



National Level Consultative Workshop on the Implementation of the Sexual Harassment at the Workplace Act 2013, for India's Domestic Workers

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Domestic workers are among the most unorganised and widespread workers around the world. The estimated numbers of Domestic Workers in India are 4.2 million, according to official estimates (although several civic society organisations agree the numbers are far higher). Despite the fact that the profession is among the most long-standing in the country, as well as internationally, they largely remain an informal workforce. In India, they are largely underpaid, with few benefits, and hardly any legal and social protection.

Since they work in homes, and private spaces, domestic workers' work, their workplace and their employers are largely invisible, making them more vulnerable to injustice, abuse and violence. They're also very vulnerable to sexual harassment at the workplace. The issue is compounded by a lack of education, lack of awareness of the law, fear of loss of livelihood and associated stigma, caste and class divide. Another issue they face is that there are improper redressal mechanisms, and the apathy of policymakers, employers and trade unions makes it harder for domestic workers to access justice.

Martha Farrell Foundation (MFF) has been working towards making workplaces safer for all, over the last five years, with projects in Gurgaon, Faridabad and South Delhi with informal women workers. As a part of this initiative, MFF collaborated with PRIA (Society for Participatory Research in Asia) and the Embassy of Netherlands in India for a project titled Ending Sexual Harassment: Making Institutions Accountable towards Women Workers in the Informal Sector.

As a part of this project, the National Level Consultative Workshop on the Implementation of the Sexual Harassment at Workplace Act 2013 for Domestic Workers in India was organised, with the objective of understanding the implementation of the Sexual Harassment of Women at Workplace Act, 2013

across the different states of India, the challenges to implementation and the best practices to overcome the challenges.

The audience attending the workshop belonged to different states, with stakeholders from Kerala, Telangana, Haryana, Delhi and even members belonging to Tibetan communities, coming together to hold the consultation, deliberate and find solutions to the issue.

The Session Design

The consultative workshop took place over 2 days, with the following broad agendas set for each day:

Day 1

- Understanding the Sexual Harassment at Workplace Act 2013 and situating the domestic worker within the context of the Act
- Focus group discussion I on the issue and what mechanisms can be used to strengthen the act and create safer workplaces for domestic workers
- Focus group discussions II on methods of creating more awareness about the law among domestic workers, and the kind of relief that can be offered to domestic workers
- Talk by Mr. Amod Kanth who is the chairperson of DWSSC (Domestic Workers Sector Skill Council), on the status and struggles of domestic workers in the country

Day 2

- A panel discussion on the current situation for domestic workers' welfare and the way forward with Dr. Bharti Sharma (Former chairperson, South-East Delhi Local Committee), Sonia George (Secretary, Self-Employed Women's Association Kerala) and Dr. Ellina Samantroy (Fellow and Coordinator - Centre for Gender and Labour at V.V. Giri National Labour Institute), followed by a short Q/A session with Dr. Rajesh Tandon
- A panel discussion with Dr. Rajesh Tandon (Founder-President, Participatory Research in Asia) and Aya Matsuura (Technical Expert at ILO Decent Work Team for South Asia in New Delhi)

Key Learnings from Day 1

Themes discussed during Focus Group Discussion I

| <u>Group 1</u> | <u>Group 2</u> | <u>Group 3</u> | <u>Group 4</u> |
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| <p>The Act excludes genders other than women in its ambit.</p> <p>We can't assume that men who work as domestic workers can't be sexually harassed.</p> <p>Domestic work is identified as performed within the home in the Act, but the workplace of domestic workers expands to include child rearing, running errands, driving, ironing clothes and gardening.</p> <p>Since the area of domestic work has expanded over the years, even an ironing lady should be seen as domestic help as she is ironing clothes for a household in exchange of money.</p> <p>The Act has also not mentioned what relief/compensation will be given to the aggrieved (especially domestic workers), and whether the compensation should be given by the employer or the governing body in question.</p> | <p>ILO Convention 189 doesn't include part time domestic workers under the definition of domestic workers. But the same respect and consideration should be given to a worker, whether the work is part-time, full-time, or even just for one hour.</p> <p>Girls working for families in exchange for getting meals and an education should also be defined as a domestic worker, and be entitled to rights and perks as they are.</p> <p>Given that a lot of live-in domestic workers are below the age of 16, the Act should have a specific section defining their work and detailing their rights, redressal and punitive measures to keep them safe at work.</p> <p>The definition of workplace in the Act should not be confined just to four walls of the employer's house. It should also start talking about the world of work as described in the article 3 of 190 ILO Convention.</p> | <p>The act should expand to include a section for "live-in worker" within the definition of a domestic worker. This would include those who lived in the accommodation provided by the employer/servant's quarters, etc. and those spaces should also be included in the category of workplaces.</p> <p>The definition of sexual harassment was largely found to be appropriate and not inclusive of cases of sexual harassment that domestic workers experience.</p> | <p>The age of the worker is not specified under the law, which automatically excludes child domestic workers from its purview.</p> <p>The definition of the employer, as well, needs to be rethought. Not just the person who pays remuneration to a domestic worker but also the family member, relative or whosoever is in the house while the worker is working there becomes an employer because of the skewed power dynamic.</p> <p>The words 'willingly employed' also needs to be rethought, as many domestic workers have no choice but to take up such work for their families, hence may not be 'willing'.</p> <p>Finally, there also emerged a recommendation that the SHW Act 2013 must be in conjunction with labour laws to be better implemented.</p> |

