CHAPTER THREE

CONTEXTUALISING THE RESEARCH

It can be said that research on sexual harassment at workplace in India began largely after the Supreme Court issued the Vishakha guidelines (1997). These studies help us to understand the issue from various dimensions including the socio-legal point of view.

1. DELVING INTO VARIOUS DIMENSIONS OF THE ISSUE


Some of the studies showed connection between sexual harassment, age and income level of women (Saheli, 1998 and Population Council, 2006). Sexual harassment increased and became intense as income level and position of women decreased. Similarly the extent became larger when it came to young women. Those by Yugantar (2003) and Oxfam (2012) showed no relation between sexual harassment, nature and status of job done by women in both organised and unorganised sector. Studies showed that sexual harassment was mainly reported to be perpetrated by persons in authority such as immediate seniors (Sanhita, 2001, Yugantar, 2003, ICHRL-Sophia College, 2003, Population Council, 2006 and CFTI, 2010) because they had power to influence job security and career of the women. Secondly it was reported to be done by colleagues (Yugantar, 2003). Also from outsiders such as from outsiders such as clients, patients etc. (SARDI, 1999).
ii) **Nature of sexual harassment.** Women spoke about direct and subtle forms of sexual harassment at their workplaces such as touching, looks, comments on body and clothes, personal questions, suggestive remarks, jokes with sexual innuendoes, sexist humour, gossip, telling sexual stories, forcing for friendship, invitation to join at pub, lunch or dinner, pressure to please clients, asking to sit closer, exhibiting porn, abusive language, demand for sexual favours in exchange of promotion and other employment benefits. (Saheli, 1998, SARDI, 1999, Sanhita, 2001, LC-ILO, 2002, ICHRL- Sophia college, 2003, Population Council, 2006, CFTI, 2010, and Oxfam, 2012). Hostile work environment was created in the form singing lewd songs, keeping obscene messages on table, issuing of threats of transfer, termination from job etc. (Sanhita 2001 and LC-ILO, 2002). Yugantar (2003) study revealed that sexual harassment at work which started from simple actions through body language and if not stopped at that point reached to the stages of sexual advances, physical contacts and demand for sexual favours. The Sophia college (2003) study revealed that some women faced nonverbal harassment such as staring while some others faced emotional harassment such as being given odd working hours, and an uncomfortable environment while few found it difficult to share the nature of sexual harassment they experienced.

iii) **Impact of sexual harassment.** Humiliation, anger and trauma were the commonly found as impact on women who underwent sexual harassment. (Saheli, 1998 and Sanhita, 2001). Both Sakshi survey (2001) and the Yugantar study (2003) showed that sexual harassment of women resulted in loss of their productivity, ill health, depression and suicides. The Yugantar study further revealed, victims of sexual harassment were scared of every male member around them, developed a feeling that their life was meaningless, were depressed as their relatives tried to avoid them, the family members looked down upon them and suspected their character. Many of the victims of sexual harassment were disturbed to an extent that they were constantly thinking of resigning the job. The family life of the women was also disturbed and it became a trigger for onset of domestic violence in the marriage. Anger, embarrassment, helplessness, fear, shame, loss of respect for the perpetrator etc. were some of the effects of sexual harassment identified by the study.

iv) **Reporting sexual harassment.** Another aspect about sexual harassment at workplace brought to light by these studies done in the post Vishakha phase was about its low reporting by women. As stated by Shukla (2002) though it was rampant, it remained the most under reported form of gender discrimination. Findings noted by the SARDI report (1999), there was politics of silence around the issue of sexual harassment which reflected in the fewer number of women unwilling to talk and report it. The issue was generally ignored by the management as is indicated by the absence of redress mechanism and the lack of punitive action in cases reported. On the contrary, women were punished for raising their voice against the sexual harassment. Though only 29% women said that
they faced sexual harassment, the union representatives reported that 50% women faced the problem thus pointing towards gross under reporting by women workers.

