



सत्यमेव जयते
GOVERNMENT OF
MAHARASHTRA

MAHARASHTRA STATE COMMISSION FOR WOMEN



**ZERO TOLERANCE FOR
SEXUAL HARASSMENT OF
STUDENTS & WOMEN IN
COLLEGES & UNIVERSITIES**

PUSH

People United against Sexual Harassment

an

initiative by

Maharashtra State Commission For Women



महाराष्ट्र शासन

GOVERNMENT OF MAHARASHTRA

महाराष्ट्र राज्य महिला आयोग

Maharashtra State Commission For Women

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Men and Women in today's society work together on all fronts. Women are today at the forefront in Politics, Business as well as Social domains. Yet women and students of all genders have to suffer sexual harassment. Any form of sexual harassment is against the basic human right of freedom and right to live. Every individual deserves a workplace which is safe and secure. Also basic respect is expected at any workplace by every individual. Government of India promulgated The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on 9th December 2013 which superseded Apex Court's Vishakha Guidelines of 1997. The Act lay down a grievance redressal mechanism that mandates all educational institutions set up an Internal Complaints Committee (ICC) to look into such complaints. UGC has also recently enacted University Grants Commission (Prevention, Prohibition and Redressal of sexual harassment of women employees and students in Higher Educational Institutions) Regulation, 2015 on 2nd May 2016. The ICC should know and be aware of the rights so that the aggrieved person gets prompt justice.

Through Maharashtra State Commission for Women, such a training has been proposed to create awareness in all Universities in Maharashtra. All ICCs will be covered under this. It is important that all critical stakeholders which includes officers, administrators, lecturers, professors are also involved in this process.

Also MSCW is publishing 2 books in which the grievance redressal mechanism and various aspects which ICCs / Universities needs to bear in mind is covered. The entire objective is to ensure a safe and healthy working environment for women and students. I am sure this book will definitely come in handy for you to understand and further educate concerned stakeholders.

V. Rahatkar

(Smt. Vijaya Rahatkar)

Chairperson

Maharashtra State Commission for Women

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EVOLUTION OF THE LAW

**Before
1997**

For women experiencing sexual harassment at workplace, only option was to lodge a complaint under the Indian Penal Code (IPC):

- Section 354: that deals with the criminal assault of women to outrage women's modesty
- Section 509: that punishes an individual for using a word, gesture or act intended to insult the modesty of women

**13th
Aug
1997**

The Supreme Court in *Vishakha v. State of Rajasthan* passed a judgment laying down guidelines to be followed by the establishments while dealing with complaints about sexual harassment. According to these guidelines, sexual harassment results in violation of the:

- Fundamental rights of women to equality under Article 14 and 15 of the Constitution of India
- Right to life and live with dignity under Article 21 of the Constitution of India
- Right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment

The judgement was applicable till an appropriate Act was enacted by the Government of India.

**9th
Dec
2013**

In the aftermath of the Nirbhaya incident of 2012, Government of India promulgated The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

The Government also passed the Criminal Law (Amendment) Act, 2013, making sexual harassment a criminal offence w.e.f 3rd February 2013 by inserting section 354A in the IPC.

**2nd
May
2016**

In March 1999, a booklet related to the Apex Court judgement was prepared by the MHRD and a letter was sent out to all Vice Chancellors and Principals to set up anti sexual harassment committees.

Post which a decade passed by & in 2012 a survey was conducted and a Task Force was set up to formulate a set of guiding principles that must govern the composition, functioning & redressal mechanisms of Internal Complaints Committees in Universities resulting in Saksham Report

As derived from its understanding of the relevance of the Vishakha judgement, the aforesaid Act of 2013 to Universities as workplaces and the Saksham Report, the UGC propagated University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015.

IMPORTANT DEFINITIONS - EXPLANATIONS

● Sexual Harassment

means ●

- (i) an unwanted conduct with sexual undertones if it occurs or which is persistent and which demeans, humiliates or creates a hostile and intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and includes any one or more or all of the following unwelcome acts or behaviour (whether directly or by implication), namely:-
 - (a) any unwelcome physical, verbal or non verbal conduct of sexual nature;
 - (b) demand or request for sexual favours;
 - (c) making sexually coloured remarks;
 - (d) physical contact and advances; or
 - (e) showing pornography
- (ii) any one (or more than one or all) of the following circumstances, if it occurs or is present in relation or connected with any behaviour that has explicit or implicit sexual undertones-
 - (a) implied or explicit promise of preferential treatment as quid pro quo for sexual favours;
 - (b) implied or explicit threat of detrimental treatment in the conduct of work;
 - (c) implied or explicit threat about the present or future status of the person concerned;
 - (d) creating an intimidating offensive or hostile learning environment;
 - (e) humiliating treatment likely to affect the health, safety dignity or physical integrity of the person concerned

● **Higher Educational Institution (HEI)**

means ●

a university within the meaning of clause (j) of section 2, a college within the meaning of clause (b) of sub-section (1) of section 12A and an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956)

● **Student**

means ●

a person duly admitted and pursuing a programme of study either through regular mode or distance mode, including short-term training programmes in a HEI;

Provided that a student who is in the process of taking admission in HEIs campus, although not yet admitted, shall be treated, for the purposes of these regulations, as a student of that HEI, where any incident of sexual harassment takes place against such student;

Provided that a student who is a participant in any of the activities in a HEI other than the HEI where such student is enrolled shall be treated, for the purposes of these regulations, as a student of that HEI where any incident of sexual harassment takes place against such student

● **Aggrieved Woman**

means ●

in relation to work place, a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent

● **Aggrieved Person**

means ●

an aggrieved woman or a student

● **Internal Complaints Committee (ICC)**

means ●

Internal Complaints Committee to be constituted by an HEI under sub regulation (1) of regulation 4 of these regulations

● **Campus**

means

the location or the land on which a HEI and its related institutional facilities like libraries, laboratories, lecture halls, residences, halls, toilets, student centres, hostels, dining halls, stadiums, parking areas, parks-like settings and other amenities like health centres, canteens, Bank counters, etc., are situated and also includes extended campus and covers within its scope places visited as a student of the HEI including transportation provided for the purpose of commuting to and from the institution, the locations outside the institution on field trips, internships, study tours, excursions, short- term placements, places used for camps , cultural festivals, sports meets and such other activities where a person is participating in the capacity of an employee or a student of the HEI;

● **Workplace**

means

the campus of a HEI including-

- (a) Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate HEIs;
- (b) Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereof in HEIs;
- (c) Any place visited by the employee or student arising out of or during the course of employment or study including transportation provided by the Executive Authority for undertaking such journey for study in HEIs.

● **Employee**

means

a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice (or called by any other name), interns, volunteers, teacher assistants, research assistants, whether employed or not, including those involved in field studies, projects, short-visits and camps;

● **Respondent**

means ●

a person against whom the aggrieved person has made a complaint of sexual harassment

● **Protected Activity**

includes ●

reasonable opposition to a practice believed to violate sexual harassment laws on behalf of oneself or others such as participation in sexual harassment proceedings, cooperating with an internal investigation or alleged sexual harassment practices or acting as a witness in an investigation by an outside agency or in litigation

● **Covered Individuals**

are ●

persons who have engaged in protected activity such as filing a sexual harassment charge, or who are closely associated with an individual who has engaged in protected activity and such person can be an employee or a fellow student or guardian of the offended person

● **Victimisation**

means ●

any unfavourable treatment meted out to a person with an implicit or explicit intention to obtain sexual favour

● **Executive Authority**

means ●

the chief executive authority of the HEI, by whatever name called, in which the general administration of the HEI is vested. For public funded institutions, the Executive Authority means the Disciplinary Authority as indicated in Central Civil Services (Classification, Control and Appeal) Rules, 1965 or its equivalent rules;

SALIENT FEATURES OF THE LAW

1 Gender neutral for students

Under this regulation, women and students of any gender can make a complaint of sexual harassment in writing to the ICC. They can make a complaint against other students as well. Further discriminatory rules for women cannot be imposed citing safety concerns

2 Protection for students in the process of taking admission as well as in other HEIs

Under this regulation, a student who is in the process of taking admission in HEI, although not yet admitted OR who is a participant in any of the activities in a HEI other than the HEI where such student is enrolled is also protected against sexual harassment

3 Broad based composition of ICC including students

Under this regulation, ICC would include 3 students, who shall be enrolled at the undergraduate, master's, and research scholar levels respectively, elected through transparent democratic procedure & who shall participate in inquiry only if the matter involves students

4 Time limit to make complaint (3 months)

Adequate time to file a complaint i. e. within 3 months from date of incident and in case of a series of incidents, within 3 months from date of last incident. This time limit balances the concerns of aggrieved person and the respondent

5 Time bound redressal

Ensures time-bound redressal (ICC must complete inquiry within 90 days from receipt of written complaint) by ICC for the aggrieved person and / or to clear the cloud of suspicion on the Respondent.

6 Confidentiality

The identities of the aggrieved party or victim or the witness or the offender shall not be made public or kept in the public domain especially during the process of the inquiry

7 Conciliation

There is an inbuilt alternative redressal mechanism for the aggrieved person to resolve grievances through mutual consent without promoting misuse of law through lure of monetary compensation

8 Preference for Conciliation over Inquiry

The resolution of the conflict to the full satisfaction of the aggrieved party through conciliation is preferred to purely punitive intervention.

9 Principle of natural justice

Equal opportunity to both parties to present their case / evidence as well as rebut adverse case / evidence, which ensures that nobody is condemned unheard.

10 Interim Redressal

Provision for interim relief to minimise the risk involved in contact or interaction between complainant and respondent and ensuring a conducive environment of safety and protection of complainant against retaliation

11 Lower Burden of Proof

No need to prove guilt beyond a reasonable doubt . The parties must merely establish the preponderance of probability of their allegation based on evidence produced.

12 Monetary compensation

Apart from disciplinary action which ICC recommends to be taken against the respondent, the law also provides restitution to the aggrieved person for emotional trauma and losses incurred in the form of monetary compensation.

13 Provision of punishment for false or malicious complaint

The provision balances the concerns of the respondent by providing adequate checks and balances. However mere inability to substantiate the allegations of sexual harassment would not amount to false complaint.

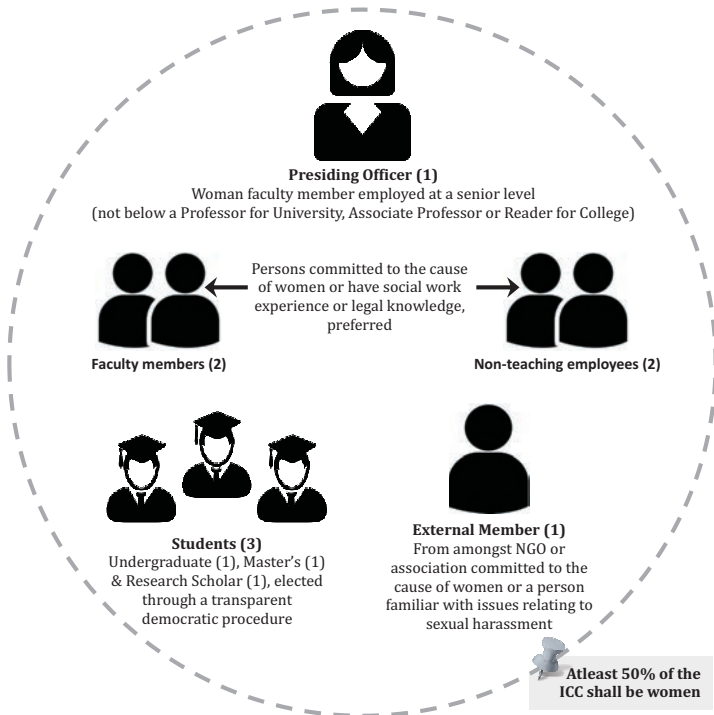
14 Appellate Remedy

Any person aggrieved by the ICC's recommendation can challenge the same before the Executive Authority within 30 days from the date of recommendation thus providing an adequate check and balance against any error being committed by the ICC

15 HEIs to implement several support measures to prevent sexual harassment

Under this regulation, the HEI has to implement several support measures like institutionalising counselling services, adequate lighting & reliable public transport within campus, well training security staff incl. women, adequate health facilities etc

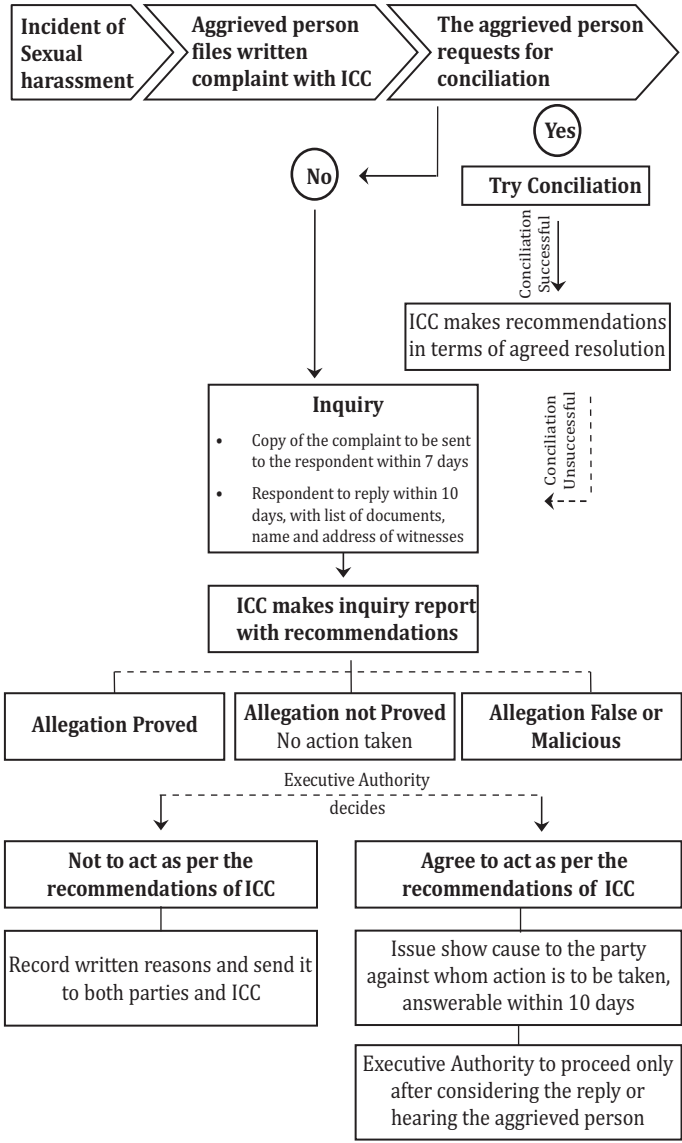
COMPOSITION OF INTERNAL COMPLAINTS COMMITTEE (ICC)
(nominated by the Executive Authority)



