

Oxfam India in collaboration with Lawyer's Collective conducted three consultations on Sexual Harassment at Workplace with the explicit aim of getting feedback on the functioning of the complaints committees under the current redressal available for the same at work places. The consultations covered the Northern region (Lucknow), Western region (Mumbai) and Eastern region (Bhubaneswar). The consultations focused on-

- forms of sexual harassment across public and private sector, formal and informal sectors,
- access to complaints committees, their composition, procedures followed, outcomes, appeals process and consequences to women complainants

Recommendations emerging from the above, which could feed into the new 'Protection of Women from Sexual Harassment Bill', tabled in December 2010 by the Government and currently pending with the parliamentary standing committee, were also discussed.

Sexual Harassment at Workplace may be described as any "unwelcome sexually determined behaviour such as physical contact, a demand or request for sexual favours, sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."¹ Whether or not a particular action or behaviour constitutes sexual harassment is determined by the impact on the recipient, and is not dependent upon the intention of the perpetrator.

The *Vishakha* Guidelines given by the Supreme Court in 1997 mandated all workplaces to form internal complaints committees to address the issue of Sexual Harassment at Workplace. In the last 13 years many workplaces introduced such committees and a few of the committees have been quite active.

In December 2010, the government introduced the new 'Protection of Women from Sexual Harassment Bill' in an attempt to bring in a law on 'Sexual Harassment at Workplace'. While a law on this subject is important, this bill has many flaws, primarily because it did not take any civil society inputs on the draft bill. Chief among the gaps are that it excludes domestic workers from its purview, includes a penalty clause for 'false' complaints and does not prescribe a robust mechanism to address complaints.

¹ Vishakha Guidelines, the Supreme Court Guidelines on Sexual Harassment, 13 August 1997

The Mumbai consultation on Sexual Harassment of Women at Workplace was organized in collaboration with the University of Mumbai and was well represented by various sections of the civil society, members of complaints committees - from corporate sector, public sector and the government, scholars, academics, advocates and legal experts.

Experiences from various areas of work: Session I focused on various forms and context of sexual harassment seen in various sectors including agriculture, educational and medical institutions and Panchayats. The representatives from Oxfam India partner organizations, ANANDI, Gujarat and Yuva Rural, Maharashtra represented the point of view of rural agricultural workers and of elected Panchayat members on sexual harassment at workplaces. Anuya Warty, a Ph.D scholar shared experiences in the Police system while Dr. Suhasini Nagda, Chairperson of the Mumbai Municipal Corporations 'Committee on Prevention of Sexual Harassment at Workplace' spoke about the harassment faced by the dental and medical students and staff. Kranti Jejurkar, the Chairperson of the Women's Development Cell in Mumbai University elaborated about the harassment in the educational institutions. The session was chaired by Prof. Kannamma Raman from the Department of Civics and Politics in the University of Mumbai.

Highlights: It was clear from the session that all sectors of women workers - formal, informal, rural, urban as well as students experienced sexual harassment. Rural women in the Saurashtra region of Gujarat engaged in daily wage occupations such as agricultural labour, construction, forests or salt pan workers become highly vulnerable to sexual violence by land owners, other male workers and upper caste men. The consequences for these women ranged from sexual assault, pregnancy on account of rape, losing employment and losing wages for having complained. Panchayati Raj women face the wrath of men who think that they have been displaced from their jobs to give employment to these women. This often deters women to be politically active in public offices. Being part of informal or unorganized structure, the agricultural labourers as well as Panchayati Raj women have no complaints committees or redressal system in place.

Police systems across the country are considered a doubly male work environment due to the fact that less than 5 per cent of the staffs are women as 'masculinities' among men are often encouraged. Women had experienced forms of harassment such as- having to witness men getting massaged, men undressing and dressing in front of women staff, sharing workplaces with drunk colleagues especially at night and being asked by seniors to come to their place at odd hours to do menial work. In addition they are discouraged from voicing these complaints.

In the educational institutions students, especially Ph.D students find it difficult to ward off the advances of their guides, as the entire 4 to 5 years of their work is dependent on certification from their guides. When complaints are made by staff, things often get complicated due to interference from trade union leaders who back male staff without looking into the merits of the case.

Dr. Nagda pointed to instances of sexual harassment in the health sector mostly of students by their teachers and patients by male doctors. Teachers often complain of being uncomfortable and unwarranted touch during demonstration of clinical skills. Women patients are often examined in the absence of any female attendant and advances made during examination. She also pointed out several good practices where complaints committees had undertaken quick investigation and the penalties given were also implemented efficiently. This has boosted confidence in the complaints mechanisms.

The chairperson summed up by emphasizing that there is a cloak of silence around these harassments which may be removed only by sensitive mechanisms to deal with the problem.