Saheli study (1998) revealed that large section of women had no option but ignore and to tolerate sexual harassment. Rather they took precautions such as dress conservatively, modify or regulate their interaction at workplace. They could not report it because of shame, fear of being blamed, looked down upon by others, overwhelming sense of guilt imbibed due to social conditioning, lack of family support, self blaming, fear that no one would believe them, they would be labeled as aggressive trouble makers, fear of dismissal and job insecurity, they would have to keep repeating the incident. It was also noted that when women complained they were never taken seriously. They were laughed at and became objects of ridicule. They became objects of office gossip; colleagues did not support them for having invited disfavor of the boss resulting in complainant becoming isolated and left alone to fight the battle. There was a presumption that only bad women faced sexual harassment because good women would never be harassed. Colleagues chose not help the women who faced sexual harassment thinking they did not deserve to be helped. More specifically women colleagues did not extend support as they did not want to be identified with the complainants and thinking complainants did not deserve to be helped as they did not behave in accordance with limits set by the male dominated society.

Sanhita (2001) study showed that sexual harassment remained invisible form of crime though 35% women faced sexual harassment which cut across all age groups and hierarchy. Rather seen as an occupational hazard within the private sector. Sanhita study revealed that women were afraid to discuss the topic of sexual harassment due to fear of backlash. They wanted to avoid situations that undermined their image and elevated status that they enjoyed as earning woman. They complained of sexual harassment only when it reached threatening dimensions. Studies reconfirmed that women did not report due to fear of stigma, retaliation, work belittled humiliation, taunting by colleagues, difficulty in getting married loss of reputation, widespread blaming and disbelief in the complaints. (Sanhita 2001, Yugantar, 2003 and Sakshi, 2001). Yugantar study (2003) mentioned that large number of cases as much as 35% of sexual harassment of women at work places remained unreported, as the women were afraid of reporting due to possible defamation or threats from the perpetrators.

The findings of the study revealed that only 41% of the victims complained about the harassment and remaining 59% did not complain. LC-ILO study (2002) showed that most women who were sexually harassed dealt with it themselves. Most of the women chose either not to complain or did not approach the formal mechanism due to fear of further harassment and adverse effects on their employment. Studies done in the Mumbai city in 2003-
2004 such as Sophia College (2003), ICHRL-JJ (2004) and ICHRL-VJTI (2004) confirmed that there was low awareness on the Supreme Court Vishakha guidelines and women largely remained silent because they feared victimisation in the context of the prevailing culture that condoned male aggression. Most women coped with sexual harassment by ignoring and avoiding the harasser. Instead of complaining to the authority significant number of women confronted the harasser.

Such findings point to the fact that probably women chose not to report sexual harassment or complain about it because they were not assured of obtaining fair hearing and men got away with the penalty by blaming the complainant. Population Council study (2006) noted that most women respondents did not complain to supervisors or the management about their experiences of sexual harassment. Some of the reasons given by women for not reporting sexual harassment at workplace were lack of confidence in the complaints mechanism due to a fear that the complaints committee would not be effective, it could be partial in favour of the harasser, it would not maintain confidentiality, and it would be able to stop the abuse. The study noted low awareness about the Supreme Court Vishakha guidelines (1997), fear of being blamed, loss of reputation, job related discrimination including dismissal, withholding of promotions and income, low confidence in complaint mechanism.

The CFTI study (2010) showed that majority of women employees i.e. 83% continued with their ordeal of suffering from the incidents of sexual harassment due to fear of professional victimisation. If the perpetrator was at senior level in the corporate hierarchy threat of victimisation was large. Additionally, there were poor awareness levels among female employees on the issues and workplace sexual harassment. 77% women did not know the method to report sexual harassment. The study noted that since most instances happened outside office such as during conference, meetings they were not covered by the company policy on sexual harassment. Also, verbal sexual harassment was not seen as worth reporting and some such acts were seen as normal. Recent survey done by Oxfam (2012) showed that in most cases women did not take any formal action against sexual harassment, stigma being the main reason. Additionally there was low awareness in public about the Supreme Court Vishakha guidelines (1997).

A 2007 study by Sanhita on functioning of complaints committees within the state and central government public sector undertakings provided insights into functioning and constitution of complaints committees, perceptions about prevalence of sexual harassment at workplace, approach towards complaint resolution and role of the third party representatives in complaints committees. The study revealed poor and faulty implementation of the
Supreme Court Vishakha guidelines (1997). It showed that none of the organisations had a policy on sexual harassment and that power dynamics inside the organisation influenced the inquiry process. Complaints committee members felt that their scope was restricted and in the absence of complaints none of them thought about the possibility of having such a policy and clearly defined inquiry procedure. Further most of them dismissed the need for implementation of the Supreme Court Vishakha guidelines (1997) because they thought that sexual harassment cannot happen at their workplaces.

