CHAPTER NINE

Analysis and Discussion

Theme One and Theme Two

ANALYSIS

A and G

A and G both employed with the public hospital and school were employees of the state government organisation. Both the cases reflect non compliance by the public hospital and school to the guidelines and the Corporation policy on sexual harassment at workplace.

In the case of A, the complaint was never handed to the complaints committee for resolution. Policy document of the organisation talked about a step by step grievance redress procedure subject to the choice of the complainant. As per the policy, a complainant taking help of the complaints committee could choose to resolve her complaint, either through a non formal resolution process proceeding to formal inquiry or else choose any one step. However, A was given no such choice for resolution of her case by the organisation.

A in her interview mentioned, the male colleague spread rumours about her behaviour with an aim to tarnish her character at workplace. As per the definition of sexual harassment at workplace in the Supreme Court Vishakha guidelines sexual harassment is any unwelcome sexually determined behaviour whether directly or by implication; it can be physical, verbal or non verbal. Therefore the action of the man fell within the category of sexually harassing behaviour. Moreover A resisted sexual harassment by confronting the man during work hours in the presence of the hospital employees. She mentioned that while she confronted him, colleagues watched it happen silently. The confrontation was indicative of the fact that his behaviour was unwelcome to A.
It was necessary that her efforts towards resisting sexual harassment were supported by the organisation. This could send message to all employees including that man that sexual harassment at workplace was misconduct and there was zero tolerance to sexual harassment by the employer. However A did not receive any such backing from the employer.

It is important to note that after A complained, the senior officer took immediate action by warning the man and informing the head of the organisation about the complaint. Yet, the process of resolution of the complaint was scuttled and diffused. Though complaints committee existed within the hospital existed, the head did not handover complaint of A to the committee for inquiry and resolution. Rather it was referred the complaint to an individual inquiry officer. It is evident that the complaint was not perceived as that of sexual harassment but resulting out of problem between colleagues and emotional disturbance in A.

A found the process of inquiry bothering and serving no purpose. Every morning she was called by the inquiry officer and repeatedly asked questions about her personal life. It was obvious that the inquiry officer did not trust A and constantly tried check consistency in her statements. It is important to note that since A was going through crisis in her personal life; the administration and the inquiry officer perceived her as having some emotional disturbance. They were unable to create a space for A where she could express her fears without any fear and apprehensions. It is seen that stigma around divorce existed in mind of A and the administration too shared similar bias that women whose family life was supposed disturbed were not ‘normal’.

The inquiry officer was seen falling prey to the rumours spread by the man and treated complaint of A as not serious. She was not found engaging with A to make her feel comfortable and know her state of mind. Rather she was found following the usual domestic inquiry procedure; she asked A if she wanted to face the man. It can be said that the worst part of the process was that A felt that her mental status was examined by the inquiry officer thinking that she was a mentally ill person. There was no effort to gauge the impact of sexual harassment on A. Also the penalty was not recommended penalty as per the service rules and the sexual harassment policy of the organisation. Outcome of the inquiry was only a verbal warning to the man which clearly showed that none looked at the complaint and inquiry seriously.

This situation tells about the lack of perspective about rights of women and limited understanding of the issue of sexual harassment on part of the employer. Further it reconfirms sharing by an NGO member that employer response to sexual harassment cases especially with reference to the government hospitals was subjective in the
sense that it depended upon the person heading the hospital. It could not be prescribed in a law or in a bill. It depended upon the head of the institution how they promoted role and functioning of the complaints committee. Here the neither the complainant was told to approach the committee nor the committee was able to reach out to the complainant for support and resolution of the issue.

A was not aware either about existence of the complaints committee or about the organisation policy. It was duty of responsible persons within the administration to make her aware of the Supreme Court Vishakha guidelines, policy and communicate to her formally she could approach the complaints committee for resolution of her complaint. However it was not done. The case is not only of non compliance to the Supreme Court Vishakha guidelines but that of service rules and sexual harassment policy of the organisation.

Case of G shows the absence of awareness about the Supreme Court Vishakha guidelines within the department where G was posted. There was no understanding of the guidelines both in the terms of their content and background of their enactment. As mentioned by G, the department officers carried an impression that the Vishakha guidelines were an initiative by the one of former Mayors of the city by the name Vishakha Raut. Similar impression was given to G. As a consequence the perspective needed for implementation of the guidelines was missing in the department. Rather the department officer looked at it as a false complaint by G with an aim to get transfer at a desired location.

Initially when G put in verbal complaint of sexual harassment to her seniors, they asked her not to take it seriously and ignore it. One of the seniors tried to warn the man over phone while other one suggested that G should have hit him with footwear. Thus it is clear that complaint did not yield a formal and uniform response. Random reactions were seen. It is evident that the complaint was taken casually and not seen as misconduct by the seniors requiring formal action on part of the department. G was expected to resolve the issue on her own rather than putting in a complaint. No attempt was made by the seniors to make G aware about existence of the complaints committee.

As stated by G, the department had little knowledge-skill-attitude to deal with a reported case of sexual harassment. They were seen to be in dilemma about the way a reported complaint was to be dealt. Instead of handing over the complaint to the local complaints committee for processing it, the department called for a meeting to reach a settlement between husband of G and the man. During the meeting it was seen that the
The department officer was not able to both recognise and acknowledge the serious repercussion of sexual harassment on the mental health of G. Typically transfer was seen as a solution to the issue by the officer.

In her interview, G mentioned that she faced similar situation when she went in person before the department officer. Focus of questions by the officer was not sexual harassment but work. The department officer promised to transfer the man and wanted to close the case. However transfer happened when G used political party pressure. It can be said that there were no efforts from the department to provide relief to G and resolve the complaint as per the organisation policy and / or the Vishakha guidelines.

