive working hours, fatigue and health problems due to long hours of holding back urination and defecation.</p>	<p>Access to drinking water and toilets was the biggest challenge identified. One woman shared that because of not having access to drinking water, she drinks very little water and is always dehydrated.</p> <p>Some vendors bring water in heavy cans from home, in addition to the load of their vending items, posing a health and safety risk due to the weight they have to carry to their workplaces.</p> <p>Access to basic facilities depends on the nature of the vending area.</p> <p>For example, vendors from Madiwala market now have access to toilet in the newly constructed vending space. Earlier they had to walk about one kilometre to use toilet facilities, leading to loss of business during that time.</p>

Themes	Domestic workers	Street Vendors
Access to first-aid and health care	<p>Access to first-aid varies from home to home. Domestic workers interviewed for this research asserted that minor injuries at workplace are common for them and in case of such an incident, the employer asks them to get some rest or gives them half a day off, but never offers to provide first aid, or to take them to the hospital, or to bear the cost of medical expenses.</p> <p>They are unable to afford private health care due to low wages, and public healthcare centres are under-functional.</p>	<p>Access to first-aid is non-existent.</p> <p>They are unable to afford private health care due to low wages, and public healthcare centres are under-functional.</p>
Occupational health risks at the workplace	<p>Most domestic workers are exposed to chemicals for cleaning and washing. The frequency and intensity of this exposure could have negative health outcomes.</p>	<p>Street vendors are exposed to harsh weather, heat, direct sunlight, dust, noise and air pollution throughout the day.</p>

Themes	Domestic workers	Street Vendors
	<p>They also face menstrual and maternity health risks/issues. The nature of their work also makes them susceptible to long term physiological damage – lifting heavy objects, bending down to work (many households don't provide long handle mops).</p> <p>They are not allowed to sit on the sofas or chairs in the house of their employers. Lying down on the beds is also prohibited, even if they are ill.</p>	<p>They are unable to leave their stalls for breaks and abstain from drinking water or going to the toilet for long hours.</p> <p>Late working hours, which are good for business, also make them vulnerable to sexual harassment.</p> <p>They also face menstrual and maternity health risks/ issues.</p> <p>The nature of their work also makes them susceptible to long-term physiological damage - pushing heavy pushcarts, carrying heavy loads, etc.</p> <p>Vendors do not have access to ergonomic sitting/ standing facilities. They carry disproportionately large loads on their head and back. This could lead to long term health problems.</p>

Themes	Domestic workers	Street Vendors
Risks at the workplace	<p>Domestic workers talked of being illegally confined inside homes – their workplaces.</p> <p>Vulnerability of domestic workers in their workplaces – enclosed spaces – increased chances of sexual harassment by male member of the employers’ household, and the incidents going unnoticed.</p>	<p>Vendors often face threats and harassment at the hands of police and municipal authorities, who verbally abuse them. This is due to the bias against them for being “illegal”, “encroachers” or “unhygienic”, which are myths propagated.</p> <p>For street vendors, the workplace becomes unsafe in absence of infrastructure like street lights and connectivity of public transport.</p>

As described above, domestic workers and street vendors face specific issues directly related to the nature of their work.

In addition, it must be noted that domestic workers are isolated in their workplace, which is an enclosed space, where the employer has no obligation to prevent or protect sexual harassment and are often the perpetrators themselves. Domestic workers are vulnerable with no one to turn to for help during times of distress. Our inability to gain access to the respondents’ workplace for the purpose of this audit is an indication of the closed nature

of this workspace. Under such circumstances, how can a safer workplace be secured for domestic workers? Their concerns range from availing basic facilities like drinking water and having access to a toilet, to threats of sexual harassment like inappropriate remarks, touching, and sexual advances.

It must be noted that domestic workers carry out their daily duties in an atmosphere of discrimination, bordering on contempt. Following is a glimpse into what they endure on a daily basis:

- *“The garbage is theirs but they don’t want us to take it in the lift with residents. They want us to take the garbage out in a separate lift.”*
- *“The RWA put photos of some domestic workers in lifts saying she is a thief no one should employ her.”*
- *“RWAs are no use. They will not support us. They say that dogs and domestic workers should use separate lifts. Even if we are waiting for a lift they will not ask us to come with them. They say that we smell.”*
- *“The domestic workers are sometimes treated worse than slaves.”*
- *“My employer used to give me food [wrapped] in newspaper. That’s why I left domestic work, because I don’t like being treated this way.”*

For street vendors, early and late hours of work to fetch goods as well as to make the most amount of sale, leaves them vulnerable to sexual harassment such as whistling, leering and even physical assault and rape. During daytime and in cases where they have other women vendors, especially older vendors, they feel a sense of safety. They have no designated space that can fit into the definition of workspace as defined by the SH Act and have no employers either. However, the urban local bodies, which are designated to look after their protection of livelihood have an obligation towards street vendors as per the Street Vendors Act, 2014.

A significant finding was that women tend to move between various types of work, depending on their own health, childcare commitments, family situation, husband's employment status etc. Despite the relative uncertainty of income, some women preferred street vending since it gave them more autonomy and they are not answerable to anyone, nor do they have to follow strict timings.

Said Yamuna, *“When I used to work in houses [domestic work], the tension would be too much. They would shout and keep asking me to do extra work. Some days I would go back late and sometimes I would have to go again to work in the evenings. I didn't like that work. When we sell things in the market, we have a little more control. Last month, I had to go back to my village in Tamil Nadu. I made sure I sold everything and then went. When I came back, I bought fresh greens and started work again.”*

In terms of the value attached to the work, one street vendor who sold flowers said, “My place of work is like a temple because I have been able to raise my son through my vending.”

