CHAPTER ELEVEN

FINDINGS

It emerged that women did not register complaint of sexual harassment immediately after the act/s of sexual harassment but after the work environment became hostile. They resisted sexual harassment in different ways such as warning the harasser, confronting the harasser and expressing their unwillingness to give in to the sexual demands. Resistance to sexual harassment resulted in retaliation and creation of hostile work environment from the harasser for the woman in form of threats to destroy her career, humiliating her in presence of other employees, instructing fellow employees to not talk to her, finding faults in her work, giving her work not meant to be done by a person working at her position, keeping watch on her, blackmailing her, pressurising her to resign from the job, initiating inquiry against her for not doing her job properly, suspending her, spreading rumours about her etc.

However after women complained to the employer there was no immediate action to rectify or stop creation of hostile work environment. It was seen that employers did not trust women and were not serious about the complaint. Women became target of attention and laughing stock at their workplaces. Employers tried informal resolution of complaints by reprimanding the harasser and kept the complaint pending. It was seen that the Supreme Court Vishakha guidelines, subsequent interim by the Supreme Court of India in Medha Kotwal vs. UOI and company policy on sexual harassment were violated by the employers. Almost all the complainants and employers were not aware of the Supreme Court Vishakha guidelines (1997). This resulted in employers taking various other steps such as doing inquiry on their own, preliminary inquiry, inquiry by one person, inquiry by
overseas management instead of handing the complaint to the complaints committee. Complaints committees were constituted and handed over the complaints after intervention by external agencies such as NGO, MSCW and High Court. The HR departments did not support women but men. Except in two cases, complainants received no support from the colleagues while sexual harassment was happening and after they complained about the same.

It came through that the going inquiry was a difficult and torturing experience for all women. This was primarily because they were repeatedly called for it which affected their daily life for that period. Members of the complaints committee did not understand their pain and agony. They felt that rather than gaining justice for them it left open avenues for the harasser to harass them further. This led to women losing interest in the process. Women working with the government organisations found department inquiry procedure that was followed by the committee lengthy and time consuming although it generated good documentation.

Women found that members of the committee were did not understand their role and they were not oriented to the inquiry procedure. They observed that committee members had pre conceived notions about them. This led the committee members to make remarks on the personality of women instead of dwelling on the complaint. In one of the instances members of the committee threatened the complainant with consequences such as termination if the complaint not found true. Women complainants working with the private sector experienced that the committee members were in the favour of the management and showed no interest in giving justice to them. Mostly they dragged the proceedings. They did not follow proper inquiry procedure and recorded incorrect conclusions which were not in favour of women. One of the committees consisted of a psychiatrist as a member which made the woman feel that the employer was checking her mental status. All women emphasised that role of the external member in the complaints committee was pivotal.

However, complaints committee members including chairpersons and HR managers agreed that complaints committee mechanism is better than outside inquiry officer because that person may not be aware of nuances of issue. Mostly committees usually faced tremendous pressure to close the case because emphasis was on time bound complaint resolution. Committee members said sometimes the inquiry was delayed because members were busy with some work. In such situations severity and seriousness was lost. Pressure built on the surrounding, and alertness caused to the man who did it was lessened and loosened. The delay could be message to the man that there was no problem with his behaviour.

It was suggested by some participants that chairperson of the committee could be fearful due to many reasons. Therefore in order to maintain independence and neutrality of the decision some outsider could be appointed as
the chairperson of the committee and the while the existing chairperson could become deputy chairperson. It was also suggested that role of the inquiry committee should be limited to state whether the gravity of the misconduct was low, medium or high. Committee should not be allowed or given authority to recommend punishment to be imposed on the employee.

Participants said that delay was caused because took six-seven months or more for the management to hand over the case to the committee. There was no reply to the letter from the committee to the management inquiring reasons for the delay. Similarly it was expected by the committee that the administration implemented recommendations by the committee within stipulated time. Committee did not know whether their recommendation was implemented by the administration. Sometimes it was found that it did not happen. Committees did not have control whether the recommendations by the committee were included the service record of the respondent.