Themes discussed during the general discussion

The chief obstacles preventing women domestic workers from accessing justice and filing complaints under the SHW Act 2013 include:

- A lot of women are barely aware of the presence of Local Committees
- Impact of cultural barriers imposed by society which prevent them from getting the confidence to speak out against such behaviour
- Furthermore, domestic workers are not in the ambit of this Act, thus exempting them from officially taking recourse against instances of sexual harassment. Domestic workers cannot be transferred to a different department; neither can they “change their supervisor”. While they can file a complaint with the local committee (like any other employee), the lack of a time-enforced mechanism after the LC forwards the case to the police deters women from bringing forward their complaint. The police are also hesitant in filing the case and more often than not, try to deter the complainant from filing the case.

Themes discussed during Focus Group Discussion 2

| <u>Group 1</u> | <u>Group 2</u> | <u>Group 3</u> | <u>Group 4</u> |
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| <p>There should be a toll-free number which will provide aid the domestic workers to access help.</p> <p>Anganwadi centres, local police stations, RWAs and hospitals should also be included in the law and they should also be able to provide help to the workers.</p> <p>The government must allocate budget for insurance of the domestic workers, relief/ compensation for loss of work due to sexual harassment by employer, etc.</p> <p>RWAs should also be included as they can oversee the redressal mechanism.</p> <p>More than one nodal officer should be</p> | <p>Constitution of sub-committees of the Local Committees at block, taluka or tehsil level so that the more information is shared with more people.</p> <p>Appoint representatives from the unorganized sector in these committees so that their voices are heard.</p> <p>Nodal officers should be the link between sub committees and LC.</p> <p>The flow of information should be from CDPO –to- Anganwadi workers –to- Community.</p> <p>LCs should have statutory power to support women domestic workers. On completion of the enquiry/ investigation, Local Committees should be able to impose penalties (financially or otherwise)</p> | <p>The Act says that on receipt of a complaint from a domestic worker, the local committee shall transfer the complaint to the police within 7 days for further registration of case under Section 509 and other relevant sections of the Indian Penal Code. In this instance, the local committee should adopt the same procedure for inquiry and redressal for domestic workers as it adopts for complaints of other female employees under the Act.</p> <p>Compensation should be provided to the victim of sexual harassment, either through a government reserve fund or under the responsibility of the concerned resident welfare association (RWA).</p> <p>The Local Committee should have more punitive powers with</p> | <p>The Ministry of Women And Child Development (WCD) and Labour Department should collectively and collaboratively work to ensure awareness generation and strengthening of Local Committees.</p> <p>At the block level, there should be a sub-committee of the Local Committee so that it could be more accessible for women to file a complaint.</p> <p>There should be continuous monitoring and evaluation of the Local Committees and their redressal mechanism.</p> <p>Compensation in the form of a salary should be a feature and essential for the victim.</p> <p>The Residential welfare association (RWA) or</p> |

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| <p>appointed in one district as the population of districts can vary across states.</p> <p>More awareness should be spread using media and print media about the law, who are included in the law, redressal mechanism and the contact number of all the IC members</p> <p>In case of a medical emergency, the employer should pay for all medical expenses of the domestic worker.</p> <p>If a domestic worker is employed by a particular employer/s for a superannuation of 5 years, she should be liable for gratuity.</p> | <p>on the employer of the domestic worker.</p> <p>The law already provides for States to make rules for the implementation of the Act. The Central government must ensure that all States have made adequate rules under the Act which suit the individual needs of the workers in the state.</p> | <p>regards to punishing the accused in case of sexual harassment of a domestic worker. For instance, that the LC should have power to give an order that no domestic work service be given to a particular household where the incident has taken place.</p> | <p>some other union must be the authority for creating awareness among domestic workers.</p> |
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Learnings from Mr. Amod Kanth's talk

The domestic worker sector is worthy of our concern due to the following reasons:

- It is one of the fastest growing sectors of employment in India
- It is unique because in most households, both the employer (housewife) and the employee are part of the unorganised sector

The domestic work sector also has several issues which make them vulnerable to poor working conditions and treatment:

- Domestic workers are generally migrants
- They are women which doubly exposes them to the risks of being trafficked or physical and sexual exploitation
- The nature of the work is limited to the private space of the household
- Most of the domestic workers belong to backward castes or SC/ST categories, adding the element of potential caste discrimination as well

The Domestic Workers Sector Skill Council (DWSSC) has helped prepare a draft national policy on domestic workers demanding:

- Inclusion in existing labour legislation
- Ability to form unions and associations
- Ability to seek rights to fair employment, social protection and labour welfare
- Ability to avail protection if they seek to work abroad
- Right to skill development