## 4.2

### Voices of working women

#### 4.2.1

#### Nature of sexual harassment experienced

Women in the study described various forms of sexual harassment they experienced on a daily basis.

#### Staring, non-verbal gestures and intimidation

Both domestic workers and street vendors reported a wide range of instances of sexual harassment although there was a general reluctance and discomfort to talk about personal experiences of sexual harassment. Most respondents spoke of general instances of being harassed. As one of the

young domestic workers put it, *“They keep staring. They say Amma you do that work and then they ogle at us”*. Another domestic worker complained, *“they ogle at our bodies in a way that makes us uncomfortable. When we are sweeping, they stare at us”*.

Yet another domestic worker explained how younger women are particularly vulnerable: *“They make us do work that exposes our body and then they watch us. They do this with young girls especially.”* A domestic worker added her experience of how some employers try to touch them in different ways, *“They quietly come and stand behind us. When we turn around, they are standing right behind us.”* There are also instances of employers behaving inappropriately when they are working, like one worker added, *“sometimes they start undressing before us or take off their trousers”* and *“they use double-meaning statements while talking”*.

The street vendors interviewed reported staring, winking, sexually suggestive gestures, inappropriate touching, inappropriate remarks and physical assault. A street vendor complained, *“When we are selling, the problem is some customers simply come and stand there. They will neither buy anything nor leave”*. Another 38-year-old street vendor from Ejipura complained of inappropriate comments by younger boys who show no respect for women.

A 35-year-old street vendor from Bannerghatta National Park market said she was harassed in the wholesale market, where she didn't fight with the harasser and instead told him, *“I come to this market regularly, why are you behaving with me like this?”* The same vendor also reported being grabbed by her hair by another vendor for no reason. She slapped the perpetrator and tried to drag him to the nearby police station, but this person escaped. She describes it as a predicament of her work: *“Market-ge hodrunu kashtane, illdidru kashtane. Janagala hatra badkodu kashta”* (Going to the market is difficult, and it is equally difficult to not go. It is difficult to be around such people) indicating that they do not have an option to give up on their livelihood, despite facing harassment on a daily basis.

A 40-year-old street vendor from Jogupalya, Halsuru described her experience of everyday harassment from customers or members of the public: *“People look and talk in a bad way, they ask for my number or where I stay”*. She mentioned that such behaviour makes her uncomfortable. She added, *“the public looks at vending as ‘keelu-matta’ (low-level)”*. However, when we asked the same vendor if women vendors are exposed to sexual harassment at markets, she said, *“We don’t conduct ourselves in a way that invites sexual harassment, we conduct ourselves properly”*, implying that it was possible to avert sexual harassment by one’s own actions. This response is a common articulation of internalised victim-blaming, which puts the onus of preventing sexual harassment on the victim-survivor.

*“We should inform the owner first of all that these kinds of things have happened to us and this person is behaving with us in this way. I could not handle it so I am bringing it to your notice,”* said a domestic worker. Another added, *“One girl I know went to the bathroom to clean and a young guy in their house followed her there and tried to touch her. She screamed and came out. I was there at that time. I took her and went back to the house and asked the boy’s mother – how do you expect her to work in this kind of situation? If this happens again, I will file a complaint. Now when the mother sees me on the street, she walks with her head bowed down. When we make this issue public, even the mothers will yell at the sons and question them for harassing women who come to work in the houses.”*

### Sexual harassment on the commute

A 34-year-old domestic worker from Begur faced sexual harassment regularly on her commute to work. She regarded it as a ‘common occurrence’. *“Near my house a school-going boy usually stands there on his bike looking or passing comments, but it is not serious”*.

The workers who needed to travel at night or early in the morning when it was dark, felt a general sense of vulnerability and insecurity.

## Street vendors: no claim to public space

Street vendors are often harassed since the police and municipal authorities regard them as “illegal” or as “encroachers”. The police often claim that street vendors obstruct pedestrian movement as they occupy footpaths, thus causing pedestrians to walk on roads, thereby causing obstructions to the traffic flow. Municipal authorities state that street vendors are unhygienic and are the reason for public disposal of garbage. Both these claims are not borne out by evidence. Street vendors do not cause trouble to pedestrians, who are in fact, their customers. Street vendors and pedestrians have long co-existed in urban spaces, but prevalent urban planning policies pit one against the other for “aesthetic” reasons and claims of “convenience”. Street vendors are accused of ruining the aesthetics of the city both by their mere presence on streets, as well as garbage disposal. However, street vendors ensure that hygienic and fresh food is available at low cost to a network of traders, workers, sales persons and daily-wage labour who perform essential services in markets. In fact, street vendors often begin their day by cleaning their vending areas by sweeping and pouring water, so as to not raise dust and therefore, ensure cleanliness for their customers.

In addition to harassment by state agencies like the police and municipal authorities, another issue is control of market-places by non-state actors. Gangamma’s experience is typical of street vendors across the city. She sells flowers near a religious place since business is good. The lucrative business also attracts anti-social elements on ‘rowdies’ who take a cut from each of the vendors. Every day, she pays around Rs. 50–70 out of her earnings of Rs. 270–300. She spends around Rs. 150 daily for transport and to buy the flowers to make garlands.

A street vendor who has been working for 25 years in Vijayanagar spoke of the sense of insecurity when she initially started vending. When she was even beaten up by the local people of the area over a dispute, she filed a police complaint. She said, *“People like us stand up and fight, we should help those*

*who do not fight for themselves*” Some people tried to extract bribes from her but after she spoke to the Councilor of the area, she refused to pay anything, though this angered the local strong-men even more. *“The only fights that have occurred have been over land/property. People fight over which space belongs to them,”* she said.

