ABSTRACT

The Supreme Court Vishakha judgment (1997) initiated a discourse on sexual harassment at workplace in India. It was asserted rights of women to a safe working environment and issued guidelines for employers directing them to provide a safe and gender friendly working atmosphere for women. In house redress mechanism was proposed in form of complaints committee envisaging that it would resolve the issues related to sexual harassment within the organisation. However over the period of sixteen years it was observed that there was severe non compliance by employers to the guidelines. Need for present research therefore came from the poor implementation of the Supreme Court Vishakha guidelines (1997) and secondly from the gaps in the existing literature. Little was known when it came to employer response to reported complaints of sexual harassment, practices and procedures put in place by organisations to resolve complaints, functioning of complaints committees, experiences of women after they complained of sexual harassment and perceptions of the persons functioning as members of complaints committees.

Objective of the research was to firstly understand nature of implementation of the Vishakha guidelines across work sectors through practices plus procedures followed by organisations to deal with reported cases of sexual harassment. Secondly the research aimed at gaining insight into the situations faced by women after they reported of complaints of sexual harassment at workplace and to understand the perceptions of about sexual harassment at workplace. The research accordingly aimed at bringing out new and context specific knowledge related to employer response to reported complaints of sexual harassment, issues related to the inquiry procedure as a resolution mechanism and perceptions about sexual harassment at workplace not only from the point of view of the complainants but other significant stakeholders.

The study was based on the ontological assumption that the phenomenon of sexual harassment at workplace can be understood from lived experiences of persons. The epistemological assumption is that the knowledge of the phenomenon of sexual harassment could be obtained by delving into the social and legal aspects of sexual harassment of women at workplace. The research required bringing out lived experiences of individuals regarding social and legal aspects of sexual harassment at workplace. I therefore chose to adhere to qualitative approach to research, keeping in mind objectives of the research and to get a both closer and deeper understanding of the phenomenon. Within qualitative approach I found phenomenology as the best suited to gather descriptions of lived experiences of persons who either complained about or dealt with sexual harassment at workplace.
Mumbai was chosen as the research setting being home to different kinds of organisations falling in the category of public, government, and private sectors. Purposive sampling was done, as the most important kind of non-probability sampling, to discover few participants based on their profile and objectives of the research. Further snowball sampling was used to expand the sample by asking one informant or participant to recommend others for interviewing. The challenge in locating and accessing participants for research reflected lack of uniformity in participant profiles.

Twenty seven individuals employed in Mumbai were interviewed. These consisted of the women who reported sexual harassment to their employers, complaints committee members including chairpersons of the complaints committees, third party members of complaints committees, human resource managers, trade unions members, lawyers. Data collection was done by using single in-depth semi structured interviews.

Attempt was made to gain insight into the experiences of persons who reported sexual harassment in terms of employer response to sexual harassment and their experiences of going through the inquiries. Secondly perceptions about sexual harassment of were sought. This helped the me to develop complex textual descriptions of the way both from two points of view i.e. firstly from the point of view of persons who complained of sexual harassment at workplace and secondly from the point of view of persons dealing with it. From the phenomenological point of view I attempted to not just describing, understanding and interpreting experiences of individuals who complained of sexual harassment and those who dealt with it in different capacities as parts but connected them together as a whole to form a holistic picture of entire phenomenon. Common meanings developed from experiences of the participants in the social and legal context of sexual harassment at workplace. These were represented through three key themes namely Employer Response to Reported Complaints of Sexual Harassment, Inquiry as a Process and Perceptions about Sexual Harassment. Number of participants in each category interviewed was based on the principle of saturation i.e. no new themes were emerging from the data analysis.

Findings of the study revealed that at the first instance employers violated Supreme Court Vishakha guidelines (1997), subsequent directions in Medha Kotwal vs. UOI (2012) and company policy on sexual harassment. Whenever 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. Rather there was retaliation. 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. This compelled women to approach external agencies such as NGOs, and
State Commission for Women or pushed them in to either into litigation. Complaints committees as per the Vishakha guidelines were constituted by the employer only after order by the High Court and / or intervention by the external agencies. It came through that the going inquiry was a difficult and torturing experience for all women. They felt that members of the complaints committee did not understand their pain and agony. They experienced that rather gaining justice for them the inquiry left open avenues for the harasser to harass them further. This led to women losing interest in the process. It was expressed that 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 led to not finding the man guilty of sexual harassment. All women emphasised that role of the external member in the complaints committee was pivotal. Members of complaints committees including chairpersons and HR managers said that though the usual procedure of domestic inquiry brought about uniformity and discipline it was not suitable for inquiries in cases of sexual harassment. Procedure needed to be simpler and women friendly.

It was stated sexual harassment was continued to be under reported. It was because women did not complain of sexual harassment primarily because of fear of their character getting maligned, reputation getting damaged, stamped as liar and trouble maker, they becoming topic of discussion in the office and jokes plus gossip between colleagues, low awareness about legal provisions and lack of support systems. Largely men were seen indulging into sexual harassment of women because of 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, belief that women will not complain and they will get away with it unnoticed, using sexual harassment as a tool of power and dominance, misuse of power and position were cited as reasons for sexual harassment of women by men. 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. It was agreed that every law was misused. Possibility of misuse of the legal provision by women was after the relationship went sour.

Specific and concrete thoughts and suggestions were given by participants regarding prevention of sexual harassment within organisations. It was agreed that prevention 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. Encouraging women to report sexual harassment was also identified as one of the ways to prevent it. For making the environment safe it was important to create a
space within the organisation where the women could express their feelings and were heard without fear of being judged. Clearly laid down and well publicised policy on sexual harassment and special cells for women inside the organisation were needed. It was stated that sexual harassment could stop if the complaints yielded results. Need to involve men more in the prevention programmes was expressed. Some participants said that prevention of sexual harassment was difficult because personal interactions between a man and a woman could not be controlled because human behaviour was unpredictable.

This research was limited to socio-legal aspects related to sexual harassment of women working with organised sector in Mumbai prior to enactment and enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.