Note

- ✓ Persons in senior administrative positions in the HEI, such as Vice- Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning
- ✓ Every ICC member shall serve the office for 3 years
- ✓ HEI may employ a system whereby 1/3 of the members of ICC may changed every year
- ✓ Member appointed amongst the non-governmental organizations or associations shall be paid fees or allowances for holding the proceedings of the ICC
- ✓ Presiding Officer or any Member of the ICC is subject to removal under circumstances enumerated in Regulation 4(6)

REDRESSAL & INQUIRY PROCEDURE



Timelines

Written complaint to be filed within 3 months from the date of incident or within 3 months from the date of last incident in case of a series of incident

The time limit can be extended for not over 3 months, for which reasons have to be stated in writing by ICC

Inquiry to be completed within 90 days from the date of written complaint

Inquiry report has to be issued within 10 days of completion of the inquiry to both parties and Executive Authority

Executive Authority to act on the ICC recommendation within 30 days of receipt of report, unless an appeal is filed

An appeal against the ICC's recommendation to be filed within 30 days from date of such recommendation by aggrieved person before Executive Authority

ADDITIONAL RESPONSIBILITIES OF ICC

● Assist in written complaint ●

Render all reasonable assistance to the aggrieved person for making the complaint in writing in case he or she is unable to make the complaint in writing

● Assist in Police Complaint ●

Provide assistance if an employee or a student chooses to file a complaint with the police

● Just & Fair Conciliation ●

Provide dispute redressal mechanism & dialogue to anticipate & address issues through conciliation without undermining complainant's right & minimize need for purely punitive approach that leads to further resentment, alienation or violence

● Safety of Complainant ●

Protect the safety of the complainant by not divulging the person's identity, & provide mandatory relief by way of sanctioned leave or relaxation of attendance requirement or transfer to another department or supervisor or also effect transfer of offender

● Prevent Victimization ●

To ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment

● Protection ●

To ensure prohibition of retaliation or adverse action against a covered individual because the employee or the student is engaged in protected activity

INTERIM REDRESSAL

1

Transfer the complainant or the respondent to another section or department to minimise the risks involved in contact or interaction, if such a recommendation is made by the ICC

2

Grant leave to the aggrieved person with full protection of status and benefits for a period up to three months

3

Restrain the respondent from reporting on or evaluating the work or performance or tests or examinations of the complainant

4

Ensure that offenders are warned to keep a distance from the aggrieved person and if there is a definite threat, restrain their entry into the campus

5

Take strict measures to provide a conducive environment of safety and protection to the complainant against retaliation and victimisation as a consequence of making a complaint of sexual harassment

PUNISHMENT FOR MISCONDUCT INCLUDING MONETARY COMPENSATION (when allegations are proved)



Employee

- ✓ Shall be punished as per the service rules



Student (based on severity of the offence)

- ✓ Withhold privileges of the student such as access to the library, auditoria, halls of residence, transportation, scholarships, allowances, and identity card
- ✓ Suspend or restrict entry into the campus for a specific period
- ✓ Expel and strike off name from the rolls of the institution, including denial of readmission
- ✓ Award reformatory punishments like mandatory counselling and / or performance of community services

Monetary compensation payable in addition

(calculation based on)

- ✓ Mental trauma, pain, suffering and distress caused to the aggrieved person
- ✓ Loss of career opportunity due to the incident of sexual harassment
- ✓ Medical expenses incurred by the victim for physical, psychiatric treatment
- ✓ Income and status of the alleged perpetrator and victim
- ✓ Feasibility of such payment in lump sum or in instalments

PUNISHMENT IN CASE OF FRIVOLOUS COMPLAINT

(when allegations are proved to be false or malicious)



Employee

- ✓ Shall be punished as per the service rules



Student (based on severity of the offence)

- ✓ Withhold privileges of the student such as access to the library, auditoria, halls of residence, transportation, scholarships, allowances, and identity card
- ✓ Suspend or restrict entry into the campus for a specific period
- ✓ Expel and strike off name from the rolls of the institution, including denial of readmission
- ✓ Award reformative punishments like mandatory counselling and / or performance of community services

Note

- ✓ To ensure that the regulations are not misused, provisions against false or malicious complaints have to be made and publicised within HEIs.
- ✓ Mere inability to substantiate a complaint or provide adequate proof will not attract action against the complainant
- ✓ Malicious intent on the part of the complainant shall not be established without an inquiry being conducted before any action is recommended

CONSEQUENCES OF NON-COMPLIANCE BY HEIs

- a withdrawal of declaration of fitness to receive grants under section 12B of the University Grants Commission Act, 1956.
- b removing the name of the university or college from the list maintained by the Commission under clause (f) of section 2 of said Act, 1956;
- c withholding any grant allocated to the institution;
- d declaring the institution ineligible for consideration for any assistance under any of the general or special assistance programmes of the Commission;
- e informing the general public, including potential candidates for employment or admission, through a notice displayed prominently in the newspapers or other suitable media and posted on the website of the Commission, declaring that the institution does not provide for a zero tolerance policy against sexual harassment;
- f recommending the affiliating university for withdrawal of affiliation, in case of a college;
- g recommending the Central Government for withdrawal of declaration as an institution deemed to be university, in case of an institution deemed to be university;
- h recommending the appropriate State Government for withdrawal of status as university in case of a university established or incorporated under a State Act.
- i taking such other action within its powers as it may deem fit and impose such other penalties as may be provided in the University Grants Commission Act, 1956 for such duration of time till the institution complies with the provisions of these regulations.

Note

- The Commission shall, in respect of any institution that wilfully contravenes or repeatedly fails to comply with the obligations and duties laid out for the said regulations, take one or more of the aforesaid actions
- No action shall be taken by the Commission under these regulations unless the Institution has been given an opportunity to explain its position and an opportunity of being heard has been provided to it

UNIVERSITY GRANTS COMMISSION (PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL HARASSMENT OF WOMEN EMPLOYEES AND STUDENTS IN HIGHER EDUCATIONAL INSTITUTIONS) REGULATIONS, 2015

In exercise of the powers conferred by clause (g) of sub-section (1) of section 26 of the University Grants Commission Act, 1956 (3 of 1956), read with sub-section (1) of Section 20 of the said Act, the University Grants Commission hereby makes the following regulations, namely:-

1. Short title, application and commencement.—

- (1) These regulations may be called the University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015.
- (2) They shall apply to all higher educational institutions in India.
- (3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. — In these regulations, unless the context otherwise requires,-

- (a) “aggrieved woman” means in relation to work place, a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
- (b) ‘Act’ means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013);
- (c) “campus” means the location or the land on which a Higher Educational Institution and its related institutional facilities like libraries, laboratories, lecture halls, residences, halls, toilets, student centres, hostels, dining halls, stadiums, parking areas, parks-like settings and other amenities like health centres, canteens, Bank counters, etc., are situated and also includes extended campus and covers within its scope places visited as a student of the HEI including transportation provided for the purpose of commuting to and from the institution, the locations outside the institution on field trips, internships, study tours,

excursions, short- term placements, places used for camps , cultural festivals, sports meets and such other activities where a person is participating in the capacity of an employee or a student of the HEI;

- (d) "Commission" means the University Grants Commission established under section 4 of the University Grants Commission Act, 1956 (3 of 1956);
- (e) "covered individuals" are persons who have engaged in protected activity such as filing a sexual harassment charge, or who are closely associated with an individual who has engaged in protected activity and such person can be an employee or a fellow student or guardian of the offended person;
- (f) "employee" means a person as defined in the Act and also includes, for the purposes of these Regulations trainee, apprentice (or called by any other name), interns, volunteers, teacher assistants, research assistants, whether employed or not, including those involved in field studies, projects, short-visits and camps;
- (g) "Executive Authority" means the chief executive authority of the HEI, by whatever name called, in which the general administration of the HEI is vested. For public funded institutions the Executive Authority means the Disciplinary Authority as indicated in Central Civil Services (Classification, Control and Appeal) Rules, 1965 or its equivalent rules;
- (h) "Higher Educational Institution" (HEI) means a university within the meaning of clause (j) of section 2, a college within the meaning of clause(b) of sub-section (1) of section 12A and an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956);
- (i) "Internal Complaints Committee" (ICC) means Internal Complaints Committee to be constituted by an HEI under sub regulation (1) of regulation 4 of these regulations. Any existing body already functioning with the same objective (like the Gender Sensitization Committee Against Sexual Harassment (GSCASH)) should be reconstituted as the ICC;

Provided that in the latter case the HEI shall ensure that the

constitution of such a Body is as required for ICC under these regulations. Provided further that such a Body shall be bound by the provisions of these regulations;

- (j) “protected activity” includes reasonable opposition to a practice believed to violate sexual harassment laws on behalf of oneself or others such as participation in sexual harassment proceedings, cooperating with an internal investigation or alleged sexual harassment practices or acting as a witness in an investigation by an outside agency or in litigation;
- (k) “sexual harassment” means-
 - (i) “An unwanted conduct with sexual undertones if it occurs or which is persistent and which demeans, humiliates or creates a hostile and intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and includes any one or more or all of the following unwelcome acts or behaviour (whether directly or by implication), namely;-
 - (a) any unwelcome physical, verbal or non verbal conduct of sexual nature;
 - (b) demand or request for sexual favours;
 - (c) making sexually coloured remarks
 - (d) physical contact and advances; or
 - (e) showing pornography”
 - (ii) any one (or more than one or all) of the following circumstances, if it occurs or is present in relation or connected with any behaviour that has explicit or implicit sexual undertones-
 - (a) implied or explicit promise of preferential treatment as quid pro quo for sexual favours;
 - (b) implied or explicit threat of detrimental treatment in the conduct of work;
 - (c) implied or explicit threat about the present or future status of the person concerned;

- (d) creating an intimidating offensive or hostile learning environment;
 - (e) humiliating treatment likely to affect the health, safety dignity or physical integrity of the person concerned;
- (l) “student” means a person duly admitted and pursuing a programme of study either through regular mode or distance mode, including short-term training programmes in a HEI;

Provided that a student who is in the process of taking admission in HEIs campus, although not yet admitted, shall be treated, for the purposes of these regulations, as a student of that HEI, where any incident of sexual harassment takes place against such student;

Provided that a student who is a participant in any of the activities in a HEI other than the HEI where such student is enrolled shall be treated, for the purposes of these regulations, as a student of that HEI where any incident of sexual harassment takes place against such student;

- (m) “third Party Harassment” refers to a situation where sexual harassment occurs as a result of an act or omission by any third party or outsider, who is not an employee or a student of the HEI, but a visitor to the HEI in some other capacity or for some other purpose or reason;
- (n) “victimisation” means any unfavourable treatment meted out to a person with an implicit or explicit intention to obtain sexual favour;
- (o) “workplace” means the campus of a HEI including-
 - (a) Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate HEIs;
 - (b) Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereof in HEIs;
 - (c) Any place visited by the employee or student arising out of or

during the course of employment or study including transportation provided by the Executive Authority for undertaking such journey for study in HEIs.’

3. Responsibilities of the Higher Educational Institution-

- (1)** Every HEI shall,-
 - (a) Wherever required, appropriately subsume the spirit of the above definitions in its policy and regulations on prevention and prohibition of sexual harassment against the employees and the students, and modify its ordinances and rules in consonance with the requirements of the Regulations;
 - (b) publicly notify the provisions against sexual harassment and ensure their wide dissemination;
 - (c) organise training programmes or as the case may be, workshops for the officers, functionaries, faculty and students, as indicated in the SAKSHAM Report (Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization on Campuses) of the Commission, to sensitize them and ensure knowledge and awareness of the rights, entitlements and responsibilities enshrined in the Act and under these regulations;
 - (d) act decisively against all gender based violence perpetrated against employees and students of all sexes recognising that primarily women employees and students and some male students and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation;
 - (e) publicly commit itself to a zero tolerance policy towards sexual harassment;
 - (f) reinforce its commitment to creating its campus free from discrimination, harassment, retaliation or sexual assault at all levels;
 - (g) create awareness about what constitutes sexual harassment including hostile environment harassment and quid pro quo harassment;
 - (h) include in its prospectus and display prominently at conspicuous places

or Notice Boards the penalty and consequences of sexual harassment and make all sections of the institutional community aware of the information on the mechanism put in place for redressal of complaints pertaining to sexual harassment, contact details of members of Internal Complaints Committee, complaints procedure and so on. Any existing body already functioning with the same objective (like the Gender Sensitization Committee Against Sexual Harassment (GSCASH)) should be reconstituted as the ICC;

Provided that in the latter case the HEI shall ensure that the constitution of such a Body is as required for ICC under these regulations. Provided further that such a Body shall be bound by the provisions of these regulations;

- (i) inform employees and students of the recourse available to them if they are victims of sexual harassment;
- (j) organise regular orientation or training programmes for the members of the ICC to deal with complaints, steer the process of settlement or conciliation, etc., with sensitivity;
- (k) proactively move to curb all forms of harassment of employees and students whether it is from those in a dominant power or hierarchical relationship within HEIs or owing to intimate partner violence or from peers or from elements outside of the geographical limits of the HEI;
- (l) be responsible to bring those guilty of sexual harassment against its employees and students to book and initiate all proceedings as required by law and also put in place mechanisms and redressal systems like the ICC to curb and prevent sexual harassment on its campus;
- (m) treat sexual harassment as a misconduct under service rules and initiate action for misconduct if the perpetrator is an employee;
- (n) treat sexual harassment as a violation of the disciplinary rules (leading up to rustication and expulsion) if the perpetrator is a student;
- (o) ensure compliance with the provisions of these regulations, including appointment of ICC, within a period of sixty days from the date of publication of these regulations;

- (p) monitor the timely submission of reports by the ICC;
- (q) prepare an annual status report with details on the number of cases filed and their disposal and submit the same to the Commission.

