



PARTNERS FOR LAW IN DEVELOPMENT

**Status of the appointment of district level mechanisms towards
implementation of the
Sexual Harassment of Women at Workplace Act, 2013
RTI Findings (2015-2017)**

Introduction:

Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“the Act”) came into force on 9th December 2013. Legal compliance is mandatory, and requires organised sector (both government and non-government) to adopt policies and internal complaints mechanisms. With most of the female workforce in India being in the unorganised sector, the creation/ appointment of a redressal mechanism for the unorganised sector assumes importance. The law requires the State governments to create district level infrastructure for promoting information and awareness about the law, and instating a ‘Local Committee’ (LC) for redressal. To map State compliance in relation to the unorganised sector, Partners for Law in Development (PLD) conducted an RTI based exercise to source information through the Right to Information Act, 2005 (RTI Act) on whether or not the district level functionaries and committees were appointed in 2016-17, three years after the law had come into force.

The appointment of the Local Committee is a primary indicator of State obligation set out by the law. The key public mechanisms are: the ‘District Officer’ for every District¹, to be appointed by the State government and the ‘Local Committee’ (LC) which is constituted by this District Officer². The Act requires the LC to be composed of a combination of women having experience in social work and government officers at the district level. It envisions an “Appellate authority” to enable parties to appeal against findings of the Local Committees on conclusion of an inquiry, and this Appellate Authority is to be notified under the Industrial Employment (Standing Orders) Act, 1946.

The mapping exercise was conducted through the medium of the Right to Information (RTI) Act, which allows persons to seek information through applications to the ‘Public

¹ Section 5, Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013

² Section 6, Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013

Information Officer' of the concerned department or Ministry. This report outlines the methodology, its and the summary findings in relation to the appointment of the District Officers, the appointment of the Local Committees, notification of appellate authority, and the department to which the law is assigned across the different States in India.

Methodology:

The state-wise information from which the findings have been drawn were sourced through RTI. The RTI Act states that the information sought must be provided to the Applicant within a period of 30 days³ unless the information is exempted from disclosure⁴. The Act further provides that if the department to which the Application is filed does not have the information sought, it shall transfer the Application to the relevant department/authority within a period of 5 days, and this department/authority shall in turn provide the information within 30 days of receipt of the transferred application. Accordingly, PLD sent out applications to what we understood to be the nodal departments, and in many cases, were redirected to approach another department.

The Act came into force in December 2013, and two years later, between October 2015 and August 2016, this RTI exercise was undertaken. At the time of the study, there were 28 states and 8 Union territories in the country. As the Act, and subsequent regulations do not specify the nodal department or ministry responsible for implementation and monitoring of the Act, the RTI Applications were sent to Ministries and departments ranging from Women and Child Department, Ministry of Home Affairs, Ministry of Law and Justice, Ministry of Labour and Employment at the Centre and the Social Welfare Department, Directorate of Labour, Department of Personnel and Administrative Reforms, Women and Child Department, Commissioner of Industries at the State level. Responses to these RTI Applications were received by mid-2017.

Three types of limitations were encountered in the course of data collection. These limitations arose from three broad scenarios: a) where the principal departments to which the RTI was sent, redirected to district level office which did not respond; b) where the principal department to which RTI was sent neither responded nor transferred or re-directed the inquiry; c) where the principal departments rejected the inquiry, on the ground that "there were too many questions", "the application was not in the prescribed format, with particulars such as identity missing," "information sought is not applicable to the department." Thus, while the data gathered from the RTI is not comprehensive, it remains relevant for purposes of drawing the findings on the extent and trends in relation to appointment and constitution of mechanisms to implement the law.

³ Section 6, Right to Information Act, 2005

⁴ Section 8, Right to Information Act, 2005

Status of RTI inquiries and responses:

Applications under the RTI Act seeking the data were sent to the Central Government to gauge if they have the consolidated information from different States, as well as to 26 State Governments and 1 Union Territory (UT). A total of 17 replies providing data were received from State governments and 1 UT.

