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**AN ANALYSIS ON THE IMPLEMENTATION OF THE
UNIVERSITY GRANTS COMMISSION (PREVENTION,
PROHIBITION AND REDRESSAL OF SEXUAL HARASSMENT
OF WOMEN EMPLOYEES AND STUDENTS IN HIGHER
EDUCATIONAL INSTITUTIONS) REGULATION, 2015**

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INTRODUCTION

Educational institutions are not just centers of academic growth but are spaces for realization and development of social responsibilities, professional ethics and value creation. The inherent structural mechanisms of an institution put forth an unequal distribution of power dynamics existing between the individuals in these spaces, be it between a student and teacher or a researcher scholar and guide or between the administrative authorities and the working staff. This imbalance in power relations can often result in exploitations, abuse of authority or discrimination. Unequal power relations is one of the root causes of sexual harassment. The hierarchical structure of academic environments creates dependencies leading to the victims being discouraged from reporting abuse due to fear of retaliation, academic disadvantage, social stigma and institutional neglect.

Sexual harassment, has existed in work spaces for a long time, but its evolution into a distinct legal violation has occurred in recent times. For years sexual harassment was viewed as a part of personal dispute, an unavoidable consequence of social interaction rather than being a violation of a person's equality, dignity and human rights. Victims of sexual harassment often faced humiliation, intimidation and discrimination with an added barrier on professional advancement. Absence of effective remedies and legal actions added to the sustaining environment of exploitation. Evolution of sexual harassment laws reflect a changing legal and social mindset of society. Various international instruments and movements by feminists along with judicial interventions and reforms have contributed to the development of a legal framework aimed at preventing and addressing this issue.

MEANING OF SEXUAL HARASSMENT

One of the very first recognised instances of sexual harassment at work places is traced back to the incident of Carmita Wood, an employee of Cornell University who had to resign from her job due to sexual advances from her employer and had to subsequently fight for unemployment compensation. In the “speak out” event organized by the Working Women United Institute in connection with this event, the term ‘sexual harassment’ was officially recognized and coined. Lin Farley and Catherine McKinnon, two pioneers of the feminist movements are often associated with the coining of the term.

Sexual harassment can be defined as unwanted sexual behavior that causes a person to feel scared, offended or humiliated. It is a form of sexual violence involving non-consensual conduct of sexual nature. The US Equal Employment Opportunity Commission defines it as - “Unwelcome sexual advances, request for sexual favors and other verbal or physical conduct of a sexual nature, when:

- submission to such conduct is made either explicitly or implicitly a term or a condition of an individual employment, or
- submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.”¹

The Canadian Supreme Court in *Janzen v Platy Enterprise Ltd. (1989) 1 S.C.R. 1252*, characterized workplace sexual harassment as a form of sex discrimination involving unwelcome sexual conduct that detrimentally affects the working environment or leads to adverse job - related consequences.²

The UK’s Equality Act, 2010 defines sexual harassment as “sexual harassment is defined as unwanted conduct of sexual nature which has a purpose or effect of either violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, for the

¹ U.S. Equal Employment Opportunity Commission, "Sexual Harassment", available at: <https://www.eeoc.gov/sexual-harassment> (last visited on July 31, 2026)

² Supreme Court of Canada, "Janzen v. Platy Enterprises Ltd., (1989) 1 S.C.R. 1252", available at: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/456/index.do> (last visited on August 1, 2026)

complainant”³, similarly the EU Gender Equality Directive describes it as “any form of unwanted, verbal, nonverbal or physical conduct of sexual nature occurring with the purpose or effect of violating the dignity of a person in particular or when creating an intimidating, hostile, degrading, humiliating or offensive environment.”⁴

In India the realization of the existence of vacuum related to sexual harassment laws was recognized through *Vishaka v State of Rajasthan* where-in the term sexual harassment was defined as “sexual harassment, includes such unwelcome, sexually determined behavior (whether directly or by implication) as : a) physical contact and advances ; b) a demand or request for sexual favors; c) sexually colored remarks; d) showing pornography ; e) any other unwelcome, physical, verbal, or non-verbal conduct of sexual nature.”⁵

Legally two forms of sexual harassment has been recognized: quid pro quo harassment and hostile environment harassment. Quid pro quo sexual harassment is when sexual harassment occurs in the form of job benefit or promotions associated with employment in return of any kind of sexual favors to an employer or supervisor or a person having an authority to make decision regarding the employment and the rejection of such sexual advances result in a tangible form of employment detriment or loss of jobs or any kind of benefits associated with the employment. In hostile environment sexual harassment, the uninvited or unwelcome conduct or behavior leads to the creation of a working environment, which is uncomfortable to the employee. Thus sexual harassment spans a wide spectrum of criminal offences from sexual assault to unwelcome conduct or comments.