Participants agreed that it was difficult to follow a department enquiry procedure which was followed for other misconducts such as gambling, thefts, drinking, insubordination, absenteeism etc. for a sexual harassment case because sexual harassment is a sensitive issue and it is about women. This procedure was time consuming. Sensitivity and confidentiality were lost during the inquiry especially after the charge sheet was issued and cross examination was done. Additionally the complainant was compelled to wait for days, months and years the complaint to be resolved. Due to these problems there was a possibility that women could be discouraged from complaining of sexual harassment. Within a department inquiry procedure the complainant became a witness. She was dependent on the presenting officer who presented the case on behalf of her. She was allowed to be not present when the cross examination of witnesses happened though she was the one who experienced harassment. It was further expressed that since committee members are not lawyers. They were worried if they are challenged in the court with regards to the procedure. Some participants stated that a separate procedure was needed which would help in expediting the inquiry. However it had to be in alignment with principles of natural justice. Approval of the legal department of the organisation was also needed because the committee members had to fight with the departments for not following the department inquiry procedure.

However some participants expressed that from the administrative approach of discipline, following the department inquiry procedure for enquiry would bring about uniformity and help the committee in deciding the case. If the procedure was not uniform people could be following different procedures and decision could happen arbitrarily. Moreover government organisations needed to follow the statutorily laid down procedure. Few participants said that the department enquiry procedure is good in cases where there is ‘bigger type’ of harassment
because the procedure was designed to probe deeper and go into complexity of the cases. In such cases the committee needed to go deep to understand how it happened from the budding stage.

Further it was said that if the committee followed the department enquiry procedure then efforts were required to make it simpler and women friendly. As per Vishakha guidelines sensitivity towards women is required because it is difficult for them to come out and report sexual harassment. Therefore inquiry was not to be done like a criminal case where the committee asked for witnesses. Since procedure is not laid down explicitly in the Vishakha guidelines some committees combined organisation rules and Vishakha guidelines for the purpose of procedure. There were conscious efforts to maintain sensitivity and confidentiality in the process. Certain things are done by the committees to make the procedure women friendly. If the woman could not come to the place of the enquiry, two committee members went to her residence. Complaint given by the woman was not attached to the charge sheet but summary of the complaint. Charge sheet was issued by the committee and not by the administration to avoid administrative delay. Cross examination was not made a compulsion if the complainants were third parties / outsiders because they were mostly not available. Recommendations and penalties that come out of the inquiry were well thought and done carefully. They were aimed at behaviour change and non repetition of the behaviour.

NGO members shared that employer response to reported cases was subjective. It depended on head of the organisations, their perception about sexuality and their interest in the case. However mostly attitude of employers was not positive towards implementation of the Supreme Court Vishakha guidelines (1997). They were often found in state of denial. There was low awareness about the guidelines and implementation was done out of compulsion or because there was pressure from the senior levels. Complaints committees were formed only after complaints were reported. These committees had no support from the employer and needed capacity building. Complaints of sexual harassment were largely pushed under the carpet. Sexual harassment was treated as normal behaviour and not taken seriously. This resulted in women reaching out to the police. Sexual harassment policies were vague because they did not envisage various situations.

Committees mostly consisted of employees who were forced to be in the committee and had no feelings for it. They lacked sensitivity towards women and intellectual capacity to understand the issue. As a result they failed to understand the impact sexual harassment had on the work and career of the woman. Instead they looked at her as somebody seeking revenge on the man because the man caused her some problem in her work. They needed motivation, education and guidance.
Committee members lacked clarity about their role and did not have a standard operating procedure. Their working was not feminist. Members were not clear about the procedure to be followed in cases of sexual harassment. They copied procedure of the vigilance department e.g. not giving copy of minutes of meeting to the complainant and asked questions the way it was done in routine department inquiries. According to the NGO members such questions were not needed and led to the inquiry becoming lengthy. It was observed by the NGO members that women complainants needed lot of input, education and guidance as they did not know the procedure and she could not manage going through the inquiry alone. However the committee members never informed the woman about her rights and entitlements. Rather they saw it from the point of the organisation and its respectability.

