

**Understanding
the Efficacy of
The Sexual
Harassment of
Women at
Workplace
(Prevention,
Prohibition and
Redressal) Act,
2013 in the
Unorganised
Sector—
Insights from
Maharashtra**

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INTRODUCTION

It is estimated that 92% of women in India work in the unorganised sector (IWWAGE, 2021). Women's access to education is lower than men's, and they primarily work as unskilled labourers. For most women, the home and children are at the centre of their work-related decisions. They choose to work closer to their homes or inside their homes, and part-time and therefore also low wage (Banerjee, 2019). It indicates that most Indian women work in non-secure jobs with poor working conditions and no social safety and that they deal with several difficulties during work.

A study titled 'Sexual Harassment at Workplaces in India 2011-2012', jointly conducted by Oxfam India and the Social and Rural Research Institute (a wing of IMRB International), in 2012 indicated a high incidence of sexual harassment among working women in both the organised and unorganised sectors. It also reports that the maximum number of sexual harassment cases was reported among labourers (29 per cent), domestic helpers (23 per cent), and small-scale manufacturing units (16 per cent).

The Vishakha Guidelines, drafted in 1997, and now The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, serve as the first civil law remedy for the incidence of sexual harassment at the workplace. The law came into force to fulfil three purposes—prevention, prohibition, and redressal, and applies to the organised and unorganised sectors. For the unorganised sector, the Act provides a redressal mechanism in the form of a Local Committee (hereafter referred to as LC) that must be constituted at a district level. The LC can receive complaints from establishments where the Internal Committee (hereafter referred to as IC) has not been constituted as the number of workers is less than ten. The current study aims to understand the functioning of this redressal mechanism in Maharashtra.

REVIEW OF LITERATURE

The review of available literature reveals that women working in the unorganised sector are the most vulnerable group in the labour force of India (National Commission for Enterprises in Unorganised Sector report, 2006). Often, these women are the sole earning member of their families. It is generally assumed that women working at agriculture farms or at construction sites, and domestic workers are at greater risk of being exposed to sexual harassment at the workplace (Abhyankar, 2021). Lack of awareness of LCs, stigma, embarrassment, and fear of backlash are some of the factors that contribute to low reporting of sexual harassment in the workplace (Singh, 2021).

In a report submitted to the National Human Rights Commission based on a study conducted in Delhi, Haryana, and Odisha, the Social Action Forum for Manav Adhikar (SAFMA), in 2019, recorded similar hurdles deterring women from reporting incidents of sexual harassment to the LCs.

Although this mechanism is available, many informal workers are unaware of the existing legislation (UN Women, 2020). The lack of information is a major hurdle in reporting these cases. This review of literature reveals that there is a dearth of data about the functioning of LCs, which is a vital forum for women workers in the unorganised sector.

As a working member of the LC at the Pune district, the researcher sees some challenges in extending the law to the unorganised sector. Hence, it was imperative to understand the functioning of the LCs and the challenges they faced, which may help identify gaps and provide input for further strengthening of LCs.

The current study is a component of the researcher's PhD project that aims to build a deeper understanding of the lived experiences of the people who are implementing the

law—LC members in this case—and people affected by the process of law, specifically women workers in the unorganised sector.

OBJECTIVES OF THE STUDY

The study is conceptualized as socio-legal research that applies a feminist-legal approach. It is located at the intersection of the law and women's studies. The researcher has been actively engaging herself on this issue by working towards raising awareness, serving as an external member of Internal Committees at a few workplaces, and helping these workplaces implement the law in its spirit. This experience shows that it is possible (although not easy) to work within the framework of the law at workplaces in the organised sector. The toughest challenge is in extending the law to women workers in the unorganised sector. This is the primary motivation behind this study.

Feminist jurisprudence as well as campaigns led by women's movements have made remarkable contributions in bringing about progressive legal reforms in India. By examining the implementation of one such law, the researcher desires to further this feminist agenda. The study aims to understand the functioning of the Local Committees in Maharashtra and the challenges faced by them, with a view that findings will help strengthen this vital forum. This study was undertaken with the following objectives:

- Understand the functioning of LCs and the challenges faced by them toward strengthening of LCs
- Seek insights on ambiguities in law in the unorganised sector and recommendations for rectification

METHODOLOGY

This qualitative research project employed semi-structured interviewing techniques. Categories of key informants are as described here.

