

Examining Local Committees under the Sexual Harassment of Women at Workplace Act

ANAGHA SARPOTDAR

One of the major milestones of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is to provide a special redress mechanism for complaints in the unorganised sector. Section 7 of this act mandates the constitution of local committees by the state government. However, there remains a lack of data when it comes to understanding the functioning of the local committees. This paper examines the functioning of the local committees in general, based on the experiences of the author as an acting chairperson of the Mumbai city district local committee.

Violence against women perpetrated by men is gender-based and socially shaped. As argued by Millett (1970), in all societies, the relationship between the sexes has been based on power and is, therefore, political. It shapes in the form of domination by men over women in all areas of life. Walby (1990) defines patriarchy as a system of social structures and practices in which men dominate, oppress, and exploit women. The structural aspect of patriarchy is manifested in the hierarchical organisation of social institutions and relations, while the ideological aspect reinforces and supports inequality and subordination (Dobash and Dobash 1979). Patriarchy in the economy as a social institution becomes obvious in the form of gender bias in labour force participation¹ and sexual harassment in the workplace.

Vishaka Guidelines

The legal recourse on the issue of sexual harassment in India came only in the 1990s, though the country signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 30 July 1980 and ratified it on 9 July 1993. It was in the case of Bhanwari Devi,² a village-level worker employed with the Rajasthan state government on contract, that the Supreme Court issued Vishaka guidelines for employers in 1997 (*Vishaka Guidelines and Others v State of Rajasthan and Others* 1997). Bhanwari Devi's gang rape case brought to light the utter disregard and failure of the state government as an employer to recognise and prevent sexual harassment experienced by women while performing duties in benefit and on behalf of them.

Jaising (2004) states that the primary question in the Vishaka case was whether the state, as an employer, was responsible to protect its employees and workers. Before the Vishaka judgment, even as the sexual dimension of harassment was disabling and unspoken, it remained invisible (Kapur 2009). The writ petition filed in this case by the women's organisations was aimed at enforcing fundamental rights of working women, finding suitable methods for realisation of gender equality, preventing sexual harassment and filling the vacuum in existing legislation. It used the case as a concrete illustration of the systemic violation of rights, and then demonstrated a pattern of abuse by providing examples of five other women who experienced sexual assault while at work. The judgment filled a gap in domestic laws related to violence against women in India and upheld the constitutional rights of women by directly applying the provisions of CEDAW to enact guidelines against sexual harassment in the workplace (Sood 2006).

Anagha Sarpotdar (anagha.sarpotdar@gmail.com) is chairperson of the Mumbai city district local committee on sexual harassment at the workplace.

In other words, the Constitution and international obligations became the basis for legislation against sexual harassment in India. The judgment drew from Articles 14 (fundamental right to equality before the law and equal protection of the laws), 15 (right to non-discrimination on grounds, including of sex), 19 (fundamental freedoms), and 21 (right to life and liberty) of the Constitution that are violated in the cases of sexual harassment. Article 14 was interpreted from the point of view of gender equality, which meant that women have a right to work with dignity, and they are to be protected from sexual harassment. Using Article 15, sexual harassment was seen as discrimination based on sex. Article 19 (1)(g), which guarantees equal opportunity to all citizens to practise any profession or carry on any occupation, trade, or business, was seen to be violated. It was observed that a climate of male domination often exists in places of employment, and sexual harassment vitiates a safe working environment for women. Read with Article 21, it implied that no person will be deprived of life or personal liberty at the workplace.

Article 42 in the Constitution, which calls upon the state to provide for just and humane conditions of work, laid the foundation for future measures and legal remedies against sexual harassment at the workplace. The Vishaka judgment recognised that sexual harassment violated the constitutional guarantee of gender equality, and women's fundamental rights to live with dignity, to personal liberty, and to carry on any occupation. Along with fundamental rights, the directive principles regarding securing just and humane conditions of work and maternity relief, and the fundamental duty imposed on all Indian citizens to renounce practices that are derogatory to the dignity of women were also referred to by the Court.

Undoubtedly, the Vishaka judgment initiated a discourse in India on sexual harassment at the workplace and benefitted women by reconfirming their right to a safe working environment.

It proposed to provide a gender-friendly atmosphere for women at work, by providing a redress mechanism within the workplace in the form of a complaints committee. It was envisaged that a committee consisting of employees and one external member would conduct hearings to address the complaints related to sexual harassment within an organisation. However, one of the major drawbacks of the Vishaka guidelines was that they failed to address sexual harassment of women prevalent in the unorganised sector (D'Souza 2005). The guidelines largely benefitted taxpaying or licenced organisations in the organised sector that follow labour laws, one of which is the legal provision related to sexual harassment (Roy Ghatak 2017). Within a few years of its coming into existence, it was a known fact that it was difficult to implement the Vishaka guidelines, which placed the onus of protecting working women from sexual harassment on the employer and focused on the internal resolution of complaints in the unorganised sector setting, as these are "enterprises whose activities are not regulated under any legal provision or do not maintain any regular accounts" (Salve 2013).