NGO members expressed that the committee members did not come across as neutral and found faults with the complainant. They held beliefs such as if a single woman worked late in the evening, dressed well and went to the canteen for tea with men, she was available. This happened because mostly the man against whom complaint was done carried a good impression within the organisation. Committee members were familiar both with the complainant and respondent for many years which made it difficult for them to trust the woman and remain neutral after listening to the complaint. They thought sexual harassment was a mistake by the man and he did not do it intentionally. They were of the opinion that even though it was intentional the woman should not have paid attention to it. Rather ignored it because he was in the habit of such behaviour. They often thought that the woman was exaggerating the incident and taking advantage of being a woman. Some members were biased against woman. They blamed her and justified behaviour of the man.

There are others who were diplomatic and oscillated while taking stands. Due to the gender biased attitude led committee members to suggest that man to be transferred and not penalise him as for them it would be an extreme step. NGO members were of the opinion that transfer of the man would not help as he would repeat the behaviour after the transfer happened. They said there was a long way to go in terms of making the attitude of the committee members unbiased. Some of the committee members were sensitive to some extent. These members thought that when one out of many women employees complained there was clearly some issue.

Overall it was expressed that role of the chairperson and the NGO member was important in the committee. Functioning of the complaints committee depended on the chairperson. She was the leading person in the committee and played a vital role. Sometimes the chairpersons were able to stand up for the cause but this was the case all the time. Some chairpersons prepared a lot by reading on the issue.
Lawyers said that employer response to complaints was negative. Mostly they ignored the issue. Employers lacked sensitivity and treated the issue trivially. If they realised that the woman would take some action against them they retaliated by blaming the woman as non performer. As a result complaints of sexual harassment usually led to issuance of charge sheet, memos to the woman and finally to her termination.

Whenever a woman complained her file was plucked out for the employer to find faults with her work, leave records etc. Employers also indulged in defaming the woman in the job market making it difficult for her to find a new job. Largely women were isolated after they complained of sexual harassment. Initial attitude of denial about sexual harassment in the organisation led to long fights in the courts. It was seen that the HR department protected the man who was charged with sexual harassment. Complaints committees were managed by the HR department in a way that they were unable to be fair to women complainants. Constitution of complaints committees too was a problem. Mostly third party member was usually a fake NGO which did not exist. Women complainants were not given details about the constitution of the committee. Confidential record of the man did not contain that there was complaint of sexual harassment about him.

Lawyers said people did not want to be associated with the complaints committee because they saw it as demotion. Committees were not assertive and did the inquiry as a formality. They were aware about the gravity of the issue of sexual harassment and it was too trivial to take action against the man. They did not make the effort of going through the records, analysing the complaint and jumped to the conclusion that it was a false complaint. Mostly the committee members did not understand the difference between intention and impact. Giving redress to the woman did not happen within companies because committee members felt that the woman was at fault and she complained to cover the same. They felt only she was harassed and not other women. Largely they attributed sexual harassment to the way the woman dressed or that she was outspoken.

Sexual harassment was justified saying that the man generally behaved in similar manner with all women and one woman need not have problem. Committee members encouraged the man to defend himself by giving him that space thus making the atmosphere hostile and not conducive for the woman. They found reasons and explanation given by the man more convincing than the complaint. More space was given to the harasser than to the complainant. Mostly she was targeted and made a scapegoat. Due to this woman needed to rely on the sensitivity and subjectivity of the complaints committee and rarely committee members were sensitive.

Union Members said that employer resisted formation of complaints committees as per Supreme Court Vishakha guidelines (1997). They generally preferred to keep the issue of sexual harassment under cover fearing misuse of laws by women. Women complainants were seen as revenge seekers and their image was tarnished by the
employers. If the man was on a high position in the organisation, union tried to bring about compromise between the complainant and him by making the woman withdraw her complaint and not take it ahead.