Even after registering the complaint with the higher level within the organisation there was no movement. Due to which G sought help of an outside agency i.e. a women’s organisation. The complaints committee did not follow proper procedure as per the policy of the organisation. As mentioned by G in her interview the committee members were not sensitive to her medical condition. They tried to intimidate her by telling her she would be in a problem if the man complained to police.

The questions asked by the committee were not relevant to the complaint. Focus was on work and transfer. Additionally, the NGO member commented on her personal life. The committee members suggested that she should have ignored the harassment saying after she took up the job she had to be prepared for sexual harassment and corruption. G in the her interview stated that she felt discouraged because she felt that the complaint committee tried to wrap up her complaint and trashed it.

Insensitivity of the organisation bureaucracy was reinforced by the Mayor. The Mayor was seen carrying myths associated with sexual harassment at workplace that only young women are sexually harassed. She shunned the complaint when she found that the complainant was not a young girl and gave no hearing to G. As representative of the people the Mayor too was unable to put the redress mechanism in place but told G to settle the case outside.

In this context a gap can be pointed in the entire scheme of redress. G suffered financial loss because of sexual harassment. Apart of dissatisfactory redress of her complaint was, G was marked absent and not paid for the period of five months because leave she availed while under treatment for depression at a government hospital. It was not considered as special leave.

On reading the organisation policy and interacting with persons in the organisation it came across as one of the well thought models where in the efforts to implement the Supreme Court Vishakha guidelines and sustain the implementation were spread both intensively and extensively in terms of the formation of the committees across workplaces and capacity building of the committee members regularly. Complaint committee members in their
interviews talked about the tremendous efforts that went into mainstreaming and sustaining implementation of the Supreme Court Vishakha guidelines within the system. However hierarchy in the organisation and rigidity of procedures continued to remain problematic after several years of implementation. This is evident from the fact that in spite of doing both intensive and extensive correspondence at various levels within the organisation, G never received written reply for any of her applications until the intervention of the women’s organisation.

Trade union member in her interview gave a sharp critique of the implementation of the Supreme Court guidelines within the organisation. She said awareness and publicity about the committees was not there within the local offices because of which they were as good as nonexistent. As a result of this, there was no fear about the mechanism and penalty in male employees. She specifically mentioned that mostly men were not punished and the case was closed by transferring the man. According to her it was important part of the redress that the man was punished and transfer was not punishment.

This was observed in the case of G, where the department inquiry officer wanted to close the case by transferring either G or the man. Cases of A and G reinforce the experiences cited by the trade union member and underlines the fact that implementation of the Supreme Court guidelines needed efforts to be mainstreamed and implemented in true spirit.

B

B’s interview reveals that prevention aspect was ignored by the organisation. Awareness generation about the issue of sexual harassment and complaint mechanism was not done. It is because of this they B and her colleagues did not know the procedure of registering a complaint and were in confusion about the way complaint would be dealt. B further stated that the department committees did not meet regularly while presence of the apex complaints committee was not felt; though the committee existed on paper.

It was stated by chairperson of the committee though the department committees were collapsed to form a single complaints committee for the entire organisation, awareness about the existence of the committee and the issue was not created by the authority till the lowest rung of the employees. It was during this period of transition from a department complaint committee structure to a single complaints committee structure, complaint of B and her colleagues came before the organisation.

It is obvious that process of change was not smooth and the cost was paid by B and her colleagues who were confused about registration of complaint and process of redress. They had no information about the change in
department committee mechanism to single committee that was done by the administration. As result of which they were in dark about procedure of inquiry and imposition of penalty.

Complaint against the man who was at a senior position was last resort for B and her colleagues as they were not prepared to fight out. All they wanted was a healthy working environment. Since fear of retaliation and revenge loomed large their strategy was to only defend them from his harassment not that of fighting out. Though there were some internal submissions in form of complaints about that man earlier to the HR department and the management. But they chose to ignore them and there was no action.

As the issue was not nipped in its bud and timely action was not taken it grew to a point where women felt that they could not take any more harassment and were nose deep in water. Head of the organisation assured of resolution to B and her colleagues. However instead of handing over the complaint to the newly formed complaints committee, preliminary enquiry was done and the complaint was shelved for long time. During this time, B continued to face sexual harassment including administrative harassment from that man.

Since there no was awareness about existence of complaints committee, B kept bearing with the retaliation. She was in two minds about approaching the head of the HR department. Finally she complained to her department head and the management. Advisory was issued to the man by the organisation but no progress happened towards resolution of the complaint of sexual harassment. It seemed as if the organisation allowed revictimisation of B by not acting on the original complaint. Even though he refused the advisory issued by the organisation there was no action against him.

It is seen that the organisation conducted two inquiries. One was a preliminary inquiry and the other one was by the complaint committee constituted as per the Supreme Court Vishakha guidelines. This was clear violation of the interim order in 2004 by the Supreme Court of India in the Medha Kotwal vs. Union of India. The order stated that the complaint committee was the inquiry authority under the Central Government Rules. This meant that one inquiry in a complaint of sexual harassment at workplace was to be done by the Complaint Committee.

The preliminary inquiry result was kept pending for two years and it concluded that it was not a case of sexual harassment but differences in the concerned department. As stated by B, the officer who conducted preliminary inquiry did it in a question answer format and did not take into account the incidents of sexual harassment. Further there was no information to B and her colleagues by the HR department regarding the preliminary report. Only after B and her colleagues moved the NCW that the organisation re recorded their statements and a charge sheet containing charges of sexual harassment was issued for inquiry to be started by a complaints committee.
Procedure followed was that of department enquiry which was lengthy and cumbersome. B stated that lengthy inquiry and cross examination were the most painful parts of the inquiry because it made her relive the past experiences that were painful. However she also mentioned that the department inquiry procedure generated elaborate and accurate documentation which was instrumental in making the inquiry sound. B raised certain issues regarding functioning of the complaint committee in terms of its size and profile of members which reflect the challenges that organisations face while selecting individuals as members of complaint committee.