- **Interviews of present or former LC members:** Ten LC members were interviewed to understand how LCs functioned and the challenges they faced. Their suggestions for strengthening the LCs were recorded.
- **Interviews of legal experts regarding ambiguities in the law:** Five interviews with experts discussed ambiguities in the law, and what needed to be done to seek clarity and offer suggestions to strengthen the law.

A total of 15 interviews were conducted as listed; however, the total number of respondents is 12, as three respondents belong to both categories. They are experts and are/were LC members.

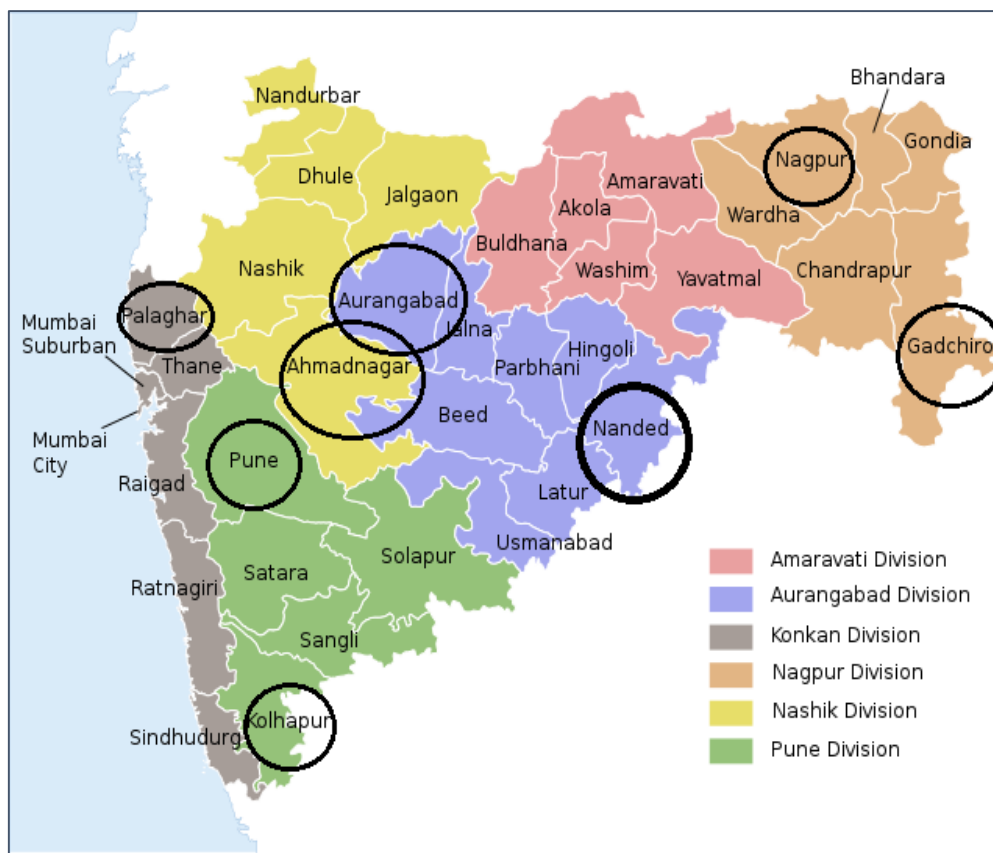
The researcher gathered information of the LC members through her own network since this level of updated information is not available in the public domain. Interviews were conducted after seeking the consent of the respondents. A consent letter provided information to the respondents about the research and explicitly sought their consent. A few of them recorded their consent in written form, while most of them preferred to provide consent /verbally on record.

DATA COLLECTION AND DATA PROCESSING

The interviews for this study were conducted online and recorded with the consent of the respondents. The researcher transcribed the interviews, which were conducted in Marathi and translated into English. The content of the transcripts was analysed and key points relating to the objectives of the study recorded.

LOCATIONS OF THE STUDY

The study was carried out entirely in Maharashtra. The LC members working at different district locations agreed to online interviews. The locations of respondents interviewed are Gadchiroli, Nagpur, Kolhapur, Palghar, Ahmednagar, Nanded, and Pune (pointed out in the map). Two more locations cannot be revealed since two respondents consented to the interview under the condition of anonymity.



THE DISCUSSION—FUNCTIONING OF LCS

The inquiry was focused on the status of the functioning of LCS to understand aspects such as the selection process of members, the support extended by the district administration, the provision of honorarium and required resources, and the challenges faced by members while working in the forum. Out of 10 respondents, five have been serving as chairpersons of their respective LCS. Eight of 10 respondents have been part of the LCS for the last seven to eight years. The major findings from the interviews are as follows.