Union members further said that women in the complaint committees were unable to take positions because they were trapped in patriarchal mindset. The committee was limited to the middle class women. It did not reach up to the class of women who were exploited. Though there were procedural guidelines for the complaints committees the union members observed that decisions were not happening quickly as per the procedure. Trustworthiness regarding committees was not there. Women were not sure of getting justice if they approached the committee. This created fear in the mind of the women who were not sure of going ahead with their complaint. Women had a feeling that they were not getting justice through the committee mechanism since the committee did not have the power to impose penalty on the harasser. Union members emphasised that publicity and awareness about the committee was needed.

Women who reported sexual harassment said that there was low reporting of sexual harassment mostly because of stigma surrounding the issue and lack of family support. Secondly women feared discrimination and retaliation after the complaint was registered. They apprehended that they would be seen as arrogant, rude, held responsible for tempting men and drawing their attention thereby judged as women with loose character.

They said men sexually harass women because of gendered socialisation. They are in a comfort zone because of the position they hold. They think and believe that no one will fight for the woman. It was expressed that women were not responsible for sexual harassment while few differed. They said that women like to be pursued, enjoy attention and give sexual favours for something in return.

Women complainants said that misuse of the Vishakha guidelines was a remote possibility because largely women were unaware about laws and complaining would cost them time, money and energy. Also women know that misuse of law could attract action against them. Prevention was required not only for physical forms of sexual harassment but also verbal harassment because both were equally traumatic. They suggested that recruitment was the most appropriate time to give warning to men. Unless strict penalty was given to the man found guilty of sexual harassment, other men would not get the message and take the complaints committee seriously.

As part of prevention women employees needed to be informed about what constitutes sexual harassment. Also women needed to learn to differentiate friends from colleagues to able to draw the line of acceptable behaviour. It was essential that women stood up for each other. Open discussions in offices were required with women who
faced sexual harassment for other women to combat it better. It was important for the human resource department to be in touch with women employees and maintain a good rapport with each of them for them to be comfortable for reporting and discussing instances of sexual harassment faced by them.

Complaints committee members and HR managers said that women did not complain of sexual harassment primarily because of fear of their character getting maligned, reputation getting damaged, they becoming topic of discussion in the office and jokes plus gossip between colleagues. In towns and small cities women feared that their family members would get to know about the complaint. Lengthy redress process too discouraged women from making formal complaints.

Various reasons such as beauty of women, jealousy and revengeful attitude, perceptions about women as loose / free influence of western culture, looseness / openness in behaviour of younger generation, lack of awareness amongst men about what constitutes sexual harassment were cited as reasons for men harassing women sexually. Belief that women will not complaint and they will get away with it unnoticed was also seen as one of the reasons.

Sexual harassment was seen as a tool to display power and dominance. Some said women not responsible for sexual harassment but patriarchal mindset, rigid and hierarchical set ups while other said women provoked sexual harassment by wearing particular kind of clothes and behaving in a particular manner. Chances of the misuse of the Vishakha guidelines were remote because women complained only when something wrong happened. They agreed that every law was misused and some said misuse happened when women complained after the relationship went sour.

They agreed that sensitisation of men employees was needed for deterrence of sexual harassment. Men could be given instructions at the time of recruitment about the ways to behave with the other sex and about the conduct rules. It was suggested that women cells should be created within organisations to conduct seminars on regular basis and posters could be put up. Prevention of sexual harassment had to be a continuous activity and in small doses. Prevention was not something to be done in spurts. It had to be in the form of constant awareness of people and in focus all the time. It needed publicity just like the drink and drive campaign. It was important to tell people that sexual harassment was not only rape and molestation. Making remarks which were unwelcome by the woman and degrading a woman by some routine actions was sexual harassment. It could be done by giving training to men about what are the things that can harass, trouble, hurt a woman and they needed to restrain their behaviour. Men needed to be given training regarding how they were to approach and behave with the woman.
This would create awareness since many men today also did not know that staring at a woman / girl can be an act of sexual harassment.