EVOLUTION OF SEXUAL HARASSMENT LAWS

Before the 1970s even though sexual harassment occurred at workplaces it remained largely unnamed and legally unrecognized. The second wave of feminism after 1970s fundamentally brought about an alteration to this perception. Feminist Scholars and activists began documenting the workplace sexual harassment experiences of women and started demonstrating and spreading awareness about how such harassment functions as a mechanism to spread about gender inequality, and discrimination in employment. These movements laid

³ Equality Act 2010, c. 15, s. 26 (United Kingdom)

⁴ European Parliament and Council Directive 2006/54/EC, "Equal opportunities and equal treatment of men and women in matters of employment and occupation", art. 2(1)(d), available at: <https://europa.eu> (last visited on August 1 2026)

⁵ (1997)6SCC241

the foundation for treating sexual harassment as a serious discriminatory practice rather than classifying it to be merely inappropriate behavior.

Sexual harassment as we understand today can be traced back to the enactment of the Civil Rights Act of 1964 in the United States, which prohibited discrimination (later on discrimination on the basis of sex was included) in Title VII, though it did not explicitly mention sexual harassment, it laid the foundation for future Acts. The American courts started interpreting sexual harassment as a form of discriminatory practices as prohibited under Title VII of the Civil Rights Act of 1964.

A landmark case regarding such recognition of discrimination was in the *Williams v Saxbe*⁶, where in *quid pro quo sexual harassment* as a form of sex or gender based discrimination was recognized. Another landmark case that dealt with sexual harassment as a form of discrimination was *Bonds v Costa*⁷, court of appeals held that sexual harassment is a form of sex discrimination, and is prohibited by Title VII of the Civil Rights Act of 1964. In subsequent case in *Meritor Savings Bank v Vinson*⁸, The US Supreme Court established that there were two types of sexual harassment, one were the harassment involved, employment benefits on sexual favor, and the other creation of a hostile or offensive working environment on refusal of sexual favors. The US Supreme Court also held that the language of Title VII of the Civil Rights Act, 1964 is not limited to economic or tangible discrimination, but may include sexual harassment. This legal developments that occurred in the US significantly expanded protections for employees and established a framework for prevention of sexual harassment in workplace which further expanded and was adopted by many jurisdictions around the world.

Sexual harassment, entered into international human rights agenda, comparatively late when issues of domestic violence, reproductive rights or trafficking came into lime light. The discourse of sexual harassment as an international issue came through the broader recognition of women's rights as human rights.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, does not explicitly mention sexual harassment in its charter, however it was later clarified

⁶ 413 F. Supp. 654 (D.D.C. 1976) (United States)

⁷ 561 F.2d 983 (D.C. Cir. 1977) (United States)

⁸ 477 U.S. 57 (1986) (United States).

and understood that gender based violence and sexual harassment, constitute forms of discrimination against women. The General Recommendation no: 19 of 1992 of CEDAW talks about the violence against women. The Article 11 details about sexual harassment and states that the quality in employment can be impaired when women are subjected to gender specific violence, such as sexual harassment in workplace. Sexual harassment is defined as “Unwelcome, sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demand, whether by words or action such conduct can be humiliating and may constitute a health and safety problem.”⁹ It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion or when it creates a hostile working environment. Further in general recommendation no: 35 in 2017 the CEDAW committee reaffirmed that sexual harassment was a form of gender based violence and a violation of women’s right.

International Labour Organisation’s Violence and Harassment Convention no:190 (2019) and it’s accompanied recommendation no:206. marked an international milestone, establishing that everyone has the right to work free from violence and harassment. The Convention defines violence and harassment as “A range of unacceptable behaviors and practices or threats thereof, whether a single occurrence or repeated, that aim at, result in or are likely to result in physical, psychological, sexual or economic harm and includes gender based violence and harassment”, Further gender based violence and harassment is defined as “, violence and harassment, directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately and includes sexual harassment”¹⁰. The Convention, recognized that addressing gender based violence is a necessity to tackle its underlying causes and risk factors. These included gender and other intersecting forms of discrimination and unequal power relation between workers and employers.