Table 1 : Status of RTI inquiries and responses from States and UT

Category	State	UT	Total	Particulars
Sent	26	1	27	States - Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand, West Bengal; UT - Goa
Response Received	19	1	20	States - Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Delhi, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Uttarakhand, West Bengal; UT - Goa
Not answered	7	0	7	States - Bihar, Kerala, Madhya Pradesh, Odisha, Tamil Nadu, Tripura, Uttar Pradesh

*(29 States, 1 Union Territory); State /UT as existed during that period have been described as such.

Therefore, the findings in this report are based on 74% of the RTIs sent out to the State governments and UT, but not the Central Government. The summary findings drawn from these responses indicate the extent of State action are listed below.

FINDINGS:

1. Appointment and notification of 'District Officer'

Section 5: Notification of District Officer—The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

Table 2 : Number of districts where District Officers were notified

No. of Districts	State	UT	Total	Particulars
100 percent	13	1	14	States - Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Manipur, Meghalaya, Mizoram, Uttarakhand, West Bengal; UT - Goa
More than 50 percent but less than 100 percent	3	0	3	States - Gujarat, Maharashtra, Punjab
Under process	1	0	1	States - Delhi
Not answered	2	0	2	States - Nagaland, Rajasthan

* As mentioned above, we received replies from only 19 States and 1 Union Territory

2. Constitution of Local Complaints Committees

Section 6: Constitution and jurisdiction of 1 [Local Committee]—(1) Every District Officer shall constitute in the district concerned, a committee to be known as the “1 [Local Committee]” to receive complaints of sexual harassment from establishments where the 1 [Internal Committee] has not been constituted due to having less than ten workers or if the complaint is against the employer himself. (2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned 2 [Local Committee] within a period of seven days. (3) The jurisdiction of the 2 [Local Committee] shall extend to the areas of the district where it is constituted.

Table 3 : Status of Constitution of Local Committees in Districts under the Act

Constitution of Local Committees in Districts	State	UT	Total	Particulars
100 percent	7	1	8	States - Andhra Pradesh, Chhattisgarh, Haryana, Meghalaya, Mizoram (gave conflicting answers), Nagaland, Rajasthan; UT - Goa

More than 50 percent but less than 100 percent	4	0	4	States - Gujarat, Punjab, Uttarakhand, West Bengal
More than 10 percent but less than 50 percent	2	0	2	States - Arunachal Pradesh, Karnataka
0 to 10 percent	2	0	2	States - Assam, Jharkhand
Not answered	4	0	4	States - Delhi, Himachal Pradesh, Maharashtra, Manipur

* As mentioned above, we received replies from only 19 States and 1 Union Territory

3. Notification of the Appellate Authority

Section 18

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

Rule 11

11. Appeal.- Subject to the provisions of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clauses (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

Table 4 : Notification of Appellate Authority in Districts under the Act

Notifying Appellate Authority in Districts	State	UT	Total	Particulars
Yes	4	1	5	States - Gujarat (Department of Industries and Mines) , Meghalaya (Labour Commissioner), Mizoram (Labour Commissioner); Uttarakhand (State level Complaints Committee, Labour Commissioner, Presiding Officer of the Industrial Disputes Tribunal); UT - Goa (District Officer)

No	4	0	4	States - Arunachal Pradesh, Assam, Nagaland, West Bengal
Not answered	11	0	11	States - Andhra Pradesh, Chhattisgarh, Delhi, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Maharashtra, Manipur, Punjab, Rajasthan

* As mentioned above, we received replies from only 19 States and 1 Union Territory

For the states which responded that they have notified Appellate Authority under the Act, the Appellate Authority varied across states:

Table 5: States and the Corresponding Department/Personnel notified as Appellant Authority

State	Department/Personnel
Gujarat	Department of Industries and Mines
Meghalaya	Labour Commissioner
Mizoram	Labour Commissioner
Uttarakhand	State level Complaints Committee, Labour Commissioner, Presiding Officer of the Industrial Disputes Tribunal
Goa	District Officer

4. Central Government does not maintain data on whether States have appointed District Officers, on whether all States have constituted Local Complaint's Committees or on whether States have appointed Appellate Authorities:

Applications to different ministries of the Central Government received responses saying that they do not maintain records for the information sought. It is unclear then whether the Central Government monitors the implementation of the Act and on what basis they do so if they have no records of compliance.

