

# **Sexual Harassment at Workplace: Legal Challenges before Higher Educational Institutions in India - A Critical Analysis**

A Thesis submitted to the  
University of Petroleum and Energy Studies

For the Award of  
**Doctor of Philosophy**

in  
**Law**  
by  
**Baij Nath**

May 2022

SUPERVISOR(S)

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**Dr. Mamta Rana**



**School of Law**

**University of Petroleum and Energy Studies**

**Dehradun- 248007 Uttarakhand**

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**May 2022**

## **DECLARATION**

I declare that the thesis entitled "**Sexual Harassment at Workplace: Legal Challenges before Higher Educational Institutions in India - A Critical Analysis**" has been prepared by me under the guidance of Dr. Gagandeep Kaur, Assistant Professor (SG), University of Petroleum and Energy Studies, Dehradun. No part of this thesis has formed the basis for the award of any degree or fellowship previously.



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## CERTIFICATE

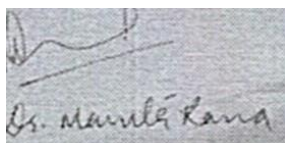
I certify that **Mr. Baij Nath** has prepared his thesis entitled "**Sexual Harassment at Workplace: Legal Challenges before Higher Educational Institutions in India - A Critical Analysis**", for the award of PhD degree of the University of Petroleum and Energy Studies, under my guidance. He has carried out the work at School of Law, University of Petroleum and Energy Studies.



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**Date: May 18, 2022**

## **ABSTRACT**

The Government of India made an official commitment at Beijing in the Fourth World Conference on Women, 1995. The commitment inter-alia includes initiatives like, formulating and operationalizing a national policy on women that will continuously guide and inform actions at every level and in every sector; to establish a Commission for Women to act as a public defender of women's human rights; and to institutionalize a national level mechanism to monitor the platform for Action's implementation. In the year 1997, the Supreme Court of India in the case, popularly known as Vishaka's case, held that every incidence of sexual violence against women at workplace, violates the fundamental rights of 'Gender Equality' and 'Right to Life and Liberty.' The Court further held that such violence is an obvious infringement of the rights guaranteed by the Indian Constitution's Articles 14, 15, 19 and 21. In this backdrop, Vishaka' guidelines were issued by the Supreme Court of India culminating into making of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter called as "POSH Act, 2013").

It is well established that the POSH Act, 2013 addresses the issue regarding protection of women alone, against sexual harassment and is not gender neutral. However, the UGC had taken steps to make the extant Regulations as gender neutral while dealing with the cases of sexual harassment. Accordingly, some guidelines in this regard were issued by UGC to the Higher Educational Institutions (HEIs) in the past, considering the fact that even men can be subjected to sexual harassment in addition to ragging episodes, particularly if they are identified as members of a sexual minority. Pursuant thereto, the University Grants Commission, has framed the regulations, namely, "The University Grants Commission (Prevention, Prohibition and Redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015". These Regulations have come into force on May 02, 2016 i.e. the date of its publication in the Official Gazette. It is mandatory that all concerned HEIs shall adopt these regulations and implement in its true letter and spirit. UGC Regulations were followed by the AICTE (Gender Sensitization, Prevention and Prohibition of Sexual Harassment of Women employees or students and Resolution of complaints in Technical education universities) Regulations, 2016, which is mandatory to be followed by Technical Institutions & universities.

POSH Act, 2013 is a legislation, which provides coverage to all the females of whatever age and with whatever category or type of employment. It makes it obligatory upon employers to constitute Internal Committees (IC) for receiving complaints of sexual harassment from or on behalf of the aggrieved women at such workplaces. Simultaneously, the Act makes it obligatory upon all District Officers, as may be notified by the appropriate governments, to constitute Local Committees (LC) in all districts for receiving complaints from organizations having less than 10 workers and for receiving the complaints against employers themselves.

The problem of sexual harassment can be classified into three categories in the HEIs, namely; when student is harassing other student, when student is harassing the teacher/non-teacher, and when a teacher/non-teacher is harassing the student. Understanding and opinion of undergraduates in respect of sexual harassment differ depending on their age, gender and program of learning. Nevertheless, the stoic silence on sexual harassment in academic institutions was broken with a Google sheet developed by a Law student. The list inter-alia contained the names of predators of sexual harassment in both Indian and foreign universities. This had resulted into a stormy debate in the campuses. There were several who condemned the list claiming that the declarations were unsubstantiated. The student who circulated the list vehemently justified her act. In pursuit of her endeavor to generate adequate awareness, she decided to alert the women of the predators of sexual harassment because notwithstanding registering the allegations several times with the authorities, nothing could happen.

The social construct that the society has developed over a period about its male constituents, contains an inherent tendency to justify the violence unleashed against women by men. Sexual harassment is shown by the perceptions of men as being "harmless" or "casual relationships to which only overly-sensitive women object. In few cases, it has been seen that there was an attempted exploitation of the provisions of the Act to fulfil some feud or due to some other reasons. Obviously, no one can, may it be a woman, be allowed to abuse the law to settle some score or to use the law as a weapon to secure personal gains. Therefore, the POSH Act, 2013 vide its section 14 also seeks to punish false and malicious complaints.

Nevertheless, the inter-alia focus of this study, firstly, is to find out whether there is a need for a remedial legislation to be put in place or to revisit the existing POSH Act, 2013 to make it more effective, to protect the employees in HEIs against sexual harassment at workplaces. Secondly,

this research also focuses if the POSH Act, 2013 needs to be evolved as a gender-neutral Act because the POSH Act, 2013 does not cover the other genders and sexual orientations under its scope. The third major challenge is ‘non- admissibility of anonymous complaints of sexual harassment’. POSH Act, 2013 does not give cognizance to anonymous complaints and unnamed complaints. Following the POSH Act, 2013, UGC Regulations, 2015 were framed in order to deal with the sexual harassment complaints in universities and colleges thereunder.

This research focusses on these areas of concern and legal challenges faced in implementation of the POSH Act, 2013, with a special focus on Higher Educational Institutions. In furtherance, a hypothesis was formulated, as follows: “There is a need to amend POSH Act, 2013, to align its provisions to address the needs of higher educational institutions.” In order to analyze and solve the above mentioned challenges, researcher has conducted an in-depth analysis of the POSH Act, 2013 and UGC Regulations, 2015. In order to understand the nerve of this problem at grass-root level, researcher has conducted a field (empirical) study of 14 higher educational institutions. This research has relied on the doctrinal methods as well as field survey. It has studied the pros and cons of the POSH Act, 2013, aiming at a research in the direction of getting the Act aligned with the needs of higher educational institutions. The material has been gathered from various enactments and different Landmark Judgments, case laws decided by the different Courts including the Supreme Court of India, relevant books, Articles, research papers, reports etc. The Higher Educational Institutions include University of Petroleum and Energy Studies, Adamas University, OP Jindal Global University, Amity University, Himgiri Zee University, Garhwal University, IIT-Roorkee, NIT Rourkela, IIM-Lucknow, IIM-Kolkata, MDI-Gurgaon, Indian Institute of Foreign Trade, Graphic Era University and Uttaranchal University. In the study the researcher has found that: (i) Today’s HEIs are demonstrating a more positive approach towards encouraging filing of sexual harassment complaints in their institutions; (ii) Private institutions are more prone to the cases of sexual harassment than Government institutions; (iii) A complacency was seen on the part of the Government institutions when it comes to discharge of their responsibility towards imparting training or education on prevention of sexual harassment at the time of induction; (iv) There was a satisfactory compliance of Section 4 of the POSH Act, 2013 and regulation 4 of UGC Regulations, 2015 regarding constitution of Internal Complaints Committee; (v) There was a total lack of awareness regarding provisions of POSH Act, 2013 in the institutions; (vi) The existing power hierarchy of males over females does not have a place in

an environment of educational institutions; (vii) An overwhelming majority expressed their satisfaction about adequacy of monitoring provisions in the POSH Act, 2013; and (viii) There are areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions.

This research further revealed that by making the anonymous complaints as admissible, POSH ACT, 2013 and the UGC Regulations, 2015 respectively, would become better effective. This study focusses all these areas of concern and legal challenges faced in implementation of the POSH Act, 2013, with a special focus on Higher Educational Institutions.

The law against sexual harassment vis-à-vis the challenges before the employers and HEIs to deal with the problem have been analyzed in this research. “UGC Regulations, 2015” recognizes helpless groups and seek for supportive measures to put in place for such helpless groups, which includes those whose sexual alignments may make them more exposed. Thus, even a male student studying in higher educational institutions, who faces any sort of sexual harassment, can file a complaint of sexual harassment before the Internal Complaints Committee. However, in order to properly address these cases of male students’ harassment, HEIs ought to take all initiatives for remedial or, if need be, the punitive interventions, after following due procedures. The analysis reveals that there is a need either to have an additional legislation in place or to re-visit the existing Act to better protect the male employees also in HEIs, against sexual harassment. Simultaneously, the POSH Act, 2013 needs to be evolved as a gender-neutral legislation because it does not include other genders and sexual orientations.

The research has also revealed that there should be an enforcing mechanism to ensure that the Employers do impart requisite training to the IC members. It will make the ICC members adequately equipped to conduct tenable investigation and proper inquiry into the sexual harassment complaints.

It has surfaced during the research that in many situations the victim is afraid to file the complaint due to various constraints, pressures and threats. In such situation, the predator continues with the harassment with impunity, though everybody knows about the act of harassment. If anonymous complaints are made admissible under the Act, it will further enhance the effectiveness of the same.



A perusal of various provisions contained under the POSH Act, 2013 reveals that the said Act does not apply to students since it contains no provisions for students-specific penalties. Hence, the UGC Regulations, 2015/the AICTE Regulations, 2016 and the POSH Act, 2013 altogether, can provide some road map on how to deal with the issue of Sexual harassment in HEIs among the students. Here, for the students who are under 18 years of age, it may also attract the provisions contained under Protection of Children from Sexual Offences Act, 2012, hence may be required to lodge an FIR, as it may require thereunder. In some cases the institutions, in order to protect their image outside, try to discourage filing of sexual harassment complaints. However, analysis revealed that it might prove to be counterproductive on the part of the Higher Education Institutions (HEIs) to discourage filing of sexual harassment complaints in order to protect reputation of their organization. Lesser number of complaints or for that matter nil complaints would rather establish an eloquent testimony to the gender insensitivity of the University.

With regular awareness campaigns conducted across the organization and possession of requisite evidence analytical skills by the IC members, they can equip themselves to differentiate between a complaint with 'absence of evidence' and a complaint with 'malicious intent'. The employer inter-alia needs to sensitize the entire work force about penal provisions for putting up a grievance that is fabricated or malicious. Additionally, appropriate trainings must be organized for the IC members so that they can truly understand the concept of 'no evidence' and 'absence of evidence' while dealing with the sexual harassment complaints based on which the conclusion can be reached whether the complaint fall under the 'proven' category or 'not proven' category or it falls under the category of 'malicious'.

The UGC Regulations, 2015, AICTE Regulations, 2016 and the POSH Act, 2013, are silent on providing protection to the aggrieved against any retaliatory action. The research reveals that there should be some provision in place, which grants effective protection to the complainant and the witnesses against any retaliatory action against them. This will encourage the victims to file the complaints and the witnesses to provide their testimony during the proceedings, without any fear, judiciously.

Mahatma Gandhi has said, "Because of the plight of our women, many of our campaigns come to a halt halfway through." Indeed, the enactment of "POSH Act, 2013" was a historical legislative milestone in development of the law against sexual harassment at work place. With introduction

of UGC Regulation, 2015/AICTE Regulations, 2016, a legal framework against sexual harassment at workplace particularly at the HEIs has been put in place. As per analysis, each HEI/TI should constitute a High-Power Monitoring Committee in their respective institutions. Such High Power Monitoring Committee shall meet, at least twice a year, in order to oversee larger compliance of the provisions of the Act and other relevant aspects under the Act.