## 4.2.2

### Reasons for non-disclosure

Experiences of sexual harassment are often internalised and go unreported for a variety of reasons. Lack of awareness of the definition of sexual harassment itself, lack of awareness of redressal mechanisms as well as the fear of repercussions and stigma are some of the reasons for not reporting incidents of sexual harassment, Women in the study who said they experienced sexual harassment, said that they ignored it. A young street vendor in her early 20s from Madiwala market said, *“There are good customers and bad customers - both kind of customers come to the market, we don’t talk more to the bad customers”*.

Women workers deal with sexual harassment by either ignoring such harassment, or in more severe cases leave their jobs, relocate to another house/vending area, or going back to their native place. These are some of the preferred ways of dealing with sexual harassment that was gathered in our interactions with our women workers. In Thubarahalli, a domestic worker was raped when on her way to work. The survivor moved back to her village and the incident was not reported to the police.

One of the main reasons that survivors of sexual harassment do not talk about their experiences is due to their economic vulnerability and the fact that they may lose their livelihood. A social activist with significant experience of working on rights of domestic workers described instances where women chose to not complain as the perpetrators were their employers. She says, *“The salaries are usually given by the men. When given salaries,*

*they try to touch the workers or say things like – if you want your salary, sleep with me”...”The domestic workers are sometimes treated worse than slaves. They say that they have to face all forms of humiliation, but since they are totally dependent on their jobs for their household, health, educational needs of their families, they tolerate everything. Otherwise they have to look for other jobs and that is not really easy.”*

She described an incident faced by a domestic worker she worked with: “One worker told me that her employer showed his private parts when she was working. She just ignored him and didn’t want to complain about it.” She drew a comparison between garment workers and domestic workers, and why the latter would be more reluctant to talk about instances of sexual harassment: “In the garments sector, there are many women and one boss. There are also complaints committees, so it is a little easier to file complaints of sexual harassment at the workplace. In domestic work, it is one woman and one employer and often she is the only person who works there, so it is difficult to raise this issue. Many women don’t even talk about it, there is a fear of losing jobs and the women are also blamed for instigating men.”

Live-in residential workers are worse off since they are dependent on the employer for their lodging and other needs. The social worker spoke of cases where owners build a small house in the basement or ground floor for the domestic workers and their family. In many cases, the husband works as a watchman or driver and the wife does the domestic work, and the employer can abuse this dependence of the entire family’s livelihood on him.

The fear of social ostracism often discourages victims from talking about instances of being sexually harassed. Victims are subjected to hostility and blamed for the incident by family members, members of workers’ groups and the union. A social worker explained, “In union meetings, when a few women raise issues about sexual violence, there is a general disapproval in the group of the woman herself. While women appear sympathetic in the group, later they talk behind the back and usually end up blaming the woman. Even family members are not supportive. Husbands become suspicious and may ask the women to stop going to work”.

The workers groups on the other hand fear for the image of the community and hence regard even consensual sexual relationships between employers and workers as damaging: *“There are some workers who are okay with having sexual relationships. They get adjusted to it. But many or not like that. Because of a few of them, the rest of us get a bad name.”* Thus, for a victim of sexual harassment in a consensual relationship with an employer, there are limited chances of receiving support from workers groups or unions. It must be noted however that “consent” in relationships where there is an inbuilt hierarchy (employer/employee) must be interpreted in the context of a power differential, and an understanding of what the consequences of saying “no” would be.

The absence of standardised wages adds to the vulnerability of workers, especially migrant domestic workers. Migrant domestic workers who are in desperate need of jobs offer their services for lower wages. This competition has led to growing resentment among local workers. A social worker explained that migrant workers from Uttar Pradesh, Bihar and Chhattisgarh rent houses in more affordable locations and take up work for less wages than those who live in the area. For example, if a domestic worker who is a local resident works as a cook and cooks once a day for a wage of Rs. 3,000, migrant workers are sometimes willing to cook even twice a day for Rs. 2,000. This has led to an environment of competitiveness and hostility, making migrant workers vulnerable to harassment including sexual harassment.

Residential domestic workers are subjected to further exploitation and restraints on their freedom of movement and right to form associations. Due to the fact that they are not registered anywhere not much information is available on their working conditions. Domestic workers also often face accusations of theft by their employers. Bangalore-based NGO Stree Jagruti Samiti narrated two instances where domestic workers were abused by “well-educated” families every month. This abuse can be verbal, physical or sexual in nature, with most of the workers being young or middle-aged, and sometimes minors as well.<sup>66</sup>

### 4.3.

## Institutions of recourse for victim-survivors of sexual harassment

### (1) Family

Family is usually the first point of contact for a victim of sexual harassment and the response of family members often determines whether or not the victim will take further action against the perpetrator. Families could provide the necessary social and psychological support to victims in distress. A 36-year-old street vendor from Ejipura feels that when women face sexual harassment at work, they usually depend on close family members or friends for resolution, as these issues hardly ever go public. Even women who had seen someone close to them going through an experience of sexual harassment at work believed that it might be better to solve the problem themselves or by involving family and others from the community, instead of approaching the legal system. On the other hand, families could also prevent victims from reporting instances of sexual harassment due to the shame associated with it. A woman vendor from Commercial Street said, “*Badnami hoti hai*” (it gives you a bad name) and added that families would often suppress incidents and not let others find out.

One instance illustrates the manner in which families can control the narrative. A 28-year-old domestic worker was working in a house where her 70-year-old employer asked her to have sex with him. She brought up the issue with her union. Union members went to the house of the employer. Since the man was absent, they raised this issue with his daughter. His

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66. Kohli and Srinivasan, “Bengaluru’s shame: Abuse of domestic workers in middle class homes,” *The Newsminute*, 29 November 2015.