Selection of LC Members

In most places, the LCS were formed in 2015-16. Key Informants (hereafter referred to as KI) KI 4 and KI 8 stated that there was an advertisement in the newspaper inviting applications to their respective districts. They sent their applications and were appointed. Two respondents, KI 2 and KI 4, learned from their acquaintances that the district administration invited applications for appointment to the LC. They applied and were appointed. Members from six locations stated that since they were already working in the field, they were approached by the district administration and were appointed (KI 1, 2, 6, 7, 9, 12).

The researcher also wants to record her own experience. There was an advertisement in the local newspaper for the appointment to the LC. After sending the application, a long checklist of documents was sent to the candidates for compliance, and police verification was made mandatory. The selected candidates were interviewed by the District Officer (hereafter referred to as DO) under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013, hereafter referred to as the PoSH Act.

This shows that the process varies at different places. There is no uniform procedure for the selection, and neither is this transparent. The common aspect is that appointment letters were given to all members across locations.

However, bringing in the right members on board is important beyond mere appointment. The expert felt that it was the responsibility of the district administration to appoint the right people on board. The “right people”, as described by KI 11 are, “Sensitive and unbiased people with a clear understanding of the procedure.” The district administration should strive to bring in such people through active engagement with law colleges and eminent social organisations. She added that there was a need to bring in people from women’s organisations and people belonging to the judiciary, such as retired magistrates at district courts since they were aware of legal procedures.

Training of LC Members

There is no standard training/capacity-building process institutionalised in the state. KI 2 informed the researcher that a copy of the PoSH Act was given to LC members in the first meeting but there was no training imparted. As informed by KI 12, the District Officer explained the law in the first meeting. Respondent KI 6, who was appointed as an LC member recently, stated that there was a plan in progress for training. KI 7 stated that since members were experienced, no training was needed. Five members mentioned that the Maharashtra State Women’s Commission had organised a training a few years ago, to which the Chairperson and one LC member were invited. However, they could not attend it as they did not receive the information in advance and there was no provision for TA/DA, so they could not travel to Mumbai to attend the training. KI 1 informed the researcher that she attended training organised by the State Women’s Commission at the regional level.

Half of the respondents opined that refresher training was required since not all members were on the same page. A few of them were concerned about the LC stepping out of its jurisdiction.

KI 5, an LC member and an expert consulted for this research, said, “They (LC members) need to understand the boundaries of the LC. We (LC) are not an appellate authority; we are at par with the IC (Internal Committee). We are not the monitoring authority.”

KI 12 stated that a complainant, aggrieved with the decision of an IC on an issue, approached their LC. It was tough for her to convince other members that LC is not the appellate authority. Respondents expressed concerns with the attitude of other LC members, such as asking questions implying that the complainant was at fault.

KI 11 (an expert) said, “Members need to be sensitive and unbiased; they must reason well while making any recommendation, and for that training is required.”

According to KI-9, two complaints with their LC were resolved through mediation by the Collector. The said law describes the conciliation process to be carried out by the LC on terms mutually agreed upon by both parties. However, a resolution of this kind of mediation by a person in authority is similar to an out-of-court settlement. This further highlights the need for training to enable LC members to follow stipulated legal procedures.

Respondents expressed the need for a forum for sharing, cross-learning, and upskilling at least at the level of the administrative division in the state. Two respondents (KI 1 and 2) think that women’s studies centres in universities could be accorded this responsibility as a part of their extension work.

Lack of Comprehensive Guidelines

There are no guidelines available for the functioning of LCs. All the experts consulted for this study, except one, felt that such a document with clear Standard Operating Procedures, including how to write an inquiry report, was essential. Respondent KI 5 stated that a simplified version of the law in the local language with clear descriptions of roles and responsibilities of LCs and DO/appropriate government officer should suffice. According to her, “People do not read law (and available material) so it may confuse things further. So, simplification of law is sufficient.” She further added that LC members should update their knowledge continuously by reading relevant case laws.

Inadequate Provisioning to the LCs

An analysis of administrative aspects of LCs was carried out to understand what enabled and/or impeded their proper functioning. The following aspects describe findings on facilities provided to LCs.