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**BAIJ NATH**

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## LIST OF ABBREVIATIONS

|                                |   |
|--------------------------------|---|
| <b>AICTE</b>                   | All India Council for Technical Education   |
| <b>AICTE Regulations, 2016</b> | The AICTE (Gender Sensitization, Prevention and Prohibition of Sexual Harassment of Women employees or students and Resolution of complaints in Technical education universities) Regulations, 2016 |
| <b>AIR</b>                     | All India Reporter  |
| <b>AISHE</b>                   | All India Survey on Higher Education  |
| <b>BofA</b>                    | Bank of America   |
| <b>BSE</b>                     | Bombay Stock Exchange   |
| <b>CEDAW</b>                   | Convention on the Elimination of All Forms of Discrimination Against Women  |
| <b>CII</b>                     | Confederation of Indian Industries  |
| <b>COVID</b>                   | Coronavirus Disease of 2019   |
| <b>FIR</b>                     | First Information Report  |
| <b>GDP</b>                     | Gross Domestic Product  |
| <b>HEI</b>                     | Higher Education Institution  |
| <b>HR</b>                      | Human Resource  |
| <b>IC</b>                      | Internal Committee  |
| <b>ICC</b>                     | Internal Complaint Committee  |
| <b>ICCPR</b>                   | International Covenant on Civil and Political Rights  |
| <b>ICESCR</b>                  | International Covenant on Social, Economic, and Cultural Rights   |
| <b>i.e.</b>                    | id est, which means “that is”   |
| <b>IIM</b>                     | Indian Institute of Management  |
| <b>IIT</b>                     | Indian Institute of Technology  |
| <b>ILO</b>                     | International Labor Organization  |
| <b>INBA</b>                    | Indian National Bar Association   |
| <b>IPC</b>                     | Indian Penal Code   |

|                              |  |
|------------------------------|--|
| <b>IT</b>                    | Information Technology   |
| <b>LC</b>                    | Local Committee  |
| <b>LGBT</b>                  | lesbian, gay, bisexual, transgender  |
| <b>LGBTQ</b>                 | lesbian, gay, bisexual, transgender, queer   |
| <b>MDI</b>                   | Management Development Institute   |
| <b>MNC</b>                   | Multi-national Company   |
| <b>NASSCOM</b>               | National Association of Software and Services<br>Companies   |
| <b>NCR</b>                   | National Capital Region  |
| <b>NCRB</b>                  | National Crime Record Bureau   |
| <b>NCW</b>                   | National Commission for Women  |
| <b>NGO</b>                   | Non-governmental organization  |
| <b>POSH Act, 2013</b>        | Sexual Harassment of Women at Workplace<br>(Prevention, Prohibition and Redressal) Act, 2013   |
| <b>POSH Rules, 2013</b>      | the Sexual Harassment of Women at Workplace<br>(Prevention, Prohibition and Redressal) Rules, 2013   |
| <b>SC</b>                    | Supreme Court of India   |
| <b>SCOPE</b>                 | Standing Conference of Public Enterprises  |
| <b>SV</b>                    | Sexual Violence  |
| <b>TI</b>                    | Technical Institution  |
| <b>UDHR</b>                  | Universal Declaration of Human Right   |
| <b>UGC</b>                   | University Grants Commission   |
| <b>UGC Regulations, 2015</b> | The University Grants Commission (prevention,<br>Prohibition and redressal of sexual harassment of<br>women employees and students in higher educational<br>institutions) Regulation, 2015 |
| <b>UN</b>                    | United Nation  |
| <b>USD</b>                   | United States Dollar   |

# CHAPTER – 1

## 1.1 INTRODUCTION

### 1.1.1 Problem Statement

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act, 2013”) is a legislation, which provides coverage to all the females of whatever age and with whatever category or type of employment. It makes it obligatory upon employers to constitute Internal Committees (IC) for receiving complaints of sexual harassment from or on behalf of the aggrieved women at such workplaces<sup>1</sup>. Simultaneously, the Act makes it obligatory upon all District Officers, as may be notified by the appropriate governments, to constitute Local Committees (LC) in all districts for receiving complaints from organizations having less than 10 workers and for receiving the complaints against employers themselves<sup>2</sup>.

Inter-alia focus of this study is to find out whether there is a need for a remedial legislation to be put in place or to revisit the existing POSH Act, 2013 to make it more effective, to protect the employees in HEIs against sexual harassment at workplaces. Study also focuses if the POSH Act, 2013 needs to be evolved as a gender-neutral Act because the POSH Act, 2013 does not cover the other genders and sexual orientations under its scope. It has now become necessary to consider the dynamics of evolved society of present era vis-à-vis the diverse nature of our workforce today<sup>3</sup>.

Yet another major challenge is ‘non- admissibility of anonymous complaints of sexual harassment’. POSH Act, 2013 does not give cognizance to anonymous complaints. The Act is silent on the aspect of unnamed complaints<sup>4</sup>. However, there may be a situation where victim woman may be experiencing some fear, constraints, pressures and threats, which might restrain her to file the complaint. In such a scenario, the predator in power continues inflicting the

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<sup>1</sup> Veluvali, P. (2021). THE WORKPLACE CONSTRUCT AND SAFETY–REVISITING THE POSH ACT, 2013 IN THE CONTEXT OF WORK FROM HOME. *International Journal of Management (IJM)*, 12(1).

<sup>2</sup> Saluja, A., Gosain, M., & Mahajan, P. (2020). Prevention of Sexual Harassment of Women at Workplace (POSH Act 2013). *Supremo Amicus*, 21, 769.

<sup>3</sup> Dwivedi, A. (2020). Effectiveness of Sexual Harassment Training on Perceived Employee Behaviour.

<sup>4</sup> Sreenivasan M. (22 March 2021). POSH Act, 2013: Tricky Cases Handled by Internal Committee. Retrieved from <https://elearnposh.com/tricky-cases-handled-by-internal-committee/>.

harassment upon the victim with impunity<sup>5</sup>. This would be akin to an act of *bahubali*, where everybody knows about the crime but none dare speak out. Following the POSH Act, 2013, UGC Regulations, 2015 were framed in order to deal with the sexual harassment complaints in universities and colleges thereunder. If the POSH ACT, 2013 and the UGC Regulations, 2015 respectively make the anonymous complaints as cognizable, would the effectiveness of the same shall be further enhanced, has also been considered under the study.

States of Telangana and Maharashtra, have recently stipulated that any failure by employers within their respective States to comply with the requirement of constitution and registration of IC, would attract monetary penalty up to Rs. 50,000. It is likely that the steps taken by Telangana and Maharashtra for imposition of penalty consequent to non-registration of IC, may not withstand judicial scrutiny in the absence of any registration requirement under the POSH Act, 2013. Therefore, making such provision a part of the Act may serve the purpose.<sup>6</sup>

The ICs constituted under the Act may consist of members who lacks training or who are otherwise not qualified or even may not be experts to grapple with legal requirements in taking up inquiry proceedings under the POSH Act, 2013. As a result, during judicial scrutiny under Section 18 of the POSH Act, 2013 of the decisions taken by and through ICs, it becomes easy for the lawyers to find holes in the proceedings, before the tribunals or the High Courts. This aspect is also considered under the study<sup>7</sup>.

This study focusses all these areas of concern and legal challenges faced in implementation of the POSH Act, 2013, with a special focus on Higher Educational Institutions.

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<sup>5</sup> Desai N. (2020). Prevention of Sexual Harassment at the Workplace (POSH). Retrieved from [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Prevention\\_of\\_Sexual\\_Harassment\\_at\\_Workplace.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf).

<sup>6</sup> Prakash A. & Choudhury A. (8 July 2019). Maharashtra And Telangana: State Governments Mandate Registration Of Internal Committee Constituted Under PoSH Act. Retrieved from <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/823608/maharashtra-and-telangana-state-governments-mandate-registration-of-internal-committee-constituted-under-posh-act>.

<sup>7</sup> Kanskar, S., & Pal, D. (2021). Reconceptualizing Sexual Harassment: Extending the POSH Act, 2013. *Jus Corpus LJ*, 2, 467.

## 1.2 BACKGROUND

The United Nations has reaffirmed its commitment to establishing and safeguarding men's and women's equal human rights to higher living standards, freedom, and dignity. On September 3, 1981, the UN adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is one of the most comprehensive and devoted UN initiatives aimed at protecting and empowering women.<sup>8</sup> India signed the convention on July 3, 1980, and ratified it on June 25, 1993, with a declaration to end any violations of women's rights by individuals, groups, and organizations.

Although, several measures for protection and safety of women have been taken up in India, nonetheless, lot more still needs to be done. When researcher looks at the problem<sup>9</sup> especially from the Capital of India point of view, Delhi tops the list in respect of crimes against women. Six years before i.e. during the year 2016, 15,310 number of cases were filed in Delhi. One year before that, i.e. during the year 2015, this figure was 17,222. During 2016, Uttar Pradesh stood 2<sup>nd</sup> while West Bengal was at third position in the list. Precisely the number of cases reported were as follows: Uttar Pradesh reported 49,262 (i.e. 14.5%) number of cases out of total 3,38,954 cases; next was West Bengal, which reported 32,513 cases (i.e. 9.6%). As per NCRB report, Delhi also topped the list of crimes committed (i.e. 160.4) in beating the national average (i.e. 55.2). In respect of crime against women, about 33% of cases were notified in the category of 'Cruelty by Husband or His Relatives'<sup>10</sup>. 'Assault on Women with Intent to Outrage her Modesty' was the next below category number wise, which comprises of about 25.0% of cases. The third category that represents occupies the list is 'Kidnaping & Abduction of Women', which constitutes about 19.0% of cases followed by about 12% rape cases.

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<sup>8</sup> Global Health Pvt. Ltd. Vs. Chief Executive Officer and Three Others (2020) LLR 40.

<sup>9</sup> Staff W. (01 Dec 2017). Most Crimes Against Dalits Are Against SC Women: NCRB Data. Retrieved from <https://thewire.in/caste/ncrb-crimes-against-dalits-women>.

<sup>10</sup> Tiwary D. (01 Dec 2017). NCRB Data, 2016: Cruelty by husband, sexual assault, top crimes against women. Retrieved from <https://indianexpress.com/article/explained/ncrb-data-2016-cruelty-by-husband-sexual-assault-top-crimes-against-women-4962464/>.

According to one estimate<sup>11</sup>, only one in five reported cases that are reported is convicted. Oxfam India and the Social and Rural Research Institute performed a survey in Ahmedabad, Bangalore, Chennai, Delhi, Durgapur, Kolkata, Lucknow and Mumbai. The survey has brought out some startling eye-opening statistics about the rampant sexual harassment in Indian society. One out of about, six female working population of India have confirmed having faced sexual offences at their workplaces. This is an alarming statics, which portrays a gigantic magnitude of sexual harassment prevailing at work places. The malaise is prevalent in both the sectors i.e. organized as well as unorganized. The survey also revealed another alarming dimension of plight of working women. Despite overwhelming awareness regarding sexual offences and the provisions of the POSH Act, 2013, most of the victims (i.e. 93% population) remained silent consequent to harassment faced by them. “Fear of losing the job”, “absence of any credible complaints redressal mechanism”, “not aware of redressal mechanism” and “fear of getting stigmatized” were some of the primary reasons behind poor state of silence on the part of the victims.<sup>12</sup>

Further, as many as one out of the six respondents from the non-working category was aware of the Supreme Court guidelines (Vishaka Guidelines<sup>13</sup>) on sexual harassment. Further, in Metro cities, more than 24% of the population was aware of the Vishaka Guidelines as compared to the non-metro areas. The survey also revealed that the issue of sexual harassment of women besides being very delicate had registered a lot of visibility. However, many employers still keeping a blind eye towards the menace of sexual harassment in their establishment and do not consider it worthwhile. As per National Health Survey Data, 99.1% of the total cases of sexual assault remain unreported!<sup>14</sup>

A perusal of the data posted by National Crime Records Bureau<sup>15</sup> in public domain reveals that in the year 2014 there were 57 complaints received, whereas the number was increased to 119 in the

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<sup>11</sup> IANS. (27 November 2012). 17 percent of Indian working women face sexual harassment. Retrieved from [http://twocircles.net/2012nov27/17\\_percent\\_indian\\_working\\_women\\_face\\_sexual\\_harassment.html](http://twocircles.net/2012nov27/17_percent_indian_working_women_face_sexual_harassment.html).