The 2013 Act for the Unorganised Sector

In the organised sector, a lack of will of the employers and insensitive functioning of the committees formed under the Vishaka guidelines remained an issue (Chaudhuri 2006; CII 2005; CFTI 2010; Dasgupta 2001; Dutta 2019; Lawyers Collective 2002; SARDI 1999). The women's movement had seen more than a decade of prolonged struggle and dialogue with the government to address low compliance to the Vishaka guidelines by employers and problems associated with the functioning of internal committees (ICs) in the organised sector, along with their limited implementation in the unorganised sector. This resulted in the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)

Economic & Political WEEKLY

Review of Urban Affairs

November 30, 2019

The Lives of Waste and Pollution

—Amita Baviskar, Vinay Gidwani

Becoming Waste: Three Moments in the Life of Landfills in Mumbai City

—Shireen Mirza

Urban Waste and the Human-Animal Interface in Delhi

—Nishant Kumar, Aparajita Singh, Barbara Harriss-White

From Balmikis to Bengalis: The 'Casteification' of Muslims in Delhi's Informal Garbage Economy

—Dana Kornberg

Numbing Machines: Manual Scavenging's Reconstitution in 21st-century Bengaluru

—Shreyas Sreenath

Neo-liberalising Inclusion? Waste Picking, Data Activism, and the State

—Harsha Anantharaman

The Colonial Roots of India's Air Pollution Crisis

—D Asher Ghertner

For copies write to:

Circulation Manager,

Economic & Political Weekly,

320-322, A to Z Industrial Estate, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013.

email: circulation@epw.in

Act, 2013 (hereinafter referred to as the 2013 act). The act came into force on 9 December 2013. As the title suggests, it is a gender-specific legislation for women, in recognition of unequal power relations at workplaces. This was an explicit form of affirmative action under Article 15(3) of the Constitution, which allows the state to enact special legislations for women.

Section 2 (p) of the 2013 act defines the unorganised sector as a workplace that engages less than 10 workers, while the domestic worker has been specifically defined as per Section 2 (e). Another definition that captures the essence of this sector is: the unorganised sector is one in which women do arduous work as wage earners, piece-rate workers, casual labour, paid and unpaid family labour, whose economic and social conditions are dismal (National Commission on Self Employed Women and Women in the Unorganised Sector 1988). In the present times, when there are differing statistics on employment in the unorganised sector of India—the Economic Survey of India 2018–19 puts it at 93%, and as per a NITI Aayog strategy document, it is 85% (Mohanty 2019)—it is understood that 95% of employed women are engaged in the unorganised sector (GCN and Deloitte 2019). Further, it is found that sexual harassment of women in the unorganised sector is rampant and widespread (Datta 2012; Neeta and Mazumdar 2010; Social and Rural Research Institute 2012; Yugantar Education Society 2003).

Section 7 of the 2013 Act mandates the constitution of a local committee (LC) at the district level for addressing complaints coming from the unorganised sector. In keeping with the nature of the sector, it is important to delve into the efficacy and efficiency of the LCs. LC members are to be nominated by the district officer (DO) who is either the district collector or a deputy collector as per Section 5 of the act. In Maharashtra, deputy collectors are notified as DOs, and their activities are coordinated by the state government's Department of Women and Child Development (DWCD). Since the jurisdiction of the LC is an entire district as per Section 6(3) of the 2013 act, and it works closely with the government machinery, it yields considerable power in comparison with an IC whose powers are restricted to only the concerned organisation.

However, in the public domain, the information available is limited only to the constitution of the LCs across India, which is also skewed in nature. There is a dearth of information about their functioning (Chhibber and Mahajan 2018; Mittal 2018; PTI 2018). Against this backdrop, this paper examines the working of the LCs. It argues that the functioning of the LCs is fraught with difficulties that originate in the provisions of the act and, thus, are system generated. The paper seeks to strategically analyse the strengths, challenges, opportunities, and risks associated with the functioning of the LCs. In writing this paper, the author has drawn upon her own experience and insights gained in working as a member and chairperson of the LC of Mumbai city district.³ Due to the non-availability of research data and/or official statistics by the central government regarding the functioning of LCs, and legal restriction regarding disclosure of case-related details, the author has depended on individual experience spanning from 2015 to

early 2020, case laws, and secondary sources, including reports published in the print media.

Functioning of LCs

The strengths of an LC lie in the powers vested in it by the 2013 act. Under the 2013 act, similar to the IC in each organisation, there is an LC in each district. The LC is the principal mechanism with the power and authority equivalent to a civil court for the resolution of complaints reported from the unorganised sector. On receiving a complaint, at the request of the complainant, the LC can settle the case under Section 10 using its power of conciliation, which can prevent the complainant from being pushed into arduous inquiry procedures that might involve cross-examination and demands for production of evidence to substantiate the complaint.

Traditionally, conciliation is understood as a form of out-of-court settlement (Dixit 2019) for concluding disputes between two parties at loggerheads. Conversely, a unique feature of the 2013 act is that conciliation is a formal process recognised under the statute. It is to be carried out by the members of the LC as conciliators in the interest of the complainant on mutually agreed terms, which can range from a verbal warning to the respondent by the LC, verbal apology by the respondent to the complainant, and transfer of either of them and other such related interventions. However, if the complainant is not willing to avail the option of conciliation or if any of the terms of conciliation are violated, the case can be reopened by the LC and moved for an inquiry. For conducting an inquiry as per Section 11(3), the LC can summon any person before it, enforce their attendance, and record their statement. Additionally, the LC can demand any document from the organisation relevant to the case under inquiry. While the inquiry is pending, the LC can recommend the transfer of either the complainant or the respondent, recommend special paid leave for the complainant for a maximum period of three months, and prohibit the respondent from evaluating the performance of the complainant.

With respect to complaints reported from the private sector, the LC can recommend a penalty to the DO, who is the appointing authority of the LC. Section 13 of the 2013 act provides for the LC to recommend compensation along with penalty on grounds stated in Section 15, thereby directing the respondents to pay the sum from either their wages or a lumpsum amount. Additionally, if compensation is not paid, the LC can forward the order to the concerned DO for recovery as an arrear of land revenue. Further, in complaints registered by domestic workers, the LC can forward these to the police for registration as per provisions of the Indian Penal Code (IPC).