It can be understood from interview of B that that the department was divided on the issue of sexual harassment as a result of which there was hardly any support to B and her colleagues. Post complaint B was not only victimised by that man but additionally by the male officers who sided him.

In this case, the Supreme Court Vishakha guidelines were implemented in letter after struggle by complainants. However the implementation did not reflect spirit of the guidelines. This particular case also reflects the poor status of implementation of the Supreme Court Vishakha guidelines and non adherence to government regulation. Complaint of sexual harassment was lost in the bureaucratic procedures causing unexplainable delay in resolution of the complaint. Moreover the aspect of retaliation by the man and other male colleagues is predominant in the case. It is seen that the organisation had no mechanism whatsoever to deal with it.

Though B and her colleagues clearly stated that the working environment was not conducive citing specific instances, the organisation seemed to have got lost in the manner the complaint needed to be addressed. Indecisiveness on part of the head of HR department and other members of the management led to inexcusable delay for the initiation of the process of redress. With regards to procedure it needs to be noted and understood that the department inquiry procedure cannot be replicated in an inquiry of a case of sexual harassment. It needs to be modified and adapted by the complaint committee and administration to make it speedy and women friendly.

C

In the case of C, her ordeal began when she complained of sexual harassment to one of the Directors of the company. The Director discouraged to take her complaint outside the company citing prestige of the company as reason. As a result C could not exercise her right as a citizen against sexual harassment. Though the company had a code of conduct but there was no mechanism within the company to deal with reported complaints of sexual harassment. There was no complaint committee in place neither did the Director put in efforts to constitute a committee.
Resolution was at the discretion of the Director who conducted an internal and informal investigation. Redress was given in form of change in reporting of C and shifting cabin of the man. Complaint was not dealt as per the legal provision and as per the company policy. No message given to the man by the company about zero tolerance to sexual harassment. Additionally no care was taken by the Director and others in the company to protect C from retaliation. As a result of this, post resignation of the Director, as result of abuse of power and position by the man, sexual harassment escalated and work conditions became severely hostile for C.

As mentioned by one of the lawyers in her interview that it was her observation that in most reported cases of sexual harassment the human resource department of the organisation did not perform its role rather protected the man charged with sexual harassment which made things difficult for the woman. It is important to note that the personnel manager did not take cognisance of her verbal complaints. In the words of C, she was tortured by the entire management. However, the union stood up in support of C. But it was not of much help because of the support of the personnel department to the man. Written complaints by C in the form of a confidential mail to the VP HR and then to the personnel manager yielded no results. Eventually they resulted in suspension and eventually termination of C.

It is clear that though there were many verbal complaints from C, the company did not cognisance of the complaint and failed to put in place a formal mechanism as per Supreme Court Vishakha guidelines to inquire into the complaint. It is seen that the company conducted two inquiries initially by the Director and second one by the overseas management team. However first time his cabin was shifted and C was stopped from reporting to him while the second time he was asked to resign from the job. But no action was initiated against him by the company as per the code of conduct. Though international management found him guilty of service, C was neither reinstated in service nor informed about outcome of the inquiry. This reflects apathy and callousness on part of the company while dealing with complaint of C.

It is only when C approached outside agencies such Labour Court and Commission for challenging suspension from service and non compliance to the Supreme Court Vishakha guidelines, the company got into action. When complaints committee was constituted by the company, it was not strictly an internal complaint committee as per the Supreme Court Vishakha guidelines. It did not have any employees of the company. It consisted of two external women lawyers and one male member. Despite of repeated objections raised by C with the company and with the High Court the complaints committee continued with a man as the third party member. The other two female members of the committee were not serious and were indifferent to the situation of C. Most importantly they did not come across as independent members to C. She felt they acted on the directions of the personnel manager and the man.
According to C the committee did not follow the procedure though they promised to do so and were in a hurry to finish the inquiry. C produced eye witnesses and transcripts of her recorded conversation with the man. But the committee took no cognisance of it in their report and said that sexual harassment was not proved. Post the enquiry by the overseas management the man was asked to leave the company and given honourable exit from the company while C suffered financial loss and mental trauma. It is evident from the narration of C, that the complaint committee members made no attempts to connect with C and understand impact of the crisis on her livelihood. They failed to understand their role and functioned like representatives of the management.

The issue of lack transparency in appointment of outside member arose in the case of C. She challenged the appointment of a man with no clear experience as external member with the committee in the High Court but in vain. One of the lawyers in her interview talked about problems related to composition of the complaints committee. She said mostly appointment of the members of the complaints committee especially the outside member was not transparent.

In the said case too, C was compelled to start from the basic i.e. of challenging the constitution of the committee in the High Court. It was a time consuming process. By the time the High Court decided on it there was loss of resources for C. C was forced to appear before the committee because she was to speed up the process and complete the inquiry. This resulted in the decision going against C as there was major problem in the constitution of the committee.

D

Post her resistance to sexual advances by her manager and complaint to the HOD, D faced severe backlash from the man. Repeated complaints were done by D initially to the Senior VP and then to the complaints committee about sexual harassment and about hostile work environment. Complaints were both verbal and in writing. But no attempt was done by Senior VP to firstly to redress the complaint of sexual harassment. She did not send it to the complaints committee; secondly she did nothing to stop the work environment from becoming abusive and / or to make it facilitative for D. D had little access to her for making her complaint heard. Rather she faced extreme pressure to resign from the job. Since D refused to leave the job, her probation period was extended though she had proven track record and international qualification.