3.2 Supportive measures.

- (1) The rules, regulations or any such other instrument by which ICC shall function have to be updated and revised from time-to-time, as court judgments and other laws and rules will continue to revise the legal framework within which the Act is to be implemented.
- (2) The Executive Authority of the HEIs must mandatorily extend full support to see that the recommendations of the ICC are implemented in a timely manner. All possible institutional resources must be given to the functioning of the ICC, including office and building infrastructure (computers, photocopiers, audio-video, equipment, etc.), staff (typists, counselling and legal services) as, well as a sufficient allocation of financial resources.
- (3) Vulnerable groups are particularly prone to harassment and also find it more difficult to complain. Vulnerability can be socially compounded by region, class, caste, sexual orientation, minority identity and by being differently abled. Enabling committees must be sensitive to such vulnerabilities and special needs.
- (4) Since research students and doctoral candidates are particularly vulnerable the HEIs must ensure that the guidelines for ethics for Research Supervision are put in place.
- (5) All HEIs must conduct a regular and half yearly review of the efficacy and implementation of their anti-sexual harassment policy.
- (6) All Academic Staff Colleges (now known as Human Resource Development Centres (HRDCs) and Regional Centres for Capacity Building (RCCBs) must incorporate sessions on gender in their orientation and refresher courses. This should be across disciplines, and preferably mainstreamed using the UGC

SAKSHAM Report which provides indicative modules in this regard.

- (7) Orientation courses for administrators conducted in HEIs must have a module on gender sensitization and sexual harassment issues. Regular workshops are to be conducted for all sections of the HEI community.
- (8) Counselling services must be institutionalised in all HEIs and must have well trained full-time counsellors.
- (9) Many HEIs having large campuses have a deficit in lighting and are experienced as unsafe places by the institutional community. Adequate lighting is a necessary aspect of infrastructure and maintenance.
- (10) Adequate and well trained security including a good proportion or balance of women security staff is necessary. Security staff must receive gender sensitization training as a part of conditions of appointment.
- (11) HEIs must ensure reliable public transport, especially within large campuses between different sections of the HEI, hostels, libraries, laboratories and main buildings, and especially those that do not have good access for day scholars. Lack of safety as well as harassment is exacerbated when employees and students cannot depend on safe public transport. Reliable transport may be considered by HEIs to enable employees and students to work late in libraries, laboratories and to attend programmes in the evenings.
- (12) Residential HEIs should accord priority to construction of women's hostels. For the growing population of young women wishing to access higher education, hostel accommodation is desirable in both urban and rural areas and at all levels of higher education which provides a modicum of protection from harassment of all kinds.
- (13) Concern for the safety of women students must not be cited to impose discriminatory rules for women in the hostels as

compared to male students. Campus safety policies should not result in securitization, such as over monitoring or policing or curtailing the freedom of movement, especially for women employees and students.

- (14) Adequate health facilities are equally mandatory for all HEIs. In the case of women this must include gender sensitive doctors and nurses, as well as the services of a gynaecologist.
- (15) The Women's Development Cells in colleges shall be revived and funded to be able to carry out the range of activities required for gender sensitization and remain autonomous of the functioning of anti sexual harassment committees and ICCs. At the same time they shall extend their activities to include gender sensitization programmes in consultation with ICCs and help to disseminate anti sexual harassment policies on campuses on a regular basis. The 'cultural' space and the 'formal academic space' need to collaborate to render these workshops innovative, engaging and non mechanical.
- (16) Hostel Wardens, Provosts, Principals, Vice Chancellors, Legal Officers and other functionaries must be brought within the domain of accountability through amendments in the rules or Ordinances where necessary.

4. Grievance redressal mechanism.

- (1) Every Executive Authority shall constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against sexual harassment

The ICC shall have the following composition:-

- (a) A Presiding Officer who shall be a woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority;

Provided that in case a senior level woman employee is not

available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section 2(o);

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;”

- (b) two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;
 - (c) Three students, **if the matter involves students**, who shall be enrolled at the undergraduate, master’s, and research scholar levels respectively, elected through transparent democratic procedure;
 - (d) one member from amongst non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority.
- (2) At least one-half of the total members of the ICC shall be women.
 - (3) Persons in senior administrative positions in the HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning.
 - (4) The term of office of the members of the ICC shall be for a period of three years. HEIs may also employ a system whereby one –third of the members of the ICC may change every year.
 - (5) The Member appointed from amongst the non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the Executive Authority as may be prescribed.

- (6) Where the Presiding Officer or any member of the Internal Committee:
- (a) contravenes the provisions of section 16 of the Act; or
 - (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - (c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - (d) has so abused his position as to render his continuance in office prejudicial to the public interest,
- such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.”

5. **Responsibilities of Internal Complaints Committee (ICC)**

The Internal Complaints Committee shall:

- (a) provide assistance if an employee or a student chooses to file a complaint with the police;
- (b) provide mechanisms of dispute redressal and dialogue to anticipate and address issues through just and fair conciliation without undermining complainant’s rights, and minimize the need for purely punitive approaches that lead to further resentment, alienation or violence;
- (c) protect the safety of the complainant by not divulging the person’s identity, and provide the mandatory relief by way of sanctioned leave or relaxation of attendance requirement or transfer to another department or supervisor as required during the pendency of the complaint, or also provide for the transfer of the offender;
- (d) ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment; and
- (e) ensure prohibition of retaliation or adverse action against a covered individual because the employee or the student is engaged in protected

activity.

6. The process for making complaint and conducting Inquiry –

The ICC shall comply with the procedure prescribed in these Regulations and the Act, for making a complaint and inquiring into the complaint in a time bound manner. The HEI shall provide all necessary facilities to the ICC to conduct the inquiry expeditiously and with required privacy

7. Process of making complaint of sexual harassment - An aggrieved person is required to submit a written complaint to the ICC within three months from the date of the incident and in case of a series of incidents within a period of three months from the date of the last incident.

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee shall render all reasonable assistance to the person for making the complaint in writing;

Provided further that the ICC may, for the reasons to be accorded in the writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the person from filing a complaint within the said period.”

Friends, relatives, Colleagues, Co-students, Psychologist, or any other associate of the victim may file the complaint in situations where the aggrieved person is unable to make a complaint on account of physical or mental incapacity or death.

8. Process of conducting Inquiry-

- (1) The ICC shall, upon receipt of the complaint, send one copy of the complaint to the respondent within a period of seven days of such receipt.
- (2) Upon receipt of the copy of the complaint, the respondent shall file his or her reply to the complaint along with the list of documents, and names and addresses of witnesses within a period of ten days.
- (3) The inquiry has to be completed within a period of ninety days from the receipt of the complaint. The inquiry report, with recommendations, if any, has to be submitted within ten days from the completion of the inquiry to the Executive Authority of the HEL.

Copy of the findings or recommendations shall also be served on both parties to the complaint

- (4) The Executive Authority of the HEI shall act on the recommendations of the committee within a period of thirty days from the receipt of the inquiry report, unless an appeal against the findings is filed within that time by either party.
- (5) An appeal against the findings or /recommendations of the ICC may be filed by either party before the Executive Authority of the HEI within a period of thirty days from the date of the recommendations.
- (6) If the Executive Authority of the HEI decides not to act as per the recommendations of the ICC, then it shall record written reasons for the same to be conveyed to ICC and both the parties to the proceedings. If on the other hand it is decided to act as per the recommendations of the ICC, then a show cause notice, answerable within ten days, shall be served on the party against whom action is decided to be taken. The Executive Authority of the HEI shall proceed only after considering the reply or hearing the aggrieved person.
- (7) The aggrieved party may seek conciliation in order to settle the matter. No monetary settlement should be made as a basis of conciliation. The HEI shall facilitate a conciliation process through ICC, as the case may be, once it is sought. The resolution of the conflict to the full satisfaction of the aggrieved party wherever possible, is preferred to purely punitive intervention.
- (8) The identities of the aggrieved party or victim or the witness or the offender shall not be made public or kept in the public domain especially during the process of the inquiry.

9. Interim redressal

The HEI may,

- (a) transfer the complainant or the respondent to another section or department to minimise the risks involved in contact or interaction, if such a recommendation is made by the ICC;
- (b) grant leave to the aggrieved with full protection of status and benefits

for a period up to three months;

- (c) restrain the respondent from reporting on or evaluating the work or performance or tests or examinations of the complainant;
- (d) ensure that offenders are warned to keep a distance from the aggrieved, and wherever necessary, if there is a definite threat, restrain their entry into the campus;
- (e) take strict measures to provide a conducive environment of safety and protection to the complainant against retaliation and victimisation as a consequence of making a complaint of sexual harassment.

10. Punishment and compensation-

- (1) Anyone found guilty of sexual harassment shall be punished in accordance with the service rules of the HEI, if the offender is an employee.
- (2) Where the respondent is a student, depending upon the severity of the offence, the HEI may,-
 - (a) withhold privileges of the student such as access to the library, auditoria, halls of residence, transportation, scholarships, allowances, and identity card;
 - (b) suspend or restrict entry into the campus for a specific period;
 - (c) expel and strike off name from the rolls of the institution, including denial of readmission, if the offence so warrants;
 - (d) award reformatory punishments like mandatory counselling and, or, performance of community services.
- (3) The aggrieved person is entitled to the payment of compensation. The HEI shall issue direction for payment of the compensation recommended by the ICC and accepted by the Executive Authority, which shall be recovered from the offender. The compensation payable shall be determined on the basis of-
 - (a) mental trauma, pain, suffering and distress caused to the aggrieved person;

- (b) the loss of career opportunity due to the incident of sexual harassment;
- (c) the medical expenses incurred by the victim for physical, psychiatric treatment;
- (d) the income and status of the alleged perpetrator and victim; and
- (e) the feasibility of such payment in lump sum or in instalments.

11. Action against frivolous complaint.

To ensure that the provisions for the protection of employees and students from sexual harassment do not get misused, provisions against false or malicious complaints have to be made and publicised within all HEIs. If the ICC concludes that the allegations made were false, malicious or the complaint was made knowing it to be untrue, or forged or misleading information has been provided during the inquiry, the complainant shall be liable to be punished as per the provisions of subregulations (1) of regulations 10, if the complainant happens to be an employee and as per sub-regulation (2) of that regulation, if the complainant happens to be a student. However, the mere inability to substantiate a complaint or provide adequate proof will not attract attention against the complainant. Malicious intent on the part of the complainant shall not be established without an inquiry, in accordance with the procedure prescribed, conducted before any action is recommended.

12. Consequences of non-compliance.

(1) The Commission shall, in respect of any institution that will fully contravenes or repeatedly fails to comply with the obligations and duties laid out for the prevention, prohibition and redressal of sexual harassment of employees and students, take one or more of the following actions after providing due notice:

- (a) withdrawal of declaration of fitness to receive grants under section 12B of the University Grants Commission Act, 1956.
- (b) removing the name of the university or college from the list maintained by the Commission under clause (f) of section 2 of said Act, 1956;

- (c) withholding any grant allocated to the institution;
 - (d) declaring the institution ineligible for consideration for any assistance under any of the general or special assistance programmes of the Commission;
 - (e) informing the general public, including potential candidates for employment or admission, through a notice displayed prominently in the newspapers or other suitable media and posted on the website of the Commission, declaring that the institution does not provide for a zero tolerance policy against sexual harassment;
 - (f) recommending the affiliating university for withdrawal of affiliation, in case of a college;
 - (g) recommending the Central Government for withdrawal of declaration as an institution deemed to be university, in case of an institution deemed to be university;
 - (h) recommending the appropriate State Government for withdrawal of status as university in case of a university established or incorporated under a State Act.
 - (i) taking such other action within its powers as it may deem fit and impose such other penalties as may be provided in the University Grants Commission Act, 1956 for such duration of time till the institution complies with the provisions of these regulations.
- (2) No action shall be taken by the Commission under these regulations unless the Institution has been given an opportunity to explain its position and an opportunity of being heard has been provided to it.

RELEVANT EXTRACT OF UGC'S SAKSHAM REPORT-MEASURES FOR ENSURING THE SAFETY OF WOMEN AND PROGRAMMES FOR GENDER SENSITIZATION ON CAMPUSES

V. SEXUAL HARASSMENT IN UNIVERSITIES AND COLLEGES

The UGC's commitment to the just redressal of sexual harassment in Universities can be seen from the fact that soon after the Vishaka judgement of August 1997, circulars were issued to all universities, advising them to establish a permanent cell to address and redress sexual harassment, to develop guidelines to combat such harassment, violence against women and ragging at the universities and colleges. It further advised the universities to proactively create a conducive atmosphere on university campuses, where the status of women is respected. In March 1999, a booklet related to the Supreme Court judgement was prepared by the MHRD and a letter was sent out by the then UGC Chairperson Prof Armaiti Desai to all Vice Chancellors and Principals (dated March 1999) to set up sexual harassment committees.

In response to this circular in the decade that followed, some HEIs responded positively and instituted such Internal Complaints Committees (ICCs); yet, the observance of the UGC letter appears to have been more in letter than in spirit. The data of a survey conducted in late 2012 by Prof. Reicha Tanwar, Director, Women's Studies Research Centre, Kurukshetra University of 200 institutions of Higher Education in the country on the status of committees set up to deal with complaints of sexual harassment reveals that while there is a proforma 'formalistic' compliance on setting up some mechanism, there is little clarity on the purpose/scope of their work. Most importantly, even though Vishaka guidelines made preventive work central to the work of standing committees, the responses to their survey revealed little commitment to initiatives for sensitization or gender awareness on the campuses surveyed.

The Task Force's impression echoes that of the 2012 survey. Based on the responses received to the questionnaires sent out as part of the Task Force's assessment and the inputs received from the Open Forums as well as other submissions, it has found that while many colleges and universities have a ICC in place, some still have generic grievance cells for complaints, but no specific sexual harassment complaints committee. Most committees have not received a single complaint of sexual harassment, nor have they conducted sustained awareness campaigns on this human rights violation.

Even in universities where complaints committees are in place, students, teachers and non-teaching staff do not know of its existence. Information about procedures for filing cases is not common knowledge. In general, ICCs and administrators lack clarity about their constitution, status, functioning and powers, and the procedures that must be followed in inquiry. ICCs often have no funding, no physical location that serves as an office, no secretarial or office assistance, making the maintenance of necessary records difficult. Commonly, ICC members have little understanding of gendered violence, experience of dealing with sexual harassment and violence against women. When compounded by the absence of legal awareness or training, the inquiry function of these committees tends to be compromised, with the result that far too often cases drag on without resolution.