Such enormous powers vested in the LC indicate that it has a crucial role to play in the prevention and redressal of sexual harassment that occurs in units with less than 10 employees, self-employed professionals, and where the complaint is against an employer, irrespective of the sector. Observations of other LCs and interactions with them indicate that since the LCs are constituted by the district collector and are backed by the district administration, including the district offices of women and child departments, they are aware of the above-mentioned

powers and exercise them in various ways, which can be understood by the subsequent discussion.

Scope of Work

Sexual harassment at the workplace is unwanted sexually oriented behaviour resulting from unequal gender-based power relations and has serious consequences for the employment of women (Aggarwal 1992; MacKinnon 1979; Stanko 1988). Different reported cases (Mantri 2016; *Scroll.in* 2017; *Times of India* 2017; Vyas and Babar 2015) reveal that whenever the complaint is against a man yielding power in the organisation, there is an invariable failure to protect the career interest of the complainant, leading to their termination or resignation from service (Crasta 2017; Calamur 2017; Dutt 2016; Ganz 2015; *Hindustan Times* 2015; Joseph 2016; Sen 2015; Shukla 2015). Inaction on the part of the employers to act promptly against a powerful respondent and the disregard of such cases by the government pushes complainants to approach external agencies, such as media, police, and the courts for the redressal of their complaints (*Financial Express* 2017; Jha 2017; Kidiyoor 2014; Rai 2017).

ICs in most organisations were earlier either not existent (*Business Standard* 2013), ineffective (Barua 2015) or gave a clean chit to the respondent (Vijayraghavan and Philip 2017). In such circumstances, it is important that the inquiry is conducted by an outside body that is not reporting to the person, so that the possibility of the committee members getting pressurised is considerably less, compared to an IC comprising largely of employees. Section 6 of the 2013 act empowers the LC to conduct an inquiry when the complaint is against the employers of the organised sector. However, in none of the cases reported against persons falling in the category of "employer" was Section 6 invoked and activated. Inquiries were or are being conducted by ICs comprising employees who directly or indirectly report to the respondent (*DNA* 2017; *Scroll.in* 2017).

However, the issue arises as to who is an employer. While Section 2(g) of the 2013 act states that heads of a department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit, or officer of an appropriate government or local authority is an employer, the interpretation by courts is different. In a 2014 judgment, the Bombay High Court has ruled that respondents working in various capacities, either managerial, administrative, or supervisory, are answerable for any lapse or wrong on their part to the management. They will be considered as "employee," and not "employer" (*Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University* 2014). A major dilemma that arises for the LC is to decide whether the respondent should be considered as an employer, thereby bringing the inquiry within the purview of the LC, or should be considered an employee. In such a situation, it is the discretion of the LC to determine the scope of the inquiry, depending on the facts and circumstances of the case.

Weighing the lack of trust expressed by the complainant in the IC constituted by the employer as the key factor and thus allowing her to testify before the LC is an important decision towards safeguarding the interest of the complainant. In one of the cases dealt with by the Mumbai city LC, complainants

refused to appear before the IC formed by the parent ministry for the purpose of inquiry against the head of the institute. Instead, they chose to approach the LC, which was also supported by the LC by taking the case as per the objectives⁴ of the 2013 act. However, in 2016, the Mumbai suburb LC dismissed the complaint of sexual harassment registered by a teacher against the principal of the school. Citing *Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University* (2014), the LC states that the principal of the school is not an employer, and therefore, the complaint is not in the purview of the LC. The order further instructs the complainant to approach the IC of the school for grievance redressal. This has left the complainant with no further recourse but to approach the high court against the LC, which is strenuous in terms of time, money, and energy.

Procedure of Inquiry

After it is established, if the respondent fits the category of the employer, the next issue for the LC to address is the procedure to be followed for inquiry. Section 11(1) of the 2013 act states that the inquiry will be done as per the policy or service rules of the respondent. In this regard, the Department of Personnel and Training (DOP&T)⁵ notification of 2015 lays down the procedure to be followed by ICs constituted in central government establishments. This can be safely relied upon by the LC as well, per the mandate of the 2013 act. This notification, based on Section 14(2) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS rules), expects a dual role from the committee. The first is to conduct a preliminary inquiry for procuring a chargesheet from the disciplinary authority, and then holding an elaborate inquiry following service rules. While the procedure appears to be clear and precise, there are serious challenges faced by the LC.

The possibility of the LC getting coerced or manipulated is lesser as compared to an IC. The organisational dynamics known to an IC, but not to an LC, is certain to affect the inquiry in many ways. The LC may still be unable to protect witnesses from coercion, intimidation, threats, and retaliation. This was experienced by the Mumbai city LC when the witnesses refused to cooperate with the LC in a complaint against a senior government officer. The complainant was on the payroll of a vendor who did not allow the LC to write a preliminary report demanding a chargesheet against the respondent, adding to pendency as the case continues to be under discussion. The complainants have limited options. One of them has approached the high court against the government, the employer in this case.

Also, since the LC is located out of the organisation, inquiries can become difficult as the context is little known (Jose 2018). Another area of tension is between the disciplinary authority and the LC. The disciplinary authority, at times, may not cooperate with an outside body. This is particularly so in situations when the LC requests issuance of a chargesheet against an influential respondent who is at a senior position within the organisation. The 2013 act is silent on the course of action to be followed by the LC if there is no response from the disciplinary authority, or if the authority denies the need to draw up a chargesheet against the respondent as per Rule 14(3) of the

ccs rules. As per Rule 14(2), the committee is to be deemed as the inquiring authority appointed by the disciplinary authority of the respondent. The LC may be at loggerheads with a powerful government department or ministry at the state or central level. In a case before the Mumbai city LC, repeated correspondence with a central government ministry yielded no response, leading to loss of time. The LC has been exploring ways to address the issue using strategies other than litigation.