<sup>12</sup> Jhaveri, B. Women in Indian Workplaces: Challenges in addressing workplace sexual harassment.

<sup>13</sup> Vishaka & Others vs State of Rajasthan & Others (1997) 6 SCC 241.

<sup>14</sup> Baij Nath; Commentary on Law Against Sexual Harassment of Women at Workplace; Whitesmann a unit of Thakkar Las House, Delhi; edition 2020: (pp 12)

<sup>15</sup> Annexure-VI; Government of India, Ministry of Women and Child Development, Lok Sabha Starred Question No: 392; Answered on: 19.07.2019



year 2015, and following year i.e. 2016, the number was further increased to 142 complaints. The above data indicated a rising trend of complaints received under the classification of “Insult to the modesty of women at workplace”. Despite POSH Act, 2013 being in place, it is clear that the number of sexual harassment complaints have registered an upward increase over the years.<sup>16</sup>

To study the statistics in India, it is worth noting that Beijing hosted the Fourth World Conference on Women.<sup>17</sup> The Government of India made an explicit vow during the aforementioned Conference, among other things, to formulate and operationalize a National Policy on Women that will continuously guide and advise action at all levels and in all sectors. The action involves the establishment of a Commission for Women to act as a protector of women's human rights and the institutionalization of a national level framework to monitor the Platform for Action's implementation.<sup>18</sup> However, the foregoing and following statistics reveal that India's existing laws, values and practices are inadequate and thus, are yet to be in conformity with those that the CEDAW espouses. Therefore, either there is a strong need for a corrective legislation to be put in place or there is a need to re-visit the existing POSH Act, 2013 to provide provisions that are more efficacious to protect the employees, against sexual crimes at workplace and in other areas of life.

In regard especially to the Higher Educational Institutions, according to one study<sup>19</sup>, female students prudently observe and avoid the faculty or staff who have a history of harassing the females. Because, these female students tend to lose their confidence when their own teachers subject them to a harassment. As a result, these male faculties make them disenchanted with the academic environment. Such pervasiveness of sexual harassment has the snowballing effect, which has potential of jeopardizing the professional advances of a victim woman in the web of a male power structure.

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<sup>16</sup> Sood, G. (15 November 2021). PoSH Act 2013 - Regulations And Implementations. Retrieved from <https://www.lexology.com/library/detail.aspx?g=ac04f76c-e587-4ae7-bae0-bc3d8790efcd>.

<sup>17</sup> United Nations Entity for Gender Equity and The Empowerment of Women: Beijing and its Follow-up; Retrieved from <https://www.un.org/womenwatch/daw/beijing/fwcwn.html>

<sup>18</sup> Vishaka and others vs State of Rajasthan and others (1997) 6 SCC 241.

<sup>19</sup> Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. *Social problems*, 29(3), 236-251.

Furthermore, because the POSH Act, 2013 does not include other genders or sexual orientations, there is a great need to widen its reach in order for it to evolve as a gender-neutral Act. It is also important to consider the progress of society and the diversity of today's students, teachers, and workforce. Most notably, the repeal of Section 377<sup>20</sup>, has made it legal to have a consensual homosexual relationship. In addition, the Transgender Persons (Protection of Rights) Act, 2019, was enacted in response to a Supreme Court ruling<sup>21</sup>, which forbids discrimination against transgender people in employment affairs like as recruitment and promotion. As a result, the scope of the POSH Act, 2013 necessitates a larger viewpoint in order to provide a fair and secure workplace for all employees, regardless of gender and sexual orientation. This is especially important given the realities of modern India, where the makeup of the workforce is constantly changing and now includes people of all genders and sexual orientations.<sup>22</sup>.

On the other hand, there are unbiased views away from the traditional stereotypes. Not so rare versions and reflections of women's understandings of sexual harassment are "poised" with examples of women are harassing men and homosexuals harassing the LGBT. These versions and reflections normally recognize the elements of authority or power in the male dominated society, but tend to project sexual harassment as "gender neutral phenomenon".<sup>23</sup> Whereas contrary to the said versions, the problem of sexual harassment is faced almost exclusively by women.<sup>24</sup>

### **1.3 NEED FOR RESEARCH**

#### **1.3.1 Increase in number of complaints:**

Predominant objective of POSH Act, 2013 is to provide a safe, dignified and congenial working environment to the female employees. Therefore, the coverage of the Act extends to all females of whatever age group, of whatever type of employment and whatever nature of employment. Within its ambit, the Act provides due coverage to all educational institutions, as well. In the present time, it has become a challenge to register and monitor complaints of sexual harassment because elusive

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<sup>20</sup> Navtej Singh Johar & Others Vs Union of India (2018) SCC 4321.

<sup>21</sup> National Legal Services Authority vs Union of India and Others (2014) 5 SCC 438.

<sup>22</sup> Schneider, K. T., Swan, S., & Fitzgerald, L. F. (1997). Job-related and psychological effects of sexual harassment in the workplace: empirical evidence from two organizations. *Journal of applied Psychology*, 82(3), 401.

<sup>23</sup> Mahaseth, H., & Agarwal, V. (2021). The transgender persons (Protection of Rights) Act, 2019 and the continued protest: What changes are required?.

<sup>24</sup> Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. *Social problems*, 29(3), 236-251.

types of sexual misdemeanors are showing a definite increasing trend in the ‘work from home’ system and many employees not even notice that something like sexual harassment is existing there, say the experts. WhatsApp queries containing inappropriate messages, unwarranted chats about what is the type of cloth that she is wearing on or how she is spending time and adding insult to injury through prolonged gazing during online personal meetings in the work-from-home situation has become a new form of harassment. Additionally, inappropriate phone calls or unwarranted messages beyond office hours during night, being rampant, also have been a cause of concern. The remarks with sexual overtone have now exceeded to the simulated office.<sup>25</sup>

As per data published by Lok Sabha (Figure No. 1.1), there was a rising trend in the number of sexual harassment complaints and there was an increase in such complaints by 35% in the year 2014 vis-à-vis 2013.

A detail pan-India view may be seen in Figure 1.1 where States wise statistic in respect of registered complaints is indicated.

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<sup>25</sup> Singh, P. (12 July 2020). Even in the virtual office, sexual harassment continues. Retrieved from <https://www.livemint.com/news/business-of-life/even-in-the-virtual-office-sexual-harassment-continues-11594561717967.html>.

## Sexual Harassment At Workplace, 2013-14

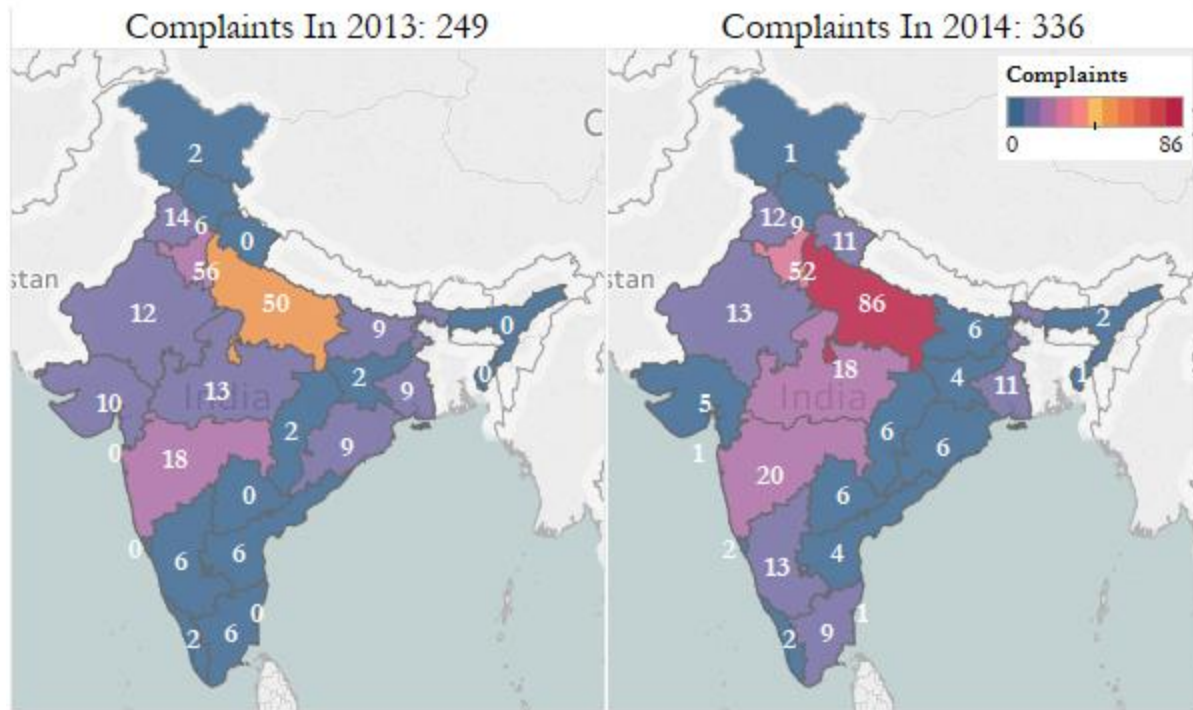


Figure 1.1

Source: Lok Sabha; available at <https://www.indiaspend.com/wp-content/uploads/graph1-desktop1.png> (last accessed by the researcher on 19.07.2021)

However, the increase in number of complaints continued thereafter during the subsequent years. On 27.07.2018, the Ministry of Women and Child Development, in response to an Un-starred Question No.1763 in Lok Sabha<sup>26</sup>, furnished the number of cases of sexual harassment in the workplace that were registered in India. It indicated an increase of 69.64% from 336 cases in 2014 to 570 in 2017. According to the ministry, 533 cases were already reported in the first seven months of 2018 [Figure 1.2 refers].

<sup>26</sup> MINISTRY OF WOMEN AND CHILD DEVELOPMENT. (2018). LOK SABHA UNSTARRED QUESTION NO.1763: SEXUAL HARASSMENT OF WOMEN AT WORK PLACE. Retrieved from <http://164.100.24.220/loksabhaquestions/annex/15/AU1763.pdf>.