Moreover, even where ICCs have been functional, their track records did not inspire enough confidence in the University community. In the open forums and other interactions with members of the Task Force **students complained that nominated ICC committees were often perceived as protecting the faculty, and expressed the fear that in the absence of student representation on these committees, no serious action would ever be taken against teachers.** They also pointed to the weakness of ICCs in empowering them to combat the pressure on them to withdraw cases –not just from faculty, but also from parents and peer groups. Fear of identification and future harassment prevents many from coming forward. **Also in these Open Forums, faculty stressed the need for ICCs to be mature in its handling of issues, and its focus should be on relief to the victim and resolution of the issue.**

The Task Force is therefore of the opinion that it needs to formulate a set of guiding principles that must govern the composition, functioning and redressal mechanisms of ICCs in Universities, as derived from its understanding of the relevance of the Vishaka judgement and the Sexual Harassment Act, 2013 to universities as workplaces.

5.1 Understanding the role of ICCs in University

The implementation of the Vishaka guidelines and the 2013 Act in universities must be predicated upon a clear understanding of the nature and significance of sexual harassment redressal mechanisms in the context of an institutional space such as the University and other Institutes of Higher education. These are not merely ‘workplaces’ where faculty and non-teaching staff work but are primarily places

where students come to learn and be trained for their professional careers, and to realise their full potential as individuals. It is therefore imperative that all students, particularly women students, are provided with a safe and dignified environment in which they are able to achieve these goals, because only then will they be able to realise the constitutional promise of equality.

The University-level ICC, when conceived of as an implementation of the Vishaka guidelines, was a mechanism to both prevent any violation of a safe and dignified environment and to ensure that if such violations do take place they are effectively and speedily dealt with. It is for this reason that ICCs have been put in place to provide a *civil redressal mechanism* in contrast to a criminal — primarily punitive — process. The goal of the SH policy is to end the problem faced by the student/employee through an internal system of relief that is easy to access, and thereby provides an effective remedy to the aggrieved complainant as quickly as possible so that she can continue to study and develop without further impediments.

This is very important to recognize for two reasons. One, in relation to how cases are resolved, in that redressal does not necessarily have to be punitive and instead may be educational, (depending on the nature of the case) and two, in relation to the nature of evidence sought.

Prior to the Vishaka guidelines, sexual harassment was addressed as a law and order problem in universities and was only addressed as and when a case came up. Committee members were not seen as needing an understanding of gender or gendered violence. This had implications for how cases were dealt with and also meant that no preventive work was done. In contrast, the Vishaka guidelines made it necessary for all institutions to set up standing committees. These committees have to be representative of the different sections of the University community, and must be autonomous (i.e. independent of existing structures of power), accountable and accessible.

The Vishaka guidelines also effected a change in the way that redressal and disciplinary actions were to be conceived. Whereas earlier sexual harassment was only treated as a matter of criminal law, where the metric of 'beyond reasonable doubt' as laid down by the Indian Evidence Act, would have to be applied, ICC enquiries are bound by the 'preponderance of possibility' standards set for domestic enquiries. More suited for the inter-personal and non-public nature of sexual harassment in the workplace, these standards enable ICCs to hear and evaluate

complaints in a manner that is more sensitive to the impact of sexual harassment on the individual. At the same time, the foregrounding of this subjective component adds further responsibility on ICCs with regards to the fair and just conduct of sexual harassment enquiries: the principles of natural justice must be observed in all cases, and the procedures it employs must be impartial and rigorous.

Finally, the Vishaka guidelines make the constitution of ICCs in every workplace an expression of the employer's commitment to a non-discriminatory workplace, in which the dignity, health and safety of every woman is guaranteed. This commitment therefore entails not only the deterrence of sexual harassment, but also its prevention. The employer, through the ICC, must ensure that the institution adopts a policy against sexual harassment that addresses the issues of its particular environment and the challenges and vulnerabilities of people who work and live there. Such a policy must be given adequate and sustained publicity, with the aim of educating and sensitising the entire university community about what sexual harassment is and the higher education institution's zero tolerance to it.

Part of the preventive work should also be the enabling of discussions on the campus on issues of gender, sexuality, consent and violence for example. It should be stressed that sexual harassment is by definition against the consent of the person concerned. It should not be confused with consensual relationships between men and women on a campus. Thus, preventive work should in no way focus on censoring these. It must also be emphasized that the policing of students, or the impositions of dress codes for either or both men and women students and employees in the work place do not constitute 'prevention' in any form, as the restriction of any individual's liberty and autonomy is discriminatory, and cannot be the basis for justice and redressal.

5.2 Guiding Principles

Guiding Principles for the constitution and functioning of anti-sexual harassment committees in Universities.

The Task Force is of the opinion that the following six principles must be adopted as the directive principles for the institution and functioning of sexual harassment policies.

5.2.1 Confidentiality

A major impediment to the lodging of complaints of sexual harassment is the apprehension that the very act of a complaint will lead to adverse publicity for the

complainant. Confidentiality with respect to the details of the complaint, the complainant's identity and the person(s) who she has charged must therefore be mandatorily guaranteed, but by itself, this is not enough, as confidentiality must extend both to the procedures employed in enquiries and the witnesses involved in them for the guarantee to be truly meaningful.

Since sexual harassment is an exercise of power that is traumatic for complainants, the enquiry process should not be one that either replicates such inequalities or causes trauma to the complainant. ICC proceedings should therefore ensure that:

At no time in the complaints receiving and recording procedure should the respondent(s) and the complainant be placed face to face, or put in a situation where they may be face to face (e.g. they shall not be called at the same time and be made to wait in the same place), in order to protect the complainant from facing further trauma and/or safety problems.

Following the Supreme Court directions in (W.P(C) 4427/2008 Page 20 of 28), the identity of witnesses should not be revealed to the respondent or any person acting on his behalf.

Complainants and other witnesses should not be examined in the presence of the respondent. This can be derived from the High Court judgement in the Bidyut Chakraborty v. Delhi University & Ors.: 2009 VI AD, as modified by the Supreme Court, wherein the court observed that it was not obligatory for the ICC to examine the complainants and other witnesses who were to depose against the respondent, in his presence.

Finally, the maintenance of confidentiality with regards to the proceedings of ICC enquiries should be the responsibility of all persons involved in the enquiry, including the complainant, the respondent and all witnesses. An oath of confidentiality must be administered to all parties with regards to the substance of their deposition during the enquiry; however, this commitment should not be interpreted as barring any party from approaching higher institutional authorities as well as the criminal\civil justice system for redress of specific grievances.

5.2.2 Non-coercion and Interim Relief

The 2013 Act has built on the Vishaka guidelines by adding that the following acts may also amount to sexual harassment:

presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment;

threat of detrimental treatment in employment;

threat about present or future employment;

interference with work or creating an intimidating or offensive or hostile work environment; or

humiliating treatment likely to affect the woman employee's health or safety.

These provisions call for an explicit recognition of the fact that in a workplace, the exercise of patriarchal power may equally be expressed by the abuse of institutional power. It is therefore incumbent upon ICCs that once a complaint has been lodged, they should take steps to minimise such abuses. For example, some university rules require an order of restraint to be issued to the respondent as soon as the complaint is filed, prohibiting all direct or indirect contact with the complainant, her family or witnesses. Violations of the order of restraint are viewed as aggravating the offence committed.

An explicit protection from victimisation must be provided to all students and employee complainants and witnesses, by which in the pendency of a complaint and even after, the person charged with sexual harassment shall be expressly prevented from supervising or evaluating any academic or work-related activity of the complainant\witness.

This protection should explicitly extend to the supervision of research and writing of the Confidential Reports of the complainant. Importantly, if the research work of the complainant has been retarded because of her pursuing a complaint of sexual harassment against her supervisor or any other person employed or studying in the HEI, the concerned institution must ensure that the complainant should not be disadvantaged or penalised for any delays with regards to her academic work. Furthermore, the institution must ensure that she is sanctioned a reasonable amount of extra time to complete her work.

Furthermore, the 2013 Act also envisages the ICCs as providing interim relief to the complainant. The Act empowers the ICC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave

to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement. University-level ICCs must obviously guarantee these at the very minimum; however, in a workplace as complex as the University, special attention must be paid to provide reasonable interim relief to students, particularly research students, as well. Appropriate procedures that are in consonance with the guarantee of confidentiality must be put in place in all HEIs.

Finally, it is important also to recognise that the principle of non-coercion must also guide the ICCs in recognising that the persons affected by sexual harassment may not always be women. Same-sex harassment and violence is a reality of our campuses and our society, and a commitment to non-coercion must also enable HEIs to redress such discriminatory acts. ICCs in educational institutions must also therefore be empowered to receive complaints of sexual harassment by men and women who have suffered same-sex harassment.

5.2.3 Fair Enquiry

All ICC enquiries must be carried out in accordance with a detailed procedure for inquiry into a complaint of sexual harassment, starting from the filing of the complaint, examination and cross-examination of witnesses, right up to the submission of the report. The governing principle should be complete transparency and impartiality, and the guarantee of principles of natural justice to both the complainant and the respondent, tempered with due attention to the aspects of confidentiality and non coercion. (See **Appendix 12** for recommended procedures for Cross-examination and **Appendix 13** for issues related to Conciliation.)

At the very minimum the procedures must include the following points:

- Information about who may file a complaint to the committee, the channels through which it may be made, and the procedure employed to record a complaint
- The composition of enquiry committees must include an NGO, comprise at least 50 per cent woman and be headed by a woman). A good practice would be to ensure that representatives of the constituency of the complainant and the respondent are members of the Enquiry Committee (i.e., if the complaint is filed by a student against an academic staff member, then the Enquiry Committee must include one student and one academic staff member).

- Ensure that the Enquiry Committee fulfils certain responsibilities towards the complainant and the respondent: for example, timely notification of the membership of the Enquiry Committee and the schedule of its hearings, the provision of the complaint to the respondent as well as the supply of all documents and authenticated but anonymised depositions to both parties, and the provision of support services like counselling and translation services, etc.
- Ensure that the accused/respondent is informed about the nature and the details of the complaint against him, and is provided with all the evidence has been submitted against him during the course of the enquiry (including the authenticated (anonymised) depositions of the witnesses from the complainant's side).
- The order and manner of enquiry, including the order of witnesses to be summoned, the procedure for the examination and cross-examination of witnesses, as well as rules for the protection of witnesses and the complainant.

It is important also to recognize that the Rules by which ICCs must function will have to be updated and revised from time-to-time, both because of the fact that Court judgements and other laws and Rules will continue to revise the legal framework within which the 2013 Act is to be implemented, as also because the experiences of the ICCs at the institutional level will throw up new challenges. As the requisite legal knowledge need not necessarily be available at the institutional level in general and with the ICCs in particular, full institutional support must be extended to ICCs in all aspects of the law.

5.2.4 Orientation towards Education and Redressal

Given the complexity of the University as a workplace, the ICC must fully exploit its potential as an alternative dispute resolution mechanism; while there must be zero tolerance for quid pro quo harassment involving a teacher\employee and a student or those in any other hierarchical relationship, many cases of peer harassment between students would benefit from being considered as an opportunity for education and sensitisation, rather than stringent punitive action. While decisions on individual cases can only be made on the basis of the facts of the case itself, this guiding principle should be reflected in providing a range of penalties that sexual harassment may attract, all the way from warnings and apologies up to dismissal. See for example the JNU GSCASH Rules and the Delhi University Ordinance XV (D)

for such a range.

An oft-neglected aspect of the need for an educative and sensitisation approach is raised by issues of sexuality. For many young persons, the years in University are the first time that they can begin to address questions of sexual orientation and sexuality. Such self-discovery is often traumatic, and in the face of (internalised) social taboos and ridicule, may lead to behaviour that is violative of the rights of another. Such cases cannot, and must not be dealt with only at the punitive level; while all steps must be taken to ensure that the sexual harassment stops, an equal concern must be shown to the individual who is dealing with his/her own sexuality. In fact, discussing questions of sexuality and addressing the rights of sexual minorities should be an activity that must be undertaken by all ICCs in HEIs.

The specific redressal a particular complaint demands will similarly have to vary according to individual cases, but the objective of the interventions by ICCs must first and foremost be to ensure that the sexual harassment stops at once. Redressal at the end of an enquiry in which harassment has been established must be tailored to address the needs of the complainant – be they academic or personal. Events of sexual harassment and enquiries into complaints exact a tremendous toll on the complainant's health and concentration and merely punitive recommendations do not address these.

5.2.5 Representative Committees

Since the UGC notification of 1998, many educational institutions have constituted their Vishaka-compliant committees through a variety of modes, including direct election, and in many cases, these modes have been incorporated into the Rules, Regulations, Statutes, and/or Ordinances of the institution concerned.

Representative committees have been challenged and upheld in the courts. In the Dr. B.N. Ray vs. Ramjas College & Ors judgement on 21 May 2012, the Hon. High Court of Delhi observed (with regards to Delhi University): "In our view, such a composition also meets the objective of ensuring that all sections of the college community have full faith in the functioning of Committee on account of presence of their representatives on it. The findings of such a broad based Committee are likely to be better received and accepted by all the sections of the college community". And in response to this being challenged ... "...We also fail to appreciate how inclusion of students or representatives of students or non-teaching employees, including the representative of Group D employees, can be said to be violative of Article 14 of the

Constitution. It was very much in the domain and competence of the University to provide, by way of Ordinance, that the members of the Committee would include representatives from all the sections of the college community”.

A core guiding principle is that individual institutions should be empowered to choose whichever method of composition of ICCs that is deemed appropriate by the work place community (students, employees and the person(s) in charge of the HEIs), as long as the composition of the ICC complies with the Act of 2013, and is given the force of Rules, Regulations, Statutes and/or Ordinances of the institution concerned.

While it could be the case that the mode of direct election is not feasible across all HEIs, it is nevertheless important that the composition of ICCs does not replicate the power inherent in workplace hierarchies. ICCs must contain representation from all sections, particularly junior levels, of the workplace. Furthermore, such representation must not be directly nominated by the employer; rather, transparency and a principled basis for membership on the ICC should be arrived at after involving all sections of the HEI community.

5.2.6 Administrators’ Zero-Tolerance to Sexual harassment and gender-discrimination

The 2013 Act makes employers liable for an institution’s non-compliance with the provisions of the Act (including the failure to constitute a Committee, include details of sexual harassment cases in the annual report etc.). The first instance of such violation is punishable with a fine of INR 50,000, and repeated violations are likely to result in higher penalties.

