



# ASK THE EXPERTS: E- PANEL DISCUSSION ON SEXUAL HARASSMENT AT THE WORKPLACE

*Hosted by Martha Farrell Foundation 1st July, 2020*

# INTRODUCTION

While we might like to believe that the work from home culture brought in by the current pandemic of COVID-19 might have curbed the issue of sexual harassment, it is far from the truth. Sexual harassment at workplace can take many forms, including cyber-harassment. According to a survey by Local Circles, nearly 80% women who face sexual harassment at the workplace never report it. Another survey has indicated that 97% of organisations are not aware about the law and its implementation. One of the major reasons for underreporting cases of workplace harassment is the lack of awareness about the survivors' own rights, as well as the procedural complexities that prevent survivors from availing redressal mechanisms under the POSH Act.

The aim of this session was to bridge the gap and empower women to not only deal effectively with sexual harassment at their workplace themselves, but also become front-line agents of change in their own organisations or fields of work. To deliberate on the current implementation of the law on sexual harassment and discuss future strategies that different stakehold-



ers can use to bring about a cultural shift towards making workplaces safe for women in the formal and informal sector, Ms. Sonia George, General Secretary of SEWA-Kerala; Dr. Bijyalaxmi Nanda, Principal, Miranda House and Ms. Renu Love, Chairperson, Child Welfare Committee (East Delhi) contributed to an extremely enriching and engaging discussion. Nandita Pradhan Bhatt, Director, Martha Farrell Foundation moderated the session which was attended by participants from across the country including students, academics, lawyers and social workers.

# KEY MESSAGES

- Institutional readiness and commitment is an essential component for a cultural shift to take place at an organisational level.
- Organisational ethics and restorative justice must be the goal of organisational policies on SHW instead of purely focusing on retributive justice.
- Awareness generation about available redressal mechanisms for sexual harassment at the workplace must be undertaken by local bodies at the neighbourhood level.
- Making committees more representative of all sectors including informal women workers will facilitate reporting and make survivors more comfortable with filing their complaints.
- Transparent monitoring mechanisms are essential to hold employers and authorities accountable.
- District Magistrates need to play a much more active role for preventing sexual harassment.
- ICs must explore ways to stay in touch with employees during lockdown or holidays virtually. This is the first step towards building trust with survivors.
- There is need to collectivise women domestic workers.
- Universities can be more proactive in building peer-educators for awareness generation and creating support system
- Universities can play an important role in awareness generation especially among informal women workers on the issue, the law, and available reporting mechanisms
- Intimate partner violence must also be looked at as part of sexual harassment at the workplace.
- Sexual harassment of women at workplace is not merely a woman's issue, therefore convergence in the roles of Ministries of Labour, Human Resource Development with the Ministry of Women and Child Development will ensure meaningful implementation of the Prevention of Sexual Harassment of Women at Workplace (POSH) Act, 2013



# SETTING THE CONTEXT: CURRENT IMPLEMENTATION OF THE POSH ACT 2013

**Renu love** began by comparing the implementation of the law of sexual harassment at the workplace before and after the implementation of the POSH Act 2013. She stated that prior to 2013 Act, Vishaka guidelines were implemented in Delhi and internal complaints committees were created in all government departments and private organisations. Pursuant to the passing of the 2013 Act, it was very difficult for the Delhi Government to undo a mechanism already in place and make a new one to replace it. Many organisations were reluctant to change the existing mechanism and start afresh, one reason being that previously no third parties were part of committees and only members of the organisation would handle complaints of sexual harassment. Gradually, guidelines were prepared for all organisations to create organizational policies in tandem with the Act. Even more challenging was the task to establish Local Committees (LCs). It was difficult to explain to District Officers (who were already overburdened with their existing work) their roles and obligations under the Act and the appointment of Nodal Officers was equally challenging. The Department of Women and Child Development (DWCD) conducted several training programs with employees and employers using a robust capacity building framework for the same.

**Dr. Bijyalaxmi Nanda** recalled the formation of the Internal Committee (IC) even prior to Vishaka Guidelines when a group of like-minded feminists pressurized the university to formulate guidelines on sexual harassment at the workplace. What was required was an empowering policy on sexual harassment and Vishaka Guidelines were passed at that time. The passing of the landmark judgement culminated in Ordinance XV-D which provided clear guidelines on the prohibition and punishment of sexual harassment. Every college had an Internal Committee with elected student representatives as members. When the 2013 Act was passed, the new structure of the internal committee left no scope for student representatives to become members of the committee. Some of the empowering elements were washed away with the 2013 Act as the activism around the issue went missing. Subsequently, the Saksham Report and then the UGC guidelines restructured the composition of the Committee to get back student representatives as members.