Similar challenges exist for inquiries about employees of the state government. In such contexts, the LC is compelled to follow Maharashtra State Civil Services (Discipline and Appeal) Rules, 1979 (MCS rules). In a case before the Mumbai city LC, the LC was required to conduct the inquiry as per Rule 8 meant for imposing major penalties on the respondents found guilty of sexual harassment. For organisations falling in the private sector, the inquiry needs to be done as per procedure laid down by Section 7 of the rules under the 2013 act, which mandate inquiry in complaints of sexual harassment as per the principles of natural justice. A slightly more complex situation unfolds if the respondent does not cooperate with the LC, and this might pave the way for litigation, hampering the timeline designated by the 2013 act. This could consequently cause discomfort to the complainant. This was the situation in *Global Health Private Limited v Local Complaints Committee, District Indore and Others* (2019) wherein the respondent—the medical superintendent of Medanta Superspeciality Hospital—refused to cooperate with the LC of Indore district that was then compelled to initiate an inquiry as per the orders of the district administration, due to the absence of an IC constituted by the hospital.

Low Reporting of Complaints

Sexual harassment of women at the workplace has been consistently plagued with low reporting (Alavi 2017; CFTI 2010; Dasgupta 2001; Gole 2017; INBA and Netrika Consulting 2017; Lawyers Collective 2002; Saheli 1998; Sakshi 2001; SARDI 1999; Sharma 2014; Social and Rural Research Institute 2012; Yugantar Education Society 2003). Majority of women do not report sexual harassment for reasons such as lack of confidence in the organisation, including its redressal mechanism, low awareness about laws and procedures, the threat of professional victimisation, and fear of ridicule, stigma and embarrassment. These factors are enhanced and accentuated in the unorganised sector where there is a constant fear of losing one's livelihood and achieving rights is tenuous (Datta 2012), resulting in either low or no reporting of complaints (Jose 2020).

Since no data is available in the public domain in the form of statistics or media reporting regarding awareness sessions conducted by LCs across India, it can comfortably be assumed that awareness generation is not happening at a conspicuous scale. However, this has serious implications, as an absence of awareness generation could be the foremost reason for low or no reporting of sexual harassment. Conversely, low or zero reporting may be used to justify the passive approach taken by the LC. The 2013 act demands a broadening of its scope from being an idle body waiting to receive complaints to one that proactively undertakes prevention initiatives. Generating

awareness about the rights of women employees guaranteed by law and raising their confidence to report incidents of sexual harassment is an important component of the LC's work. This will help break the silence around the issue and enhance the reporting of sexual harassment. However, most LCs, including in Mumbai city and suburbs, have not been able to do outreach programmes due to a lack of monetary support from the central and the state governments that is mandated under Section 8 of the 2013 act.

Opportunities

It is important to note that in May 2016, there was an amendment to the 2013 act, which renamed the local complaints committee as the LC. This amendment implies that the LC is no longer conceived to be only a complaint resolving mechanism. It should work proactively at awareness generation about the rights of women employees in order to fulfil a key objective of the 2013 act in the prevention of sexual harassment. Prevention campaigns would be helpful in breaking the silence around the issue and enhance reporting of sexual harassment. Practically, the LC has the district government machinery backing it, which provides it a wide scope and reach. Compared to an IC, the LC has wide coverage, as its jurisdiction expands to the whole of the district as per Section 6(3) of the 2013 act.

It is pertinent to mention that the Mumbai city LC has drawn up a plan to build alliances with trade unions, workers' collectives, women's groups and organisations and various boards created for workers in the unorganised sector for generating awareness about its existence and on the issue of sexual harassment. However, it is at a formative stage due to lack of funds. Additionally, it is in the process of drafting recommendations to the state government for better implementation of the 2013 act. With trained social workers, lawyers and women's rights activists active in the district, the LC is in an enviable position to recommend actionable measures to the district administration. An interaction with a member of the Pune LC reveals that it, along with women's groups, has drafted a state-level policy for all LCs across the state, which is yet to be formalised.

Another possible area of intervention for the LCs is to receive complaints of sexual harassment against self-employed professionals, more specifically, in instances where the complainant is averse to registering a police complaint. In a reported complaint against a paramedic, the Mumbai city LC was able to obtain a letter of apology as a penalty for posting sexually coloured messages to a university student who sought treatment from him.

Risks

The risks can be deduced from court orders and media reports and from the gap in documenting LCs' functioning. A prominent one is with regard to the use of Section 14 under the 2013 act by the LC. Section 14(i) of the 2013 act states that if the LC concludes that the complaint was false and registered with a malicious intent, it can recommend action against the woman to the DO or the employer. The Gurugram LC used this provision and allowed a public display of its order regarding a false

complaint on a website. This order carries the LC's recommendation of issuing a written warning to the complainant. It mentions that the penalty was recommended for misleading it, on the basis of findings that there was a disparity between statements by the complainant to the LC and to the company's IC, including the length of the interval in reporting incidents of sexual harassment (*Shoneekapoor.com* 2018).

This is only one illustration that has come to public knowledge, while there is a lack of nationwide data available with respect to false complaints reported to the LCs. However, it can be stated that the arbitrary use of Section 14 by the LC, such as in the above case, without deeper thought, can discourage and frighten potential complainants from reporting incidents of sexual harassment. It is imperative for the LC to understand that complainants may not always be able to provide direct evidence in support of their complaint. Rather, it is clarified by Section 14(1) of the 2013 act that the mere inability to substantiate a complaint or provide adequate proof does not falsify the complaint. Hence, it is important for the LC as well as the IC to be clear about the thin line of distinction between the complainant's inability to prove a case and their deliberate falsity with malicious intent. Such a provision could act as a trap for the LC members if they do not understand the stealthy, private and subtle nature of sexual harassment and the hesitation on part of witnesses to depose before a formal mechanism such as the LC. Coupled with the prevailing context of low reporting of complaints, the impact of such a provision gets exacerbated.

