

“Abhi toh pata chala hai kanoon ke barein mein- jab ki 2013 mein lagu hua tha, hamara naam toh hai usme lekin awaaz nahi hai” (We have just learnt about the sexual harassment at workplace law, even though it was enacted in 2013, it has our name but not our voices)”

Women domestic workers participate in a training session on strategies for effective implementation of the SHW Act to address sexual harassment in their world of work

Date: 26th April, 2022

Place: PRIA Conference Hall

Number of participants: 35 women domestic workers

Resource Person: Nandita Bhatt (Director, Martha Farrell Foundation)

Field Facilitators: Helen, Anima, Rajni, Gudiya, Sister Bibiyana

Introduction

#मैभी is a program addressing the issue of sexual harassment in the world of work of women domestic workers. Led by Martha Farrell Foundation (MFF) in partnership with UN Trust Fund to End Violence Against Women and Girls, **#मैभी** has been developed with and for women domestic workers, to strengthen and build accountable institutional mechanisms that prevent, prohibit and redress cases of sexual harassment. Ahead of the State Consultation held on the 15th of May, 2022, women domestic workers participated in a training session on advocacy strategies for addressing sexual harassment in their world of work.

Women domestic workers have been participating in sessions outlining the Act, as well as the protections afforded under it, since the inception of the **#मैभी** project. To solidify their understanding of the Act, and to ensure that they would be able to raise a collective voice towards advocating for their rights on this issue, the training session was designed by using participatory tools and methodologies. Throughout the session, MFF program staff noticed that women were readily sharing narratives of sexual harassment at workplace, faced by themselves, or others they knew. This was in stark contrast to the initial sessions, where women hesitated to share even basic information, due to lack of awareness regarding what constitutes sexual harassment at workplace— this also marked the increased trust that women domestic workers felt in their relationships with field facilitators and program staff.

As women domestic workers participated with great enthusiasm, sharing their experiences, learnings, and ideas for effective implementation of the sexual harassment at workplace (prevention, prohibition, and redressal) Act, the session marked a successful beginning to the month-long advocacy programme. To take the learnings of this session further, women domestic workers will present their insights related to safety at a State Consultation that is scheduled to take place on the 15th of May, 2022.

Highlights from the Conversation

The session began with a review of the discussions and learnings from previous sessions regarding the Sexual Harassment at Workplace Act, 2013. The central questions that were addressed during this were- whether this law adequately addresses the needs of women domestic workers, and gives voice and representation to them; how the Act could give meaningful representation to the voices, lived experiences and needs of women domestic

workers; what could be possible advocacy strategies for ensuring policy changes in this regard.



Women domestic workers participate in a review session on the prevention of sexual harassment law

All women domestic workers who have been discussing and engaging in sessions on the issue of sexual harassment at workplace felt that the 2013 Act is one of the few laws that include protections for domestic workers under its ambit. However, as the Act was created without using a participatory and consultative approach, it does not meaningfully give voice to the needs of women domestic workers. The primary issues with the Act, as identified by participants in this session were as follows-

Firstly, although the definition of workplace has been framed in such a way to include the routes taken to work, as well as any other places visited during the course of their employment, this does not effectively address the broad nature of work of domestic workers (for example, dog-walking, buying vegetables, among others). Additionally, according to the notional extension of a 'workplace' within the Act, harassment includes that by a co-worker "outside the precincts of her workplace or by an employee of another workplace visited by her during the course of her employment". Thus, when considering that the coworkers of domestic workers may include drivers and guards who live in the same *bastis* as domestic workers, may also extend to the residences of the latter.

Secondly, within the Act, "Employer" has been defined as "a person or a household who employs or benefits from the employment of a domestic worker...", and although this definition has been framed broadly, it does not take into account the power dimensions between "coworkers" in a household. For example, cooks, guards, and drivers may also, at

times, act in supervisory capacities. Visiting family members of homeowners, may also exercise the roles of employers.

Thirdly, live-in domestic workers are mostly young women between the ages of 14-17, and the definition of an “employee” (a domestic worker, in this instance) may not adequately be able to afford protections under the Act to the mentioned age group

Domestic worker Anita (name changed) shares a horrific story of a young domestic worker facing sexual harassment in her workplace:

“Ek 14 saal ki ladki ko uski maalik ne kapde utarne bola. Jab maalik ki biwi ghar pe thi, toh ladki ko ‘beti, beti’ karke bulaate the. Woh ladki uss ghar mein hi rehti.” (A 14 year old girl was employed as a live-in domestic worker, where her employer would ask her to take off her clothes occasionally. When his wife was at home, however, he would refer to her as his daughter)

Fourth, at an institutional level, under-defined referral pathways within the laws which particularly relate to domestic workers were identified as barriers to justice delivery. The Act mentions that the redressal mechanism for Domestic Workers is not carried out by Local Committees (LC), but once the complaint reaches the LC and an initial inquiry finds evidence of sexual harassment, it has to be forwarded to the police within seven days, and a complaint is to be filed under Section 509¹ of the Indian Penal Code, 1860 or any other relevant provisions.

¹ Word, gesture or act intended to insult the modesty of a woman



Women domestic workers discuss issues regarding effective implementation of the sexual harassment at workplace act, 2013

Fifth, domestic workers are employed in homes which are considered private spaces, which excludes them from labour legislations that guarantee personal security and job safety. Despite their inclusion in social security benefits including the Minimum Wages Act, lack of regulation of domestic work in India leads to their inability to access their rights as workers. This leads to job insecurity and low socioeconomic status among women domestic workers— ultimately meaning that complaints of sexual harassment against employers will not be filed.