2. NEED FOR RESEARCH

Need for such a research therefore arose for two primary reasons. Firstly it comes from the poor implementation of the Supreme Court Vishakha guidelines (1997) and secondly from the gaps in the existing literature.


Undoubtedly the Supreme Court Vishakha judgment (1997) initiated a discourse in India on sexual harassment and benefited women by reconfirming their right to a safe working environment. It proposed to provide a safe and gender-friendly atmosphere for women, proposing an in house redress mechanism envisaging that it would resolve the issues related to sexual harassment within the organisation. Studies done by organisations across India and media coverage over the years revealed that employers either chose to ignore the guidelines or not take the Vishakha guidelines (1997) seriously.

The ILO-Lawyers Collective study (2002) mentioned that awareness about the Vishakha guidelines was a universal problem in India. The Supreme Court in the year 2005 asked the state governments to file affidavits regarding the steps taken by them to implement the Vishakha judgement. The replies by the individual states disclosed substantial non-compliance with the Vishakha guidelines reveals the Supreme Court judgment given in the Medha Kotwal vs. Union of India in October 2012. Such a grim picture at the macro level was confirmed by certain meetings that happened locally across India. The report (2005) round table conference of representatives from the public, private, government, and unorganised sectors organised by India Centre for Human Rights and Law (ICHRL) Mumbai and Maharashtra State Commission for Women (MSCW) held in Mumbai, India revealed that the implementation of the guidelines was poor and that sexual harassment was rampant in across work sectors. The SARDI study stated that 96% women said there were no complaints committees. Wherever the committees existed it comprised of top management persons and it had only recommendatory powers. Yugantar (2003) study mentions that 52% employers were aware of the guidelines. However employers gave warning in most cases of sexual harassment. Only in 8% of reported cases of sexual harassment complaints committee were
formed however these committees were dominated by men and there was lot of favouritism. 80% women were not satisfied with the working of the complaints committee.

The Population Council study (2006) revealed that in reported cases of sexual harassment actions taken by the employer were indirect. Rarely perpetrators were confronted or any action was taken to dismiss them. The study notes that the private sector hospitals did not take the guidelines seriously, impartial committees were not established, commercial interests continued to override matters determining influential perpetrators, and women were doubly harassed if they opted to lodge a formal complaint. This led to reluctance of women to take action and invoke complaints mechanism because of the ineffectiveness of complaints committee in punishing the perpetrator. Study done by Sanhita (2007) with 25 complaints committees showed that complaints committees were largely not functional and existed only on paper. Presence of senior men in the committee marginalised women members and chairperson of the committee. Sometimes though the committee existed the authorities directly dealt with the complaints. There was a felt need for capacity building and orientation of the complaints committees. The CFTI study (2010) stated that education on the sexual harassment company policy was not integral part of the core HR policies. There was low awareness about the policy i.e. 77% women did not know the method to report sexual harassment. It is clear from the above mentioned studies that employers did not invest any resources towards effective and efficient implementation of the Supreme Court Vishakha guidelines.

Articles by Radhika (1999), Pinglay (2012), Deshpande (2012, 2013) provide insights into long drawn struggles of several employed women who protested against sexual harassment, challenged the employer for not complying with the legal provisions on sexual harassment and in return were terminated from their jobs for doing so. These articles highlight and emphasise repeated defiance of the legal provisions on sexual harassment by the employers and revictimisation of the women by the employers. Poor and faulty implementation of the Vishakha guidelines was discussed in articles by Oversier (2010) and Majumdar (2003). They confirm that the issue of sexual harassment has largely been swept under the carpet in India. Further they disclosed that considering the social taboos still associated with sexual harassment and the long pendency in courts; these provisions were never been successfully invoked. These articles reveal that overall awareness among Indian companies about the need for a well-defined mechanism to tackle sexual harassment at the workplace is terribly poor.