⁹ UN Committee on the Elimination of Discrimination against Women, "General Recommendation No. 19: Violence against women", 1992, art. 11, available at: <https://ohchr.org> (last visited on August 1, 2026)

¹⁰ International Labour Organization, "C190 - Violence and Harassment Convention, 2019 (No. 190)", available at: <https://normlex.ilo.org> (last visited on August 1, 2026)

DEVELOPMENT OF LAWS AGAINST SEXUAL HARASSMENT IN INDIA

The Indian recognition of workplace sexual harassment as an issue emerged from judicial intervention and subsequent development of legislations. The recognition and evolution of sexual harassment laws in India can be broadly described in three phases as: Pre-Vishaka era before 1997, the Vishaka era of 1997 to 2013 and the Statutory era from 2013 to present.

Before 1997 sexual harassment was not recognized as a distinct offense affecting the dignity and autonomy of an individual rather it was considered as a part of workplace issue. The only portion in criminal law that dealt with sexual harassment was in the Indian Penal Code 1860 (now retained in Bharatiya Nyaya Sanhita, (BNS) 2024) under the general provisions of Section 294 dealing with obscene acts and songs or Section 354 (presently Section 74 of BNS) of assault or criminal force used to outrage a woman's modesty and Section 509 (presently Section 79 of BNS) that dealt with insulting modesty of a woman. The case of *Rupan Deol Bajaj v KPS Gill*¹¹, highlighted the absence of a dedicated sexual harassment legislation in India. The accused in this case, a DGP, slapped the posterior of an IAS officer at a dinner party. When the action was challenged in court, the Punjab and Haryana High Court dismissed it as trivial, but the Supreme Court overturned this, ruling it a serious criminal offense against a woman's dignity.

Following the Nirbhaya gang rape case¹² the parliament enacted the Criminal Amendment Act of 2013, on the basis of Justice Verma Committee Report, which inserted the section 354A to IPC (presently section 75 of BNS). It explicitly defined and penalized sexual harassment for the first time under the IPC. It criminalized physical contact and advances involving unwelcome and explicit sexual overtures, demands or requests for sexual favors, showing pornography against a woman's will, and making sexually colored remarks. Offenses under this section were punishable with rigorous imprisonment of up to three years, or fine, or both. Section 354B (presently section 76 of BNS) penalized assault or use of criminal force upon a woman with the intent to disrobe her, recognizing the gravity of such acts as a violation of a woman's dignity and bodily autonomy.

¹¹ (1995) 6 SCC 194., AIR 1996 SC 309.

¹² Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

The turning point in the development of workplace sexual harassment laws in India arose from the case of Bhanwari Devi, a Saathin (village level woman social worker) employed under the Rajasthan government's women development program. In 1992, after she attempted to prevent a child marriage in her village, she faced severe retaliation culminating in her gang rape by five men on September 22, 1992. Her attempts to seek justice were met with institutional failure at every level — police reluctance, denial of medical examination, and eventual acquittal of all accused due to lack of evidence — starkly exposing the absence of any legal framework protecting women from workplace sexual harassment. Following this injustice, several women's rights organizations filed a collective PIL before the Supreme Court, contending that India lacked laws protecting women from workplace harassment and had failed its obligations under CEDAW. The Supreme Court, in its landmark judgment of August 13, 1997, held that sexual harassment violated fundamental rights under Articles 14, 15, 19(1)(g), and 21, and significantly expanded Article 21 to include the right to work with dignity in a harassment-free environment. To fill the legislative vacuum, the Court laid down the *Vishaka Guidelines*, which defined sexual harassment, prescribed preventive obligations upon employers across both public and private sectors, and established a formal complaint mechanism and Complaints Committee to address such cases at the workplace.

The post - Vishaka era marked the transition from governing sexual harassment cases from Vishaka guidelines to a comprehensive statutory framework. This era can be stated to begin with the enactment of Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act 2013 (POSH Act), transforming judicial principles into enforceable legal obligations. However this transformation was marked by the fact that for nearly 16 years since the establishment of Vishaka guidelines there was no enactment of any legislation and that during these years, harassment cases were regulated on the basis of these guidelines. The implementation as laid in Vishaka guidelines was inconsistent as many institution failed to establish complaints committee or for the fact that employers lacked accountability because of the lack of a comprehensive legislation, and also due to the fact that victims faced procedural difficulties.