The Senior VP openly told D that she could afford losing the man as he was old employee knowing work, and there was no other recourse for D but to leave the bank. It is clear that the bank wanted to throw D out only because they could not continue without him. This reflects total mayhem at the bank when it came to resolution of
sexual harassment. There was lack of motivation on part of the Senior VP to gain control over the situation. On the contrary she came across helpless and continued to force D to put down her papers. She was seen having absolutely no regard to vulnerable position of D as a probationer and value as future employee. Additionally it is seen that the bank had no mechanism to deal with retaliation post complaint. D continued to report to the man even after she complained about him. There was no change in reporting.

D could locate the bank policy on sexual harassment only when she searched through the bank portal. There were no efforts done by the bank for informing the new recruits about the policy followed by the organisation with reference to sexual harassment. In the words of D she was singled out at workplace which made it was impossible for her to gain any information about complaint mechanism. There was no reply to her written complaint that D sent via email to the complaints committee. It is evident that either the complaints committee did not exist or it existed only on paper. Bank did not follow its own policy on sexual harassment and the bank leadership invested no resources in both formulating and implementing its policy demonstrating zero tolerance to sexual harassment. Moreover it was not available to all employees but only to employees from the corporate office and could not be downloaded by other employees.

In the case of D, the bank formed a panel to look into the complaint of D only after outside intervention. However the panel was not as per the Supreme Court Vishakha guidelines. It is only after D protested and demanded a committee to be formed, that the bank constituted a complaints committee. After the complaints committee was formed by the bank there was no transparency on their part to inform the names and background of the members to D. D was not sure if a third party member was part of the committee. Moreover appointment of a psychiatrist as one of the members of the committee shows disbelief of the bank about the mental status and complaint of D.

Report given by the committee quoted lack of evidence as the reason for sexual harassment to be not proved. However it acknowledged harassment to D by the man. It is important to note that since the man demanded sexual favour from D while they were seated inside his cabin. Therefore any evidence to that effect was not possible. This reflects inadequacy on the part of the committee to connect the complaint of sexual harassment to the hostile work environment.

D was called by the committee only once. She had no idea and information about the procedure of the enquiry. Apparently D was transferred by the HR department of the bank to other department after the enquiry as a measure of damage control. However she continued to be nervous and experienced low self confidence because of the hostile treatment by the seniors in the new department. D was discouraged and de motivated by her new HOD to the point that she eventually chose to resign from the bank. This case is not just about non implementation of
the Supreme Court guidelines technically it shows complete violation of their spirit and vision. It is clear that the bank was not serious about implementation of the Supreme Court Vishakha guidelines and their attitude was careless.

E

In the case of E, sexual harassment continued and hostile work environment persisted inspite of her verbal complaints to her seniors. It is seen that seniors treated her complaint as a joke. They took no cognisance of repeated complaints and asked her to settle the case with the man. There was no effort to protect E while the man continued to malign her character, threatened to destroy her career and insulted her publicly.

Finally E complained in writing to head of the organisation because she feared that her confidential record would be spoilt by that man. Action began only after the written complaint. There was no instruction by head of the organisation to the HOD to handover the complaint to the complaints committee neither did HOD do it. Contrary to the directions in the Supreme Court Vishakha guidelines the inquiry was given to an officer instead of a complaints committee.

E became aware about the Supreme Court guidelines after she approached NGO. This shows that there was no effort done by the corporation to create awareness about the guidelines and towards prevention of sexual harassment.

It is seen that the corporation was groping in dark when it came to constitution of a complaint committee. There was no committee in place and the process started only after E complained. Months were spent by the administration in forming different kinds of complaints committees. The first committee consisted of members across the state. The committee was in a hurry to finish inquiry and arrived for a hearing without informing E. E was firm enough to not proceed. E struggled and pressed with the corporation for getting her complaint handed to a local complaints committee. In response, while Corporation faltered by appointing a committee with no third party member. Only after E persisted, external member was included in the complaint committee.

It is evident from the interview of E that the complaints committee was not supportive and facilitative. They refused help to E for procuring documents saying that it was not their job to do so. They did not carry out the enquiry fairly and tried to bungle with the procedure in the absence of the NGO member. Moreover they threatened E saying that she could lose her job. There was lack of transparency in the inquiry process and there were attempts to tamper the minutes of the meeting by the chairperson.
Documents generated during the inquiry were given to E due to pressure from the union leader. As mentioned by E, the complaint committee members did not understand spirit of the exercise. From the interview of E, it is clear that they were biased in the favour of the man and against E. Certain procedural parts such as cross examination that would help establish the charge of sexual harassment were not done inspite of request of E. Focus of the inquiry was find fault with work performance of E and not sexual harassment.

As mentioned by E while writing the report the committee did not take into account witness statements which in support of E and could prove the man guilty. On the other hand the members told E to bring solid proof in her support of her case. Whenever E challenged the committee members they labeled her as ruthless, pushy and ambitious woman. The report contained remarks that blamed E. Since E used the RTI Act to obtain copies of the witness statements, the administration tried to move her out on transfer. It is only through the RTI Act that E obtained the inquiry report and found out that the man was given written warning.

He was transferred out on promotion while anonymous letters were circulated about work performance of E. There was watch was on her activities and movements. It is obvious from the remark given by the consultant to the Corporation on the inquiry report that there were lacunae. It is clear that whatever little the committee could perform was because of the guidance of the NGO member in the committee. However in the long run, the NGO member too was unable to maneuver things in the interest of E.

Unwillingness of the management regarding implementation of the Supreme Court Vishakha guidelines both in letter and spirit percolated till the lower level of administration. Post complaint E was not given access to documents relevant to the inquiry. When she asked for papers under the RTI Act, she feared transfer by the administration. It is evident that E was isolated, cornered by the Corporation administration by taking away relevant work from her, making her do jobs below her level, cutting her allowances including those employees who supported her, keeping watch on her activities only because she resisted sexual harassment and challenged her seniors with the help of an NGO. There was no attempt either by the management or the Corporation to take into account impact of the process on the well being of E as an employee.