Further taking cognisance of this situation the Supreme Court of India directed in Medha Kotwal vs. Union of India (2012) directed that since legislation on sexual harassment at workplace was not in place and many women were struggling to have their basic rights protection implementation of the Vishakha guidelines needed serious attention. Many employers choose to ignore them and / or not take them seriously. In short, lot of ground towards
effective implementation of the Vishakha guidelines was to be covered while the level of compliance among employers, action from trade unions, and awareness amongst employees remained dismal.

Little was known when it came to employer response to reported complaints of sexual harassment, practices and procedures institutionalised by organisations to resolve complaints, functioning of complaints committees, experiences of women after they complained of sexual harassment and perceptions of the persons i.e. internal and external members functioning as members of complaints committees. The only reference found was in the Round Table Conference organised by India Centre for Human Right and Law in the year 2005 that rare enquiries in reported cases of sexual harassment were a success. Report by the Joint Parliamentary Committee (2011) that reviewed the Sexual Harassment Bill, 2010 summarised the issue pertinently. It said there in the absence of a laid down central mechanism was no database available with the Ministry of Women and Child Development (MWCD) with regards to the number of complaints of sexual harassment, their resolution and action taken especially in the context of the private sector. The Committee concluded that so far Supreme Court guidelines remained on paper in majority of workplaces.

b. Gaps in the Existing Literature

Above discussed studies in India on sexual harassment at workplace done after 1997 used samples across work sectors and provided some insights about phenomenon of sexual harassment. All of them brought forth that implementation of the Supreme Court Vishakha guidelines was poor, reporting of sexual harassment was low and that resolution of reported complaints of sexual harassment was dismal. This was attributed to low levels of awareness amongst employers and employees. However, most of them restricted themselves to interviewing women employees and public in general. There was no discussion in the any of these studies about the experiences of women of going through an inquiry after they reported sexual harassment at workplace and about other significant stakeholders who deal with sexual harassment at workplace complaints in various capacities. Also discussion about employer response to sexual harassment, inquiry as a resolution mechanism and perceptions about sexual harassment remained unexplored. As a result the hindrances faced by women, complaints committees and others in countering sexual harassment at workplace are not known. In addition, none of the studies offered in depth narrations of women who went through inquiries and committee members who carried out inquiries to analyse and understand the process of inquiry and decision making by the committee. Though the Sanhita survey (2007) of complaints committees provided snapshots about functioning of complaints committees it was restricted to public sector organisations. Moreover, it did not delve into employer response to reported complaints and experiences of going through inquiry.
Two of the studies done in Mumbai at the JJ hospital and VJTI were unique, since they combined awareness sessions on sexual harassment while data was gathered for the research purpose. This kind of action research, created an atmosphere in the hospital and college, which facilitated discussion about a sensitive and difficult issue such as sexual harassment. However, though the study reports mention that sexual harassment was rampant on the campus, there was no attempt on the part of research to understand the details of the reported cases and the procedure adopted by the complaints committees to inquire into these cases. Again, voices of women complainants and complaints committee members were not found in the study. Focus of the study was on the social aspects and there was hardly any discussion about the implementation of the Supreme Court Vishakha guidelines (1997).

In terms of methodological approach, most of the studies did not explain the philosophy behind the methods used for collecting data. Most studies were large scale, multisite. They used the survey method for collection of data; which means the categories were pre-existing and data generated was not context specific.

Almost all the studies focused on the social aspects of the sexual harassment at workplace. Though they looked at implementation of the Supreme Court Vishakha guidelines (1997) was hardly any analysis from point of view of practices and procedures by organisations to deal with reported complaints of sexual harassment. Though the studies helped to develop a fair amount of understanding about sexual harassment at workplace prevailing in various sectors; they hardly provided an insight into the existence and functioning of the complaints committees nor does it reflect the resistance put up by the working women; portraying them only as helpless victims. Struggles of women who chose to protest against sexual harassment in a formal manner by approaching the complaint committees remained out of purview. Holistic understanding of the issue was therefore lacking. One of the studies is seen blaming women and recommending that women should be watchful as their ‘free’ behaviour at the workplace can lead to sexual harassment. Such a position taken by the study is problematic as it shifts the responsibility of the behaviour from the men to the women.

It is in the above mentioned context, that the present research was done. Approach to the research in terms of methodology is discussed in the chapter four.