**Annexure-I**

**Annexure referred to in reply to Part (a) of the Lok Sabha Unstarred Question No. 1763 for reply on 27.07.2018 regarding Sexual Harassment of Women at Work Place.**

**Number of complaints registered under the category of Sexual Harassment at Workplace, State/UT wise during last three years and current year i.e. 2015, 2016, 2017 and 2018**

| S. No | State/UT         | 2015       | 2016       | 2017       | 2018       |
|-------|------------------|------------|------------|------------|------------|
| 1     | A & N Islands    | 2          | 2          | 0          | 1          |
| 2     | Andhra Pradesh   | 4          | 11         | 12         | 2          |
| 3     | Assam            | 1          | 6          | 6          | 3          |
| 4     | Bihar            | 12         | 20         | 15         | 20         |
| 5     | Chandigarh       | 3          | 4          | 2          | 3          |
| 6     | Chhattisgarh     | 5          | 4          | 6          | 2          |
| 7     | D&N Haveli       | -          | 1          | 0          | 0          |
| 8     | Delhi            | 100        | 82         | 77         | 55         |
| 9     | Goa              | 1          | -          | 2          | 1          |
| 10    | Gujarat          | 15         | 7          | 12         | 7          |
| 11    | Haryana          | 33         | 30         | 39         | 37         |
| 12    | Himachal Pradesh | 5          | -          | 3          | 2          |
| 13    | Jammu & Kashmir  | 3          | 5          | 3          | 0          |
| 14    | Jharkhand        | 14         | 9          | 4          | 4          |
| 15    | Karnataka        | 21         | 22         | 38         | 14         |
| 16    | Kerala           | 9          | 9          | 4          | 7          |
| 17    | Madhya Pradesh   | 38         | 35         | 39         | 23         |
| 18    | Maharashtra      | 28         | 35         | 41         | 22         |
| 19    | Manipur          | -          | -          | -          | -          |
| 20    | Meghalaya        | -          | -          | -          | -          |
| 21    | Nagaland         | 1          | -          | -          | -          |
| 22    | Odisha           | 5          | 9          | 8          | 5          |
| 23    | Pondicherry      | 1          | 1          | 3          | 3          |
| 24    | Punjab           | 6          | 8          | 16         | 14         |
| 25    | Rajasthan        | 23         | 31         | 31         | 28         |
| 26    | Sikkim           | -          | 1          | 1          | 0          |
| 27    | Tamil Nadu       | 24         | 38         | 17         | 17         |
| 28    | Telangana        | 20         | 12         | 8          | 10         |
| 29    | Tripura          | 1          | -          | 1          | 0          |
| 30    | Uttar Pradesh    | 120        | 129        | 147        | 231        |
| 31    | Uttarakhand      | 8          | 5          | 7          | 7          |
| 32    | West Bengal      | 19         | 23         | 28         | 15         |
|       | <b>Total</b>     | <b>522</b> | <b>539</b> | <b>570</b> | <b>533</b> |

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Figure 1.2

**Source:** Lok Sabha – Annexure-I to reply to Part (a) of Unstarred Question No. 1763<sup>27</sup>.

Various workplaces in India have reported more number of sexual harassment complaints at the workplace<sup>28</sup> in the year 2019 vis-à-vis 2018. Data contained in annual reports of BSE 100

<sup>27</sup> MINISTRY OF WOMEN AND CHILD DEVELOPMENT. (2018). LOK SABHA UNSTARRED QUESTION NO.1763: SEXUAL HARASSMENT OF WOMEN AT WORK PLACE. Retrieved from <http://164.100.24.220/loksabhaquestions/annex/15/AU1763.pdf>.

<sup>28</sup> Plus, S. (25 November 2019). 14% rise in sexual harassment complaints at the workplace. Retrieved from <https://sightsinplus.com/news/survey-report/14-rise-in-sexual-harassment-complaints-at-the-workplace/>.

companies, in compliance of the provisions of the Companies Act, 2013 to furnish this information, indicated an increase in the number of sexual harassment complaints by 14% in the year 2019 via-a-vis previous year, based on an analysis of their annual reports done by *ComplyKaro Services*.<sup>29</sup> This increase in reportage could be due to a greater awareness generated among the employees and public about the legislative protections available under POSH Act, 2013 and the consequent initiatives undertaken by the employers to make the workplace safer for women. The study shows the obvious conclusion that the today's woman is becoming more prompt to report the cases of sexual misconduct. Consequently, the onus shall shift on the employer to take speedy action and to demonstrate a zero tolerance about the sexual misconduct.

### **1.3.2 Reasons for non-filing the complaints**

As regard the reasons behind not filing the official complaints, the outcome of one survey<sup>30</sup> was interesting. 56.14% of the students were under fear of harming of their reputation; 36.84% of the students were apprehensive of repercussion; while 33.33% students were not aware whether there was existing some committee where they can go and file their complaint. This is alarming. It demonstrates that the system had failed miserably to which the society and the institutions should be held accountable. When a victim fears character assassination consequent to filing a complaint, it surely reflects that there is a victim blaming culture. If we analyze the other situation where the victim is apprehending backlash consequent to filing of her complaint, this also reflects something serious. It shows that there indeed exists power structure, which is born out of the avoidable rigid power hierarchy in the institution and is seen as suffering from biases against women.<sup>31</sup> It is a fact of general perception that speaking up against your faculty member may cost your academic career that may be jeopardized. Such hazard is further strengthened for the students coming from the background where girls' going to school or colleges is taken as a

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<sup>29</sup> Sharma, C. S. K. (2013). A 360 degree analysis of Corporate Social Responsibility (CSR) mandate of the new Companies Act, 2013. *Global Journal of Management and Business Studies*, 3(7), 757-762.

<sup>30</sup> Dasgupta, S & Mukherjee, A. (4 Oct 2020). Survey of 500 Women Finds 1 in 10 Had Been Sexually Assaulted in Higher Education Institutions. Retrieved from <https://thewire.in/women/sexual-assault-higher-education-institution>.

<sup>31</sup> Barak, A. (2005). Sexual harassment on the Internet. *Social Science Computer Review*, 23(1), 77-92.

taboo. Last but not the least, a startling revelation emerged from the survey is that 10% of the women admitted that they faced sexual harassment by at least one person in their HEIs.<sup>32</sup>

### 1.3.3 Cost of Gender inequality

During the year 1995, globally the women labor participation rate was around 52.4%, which had shown a decline to 49.6 % during the year 2015.<sup>33</sup> As per a report of International Labor Organization, the women participation share in the industrial market continued to be lower than that of the men, which was evidently 27 % dearer than the men share.<sup>34</sup> South Asian countries demonstrated a disappointing score card in terms of gender equality. Once, the Noble laureate Amartya Sen while explaining the dismal state of affairs regarding condition of women, had claimed that worldwide one crore women were missing while a majority of them belonged to Asia and north Africa.<sup>35</sup> Needless to say that in Asia as a whole it is the South Asia region, which registered significantly higher number of incidences of violence against females in different forms. As a result, the overall women labor share for South Asia region is very low at 28 percent, which is almost 56% of the global rate. The ILO and the World Bank data reflects that in the year 2018 in terms of lowest women labor participation Nepal registered a 82 % of participation followed by Bhutan at 58 %, Afghanistan at 49 %, Bangladesh at 36 %, Sri Lanka at 35 % followed by Pakistan and India both at 24 %. This statistic reflects the lowest women labor share globally.<sup>36</sup> The above said study of the ILO reflects a comparison of the data of the year 2018 vis-à-vis 1990. Remarkably, Nepal, Bhutan, Afghanistan, Bangladesh and Pakistan registered an increase in the women labor participation in the year 2018 vis-à-vis 1990 while India and Sri Lanka reflected a decrease. According to one study<sup>37</sup>, many reports have confirmed that women including the other weaker section sections of the society have suffered the most during the pandemic. The Economists at Bank of America (BofA) Securities have monetized the cost of lack of gender diversity and have

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<sup>32</sup> Welsh, S. (1999). Gender and sexual harassment. *Annual review of sociology*, 25(1), 169-190.

<sup>33</sup> Kurien, J. (1995). The Kerala model: Its central tendency and the outlier. *Social Scientist*, 70-90.

<sup>34</sup> Schneider, K. T., Pryor, J. B., & Fitzgerald, L. F. (2010). Sexual harassment research in the United States. *Bullying and emotional abuse in the workplace: International perspectives in theory, research, and practice*, 245-260.

<sup>35</sup> Croll, E. J. (2001). Amartya Sen's 100 million missing women. *Oxford Development Studies*, 29(3), 225-244.

<sup>36</sup> Klasen, S. (2019). What explains uneven female labor force participation levels and trends in developing countries?. *The World Bank Research Observer*, 34(2), 161-197.

<sup>37</sup> Plus, S. (15 January 2020). 10% of working women face sexual harassment at the workplace. Retrieved from <https://sightsinplus.com/news/survey-report/10-of-working-women-face-sexual-harassment-at-the-workplace-report/>.

accordingly concluded that it will take around 257 years to bridge the gender economic gap going by the current rate. They have estimated that by not doing so; the world has suffered a whopping consequential cost to the tune of USD 70 trillion reckoning since 1990.<sup>38</sup>

The report also suggests that by bringing about true gender equality globally alone shall enhance the world GDP by USD 28 trillion by 2025. The report further suggests that due to gender inequality gap alone, the estimated loss of human capital wealth shall be around USD 160 trillion. The report further observed that the gender and racial discrimination is the main cause of creating labor market disparities, which impairs the economy. The report argues that merely bridging the gender and racial gaps in education and employment sector, could have registered an additional growth by USD 2.6 trillion in the economic output during the year 2019. Thus, the cumulative gains in the economy would have been USD 70 trillion from 1990 computing the same at the US \$ rate prevailing in the year 1990.<sup>39</sup>

#### **1.3.4 10% of working females are victim of sexual offence: Report<sup>40</sup>**

According to a Hindustan Times report, at least one out of ten working females have been victim of sexual offences at their workplaces; 37.14% of Indian women population are subjected to the concerns related to their health; while 44.8% of women are employed. In this report, the researchers have carried out as many as 26 number of separate researches. They interacted with female employees from all occupations including the females in political field, the female Sadhvis from various religious beliefs, including the females working in the challenging areas like Naxals and the females from borders of the states of Jammu & Kashmir and West Bengal. Obviously, the wide and large sampling was chosen to critically analyze and understand the prevailing condition of women at pan India level and look for a solution.

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<sup>38</sup> Upadhya, S. (1996). The status of women in Nepal—15 years on. *Studies in Nepali History and Society*, 1(2), 423-453.

<sup>39</sup> Sarki, A. (2018). Women empowerment-problem and potential with special reference in Indian context. *International Journal of Research in Social Sciences*, 8(1), 696-711.

<sup>40</sup> Plus, S. (15 January 2020). 10% of working women face sexual harassment at the workplace. Retrieved from <https://sightsinplus.com/news/survey-report/10-of-working-women-face-sexual-harassment-at-the-workplace-report/>.



### **1.3.5 70% working women do not report workplace sexual harassment in India<sup>41</sup>**

A survey covering 6,047 respondents was conducted by the Indian Bar Association in the year 2017. During the survey, it has surfaced that many victim women did muster courage to speak up and lodge complaint about the sexual misdemeanor committed against them at their workplaces. Yet, during the survey, 70% female said they faced sexual harassment by their superiors. However, complaint of sexual harassment was not preferred because they were apprehending backlash. Between 2014 and 2015, there was an increase in sexual harassment at workplace by more than 100%<sup>42</sup>, whereas it was 51% rise in 2015<sup>43</sup>.

Notwithstanding spurt in numbers of complaints, victims are finding it difficult to get their complaints effectively addressed by their employers. Study reveals that these employers are neither aware of the legal provisions nor have they implemented law in letter and spirit. Even in those cases where they have set up internal committees, there is visible lack of trained members. Moreover, there is hardly a gender uniformity in organizations. Example of female officer with The Energy & Resources Institute, who fought a prolonged battle in respect of her harassment by her superior, is an eloquent testimony to this effect. While such menace is prevalent in private as well as in public-sector employers but is also witnessed in other organization including HEIs.<sup>44</sup>

This study focusses on these areas of concern and legal challenges faced in implementation of the POSH Act, 2013, with a special focus on Higher Educational Institutions.<sup>45</sup>

## **1.4 HYPOTHESIS**

***There is a need to amend POSH Act, 2013, to align its provisions to address the needs of higher educational institutions.***

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<sup>41</sup> Chachra, M. (4 March 2017). 70% working women do not report workplace sexual harassment in India. Retrieved from [https://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227\\_1.html](https://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227_1.html) .

<sup>42</sup> Marg, S. Ministry of Women & Child Development.

<sup>43</sup> PANT, P. (2006). MINISTRY OF WOMEN AND CHILD DEVELOPMENT.