- **Limited administrative support:** All LC members reported that the District Women and Child Development Department (hereafter referred to as WCD) provided a person for administrative support. This person would receive complaints, do required correspondence, organise meetings, and take minutes. There was no full-time officer nominated for this work; the appointed person looked after this work in addition to his/her regular job responsibilities. KI 3 recalled that during her tenure, the person supporting the LC did not have access to the complaint portal, which caused a delay in receiving complaints. She added, “The resources—human and time—were never sufficient to complete an inquiry in 90 days (as prescribed by the law).”
- **No separate office space for LCs:** No LC has a separate office space; LCs meet at the WCD office, the DO office, or the conference hall in the collector's office. Many

respondents expressed concerns over disturbance and lack of privacy at their meeting places. KI 2 said, “The place (provided for meetings in the DWCD office) was not good as it lacked privacy (which is essential) while talking to aggrieved women.” At all the locations except one, the DO in charge was a woman. As stated by KI 5, “Earlier, the DO was a lady officer, so we used to meet in her cabin. Now the charge of DO is with a male officer, so I have never approached him about conducting LC meetings in their office. We then started meeting in the WCD office.”

- No honorarium and conveyance allowance to members: No LC member in any location, except one, has ever received an honorarium or conveyance expenses. As stated by KI 2, “Since we could afford it, we could work. But younger people would not turn up.” Respondents also expressed concern about the lack of acknowledgment for this work. According to KI 1, “There is no award for fulfilling this responsibility. This does not need to be in monetary terms, but there is no recognition even for the work.” Lack of an honorarium and no recognition for work are factors that deter younger people from joining LCs.

Apathy of State Government Representatives

Through the District Officer, the government is primarily responsible for promoting awareness of the POSH Act's requirements among the public. Rule 13 of the PoSH Act elaborates on the manner of organising workshops, but it is silent on the DO's involvement in it. As per Section 23 of the PoSH Act, the government must monitor the implementation of the POSH Act and maintain data on the number of cases filed and disposed of. Additionally, Section 24 requires the Central and State Governments to:

- develop relevant IEC (information, education, communication) material and training materials, and organise awareness programmes to advance the understanding of the public on provisions of the POSH Act.

- formulate orientation and training programmes for members of the LCs.

Although prescribed by law, such programmes were hardly organised at any locations. LC members who pushed for it were often declined due to lack of funding. As described by KI 1, “Funds should not be an issue since such work does not require extensive budgetary provision. But this (LC) is not the priority of the district administration.” KI 5 sees it as “a lack of bureaucratic will; the work does not require much money, but it is about allocating time and making a plan.”

According to KI 2, “The DO did not attend any LC meeting except the hearing of a high-profile case.” At one location, there were two deputy collectors involved in LC work. One was the DO; the other was a representative of the state. However, as per the PoSH Act, a member from a municipal ward is to be appointed. As such there are two deputy collectors in that LC, but as reported by KI 5, “They don’t do anything, their involvement is near zero.”

Respondents raised concerns regarding the representatives of the WCD department. KI 4 recalled her frequent arguments with the WCD officer also nominated as an LC member, “He (the WCD officer) was of patriarchal mentality and would often blame women for the violence they faced.” This bureaucratic indifference makes the journey difficult for LC members, who are motivated and committed to their duties. This apathy also leaves the most vulnerable women completely unsupported.

Concerning budget provision, Section 8—Grants and Audit—of the POSH Act says that the state government may set up an agency and transfer any grants, and this agency shall pay, to the District Officer, such sums as may be required for payment of fees or allowances to LC members. However, as pointed out by KI 11 (expert), there is no rule made in connection to this section. She further stated, “Clear rules can be drafted if there is any ambiguity in the law.”

The point of non-involvement or apathy of the state government representative was brought up repeatedly by majority of the respondents during the interviews. As KI 11 described, “The right is given by the law, but there is poor awareness of how to ascertain it. There are no efforts being made on behalf of the government to generate awareness.” Inadequate support coupled with apathy of the state government appear to be the major factors impeding the effective operation of LCs.

Working of LCs

Although there is inadequate support and no honorarium as described earlier in this study, respondents informed the researcher that the LCs managed to execute their work. The discussion revealed significant aspects as described below.