In *Apparel Export Promotion Council v AK Chopra, 1999*¹³, the first significant case after the Vishaka guidelines were established the Supreme Court of India held the validity of the

¹³ (1999) 1 SCC 759

Vishaka guidelines and reaffirmed that workplace sexual harassment violated fundamental rights. In *Medha Kotwal Lele v Union of India (2013)*¹⁴, the Supreme Court observed that many institution had failed to implement the Vishaka guidelines and called for a implementation of legislation for regulating sexual harassment at workplace.

In the same year, the first legislation, governing sexual harassment of women at workplace was enacted in India - Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. This legislation was enacted as a response to Vishaka guidelines, CEDAW obligations and judicial directions.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 or POSH Act has marked the transition from judicial regulation, Vishaka guidelines to a comprehensive statutory framework. The Act aims at prevention of sexual harassment, prohibition of sexual harassment and provide effective redressal mechanism and promote a safe working environment. The legislation is rooted in constitutional guarantees of equality and dignity and seeks to fulfill India's obligations under CEDAW (government of India has ratified CEDAW on 25 June 1993)

The Act consists of 8 chapters and 30 sections. The Act has provided extensive definition as to who is an employee, who is an employer, sexual harassment, and what constitutes as workplace. The Act also provides for the constitution of an internal complaints committee, local complaints committee, a system or procedure for complaints, the procedure for inquiry into complaints, the duties of the employer and the duties of the district officer in its chapters.

The Act in section 2(n) the definition of sexual harassment is given as "Includes any one or more of the following and welcome after behavior whether directly or by implication, namely

- i. Physical contact and advances or
- ii. A demand or request for sexual favors or
- iii. Making sexually colored remarks or
- iv. Showing pornography or

¹⁴ (2013) 1 SCC 297

- v. Any other unwelcome, physical, verbal or nonverbal conduct of sexual nature”

The Act defines a workplace¹⁵ and includes any department, organization, undertaking or establishments which is controlled or financed by appropriate government or local authority or any private sector, including any private ventures and enterprises, institutions or service providers carrying on commercial, professional, vocational, educational, entertainment, activities etc., and also includes hospitals or nursing homes, sports institute, stadium, sports complex or any place visited by the employee arising out of or during the course of employment, including transportation by the employer for undertaking such a journey or a dwelling place or a house.

The definition of workplace clearly indicates that educational institution whether private or government owned, comes within the scope of workplace under the Act, and so sexual harassment, arising in colleges and universities are well within the ambit of the Act.

While the Act applies to educational institution as workplace, it does not fully address the distinctive realities of higher educational institutions where relationship between students faculty members, research supervisors, and administrative staff involve a unique power dynamic and academic independencies. Recognizing this fact, the University Grants Commission UGC introduced a specialized regulatory framework through the UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulation, 2015. This regulation acts as a supplement to the POSH Act and provides institution specific measures aimed at ensuring safer and more gender, sensitive educational environment.

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

The UGC recognizing the need for a special regulation, in addition to the general legislation in higher educational institutions for the matters related to sexual harassment exercised its power

¹⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 2(o)

under section 26 of the University's Grant Commission Act 1956 and promulgated the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015.

This Regulation seeks to provide a mechanisms for redressal of complaints, to foster gender sensitive academic environment through preventive measures, awareness programs, institutional accountability, and effective systems and by extending protection to both employees and students, the regulation acknowledges that sexual harassment in educational institutions adversely affects the freedom, educational opportunities, professional development, and overall well-being of members of the academic community.

The regulation defines sexual harassment in clause S.2(k), in the same manner as provided in the POSH Act and in addition reads "Anyone or more than one or all of the following circumstances, if it occurs or present in relation or connected with any behavior that has explicit or implicit sexual undertones-

- a. Implied or explicit promise of Preferential treatment as quid pro quo for sexual favors
- 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 persons concerned"

The regulation also has a wider definition for the term campus¹⁶ which is inclusive of all higher educational institution and related facilities, like library, laboratories lecture halls residence halls, toilets, student center, hostels, dining hall, stadium, parking area, park like settings, and other amenities, like health centers, canteens, bank counters, which are situated in campus and also includes extended campus and covers within its scope places visited as a student of the higher educational institution, including transportation provided for the purpose of commuting to and from the institution, locations outside institution on field trips, internship, study excursions, short term placement, places used for camp, cultural festival, sports meets such other activities whether the person is participating in the capacity of an employee or a student

¹⁶ University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, reg. 2(c)

of the higher educational institutions.