Participants said that usually men think that they were just looking at them and he could do it casually. But it could hurt the woman. Encouraging reporting of sexual harassment was also identified as one of the ways to prevent it. This could be facilitated by having simple procedure and redress mechanism looking at which women would not hesitate to come forward. Only then women would come out of fear and they would report sexual harassment. If women kept quiet then the harassment would grow and those men could harass other women. Keeping quiet and bearing the harassment would encourage men. If they learnt lesson due to complaint by one woman then they would stop it there.

Some participants said that personal interactions between a man and a woman could not be controlled. One only promulgate that there should be no gender bias. Sometimes there could be misconception in the friendship. One person misconceives that it is more than friendship which led to sexual harassment. According to the participants these areas cannot be defined. Human behaviour cannot be defined to a standard pattern. Some expressed that attitude of women needed to undergo change for them see men as brothers and fathers.

Further it was said that traditional penalties would not work. New ways of penalising had to be found out such as calling parents and wife to the office etc. to make the man feel guilty. It was shared that this method worked in other company to reduce absenteeism of the workers. Participant saw this as cultural management for prevention of sexual harassment. Some of the good practices for prevention that were shared were separate camps for various levels of employees, notice boards to be displayed at prominent locations, repeated trainings to the complaints committee members, special trainings for managers, and regular awareness drive for employees, email id of the committee made prominent, puzzles, crosswords, poster campaigns, having policy in place, awareness articles within in house magazine and organising meet of women on the international women’s day.

Representatives from NGOs functioning as third party members with committees’ lawyers and trade union members said that reporting of sexual harassment was low because women complained only when the nature of the act was critically offensive and went beyond a particular level. Also women were stamped as liars and trouble makers by the employer. Secondly there was lack of awareness about the Vishakha guidelines amongst women plus the support systems were few. This situation became more difficult if the woman was not an employee.

They stated that men indulged in sexual harassment primarily because of the patriarchal construction of masculinity and sexuality which created particular kind of outlook, mindset and perceptions about women. This
understanding led men to flirt with women and use sexuality to lure women for keeping them under control. Power and position was misused by men at workplaces to spread gossip about the woman and tarnish her image. They stated that though men behaved open and free manner they were never seen as provoking sexual harassment. Women believed in social norms and were always conscious of their character. Therefore it was not possible that they invited or were responsible for sexual harassment.

This group added that organisation policies on sexual harassment should not hold women responsible for sexual harassment. Sexual harassment was underreported and instances of misuse were few. NGO members, lawyers and trade union members said that women had no time to put in false complaints are they were balancing and managing home and work. Stakes were too high for women in terms of their reputation and career. This group agreed that since there was silence around sexual harassment publicity was needed. NGO members said they did not see prevention activities in the form of awareness sessions happening within organisations. Therefore women were not aware about the existence of the complaints committee. They did not know that they could approach the committee if they faced sexual harassment.

Some organisations conducted regular meetings of the committee but there was not much follow up of these discussions in terms of organising awareness sessions for women. Discussions held during complaint committee meetings did not reach the employees. Few committees held awareness sessions, general discussions with women and gave publicity to the committee. For publicity posters needed to be exhibited in all the conspicuous places in the office premises and awareness programmes had to be done on gender, sexuality and sexual harassment. However displays had to be such that they could be understood by those who could not read.

Role of the committee members needed to be chalked out. If a senior was found indulging in sexual harassment, it was decided that the observer would contact senior person of the committee who would communicate with the man. Names and phone numbers of the committee members should be displayed for information of women. Prevention also meant creating conducive environment for women to report sexual harassment. For making the environment safe it was important to create a space within the organisation where the women could express her feeling and was heard not being worried whether it was correct. Clearly laid down and well publicised policy on sexual harassment was needed. Cells were needed where grievances could be heard. It was stated that sexual harassment could stop if the complaints yielded results. Union member expressed the need to involve men more in the prevention programmes.