<sup>44</sup> O'Leary-Kelly, A. M., Bowes-Sperry, L., Bates, C. A., & Lean, E. R. (2009). Sexual harassment at work: A decade (plus) of progress. *Journal of Management*, 35(3), 503-536.

<sup>45</sup> Rospenda, K. M., Richman, J. A., Wislar, J. S., & Flaherty, J. A. (2000). Chronicity of sexual harassment and generalized work-place abuse: effects on drinking outcomes. *Addiction*, 95(12), 1805-1820.

## **1.5 RESEARCH OBJECTIVE**

- i. To explore the origin of Sexual Harassment and evolution thereof;
- ii. To critically examine the applicability of POSH Act, 2013 in Higher Educational Institutions in India;
- iii. To study adequacy of provisions in respect of monitoring implementation of the POSH Act, 2013 in Higher Educational Institutions;
- iv. To study the nexus of power and sexual harassment by men with formal authority over women in Higher Educational Institutions;
- v. To analyze the judicial pronouncements with respect of Sexual Harassment in Higher Educational Institutions;
- vi. To suggest the reforms and remedial measures in terms of roles & duties of executive authority of Higher Educational Institutions, to address the crimes of sexual Harassment in Higher Educational Institutions.

## **1.6 RESEARCH QUESTIONS**

Following is a list of the research questions:

- I. Which are the legislative milestones in development of the law against sexual harassment at work place particularly at the HEIs?
- II. Does POSH Act, 2013 contain adequate monitoring provisions to enforce its implementation in Higher Educational Institutions?
- III. Is there any relation of power with sexual harassment by men with formal authority over women in Higher Educational Institutions?
- IV. What are the areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions?
- V. Whether sexual harassment at higher educational institutions has been addressed by the courts in various pronouncements?
- VI. What changes should be brought in the POSH Act, 2013 to curb the menace of sexual harassment in the Higher Educational Institutions?

## **1.7 RESEARCH METHODOLOGY**

The study relies on the doctrinal methods as well as field survey. It has studied the pros and cons of the POSH Act, 2013, aiming at a research in the direction of getting it (the Act) aligned with the needs of higher educational institutions. The material has been gathered from various enactments and different Landmark Judgments, case laws decided by the different Courts including the Supreme Court of India, relevant books, Articles, research papers, reports etc. The Higher Educational Institutions are University of Petroleum and Energy Studies, Adamas University, OP Jindal Global University, Amity University, Himgiri Zee University, Garhwal University, IIT-Roorkee, NIT Rourkela, IIM-Lucknow, IIM-Kolkata, MDI-Gurgaon, Indian Institute of Foreign Trade, Graphic Era University and Uttaranchal University.

## **1.8 REVIEW OF LITERATURE**

Following is the broad status of the Review of Literature, which is undertaken by the researcher up to the stage of writing this Abstract. The researcher has studied more than one hundred articles, research papers, material and reports. These mainly includes relevant court judgments, various studies/surveys conducted inter-alia concerning educational institutes, Parliamentary Committee Report, Information/Replies furnished by the Government before Parliament, the National Crime Records Bureau (hereinafter referred to as “the NCRB”) Data, the National Commission for Women (hereinafter referred to as “the NCW”) data, Studies conducted by NGOs/Professional Bodies, UGC reports etc. Thus, the list of literature that was reviewed by the researcher is indicative.

### **BOOKS:**

#### **1.8.1 Chippa, A. (2020). Sexual Harassment of Women in India. Notion Press.**

The interaction of power and gender that exists in almost every sector of the economy at virtually every level is what sexual harassment is all about. While the data clearly reveals that women of inferior status are the most prevalent targets of harassment by perpetrators who are often males of higher status across all industries and harassment is not confined to the current relationship. Men, especially those who do not comply with traditional masculine stereotypes, and others who are

perceived as outsiders, such as LGBTQ and gender nonconforming people, are frequently targets, whereas women are frequently harassers. A sexually harassing culture might become so commonplace that no one notices it or objects because they are afraid of being labelled a troublemaker and losing their job or standing. Furthermore, harassment may occur.<sup>46</sup>

**1.8.2 INBA. & Consulting, N. (2017). Garima: Sexual Harassment at Workplace. (1st ed.). Prabhat Books.**

This report is written by Netrika Consulting India Private Limited (Netrika) based on survey conducted by Indian National Bar Association (INBA) and prevalent acts and guidelines. The Vishaka Guidelines, as well as additional legislation, such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, have given the issue critical visibility in India. However, HR experts say that organizations in both the public and private sectors have a long way to go in terms of sensitizing employees to gender issues at work. This comes amid an increase in the number of complaints of sexual harassment allegations in the country. According to experts, such examples reveal a deep-seated and ongoing gender bias in the workplace, as well as the fact that the majority of organizations are ill equipped to deal with such situations. Sexual harassment in the workplace is persistent and difficult to eradicate, despite the fact that it is unlawful and an affront to decency. What shortcomings are preventing its eradication, how successful is legislation, and what measures can lessen the incidence? As a result, INBA is taking steps to make legislative changes that are both effective and efficient, and this project has already begun with the largest survey ever conducted in India.<sup>47</sup>

**1.8.3 Gupta, R. (2013). Sexual Harassment At Workplace. (1st ed.). Lexis Nexis.**

The author has observed that gender-based violence includes sexual harassment of women at work. It not only degrades their self-esteem, self-respect, and dignity, but it also deprives them of their fundamental human and constitutional rights. It is not a new phenomenon, but the fact that workplace dynamics are changing has brought this dark underground reality to the surface. Sexual harassment in the workplace has become commonplace throughout the world, and India is no different. Because of the taboo surrounding the subject, it is rarely mentioned, yet it can be felt in

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<sup>46</sup> Chippa, A. (2020). Sexual Harassment of Women in India. Notion Press.

<sup>47</sup> INBA. & Consulting, N. (2017). Garima: Sexual Harassment at Workplace. (1<sup>st</sup> ed.). Prabhat Books.

practically every business where women have entered and which was formerly dominated by men. We are members of any social group we are a part of, whether directly or indirectly.<sup>48</sup>

#### **1.8.4 Brown, N. W., Wetzel, R. (2000). Student-generated sexual harassment in secondary schools. United Kingdom: Bergin & Garvey.**

In this work, Wetzel and Brown gave data on the prevalence of student-to-student sexual harassment and its influence on adolescent males and girls' educational and psychological well-being. When sexual harassment of students is considered, the first thought is that teachers or other adults are the harassers. Mostly overlooked is the problem of student sexual harassment of other students. There are numerous reasons why little attention is paid to this concern, not the least of which are the prevailing attitudes of adults towards children, adolescents, and the notion of sexual harassment.<sup>49</sup>

#### **1.8.5 Brown, N. W., Wetzel, R. (2000). Student-generated sexual harassment in secondary schools. United Kingdom: Bergin & Garvey.**

Current studies and philosophy on sexual harassment on college campuses are discussed in Ivory Power. Sexual harassment in the academic community is most often the victimization of the less powerful. It involves coercion and potential retaliation in a system in which advancement is based on subjective evaluations. The victim's helplessness is exaggerated by the dependency that is fostered by the powerful agents in the university – the teacher, the thesis sponsor, the faculty member who is expected to provide letters of recommendation, etc. The junior faculty member, like the student, is equally dependent, and it just as likely to be victimized as long as these issues are ignored. The fact that the system is based on subjective criteria – for grades, for promotion – makes the victim even more helpless.<sup>50</sup>

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<sup>48</sup> Gupta, R. (2013). *Sexual Harassment At Workplace*. (1<sup>st</sup> ed.). Lexis Nexis.

<sup>49</sup> Brown, N. W., Wetzel, R. (2000). *Student-generated sexual harassment in secondary schools*. United Kingdom: Bergin & Garvey.

<sup>50</sup> Paludi, M.A. (1990). *Ivory Power: Sexual Harassment on Campus*. State University of New York Press.

**1.8.6 Widnall, S., Johnson, P. & Benya, F.F. (2018). Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine. National Academies Press.**

Over thirty years the incidence of sexual harassment in different industries has held steady, yet now more women are in the workforce and in academia, and in the fields of science, engineering, and medicine (as students and faculty) and so more women are experiencing sexual harassment as they work and learn. Over the last several years, revelations of the sexual harassment experienced by women in the workplace and in academic settings have raised urgent questions about the specific impact of this discriminatory behavior on women and the extent to which it is limiting their careers. *Sexual Harassment of Women* explores the influence of sexual harassment in academia on the career advancement of women in the scientific, technical, and medical workforce. This report reviews the research on the extent to which women in the fields of science, engineering, and medicine are victimized by sexual harassment and examines the existing information on the extent to which sexual harassment in academia negatively influence the recruitment, retention, and advancement of women pursuing scientific, engineering, technical, and medical careers. It also identifies and analyzes the policies, strategies and practices that have been the most successful in preventing and addressing sexual harassment in these settings.<sup>51</sup>

**1.8.7 Nath, B. (2020). Commentary on Law Against Sexual Harassment of Women at Workplace. Whitesmann Publishing Co.**

The book serves as a Practical Approach on the subject relating to law on the sexual harassment. The book contains well-established legal rulings on its subject. The book inter-alia reflects the historical perspective, its origin, standard elements and the principles of law governing sexual harassment of women at workplace. Interpretation of various sections that is supported by various

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<sup>51</sup> Widnall, S., Johnson, P. & Benya, F.F. (2018). *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*. National Academies Press.

court judgments and the application of various provisions under the Act, have been covered in detail.<sup>52</sup>

**1.8.8 Johnson, K. C., & Taylor Jr, S. (2018). The Campus Rape Frenzy: The Attack on Due Process at America's Universities. Encounter Books.**

The authors are not attempting to downplay the problem of sexual assault. Despite widespread attention to the situation of students who have been wrongly accused of sexual assault, the faces of students who have been wrongfully accused of sexual assault have mostly gone unnoticed. This book aims to address the issue by taking readers inside a system on our nation's campuses where accused students must effectively establish their innocence, frequently under rules that deny them that opportunity.<sup>53</sup>

**1.8.9 Keenan, F. J. F. (2015). University ethics: How colleges can build and benefit from a culture of ethics. Rowman & Littlefield.**

In this book, the argument is made that the mindset and language of ethics proposes a logic for recovering the value of truth and credibility for the university. It is time now for us to appropriate that way of living, collectively.<sup>54</sup>

**1.8.10 Wooten, S. C., & Mitchell, R. W. (2015). Crisis of Campus Sexual Violence. Routledge.**

Beyond bystander intervention programs and incoming student seminars, how are institutions engaging in a holistic reckoning regarding campus rape culture? The increased attention to the reality of rape and sexual assault in higher educational institutions is a major step in the right direction, however, institutional response to highly publicized incidents of sexual violence remains widely varied. There is a need of meaningful policy that addresses the concerns of different student

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<sup>52</sup> Nath, B. (2020). Commentary on Law Against Sexual Harassment of Women at Workplace. Whitesmann Publishing Co.

<sup>53</sup> Johnson, K. C., & Taylor Jr, S. (2018). The Campus Rape Frenzy: The Attack on Due Process at America's Universities. Encounter Books.