The Regulation further defines a student¹⁷ as someone who is duly admitted and pursuing a program of study either through distance or regular mode or a student who is in process of taking the admissions to the higher educational institution, or a student who is a participant in any of the activities of the higher educational institution, other than the higher educational institution where the student is enrolled shall be treated, as per the regulations, as a student of the higher educational institution, where the incident of sexual harassment has taken place against such a student. From the language used for the definition of student, it becomes quite clear that the term is used in gender neutral context which signifies that both victim and perpetrator could be of any gender whereas in POSH Act, 2013 the victim is always a women.

In *Dr. Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College & Others*¹⁸, the Calcutta Highcourt ruled that the term respondent is defined as “a person.” in section 2(m) indicating that the respondent may be of any gender.

Other than this regulation has also provided for definitions for third-party harassment, employees, for protected activities, for covered individuals, aggrieved women and other such terms used in the regulation. The regulation also provides for responsibilities of the higher educational institutions, supportive measures for grievance mechanism for an internal complaints committee provides detailed procedure for making a complaint and conducting an inquiry related to the complaint for interim punishment and compensation for actions against frivolous complaint and the consequences of non-compliance, altogether forming, 12 sections.

Some of the key characteristics of the 2015 UGC regulation are that:

- a. It provides for a gender, neutral definition of students
- b. It provides for a broader jurisdiction by providing an inclusive definition for workplace that extent beyond the traditional understanding of a campus
- c. It provides for a third-party coverage by not limiting the scope of the regulation to faculties or peers, but also to incidence caused by visiting individuals or outsiders within the institutional premises
- d. It provides for punitive actions for noncompliances

¹⁷ Ibid. at reg. 2(l)

¹⁸ W.P.A. 9141 of 2020 (Calcutta HC)

- e. It provides for institutional responsibilities for proactive awareness and support system for victims

The UGC 2015 regulation provides for the constitution of an internal complaints committee. The internal complaints committee or ICC shall have the following composition as per section 4 of the regulation that is.

- i. a presiding officer who is generally a woman
- ii. Two faculty members and two non-teaching employees
- iii. Three students in the matter involving students, who shall be enrolled each at undergraduate, masters and research level as elected by transparent and democratic process
- iv. One member from the non-governmental organization, which is committed to the cause of women or a person familiar with issues relating to sexual harassment, nominated by the executive authority.

It is also mandates that at least 1/2 of the members of the ICC shall be women and that the persons holding senior administrative position in higher educational institution such as vice chancellor, chancellor, registrars, deans, heads of department, etc. shall not be members of the ICC in order to ensure autonomy of their functioning. A member of ICC shall hold the position for a period of three years and 1/3 of the members of the ICC may change every year. It is to be noted that the term internal complaints committee was officially replaced with internal committee through the Repealing and Amending Act of 2016.

The responsibilities of the internal committee include provisions like¹⁹ -

- providing assistance to the aggrieved if the person chooses to file a complaint with the police, provide mechanism for redressal of the dispute and dialogue to anticipate and address issues so as to ensure just and fair conciliation without undermining the complainants right and minimize the need for purely punitive approach that leads to further resentment, alienation or violence.
- To protect the safety of the complainant and not to divulge the person's identity and to provide mandatory release by way of sanction plea or relaxation of attendance requirements or transfer to another department during the pendency of the complaint or

¹⁹ University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, reg.5

to provide for the transfer of the offender.

- To ensure that victims or witnesses are not victimized or discriminated against while dealing with the complaints of sexual harassment, and to ensure that no retaliatory measures or adverse actions are taken against the aggrieved person or covered individual²⁰ for engaging in the protective activity²¹

In *Atharva Prakash Naukarkar v Maharashtra National Law University*²², the Bombay High court held that the punitive measures taken as disciplinary proceedings must be in conformity with the principle of proportionality.