<<https://www.thenewsminute.com/article/bengalurus-shame-abuse-domestic-workers-middle-class-homes-36409> (accessed 3 September 2018)

daughter said that her father treated the domestic worker like his daughter and refused to believe the union workers. They then attempted to file an FIR at the police station but the police refused to register it, unless the employer was also present. Realising that the police would do nothing, the social worker and the domestic worker sought help from lawyers. When they were on the way to the lawyers office, the domestic worker got a call from her husband who threatened to leave her if she went to the police or lawyers. The domestic worker decided to turn back, but as soon as she reached home, her husband started accusing her of being a 'loose woman'. He claimed to be in possession of some photographs of her with the 70-year-old employer in compromising positions and threatened to leave her if she decided to take the case forward. He further threatened to shame her in public. Since then, the domestic worker did not attend union meetings and refused to speak to any of the peers or the social worker herself.

## (2) Unions or Community Groups:

Most respondents interviewed were part of community groups or unions and felt supported by these groups. Domestic workers also feel that being a part of community groups and unions has helped them assert their rights and the changed perception of employers is not always for the worse. One worker said, *"Earlier things used to be different. Now they know that we are part of the union, so they speak to us well. They don't use any kind of abusive language with us."*

A domestic worker said, *"We can complain to the union members. Bring the person to the union and bring up this issue."* A street vendor stated, *"Union is helpful for women. It generates unity and also creates confidence to complain about issues"*.

However, they also mentioned how employers' perspective about them changed upon knowing that they were part of groups as unions. They attract labels like "difficult" or "too vocal". A domestic worker explained this using a recent conversation with her employer who would asked her to come at a different time every day, and not on their mutually agreed upon time. *"When we question them, they get angry and say that we talk like that because of the union."*

Another domestic worker said, *“Once I took leave and the lady asked me not to come to work anymore. Usually she doesn’t do that, then I realised that it’s because I have joined the union. They feel we ask too many questions after joining the union.”*

In one instance where the Bengaluru Jilla Beedhi Vyapari Sanghatanegala Okkuta intervened in a case of sexual harassment faced by a woman member at Mysore Circle, they approached the jurisdictional police station to lodge a complaint, who was an acquaintance of the woman vendor and a regular customer. The police registered an NCR (Non-Cognizable Report) and conducted conciliation between the complainant and the accused. However, the Union was successful through this case in getting to empower the women vendors in that area.

However, there was a considerable number of workers interviewed who did not want to join a union for various reasons, from an ability to deal with issues on their own, not seeing a need for a union, and also because it seemed to anger employers, in the case of domestic workers.

### (3) The police:

**Fear and mistrust:** Most respondents expressed fear and mistrust in the police with regard to complaints of sexual harassment and felt that they would be discriminated against based on their economic class, gender or profession by the police. An 18-year-old domestic worker from Begur Road spoke of her mother (also a domestic worker) who verbally confronted the employer and informed all other maids in the locality about the harassment, when her sister was inappropriately touched by him. She expressed more faith in individual ways of dealing with such instances rather than approaching the police or the courts. A 36-year-old street vendor from Ejipura asserted that going to the police should not even be the last recourse. She says, *“They will never understand, because the police are just men in uniforms. They are no different from other men. The only difference is that policemen can get away doing what other men may be scared to do!”*. Another 38-year-old street vendor from Ejipura who regularly deals with inappropriate comments from

passersby said, *“Whatever problem we have, no one will support us. We have to find our own support. I don’t depend on anyone. I will not go to the police no matter what. They come to our area and they act one way, then in the police station they act in another way. I tell my son also that if he gets caught with the police then only God can save us”.*

## Corruption

A 20-year-old street vendor was hesitant to talk to us for fear of the police. She stated that an earlier instance of talking to some reporters had landed them in trouble with the policemen. A police bus stood outside Madiwala market as we spoke (probably to monitor the relocation process of vendors within the new market space which was underway during our visit), and a man in a two-wheeler drove past us several times. The young woman vendor we were talking to suspected a policeman in civil uniform trying to eavesdrop on our conversation. A woman street vendor from Jogupalya said in regard to approaching police in case sexual harassment, *“If there are two parties involved, police takes 500 rupees from both parties (street vendor and the customer) and the case is closed. Instead of taking note of our complaints, the police asks us ‘Why you are vending on the footpath? The traffic is jammed because of you! Why have you rented a vending space here?’”*

During the group discussion, domestic workers discussed the challenges of approaching the police. *“It is very difficult to file cases with the police. The police always support the employers especially as they speak to them over phone or give them money. Then the police question our character and refuse to even file complaints,”* one worker said. *“The police will not listen to anything we say. They will listen to only what those big people say. If the police did their job properly, it would help the women and encourage them to come forward and file complaints. Police should register complaints,”* another added. *“We don’t even approach the police whatever the issue. We just try to resolve it among ourselves. They will put all kinds of false cases against us. We know very well about the police,”* added a third worker.

## Collusion with the elite

In another instance, a domestic worker was locked in a room at her workplace by her employer, after being accused of stealing a necklace. The domestic worker didn't have a mobile phone with her to call for help or raise an alarm about her confinement. The room she was locked in had a window. She shouted from the window to call other domestic workers and requested their help to free her. One of the other domestic workers called her home and her family also came to the employer's home – still the employer didn't let her go, and called the police who took the domestic worker away to police station. The police also supported the employer. The interviewee stressed that she feels the police always supports rich people. She was held in police station for an entire day, until finally her employer withdrew the complaint.