An LC order within the jurisdiction of Delhi dismissed a complaint without inquiring into its merits, because it was lodged beyond the limitation period of three months as stipulated by Section 9(1) of the 2013 act. This order of dismissal was set aside by the Delhi High Court in 2019 (Banka 2019). While the court directed the LC to hear the complainant, the point to be noted is that Section 9(1) allows the LC to condone the delay by three months by recording reasons for the same, provided it is satisfied by the explanation submitted by the complainant for the delay in registering a complaint. The LC needs to interpret such sections in the 2013 act in a liberal manner considering ground-level issues that prevent women from reporting sexual harassment and by acknowledging the inevitable existence of hierarchy and power inequalities at a workplace, and the enormous courage it takes on the part of women to register a complaint. The LC ought not to dismiss complaints for exceeding the limitation period in a mechanical manner and, instead, delve deeper into the reasons for delayed reporting.

In another instance of mechanical treatment of complaints, an LC in Karnataka dismissed a complaint, stating that the said complaint did not fall within its jurisdiction, without citing reasons. In 2015, the Karnataka High Court set aside this order and directed the LC to issue an order recording reasons as required by Section 7 of the 2013 act, or else proceed with inquiry into the complaint (CLPR 2015). It appears that the LC was not able to issue a reasoned decision.

In addition to the mechanical treatment of complaints, the LCs sometimes overstep the limits of their legal mandate. The DO has a legal mandate to monitor the timely submission of

annual reports (Section 20), while the overall compliance is to be regulated by the appropriate government as per Section 23 of the act. In one instance, the Gurugram LC exceeded its jurisdiction by issuing notices to private sector organisations instructing them to file reports regarding compliance to the 2013 act (*BW People.in* 2018). Additionally, it appears that the Hyderabad LC dealt with a complaint from an organisation having more than 10 employees, falling within the purview of IC as per the 2013 act (*New Indian Express* 2020). These are instances of misplaced overzealousness of LCs due to a lack of understanding of the limits of their legal mandate.

Moving Forward

Working on the social and legal aspects of sexual harassment since 2005 has provided the author glimpses into struggles waged by women complainants for the realisation of their rights. These struggles are more difficult in the unorganised sector, with high casual labour that does intermittent jobs at extremely low wages or with uneconomical returns. There is a total lack of job security and social security benefits in the unorganised sector. The areas of exploitation are high, resulting in long hours, unsatisfactory work conditions, and occupational health hazards (National Commission on Self Employed Women and Women in the Unorganised Sector 1988).

The 2013 act is pertinent in this context as it is a social legislation to prevent and redress sexual harassment. Social legislations are an active process of preventing or changing the wrong course in society, with an aim to empower groups that are disadvantaged (Fairchild 1944; Gangrade 1978). The Vishaka guidelines and the 2013 act as well as their application to the unorganised sector are outcomes of a long-standing struggle by women's groups and organisations. The faulty implementation of the 2013 act in the unorganised sector will be damaging and regressive.

A grim scenario can be avoided by strengthening the LCs and providing them with adequate budgetary, infrastructural and logistical support. An adequate budget is crucial for the LC to fulfil its broad mandate of working at the preventive level, proactively through awareness-raising activities. This will not only empower LCs but also motivate women to lodge complaints of sexual harassment. The government would do well to document the functioning of LCs across the country in terms of their composition, nature of complaints received, orders issued, time taken for issuing orders, and other such related aspects. Gathering quantitative as well as qualitative data with regard to LCs' functioning, and focusing both on their efficiency and efficacy, is crucial.

In conclusion, the 2013 act definitely has the potential to carry forward the process of shifting power relations at work, as initiated by the Vishaka guidelines of 1997. This can happen provided the act is implemented in its spirit in the unorganised sector. As stated by Douglas (1993), only if we are seriously committed to ending the widespread violence and injustice in society at individual, collective, and institutional levels can the structures and forces that maintain and reproduce a patriarchal system be contested and transformed.

NOTES

- Female labour force participation in India has declined from 34% in 2006 to 24.8% in 2020, according to United Nations Global Compact (UNGC) India study (GCNI and Deloitte 2019).
- In 1985, Bhanwari Devi was selected and trained as Saathin (woman village level worker) under the Women Development Programme by the Government of Rajasthan. In 1992, as part of the state government campaign against child marriage, Bhanwari Devi attempted to stop the marriage of a one-year-old girl in a Gujjar family. Men from the community retaliated and punished her by intimidating her with sexual harassment, threats, imposing a socio-economic boycott on her family, which finally resulted in five men raping her in the presence of her husband. She faced numerous obstacles in her attempts to seek justice. Police were reluctant to record her statement or carry out an investigation, and doctors at two government health facilities refused to conduct a proper medical examination. Subsequently, the men were acquitted by the sessions court. The court said, a man could not possibly have participated in a gang rape with and in the presence of his nephew, Bhanwari Devi could be lying that she was gang-raped as her medical examination happened 52 hours after the incident and that her husband could not possibly have watched passively as his wife was being gang-raped because he had taken marriage vows which bound him to protect her. In 1992, under the collective name "Vishakha," a public interest petition was filed in the Supreme Court of India by women's organisations and groups against the State of Rajasthan, its Women and Child Welfare Department, its Department of Social Welfare, and the Union of India. The case was cited as an instance of sexual harassment in the context of work and it was said that in the absence of legislation on sexual harassment at workplace, women were left vulnerable and their rights unprotected.
- The metropolis of Mumbai is divided into two districts, that is, Mumbai city and Mumbai suburbs. Consequently it has two LCs.
- To provide protection against sexual harassment to women at the workplace, and for the prevention and redressal of complaints of sexual harassment.
- Office Memorandum F No 11013/2/2014-Estt (A-III) of 2015, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DoPT), Government of India, North Block, New Delhi.