This case is about faulty implementation of the Supreme Court guidelines. It brings out the problems associated with the complaints committees. To begin with was a clear case of non implementation of the Supreme Court Vishakha guidelines and corporation regulation. Management and the administration were indifferent and disinterested in doing prevention activities. After E complained, one awareness session for a day was organised for the committee members. No prevention initiative was undertaken prior to a complaint.
It is clear that implementation of the Vishakha guidelines was not a priority for the Corporation. It is obvious that prior to complaint by E, the Corporation never made paid any heed to and made no efforts to adhere to the circulars sent by the state government. Chairperson in her interview shared that updated government decisions on the subject by the state government were not marked to the complaints committee. It is because of this attitude of non cooperation from the management and administration the chairperson felt incapacitated and inadequate. Due to persistent efforts by E to get her complaint heard and resolved the Corporation was compelled to comply with the Supreme Court Vishakha guidelines. However it was done in a haphazard and insensitive manner. It caused delay and disruption in the process of resolution and led to revictimisation of E.

H

While in service, H put in several verbal complaints to her immediate supervisor and manager. However their response was that of avoidance and evasion. Both of them promised action but asked her to not take the harassment seriously. But there was no move from them to intervene in the situation. Precisely as result of their passive support to the man and not recognising the complaint as that of sexual harassment, problem grew acute. H found it difficult to work at the bank because she became target of joke.

When she requested transfer to other part of the office, the manager refused to relocate her, instead offered her to share desk with the man who harassed her thereby actively encouraging the harassment. It is clear from the interview of H while she remained persistent in her complaints both her manager and supervisor never believed in her complaint rather they were active participants making the working conditions hostile. All complaints by H before she resigned from the bank met with ridicule and dismissal.

There was no deterrent action against the man rather harassment was justified as ragging of junior employee by a senior employee. It needs to be emphasised that probably both manager and supervisor held H responsible for the harassment and told her to reduce her interaction and dependence on the man. As result of this attitude of inaction and insensitivity, H found it impossible to continue working and finally chose to leave the job. Formal process laid down by the bank in its policy was not followed while H was still an employee.

Post resignation when H wanted to voice her complaint to the human resource department, the manager supported the man by discouraging H from complaining to the HR. Even after H gave a written complaint to the HR department, the bank dragged its feet in addressing the complaint. First inquiry was done without knowledge and participation of H. No information was given to her about its outcome except that appropriate action had been taken. H got information from a NGO about the Supreme Court Vishakha guidelines and she pressed in writing
that the bank needed to constitute a complaints committee to redress her complaint. However time taken by the bank was of months to form the committee and five months to get witness statements. This reflected apathy about the process on part of the bank.

It is revealed that committee members had no knowledge about the issue of sexual harassment and about the role of a complaint committee. They did not believe the complaint to be that of sexual harassment but of bullying. Moreover they did not take it seriously because it came from a former employee. There was no effort or attempt on part of the committee members to understand that H resigned from the job because of the sexual harassment and corresponding hostile work environment; therefore the responsibility to take corrective action was all the more needed.

Further they failed to understand the meaning of sexual harassment and impact of it on H. It is seen that H lost hope and felt completely discouraged. The way the inquiry progressed, it displayed lack of interest by the committee as they kept delaying it for almost a year. Attitude of the committee members led to H losing faith in them and leaving the inquiry incomplete. Since the bank did not issue release letter to H, she could not seek employment elsewhere thus damaging her further job prospects. It can be said that bank pushed H first to give up her job and then the inquiry due to its careless and half hearted attitude. Case of H is a case that shows total non compliance by a multinational bank to guidelines on sexual harassment issued by the Supreme Court of India.

**Issues Tied Together**

Participants who were representatives from NGOs functioning as external members with complaints committees, lawyers and trade union members substantiated experiences of women complainants i.e. A, B, C,D,E,G, H. Experiences cited by this group matched with those of women complainants and they help us to understand the nature and status of implementation of the Supreme Court Vishakha guidelines.

**Employer Response.** All women who complained of sexual harassment did not know what they could do in the face of sexual harassment and wanted to know more about dealing with it. None of the women had knowledge about existence of the complaint mechanism in their respective organisations. This reflected lack of awareness generation by the employer. None of the committees in the seven cases were able to reach women employees in their organisation. Women therefore reached out to the NGOs and the police for grievance redress. C approached the police.
All the women except A who received information from colleague, got to know about the Vishakha guidelines when they approached some outside agency such a NGO and / or the State Commission for Women. It is in this light that NGO members, lawyers and trade union members said mere forming a complaint committee by the employer was not enough. Publicity had to be done by the employer regarding existence of the committee. Additionally it was suggested that the employers gave them concessions in regular work for them to reach to the employees.

None of the organisations in the above mentioned examples had complaints committees as a permanent system in place. As a result none of the cases were instantly referred to the complaints committees. Complaints committees were either formed or activated after complainants insisted. Initially the complaint tossed from one forum to the other. In the case of A, B, C, D, E, G and H complaints committees were invisible. They were constituted by the employer due to external pressure or came into action after B, C, D, E, G and H protested and demanded compliance to the Supreme Court Vishakha guidelines. NGO members, lawyers and trade union members stated that implementation of the Vishakha guidelines was done with reluctance and out of compulsion. Largely there was denial about existence of sexual harassment. Most establishments were living in a belief that atmosphere in their organisation was good and therefore women did not have such experiences. Attempts were made to keep the issue of sexual harassment under cover by portraying that the provision would be misused. It was not easy for women to complain because it led to getting them a bad name. They complained because in almost all situations their work and career was affected. B, C, D, E, and H did not complain immediately after the incidents of sexual harassment happened. They complained when the work environment became difficult and intimidating. A and G complained because their well being and health was affected, B and E complained as they felt that they were in deep problem, D and H complained as it became impossible for them to continue working in hostile working conditions. It was clear that complaint was the last choice for them.