In the Task Force’s view, the heads of educational institutions must mandatorily extend full support to the ICCs to ensure that prevention and deterrence of sexual harassment in the workplace is actually affected. The best practice should be to treat ICC recommendations as binding, and to consider any dilution or enhancement of the action recommended as needing written justification. Furthermore, the educational institution must afford all possible institutional resources to the functioning of the Complaints Committee, including office and building infrastructure (computers, photocopiers, audio-video equipment, etc.), office staff, and counselling and legal services as well as a sufficient allocation of financial resources. In addition, at the very minimum, the following steps need to be taken by persons in charge of

HEIs to ensure:

- An annual notification notifying the names and contact details of the members of the ICC.
- Publication and dissemination of the HEI's policy against sexual harassment and its rules.
- Provision of legal, medical and counselling assistance to complainants.
- Implementation of the guarantees of confidentiality and protection against victimization
- Provision of an atmosphere in the workplace in which the functioning of the ICC are not subjected to undue "pressure from senior levels".
- Forward to the government department concerned as well as the UGC, the Annual Report of GSCASH together with a written report on the Action Taken by the HEI upon the decisions/recommendations of the GSCASH and/or the Appeals Committee.
- Ensure that the ICC organizes programmes for the gender sensitisation of the HEI community through workshops, seminars, posters, film shows, debates, skits, etc.
- Ensure the sensitivity of the HEI security services and other institutional services to the ICC with regards to the redressal of complaints of sexual harassment in the workplace.
- Organize mandatory training sessions for members of the ICC, so that they may discharge their functions in a law-abiding manner, and that the ICCs function in compliance with the 2013 Act

5.3 Specially Vulnerable Groups

Sexual harassment is an assertion of power. Though all women and some men can be the targets of sexual harassment, the feedback obtained from the Open Forums as well as long standing experience of ICCs makes it evident that vulnerability can be compounded.

Firstly, the vulnerability of women can be compounded through forms of existing social discrimination based on region, class, caste, minority identity or sexual orientation among others. Many of these aspects of identity or social background

remain invisible or stigmatized and therefore sensitivity must be developed to enable students and staff who are vulnerable in these ways to come forward and seek redressal in an atmosphere of trust.

Secondly, women can find themselves in vulnerable situations for reasons having more to do with the structures of HEIs themselves. Here we include women with disabilities who are placed in relations of unique dependency because they are differently abled, and hence require forms of assistance for their basic needs. This situation is exacerbated by the lack of facilities on campuses which are built only with the abled bodied in view. This is also why campuses must be disabled friendly. The differently abled can be particularly susceptible to harassment or abuse. Access to institutional structures such as anti-ragging committees or ICCs must be enabled and facilitated. Some universities have provided for enabling committees to address the special needs of the differently abled students and it is suggested that these committees work with women's cells to provide counselling and facilitation in terms of access to ICCs where needed.

Special mention must also be made of research students whose work and study places them under a supervisor. Research supervision carries considerable power with it since the degree and future of a student hangs on the successful completion of such research to the satisfaction of the supervisor. Research typically is contingent on regular interactions where the supervisor mentors the student and guides her or him through the process. Such power can be misused in a variety of ways to intimidate, create a hostile environment, or communicate quid pro quo statements all of which can lead to sexual harassment and considerable trauma for the student. Students typically experience these problems in isolation and, precisely because they fear reprisals if a complaint is made, can feel quite helpless with their future at stake. In the next section below some considerations are suggested for an ethics of supervision. In science departments supervisors can have enhanced power over their students, including through joint experiments, working late hours in laboratories, on projects involving significant funding, all of which lead to heightened control over students. Even simple matters such as disbursement of scholarships and financial grants to students make it more difficult for the aggrieved student to bring complaints against their supervisors. Typically also science departments are somewhat isolated from the rest of the university community. The Task Force was made aware of particularly tragic cases where a case of harassment followed by isolation led to the suicide of the victim.

Staff and faculty can also be specially vulnerable depending on the nature of their employment. Contract workers and all ad hoc and part time employees or faculty, which is now a growing proportion of those employed in HEIs, are working in conditions which can be further exploited. Junior faculty especially at entry level or when awaiting promotion can also find themselves vulnerable to harassment. Clear guidelines against sexual harassment must therefore also be sensitive to employees on campuses who would ordinarily find it difficult to complain because their rights to employment are not secure.

5.4 Intimate Partner Violence

Intimate Partner Violence is a term that is used in order to help people recognise the unacceptability of the violence they may be experiencing in their personal relationships and friendships with others. Such violence can occur in a variety of situations – where the relationship is otherwise consensual, in a relationship that one party has attempted to end, or when feelings are no longer mutual. It can take the form of physical, emotional, sexual or psychological actions by a person in order to gain power over the other. Such behaviour can be aggressive and seek to humiliate the other person and so lead to loss of self-esteem. There could be attempts to control the actions or decisions of the other person, or take even more complex forms where a person threatens to harm him or herself in order to maintain the relationship. While gender inequalities are such that the aggressor is usually a man, the complex nature of personal relationships is such that men may occasionally feel victimised as well.

If a person is feeling victimised in such a relationship, it is imperative to recognise that this is wrong and is a form of harassment. It is important not to hide such a situation especially if it is not coming to an end and to bring it to the notice of friends, and to a person in a position of responsibility, whether a counsellor or a member of the gender sensitization committee. Early efforts to deal with such violence can prevent the situation from deteriorating further or on occasion coming to extremely tragic ends. Gender sensitization is crucial so as to enable young people to distinguish between affirmative friendships and relationships, and those that are causing harm.

5.5 Ethics for Research Supervision

The perspective that should guide ethics for research supervision is to maintain clear norms in the relationship such that neither is the student violated nor does her research suffer. Time spent with supervisors must be professionally oriented and

not be personal. Unnecessary requests to spend time with supervisors should be avoided. All meetings should be during office hours in office space. Doors should either have glass – and this should also include laboratory doors which usually must be kept closed —or else doors should be kept open during meeting times.

Any complaint made by a student about a supervisor must be forwarded to the Sexual Harassment committee and officially acknowledged. Following this the supervisor must be suspended and another faculty member assigned in consultation with the student.

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Appendix 12

Recommended Procedure for Cross Examination

In the *Dr. Pushkar Saxena v. Govt. of NCT of Delhi & Ors.* WP(C) No. 7592/ 2001 decided on 16.5.2012, the Hon. High Court of Delhi has directed that in order to ensure that “there is no possibility of witnesses getting influenced on account of the presence of the respondent at the time of their cross-examination, the witnesses may be cross examined through a female defence assistant. If the respondent does not want to engage the services of such a female defence assistant, then the exercise of the right of cross-examination would require the petitioner to submit a questionnaire, giving the questions he wanted the witnesses to answer, and the answers to the questions will be obtained by the Inquiry Committee.” The Court also directed that the respondent will not be present at that time of either examination or cross-examination of the witnesses. This procedure was upheld by the Hon. Supreme Court in its ruling on SLP No. 23060/2009 and the Hon. High Court of Delhi in the *B.N. Ray vs Ramjas College & Ors* judgement on 21 May 2012.

The Committee thinks that the procedure laid down in the Hon. Supreme Court’s guidelines (SLP No. 23060/2009, and the *Bidyut Chakraborty (Prof.) v. Delhi University & Ors.*: 2009 VI AD (Delhi)) for cross-examination must be adopted as the procedure at educational institutions in general. The defining points of this procedure is that neither the complainant nor her witnesses shall, if they so wish, be subjected to a face to face- encounter with the charged person(s) whether during examination or cross examination, and that cross-examination may be done through a cross-examination or a questionnaire. This entails that witnesses for the complainant need not be examined in the presence of the charged person.

- i. At the first examination of the complainant, the Complaints Committee shall formally enquire from the complainant whether she wishes to avoid a face-to face encounter of herself and/or her witnesses with the respondent, including during the examination and cross-examination of herself and/or her witnesses, and record her response thereto.
- ii. The order of examination of witnesses to shall first be the list of person(s) named by the complainant, followed by their cross-examination on behalf of/by the respondent. The Complaints Committee shall then examine the witnesses named by the respondent, and after that facilitate their cross-examination on behalf of/by the the complainant. Official and other witnesses may be examined at any time. Provided further that the Complaints Committee shall provide one further opportunity for the complainant and the respondent to add to their respective lists of witnesses, before embarking on the cross-examination of witnesses of either party.
- iii. In the event that the complainant has indicated that she and/ or her witnesses should not be put face-to-face with the respondent during their examination and cross-examination, the Complaints Committee shall communicate the same to the respondent. In such an eventuality, the Complaints Committee shall give the respondent an option of nominating a woman Examination Assistant.
- iv. Such an Examination Assistant may be present during the examination of the complainant's witnesses as an observer, and shall also conduct the cross-examination of the complainant's witnesses. Provided further that the Examination Assistant must be an employee of the workplace in which the respondent is an employee, and should not have been found to be guilty of sexual harassment, or been a respondent to a Complaints Committee-instituted conciliation procedure.
- v. In the event that the respondent cannot or does not nominate an Examination Assistant, he may submit a list of questions to the Complaints Committee to administer to the complainant and her witnesses for the purposes of cross examination.
- vi. In individual cases, the Complaints Committee may feel it necessary to protect the identity of any or all of the complainant's witnesses. In such an event, the Complaints Committee shall guarantee the anonymity of all such witnesses

produced by the complainant and shall allow cross-examination only by written questionnaire. In such exigent circumstances, the Complaints Committee shall provide the statements of witnesses, without disclosing their names and identities to the respondent, and shall obtain the answers to the questionnaire and supply them to the respondent.

- vii. If at any given point of time, the Complaints Committee finds that the respondent has attempted to adversely influence the inquiry by threatening, harassing or intimidating either the aggrieved woman or any witness, it may recommend action to be taken as prescribed under Rule 15.

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Appendix 13

Conciliation

Clause 10 of the Act addresses ‘**conciliation**’ between the aggrieved woman and the respondent as the possible first step in case of a complaint, to be initiated only if the aggrieved woman asks for it. In order for the Act to be implemented fairly, a complainant may submit a written request for conciliation within 2 weeks of the date of the initial complaint.

- i. In case the aggrieved woman requests for conciliation, the chairperson\presiding officer of the ICC/LCC shall within a period of one week of the receipt of request for conciliation from the complainant, summon the complainant in order to ensure that she is not opting for it under any form of coercion/threat.
- ii. On satisfaction of the above, the chairperson\presiding officer may herself carry out the conciliation or nominate one member from the Committee to carry out this process who shall then provide detailed information to both parties regarding the conciliation process.
- iii. Conciliation shall not include any component of monetary settlement or pecuniary benefit to either of the parties, but may include a verbal or written apology, counselling of either party, bond of good conduct by the respondent, monitoring of the respondent’s good conduct by the conciliator, or any other reasonable relief agreed to by the aggrieved woman.
- iv. Notwithstanding anything contained in any other law for the time being in

force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

- v. The conciliation process shall be completed within a period of 30 days from the time of receiving the request for the same from the complainant.
- vi. The aggrieved woman may opt out of the conciliation process at any point in these thirty days, without any adverse inference being drawn against her for this decision.

Therefore necessary that a complaint of sexual harassment in the workplace first be established as a complaint that falls within the ambit of the Act before any conciliation be attempted. The following guidelines are recommended.

4.3.2.2 Cross-examination

Cross-examination of witnesses and manner of Enquiry: A vexed issue for most existing ICCs is how to guarantee the principles of natural justice for both the complainant and the accused - i.e. to provide a reasonable opportunity to examine and cross examine witnesses - and at the same time ensure that the procedure does not lead to the intimidation of, and trauma to, the complainant and/or her witnesses in a complaint of sexual harassment. This has been the subject of two important court rulings, which have recognized the specific nature of sexual harassment and the psychological effects it has. A detailed note on the recommended procedure for Cross Examination is at Appendix XI

4.3.2.3 Accountability

The UGC must ensure that heads of educational institutions must mandatorily be extended full support to see that the recommendations of the ICC are implemented in a timely manner. With regard to the implementation of the recommendations of disciplinary action, the best practice should be one that treats them as binding, and any dilution or enhancement of the action recommended must be justified in writing. Furthermore, the educational institution must afford all possible institutional resources to the functioning of the Complaints Committee, including office and building infrastructure (computers, photocopiers, audio-video equipment, etc.), staff (qualified stenographers, typists, office assistants — to be appointed on a permanent basis, and counselling and legal services) as well as a sufficient allocation of financial

resources.

Annual Report of the ICC- Every educational institution must mandatorily submit to the UGC an Annual Report in compliance with Sections 20 and 22 of the Act. This report must contain, at the minimum, the following information:

- a. Number of complaints of sexual harassment received in the preceding year
- b. Nature of the act of sexual harassment (physical, verbal, through electronic communication, etc.)
- c. Position on the hierarchy of the aggrieved woman vis-a-vis the respondent
- d. Number of cases in which the aggrieved woman was SC/ST/OBC/minority.
- e. Number of complaints disposed during that year
- f. Number of complaints disposed within the required time frame.
- g. Number of cases in which conciliation was sought, and an agreement reached
- h. Nature of other relief sought.
- i. Number of cases where the accusation was upheld.
- j. Nature of penalty imposed
- k. Time gap between the submission of the Complaints Committee report and disciplinary action.
- l. Number of cases involving repeat offences.
- m. Number of cases where penalty was imposed for attempting to harass or intimidate the aggrieved woman/ witnesses.
- n. Number of complaints proved to be false/malicious
- o. Number of trainings/awareness campaigns/workshops against sexual harassment carried out within the organization.
- p. Any method used to educate employees about sexual harassment, the Act and the Rules.
- q. Number of complaints where conciliation was successfully carried out
- r. Nature of action taken by the employer/district officer.
- s. Number of cases where appeals were filed, as well as number of cases where

appeals were upheld.

Such compliance could be tied to the pre-requisites for allocation of grants from the UGC.

**DELHI HIGH COURT JUDGMENT IN THE MATTER OF
DR. B.N. RAY, V. RAMJAS COLLEGE & OTHERS**

IN THE HIGH COURT OF DELHI

W.P.(C) 4427/2008

Decided On: 21.05.2012

Appellants : **Dr. B.N.Ray**

Vs.