The regulation also provides for instances due to which the members of the internal committee can be removed. these instances include contravention of provisions provided in the POSH Act, or if the person has been convicted for an offense, an inquiry under any law for the time being in force is pending against him, he has been found guilty in any disciplinary proceedings or has disciplinary proceedings pending against him or has abused his position as to lent his continuation in the Office prejudicial to the public interest.²³

The UGC 2015 regulation also provides for certain responsibilities for the higher educational institutions in regulation 3. The responsibilities include provisions like.-

- ✓ publicly notify the promotions against sexual harassment to ensure wide dissemination,
- ✓ to subsume the spirit of the definition in its policies and regulation on prevention and prohibition of sexual harassment against employees and students, and modify its ordinance and rules in consonance with the requirements of the regulation,
- ✓ to organize training programs workshops as indicated in the SAKSHAM report (Measures for Ensuring the Safety of Women and Programs for Gender Sensitization on Campus) for internal committee members and sensitize them
- ✓ do active campaign against all gender based violence against employees and students

²⁰ *Id.* at reg. 2(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”

²¹ *Ibid* at reg. 2(j) - protected activity : “reasonable opposition to 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 sexual harassment practices or acting as a witness in an investigation by an outside agency or litigation”

²² Writ Petition (L) No. 31150 of 2023 | Writ Petition (L) No. 9713 of 2024, Bombay High Court, October 10, 2024

²³ University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, reg.4

of all sexes, recognizing 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,

- ✓ publicly commit itself to a zero tolerance policy towards sexual harassment
- ✓ to make reinforcement to its commitments to creating a campus free from discrimination, harassment, retaliation, or sexual assault at all levels
- ✓ to create awareness as to what constitutes harassment
- ✓ to include in its prospects and to display prominently at conspicuous places - penalty, and consequence of sexual harassment, contact details of the members of internal committee, complaint procedures, and so on,
- ✓ to inform its employees and students of the recourse available to them if they are victim of sexual harassment
- ✓ to organize regular orientation or training programs for the members of the ICC to deal with the complaints and the process of settlement or conciliation, etc., with sensitivity
- ✓ to bring guilty party of sexual harassment into proceedings, and also to put in place mechanism and addressing systems to treat sexual harassment as a violation of disciplinary rules and as a misconduct under service rules
- ✓ to monitor the timely submission of reports by the ICC and prepare an annual status reports with details on the number of cases filed, and they dispose and submit it the same to the Commission.

On top of the responsibilities as enunciated in the section, a subsection to the section provides for supportive measures that higher educational institution, and its executive authorities, can undertake.

The UGC regulations 2015 establishes a comprehensive complaint and redressal mechanism to ensure a timely fair and effective resolution of complaint relating to sexual harassment. The process of making a complaint of sexual harassment as provided for in the regulation includes submission of a written complaint to the internal complaints committee within three months from the date of incident and in case of a series of incident within a period of three months from the last date of the incident. It is also provided that when the complaint cannot be made in writing, it is the duty of the presiding officer or any of the member of the internal committee to provide reasonable assistance for the person to make the complaint in writing. It is also well within the power of the Internal committee to extend the time limit of the set three months if it

is satisfied that circumstances existed which prevented the persons from filing a complaint and such reasons should be accorded in writing. If the aggrieved person is unable to make the complaint on account of any physical or mental capacity or in cases of death then friends, relatives, colleagues, or students psychologist, or any other associate of the victim are entitled to file the complaint.²⁴

In *Dr. Ajay S Sekhar v Internal Complaints Committee, Sree Sankaracharya University of Sanskrit*²⁵, the Kerala High Court held that Universities have an independent statutory duty to ensure a safe educational environment under POSH Act 2013 and UGC Regulations 2015. The court held that University is not powerless merely because information regarding sexual harassment originates from a third party and that sexual harassment constitutes misconduct for which disciplinary proceedings may be initiated independently of a formal complaint by the victim.