Sixth, a distinct lack of awareness regarding the Act, its provisions, and redressal mechanisms also exists among women domestic workers. When workers in the informal sector, including domestic workers are not certain about what constitutes sexual harassment or how it may be redressed, the time limit of 3-6 months for filing complaints after an incident of sexual harassment has taken place also poses a challenge.

In the next half of the session on strengthening the mechanisms for effective implementation of the Act, as well as techniques for advocating for the same, women domestic workers effectively articulated their needs. With support from MFF program staff, women domestic workers decided that the following steps should be taken in order to give due recognition to their voices within the Act-

1. An extended definition of 'workplace' needs to be included within the Act. This is the 'world of work' of domestic workers, which extends beyond the four walls of their employers' homes, to the entire building complexes, the roads they travel to and back from work, as well as their community settlements, which they share with their colleagues (other domestic workers, drivers, security guards, etc. who work in the

same buildings and complexes as them). Places of leisure in between shifts of employment, such as parks also need to be brought under the ambit of ‘workplaces’ for domestic workers.

2. The definition of ‘employer’ also needs to be extended to include drivers, cooks, and all other ‘coworkers’ who may act in a supervisory capacity to domestic workers. In addition, family members of employers, including those visiting for short periods of time also need to be specifically mentioned within the Act (as it may be believed that they do not directly benefit from the work of domestic workers).
3. A separate section in the act should specifically mention the protections that may be afforded to child domestic workers, in order to avoid ambiguous definitions of domestic workers as ‘employees’. The section should detail redressal mechanisms, punishments and penalties for cases of sexual harassment against child domestic workers
4. The District Officers should have the responsibility of ensuring that LCs are adequately trained on issues of sexual harassment at workplace, and the inquiry process for the same.
5. Resident Welfare Associations should be included within the ambit of the Act, and hold responsibility as to oversee the redressal mechanism. For example, if a domestic worker complains that she is harassed by one of the employers in that particular residential area, then no other domestic worker should be employed there, until the employer has given a written apology— which is to be overseen by the RWA.
6. It is also crucial that directions be passed which restrain the respondent from approaching the aggrieved woman domestic worker, either directly or indirectly, in order to ensure that there is no obstruction in the process of justice (which is to be the responsibility of the District Officer). Directions also need to be passed to ensure witness protection and confidentiality of all witnesses who may come forward to depose before the LC.



Women domestic workers present their insights into how the PoSH Act may be strengthened and effectively implemented

7. The Act specifies that awareness generation regarding sexual harassment at workplace is the responsibility of the employer. However, in private households, employers themselves may not be completely aware of the provisions of the Act, as a result of which, the responsibility of awareness generation may be enforced by the District Officers, in conjunction with Resident Welfare Associations and other local civil society organisations. This may be done in the form of fliers, multimedia communications, and other platforms, using local, contextual language that is easy to understand.
8. Resident Welfare Associations should be advocated with, to create identification cards for all Domestic Workers, to ensure transparency and create a degree of formalized workplaces. Along the same lines, placement agencies that 'provide' domestic workers for households should verify, and conduct background checks for all potential employers.

Domestic worker Usha (name changed) shares a narrative regarding the widespread nature of trafficking in New Delhi

“Jab ek ladki 10 saal ki thi, usko 40,000 rupees mein bech diya tha unki pita ne. Phir woh alag alag ghar mein kaam karti thi. Jab woh 17 saal ki hui, usko rape kiya tha, aur terrace se phel diya tha. Usko pata hi nahi tha woh kaha se thi.” (A young 10 year old girl was sold by her father to a trafficker for 40,000 rupees. She was then employed as a domestic worker in different homes. When she was 17, she was raped by one of her employers, and was thrown from the terrace of their home)

Recommendations and from this session, and the insights gleaned from this conversation will be used to prepare an advocacy document that women domestic workers will use to give voice to their rights at a state consultation for key stakeholders in the informal sector. These will further be presented to government agencies and policymakers, in order to have Delhi state-specific rules for implementation of the sexual harassment at workplace (prevention, prohibition, redressal) Act.

Key Learnings

- Participatory small group discussions were helpful to understand the lived realities of women- and they were able to have a very contextualized understanding of the law, even if they did not use the exact terminologies
- Deliberated upon as a “women’s issue” and not as a “labour issue”, sexual harassment at workplace, especially that within the informal sector, requires a multisectoral approach to ensure holistic redressal. Despite the Vishakha guidelines mentioning the importance of it as a labour problem and stipulating that the Labour Commissioner handle issues related to it, the Act of 2013 is still handled solely by the Women and Child Department of state and central governments. The Act has been completely taken out of the ambit of the responsibilities accorded to the labour commissioner, who is not involved with dealing with sexual harassment issues in India. Despite this, it is imperative that various institutions currently mandated to prevent and address sexual harassment at workplace play their roles effectively in New Delhi. Specifically, the state governments, district officers, local committees, and police may play a crucial role in effective implementation of the 2013 Act.

- Women domestic workers also highlighted the nexus between placement agencies, trafficking, bonded labour and the issue of sexual harassment at workplace. In the informal sector, the lack of verifiable 'workplaces' and need for low-cost labour often perpetuates trafficking of young women from rural areas. Placement agencies also indirectly perpetuate trafficking of young women to meet the demand for low-cost labour, without verifying the workplaces of women domestic workers
- Women domestic workers have a degree of trust with MFF program staff, and field facilitators. They felt safe enough to share stories and narratives of sexual violence, in the space provided to them.