Sometimes women could not name the behaviour as sexual harassment and the complaints committee members were did not delve deeper. As a result the complaint was not seen as sexual harassment. It was seen as administrative in nature, labelled as workplace harassment or something else. This happened with B, D, A, G, and H. With B it was seen as politics in the department, with A as psychological problem, D as rude behaviour from senior, H as ragging, with E and G as politics between their seniors and them. As a result, when they reported it concerned persons either laughed at their complaints or did not believe them. There were efforts to tarnish character of the woman as in the case of E and H. NGO members, lawyers and trade union members said that generally employers looked at sexual harassment complaint as insignificant. As in the case of C and D, it was usually propagated by the employer that the woman was a non performer due to which she has complained of
sexual harassment. Complaints by B, E and G were not considered grave enough for attention and were dismissed as trivial. G was advised by her senior to beat up the man while E was told not to take it seriously. If nature of conduct was non-verbal then the employer did not see it as a form of sexual harassment and they felt that the woman was making an issue out of it which happened in the case of E and G. It was emphasised that employer response to complaint of sexual harassment was never sympathetic but negative, casual and that of avoidance. Initial response of the employers was that of disbelief and avoidance which was clearly seen in the case of E, D and H. In the case of D, Senior VP was shocked while seniors of E and H mocked at them. Initially in all the cases the attempt was to suppress the complaint or ignore them.

Sexual harassment at workplace was not seen as violence to the women rather as normal and was taken in a light manner. As said by one of the lawyers, companies apparently feigned strict global standards and sophistication outwardly. But it was a facade. Inside they had apathetic attitude which led them to believe that the woman complained because of some ulterior motive as in the case of C, E and G. All the organisations in the cases discussed above did not follow their policies on sexual harassment.

Retaliation after complaint was distinctly seen in all cases except that of A. C was terminated while D and H were compelled to resign because they were unable to continue working in humiliating working conditions. Since B, G and E were employed with the government organisations the nature of retaliation differed substantially and did not cost them their jobs. Sexual and administrative harassment escalated for B after she complained. She was left at the mercy of the man about whom she complained as she continued to report to him. While E was harassed in different ways such as given work lower than her position and anonymous letters posted about her performance at work etc. Leave availed by G was not regularised resulting her not getting paid for that period. H was unable to seek employment elsewhere as her release letter was not given by the company. Almost in all cases, the senior management and persons on responsible positions were found involved in torturing the women. Lawyers shared that all the cases; there was retaliation against the women after the complaint. Women were either terminated or charge sheets issued to them for unrelated issues. Mostly personal file of the women would be plucked out and the spotlight would be on them. There would not even a slight warning from the employer to the man. In most cases employers got absolutely vindictive and made it difficult for the women to seek employment elsewhere. News was spread around that the woman was a trouble maker.

**Functioning of Complaints Committees.** It was observed in the case of C, D, E, G and H that complaint committee members failed to play a facilitative role in the process of inquiry. E and G felt threatened by the behaviour of the committee members. E was labelled by the committee as ruthless and pushy in the inquiry report
because she fought for her rights. In the case of H and D the committee was disinterested in the conducting the proceedings. C realised that the committee was not sensitive to her and did not follow proper procedure. In the case of A the inquiry officer did not trust her and suspected her for having given a false complaint. She repeated her questions with A to check whether she changed her statements and her mental condition was sound. NGO members, lawyers and union members stated that complaints committees consisted of employees who were forced to be in the committee and not out of choice. They lacked sensitive attitude and intellectual capacity towards women and the issue. Additionally they did not have clarity about their role and the steps to be taken after a case was reported. As a result of the confusion about their role, the committee members did not encourage sharing by the complainant and did not listen to her attentively.

It was seen that committee members were unable to understand the impact of sexual harassment on physical and mental health of the woman. In the case of G, it was officially known that she was depressed and underwent treatment for the same. Yet her seniors and the complaint committee members including the outside member showed no sensitivity to her condition. In fact they asked questions and commented on the complaint which further made her feel upset and angry. One of the lawyers said that they ended pointing fingers at the complainant. Most of them carried preconceived notions about women.

It was obvious the committee did not trust E. Both in the case of E and G, transfer of the man was seen as the way to deal with the situation. Complaint of sexual harassment was seen as revenge by the women, attitude problem of the woman and lack of trust in her. This led to the members blaming the woman and thinking that she was misusing the provision. They justified sexual harassment, named it as a mistake, unintentionally committed on part of the man and expected the woman to ignore it. There was a feeling that penalty imposition on the man would be an extreme step and therefore ended up recommending his transfer.

In the cases discussed above, most of the women did not know names of the committee members before they participated in the inquiry. D was not aware if an external person was included in the committee. H and G did not know their names. H and C found the external member disinterested while G felt threatened by her questions. Situation was similar with regard to the procedure of inquiry. Most committees did not inform the complainants about the procedure they were planning to follow during the inquiry. NGO members, lawyers and trade union members mentioned that complainant needed inputs, education and guidance about her rights and entitlements before going through an inquiry. However complaint committee members were unable to provide her with the same. This resulted in the complainant being in a weak spot compared to the man. Mostly he consulted a lawyer.
Further it caused dependence of the complainant on the one / few sympathetic independent persons with the committee and overall attitude of the committee. In order to make the inquiry procedure women friendly and make the complainant feel supported it was needed in beginning that her doubts were clarified; the procedures were told to her clearly preferably in writing. One of the lawyers mentioned that it was crucial that the woman was accompanied by someone of her choice who understood the procedure and could support her at the time of the proceeding. Employers generally did not allow anyone with the woman on the pretext of confidentiality but it was like cutting her support systems. E was not allowed to be accompanied by the union member. In all the above discussed cases, the complaint committee members gave no information, offered no support and guidance to the women complainants about the inquiry process and procedure. The women were left on their own feeling isolated and further victimised.