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Within the larger context, it's essential to have an understanding of what is sexual harassment; not in the context of a desire-prominence paradigm but in the context of the competence model where organisational ethics play an important role. There must be inclusive gender policies for organisations which help counter gender discrimination. For prevention of sexual harassment, readiness of organisations is required where, within the competence model, women are provided with an empowering and enabling space within the organisation.

Speaking about sexual harassment in the context of women in the informal economy, **Sonia George** shared her experience of working with domestic workers. She stated that there are only two legislations that have defined the domestic work sector and the POSH Act is one of them. It gives women in the informal sector such as domestic workers the option to file a complaint with the LC of their district. Having said that, there are huge complexities at the ground level when it comes to implementation of the law. The nature of domestic work is unique in the sense that another person's home is their workspace. Making a private space a workplace can be difficult to define in the long run. The informality of the work makes it a greater challenge; there are no written contracts for domestic workers and they work solely on verbal arrangements; there is no written proof that they are even workers or that they work at a specific place. Most women in the informal sector are excluded from even vague legal structures available for their protections, and they are scattered. Defining work and workspaces is the first step towards creating a safe workplace model for all.



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**"A Standard Operating Procedure containing protocol for composition of Internal and Local Committees, well-defined roles, required skills and tenure of committee members, timeline of cases, and rating procedures, is needed for uniform implementation of the SHW Act."**

**RENU LOVE**  
CHAIRPERSON  
CHILD WELFARE COMMITTEE  
EAST DELHI



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**"There is a pressing need for convergence of the roles and resources of Ministries of Labour and Human Resource Development with the Ministry of Women and Child Development, to properly implement the Prevention of Sexual Harassment of Women at Workplace (POSH) Act, 2013."**

**SONIA GEORGE**  
GENERAL SECRETARY  
SEWA - KERALA

# CHALLENGES FACED BY SURVIVORS IN THE FORMAL AND INFORMAL SECTOR UNDER THE POSH ACT 2013

**Nandita Pradhan Bhatt** continued the discussion of defining workplaces to suggest that today workplace boundaries are completely blurred and therefore, questioned the panellists about the challenges that survivors might face when it came to filing a complaint of sexual harassment in the work from home format, and what the role of the ICs and LCs would be during this time as many ICs and LCs have informed the aggrieved that “they are in lockdown”. This was also recorded in the MFF led rapid telephonic assessment conducted with LCs during this time.

**Dr. Bijayalaxmi Nanda** shared that there has been an intermeshing of public and private lives of people during Covid-19, but reporting cases should remain the same. Complaints are to be given in writing, the survivor can email the same to the IC or LC as the case may be. Sexual harassment at workplace has happened pre- covid even virtually on social media, in the form of trolling, etc. The language of sexual harassment at workplace is there in cyber space which is equally daunting. The Saksham Report suggested that intimate partner violence must also be looked at as part of sexual harassment at the workplace, because it acts as an obstruction for women to come to work. In fact many survivors of intimate partner violence find it easier to come to the IC and the IC negotiates for them and helps them to find counsellors and provides other similar assistance. It is time for us to have solidarity as women workers. In Miranda House in Delhi University the IC is working and has continued to work through the lock down; intimate partner violence is also being reported. There is no reason why the ICs should not work during lockdown. They are never under a lockdown even if physically the members cannot meet. ICs must function to build trust for survivors who should feel they can always approach the IC when they need to.

Information about the IC has been put up on the website including the names of student members and committee members with their contact details. A set of counsellors have also been engaged to help survivors of sexual harassment. In Miranda House, the electoral body consists of students and there is an endeavor to create a safe comfortable space for survivors to approach the IC with ease. Peer-educators really help create this environment and frequent trainings are conducted of students as well of committee members. The IC in the college should not merely be a complaints committee; it should also play the role of a gender sensitization committee while creating safe spaces on campus for students.

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"While a centralised POSH Act is instrumental, each state must have specific rules and recommendations for workers' safety to allow locally relevant solutions for making workplaces safe for all working women in the state."

NANDITA BHATT  
DIRECTOR-OPERATIONS  
MARTHA FARRELL FOUNDATION




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"There is an urgent need to replace the notion of retributive justice with restorative justice, which goes beyond delivering immediate justice to the aggrieved, and aims for systemic engagement and change in organisational culture."