- Frequency of LC meetings: The LCs meet regularly at a predetermined frequency. The LCs meet twice a month at one location and monthly at another. They meet once every three to four months at other locations. The frequency of the meetings increases as needed, especially when there are complaints. Most LCs have a WhatsApp group, and meeting timings and locations are communicated through this.
- Prevention: The researcher inquired about efforts for the prevention of sexual harassment in the workplace, especially in the unorganised sector. All respondents expressed concern over poor awareness of the law in the sector. Only two members said that there was some effort toward this. KI 5 stated that WCD staff organised awareness programmes at the grassroots level. KI 4 added that the DO had called a meeting of the workplaces they knew with less than 10 employees. Since the law was applicable to the unorganised sector, the meeting discussed the measures that needed to be taken when a complaint was registered, including an action taken report. However, nothing happened after this. KI 5 stated that the DO or government officers expected LC members to organise such programmes. While LC members could

address such events, the district administration expected LC members to take care of logistic arrangements such as identifying potential groups, communicating with them, and organising the programme. With no administrative support and no budgets, it is practically impossible for LC members to organise such awareness programmes.

- Redressal: The LC is constituted as a redressal forum; it has jurisdiction as described here.
 - Complaints from workplaces in the unorganised sector, with less than 10 employees
 - Complaints against the employer in the organised sector

The LCs have been receiving complaints, but not a single complaint is from the unorganised sector. KI 5 said, “The mechanism is failing, it is not reaching the women who need it the most.” The complaints received are either against employers or where the aggrieved women needed support to go back to their IC or needed information on the appropriate channel for redressal.

LCs conducted inquiries when complaints were raised in their jurisdiction. Here are some key recommendations given by LCs upon the conclusion of the inquiry.

- KI 3 informed that in a complaint alleging wrongful termination of the aggrieved woman by the employer in connection to a sexual harassment complaint raised by her, the respective LC recommended that the complainant be reinstated.
- KI 5 informed that while conducting an inquiry into a complaint against a physiotherapist, it was also observed that the respondent did not have the required degree. The WCD informed the concerned authorities, and he was barred from practice. In another complaint alleging inappropriate touch and messaging, the LC recommended a formal apology.

- Few women had approached the LCs directly since the IC was not constituted at their workplace. In such cases, the LC called the employers and instructed them to constitute IC and conduct the inquiry.

Although all these committees have been in place for over six to seven years, not a single complaint from the unorganised sector has been recorded so far. No budgets, little or no involvement of the DOs, and inadequate facilities for functioning are the major difficulties as stated by the respondents.

Ambiguities in the Law

Another objective of the study was to investigate ambiguities in the law in general and the unorganised sector in particular. Interviews with experts shed some light on what needed to be done.

- Jurisdiction of the LC: An LC's jurisdiction is clear in geographic terms—a district. However, there is no data available on workplaces in the unorganised sector. Such a database will give a clear idea of the jurisdiction of LCs in the unorganised sector. Although members at a few locations followed up on this, they have not been successful. Respondents cited a lack of coordination among the departments as a possible reason for this.
- Grants and Audits: As per section 8 of the PoSH Act, 'Grants and Audits', the state government must set up an agency and transfer funds to ensure implementation of the law. KI 11 pointed out that there was no rule regarding the implementation of this clause. The practical implication of no rule in this regard is the non-availability of funds for LC-related work. The study has found that there is hardly any work being carried out for prevention/awareness generation in the unorganised sector.

Summary

The findings highlight multiple challenges faced by LC members owing to lack of training, lack of funds, inadequate administrative support, and apathy of the district administration. Incorporating pertinent rules is also urgently required to resolve ambiguities in the law, particularly in the grants-related section. The lack of a database on workplaces in the unorganised sector is required for further clarity on the jurisdiction of the LC beyond its geographical limits. The absence of even a single complaint from the unorganised sector is rather alarming, and efforts are required to extend implementation of the law to the unorganised sector.

CONCLUSIONS AND RECOMMENDATIONS

As the Act specifies, sexual harassment at a workplace is a violation of the fundamental rights of a woman including the right to equality under Articles 14 and 15 of the Constitution of India, the right to life and personal liberty and the right to live with dignity under Article 21 of the Constitution, and rights to practice any profession or occupation, with a right to a safe environment. The problem is far more severe in the unorganised sector where women workers in low-paid employments are more vulnerable, with fewer protections and limited access to social security.

Although the law has provided a redressal forum in the form of LCs, it is unfortunate that the study found that no complaint from the unorganised sector was recorded at any of the locations of the study. The interviews of LC members and law experts across Maharashtra provided insights into the functioning of LCs in the state and actions required to strengthen the LCs to extend the law effectively to the unorganised sector.

The study's findings lead to the following recommendations for the relevant authorities.