<sup>54</sup> Keenan, F. J. F. (2015). University ethics: How colleges can build and benefit from a culture of ethics. Rowman & Littlefield.

groups, negotiating regulations and mandates, promoting rather than discouraging reporting, and implementing effective prevention education programming.<sup>55</sup>

#### **JOURNAL PAPERS:**

**1.8.11 Kettrey, H. H., Marx, R. A., Tanner-Smith, E. E., Kettrey, H. H., & Hall, B. (2019). Effects of bystander programs on the prevention of sexual assault among. *Campbell Systematic Reviews*, 1.**

The authors have brought out that sexual assault is a major issue among teenagers and college students all around the world. Bystander sexual assault prevention programmes, which urge young people to intervene when seeing incidents or warning signs of sexual assault, are one potential technique for preventing these crimes. This study looks at the impact of bystander training on participants' knowledge and attitudes about sexual assault and bystander conduct, as well as bystander involvement while observing sexual assault or warning indicators, and rates of sexual assault perpetration.<sup>56</sup>

**1.8.12 Karami, A., Spinel, M. Y., White, C. N., Ford, K., & Swan, S. (2021). A Systematic Literature Review of Sexual Harassment Studies with Text Mining. *Sustainability*, 13(12), 6589.**

This project examined and identified sexual harassment topics in over 5000 research papers published between 1977 and 2020, as well as the temporal trend of those topics. According to the data, sexual harassment in the workplace was the most popular research topic, and it was researched in a variety of contexts ranging from schools to military bases. According to the findings, 62.5 percent of the issues with a significant trend had a growing (hot) temporal trend that will be investigated more in the next years. With text mining, qualitative, and temporal trend analysis methodologies, this study provides a bird's eye view to better understand sexual harassment literature. Researchers, educators, publishers, and politicians may benefit from this study's findings.<sup>57</sup>

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<sup>55</sup> Wooten, S. C. & Mitchell, R.W. (2015). *The Crisis of Campus Sexual Violence: Critical Perspectives on Prevention and Response*. Taylor & Francis.

<sup>56</sup> Kettrey, H. H., Marx, R. A., Tanner-Smith, E. E., Kettrey, H. H., & Hall, B. (2019). Effects of bystander programs on the prevention of sexual assault among. *Campbell Systematic Reviews*, 1.

<sup>57</sup> Karami, A., Spinel, M. Y., White, C. N., Ford, K., & Swan, S. (2021). A Systematic Literature Review of Sexual Harassment Studies with Text Mining. *Sustainability*, 13(12), 6589.



**1.8.13 Gupta, P., Fatima, N., & Kandikuppa, S. (2021). Sexual Harassment at the Workplace Act: providing redress or maintaining status quo?. *Social change*, 51(2), 246-257.**

Despite a law against sexual harassment of women at the workplace, persons holding high offices, including senior judges, seem to enjoy impunity. By critically examining the allegations made against Justice Ranjan Gogoi (retired), former Chief Justice of India, and analyzing five other cases of sexual harassment, we highlight how women are routinely denied justice. In doing so, we ask: are women actually able to file complaints of sexual harassment without the fear of facing a backlash? Moreover, do they ultimately get justice when they do so? We argue that caste, class and gender, both of the survivor and of the perpetrator, mediate the implementation of the law against sexual harassment. We point to a changing polity that makes laws, guarantees and protections for women, but stumbles in implementing them in a fair and non-arbitrary manner.<sup>58</sup>

**1.8.14 Nieder, C., Muck, C., & Kärtner, J. (2019). Sexual violence against women in India: daily life and coping strategies of young women in Delhi. *Violence against women*, 25(14), 1717-1738.**

The contemporary state of sexual assault against women in India, as well as women's different coping techniques, are examined in this study. In this study, 15 semi structured interviews with Indian college students aged 17 to 22 were done. First, the current situation's findings indicated dangerous conditions for women and revealed how severely sexual assault affects women's life. Second, women indicated three types of tactics for dealing with sexual violence: (a) safety, (b) avoidance, and (c) empowerment techniques. We propose in the debate that women's employment of safety and avoidance techniques are safety behaviors that play a critical part in maintaining women's anxiety and societal dynamics.<sup>59</sup>

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<sup>58</sup> Gupta, P., Fatima, N., & Kandikuppa, S. (2021). Sexual Harassment at the Workplace Act: providing redress or maintaining status quo?. *Social change*, 51(2), 246-257.

<sup>59</sup> Nieder, C., Muck, C., & Kärtner, J. (2019). Sexual violence against women in India: daily life and coping strategies of young women in Delhi. *Violence against women*, 25(14), 1717-1738.

**1.8.15 Vandana. (2020). Dalit girls and sexual harassment in the university. Indian Journal of Gender Studies, 27(1), 33-54.**

The contemporary state of sexual assault against women in India, as well as women's different coping techniques, are discussed in this paper. 15 semistructured interviews with Indian college students aged 17 to 22 were done as part of this study. First, the current situation's findings indicated dangerous conditions for women and revealed the extent to which sexual assault affects women's life. Second, women stated three different types of techniques for dealing with sexual violence: (a) safety, (b) avoidance, and (c) empowerment. We argue in the discussion that women's employment of safety and avoidance techniques are safety behaviours that play an important part in perpetuating women's fear and societal dynamics.<sup>60</sup>

**1.8.16 Gurung, A., & Priyadarshini, S. (2016). Knowledge of Sexual Harassment among the Undergraduate students in Udupi district. Journal of Health and Allied Sciences NU, 6(02), 004-009.**

Sexual harassment is a public health issue that has major consequences for students' dignity, physical and mental health. Students who are knowledgeable about sexual harassment are better prepared to tackle such situations with fortitude. The study's goal was to determine how well undergraduate students understood sexual harassment. This study reveals that students have average knowledge of sexual harassment, implying that they require additional education to enable them to respond appropriately if harassment occurs.<sup>61</sup>

**1.8.17 Moylan, C. A., Javorka, M., Bybee, D., Stotzer, R. L., & Carlson, M. (2019). Campus-level variation in the prevalence of student experiences of sexual assault and intimate partner violence. Journal of the Society for Social Work and Research, 10(3), 397-421.**

Although sexual assault and intimate relationship violence are common on college campuses, few research have looked into the elements that may contribute to their occurrence. This study looks at the factors that influence sexual assault and intimate partner violence rates among college students at the campus level. College administrators and student support workers can use campus-

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<sup>60</sup> Vandana. (2020). Dalit girls and sexual harassment in the university. Indian Journal of Gender Studies, 27(1), 33-54.

<sup>61</sup> Gurung, A., & Priyadarshini, S. (2016). Knowledge of Sexual Harassment among the Undergraduate students in Udupi district. Journal of Health and Allied Sciences NU, 6(02), 004-009.

level indicators linked to incidence of sexual assault and intimate partner violence as intervention targets. In order to prevent and reduce sexual assault and intimate partner violence, colleges should address both individual and college-level factors.<sup>62</sup>

**1.8.18 Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. *Social problems*, 29(3), 236-251.**

The experiences of sexual harassment reported by a random sample of undergraduate women at Berkeley, a prominent U.S. school, have been investigated in this research. During their four years in college, 33% said they encountered unwelcome sexual attention from at least one male instructor. There were two distinct patterns that formed. Women keep a close eye on new instructors and strive to avoid them. When harassment occurs in more established student-teacher interactions, however, women frequently lose their academic self-confidence and lose faith in male teachers. Because of the high occurrence of sexual harassment, women's dedication to employment in male-dominated fields is weakening.<sup>63</sup>

**1.8.19 Naushad, G. & Naushad, S. (2003). The Sexual Harassment of Women at Workplace: An Unmanned territory, *India Law Journal*, 8(1), 111-126.**

This work has been written based on the incident of sexual harassment in the case of Vishaka v. State of Rajasthan. The case involved the gang rape of Bhanwari Devi, a social worker who was trying to raise awareness about the dangers of child marriage. The court decided to take advantage of the occasion to construct a protective framework for the country's female labour, an area where Indian law had significant gaps. As a result, the Supreme Court established detailed instructions to ensure that the country's female workforce is protected against sexual violence and sexually charged gender discrimination in the workplace.<sup>64</sup>

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<sup>62</sup> Moylan, C. A., Javorka, M., Bybee, D., Stotzer, R. L., & Carlson, M. (2019). Campus-level variation in the prevalence of student experiences of sexual assault and intimate partner violence. *Journal of the Society for Social Work and Research*, 10(3), 397-421.

<sup>63</sup> Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. *Social problems*, 29(3), 236-251.

<sup>64</sup> Naushad, G. & Naushad, S. (2003). The Sexual Harassment of Women at Workplace: An Unmanned territory, *India Law Journal*, 8(1), 111-126.

**1.8.20 Borumandnia, N., Khadembashi, N., Tabatabaei, M., & Alavi Majd, H. (2020). The prevalence rate of sexual violence worldwide: a trend analysis. BMC public health, 20(1), 1-7.**

The goal of this study is to emphasize the image of Sexual Violence (SV) temporal trends by examining disparities in SV prevalence rates across 195 nations and territories from 1990 to 2017. Given the substantial economic and social costs of SV to victims and society, the rate of SV in most nations does not appear to have decreased significantly, and policymakers should pay special attention to this issue. The prevalence rate of SV varies greatly between nations, which could be attributable to the criteria and instruments utilized, as well as cultural standards.<sup>65</sup>

**1.8.21 Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. Social problems, 29(3), 236-251.**

In regard especially to the Higher Educational Institutions, this study reveals that female students prudently observe and avoid the faculty or staff who have a history of harassing the females. Because, these female students tend to lose their confidence when their own teachers subject them to a harassment. As a result, these male faculties make them disenchanted with the academic environment. Such pervasiveness of sexual harassment has the snowballing effect, which has potential of jeopardizing the professional advances of a victim woman in the web of a male power structure.<sup>66</sup>

**1.8.22 Singh, P. (2020 July 12). Even in the virtual office, sexual harassment continues.**

This paper reflects that the predominant objective of POSH Act, 2013 is to provide a safe, dignified and congenial working environment to the female employees. Therefore, the coverage of the Act extends to all females of whatever age group, of whatever type of employment and whatever nature of employment. Within its ambit, the Act provides due coverage to all educational institutions, as well. In the present time, it has become a challenge to register and monitor complaints of sexual harassment because elusive types of sexual misdemeanors are showing a definite increasing trend

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<sup>65</sup> Borumandnia, N., Khadembashi, N., Tabatabaei, M., & Alavi Majd, H. (2020). The prevalence rate of sexual violence worldwide: a trend analysis. BMC public health, 20(1), 1-7.

<sup>66</sup> Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. Social problems, 29(3), 236-251.

in the 'work from home' system and many employees not even notice that something like sexual harassment is existing there, say the experts. WhatsApp queries containing inappropriate messages, unwarranted chats about what is the type of cloth that she is wearing on or how she is spending time and adding insult to injury through prolonged gazing during online personal meetings in the work-from-home situation has become a new form of harassment. Additionally, inappropriate phone calls or unwarranted messages beyond office hours during night, being rampant, also have been a cause of concern. The remarks with sexual overtone have now exceeded to the simulated office.<sup>67</sup>

## **STUDY & REPORTS:**

### **1.8.23 IANS. (2012 November 27). '17 percent of Indian working women face sexual harassment'. (last accessed by the author on 28.03.2020)**

The study underlines the aspect that, only one in five reported cases that are reported is convicted. Oxfam India and the Social and Rural Research Institute performed this survey in Ahmedabad, Bangalore, Chennai, Delhi, Durgapur, Kolkata, Lucknow and Mumbai. The survey has brought out some startling eye-opening statistics about the rampant sexual harassment in Indian society. One out of about, six female working population of India have confirmed having faced sexual offences at their workplaces. This is an alarming statics, which portrays a gigantic magnitude of sexual harassment prevailing at work places. The malaise is prevalent in both the sectors i.e. organized as well as unorganized. The survey also revealed another alarming dimension of plight of working women. Despite overwhelming awareness, regarding sexual offences and the provisions of the POSH ACT, 2013, most of the victims (i.e. 93% population) remained silent consequent to harassment faced by them. "Fear of losing the job", "absence of any credible complaints redressal mechanism", "not aware of redressal mechanism" and "fear of getting stigmatized" were some of the primary reasons behind poor state of silence on the part of the victims! Further, as many as one out of the six respondents from the non-working category was aware of the Supreme Court guidelines (Vishaka Guidelines) on sexual harassment. Further, in

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<sup>67</sup> Singh, P. (2020 July 12). Even in the virtual office, sexual harassment continues. Retrieved from <https://www.livemint.com/news/business-of-life/even-in-the-virtual-office-sexual-harassment-continues-11594561717967.html>.