The responsibility of conducting the inquiry is bestowed upon the internal complaints committee, and the process includes sending a copy of the complaint to the respondent within a period of seven days of such receipt. On the receipt of the copy of complaint, the respondent can file his or her reply to the complaint, along with other documents and list of witnesses within a period of 10 days. The time limit of the inquiry is set at 90 days from the receipt of the complaint and an inquiry report with recommendation, if any, has to be submitted within 10 days from the completion of the inquiry to the executive authority of the higher educational institution. The copy of such findings and recommendation are to be served to both the parties of the complaint. If the higher educational institution for any reason whatsoever decides not to act up upon the recommendation as provided in the inquiry report then such reasons shall be recorded in writing, and the same shall be conveyed to the internal complaints committee and both the parties of the proceedings. On the other hand if the higher educational institution decides to act upon the recommendation then a show cause notice is to be served which is to be answered within a period of 10 days.²⁶

In *Dr. T.V Ramakrishnan v Kannur University*²⁷, the Kerala High court held that the procedural

²⁴ Id at reg 7

²⁵ W.A. No. 2242 of 2017 (Kerala High Court, 10 February 2021)

²⁶ University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, reg.8

²⁷ W.P.(C) No. 17484 of 2018 (Kerala High Court, decided on 3 July 2018)

safeguards under the UGC Regulations and POSH Act 2013 are mandatory and must be strictly complied during ICC inquiries.

Further executive authority has to act on the said recommendation of the committee within a period of 30 days from the receipt of the inquiry report, unless, against the finding an appeal is filed within the time by either party. This appeal against the findings or recommendations of the internal complaint committee can be filed by either of the parties before the executive authority of the higher educational institution within a period of 30 days from the date of recommendations.

The aggrieved party, may seek conciliation in order to settle the matter, but it is mandated that no monetary settlements should be made on the basis of the conciliation. The higher educational institution is responsible to facilitate a conciliation process through the internal complaint committee as the case maybe if it is sought. The resolution of the conflict to the full satisfaction of the agreed party wherever possible is preferred to purely punitive interventions. It is also mandated that the identities of the aggrieved or the witnesses or the offender is not to be made public or placed in public domain, especially during the process of inquiry.

The regulation provides for a system of internal hearing in the higher educational institution. It is also empowered to transfer the complainant or the respondent to another sectional department to minimize risk involved in contact or interactions, to grant a relief of absence to the party with full protection of status and benefits for a period up to three months, to restrain the respondent from reporting on or evaluating the work performance or test or examination of the complainant, to ensure that offenders are to keep a distance from the aggrieved, and to take strict measures to provide a conducive environment of safety and protection to the complainant against any form of delegation or victimization.²⁸

The punitive measures that the higher education institutions may impose include in case of an employee punishment is to be in accordance with the service rules of the higher education institution, and if the respondent is a student, depending upon the severity of the offense, the higher educational institution may withhold privileges of the student to access facilities of institution, suspend or restrict entry into the campus for a specific period or expel the student

²⁸ University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, reg.9

from the institution or place any reformatory punishments, like mandatory counseling or performing community services. The aggrieved party is also entitled to seek compensation from the offender, and this shall be done on the instruction of the higher education institution, if recommendation of such a payment of compensation is made by the internal complaint committee and accepted by the executive authority. Such a compensation payable can be determined on the basis of the mental trauma, pain, suffering, and distress caused to the aggrieved party or the losses of career opportunities due to the incident of sexual harassment, or on the basis of medical expenses incurred by the victim for physical psychiatric treatment.²⁹

In case of any frivolous complaints, made the higher educational institution is also empowered to take actions against such a complaint to ensure that these provisions are not misused or falsified or malicious complaints are made against anyone. If the internal complaints committee comes to the conclusions that the allegations so made are with an intention of malicious nature, or is false or forced or made knowing it was untrue with misleading information provided during inquiry, the complainant shall be punished as per the provisions provided for the punishment for Commission of such an offense. It is to be noted that the mere inability to substantiate the complaint or provide adequate proof is not enough to attract action against the complainant.³⁰

CONCLUSION

The enactment of the institution specific UGC regulations 2015 strengthens and extends protection to both employees and students, and impose specific obligation upon higher educational institutions in matters relating to sexual harassment in such educational institutions. Together the Constitution, judicial pronouncements, the POSH Act and UGC regulation creates a comprehensive framework which is aimed at ensuring a safe inclusive and gender, sensitive, educational environment. However, the effectiveness of these legal provisions, ultimately depend upon their implementation in real time by educational institutions. Statutory compliance is insufficient and ineffective, and provides no concrete protection to the victims. The existence of such framework is not enough, but it should be accompanied with institutional commitment to awareness and a culture of accountability to

²⁹ *Id.* Reg. 10

³⁰ *Id.* Reg. 11

make a difference. Ultimately, it is only with the proper and effective implementation of this framework can the campuses be made into a space where every individual can pursue education and professional development with dignity, equality and freedom from harassment.