Issue of the prolonged inquiry was prominent in the case of B. B attributed the delay to predominantly to the domestic procedure followed by the committee for carrying out inquiry. She said it was important that complaint committee members took firm stand to define the scope of the inquiry and avoided irrelevant questions during cross examination. It was their prerogative to ensure that the procedure did not become harsh and unfriendly for the women. NGO members, lawyers and trade union members observed that time bound aspect was missing in the inquiries since the committee had many other commitments and deadlines to meet. There were no standard operating procedures regarding procedure to be followed during inquiry. If the procedure was done as per the department inquiry procedure, committee members were seen asking irrelevant questions. It took tremendous efforts on part of the NGO member to convince them that those questions would not bear any output and telling the members to allow the woman to talk. Due to lack of knowledge the committee members were seen avoiding the procedure or took time to complete it. Lawyers shared that committee needed to stop the man if his questions to the woman during cross examination were irrelevant and identify relevant issues.

H, D and C were in situations where the committee and HR department did not play any role in either stopping or redressing sexual harassment. In the case of C, the HR manager abetted sexual harassment by ignoring complaints by C. In the case of H the HR department only asked H to send a written complaint and did nothing beyond it. In the case of D, the HR department did not play significant role. In all these cases the HR departments and committees were ineffective when it came to taking stand against sexual harassment. There were no mechanisms put in place by the HR department in the companies to protect the women from retaliation. In most cases, the women faced brunt of the man when they proactively resisted and protested against sexual harassment. Lawyers said that committees in corporate were not able to give redress to women because the committee members were
either intimidated by the man or they wanted to make the company happy by not taking stand in interest of the complainant. The HR department was involved in protecting the man and constitution of the committee depended on the HR department.

**Issues related to Procedure.** Concerns regarding inquiry procedure highlighted by complainants were similar to the ones by one of the NGO members. B stated that she was made to revisit the trauma while underwent the inquiry. In the case of A too she was asked by the inquiry officer if she was willing to come face to face with the man. In this context one of the NGO members clearly voiced her resistance to the compulsion of having semi legal inquiry and stated that procedures such as cross examination could be pressurising for the committee members and they could commit mistakes. Decision about the procedure needed to be left to the committee members. She added that such procedure was not women friendly and especially if the complaint was by a woman who was a third party. Having the domestic inquiry procedure would be self defeating because mostly women were not willing to come forward to complain. Those who came forward with courage would have to face the harasser for cross examination.

Committee asked D to provide evidence. They did it without taking into consideration that the incident happened in a closed room. Conversely though E and C produced proofs in form of witnesses and documents before the committee they were not considered by the committee while arriving at a decision. It was added by a lawyer that many times committees that had lawyers as members fell into the trap of looking for proof, contradictions and failed to understand the state of mind of the complainants. They further added that procedure was a problem. Within the domestic inquiry understanding the man was innocent unless proven guilty. Burden of proving the misconduct rested on the woman and the employer. This needed to change if the procedure was to become less stringent. After the woman complained and prima facie a case of sexual harassment was made out, the burden needed to be shifted to the man to prove his innocence. This would prevent from the committee doing cross examination and the charges not getting proved due to lack of witnesses. Complainant would not need to depend on sensitivity on the committee members which was rarely found. Sexual harassment happened in privacy, it was required that the committee members understood that evidence could be lacking. They needed to trust the woman.

**Ray of Hope.** In the face of the negative experiences by most NGO members, one of them cited her positive experience with a complaint committee. The chairperson made efforts to read about the issue and dealt with a reported complaint sensitively. She added that role of the chairperson was important in the committee because she was the leading person.
DISCUSSION

Most of the writings and studies in India done during 1997-2013 i.e. after the Supreme Court of India issued the Vishakha guidelines and till the law on sexual harassment at workplace was enacted reflected poor implementation of the Supreme Court Vishakha guidelines. The SARDI study (1999) stated absence of sexual harassment committees and the lack of punitive action in reported cases. It pointed towards the fact that management generally ignored the issue. On the contrary, women were punished for raising their voice against the sexual harassment within the workplace.

In 1999, the women’s groups and others campaigned for implementation of the Vishakha guidelines through open letter to the Supreme Court of India. The campaign emerged from a case in the M.S University in Baroda, India where the Supreme Court guidelines were not complied. Replies by the state governments to the Supreme Court (2005) in form of affidavits regarding the steps taken by them to implement the Vishakha judgement revealed substantial non-compliance with the Vishakha guidelines.

The Lawyers Collective study (2002) stated that the employers saw Vishakha guidelines as not binding on them and employees were rarely organised or powerful enough to pressurise the employers to do the compliance. Also the level of awareness about the guidelines was low almost in all the workplaces reflecting lack of prevention programmes by the employer. Similarly the Yugantar study (2003) showed out of fifty two employers covered by the study only fourteen formed complaints committees and most employers did not take any measures towards prevention of sexual harassment.

A CII study (2005) released around little later brought forth sexual harassment at workplace as one of the reasons leading to speedy attrition of women on higher and managerial positions in large companies. Around that time, Chaudhuri (2006) found that few women knew about the Vishakha guidelines (1997) while none had any knowledge about the complaints committees. This reflected poor implementation of the guidelines by the employers.