Metro cities, more than 24% of the population was aware of the Vishaka Guidelines as compared to the non-metro areas. The survey also revealed that the issue of sexual harassment of women besides being very delicate had registered a lot of visibility. However, many employers still keeping a blind eye towards the menace of sexual harassment in their establishment and do not consider it worthwhile.<sup>68</sup>

**1.8.24 Plus, S. (2019 November 25). 14% rise in sexual harassment complaints at the workplace. (last accessed by the researcher on 21.04.2021)**

This report reveals that various workplaces in India have reported more number of sexual harassment complaints at the workplace in the year 2019 vis-à-vis 2018. Data contained in annual reports of BSE 100 companies, in compliance of the provisions of the Companies Act, 2013 to furnish this information, indicated an increase in the number of sexual harassment complaints by 14% in the year 2019 via-a-vis previous year, based on an analysis of their annual reports done by *ComplyKaro Services*. This increase in reportage could be due to a greater awareness generated among the employees and public about the legislative protections available under POSH Act, 2013 and the consequent initiatives undertaken by the employers to make the workplace safer for women. The study shows the obvious conclusion that the today's women is becoming more prompt to report the cases of sexual misconduct. Consequently, the onus shall shift on the employer to take speedy action and to demonstrate a zero tolerance about the sexual misconduct.<sup>69</sup>

Many reports have confirmed that women including the other weaker section sections of the society have suffered the most during the pandemic. The Economists at Bank of America (BofA) Securities have monetized the cost of lack of gender diversity and have accordingly concluded that it will take around 257 years to bridge the gender economic gap going by the current rate. They have estimated that by not doing so; the world has suffered a whopping consequential cost to the tune of USD 70 trillion reckoning since 1990.

The report also suggests that by bringing about true gender equality globally alone shall enhance the world GDP by USD 28 trillion by 2025. The report further suggests that due to gender inequality gap alone, the estimated loss of human capital wealth shall be around USD 160 trillion.

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<sup>68</sup> IANS. (2012 November 27). '17 percent of Indian working women face sexual harassment'. Retrieved from [http://twocircles.net/2012nov27/17\\_percent\\_indian\\_working\\_women\\_face\\_sexual\\_harassment.html](http://twocircles.net/2012nov27/17_percent_indian_working_women_face_sexual_harassment.html).

<sup>69</sup> Jhaveri, B. Women in Indian Workplaces: Challenges in addressing workplace sexual harassment.

The report further observed that the gender and racial discrimination is the main cause of creating labor market disparities, which impairs the economy. The report argues that merely bridging the gender and racial gaps in education and employment sector, could have registered an additional growth by USD 2.6 trillion in the economic output during the year 2019. Thus, the cumulative gains in the economy would have been USD 70 trillion from 1990 computing the same at the US \$ rate prevailing in the year 1990.

According to a Hindustan Times report, at least one out of ten working females have been victim of sexual offences at their workplaces; 37.14% of Indian women population are subjected to the concerns related to their health; while 44.8% of women are employed. In this report, the researchers have carried out as many as 26 number of separate researches. They interacted with female employees from all occupations including the females in political field, the female Sadhvis from various religious beliefs, including the females working in the challenging areas like Naxals and the females from borders of the states of Jammu & Kashmir and West Bengal. Obviously, the wide and large sampling was chosen to critically analyze and understand the prevailing condition of women at pan India level and look for a solution.<sup>70</sup>

#### **1.8.25 Dasgupta, S. & Mukherjee, A. (2020 Oct 4). Survey of 500 Women Finds 1 in 10 Had Been Sexually Assaulted in Higher Education Institutions.**

The study diagnoses the reasons behind not filing the official complaints, the outcome of one survey was interesting. 56.14% of the students were under fear of harming of their reputation; 36.84% of the students were apprehensive of repercussion; while 33.33% students were not aware whether there was existing some committee where they can go and file their complaint. This is alarming. It demonstrates that the system had failed miserably to which the society and the institutions should be held accountable. When a victim fears character assassination consequent to filing a complaint, it surely reflects that there is a victim blaming culture. If we analyze the other situation where the victim is apprehending backlash consequent to filing of her complaint, this also reflects something serious. It shows that there indeed exists power

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<sup>70</sup> Plus, S. (2019 November 25). 14% rise in sexual harassment complaints at the workplace. Retrieved from <https://sightsinplus.com/news/survey-report/14-rise-in-sexual-harassment-complaints-at-the-workplace/>.

structure, which is born out of the avoidable rigid power hierarchy in the institution and is seen as suffering from biases against women. It is a fact of general perception that speaking up against your faculty member may cost your academic career that may be jeopardized. Such hazard is further strengthened for the students coming from the background where girls' going to school or colleges is taken as a taboo. Last but not the least, a startling revelation emerged from the survey is that the 10% of the women admitted that they faced sexual harassment by at least one person in their HEIs.<sup>71</sup>

#### **1.8.26 ILO. (2016). Women at Work Trends 2016. (last accessed by the researcher on 19.07.2021)**

Gender equality and non-discrimination have been hallmarks of the ILO's goal to promote social justice via the workplace since its founding in 1919. As the Organization approaches its second century, one of its centennial programmes will focus on women at work. Women at Work: Trends 2016 is an important addition to these efforts, and it aims to further the 2030 Sustainable Development Agenda's major goals.

The research depicts where women are in the workplace today and how they have evolved over the last two decades. It looks at global and regional labour market trends and gaps, such as labour force participation rates, employment-to-population ratios, and unemployment rates, as well as differences in the global and regional labour markets.

It also examines the fundamental policy drivers for gender transformative change and provides an in-depth analysis of gender disparities in job quality. Sectoral and occupational segregation, the gender wage gap, and deficiencies in the policy framework for work and family integration are all discussed and related recommendations.<sup>72</sup>

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<sup>71</sup> Dasgupta, S. & Mukherjee, A. (2020 Oct 4). Survey of 500 Women Finds 1 in 10 Had Been Sexually Assaulted in Higher Education Institutions. Retrieved from <https://thewire.in/women/sexual-assault-higher-education-institution>.

<sup>72</sup> ILO. (2016). Women at Work Trends 2016. Retrieved from [https://www.ilo.org/gender/Informationresources/Publications/WCMS\\_457317/lang--en/index.htm](https://www.ilo.org/gender/Informationresources/Publications/WCMS_457317/lang--en/index.htm).



**1.8.27 kila, R., & Sasikala, R. (2022, January). Sexual harassment at workplace faced by women employees in private organization special referenceto Tamilnadu and Pondicherry regions-India. In AIP Conference Proceedings (Vol. 2385, No. 1, p. 110001). AIP Publishing LLC.**

This study aims to elicit women employees' opinions on the occurrence of sexual harassment behaviors in private sector organizations, to investigate the forms, patterns, and levels of sexual harassment in the workplace, and to learn how sexual harassment victims deal with their abuse. There has been an attempt to offer measures and methods for preventing workplace sexual harassment.<sup>73</sup>

**1.8.28 Chachra, M. (2017 March 4). 70% working women do not report workplace sexual harassment in India. (last accessed by the researcher on 21.04.2021)**

In this report, in one of the surveys conducted by Indian Bar Association in the year 2017, as a respondent, Ridhima, shared her experience. At one point, she felt to report the functionaries some of the organizational issues faced by her from the senior. However, her superior undeterred of its consequences, further indulged in making unwelcome gestures every time when she was to enter his office. One day, he wanted Ridhima should accompany him to Connaught Place. Surprisingly, he subsequently changed his mind and demanded that she should join him to his residence. She refused and resisted, but he pressurized her to accept his proposal to accompany him to his residence. When they were heading towards his place, he indulged in inappropriately touching her with some unwarranted comments on her dress. Upon reaching his residence, he offered her with drink or else, in case she does not drink, he wants her to sleep with him. Her continuously saying 'No' to him was of no avail. He totally unmindful of her reluctance, continued with his aggressions. Aggrieved by the harassment, she took up the complaint. According to a survey covering 6,047 respondents conducted by the Indian Bar Association in the year 2017, Ridhima, was one of the many increasing numbers of the victim women, who mustered courage to speak up and lodge complaint about the sexual misdemeanor committed against them at their workplaces. Yet, during survey, 70% female said they faced sexual harassment by their superiors. However, complaint of sexual harassment was not preferred because they were apprehending backlash.

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<sup>73</sup> Akila, R., & Sasikala, R. (2022, January). Sexual harassment at workplace faced by women employees in private organization special referenceto Tamilnadu and Pondicherry regions-India. In AIP Conference Proceedings (Vol. 2385, No. 1, p. 110001). AIP Publishing LLC.

Between 2014 and 2015, there was an increase in sexual harassment at workplace by more than 100%, whereas it was 51% rise in 2015.<sup>74</sup>

**1.8.29 Staff, T.W. (2017 Dec 1). Most Crimes Against Dalits Are Against SC Women: NCRB Data. (last accessed by the researcher on 18.02.2021)**

NCRB reaffirmed several prevalent ideas while refuting others in this report. For the first time this year, the NCRB revealed not only state-level data, but also data on metropolitan areas, with Delhi ranking first in terms of violence against women. In 2016, there were 15,310 instances reported in the union territory, down from 17,222 in 2015. During 2016, Uttar Pradesh recorded 14.5 percent of total cases of crimes against women (49,262 out of 3,38,954), followed by West Bengal (9.6%) (32,513 cases). According to the NCRB data, Delhi UT has the highest crime rate (160.4) compared to the national average of 55.2. The vast majority of cases of crimes against women were reported under the heading of ‘Cruelty by Husband or His Relatives’ (32.6%) followed by ‘Assault on Women with Intent to Outrage her Modesty’ (25.0%), ‘Kidnaping & Abduction of Women’ (19.0%) and ‘Rape’ (11.5%).<sup>75</sup>

**1.8.30 Arora, K. Only 6/100 Corporate Chairpersons In India Are Women. Here’s Why That Must Change. (last accessed by the researcher on 22.07.2021)**

In the year 2019, this report was released. According to the research, there is no legal structure in India that allows a woman to be prosecuted for sexual offences against a man. The Indian law against sexual harassment protects only women. Meanwhile, Gender Neutral legislation have been adopted in 77 nations, including Denmark, Australia, Switzerland, the United States, and the United Kingdom, among others. There is a level of skepticism surrounding male sexual harassment, which may be due to a lack of data. It's almost as though the idea of a woman sexually harassing a man is still unthinkable in today's society. The report also mentions a study known as

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<sup>74</sup> Chachra, M. (2017 March 4). 70% working women do not report workplace sexual harassment in India. Retrieved from [https://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227\\_1.html](https://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227_1.html).