REFERENCES

- Aggarwal, A (1992): *Sexual Harassment: A Guide for Understanding and Prevention*, Butterworths: Toronto.
- Alavi, A M (2017): "Most Women Still Don't Report Sexual Harassment at Work: Study," *Hindustan Times*, 4 January, <http://www.hindustantimes.com/delhi/most-women-still-don-t-report-sexual-harassment-at-work-study/story-8Efyv-12aScvKBsAKoAxy2l.html>.
- Banka, R (2019): "Delhi High Court Sets Aside LCC's Order on Sexual Harassment Complaint," *Hindustan Times*, 6 February, <https://www.hindustantimes.com/delhi-news/delhi-high-court-sets-aside-lcc-s-order-on-sexual-harassment-complaint/story-GhTqBORhMOy8SWUczabBBP.html>.
- Barua, R (2015): "Exclusive: Pachauri Harassment Survivor Shares Her Ordeal," *Quint*, 27 July, <https://www.thequint.com/india/2015/07/24/>

- exclusive-pachauri-was-given-a-pleasant-send-off-not-sacked.
- Business Standard* (2013): "Tarun Tejpal Steps Down for 6 Months as Editor of Tehelka," 20 November, http://www.business-standard.com/article/current-affairs/tarun-tejpal-steps-down-for-6-months-as-editor-of-tehelka-113112000997_1.html.
- BW People.in* (2018): "#MeToo: 3,000 Gurgaon Firms to Come Under Administrative Scanner," 2 November, <http://bwpeople.businessworld.in/article/-MeToo-3-000-Gurgaon-firms-to-come-under-administrative-scanner/02-11-2018-163576/>.
- Calamur, J (2017): "TVF Calls Allegations against Arunabh Kumar 'False', Promises 'Severe Justice'," *DNA*, 13 March, <http://www.dnaindia.com/entertainment/report-dna-exclusive-tvf-ceo-arunabh-kumar-rubbishes-allegations-of-sexual-harassment-2351358>.
- CFTI (2010): "The Workplace Sexual Harassment Survey," Centre for Transforming India, New Delhi.
- Chaudhuri, P (2006): "Sexual Harassment at Workplace: Experiences of Women in the Health Sector," Health and Population Innovation Fellowship Programme Working Paper, No 1, Population Council, New Delhi.
- Chhibber, D and N Mahajan (2018): "Who Safeguards Women's Right to a Safe Workplace? A Study of Local Committees Across India Using RTI Data," Research Report, Martha Farrell Foundation and PRIA International Academy.
- CII (2005): *Understanding the Levels of Women Empowerment in the Workplace: A Study*, New Delhi: Confederation of Indian Industries.
- CLPR (2015): "Mrs Anita Ravindra vs Sexual Harassment Complaints Committee and Others," Centre for Law & Policy Research, 2 November, <https://clpr.org.in/litigation/mrs-anita-ravindra-vs-sexual-harassment-complaints-committee-and-ors/>.
- Crasta, R (2017): "Scoop Whoop Reveals Private Emails of Complainant in Sexual Harassment Case," *Catch*, 13 April, <http://www.catchnews.com/india-news/tvf-2-former-employee-accuses-scoopwhoop-co-founder-of-sexual-assault-57486.html>.
- Dasgupta, R (2001): *Politics of Silence: Sexual Harassment at Workplace*, Kolkata: Sanhita.
- Datta, B (2012): *Nine Degrees of Justice: New Perspectives on Violence Against Women in India*, New Delhi: Zubaan.
- Dixit, S (2019): "A Critical Study of Principles and Procedure of Conciliation under Arbitration and Conciliation Act 1996," *Legal Service India.com*, <http://www.legalservicesindia.com/article/725/Principles-&-Procedure-of-conciliation-under-Arbitration-&-Conciliation-Act-1996.html>.
- DNA* (2017): "TVF Forms a Committee to Probe Sexual Harassment," 14 March, <http://www.dnaindia.com/india/report-tvf-forms-committee-to-probe-sexual-harassment-against-its-founder-2352580>.
- Dobash, R P and R E Dobash (1979): *Violence against Wives*, New York: The Free Press.
- Douglas, P (1993): "Men=Violence: A Pro-feminist Perspective on Dismantling the Masculine Equation," paper presented at the Second National Conference on Violence, Australian Institute of Criminology, Canberra, Australia, 15-18 June.
- D'Souza, F (ed) (2005): *Labouring Domesticity and Domesticating Labour: A Survey of Domestic Workers in Delhi and Their Vulnerabilities to Various Forms of Exploitation*, Delhi: Media House.
- Dutt, R (2016): "Here's the Bombshell Resignation Letter of The Taj Hotels Employee Who Alleged Sexual Harassment By the CEO," *HuffPost*, 11 November, <https://www.huffpost.in/2016/11/11/here-s-the-bombshell->

resignation-letter-of-the-taj-hotels-employ_a_21604093/.