- **Selection process:** The district administration should make efforts to appoint people who have the right perspective on this issue and clear procedural understanding. These include social welfare organisations, women's organisations, and professors at law colleges.
- **Capacity building of LC members:** As apparent from the interviews, in-depth training is required for members to develop a right perspective and procedural understanding. A few years ago, the Maharashtra State Women's Commission made such an effort. With the assistance of subject-matter experts, a training system with workshops that can share experiences and refresher training at the divisional level

needs to be created. The nodal department (WCD) should institutionalise the LC member training programme.

- **Prevention:** The state government/district administration is responsible for the dissemination of information on legal provisions to women in the unorganised sector. The state machinery must conduct awareness programmes with employers and workers in the unorganised sector, addressed by LC members. Simple educative material in the local language should be made available for dissemination.
- **Provision of budgets:** A lack of funds is a major hurdle in the effective implementation of the law. A budget needs to be provided for several aspects, such as facilities in LCs, honorariums to LC members, dedicated administrative support to LCs, training programmes, and orientation sessions for nodal officers at the block level, to mention a few. The state government should treat it as a priority. To address this problem at a strategic level, there is a need to create an appropriate rule to implement section 8 of the law, 'Grants and Audits'. The State Women's Commission should follow through this with the appropriate government.
- **Online facility:** As per the rule 14 of the PoSH Act, all workplaces must submit the annual report to the DO with respect to implementation of this law. There is a need to create an online facility for the submission of annual reports. At present, reports are submitted in hard copy, which has little or no use for the purpose of monitoring. The WCD Commissionerate should create an online facility that can be uniformly applicable across Maharashtra.
- **Database of workplaces in the unorganised sector:** The WCD ministry and/or Commissionerate should coordinate with all concerned departments to create a database of workplaces in the unorganised sector within the district, which can be

followed up by authorities. This will provide clarity on the LC's jurisdiction across workplaces.

Despite obstacles, most respondents of this study are striving to engage with the district administration to bring positive change—this may be the sole enabling element allowing LCs to continue their work at this point. The rights granted by law will only exist on paper unless there is a political and administrative commitment to make them a reality.

ANNEXURE

I) Key Informant Interviews (KII) of following respondents were conducted. Sample size—Ten LC members and five experts

Sr. No.	Name	LC Member	Expert	Location
1	Dr. Smita Avachar	√		Aurangabad
2	Ms. Shubhada Deshmukh	√		Gadchiroli
3	Adv Rama Sarode	√	√	Pune
4	Adv Smita Singalkar	√		Nagpur
5	Anonymous	√	√	Anonymous
6	Ms. Meena Lokhande	√		Palghar
7	Ms. Pallavi Korgaonkar	√		Kolhapur
8	Adv Vishal Jadhav	√	√	Pune
9	Dr. Laxmi Puranshettywar	√		Nanded
10	Adv Nisha Shivurkar		√	Ahmednagar
11	Dr. Jaya Sagade		√	Pune
12	Anonymous	√		Anonymous

II) Interview Schedule for LC Members

- Name, Age, Education, Relevant experience, Years active as an LC member
(caste/religion)
- Functioning of LCs during the tenure, including frequency of meetings, meeting place, and facilities provided (such as a separate room, administrative assistance, and honorarium for work)
- Training/guidelines available for LC members
- Work undertaken by the LC and district administration
 - Prevention (efforts to raise awareness)
 - Prohibition (declarations)
 - Redressal (inquiries—number, nature of cases, actions recommended, challenges)
- Challenges/difficulties faced while working as an LC member
- Thoughts and suggestions on strengthening of LCs (capacity building of members, budget provisions, facilities)

III) Interview Schedule for Experts Lawyers/Activists/Practitioners)

- Name, Age, Education, Relevant experience, Years active, Caste, Religion
- How do you see implementation of this law in general and in the unorganised sector in particular?
- Do women face any hurdles in reporting sexual harassment? What are those? (In general, and to the unorganised sector in particular)
- How do you see the said law with reference to the unorganised sector?
 - Strengths and weaknesses
 - Ambiguities

- Challenges for women workers in the unorganised sector
- What are your suggestions to overcome these weaknesses, ambiguities, or challenges?
- How do you see the functioning of LCs in your district?
- Is there a guiding framework available for LCs? Do you see any such need? What are your suggestions for the same?

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About the author:

Preeti Karmarkar is the Chief Functionary of Nari Samata Manch, Pune. She was a recipient of the Rajaram Fellowship in 2022.

About this study:

Using field interviews, the author assesses the effectiveness of Local Committees in implementing India's workplace sexual harassment law and providing access to justice for unorganised, self-employed and freelance workers as well as those employed in small organisations.