CHAPTER TWELVE

RECOMMENDATIONS

The Vishakha guidelines (1997) affirmed that sexual harassment of women was common and resulted in violation of their fundamental rights to life and liberty guaranteed by the Indian Constitution. The Apex court specified that the guidelines would be binding and enforceable on all employers until the Indian Parliament enacted suitable legislation to replace them. Prolonged struggle and dialogue by the women’s movement with the government for more than a decade resulted in enactment and enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on 9th December 2013. Prevention, prohibition and redress of sexual harassment are the key features of the Act. As the title suggests it is a gender specific legislation recognising unequal gender relations at workplaces. It is therefore an explicit form of affirmative action under Section 15(3) of the Indian Constitution, which allows the State to enact special laws for women.

Present research was conceptualised and undertaken when India did not have a law on sexual harassment at workplace. Therefore it is important that certain recommendations are done by me aimed at better and effective implementation of the new law. The following recommendations are based on the argument that only if certain hazy areas in the Act are interpreted from pro woman perspective and contextualised with the struggle from it emerged that Act will be able bring about desired change in the position of women.

Meetings of the Internal Complaint Committees (ICC)
ICC has a vital role to play in the implementation of the law. Section 13 (a) of the Rules mandates every organisation to have a policy on sexual harassment and carry out wide dissemination of the same. In the context of this provision, the ICC members are keepers of the policy who will ensure its efficient implementation. In fact sexual harassment policy of the organisation needs to set out the roles and responsibilities of the ICC from firstly from the prevention perspective and lastly in the context of redress.

One of the major gaps that the Act creates in the context of the working of the ICC is that it does not specify frequency and number of meetings for the ICC. It could be interpreted that, the ICC needs to meet only after a complaint is reported to it. Consequently if no complaint is received then the ICC members will never come together and will have no role to play in the implementation of the Act. Such an interpretation is detrimental for the organisation in the long run as it will result in the ICC remaining only on paper thereby losing its significance and visibility to the employees.

As a best practice, it is important that the even though there is no reported instance of the sexual harassment, there are regular meetings of the ICC. Expected outcome is that the ICC members will then be able to reach out to the women in the organisation and build rapport with them. Sustained dialogues between the ICC and women will instill confidence in women for them to report sexual harassment without facing the hassle of not knowing the avenue to report sexual harassment. Such an exercise will not only help the ICC members to gain visibility but make their existence in the organisation prominent. As a result the ICC can become face of in house awareness campaigns on sexual harassment leading to effective compliance of the Act. Mere existence of the ICC on paper to becoming a dynamic body that vigorously champion’s prevention, attitudes can undergo a change and systems can become more sensitive to women.

**Importance of the External Member**

In the Act, Section 4 of the Act mandates appointment of an outside member with the ICC. However Section 7 of the Rules does not mention mandatory presence of that member as part of the quorum for the ICC meetings. This is clear loophole in the Act which can be manipulated by employers to suit their vested interests. Though outside members will be mandatorily appointed with the ICC as per the Act, employers can choose to exclude the external member from certain key meetings of the ICC especially the case hearings. Absence of a third party member in a committee totally comprised of insiders could lead to lack of credible and fair hearings. This will prove to be injurious to the inquiry process and interest of the complainant.
Therefore it is important that the composition of the quorum is done not on the basis of one particular Section, rather taking into consideration spirit of the Act. Appointment of an external member with the complaints committee that originated in the Vishakha guidelines (1997) has been retained in the current law, it can be inferred that presence of an external member adds value to the ICC. Moreover it plays a key role in ensuring reasonable hearing and infuses confidence in the complainant. Pressure to resolve the complaint in a time bound and confidential manner is one of the other crucial functions performed by the outside member. It can be said that absence of the external member as part of the quorum directly damages chances of a gender sensitive hearing and decision making in cases. Therefore mandatory presence of an outside person during the ICC meetings needs to be acknowledged and included within the sexual harassment policy of the organisation.

**Sexual Harassment and Hostile Work Environment**

The Vishakha guidelines (1997) directed employers to provide appropriate work conditions for all women employees. In the current law, Section 3 (2) introduces the concept of hostile work environment as a part of the definition of sexual harassment. However concept of hostile work environment within the Act should not remain limited to the one or more acts of sexual harassment directed towards a particular woman. It should establish connection with the overall environment within the organisation from the prevention perspective. As a result of this, liability on the employer to build safe working environment can be reinforced and emphasised. There could be sexually hostile working conditions in both verbal and non-verbal which may not be directed towards a particular woman. Yet they could create discomfort amongst many women at the workplace.

Therefore it is important that the understanding hostile work environment is expanded and extended to the work culture within the organisation from the prevention angle. Sub section (1) of Section 3 and sub section (2) of Section 3 should be read together to understand that onus is on the employer to provide safe work environment for women to work without discomfort. It is necessary that the organisation policy takes note of complaints which are general in nature. This can be done by the Human Resource department and the ICC by making use of both formal and informal sensing mechanisms such as surveys, group discussions, complaint box etc. with the help of which information about atmosphere prevailing within organisation and about various services provided by the organisation can be gathered for prevention campaigns to be designed and safety audits to be done.