Respondent: **Ramjas College & Ors.**

Citation: 2012 (130) DRJ 277

Coram:

Hon'ble Mr. Justice Badar Durrez Ahmed and Hon'ble Mr. Justice V.K. Jain

Counsels:

For Appellant: Mr. Yashoband Das, Sr. Advocate with Mr. Arun Srivastava and
Mr. Arunav Patnaik along with Petitioner-in-person

For Respondents: Mr. Anurag Mathur for R-1, Mr. Amit Bansal for R-2
Ms. Maninder Acharya for R-3 (DU)

Cases Referred:

Bidyug Chakraborty (Prof.) v. Delhi University & Ors.: 2009 VI AD (Delhi); Dr. Pushkar Saxena v. Govt. of NCT of Delhi & Ors. WP(C) No. 7592/2001; Apparel Export Promotion Counsel v. A.K. Chopra (1999) 1 SCC 759; Avinash Nagra v. Navodaya Vidyalaya Samiti and Ors.(1997) II LLJ 640 SC; Hira Nath Mishra and Ors. v. The Principal, Rajendra Medical College, Ranchi and Anr. (1973) II LLJ 111 SC

JUDGMENT

V.K. Jain, J

1. The petitioner before us is teaching in Ramjas College of Delhi University and took over charge as its Vice-Principal in January, 2007. 04 male students of the College submitted complaints alleging sexual harassment at the hands of the petitioner, to the College Complaints Committee (hereinafter referred to as the Committee), constituted under Ordinance XV-D of the University of Delhi which prohibits and

provides for punishment in cases of sexual harassment. Charges based upon the complaints of the students were served upon the petitioner. However, the copies of their complaints were not provided to him. The Committee conducted its proceedings in 05 sittings on 05 different dates. The Committee met 04 of the complainants in person and interacted with them. On the basis of the written complaints and interaction with the complainants, the Committee concluded that there was a prima facie case of sexual harassment against the petitioner and therefore an inquiry into those complaints was required to be held in terms of provisions contained in Ordinance XV-D.

2. A Sub-Committee was set up in terms of Clause 2.7 & 8 of the Ordinance to conduct the inquiry. The Sub-Committee consisted of 05 members of the Committee. The following 06 charges were framed by the Sub-Committee against the petitioner and were communicated to him in writing on 5.11.2007.

Abused his position as a teacher to cause the sexual harassment of xxxxx, B.A.(H) Pol. Sc.III, through inappropriate physical contact over a period of two years, including non-consensual sexually explicit physical contact in a hospital/nursing home in September 2006, intimidating him when he resisted such contact, and causing the intimidation of Adeel Ahmed after he had complained to the College Complaints Committee.

Abused his position as the Convenor, Admission Committee, to cause the sexual harassment of xxxxx, B.A.(H) History II through inappropriate non-consensual physical contact on the 19th and the 20th October, 2007 in his Model Town residence, including hugging, kissing and physical contact with genitalia.

Abused his position as a teacher as the Convenor, Admission Committee, to cause the sexual harassment of xxxxx, B.A.(H) Pol. Sc.II, through inappropriate non-consensual physical contact over a period of more than one year, including kissing and physical contact with genitalia, in Delhi and elsewhere.

Abused his position as a teacher and as the Vice-Principal to cause the sexual harassment of Abdullah Nasir, B.A.(H) Pol. Sc. III, through non-consensual inappropriate physical contact and verbal conduct of a sexual nature over a period of more than one year, including hugging and kissing in his residence and in a hospital/nursing home in September 2006, and by promising rewards for sexual compliance by awarding high marks in the Internal Assessment in papers taught by him and by others in the Department of Political Science, Ramjas College.

Abused his position as a teacher by using his interpretations of classical Greek philosophy and of the lives of Greek Philosophers as a pre-meditated preface to the sexual harassment and abuse of his students in the Department of Political Science, Ramjas College.

Caused the intimidation of the complainants and others and thus interfered in the proceedings of the College Complaints Committee in the instant case.

(names omitted by us)

3. The Sub-Committee declined to supply copies of the complaints to the petitioner despite the request made by him and informed him that he would get an opportunity to rebut the charges in his deposition before the Sub-Committee. The main reasons given for not providing the copies of the complaints to the petitioner were that the complainants had requested that their complaints should not be shown to the petitioner and there was no provision in the Ordinance to provide such copies to the person charged with sexual harassment. The complainants deposed before the Sub-Committee on 15.11.2007 and 16.11.2007 whereas the petitioner deposed on 17.11.2007, 26.11.2007 and 27.11.2007. Some persons named by the complainants were also examined by the Sub-Committee. On 14.2.2008, the Sub-Committee recorded the answers of the petitioner to the questions put to him. The Sub-Committee also read out relevant parts from the deposition of the witnesses and the letter it had received. It also disclosed the names of the persons whose depositions and letters were being quoted by it to the petitioner. The Sub-Committee asked the petitioner as to whether he would like to examine any person who had information, relevant to the inquiry. The petitioner named 04 persons, out of which 02 were examined by the Sub-Committee. The remaining 02 persons expressed their inability to appear on the day the other two witnesses of the petitioner were examined. The Sub-Committee, therefore, decided to elicit their response by conveying the questions to them in writing. The written replies submitted by those two witnesses were then considered by the Sub-Committee which submitted its report to the Committee on 18.3.2008. On considering the report of the Sub-Committee, the Committee concluded that the petitioner be dismissed from service without prejudice to his financial benefits and the Governing Body of the College should ensure further action in this regard in accordance with the provisions of the Ordinance.

4. On receipt of the copy of the Inquiry Report, the petitioner filed this writ petition

seeking a writ or order declaring the inquiry procedure contemplated under the Ordinance as violative of Article 14 of the Constitution of India being unfair and arbitrary, declaring the composition of the College Complaints Committee as well as the manner in which the inquiry was conducted, under the above-said Ordinance as unconstitutional and contrary to law. He also sought quashing of the findings of the Committee and the recommendation made by it for dismissal of the petitioner. This Court permitted the respondents to go-head with the passing of the final order but directed that the said order shall not be given effect to. The decision of the Governing Body on the report of the Inquiry Committee was produced before this Court in a sealed cover on 7.10.2010

5. During the course of arguments, the learned senior counsel for the petitioner assailed the recommendations of the Committee on the following grounds:-

(i) Ordinance XV-D under which inquiry was conducted against the petitioner does not apply to the allegations of sexual harassment of a male and is confined to sexual harassment of females; (ii) the composition of the Committee was bad since it was headed by a teacher who was inferior to the petitioner in rank and consisted of representatives of students as well as of non-teaching staff of the college; (iii) the copies of the complaints made by the boys were not supplied to him, which prejudiced the petitioner in making his defence; (iv) the witnesses were not examined in the presence of the Petitioner (v) the petitioner was not given an opportunity to cross-examine the witnesses; (vi) the petitioner was not allowed to himself examine the defence witnesses;

It was also the submission of the learned senior counsel that unless the requirements of supplying copies of complaints made and statements of witnesses recorded during preliminary inquiry, giving an opportunity to the delinquent to cross-examine the witnesses and giving him an opportunity to examine witnesses in his defence are read as implicit in the Ordinance, it would be unconstitutional, being violative of Article 14 of the Constitution.

6. We will first deal with the submission that the Ordinance in question applies only to the cases of sexual harassment of females and, therefore, the inquiry against the petitioner could not have been held under the provisions of the said ordinance.

Ordinance XV-D, to the extent it is relevant, provides as under:

“Scope of the Ordinance:

This Ordinance shall be applicable to all complaints of sexual harassment made:

- (i) By a member of the University against any other member of the University irrespective of whether the harassment is alleged to have taken place within or outside the campus.
- (ii) By a resident against a member of the University or by a member against a resident irrespective of whether the sexual harassment is alleged to have taken place within or outside the campus.
- (iii) By an outsider against a member of the university or by a member of the University against an outsider if the sexual harassment is alleged to have taken place within the campus.
- (iv) By a member of the university, against an outsider if the sexual harassment is alleged to have taken place outside the campus. In such cases the Committee shall recommend that the University college authorities initiate action by making a complaint with the appropriate authority. Further the committee will actively assist and provide available resources to the complainant in pursuing the complaint”

7. Definitions

- i. “Students” includes regular students as well as current ex-students of Delhi University.
- ii. “Teaching staff” include any person on the staff of the Delhi University or any colleges or institution affiliated to it, who is appointed to a teaching and/or research post, whether full time, temporary, ad-hoc, part-time, visiting, honorary, or on special duty or deputation and shall also include employees employed on a casual or project basis.
- iii. “Non-Teaching Staff” includes any person on the staff of the Delhi University or of any colleges or institutions affiliated to it, who is not included in the teaching staff. It includes employees who are full-time, temporary, ad-hoc, part-time, visiting honorary, or on special duty or deputation, and employees employed on a casual or project basis.
- iv. “Member of the University” includes all those included in categories i-iii above.
- v. xxx xxx xxx xxx xxx xxx

vi. xxx xxx xxx xxx xxx xxx

vii. xxx xxx xxx xxx xxx xxx

viii. "Sexual harassment" includes any unwelcome sexually determined behavior, whether directly or by implication and includes physical contact and advances, a demand or request for sexual favour, sexually-coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Explanation: "Sexual harassment" shall include, but will not be confined to, the following:

- a. When submission to unwelcome sexual advances, request for sexual favours, and verbal or physical conduct of a sexual nature are made, either implicitly or explicitly, a ground for any decision relating to employment, academic performance, extracurricular activities, or entitlement to services or opportunities at the Delhi University.
- b. When unwelcome sexual advances, and verbal, non-verbal and/or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or e-mail, gestures, exhibition of pornography, lurid stares, physical contact, stalking, sounds or display of a derogatory nature have the purpose and/or effect of interfering with an individual's performance or of creating an intimidating, hostile, or offensive environment
- c. When a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person without the letter's consent or against the person's will, such conduct will amount to sexual assault
- d. When deprecatory comments, conduct or any such behavior is based on the gender identity/sexual orientation of the person and/or when the classroom or other public forum of the University is used to denigrate/discriminate against a person or create a hostile environment on the basis of a person's gender identity/sexual orientation."

8. It would thus be seen that the Ordinance includes, in its ambit, all complaints of sexual harassment made by "a member of the University" against any other "member of the University". It is not restricted to the complaints made by a female member of

the University. Member of the University has been defined to include students as well as teaching staff. Student can be male as well as female. The definition given to the expression "students" does not exclude male students either expressly or by implication. Admittedly, the petitioner is included in the teaching staff of the Ramjas College which is a college, affiliated to Delhi University having been appointed to a teaching post. In fact, even the non-teaching staff is included in the definition given to the expression "member of the university". Hence, there is no escape from the conclusion that a complaint of sexual harassment made by a male student against a teacher, including a Vice Principal of a college affiliated to University of Delhi, can be inquired into, under the said Ordinance. The definition given to the expression "sexual harassment" is wide enough to include an unwelcome sexually determined behavior, physical contact and advance, demand or request for sexual favour or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature by a teacher qua a male student of the college. Considering the charges served on the petitioner, it can hardly be disputed that the allegations made in the complaint of male student of the college constitute sexual harassment within the meaning of Ordinance XV of the University.

9. The learned senior counsel for the petitioner, in support of his contention that the Ordinance is confined to cases of sexual harassment of a woman, relied upon the policy which led to the promulgation of the said Ordinance and which, in its preamble refers to the decision of the Supreme Court in *Vishaka & Others v, State of Rajasthan & Ors.* (1997) 6 SCC 241. He pointed out that *Vishaka* (supra), was dealing with cases of sexual harassment of women and it was for inquiring into complaints of sexual harassment of women, that the Supreme Court had directed setting up of the Complaints Committee to be headed by a woman and had also directed that 50% of members of the Complaints Committee should be female and exactly same is the composition of the Committee set up in Ordinance XV-D of the University which provides that the Chairperson, to be elected from amongst the members, would be a woman and at least 50% of the members in each of the categories specified in the Ordinance should be women. This, according to the learned senior counsel for the petitioner, indicates that the Ordinance was intended to apply only to the cases of sexual harassment of women and inquiry into the allegations of sexual harassment of males was not envisaged when the Ordinance was promulgated. We are unable to accept the contention. If the provisions of the Ordinance unambiguously include the cases of sexual harassment of a male within its ambit, it is not necessary for the

Court to look into the policy which led to the issuance of the Ordinance. It would have been useful to refer to the policy on sexual harassment had the Ordinance been ambiguous or had there been any scope for more than one interpretation with respect to the scope of the Ordinance. That, however, is not the position in the case before us.

Moreover, even if we look at the policy, we cannot accept the contention that it was intended to apply only to the case of sexual harassment of females working/teaching/studying in the University and its colleges. Para 2 of clause 1.2 of the Policy under the heading “Social Context of Sexual Harassment” reads as under:-

“1.2 SOCIAL CONTEXT OF SEXUAL HARASSMENT

Though violent conduct is prohibited both by law and by University rules, a specific policy defining sexual harassment is required to address the specific form and extent of sexual harassment in the University. The policy recognises that sexual harassment is not an offence merely amounting to disruption of law and order. Sexual harassment is an act of power, and a public and collective violation that is often trivialised by labelling it an interpersonal transgression. It is therefore a violation of gender equality and also, of the right to a safe education and work environment for all. Sexual harassment not only affects a few individuals but reinforces gender-based discrimination for everyone.

It, therefore, becomes imperative that various educational institutions, and civil society as a whole, should take adequate measures to ensure the safety, security, dignity, rights and equality of women as much as of men. Such measures will strengthen social and professional relationships in the work place.

The University of Delhi, in evolving this policy, has borne in mind that the institution functions within a social context. Given the social stigma associated with sexual harassment, a majority of instances of sexual harassment go unreported or even unmentioned. The policy, therefore, has evolved mechanisms that are accessible and will ensure confidentiality. It has also attempted to ensure fair, accountable and representative procedures for redressal and resolution.”

(emphasis supplied)

The above-referred para of the Policy is a clear indicator that the policy was intended at taking adequate measures to ensure safety, security and dignity, etc. of both, female as well as male studying/teaching/working in the University and its colleges. In any

case, even if two interpretations in the matter are possible, we should lean in favour of an interpretation which will protect and safeguard the safety, dignity and honour not only of females but also the males studying/teaching/working in University and its colleges. We, therefore, find no merit in the contention that Ordinance in question does not apply to allegations of sexual harassment of a male student of the college.