## Refusal to file FIR

Distrust in the police is further aggravated in instances like when the police refused to file a First Information Report (FIR) in the absence of the employer who was the accused. When a 28-year-old domestic worker approached the police station to file a sexual harassment complaint against her employer, the police demanded the employer to be present for them to file the FIR. Moreover, women realise that reporting a case of sexual harassment would need time. A 41-year-old part time domestic worker from Begur Road said, *“The police talks to you after seeing your face and if people like me go they won't be entertained or taken seriously, further I will be harassed or told to come multiple times. With my job, it won't be possible to go again and again to the station.”* She mentioned that she had heard many such incidents of police behaviour. A 27-year-old domestic worker from the same area said she had heard of instances of sexual harassment from other domestic workers, and she too does not have much faith in finding recourse through police. *“I would prefer to settle it myself or with the help of my husband. The police can be easily swayed so a better punishment (physical) should be given by the victims only,”* she added.

## Lack of awareness about the Act

Officers at the police station and the Women's Police Station reported that no cases of sexual harassment at workplace had been reported by victims in the unorganised sector including domestic workers and street vendors. The police officer stated that they mostly received complaints related to family problems like sexual harassment, physical abuse and harassment by a family member of the victim or cases related to dowry. Most cases were registered under the Section 506 and 488 of the Indian Penal Code, 1860.

None of them were aware of the SH Act, the Local Complaints Committee (LCC) or where the LCC could be found. Ideally, the police should help victims of sexual harassment and explore the option of filing a complaint with the LCC. This, however, is not happening in reality.

Ironically, according to media reports, all the 18 policewomen working at the Women's Police Station near Shivajinagar Bus Stand (earlier located in Halasur Gate), at the time of relocation in 2017 had expressed concern for their own safety after the move. The report stated, *"According to the policewomen, inebriated men and thugs often harass and threaten them. They said the neighbourhood is such that the very people the station is meant to serve don't want to come there."*

### (4) Lawyers:

When we asked women who said they never experienced sexual harassment at the workplace, to describe their approach in case they face it hypothetically, there was a general reluctance to approach a lawyer. A woman vendor from Commercial Street said that if an incident of sexual harassment were to occur, she would speak to nobody but her family. When asked about whether she would be comfortable talking with a lawyer or approaching one, she said 'no', and mentioned that she perceived the process to involve unnecessary trouble.

(5) Vanitha Sahayavani:

Vanitha Sahayavani is a women's 24X7 helpline which is a community collaboration initiative by the Bengaluru City Police. It was to provide immediate rescue and support for women in distress. Their website states that it *"attends to various issues and problems (social, economic, psychological, mental, and/or physical violence) that women face at home, place of work as well as in public"*.<sup>67</sup>

It is located inside the Police Commissioner's office on Infantry Road. The Counsellor stated they don't deal with sexual harassment complaints. They advise complainants of sexual harassment to make written complaints to the Secretary of the Women's Commission. They do not provide any assistance in the writing of complaints. Representatives of Vanitha Sahayavani were not aware of the LCC, either. Three respondents upon being informed about Vanitha Sahayavani called their Helpline number (080-22943225) in a span of half hour. In the first call, the woman counsellor answering the phone provided details about Vanitha Sahayavani and the five zones it operates in in Bangalore. She advised the complainant to call the closest zone which would then help her to register a complaint at the nearest police station. When asked about sexual harassment at workplace by a domestic worker or street vendor the Counsellor replied, *"I don't know"* and passed the call to another counsellor. The second counsellor explained that they provide help only with police complaints, though they don't accompany the victims to the police station. She had heard about the LCC, but was not aware of the process of filing the complaint of its location.

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67. <http://bcpparihar.org/vanitha-sahayavani/>

### (6) Local Complaints Committee (LCC):

Section 6 of the SH Act, 2013 mandates LCCs to be constituted by District Officers<sup>68</sup> in all districts to receive complaints of sexual harassment at workplace where an ICC has not been constituted. According to the State Commission for Women (responsible for helping with organising awareness workshops about the role and responsibilities of LCC), the LCC is not working in most of the districts as they should and are not fulfilling the requirement of having at least one member who is an experienced social worker on the committee.

The LCC submits a monthly report to the Social Welfare Council (SWC) office and no complaints were received by the LCC in the last two years. This information was obtained through an RTI application. The Secretary of the Commission stressed the need for awareness of POSH Act, 2013 and the LCCs. She informed us that according to the Act, it is important to display information about the Local Complaints Committee in prominent public places to raise awareness, and that is something that SCW will be working on. She feels that it is important to raise awareness through digital means and for university and college students.

### (7) SHe-Box

The National Commission for Women launched the SHe-Box<sup>69</sup> in 2017. It is an online portal where complaints of sexual harassment at workplace can be registered and all complaints are centrally redirected to the relevant district authorities. It has received 134 complaints (as on 14 December

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68. The appropriate government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer.

69. <http://www.shebox.nic.in/>

2018). Complaints can be registered only in the English language, and therefore this online complaints management system remains inaccessible to a majority of women workers. The Secretary of Karnataka SWC also mentioned physical boxes to register complaints, but added that they also run a higher risk of false complaints in them. The aim, she said, was to provide basic facilities so that a woman did not have to leave their office with more distress and take any drastic measures like committing suicide. She felt that there should be counsellors and a police cell right in the SCW office to make it easier for women in distress. The constitution of LCC was delayed initially, and even the reconstitution (mandatory after three years of its term) was delayed by a few months for Bangalore Urban District. The LCC for Bangalore Urban is a part of the office of Deputy Director for Women and Child Welfare) near Kidwai Hospital on Hosur Road.