- Dutta, S S (2019): "Disappointed With ICC, Sexual Harassment Survivors Turn to She-Box," *Indian Express*, 29 July, <http://www.newindianexpress.com/nation/2019/jul/29/harassment-victims-turn-to-she-box-2010886.html>.
- Fairchild, H P (ed) (1944): *Dictionary of Sociology*, New York: The Philosophical Library.
- Financial Express* (2017): "FIR against ScoopWhoop Co-founder Suparn Pandey after Woman Staffer Accuses Him of Sexual Harassment, Assault," 12 April, <http://www.financialexpress.com/india-news/after-tvfs-arunabh-kumar-fir-against-scoopwhoop-co-founder-suparn-pandey-accuses-him-of-sexual-harassment-and-assault/62519/>.
- Gangrade, K D (1978): *Social Legislation in India*, New Delhi: Concept Publishing Company.
- Ganz, K (2015): "What Happens When Women Complain of Sexual Harassment," *Livemint*, 30 June, http://www.livemint.com/Politics/v8RrLLY5QvAj4JgRrSrhRk/What-happens-when-women-complain-of-sexual-harassment.html#nav=also_read.
- GCNI and Deloitte (2019): "Opportunity or Challenge? Empowering Women and Girls in India for the Fourth Industrial Revolution," Report, Global Compact Network India and Deloitte.
- Gole, S Shinde (2017): "They Can't Stop Staring at You," *Times of India*, 12 February, <http://timesofindia.indiatimes.com/home/sunday-times/they-cant-stop-staring-at-you/article-show/57101713.cms>.
- Hindustan Times* (2015): "Pachauri Case Highlights Plight of Sexual Harassment Victims at Work," 27 February, <http://www.hindustantimes.com/comment/pachauri-case-highlights-plight-of-sexual-harassment-victims-at-work/story-mw-wkmeGpUDVVh6lZM9G7FI.html>.
- INBA and Netrika Consulting (2017): *Garima: Sexual Harassment at Workplace*, Delhi: Prabhat Books.
- Jaising, I (2004): *Law Relating to Sexual Harassment at Workplace*, New Delhi: Universal Law Publishing Company.
- Jha, A (2017): "Ex-employee Stories Show How TVF's Claims of Workplace Safety May Be Untrue," *Youth Ki Aawaz*, 13 March, <https://www.youthkiawaz.com/2017/03/arunabh-kumar-accused-of-sexual-harassment/>.
- Jose, Donita (2018): "Hyderabad: Complaint Committees Fail to Help Women against Sexual Harassment," *New Indian Express*, 16 October, <https://www.newindianexpress.com/thundaystandard/2018/oct/16/hyderabad-complaint-committees-fail-to-help-women-against-sexual-harassment-1886117.html>.
- (2020): "80 Per Cent Women in Low-income Jobs in Hyderabad Face Sexual Harassment at Work," *New Indian Express*, 2 March, <https://www.newindianexpress.com/cities/hyderabad/2020/mar/02/80-per-cent-women-in-low-income-jobs-in-hyderabad-face-sexual-harassment-at-work-210868.html>.
- Joseph, M (2016): "Just Another Sexual Harassment Story," *HuffPost*, 15 July, http://www.huffpost.in/manu-joseph-just-another-sexual-harass_b_10316528.html.
- Kapur, N (2009): "Aspirations of Law," http://nainakapur.blogspot.in/2009/03/aspirations-of-law_03.html?updated-min=2009-01-01To:00:00-08:00&updated-max=2010-01-01To:00:00-08:00&max-results=4.
- Kidiyoor, S (2014): "Pay Techie ₹12.5 Lakh For Sacking Her, Karnataka Labour Department Orders US-Based Firm," *Times of India*, 4 November, <http://timesofindia.indiatimes.com/city/bengaluru/Pay-techie-Rs-12-5-lakh-for-sacking-her-Karnataka-labour-department-orders-US-based-firm/articleshow/45034667.cms>.