CFTI study (2010) done across IT and BPO companies in India brought forth the fact that majority women not only continued bearing with sexual harassment due to fear of retaliation but sexual harassment was not an important issue for companies. Apart from poor policies there was lack of trained human power to handle cases of workplace sexual harassment due to lack of commitment of industry heads.
The UNDP report (2010) stated that though India had a strong labour movement; trade unions did not take up the issue of sexual harassment happening at workplaces seriously. Understanding was emerging only slowly in the region, despite the growing number of women in the paid workforce. Poor and faulty implementation of the Vishakha guidelines within the private sector was discussed in articles by Oversier (2010) and Majumdar (2003). Industry persons and academicians were quoted in these articles. They confirmed that the issue of sexual harassment was largely been swept under the carpet in India. Further they disclosed that considering the social taboos associated with sexual harassment and the long pendency in courts; these provisions were never been successfully invoked. These articles revealed that overall awareness among Indian companies about the need for a well-defined mechanism to tackle sexual harassment at the workplace was terribly poor. Moreover multinational companies were seen taking advantage of the legal gap created in absence of law.

Sarpotdar (2012) gave insight into the struggles of women saying that challenging the employers is overwhelming and practically difficult for any woman who faced sexual harassment given the enormous cost attached in terms of time, energy, and determination. Fighting huge powerful transnational companies that enjoy astounding resources may crush women completely as the test is not just to tackle the unyielding employer but bureaucratic challenges thrown up by the police, bureaucracy and the courts come into play as well. This is supported by women’s rights activists who pointed out that the organisations generally view such cases from the perspective of the company's prestige and not as breach of an individual employee’s right to dignity and safety, leading to skewed attitudes and hushing up of such cases (Deshpande, 2013).

It is important to note that the Supreme Court of India in one of its interim orders issued in 2006 designated Labour Commissioner of each state as the nodal agency to collect the details regarding the complaints of sexual harassment and to make sure that the required committees were established in factories, shops and commercial establishments. Records at the Maharashtra Labour Commissioner office explored by Pinglay (2012) show as less as three complaints from 2010-2012 while those at Karnataka Labour Commissioner office show as many as 700 complaints registered unofficially (Phadnis, 2013). Both revealed serious problems with the compliance by the companies to the Supreme Court directions.

Taking cognisance of this situation the Supreme Court of India reiterated its directions in Medha Kotwal vs. Union of India, 2012 with special reference to the nursing homes, law, architect and engineering firms. It directed statutory institutes to ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them followed the guidelines laid down in Vishakha.
Report by the Joint Parliamentary Committee (JPC) in 2011 that reviewed the Sexual Harassment Bill, 2010 summarised the issue pertinently. The JPC recorded that there was no database available with the Ministry of Women and Child Development (MWCD) with regards to the number of complaints, their resolution and action taken in the absence of any laid down central mechanism especially in the context of the private sector. As a consequence, implementation of Vishakha guidelines in the private sector could not be ascertained. In the absence of any penal provisions, compliance by the employer in the private sector could have been lax. The JPC concluded that so far Supreme Court guidelines remained on paper in majority of workplaces.

In order to understand the situation closely about the experiences of women of going through the inquiry; it is important to look at functioning of the complaint committees brought out by various studies in India.

The LC study (2002) stated that most committees were not truly representative nor have they had effective NGO representation. The employer did not consult the trade unions while forming the committee nor were the complainants allowed to nominate member of their choice. Additionally there was a danger that the complaint committee members were such who suited and favoured the employer and the man because they were mostly constituted post complaint. The study noted that the committee members were unable to stand up due to fear of retaliation from the employer. Employers often resisted induction of an NGO member, as they perceived sexual harassment to be an internal matter. In some cases, the employers sponsored friendly NGOs with the intention of nominating their member on the committee thus compromising their impartiality. Selection of an NGO member was fraught with problems as several NGO persons were not exposed to dealing with complaints of this nature and not sensitised to the issue. Therefore, the mere existence of an NGO member did not ensure fairness and sensitivity in dealing with the complaint.

Additionally the study found that the significant handicap faced by the committees was their lack of legal knowledge and inability to assess the impact of sexual harassment on the well being of the complainant. This led to committee members rebuking the complainants for having raised the issue and not taking the complaint seriously. Several complainants said that there was lack of transparency in the functioning of the committees and intervention by a state agency such as the Women Commission was needed. The study discussed about the retaliation to women complainants in form of dismissal or forced resignation by the employer after they registered the complained.

The Yugantar study (2003) noted similar findings. Representatives of women workers were not included in the committees and committees did not have women as chairpersons. Most complainants were not satisfied with the functioning of the committees because most of them were only on paper, dominated by men, members were not
impartial and the grievance redress was not done promptly. Chaudhuri (2006) has noted that most women respondents did not complain to supervisors or the management about their experiences of sexual harassment because of 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 not be able to stop the abuse.

Chaudhuri (2008) discussed findings of the study done by Sanhita (2007) on functioning of complaint committees. The study found that complaints committees constituted as per the Supreme Court Vishakha guidelines (1997) were not functional and lived in denial about occurrence of sexual harassment in the their respective organisations. Cases were dealt by the directly by the authorities though the complaint committee was present. Committee members were found confused about the range of behaviours that could be termed as sexual harassment and were not able to draw links between acts of sexual harassment and consequent hostile work conditions faced by women.

Most complaints were dismissed by the committee either as trivial or false. Similar findings were noted by the SARDI study (1999) and the CFTI study (2010). SARDI study found that complaint committees did not exist in majority workplaces and the CFTI study showed wherever they existed women did not have faith in them because the issue of sexual harassment was not treated as an important issue but as any other HR issue. Both studies reflected lack of commitment from the top management to address the problem from the impact angle of it.

It is evident that none of the above mentioned studies capture experiences of women of going through a sexual harassment inquiry. Yet it can be understood from the interviews of women about functioning of the complaints committees and overall implementation of the Supreme Court Vishakha guidelines that the experiences were not positive and there was tremendous scope for improvement when it came process of inquiry and resolution mechanism.