**4.4.****Response to Sexual Harassment - Institutions**

Institution / Representation	Number of SH Complaints (Informal Sector) received in 2018	Awareness of LCC
Police Station, Jogupalaya, Halasuru		
Constable	Zero	No
Station House Officer (SHO)	Zero	No
Women's Police Station, Shivajinagar		
Head constable 1	Zero	No
Head constable 2	Zero	No
Vanitha Sahayavani		
Councillor 1	Zero	No
Councillor 2	Zero	No
Councillor 3	Zero	No

## 4.5

### Resistance and resilience

Women workers in the study appeared to view sexual harassment at the workplace on a continuum of daily harassment and difficulties at work. When asked what their course of action would be in case they experienced sexual harassment, they had the following responses:

- i. Seeking union support, since unions were seen to be sources of strength and solidarity.
- ii. Employers of domestic workers should be informed of any misconduct or inappropriate advances by any family member.
- iii. To raise an alarm and inform all present and around about the incident, resorting to public naming and shaming.
- iv. To refrain from confrontation unless within a safe environment, to avoid aggravating the perpetrator.
- v. Being part of women's support groups to share and seek advice. Respondents expressed their belief that support of a larger group of women could enable them to protest and protect themselves when in a similar situation.
- vi. Adequate awareness of grievance redressal mechanisms could empower and encourage victims to seek redressal.
- vii. LCC: they also felt that details about the committee should be made public and publicity material should be posted in apartment complexes, union offices, RWAs, Labour Commissioner's office and other public spaces that domestic workers and street vendors access during the course of their workday. They also felt that they needed more information and it should be made available to them, their families, their employers as well as general

member of the public. They asserted that it should be accessible and not located in some distant area.

viii. Enforcement of punishment for sexual harassment perpetrators that will act as a deterrent for others.

Significantly, these responses do not talk about approaching the legal system. This signifies the reality of a system that has failed these women to such an extent that they don't want to subject themselves to its workings even when speaking hypothetically.

It is clear that the existing legal provisions and mechanisms do not sufficiently address incidents of sexual harassment at the workplace for women workers in the unorganised sector. A safe workplace is still a distant dream for domestic workers and street vendors.

## 5.

### Challenges and Issues

One of the key challenges that we came across during the interviews was the reluctance of women to talk about this subject with researchers they had just met. We also came across instances when a woman agreed to a one-on-one interview in a secluded space inside her home or near her vending space, but interruptions by male family members disrupted the conversation. Women generally spoke out more easily when they felt they were in a safe space where they would be heard and believed. They opened up the most, in instances where we approached them through a union or an organisation already working with them on work-related issues. Group discussions organised by unions of women workers and interviews where an organiser of a union accompanied us, were important sources of insights for this research.

This experience illustrates the importance of trust-based relationships in this context. On the other hand, a body like an LCC expects that women who have faced harassment, will seek out an institution they have never heard of before. This immediately stands out as an unreasonable assumption in this context, and one can't stress enough the need for LCCs need to reach out to the women workers it seeks to serve with its mandate. They need to establish a relationship of trust with them, so they can feel comfortable to approach them in case of any grievance, and this could mean including women members of unions in this body.



## **CONCLUSION**



## Unique vulnerabilities

The study provided insights into the daily working lives of two groups of women workers, domestic workers and street vendors in the informal sector.

The nature of work, the precariousness of women's labour that is undervalued and underpaid and the exclusion of women from public spaces, all go towards creating an environment in which sexual harassment can not only occur, but also continue with impunity. Accountability mechanisms – both civil and criminal—are inadequate in addressing the problem in a context where the work is itself precarious at best and criminalised at worst.

While there are similarities due to the overall framework of precarious, underpaid and under-valued labour, there are some distinct differences that it is useful to take note of, particularly for advocacy purposes.

### 1. Recognition of “workplace”

Of the two workers' groups, domestic workers seem to be at a higher risk of experiencing sexual harassment at the workplace because of working in a confined private space. However, their workplace is legally recognised as a workplace according to the SH Act. For street vendors, even though the risk of experiencing sexual harassment at workplace is relatively lower, their workplace itself is not recognised as one according to the SH Act. These factors make each group vulnerable in a unique way.

In case of street vendors, the challenges of safety and experiences of harassment depend on where one lived and worked.

## 2. Difficulties of redress

For domestic workers, the fact that the workplace is recognised as one in the Act, is enabling but not a sufficient condition to ensure redress, because of the difficulties associated with regulating private households which constitute the workplace. Regulation is practical as well as possible, if the willingness to implement rules exists within the state machinery. For instance, in Urban Indian apartment complexes it is easy “*to visualise the gate of the apartment as the factory gate*”,<sup>70</sup> as domestic workers are usually issued identity cards by the Resident Welfare Associations (RWA) and their entry and exit timings are logged.

## 3. Inadequate redressal mechanisms

The experiences of women in tackling sexual harassment at the workplace make it clear that a multiplicity of state authorities exist only in letter. Without adherence to their stated mandate and weak powers of implementation, they are rendered meaningless. The Local Complaints Committee, mandatory under the SH Act, is notable by its weak presence and appears to be merely a requirement of the law rather than a genuine response to women workers in the unorganised sector who face sexual harassment in the course of their work. When the civil law to redress sexual harassment at the workplace is not implemented, women workers have no options but to approach the criminal justice system, which is patriarchal and laden with class and caste biases.

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70. Natrajan, B., & Joseph, R. (2018). Domestic Workers and the Challenges of Collective Action in Informal Work.

#### 4. Insensitive law enforcement

It is significant to note that even in severe cases like confinement or rape by employers (in case of domestic workers), they chose to not report to the police. Existing legal remedies seem either non-existent on the ground or inadequate for victims in these sectors. Elaborate procedures like writing of complaints and requirement of the employer to file an FIR seem impractical. As it stands, the police are viewed with distrust and as partial to while also being the institution for redressal in victims' understanding. Initiating a legal procedure is also perceived as a tedious by both domestic workers and street vendors because taking a day or even a few hours off work to pursue a complaint can mean economic losses or loss of the livelihood altogether. It seems almost as though women in the current system have to make a cruel choice between being safe and having a source of livelihood.