Experiences of complaints committees: Anagha Sarpotdar, a member of complaints committees in several corporate houses reported that most corporate houses and multi nationals have not instituted committees to handle cases against sexual harassment citing the fact that Vishakha guidelines are not passed as a law yet. In absence of any such committee or redressal mechanism, these complaints are put forward to the HR team who are largely unaware and unwilling to take the issue forward. Most complaints are trivialized and settled informally due to doubts or lack of belief in the complaints. In most cases the woman is re-victimised where she may be forced to resign, her contract terminated or her performance appraisal marred. In some cases, the woman is sent for a psychiatric check-up. This leaves space to blame the incident on the mental instability of the woman. Where committees do exist, their composition is not always according to the Vishakha guidelines. Also, the victim is not provided with any information on the complaints committee members or such other details.

Sneha Khandekar, the external complaints committee member of the Mumbai Municipal Corporation (BMC) provided the example of their committee as a good practice. She told that the BMC had come out with a progressive policy on sexual harassment at work place and took efforts to institutionalize it in the system, by way of periodic trainings, making the policy known and several reciprocal changes in code of conduct and other staff rules. She also pointed to actions taken after the committee submitted its report. Several challenges including appeals mechanism which is not well defined in the Vishakha guidelines was also cited. Other challenges- sometimes inquiry in these cases is at risk of becoming just another departmental enquiry, BMC staff is reluctant to become part of committees, third party harassments -e.g. clients who take services from BMC and are not staff – are not covered, union pressures exist, constant changes to the committee and how to incorporate provisions of 'Right to Information act'.

Advocate Albertina Almeida highlighted from the lawyer's perspective based on her experiences with being part of complaints committees. She reported that procedures of inquiry are not well defined in the Vishakha guidelines and this should be done in the new bill. E.g. whether procedures of labour law are to be used or any other is currently left to the discretion of the complaints committees. She also pointed that there should be mechanisms other than the internal complaints committee where the woman may want to be heard by an external committee.

The chairperson, Prof. Asha Bajpai added that currently it is left entirely to the management to implement the recommendations of the internal complaints committees and the report may well be shelved. She has sometimes written a dissenting note to the judgement of the committee and is doubtful that anybody ever took note of it. Especially in case of Ph.D students, she recommended that having a group of guides instead of a single one would help reduce their vulnerability.

Recommendations: Some of the recommendations and good practices which emerged were-

For the Sexual Harassment Bill:

1. Include domestic workers and all informal sector workers. Define a complaints mechanism which caters to the scattered and sometimes invisible nature of work. E.g. Committees at village or panchayat/ local self governance structure level
2. Remove penalty clause for so called 'false' complaints.
3. Lay out a procedure for handling of complaints, appeals mechanism and access to the court mechanism
4. Put in a clause for accountability of the committees and their regular monitoring
5. Lay out alternate complaints mechanisms other than the internal committees currently laid out. Also currently the external committee member may not receive any support in difficult cases.
6. Lay out criterion for external members of complaints committees, to ensure gender sensitized civil society member who has worked on this issue is invited
7. Provide a time frame within which committees must submit report and action to be taken
8. Define and classify complaints as major and minor and punishment to be graded accordingly.

Corporate offices and Formal sector

- 1) Vishakha guidelines must be implemented in all workplaces
- 2) Institutionalising the policy and procedures to prevent and address sexual harassment at workplace
- 3) Sensitising all levels of managers starting from the top-most level in corporates to the issue
- 4) Sensitive re-dressal system and quick implementation
- 5) To increase the sense of security of women employees
 - a. All doors to cabins should have glass doors
 - b. In factories, plants, offices identify areas that are not lit well or can be a problem area for women and take corrective steps
- 6) Complainant must be provided information about who sits on complaints committees, procedure of inquiry, outcome and what options she has after the complaints committee.

Rural areas and informal sector

- 1) Village committees like 'Atyachar Niwaran Committees', independent from Panchayati Raj Institutions and power wielding class, have been constituted where NGOs work, in order to support women facing violence or for development purposes. These committees could alternate as complaints committees at village level. The challenge would be in areas where such sensitized committees do not exist.
- 2) Identify the most vulnerable groups and make them aware of redressal mechanisms at their disposal.
- 3) Pro-active NGO support helps in making the committees active
- 4) Capacity building at various levels, creating necessary infrastructures and creating awareness through relevant communication material.

Larger issues: Some fundamental issues were discussed which would require additional debate and discussion. These were- should the law be gender specific (i.e. for women employees) or gender neutral (i.e. for women as well as men employees). Inclusion of transgenders as a vulnerable group and recognizing same sex offenders are other issues of debate.