An application filed with the **Ministry of Labour and Employment** received two responses. The Child and Women Labour Division responded to the Application *"in so far as the Women Labour Cell of Ministry of Labour & Employment is concerned, we have no information to furnish."*⁵ The Industrial Relations (Policy Legal) Division responded to the Application, *"The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is not being dealt by this Ministry.*

⁵ Reply bearing No.A-42011/09/2006-C&WL.II dated 26.10.2015 to Application No.MLABE/R/2015/61463 dated 14.10.2015

*This Act is being handled by the Ministry of Women and Child Development. IR (PL) Section has no information to furnish.*⁶

Another Application “...there is no such Appellate Authority notified under Section 11 of the Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Rules, 2013 under Section 2(a) of the industrial Employment (Standing Orders) Act, 1946.”⁷

Application filed to the **Ministry of Women and Child Development** received a response stating that the responsibility/duty of ensuring constitution of Local Complaints Committees rests with the States, and hence no information is available with the Women’s Development Department, or the Ministry of Women and Child, it then directed the Applicant to the Delhi Government.⁸

Application to the **Ministry of Law and Justice**⁹ was ‘returned’ on the grounds that “information requested is available with the concerned State Government”¹⁰

5. Lack of uniformity or certainty regarding nodal Department/Ministry: Departments/ Ministries tasked with the responsibility of implementing the law:

Through the course of this exercise, it emerged that broadly three different Departments responded to the RTI. There is no uniformity across States in the Department/ Ministry tasked with constituting Local Committees, appointing District Officers and so on. The Act itself does not specify any particular department or ministry to be the sole implementing or monitoring authority. By and large it appears that the Departments/Ministries related to Women and Child Development are tasked with implementation. Yet, in a considerable number of States the Department of Social Welfare is tasked with implementation. The Labour Department is absent from the constitution of Local Committees, but it is the Department under which Appellate Authority is constituted. It is also relevant to mention the “SHe-Box” initiative notified by the Ministry of Women and Child Development, which as per their website serves the following purpose, “*This Sexual Harassment electronic Box (SHe-Box) is an effort of Gol to provide a single window access to every woman, irrespective of her work status, whether working in organised or unorganised, private or public sector, to facilitate the registration of complaint related to sexual harassment. Any woman facing sexual harassment at workplace can register their complaint through this portal. Once a complaint is submitted to the ‘SHe-Box’, it will be directly sent to the concerned authority having jurisdiction to take action into the matter.*”¹¹ This serves as an additional entry point for registering complaints, which

⁶ Reply bearing No.Z-13025/04/2015-IR(PL) dated 03.11.2015 to Application No.MLABE/R/2015/61463 dated 14.10.2015

⁷ No.MLAEBE/R/2015/61566 dated 02.11.2015, see reply from IR(PL) dated 17.11.2015

⁸ Reply bearing No. FAS 19/485/2015/WW

⁹ Application bearing Registration No.JUSTC/R/2015/61120 received on 14.10.2015

¹⁰ Reply bearing No. K.14016/1/2015-Jus (Desk) dated 21.10.2015

¹¹ https://shebox.nic.in/user/about_shebox

acts like a post office that channels the complaint to the “concerned authority having jurisdiction” for conducting inquiry and redressal.

Table 6: State/District Department which provided RTI responses

Department	State	UT	Total	Particulars
Women and Child Development	7	0	7	States - Arunachal Pradesh, Chhattisgarh, Delhi, Gujarat, Karnataka, Maharashtra, Rajasthan
Social Welfare	2	0	2	States - Assam, Meghalaya
Labour	1	0	1	States - Nagaland
Combined	9	1	10	States - Andhra Pradesh, Haryana, Himachal Pradesh, Jharkhand, Manipur, Mizoram, Punjab; Uttarakhand, West Bengal; UT - Goa

*The RTI questions were sent to States, which in turn sent it to their districts for responses. Hence, for different districts within a State, different departments provided RTI responses.