#### 5. Pivotal role of support and solidarity

Domestic workers and street vendors for the large part deal with incidents of sexual harassment on their own. They either ignore harassment like teasing and inappropriate touching or relocate to a different location in cases of physical assault. Families of complainants play an important role in determining whether the case is reported or not or if the complainant herself is blamed. There is an urgent need for family members to be sensitised and informed about sexual harassment and the redressal mechanism in place. As discussed earlier, workers unions and women's groups do not always offer a safe platform where victims can share their experiences. As respondents spoke of the collective strength of such groups to prevent and protect workers, there is a strong fear of being judged and ostracised by such groups.

It is important to note that group discussions organised by unions of women workers and interviews where an organiser of a union accompanied us, were key sources of insights for this research. This experience illustrates the

importance of trust-based relationships and structures to enable women to speak out and seek redress.

While membership of unions and groups is crucial, it is equally important to link them to institutions such as the LCC to ensure proper representation on these bodies in order to make them function.

## 7. Recommendations

Women's experiences of sexual harassment at the workplace are part of a spectrum of harassment and insecurity while earning their livelihoods. In order to work towards workplaces free of sexual harassment, precarious and insecure conditions of work must be addressed, as they create an environment for sexual harassment to thrive and go unaddressed.

In terms of effective implementation of the SH Act, it must first be strengthened to include diverse workplaces and patterns of work. It is crucial to bring private homes and public places under the same set of laws and regulations that are expected from a formal work environment. In the context of sexual harassment at workplace for these categories of workers, a redressal mechanism will only be effective if it works on the following levels:

- i. Create conditions for women to earn a fair wage through domestic labour and street vending. This would include upholding the rights of street vendors as enunciated in The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and advocating for the passage of the draft National Policy for Domestic Workers.
- ii. Advocate for the rights of women to public spaces and safety and security on streets, market-places, and affordable public transport.

iii. Strengthen urban infrastructure to ensure safety, health and hygiene for women workers in the informal sector like street-lights, toilets, drinking water outlets and covered sheds.

iv. Work with unions and associations to create awareness about what constitutes sexual harassment at the workplace for informal sector workers, especially for groups like domestic workers and street vendors which are more vulnerable because of the 'invisibility' of their workplace;

v. Work with local urban bodies such as Ward Committees and Councils as well as Resident Welfare Associations to raise awareness and intervene in cases of sexual harassment at the workplace and encourage community engagement in prevention and awareness.

vi. Create state capacity to respond to instances of sexual harassment effectively, by providing adequate training and filling existing knowledge and attitude gaps of key departments like the police, labour departments and other authorities.

vii. Build trust and credibility in the redressal mechanism by making it accessible for women workers; and

viii. Advocate for the setting up of independent Employment Tribunals on the lines recommended by the Verma Committee.<sup>71</sup>

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71. <http://www.prsindia.org/uploads/media/Justice%20overma%20committee/js%20verma%20committe%20report.pdf>



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## **ANNEXURES**



## Annexure 1.

### Draft Questionnaire for Domestic Workers

#### Consent/Confidentiality

Date	
Current address	
Previous address (if migrated)	
Interviewer name and signature	

#### Background Information

Name:

- Age(years):
- Marital Status: (a) Unmarried      b) Married c) Widow d) Separated / Divorced e) Others (please specify)
- Religion: (a) Hindu b) Muslim c) Christian d) Others (specify)
- Type of family: (a) Nuclear b) Joint c) Extended)
- Caste: (a) General b) Backward c)OBC d) SC e) ST f) Minority
- Sub-caste -
- Educational level: (a) Illiterate b) Primary (1-4th std) c) Middle (5-7thstd) d) High School(8-10th std) e) PUC f) Diploma g) Graduate h) Post Graduate. i) Others(specify)
- Family Income/month (Rs): specify
- Are you member of any sangha(s)/union? Yes/No If yes, specify which one(s)

#### History of occupation

- Main Occupation \_\_\_\_\_ B. Any subsidiary occupation
- How long have you been a domestic worker?
- How many employers have you changed in the last 5 years? Reason

- Have you always lived in Bangalore? If no, give details of how you came to Bangalore
- What are the major challenges you face as a domestic worker?
- At what age did you start domestic work?
- Did you start as full time or part time?
- Currently are you full time or part time? Any other? Explain
- Do you receive your salary regularly?
- How were you recruited?
- Are you given food by your employer?
- Do you have access to a toilet? Details
- For stay in workers – how often do you get leave? Do you have privacy to change and have a shower? And Sleep

#### General information on sexual harassment

- Do you know what a woman should do if she faces sexual harassment at workplace?
- Are you aware of anyone who has faced sexual harassment at workplace?
- What are the challenges to accessing healthcare if a woman faces sexual harassment at workplace
- What are the challenges to filing a case?
- Would you ever go the police station to report sexual violence? Why or why not? What are the barriers to access a police station?
- What do you feel about the legal process in terms of accessibility and ease of use?
- Are women exposed to sexual violence at their workplace?
- If women face sexual violence at workplace what is the action taken – by them/ the community/the family/employer
- Do women generally speak up about violence they face?
- Are there any people/important leaders in your community that people go to? Name some. Do women go to them as well, if they face violence? If not, who do they go to?
- What systems exist to support women who face sexual violence (at home/work/public spaces)?

- Are there any community-led initiatives to help women if they want to report any issues?
- Have there been any NGOs working in this area?
- What is your idea of a workplace?
- Do you feel that the house you are employed in is your workplace?
- If you work in an apartment, can the apartment be considered as your workplace ?