Key Learnings from Day 2

Panel discussion with Dr. Bharti Sharma (Former chairperson, South-East Delhi Local Committee), Sonia George (Secretary, Self-Employed Women's Association Kerala) and Dr. Ellina Samantroy (Fellow and Coordinator - Centre for Gender and Labour at V.V. Giri National Labour Institute)

Dr. Bharti Sharma

- As the former chairperson of the Local Committee of South-East Delhi, I dealt with people who do not have the luxury of an Internal Committee and have no one to turn to raise this issue but the LC. The consequences of bringing up the issue against the employer are also grave; they may be fired, lose their income, be black-balled in the society they work in, among other consequences.
- All of these domestic workers, by and large, have been the subject of sexual harassment, either while going to work or working. This law is the only avenue for these individuals to get justice but it does not do enough to safeguard their interests and working conditions.
- Where will the DW go for a complaint? The answer is, to the LC. She has to give the complaint in writing, despite usually not being able to read or write. She has to take help to get it written, who will she ask? As literate men and women, we take these things for granted but this is not easy for many people in our country.
- How will domestic workers reach the LC? The LC usually sits in the district office, which in itself takes effort to reach out to. It may also be intimidating for someone like a domestic worker to approach a government office

regarding a complaint on sexual harassment.

Dr. Ellina Samantroy

- When we define domestic workers, we find that they are statistically invisible. This is especially relevant when you are in a country like India where 92% of the workforce is in the informal sector, and informality is increasing.
- Girl child labour is a major aspect of the informal sector. We have observed that those who are also dropping out of schools are increasingly being engaged in marginal work inside and outside households, acting as a source of income or doing unpaid labour.
- The minimum wage regulations are applicable to domestic workers only in 6 states, and states have to do more to include domestic workers in the schedule of employment, especially since labour is a concurrent subject.
- There's a need to regulate the private placement agencies which give these women opportunities in households, where most of the harassment-related cases originate. Domestic workers are mostly recruited from these agencies, and are vulnerable to the 'middleman' since they are dependent on them for work.
- Domestic workers need to be included in the Rashtriya Swasthya Bima Yojana, which would help give legal recognition to domestic workers but none of the states of India have included them in the RSBY.
- The 2013 law on Sexual Harassment is under the Women and Child Development ministry for purely monitoring purposes, and not enforcement. We need to work upon developing a stringent enforcement mechanism where powers and duties of the inspector are identified.

Ms. Sonia George

- The main issue with organising the workers is the uniqueness of their workplace, since their workplaces are our homes, and their employers by that extension, being people like you and me. This makes it difficult to organise them towards any action.

- In many states we have minimum and less than minimum wage for domestic workers, largely because the schedule for employment does not cover domestic workers in its ambit. The 190th ILO convention is largely influential in changing this, despite the reticence of the current government to sign the convention (although Indian government did end up being one of the signatories).
- As organisations working in this space, we need to collectivise the domestic workers and give them confidence to fight for their rights. Blackballing of harassing households is one way of giving them collective bargaining power.

Key learnings from the panel discussion with Dr. Rajesh Tandon (Founder-President, Participatory Research in Asia) and Aya Matsuura (Technical Expert at ILO Decent Work Team for South Asia in New Delhi)

Dr. Rajesh Tandon

- Domestic work is one of the most vulnerable sectors of employment. We take it for granted that since they do the work they do, for not much money, we can have a little bit of “masti” with them. This shows that it does not need to be a small workplace in rural Bihar for such incidents to happen, it can also happen in urban buildings.
- We need to work with domestic workers and give them confidence. Caste is a big problem in this regard. Since we treat domestic work as lowly, lower caste, lower class, we feel that we are above these kinds of things. This needs to be addressed. Domestic workers (and their sense of important work that they are doing) needs to be restored. If domestic workers begin to feel this way, then we can take a step forward.
- The value of the labour ministry has decreased drastically over the last few decades. Nobody wants to be a labour secretary anymore. In our socio-economic situation, labour and labour issues have lost its importance. Before we teach others to stand up for their rights, we must remember that all of us, in our own way, are labourers.

Ms. Aya Matsuura



- The ILO committed to a new convention for violence and sexual harassment workplace, which takes forward the conversations on domestic workers in 2011. There was a strong agreement among government employers and organisations that violence and harassment should not happen to anyone and that it is a violation of human rights. There was also a spirit that nobody should be outside the coverage. The idea was to develop standards that were comprehensive and did not miss out on anyone.
- The modern style of working requires us to be in different places (other than the office premises) at different times. The many places that one visits in “the world of work”, should also be similarly protected from sexual harassment, just like the office premises itself. This could be a training venue, the road you take to commute, post-work celebrations etc.
- The main strategy (and by extension, obstacle) continues to be organising and collectivising domestic workers to fight and combat sexual harassment. Without organising, it is hard to raise demands in unison.
- Unpaid care work for women is close to 300 minutes per day whereas men spend close to 30 minutes a day. This shows that this work is not recognised and is seen as not important. This is also related to power in relationships and this power is also a major force in violence and sexual harassment. By paying attention to different aspects of life, we can pay attention to sharing care responsibilities, giving them the power to say NO, as well as improving their work conditions.