DR. BIJAYALAXMI NANDA  
PRINCIPAL, MIRANDA HOUSE

**Renu Love** took the conversation of filing complaints forward by discussing the procedure for filing a complaint virtually on Shebox. Ms Love being the nodal officer for Delhi Government at the time, facilitated the Shebox for easing the reporting mechanisms for complaints. She explained that the Shebox is controlled by Government of India (GOI), has a password so not everyone can open it apart from the District Magistrate. Complaints will then be forwarded by the District Magistrate to the LC. Ms Love suggested that its faster to get redressal from Shebox and full confidentiality of the case is maintained. Having said this, Shebox is limited to those who have access to internet. For women who have no access to internet, have no other option but to manually file a complaint with the Nodal Officer or the District Officer. Lack of awareness about nodal officers and district officers; no advertisement about contact details of LCs and nodal officers and their offices, distance from the work location of women informal workers, lack of clarity on the availability of LCs makes it extremely difficult for survivors to access redressal mechanisms.

**Sonia George** highlighted the limited capacity of one District Officer to deal with all complaints of sexual harassment amongst other duties and functions. She stated that nodal officers are just not enough to deal with complaints of so many survivors scattered in different areas. Moreover, lack of clarity about who are the members of LCs and how can domestic workers living away without any internet connectivity approach them also creates barriers for survivors. Since the POSH Act is a central



Act, States are confused about the procedural complexities. The definition of domestic worker within the statute is not linked to the definition of workplace in the informal sector. There is also no linkage drawn between this Act and the laws of the labour ministry. Therefore no convergence is taking place for treating domestic workers as part of the broader informal workers framework. There needs to be mobilization at a more larger scale with concerted efforts from labour ministry for including them in the realm of basic protections afforded to other informal workers.

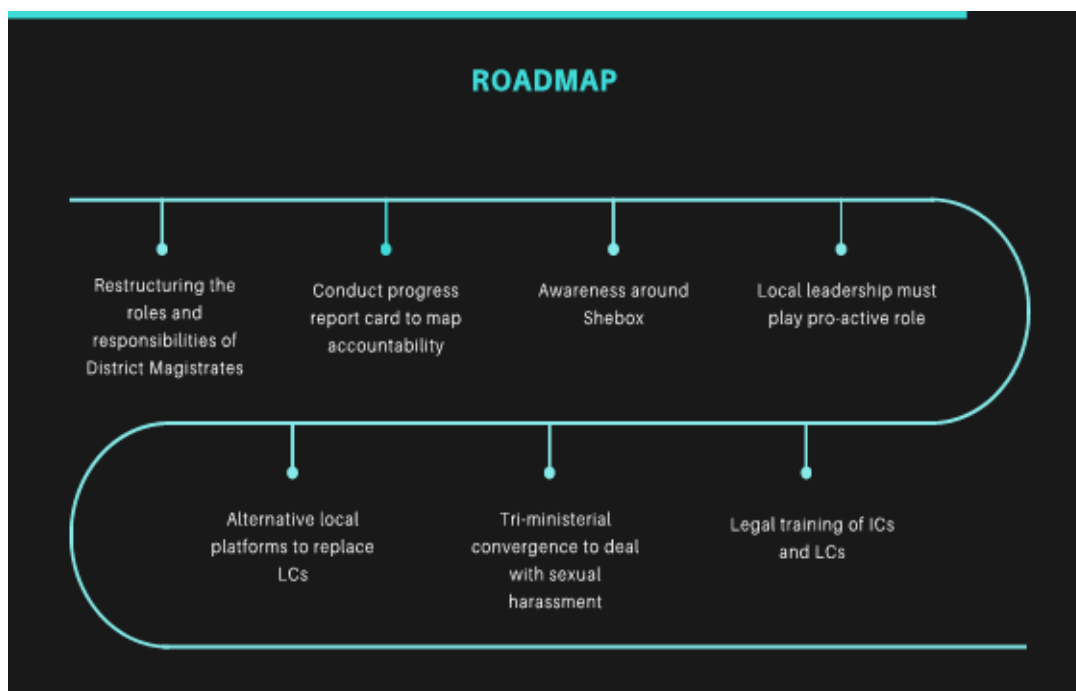
Other challenges for informal workers with regard to sexual harassment include lack of education as well as no organizational strength. Marginalised unorganised women workers who work from home such as tailors face abuse by their husbands, and therefore see an overlap of workplace harassment and domestic abuse. They have no information about how to file a complaint; who to approach; which LC they can complain to; most have not even heard of the Shebox.