- Lawyers Collective (2002): *Sexual Harassment at Workplace: India Study Report*, New Delhi: International Labour Organisation.
- MacKinnon, C (1979): *Sexual Harassment of Working Women: A Case of Sex Discrimination*, New Haven, CT: Yale University Press.
- Mantri, G (2016): "I Was Sexually Harassed by a Colleague, Fired by My Company," A Bengaluru Professional Writes," *NEWS Minute*, 23 August, <http://www.thenewsminute.com/article/i-was-sexually-harassed-colleague-fired-my-company-bengaluru-professional-writes-48721>.
- Millett, K (1970): *Sexual Politics*, New York: Columbia University Press.
- Mittal, P (2018): "Sexual Harassment at Workplace: SC Seeks States' Response on Implementation of Law," *Live Mint*, 9 January, <https://www.livemint.com/Politics/H6byUiQdRnrD2M-MZH3HtO/Sexual-harassment-at-workplace-SC-seeks-states-response-on.html>.
- Mohanty, P (2019): "Labour Reforms: No One Knows the Size of India's Informal Workforce, Not Even the Govt," *Business Today*, 15 July, <https://www.businesstoday.in/sectors/jobs/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt/story/364361.html>.
- National Commission on Self Employed Women and Women in the Unorganised Sector (1988): "Shramshakti: Report," New Delhi.
- Neeta, N and I Mazumdar (2010): "Study on Conditions and Needs of Women Workers in Delhi," Centre for Women's Development Studies.
- New Indian Express* (2020): "Hyderabad LCC Got Four Complaints in 2019," 2 March, <https://www.newindianexpress.com/cities/hyderabad/2020/mar/02/hyderabad-lcc-got-four-complaints-in-2019-2110870.html>.
- PTI (2018): "Only 29% Districts Have Local Committees to Address Sexual Harassment at Workplace," *Indian Express*, 24 October, <https://indianexpress.com/article/india/only-29-pc-districts-have-local-committees-to-address-sexual-harassment-at-workplace-5416906/>.
- Rai, A (2017): "Single Mother Moves Court against Boss over Abuse at Workplace," *India Today*, 1 January, <http://indiatoday.intoday.in/story/single-mother-moves-court-over-workplace-abuse/1/846984.html>.
- Roy Ghatak, A (2017): "Misleading Dichotomy," *Development and Cooperation*, 4 September, <https://www.dandc.eu/en/article/indias-informal-sector-backbone-economy>.
- Saheli (1998): "Another Occupational Hazard: Sexual Harassment and the Working Woman," Report, Delhi.
- Sakshi (2001): "Study on Sexual Harassment at Workplace," Delhi.
- Salve, P (2013): "India's 93%, 437 Million That Holds up the Economy but Lacks a Voice," *IndiaSpend*, 12 April, <https://archive.indiaspend.com/sectors/indias-93-437-million-majority-that-lacks-a-voice>.
- Sarpotdar, A (2016): "Sexual Harassment of Women at Workplace: A Socio-legal Study of Organised Sector in Mumbai," Diss, Tata Institute of Social Sciences.
- SARDI (1999): "Women Workers: Inequalities at Work," Report of the Survey of Working Conditions of Women Workers in the Industry, South Asian Research and Development Initiative, New Delhi.
- Scroll.in* (2017): "Will Take Action If Found Guilty: ScoopWhoop Responds to Sexual Harassment Case against Co-founder," 12 April, <https://scroll.in/latest/834426/will-take-action-if-found-guilty-scoopwhoop-responds-to-sexual-harassment-case-against-co-founder>.
- Sen, R (2015): "What the Pachauri Case Reveals: Men Can't Take a Polite No for an Answer," *Firstpost*, 9 March, <http://www.firstpost.com/living/pachauri-case-reveals-men-cant-take-polite-no-answer-2143239.html>.
- Sharma, R (2014): "47% of Indian Women Find Sexual Harassment at Workplace Big Issue," *Business Insider India*, 4 November, <http://www.businessinsider.in/47-Of-Indian-Women-Find-Sexual-Harassment-At-The-Workplace-A-Big-Issue/articleshow/45070664.cms>.
- Shoneekapoor.com* (2018): "Complainant Warned in Sexual Harassment at Workplace Complaint by LCC Gurugram," 1 November, <https://www.shoneekapoor.com/complainant-warned-in-sexual-harassment-at-workplace-complaint-by-lcc-gurugram/>.
- Shukla, A (2015): "Sexual Harassment in the Work Place," *Citizen*, 5 July, <http://www.thecitizen.in/index.php/OldNewsPage/?Id=4268&Sexual/Harassment/in/the/Work>.
- Social and Rural Research Institute (2012): "Sexual Harassment at Workplace in India," A study supported by Oxfam India, Delhi: SRI.
- Sood, A Mehta (2006): "Vishaka v State of Rajasthan," *Litigating Reproductive Rights: Using Public Interest Litigation and International Law To Promote Gender Justice in India*, New York: Centre For Reproductive Rights, pp 58–65.
- Stanko, E A (1988): "Keeping Women in and Out of Line: Sexual Harassment and Occupational Segregation," *Gender Segregation At Work*, S Walby (ed), Milton Keynes: Open University Press, pp 91–99.
- Times of India* (2017): "Several People Accuse TVF CEO of Sexual Harassment," 15 March, <http://timesofindia.indiatimes.com/india/several-people-accuse-tvf-ceo-of-sexual-harassment/articleshow/57640911.cms>.
- Vijayraghavan, K and L Philip (2017): "Indian Hotels CEO Rakesh Sarna Gets Clean Chit in Harassment Case," *Economic Times*, 21 March, <http://economictimes.indiatimes.com/news/politics-and-nation/indian-hotels-ceo-rakesh-sarna-gets-clean-chit-in-harassment-case/articleshow/57741930.cms>.
- Vyas M and K Babar (2015): "Key IL & FS Executive in Trouble Over 'Sexual Harassment' Charges," *Economic Times*, 19 August, <http://economictimes.indiatimes.com/news/company/corporate-trends/key-ils-executive-in-trouble-over-sexual-harassment-charges/articleshow/48536006.cms?inttarget=no>.
- Walby, S (1990): *Theorizing Patriarchy*, Cambridge: Basil Blackwell.
- Yugantar Education Society (2003): "A Research Study on the Nature, Incidence, Extent and Impact of Sexual Harassment of Women at Workplace in the State of Maharashtra," Nagpur.

CASES CITED

- Global Health Private Limited v Local Complaints Committee, District Indore and Others* (2019): Writ Petition No 22317 of 2017, High Court of Madhya Pradesh judgment dated 16 September.
- Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University* (2014): Writ Petition No 3349, 3450 and 3451 of 2013, Bombay High Court judgment dated 13 June.
- Vishaka Guidelines and Others v State of Rajasthan and Others* (1997): SCC, SC, 6, p 241.

Economic & Political WEEKLY

Technology and Society

August 24, 2019

- Narratives of Technology and Society Visioning in India
 India's Green Revolution and Beyond: Visioning Agrarian Futures on Selective Readings of Agrarian Pasts
 Whose Knowledge Counts? India as a Reluctant Leader in Agroecological Research
 The Fight against Mosquitoes: Technoscientific Vision of Advanced Biological Control
 Technology Vision 2035: Visions, Technologies, Democracy and the Citizen in India
 Collective Dreaming: Democratic Visioning in the Vikalp Sangam Process

- Pankaj Sekhsaria, Naveen Thayyil
 —Richa Kumar
 —C Shambu Prasad
 —Mahendra Shahare
 —Pankaj Sekhsaria, Naveen Thayyil
 —Ashish Kothari

For copies write to:
 Circulation Manager,

Economic & Political Weekly,

320–322, A to Z Industrial Estate, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013.

email: circulation@epw.in