10. We, now, come to the next contention that composition of the Complaints Committee as well as the sub-Committee was bad on account of the Chairperson being inferior in rank to the petitioner and on account of inclusion of the representatives of the students and of non-teaching members of the staff as their members. In the case before us, we are concerned with the College Complaints Committee and its sub-Committee. The Ordinance provides as under with respect to constitution of the Committee:-

“ORDINANCE XV(D): APPENDIX I. CONSTITUTION OF THE COMMITTEES (a) COLLEGE COMPLAINTS COMMITTEE (CCC)

1. *Two teacher representatives to be elected/nominated by the procedure outlined in Clause 4 (Procedure for the Constitution of First Committee).
2. *Two non-teaching Staff representatives of the College (of which one must be from Group D) to be elected/nominated by the procedure outlined in Clause 4.
3. *Three student representatives to be elected from a Gender Sensitising Committee of students comprising one elected representative of each class. At least one of the three representatives should be a second year graduate student. The details of this procedure are outlined in Clause 4.
4. *Two persons with known contribution to women’s issues, to be co-opted by the Committee from outside the College. One of these may preferably have a legal background.
5. The Chairperson (woman) to be elected from amongst the members.
6. The Member Secretary to be elected from amongst the members.”

As regards the sub-Committee, the Ordinance provides that in case a prima facie case is established, the Complaints Committee shall set up an Inquiry Committee, consisting of 3-5 members with at least one member of the complainant’s category as well as a member from outside the University.

It would thus be seen that the College Complaints Committee is a broad based committee having representation from all categories, including teaching staff, non-teaching staff and students. At least two outsiders are required to be members of the Committee and one outsider must necessarily be a member of the sub-Committee which inquires into the complaint once a prima facie case of sexual harassment is found by the Committee.

Admittedly, the petitioner is not a Government servant. Hence, the rules made and instructions issued by Government of India from time to time, with respect to inquiries to be held against its employees, do not per se apply to complaints of sexual harassment by a teacher of the college, affiliated to the University which is an autonomous body having its own rules and regulations. Hence, the instructions of the Government, stipulating that the Inquiry Officer should be higher in rank to the charged officer, do not apply to the case of the petitioner. When questioned as to how the constitution of the Committee/sub-Committee is illegal or unconstitutional, the learned senior counsel for the petitioner submitted that the composition, as envisaged in the Ordinance, violates Article 14 of the Constitution. We, however, find no merit in this contention. The petitioner being a teacher in a college affiliated to Delhi University and governed by the rules and regulations of the University and the college, in which he is working, is not similar to the Government servants who form a class in themselves. The plea of hostile discrimination is available only to those who are similarly situated and not to those who are placed in an altogether different class of persons. There can be no equality amongst unequals. Teaching staff, non-teaching staff and students of a University and/or a college affiliated to the University constitute a class which is altogether different from the class constituted by Government servants. Therefore, it cannot be said that fundamental right of the petitioner, guaranteed under Article 14 of the Constitution, is violated on account of the Chairperson and/or members of the Committee/sub-Committee being inferior in rank to the petitioner. We also fail to appreciate how inclusion of students or representatives of students or non-teaching employees, including the representative of Group "D" employees, can be said to be violative of Article 14 of the Constitution. It was very much in the domain and competence of the University to provide, by way of Ordinance, that the members of the Committee would include representatives from all the sections of the college community. In our view, such a composition also meets the objective of ensuring that all sections of the college community have full faith in the functioning of Committee on account of presence

of their representatives on it. The findings of such a broad based Committee are likely to be better received and accepted by all the sections of the college community. In fact, inquiry by a Committee, as against inquiry by an individual, which normally is the case in case of Government servants, is likely to be more fair, objective and impartial, particularly when all the sections are represented in it. We would like to note here that representatives of the teaching community, to which the petitioner belongs, are also included in the Committee as well as the Sub-Committee. In any case, it is for the University to decide what the constitution of such Committees should be and so long such a composition is not shown to be illegal or without jurisdiction, it is not open to the Court to interfere with the decision of the University in this regard.

11. We now come to the other submissions made by the learned Senior Counsel for the petitioner. It is an admitted position that the witnesses were not examined in the presence of the petitioner and he was not given an opportunity to cross-examine the witnesses. It is also not in dispute that the petitioner was not allowed to examine witnesses in his defence. The procedure adopted by the Committee with respect to the witnesses of the petitioner was that he was asked to give the names of the witnesses he wanted the Sub-Committee to examine and thereafter, those witnesses were examined by the Sub-Committee, not by the petitioner. The procedure adopted by the Sub-Committee was based upon the following provisions of the Ordinance:

The sub-committee must inform the accused in writing about the charges made against him/her and she/he should be given a period of five days from the date of receipt of the notification to respond to the charges.

During the enquiry procedure, the complainant and the accused will be called separately so as to ensure freedom of expression and an atmosphere free of intimidation. The complainant will be allowed to be accompanied by one representative during the enquiry.

12. The issue with respect to the examination of witnesses, their cross examination and examination of defence witnesses in an inquiry held under Ordinance XV-D came up for consideration before this Court in Bidyug Chakraborty (Prof.) v. Delhi University & Ors.: 2009 VI AD (Delhi) 1. In that case, on complaints of sexual harassment being made against the petitioner before this Court, who was working in University of Delhi, an Inquiry Committee was set up to investigate the complaints. The Committee submitted its report holding the petitioner guilty of sexual

harassment Pursuant to the report of the Committee, the Executive Council of the Committee warned the petitioner and also debarred him from holding any administrative post in the University for a period of 03 years. The petitioner filed the aforesaid writ petition seeking quashing of the Memorandum, whereby warning was given to him and he was debarred from holding any administrative post in the University for a period of 03 years as well as the report of the Inquiry Committee. The Committee did not give an opportunity to the petitioner for verbal cross-examination of the witnesses examined by it and copies of their statements were not supplied to him. After completion of examination of the witnesses, no opportunity was given to the petitioner to produce defence witnesses, though at the time of supplying the charge-sheet to him he was given an opportunity to give names of the witnesses whom he wanted the Committee to examine. Allowing the writ petition a Division Bench of this Court, inter alia, held as under:

“As noted earlier, no opportunity was given to the petitioner for verbal cross examination of the complainant. A perusal of the inquiry report shows that the committee informed the petitioner that he could cross examine the complainant by giving written questions to the committee. In our opinion, mere permission to give written questions to the committee for cross examination of the complainant does not fulfil the legal requirement on the part of the Inquiring Authority, to give opportunity to the delinquent to cross examine her. Cross examination by giving written questions to the inquiring authority can never be as effective as verbal cross examination and cannot be its proper substitute. While putting questions to a witness the examiner does not know what answer the witness would give to the questions put to him/her. It is, therefore, not possible for him to formulate the next question without taking into consideration the answer given by the witness. The answer given by the witness to one question may lead to further questions from the examiner on the same line, in order to elicit truth from the witness and to impeach his/her trustworthiness. Moreover, asking the petitioner to give written questions for cross examination was confined in respect of the complainant alone. No opportunity was given to the petitioner even to give written questions for cross examination of other witnesses examined by the committee. It was imperative on the part of the Inquiring Authority to give opportunity to the petitioner for her cross examination not only of the complainant but also of the other witnesses examined by it. Denial of opportunity to cross examine the complainant and other witnesses examined by the committee constitutes gross violation of principles of natural justice.

x x x x In the present case, though at the time of serving charge sheet upon the petitioner, the committee asked him to give list of witnesses whom he wanted to be examined by the committee, no such opportunity was given to him after the committee had examined the complainant and other witnesses in support of the complaint. The committee was required not only to give an opportunity to the petitioner to produce his witnesses but those witnesses were to be cross examined by the petitioner and not by the committee, though, it would have been open to the committee to examine them after they had been examined by the petitioner and had also been subjected to cross examination.”

This Court held that it was obligatory to follow at least the fundamental norms for conducting inquiries and unless such a requirement was held to be implicit in the Ordinance, it may not be possible to sustain the validity of the inquiry procedure prescribed therein. The Court was of the view that the inquiry conducted without giving an opportunity to the delinquent to cross examine the witness and without giving him an opportunity to produce the witnesses in his defence would not conform to the basic principles of natural justice and a procedure which does not contain even these minimum safeguards for the delinquent cannot be said to be a fair and reasonable procedure for conducting an inquiry.

The decision of this Court was challenged by University of Delhi before the Supreme Court, vide SLP No. 23060/2009. The Supreme Court was of the view that the respondent before it was entitled to a hearing and to cross examine the witnesses produced by the University. However, considering that it was a case of sexual harassment, the Supreme Court directed that the identity of witnesses need not be revealed to the respondent or to his Counsel and for this purpose the respondents would be entitled to submit a questionnaire which will be put to the witnesses for their answers in writing. The learned Counsel for the University undertook to supply the statements of witnesses, without disclosing their names to the respondents and a Local Commissioner was appointed by the Supreme Court for the purpose of getting answers to the questions to be supplied by the respondents. The Local Commissioner was directed to ensure the anonymity of the witnesses. It was also stated by the learned Counsel for the University that the respondents would be entitled to produce their entire defence evidence in addition to the questionnaire and all annexures to the respondent without revealing the identity of the witnesses.

In view of the decision of this Court in Bidyug Chakraborty (Prof.) (supra) as modified by the Supreme Court, it was not obligatory for the Sub-Committee to examine the complainants and other witnesses who were to depose against the petitioner, in his presence. Though the identity of the witnesses was disclosed by the Committee/ Sub-Committee to the petitioner, that, in our opinion, does not by itself mean that these witnesses were required to be examined in his presence. In a recent decision Dr. Pushkar Saxena v. Govt. of NCT of Delhi & Ors. WP(C) No. 7592/2001 decided on 16.5.2012, the petitioner before this Court was working as PGT (English) in Government Girls Senior Secondary School, Gandhi Nagar. He was charge-sheeted on 2.12.1996 on the allegation of misbehaviour with the female students studying in the school. The Inquiry Officer reported that the indecent behaviour on the part of the petitioner had been proved. The Disciplinary Authority imposed penalty of dismissal from service upon the petitioner which was also to be a disqualification for future employment under the Government. The Appellate Authority, however, reduced the penalty from dismissal of service to compulsory retirement of the petitioner from the service. It was also directed that he would not be entitled to any benefit for the period from the date of the order of the Disciplinary Authority till the date of his compulsory retirement. The orders passed by the Disciplinary Authority and the Appellate Authority were challenged by the petitioner by way of an OA which was dismissed by the Tribunal. The petitioner assailed the decision of the Disciplinary Authority and the Appellate Authority as well as the view taken by the Tribunal on the ground that the Inquiry was conducted in utter disregard of the mandatory provisions of CCS (CCA) Rules, which were applicable to the inquiry held against him as also in contravention of the fundamental and mandatory principles of natural justice. The names of the complainants had been disclosed in the charge-sheet, which was served upon the petitioner before this Court. It was held by this Court that in the case of an inquiry into allegations of sexual harassment, cross examination need not necessarily be in the presence of the delinquent since sometimes his very presence may result in putting pressure upon the witnesses and may discourage them from coming out with the truth. With respect to the application of principles of natural justice, this Court, in Dr. Pushkar Saxena (supra), inter alia, observed as under:

“It was observed by Supreme Court in **Apparel Export Promotion Counsel v. A.K. Chopra** (1999) 1 SCC 759, in the context of sexual harassment at the place of work, that such incidents result in violation of the fundamental right

to gender equality and the right to life and liberty, the two most precious fundamental rights guaranteed by the Constitution of India. It was further observed that the contents of fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the Courts are under a constitutional obligation to protect and preserve those rights. The observations made by the Supreme Court in the context of sexual harassment at the work place apply with a greater vigour in respect of sexual harassment of students, who, on account of their tender age and impressionable mind are at a greater disadvantage in resisting such advances.

In **Avinash Nagra v. Navodaya Vidyalaya Samiti and Ors.** (1997) II LLJ 640 SC, the Supreme Court, referring to our ancient text and teachings, observed that a duty is cast on the teachers to take such care of the pupils as a careful parent would take of his children. It was further observed that since middle class people are now sending girls to co-educational institutions, a greater responsibility is thrust on the management of the school and colleges imparting co-education to protect the young children and, in particular growing up girls in a disciplined and dedicated pursuit of excellence. The Court observed that the teacher, who is kept in charge of such added responsibility, should conduct himself more like a Rishi and as loco parentis.

In our opinion, all the rules and principles of natural justice, which apply to service jurisprudence in respect of disciplinary proceedings between master and servant, need not necessarily be applied to the disciplinary proceedings taken against a teacher on the basis of complaints made by students, if the allegations made against him constitute misconduct, founded on sexual harassment. It must, however, at the same time be ensured that the teacher concerned is afforded a fair opportunity to controvert the allegations and defend himself and the explanation given by him along with the evidence which he may choose to tender in his defence are duly considered before a decision is taken in respect of the allegations made against him.

In **Hira Nath Mishra and Ors. Vs. The Principal, Rajendra Medical College, Ranchi and Anr.** (1973) II LLJ 111 SC, the Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. The Court was of the view that the principles of natural justice did not require

that the statements of girl students should be recorded in the presence of male students against whom the enquiry was held in that case. The principles of natural justice will, therefore, depend upon the facts and circumstances of each case. “

13. As regards cross examination of the witnesses, the learned Counsel for the respondents, stated that in view of the order passed by the Supreme Court in the case of **Bigyug Chakraborty (Prof.)** (supra), they have no objection to the witnesses answering the questions of the petitioner through a Local Commissioner, and for this purpose, the petitioner may submit a questionnaire as was directed to be done in the case of **Bigyug Chakraborty (Prof.)** (supra). They also stated that as was done in the case of **Bigyug Chakraborty (Prof.)** (supra), the Sub-Committee would allow the petitioner to produce defence witnesses and examine them himself, instead of their examination by the Committee subject, of course, to those witnesses being cross-examined by the Presenting Officer/Department representative.