**Dr. Bijayalaxmi Nanda** added to these challenges, stating that most informal women workers did not have access to any complaints committee even before covid-19. The Pandemic has only exacerbated the problem. There is a need for creating structures, create linkages, having readiness amongst organisations as well as to have more awareness so that domestic workers can respond. Migrant women domestic workers have such long working hours; their work is tenuous and provides no social security. Hence they cannot afford to complain since they face huge vulnerabilities which do not allow them to take the risk of filing a complaint at the cost of their livelihood. Even in the formal sector people move from one job to another and often survivors who switch jobs after being sexually abused do not follow up on cases or do not want to go through the physically and mentally exhausting process of filing the complaint. What must be kept in mind is that restorative justice is more important than retributive justice. There is a need to institutionalize a system which involves more engagement of the survivor and the perpetrator and weed out the evil of sexual harassment from its root.



**Nandita Pradhan Bhatt** raised the question of accountability for implementing a robust redressal mechanism under the POSH Act. Bijayalaxmi Nanda stated all relevant authorities are meant to implement the law of the land. Largely private companies comply because it is their company policy. Monitoring of redressal mechanisms is very important and transparency is needed within this monitoring process. It is important that compliance with the Act doesn't remain a mere check box but in fact helps create gender-inclusive workspaces. Renu Love also shared that Annual Reports regarding complaints of sexual harassment are not to be handled by the local committees but in fact the District Magistrate. The District Magistrate then compiles reports and forwards them to Government of India. They have to be proactive, if they do not get reports, they must contact the concerned organisations. Sonia George found the composition of ICs problematic since only one third party members is required while all other members are internal employees, which can lead to biased decisions against survivors. RWAs are also a set of employers and she was apprehensive about engaging with them beyond a certain extent.

**Renu Love** shared that Women Commissions are the monitoring authorities which implement every legislation that is passed. They should have clarity on every aspect of the Act; they should bring in training programs and publicise nodal officers' contact details in every pocket of every district. Sonia George spoke about the history of the creation of Womens Commissions in India and suggested that it took a long time for them to have far reaching access to women survivors. She advocated for the Ministry of labour to address the concerns of women domestic workers from the forefront.



# KEY RECOMMENDATIONS

- **Restructuring the roles and responsibilities of District Magistrates** to provide for a more flexible and accessible platform for addressing complaints of sexual harassment
- **Civil society should do a progress report card** amongst organisations and households and map it to bring about accountability
- **Partnership with law enforcement agencies**
- **Local leadership must take a pro-active role** in helping survivors file complaints of workplace harassment, especially amongst women without access to information or digital technology
- **Alternative local platforms** using expertise of professionals like lawyers, social workers and psychologists must be created for handling complaints
- **Organisational ethics** must play an important role in determining “hostile work environment” in organisational policies
- **Colleges and Higher Education Institutions (HEIs) must train and sensitise female students not as girls but as women** gearing up to join the workforce
- Introduce the ideas of consent, **boundaries, intent and impact** in college and university curriculums and pedagogy
- A **community-based participatory research** course with scholars with a focus on SDG 5 to generate a rich inventory of research material must be created on Sexual harassment at the workplace<sup>1</sup>
- **Heads of institutions must be brought together** to a platform so that there is active engagement on the matter of sexual harassment in campuses. (A campaign similar to Unnat Bharat Abhiyan must be introduced for colleges across the cohort to do participatory work.)
- **Appoint pro-active grassroots workers** who are easily approachable and act as facilitating agents for survivors to file complaints and access LCs.
- **Convergence of the roles of Ministries** of Labour and Human Resource Development with the Ministry of Women and Child Development, to properly implement the Prevention of Sexual Harassment of Women at Work
  - The complexities surrounding the issue of Sexual harassment assume an overlap of roles and responsibilities of different Ministries
- Introduce a **Standard Operating Procedure** for putting down all the procedures for functioning of LC/IC and other related institutions
- Local Committees **must meet at least once in three months and must take a pro-active role in prevention and redressal of workplace harassment.**
- **Legal training of ICs; they should be trained about their powers which are those of powers given to a civil court.**
- **Counselling must be given as part of the assistance** granted to the survivor by the Committee.
- Awareness campaign for **Shebox**, especially amongst the informal women workers who have even lesser access to digital technology



- **Inclusion of Domestic Work** under the purview of Labour laws.
  - **Appoint representatives** from the unorganized sector such as domestic workers in these committees
  - **RWAs should be engaged** to prepare guidelines for all employers to create separate, safe and hygienic living arrangements for in-house domestic workers. There must be specific guidelines for employers for preventing sexual harassment in their homes stating the following:
    - Listen to the worker carefully and patiently
    - Keep helpline numbers handy with you
    - Help them get access to domestic violence helplines
    - Offer to support them with legal assistance in filing a complaint or for any other matter.
    - Help your domestic worker access time- bound justice through Local Committees in case of SHW
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