#### Specific questions on sexual harassment at workplace

- Have you ever faced physical abuse at workplace?
- Have you faced verbal abuse and bullying at workplace?
- Have you ever been to a police station to register a complaint? What was your experience?
- Would you be willing to file a case for sexual violence? If no, why? If yes, in what situations would you file? What are the barriers to filing a legal case? How do you think these barriers can be removed?
- Have you been sexually harassed – touching/inappropriate comments/ offered benefits in return for sexual favours?/abused in sexually explicit language
- If yes, how have you responded?
- Have you complained to anyone in the household? If yes, what was the response
- If an apartment complex, have you complained to the RWA? What was the response?
- Have you had to work alone in the presence of a male member?
- In the last year, have you been forced to have sexual relationship at your workplace?
- If yes, was it someone who lives in the house or a visitor or another employee?
- If you live in domestic worker quarters, do you have safety there?
- Does your male employer visit you for sexual favours?
- Do you know what rights you have as an employee? Can you list them

- Are there certain places in the apartments that you work in where you are not given permission to visit? What is the reason for this? Does it make your workspace more unsafe?
- Are there certain places in the homes you work in which you are not allowed to enter. What is the reason for this?
- Are you allowed to use the toilets at the houses you work at? If no, what do you do?
- 
- Recommendations
- What would you recommend to make your community safer for women?
- Would you like to undergo any training on your rights? Would you like to be part of a group/union?
- What recommendations do you have to make your workplace safer
- What recommendations do you have to make your workplace free from sexual harassment?

## Annexure 2.

### Draft Questionnaire for Street Vendors

#### Consent/Confidentiality

Date	
Current address	
Previous address (if migrated)	
Interviewer name and signature	

#### Background Information

- Name:
- Age(years):
- Marital Status: (a) Unmarried (b) Married (c) Widow (d) Separated / Divorced (e) Others (specify)
- Religion: (a) Hindu (b) Muslim (c) Christian (d) Others (specify)
- Type of family: (a) Nuclear (b) Joint (c) Extended
- Caste: (a) General (b) Backward (c) OBC (d) SC (e) ST (f) Minority Sub-caste -
- Educational level: (a) Illiterate (b) Primary (1-4th std) (c) Middle (5-7thstd) (d) High School (8-10th std) (e) PUC (f) Diploma (g) Graduate (h) Post Graduate (i) Others (specify)
- Family Income/month (Rs):
- Are you member of any sangha(s)/union? Yes/No If yes, specify which one(s)

### History of occupation

- Main Occupation \_\_\_\_\_  
Any subsidiary occupation
- How long have you been a street vendor?
- Have you always lived in Bangalore?  
If no, give details of how you came to Bangalore
- What are the major challenges you face as a street vendor?
- At what age did you start vending on the street?
- How many hours do you spend selling your product?
- Can you give a brief outline of your activities from the morning – procuring things from the market and where you sell it, etc?
- Of your income, how much percent do you invest again into buying goods?
- Do you work alone or with others? Explain
- Do you have access to a toilet? Details

### General information on sexual harassment

- Do you know what a woman should do if she faces sexual harassment at workplace?
- Are you aware of anyone who has faced sexual harassment at workplace?
- What are the challenges to accessing healthcare if a woman faces sexual harassment at workplace?
- What are the challenges to filing a case?
- Would you ever go the police station to report sexual violence?  
Why or why not?
- What are the barriers to access a police station?
- Do you think you have access to a lawyer who would help you through a case of sexual harassment, when it occurs?
- Are women vendors exposed to sexual harassment at markets?
- If women vendors face sexual harassment what do they do? – complainant/other vendors/family/employer-vendor
- Do other women vendors generally speak about the harassment they face?

- Are there any people/important leaders in your community that people go to? Name some. Do women go to them as well, if they face harassment? If not, who do they go to?
- What systems exist to support women who face sexual harassment (at work/public spaces)?
- Are there any community-led initiatives to help women if they want to report any issues?
- Have there been any NGOs working in this area?
- What is your idea of a workplace? Do you think that where you work is a workplace? If yes, why? If no, why not?

#### Specific questions on sexual harassment in vending areas

- Have you ever faced physical abuse at workplace?
- Have you faced verbal abuse and bullying at workplace?
- Have you ever been to a police station to register a complaint? What was your experience?
- Would you be willing to file a case for sexual violence? If no, why? If yes, in what situations would you file? What are the barriers to filing a legal case? How do you think these barriers can be removed?
- Have you been sexually harassed – touching/inappropriate comments/offered benefits in return for sexual favours?/abused in sexually explicit language
- If yes, how have you responded?
- What is the nature of sexual harassment experienced by women vending on the street?
- Are you aware of any incidents of sexual harassment? Explain

#### Recommendations

- What would you recommend to make your community safer for women?
- Would you like to undergo any training on your rights against sexual harassment? Would you like to be part of a group/union?
- What recommendations do you have to make your workplace safer?

- What recommendations do you have to make your workplace free from sexual harassment?
- If this is your workplace what additional facilities do you think you would require? Who do you think should provide these services?

## **Annexure 3**

### **RTI queries to the Principal Secretary**

1. Has the Local Complaints Committee been formed? Date of formation
2. List of members – How have the members been selected?
3. Jurisdiction of LCC? Any guidelines? What is the tenure of LCC members?
4. List of nodal officers as submitted to LCC
5. How often has the LCC met in the last two years – share minutes
6. Have any complaints been received by the LCC – number and details other than confidential personal information
7. Details of annual report submitted to district officer/WCD/Chief ministers office
8. Details of district officer – background, contact details, responsibilities?
9. Break up of the LCC by gender, caste, legal background
10. What is the grant given to the LCC?
11. How many audits have been conducted on the LCC/ Any reports?