We take note of the fact that in **Bigyug Chakraborty (Prof.)** (supra), the Supreme Court upheld the right of the delinquent to cross examine the witnesses produced by the University and the delinquent was asked to submit a questionnaire to be put to the witnesses, so that the identity of the witnesses was not revealed to him or to his Counsel. It was precisely for this reason that the learned Counsel for the University undertook to supply the statement of witnesses to Professor Bidyug Chakraborty without disclosing their names. The Local Commissioner was also directed to ensure the anonymity of the witnesses. However, in the case before us, the Committee/Sub-Committee has already disclosed the names of the witnesses to the petitioner and has thereby revealed their identity to him. No useful purpose will, therefore, be served by asking the petitioner to submit a questionnaire, to be answered by the witnesses in writing. Had the University not disclosed the identity of the witnesses to the petitioner as was done in the case of **Bigyug Chakraborty (Prof.)** (supra), the University would have been perfectly justified in asking for adopting the same procedure, which it was directed to adopt in the case of **Bigyug Chakraborty (Prof.)** (supra). But, no useful purpose from adopting such a course of action would be served in a case where the identity of the witnesses has already been disclosed. However, even while in requiring the petitioner to submit a questionnaire containing questions to be answered by the witnesses, we have to ensure that there is no possibility of the witnesses getting influenced on account of the presence of the petitioner at the time of their cross-examination. In the case of

Dr. Pushkar Saxena (supra), we had directed that the witnesses may be cross-examined through a female defence assistant, and that the petitioner would submit a questionnaire, giving the questions he wanted the witnesses to answer and the answers to the questions will be obtained by the Inquiry Committee. We also directed that the petitioner would not be present at that time, if such a course of action is adopted. In the case before us, we were informed, during the course of the arguments, that all the witnesses, who have yet to depose against the petitioner, are male witnesses. Hence, instead of a female defence assistant, they should be cross examined by a male defence assistant but the petitioner should not be present at the time of their cross-examination.

14. As regards supply of the previous complaints and statements of witnesses, the learned Counsel for the respondents fairly stated that in view of the order of this Court in **Bigyug Chakraborty (Prof.)** (supra), as modified by the Supreme Court, they would supply copies of all such complaints/statements, in case, the same have already not been supplied and this would be done, before the petitioner is called upon to cross examine the witnesses.

15. For the reasons stated hereinabove, we dispose of the writ petition with the following directions:

1. The findings recorded and the recommendations made by the Enquiry Committee/Sub-Committee are hereby quashed.
2. The respondents will supply copies of all previous complaints and statements of witnesses, to the petitioner, within 04 weeks, unless such complaints/statements have already been supplied to him. This would include the statements recorded by the Committee as well as the statements recorded by the Sub-Committee.
3. Further inquiry in the matter would begin from the stage of cross-examination of the witnesses, who were earlier examined by the Sub-Committee through a male defence assistant of his choice. The petitioner, however, would not be present at the time of their cross examination. If the petitioner does not avail the services of a male defence assistant, he will submit a questionnaire giving the questions, he wants the witnesses to answer and the answers to those questions will be obtained by the Sub-Committee. If such a course of action is adopted, the petitioner will not be present at the time the witnesses answer to the questionnaire.

4. After cross-examination of their witnesses, the petitioner would be given an opportunity to examine witnesses in his defence. It is made clear that examination-in-chief of the defence witnesses shall be conducted by the petitioner or by his defence assistant. Those witnesses may then be cross examined by the Presenting Officer/Departmental Representative.
5. A Fresh report will be submitted by the Sub-Committee after completing the inquiry in terms of this order within 06 months from the date of the order. On submission of the inquiry report, the respondents shall proceed further in the matter in accordance with Ordinance XV-D of the University.

The writ petition stands disposed of in terms of directions contained hereinabove. No order as to costs.

CHECKLIST FOR HIGHER EDUCATIONAL INSTITUTION (HEI) TO ENSURE COMPLIANCE WITH UNIVERSITY GRANTS COMMISSION (PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL HARASSMENT OF WOMEN EMPLOYEES AND STUDENTS IN HIGHER EDUCATIONAL INSTITUTIONS) REGULATIONS, 2015 (“REGULATIONS”)

Regulation	Actionable Item	
1	Are you aware about the aforesaid Regulations having coming into force w.e.f. 2 nd May, 2016 ?	<input type="checkbox"/>
3(1)(o)	Did you know that you had to ensure compliance with the provisions of these regulations, including appointment of ICC, within a period of sixty days from the date of publication of these regulations i.e. latest by 1 st July 2016 ?	<input type="checkbox"/>
3(1)(a)	Have you subsumed the spirit of the definitions of the Regulation in your policy and regulations on prevention and prohibition of sexual harassment against the employees and the students ?	<input type="checkbox"/>
3(1)(a)	Have you modified your ordinances and rules in consonance with the requirements of the aforesaid Regulations?	<input type="checkbox"/>
3(1)(b)	Have you publicly notified the provisions of sexual harassment and ensured their wide dissemination ?	<input type="checkbox"/>
3(1)(c)	Have you organised training programmes or workshops as indicated in the SAKSHAM report of the Commission for the officers, functionaries, faculty to sensitize them and ensure knowledge and awareness of the rights, entitlements and responsibilities enshrined in the Act and under these regulations?	<input type="checkbox"/>
3(1)(c)	Have you organised training programmes or workshops for students to sensitize them and ensure knowledge and awareness as indicated in the SAKSHAM report of the Commission of the rights, entitlements and responsibilities enshrined in the Act and under these regulations?	<input type="checkbox"/>

- 3(1)(d) Are you aware that you need to act decisively against all gender based violence perpetrated against employees and students of all sexes?
-
- 3(1)(d) Are you aware that even male students and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation?
-
- 3(1)(e) Have you publicly committed yourself to a zero tolerance policy towards sexual harassment?
-
- 3(1)(f) Have you reinforced your commitment to creating your campus free from discrimination, harassment, retaliation or sexual assault at all levels?
-
- 3(1)(g) Have you created awareness about what constitutes sexual harassment including hostile environment harassment and quid pro quo harassment?
-
- 3(1)(h) Have you included in your prospectus and displayed prominently at conspicuous places or Notice Boards the penalty and consequences of sexual harassment and made all sections of the institutional community aware of the information on the mechanism put in place for redressal of complaints pertaining to sexual harassment, contact details of members of Internal Complaints Committee (ICC), complaints procedure and so on ?
-
- 3(1)(h) Have you reconstituted any existing body already functioning with the same objective [like the Gender Sensitization Committee Against Sexual Harassment (GSCASH)] as the ICC under these regulations?
-
- 4(1)(a) Does your ICC have a Presiding Officer who is a woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority? Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices

or administrative units of the workplace referred to in subsection 2(o) of the Regulations; Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;”

4(1)(b) Does your ICC have two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority?

4(1)(c) Does your ICC have three students who are enrolled at the undergraduate, master’s, and research scholar levels respectively, and elected through transparent democratic procedure who would participate if the matter involves students?

4(1)(d) Does your ICC have one member from amongst NGOs or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority?

4(2) Have you ensured that women constitute at least one-half of the total members of your ICC?

4(3) Have you ensured that persons in senior administrative positions such as Vice- Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning?

4(4) Have you ensured that the term of office of the members of the ICC be for a period of three years?

4(4) Are you aware that you may also employ a system whereby one -third of the members of the ICC may change every year?

4(5) Do you pay member appointed from amongst NGOs or associations such fees or allowances for holding the proceedings of the ICC as may be prescribed , by the Executive Authority ?

4(6) Are you aware that where the Presiding Officer or any member of the Internal Committee:(a) contravenes the provisions of section 16 of the Act; or(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or(d) has so abused his position as to render his continuance in office prejudicial to the public interest,such Presiding Officer or Member, as the case may be, shall be removed from the ICC and the vacancy so created or any casual vacancy shall be filled by fresh nomination?

3(1)(i) Have you informed employees and students of the recourse available to them if they are victims of sexual harassment?

3(1)(j) Have you organised regular orientation or training programmes for the members of the ICC to deal with complaints, steer the process of settlement or conciliation, etc., with sensitivity?

3(1)(k) Have you taken proactive steps to curb all forms of harassment of employees and students whether it is from those in a dominant power or hierarchical relationship within HEIs or owing to intimate partner violence or from peers or from elements outside of the geographical limits of the HEI?

3(1)(l) Are you aware about your responsibility to bring those guilty of sexual harassment against its employees and students to book and initiate all proceedings as required by law and also put in place mechanisms and redressal systems like the ICC to curb and prevent sexual harassment on its campus?

- 3(1)(m) Do you treat sexual harassment as a misconduct under service rules and initiate action for misconduct if the perpetrator is an employee?
-
- 3(1)(n) Do you treat sexual harassment as a violation of the disciplinary rules (leading up to rustication and expulsion) if the perpetrator is a student ?
-
- 3(1)(p) Do you monitor the timely submission of reports by the ICC?
-
- 3(1)(q) Do you prepare an annual status report with details on the number of cases filed and their disposal and submit the same to the University Grants Commission?
-
- 3(2)(1) Do you update & revise from time to time the rules, regulations or any such other instrument by which ICC shall function, as court judgments and other laws and rules will continue to revise the legal framework within which the Act is to be implemented?
-
- 3(2)(2) Does your Executive Authority mandatorily extend full support to see that the recommendations of the ICC are implemented in a timely manner?
-
- 3(2)(2) Has your Executive Authority provided all possible institutional resources for the functioning of the ICC, including office and building infrastructure (computers, photocopiers, audio-video, equipment, etc.), staff (typists, counselling and legal services) as, well as a sufficient allocation of financial resources?
-
- 3(2)(3) Have you ensured that your ICC is sensitive to vulnerable groups who are particularly prone to harassment and also find it more difficult to complain as well as their special needs? Vulnerability can be socially compounded by region, class, caste, sexual orientation, minority identity and by being differently abled.
-

- 3(2)(4) Have you ensured that the guidelines for ethics for Research Supervision are put in place since research students and doctoral candidates are particularly vulnerable ?
-
- 3(2)(5) Do you conduct a regular and half yearly review of the efficacy and implementation of your anti-sexual harassment policy ?
-
- 3(2)(6) If you are an All Academic Staff College (now known as Human Resource Development Centres (HRDCs) / Regional Centre for Capacity Building (RCCBs), have you incorporated sessions on gender in your orientation and refresher courses? This should be across disciplines, and preferably mainstreamed using the UGC SAKSHAM Report which provides indicative modules in this regard.
-
- 3(2)(7) Does you conduct orientation courses for administrators which have a module on gender sensitization and sexual harassment issues?
-
- 3(2)(7) Are regular workshops being conducted for all sections of the HEI community ?
-
- 3(2)(8) Have you institutionalized Counselling services and do you have well trained full-time counsellors ?
-
- 3(2)(9) Do you have adequate lighting in your campus as the same is a necessary aspect of infrastructure and maintenance?
-
- 3(2)(10) Do you have well trained security including a good proportion or balance of women security staff who must receive gender sensitization training as a part of conditions of appointment?
-
- 3(2)(11) Do you have reliable public transport, especially within large campuses between different sections of the HEI, hostels, libraries, laboratories and main buildings, and especially those that do not have good access for day scholars.?
-

3(2)(12) In case you are Residential HEI, have you accorded priority to construction of women's hostels?

3(2)(13) Have you ensured that discriminatory rules for women in the hostels as compared to male students are not imposed citing concern for the safety of women students? Campus safety policies should not result in securitization, such as over monitoring or policing or curtailing the freedom of movement, especially for women employees and students.

3(2)(14) Do you have adequate health facilities and in the case of women have you included gender sensitive doctors and nurses, as well as the services of a gynaecologist?

3(2)(15) Have you revived and funded the Women's Development Cells to be able to carryout the range of activities required for gender sensitization in consultation with ICCs and help to disseminate anti sexual harassment policies on campuses on a regular basis?

3(2)(15) Have you ensured that the 'cultural' space and the 'formal academic space' collaborate to render the aforesaid workshops innovative, engaging and non mechanical?

3(2)(15) Have you ensured that the Women's Development Cells remain autonomous of the functioning of anti sexual harassment committees and ICCs?

3(2)(16) Have you amended your rules or ordinances, if necessary, so that Hostel Wardens, Provosts, Principals, Vice Chancellors, Legal Officers and other functionaries are brought within the domain of accountability through amendments?

Has the ICC filed annual report with the District Officer as mandated under Section 21 of the Act as well as UGC?

Have you intimated the number of cases filed and their disposal thereof to the District Officer as mandated under section 22 of the Act?

ABOUT MAHARASHTRA STATE COMMISSION FOR WOMEN (MSCW)

(Maharashtra Rajya Mahila Aayog)

BACKGROUND

Special provisions have been made in the Indian Constitution to ensure the protection of women's status in the society. In accordance with these provisions, the Government established a State Commission for Women on the basis of the National Commission for Women, in the year 1993, with the aim of furthering the fundamental rights guaranteed by articles 14, 15 and 16 of the constitution of India with respect to women and give to effect to the Directive Principles of State Policy and in particular those enshrined in articles 38, 39, 39A and 42 of the Constitution to improve the status and dignity of women in society.

CONSTITUTION OF THE COMMISSION

The Maharashtra State Commission for Women was established on January 25, 1993 under the Maharashtra Act, No. XV of 1993. The Commission consists of the Chairperson; six non-official members; a Member-Secretary and Director General of police as *Ex Officio* member. The Government has sanctioned staff strength of thirty nine for the commission.

MAIN OBJECTIVES OF THE COMMISSION

- To improve the status and dignity of women in the society.
- To investigate into practices unfavourable to women and suggest suitable remedial measures to them.
- To review from time to time the existing provisions of the constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislation measures.
- To advise the Government on all matters related to the improvement and upliftment of the status and dignity of women in society.

POWERS OF THE COMMISSION

The Commission is a statutory body vested with powers as applicable to the Civil Court in respect of requisitioning of any public record from any Court or office, issuing orders for the examination of witnesses and documents to enforce the attendance of a person to give witnesses and before the Commission for holding an enquiry in any matter, to appoint any officer of the State or Central Government for holding a detailed enquiry into any question affecting women.

ACTIVITIES OF THE COMMISSION

- Free legal aid for women
- Research regarding women issues
- Workshops, trainings, consultation on various issues related to women
- Special efforts for bringing out gender equality in society
- Awareness campaign for stakeholders
- Legal literacy seminar
- Networking with NGO
- Jail inspections
- Inspections of remand homes & Women institutions
- Camps for Women
- Counselling
- Hearing before Commission
- Public Hearing
- Give recommendations on policy matters of women to the State Government



MAHARASHTRA STATE COMMISSION FOR WOMEN

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