**Reporting to the Police**

Section 19 of the Act states that it is duty of the employer to provide assistance to the woman only if she chooses to report to the police or to register the complaint with police especially if the perpetrator is a third party. It is for
the Human Resource Department and the ICC to respond proactively. It is their prerogative to take initiative in informing and educating the complainant about her rights. Members of the ICC can engage with the woman to make her aware about alternatives and help her make an informed choice for redress of complaint.

Such interactions with the women can be specifically carried out with the help of the external member appointed with the ICC. This part of the law needs broader interpretation in the interest of the complainants. It is needed that the employers recognise right of women as citizens and do not treat the complaint as a private matter to be dealt internally. The policy on sexual harassment needs to clearly specify employer position, where procedure of educating the woman about various redress alternatives available to her within existing laws is clearly laid down.

**Definition of Sexual Harassment**

Section 2 (n) of the Act defines sexual harassment as any unwelcome behaviour whether directly or by implication. Though the definition within the Act describes sexual harassment as uninvited and unwanted conduct which is sexual in nature; it does not highlight the much needed clarification that unwelcome-ness of the behaviour should be interpreted on the basis of subjective perception of the woman.

Justice Verma Committee report (2013) that reviewed the Act suggested that the definition needed to explanation stating that individual perception of the woman was to be one of the important factors considered while weighing the complaint. Whenever a complaint of sexual harassment at workplace is handed over to the ICC, it is crucial that ample room should be provided by the ICC members to accommodate varying perceptions and comfort levels of women depending on gendered socialisation, cultural beliefs including contextual factors such as location, caste, class and religion, age, ethnic background.

It is important to realise that sexual harassment results out of complex dynamics of gender, power and sexuality. A particular behaviour interpreted as sexual harassment by one woman may not be the same for other women due to diverse personal boundaries. At the first instance the woman may not be sure about unwelcome-ness of the behaviour leading to neglecting it or a courteous response out of compulsion only to complain at a later date. It is indeed a complex journey influenced by various factors for women to reach a point where they are able acknowledge and report sexual harassment. If these factors are not considered adequately the organisation could run into the danger of justifying objectionable conduct as normal finally leading to not acknowledging valid complaints of sexual harassment and dismissing them as out of purview of the definition of sexual harassment.
False and Malicious Complaints

Section 14 of the Act states that if the ICC concludes that the complaint was false and done with malicious intent; it can recommend action against the woman to the employer. Apparently the section was pushed by a section of the society under the pretext of preventing misuse of the law. However it needs to be understood that sexual harassment at workplace is one of most under-reported form of violence against women. The aspect of low reporting has been discussed in the Theme Three of the thesis including its analysis and discussion. Taking into consideration the hierarchy and power inequalities existing at a workplace it will take huge courage on part of women to register a complaint. Such a provision is a trap for the ICC members if they not aware that sexual harassment usually happens in a stealthy, private and subtle manner. Use of the section by the ICC without deeper thought can discourage women from reporting complaints. It is imperative for the ICC to understand that the women may not be able to provide direct evidence in support of their complaint and that unlike a criminal trial an internal inquiry does not require strict proof. As stated in the Verma Committee Report (2013) Section 14 is a Red Rag provision. It reflects little thought and therefore should be not be the focus of the ICC and the employer because such a provision directly violates spirit of the law.

Policies on Sexual Harassment

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 necessitates that no woman shall be subjected to sexual harassment at workplace. This requires that the employer is proactive and undertakes concrete steps for prevention of sexual harassment. Prevention is the primary intervention strategy and is commonly understood as awareness generation activities which can that can be used by the employers to discourage employees from indulging in sexual harassment. One of the key aspects of a prevention plan is to provide all employees a clear policy statement which contains an unambiguous message that there is zero tolerance to sexual harassment by the employer.

Section 13(a) of the Rules of the Act mandates formulation and wide dissemination of internal policy on sexual harassment intended to promote safe spaces for women by elimination of causal factors that contribute towards a hostile work environment against women. In this situation, it is imperative that under the said law all employers create policies focused on prevention and resolution of sexual harassment of women. It can be said that a good policy is the one which is not only in synchrony with the law of land but addresses grey areas in the law, those areas where the law in silent and makes a clear statement about the stand taken by the organisation to demonstrate zero tolerance to sexual harassment at workplace.
Way Forward

Social legislation are an active process of preventing or changing wrong course in society with an aim to empower groups who are disadvantaged due to certain disenabling factors (Fairchild, 1944; Gangrade, 1978). In case of such legislations it is important to understand its background and evolution. It is crucial to understand that the current law on sexual harassment is an outcome of long standing struggle by the women’s groups and organisations towards realisation of right to work with dignity. Any interpretation of the law devoid of a pro woman perspective can become counterproductive. It is required that the law is interpreted and understood within the framework of their fundamental rights guaranteed by the Constitution to women and the larger perspective of human rights of women. It is only after this perspective is instilled that we will be able to effectively implement the law. In conclusion, the newly enforced law on sexual harassment definitely has the potential to carry forward the process of shifting power relations at work initiated by the Vishakha guidelines (1997). This can happen provided the employers implement the Act from the standpoint of responsibility and not duty. As stated by Douglas (1993) only if we are seriously committed to ending the widespread violence and injustice in society at individual, collective, and institutional levels, then the structures and forces which maintain and reproduce a patriarchal system will be contested and transformed.