<sup>75</sup> Staff, T.W. (2017 Dec 1). Most Crimes Against Dalits Are Against SC Women: NCRB Data. Retrieved from <https://thewire.in/caste/ncrb-crimes-against-dalits-women>.

the "Economic Times-Synovate survey" that took place in 2010. According to the survey, 19% of the 527 men polled agreed with this statement.<sup>76 77</sup>

**1.8.31 FICCI. (2015). Fostering safe workplaces. (last accessed by the researcher on 06.07.2021)**

*Fostering Safe Workplaces*, is the study conducted at the behest of the Federation of Indian Chamber of Commerce and Industry during the year 2015. The study reveals that more than 35% of domestic companies and around 25% of MNCs had not yet constituted ICs in their respective establishments. The study further reveals that out of the 120 companies, about 50% admitted that their respective IC members were without any proper training. EY Fraud Investigation & Dispute Services conducted a survey titled 'Reining in sexual harassment at the workplace in India' to measure corporate India's perception of the transformation in the wake of the POSH Act, 2013. The key findings reveal the focus of the employers on driving an unfettering change, although uncertainty, caution and contemplation are still highly prevalent!<sup>78</sup>

**1.8.32 Volz, E., Hill, V., mccrone, J. T., Price, A., Jorgensen, D., O'Toole, Á., ... & Allan, J. (2021). Evaluating the effects of SARS-cov-2 spike mutation D614G on transmissibility and pathogenicity. Cell, 184(1), 64-75.<sup>79</sup>**

It remains always the most popular defense that they are the students who harass the faculty. Nevertheless, there may be cases where students are found creating sexual annoyance but this cannot be treated as sexual harassment due to lack of power hierarchy with the students. However, such sexual annoyance cannot justify an act of sexual harassment. It has also been witnessed that male faculty rampantly uses the defense of mutual consent. However, such a defense also could not stand test of time mainly because the sexual harassment alleged to be based on consensual relationship is very misplaced in the student-faculty relationship. This again shall be because of the power imbalance and the extent of the role inequality.<sup>80</sup>

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<sup>76</sup> Arora, K. (2019 November 18). Why India Inc. needs to protect Men against Sexual Harassment at Workplaces in India- case for gender neutral policies. Retrieved from <https://www.ungender.in/why-india-inc-needs-to-protect-men-against-sexual-harassment-at-workplaces-in-india-case-for-gender-neutral-policies/>.

<sup>77</sup> Arora, K. Only 6/100 Corporate Chairpersons In India Are Women. Here's Why That Must Change.

<sup>78</sup> FICCI. (2015). Fostering safe workplaces. Retrieved from <https://ficci.in/spdocument/20672/Fostering-safe.pdf>.

<sup>79</sup> Volz, E., Hill, V., mccrone, J. T., Price, A., Jorgensen, D., O'Toole, Á., ... & Allan, J. (2021). Evaluating the effects of SARS-cov-2 spike mutation D614G on transmissibility and pathogenicity. *Cell*, 184(1), 64-75.

<sup>80</sup> Smit, D., & Du Plessis, V. (2011). Sexual harassment in the education sector. Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad, 14(6), 173-217.

**1.8.33 CAM. (2016 August 11). Challenges Faced by Employers in Addressing Sexual Harassment Complaints. (last accessed by the researcher on 27.06.2021)**

According to the findings, many complainants wish to remain anonymous in order to avoid being identified and/or being subjected to societal pressure and stigma. Rather than assuming that there is no legal need to act on the complaint, an employer should attempt to soothe the anonymous complainant and encourage him or her to come forward so that the appropriate process can be launched. When anonymous complaints about a certain person are received repeatedly, the employer may want to investigate further while taking all necessary precautions. It is seen that in many situations the victim is afraid to file the complaint due to various constraints, pressures and or threats. In such situation, the predator continues with the harassment with impunity, though many of the group members are aware of the act of harassment. Therefore, the study also focusses on the feasibility of making admissible the anonymous complaints under the Act and the UGC Regulation, to further enhance their effectiveness. There is a need to realize that in many situation the victim is afraid to file the complaint due to various constraints, pressures and threats. If anonymous complaints are made admissible under the Act, it will further enhance the effectiveness of the same.<sup>81</sup>

**1.8.34 Mohanty, D. (2018 July 17). Sexual Harassment In The Workplace: What Indian Companies Need To Know. (last accessed by the researcher on 18.02.2021)**

This Articles says that POSH Act, 2013 is primarily a gender specific legislation dealing with the issues related to women only. However, while addressing the issue of sexual harassment, “the University Grants Commission (prevention, Prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015” (“UGC Regulations”) recognizes helpless groups and seek for supportive measures to put in place for such helpless groups, which includes those whose sexual alignments may make them more exposed. Thus, even a male student studying in higher educational institutions, who faces any sort of sexual

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<sup>81</sup> CAM. (2016 August 11). Challenges Faced by Employers in Addressing Sexual Harassment Complaints. Retrieved from <https://corporate.cyrilamarchandblogs.com/2016/08/challenges-faced-employers-addressing-sexual-harassment-complaints/>.

harassment, can file a complaint of sexual harassment before the Internal Complaints Committee for redressal of his grievance.<sup>82</sup>

**1.8.35 Sabha, R. (2011 Dec 08). Parliamentary Standing Committee on Human Resource Development: Protection of Women against Sexual Harassment at Workplace Bill, 2010.**

**1.8.35.1** The 239th Report of the Committee on the Protection of Women Against Sexual Harassment at Workplace Bill, 2010, was presented by the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development.

**1.8.35.2** On December 7, 2010, the Lok Sabha passed the Protection of Women Against Sexual Harassment at Workplace Bill, 2010. On December 30, 2010, the Chairman of the Rajya Sabha, in consultation with the Speaker of the Lok Sabha, referred the Bill to the Committee for examination and report under Rule 270 dealing to Department-related Parliamentary Standing Committees.

**1.8.35.3** The Committee began its discussions by publishing a press release on January 10, 2011 to solicit public and stakeholder comments and ideas on the proposed Bill. The Press Release drew a huge response from the Committee. Stakeholders' perspectives were shared among Committee members and taken into consideration when the Committee formulated its observations and recommendations. In meetings held on April 20, 2011 and November 2, 2011, the Committee heard from the Secretary of the Ministry of Women and Child Development. Apart from engaging the Ministry of Women and Child Development, the Committee undertook extensive discussions with a variety of stakeholders. The Committee heard from the National Commission for Women, as well as NGOs such as Saheli, Sewa, PRIA, Lawyers Collective, Human Rights Law Network, Centre of Indian Trade Unions, National Coalition for Men, All India Men's Welfare Association, All India Women Conference, National Domestic Workers Movement, INSAAF, YWCA and other organizations like Indian Banks Association, NASSCOM, CII,

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<sup>82</sup> Mohanty, D. (2018 July 17). Sexual Harassment In The Workplace: What Indian Companies Need To Know. Retrieved from <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/720046/sexual-harassment-in-the-workplace-what-indian-companies-need-to-know>.

SCOPE and Office of Chief Labor Commissioner.

**1.8.35.4** The Committee considered the Bill in its eight sittings held on 20 April, 5 May, 18 August, 29 September, 13 October, 2 November, 11 November, and 30 November 2011.

**1.8.35.5** The Committee based its Report on the following sources: (i) Background Note on the Bill and Note on the Bill's Clauses received from the Ministry of Women and Child Development; (ii) Presentation made by the Secretary, Ministry of Women and Child Development; and (iii) Feedback received from the Ministry on the questionnaires and memoranda of the stakeholders, as well as issues raised by the Members during the oral hearing.

**1.8.35.6** The Committee considered the Draft Report on the Bill and adopted the same in its meeting held on 30 November, 2011.<sup>83</sup>

**1.8.36 Reena, M., & Saheab, O. (2014). Sexual harassment against women at educational institutions. International Journals of Science and Research, 3(12), 914-917.**

This is an Indian study Reena and Saheab (2014). The study reveals that the Indian Central Government confirmed that in Kendriya Vidyalayas and Navodaya Vidyalayas there were existing of sexual harassment cases against students in these educational institutions. Mr Shashi Tharoor, then a Central Cabinet Minister, indicated in the Rajya Sabha that 14 incidences of sexual harassment had been recorded in Navodhaya vidhyalaya and 42 cases had been reported in Kendriya vidhyalaya. Guilt was duly established in the inquiries in respect of a total of 24 accused in the above 56 cases, and appropriate actions were taken against them as a result.<sup>84</sup>

**1.8.37 Gurung, A., Priyadarshini, S., & Margaret, B. E. (2016). Perception of sexual harassment among the undergraduate students. Manipal Journal of Nursing and Health Sciences (MJNHS), 2(1), 46-51. (last accessed by the researcher on 25.01.2022)**

Aditi et al. (2016) conducted a study of 408 students out of 420 undergraduates from identified

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<sup>83</sup> 1.8.35 Sabha, R. (2011 Dec 08). Parliamentary Standing Committee on Human Resource Development: Protection of Women against Sexual Harassment at Workplace Bill, 2010. Retrieved from <http://nlrd.org/wp-content/uploads/2012/01/239-TH-REPORT-ON-SEXUAL-HARRASMENT-OF-WOMEN-AT-WORK-PLACE.pdf>.

<sup>84</sup> Reena, M., & Saheab, O. (2014). Sexual harassment against women at educational institutions. International Journals of Science and Research, 3(12), 914-917.

technical institutions in the Udupi district of Karnataka, India, and discovered that undergraduates' understanding and opinions on sexual harassment differ depending on their age, gender, and programme of study. Despite this, the analyses' findings do not address the problem of possible difference in interpretation based on different types and forms of institutions.<sup>85</sup>

### **1.8.38 Karmarkar, P. (2020 September 7). Sexual harassment at higher education**

**institutes: what needs to be done?. (last accessed by the researcher on 10.11.2020)**

The article is based on a UGC study conducted for the period April 2018-March 2019. The study reported that there were 171 number of incidents in 188 number of universities only, while 149 number of complaints were registered during the period 2016-2017. During the research period, there were a total of 945 universities, including private institutions, according to data given by the UGC. In response to a question about whether the Internal Complaint Committee had been established in accordance with the Act, 29 universities out of a total of 188 universities that had submitted the report provided 'NIL' information, despite the fact that the Internal Complaint Committee was to be established mandatorily in accordance with the provisions of the POSH Act, 2013. Further, only 417 awareness/sensitization sessions organized during the period under study in the said 188 universities. Considering that there would be about 40 participating students in a group, the estimated coverage for the entire lot of 188 universities would be about 16,680 students. According to the Sixth Report on All India Survey on Higher Education (AISHE) for the year 2015-16, total enrolment in higher education is anticipated to be 34.6 million, with 18.6 million boys and 16 million girls. As a result, the low number of awareness programmes planned by these 188 institutions represents the genuine picture of the seriousness with which these HEIs have approached the implementation of the POSH Act, 2013.

Furthermore, there are questions about the law's interpretation as well as the investigation and inquiry procedure. The HEIs' lack of or inadequate responsiveness to the challenges outlined is a big obstacle. The student who created the 'name and shame list' used the same rationale to justify her conduct. Several students have complained that the administrators at their schools protect the accused while ignoring their concerns. The majority of the time, the complaints were not even registered, and if they were allowed to file them, they were asked offensive questions such as

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<sup>85</sup> Gurung, A., Priyadarshini, S., & Margaret, B. E. (2016). Perception of sexual harassment among the undergraduate students. *Manipal Journal of Nursing and Health Sciences (MJNHS)*, 2(1), 46-51.

"What did you wear?" despite the fact that they were victims. "How did you end up here?" "Did you have anyone with you?" When dealing with charges of sexual harassment and sexual assault, such attitudes are fairly common, and they have permeated deep into our psychology and culture. Obviously, the officials in charge at HEIs frequently act in the same shady manner in these situations.<sup>86</sup>

**1.8.39 Bondestam, F., & Lundqvist, M. (2020). Sexual harassment in higher education—a systematic review. *European Journal of Higher Education*, 10(4), 397-419. (last accessed by the researcher on 13.03.2022)**

Sexual harassment is rife in the world's higher education systems, and it has far-reaching consequences for people, groups, and entire organisations. Precarious working conditions, hierarchical organisations, the normalisation of gender-based violence, toxic academic masculinities, a culture of silence, and a lack of active leadership are all factors that contribute to sexual harassment. The purpose of this research is to examine scientific knowledge about sexual harassment in higher education. The focus of the research is on (a) knowledge derived from top-ranked peer-reviewed articles in the field, (b) the prevalence of sexual harassment among students and staff, (c) reported consequences of sexual harassment, (d) examples of primary, secondary, and tertiary preventive measures, and (e) core challenges to sexual harassment research in higher education. The published research evidence suggests several important findings, including: (a) one out of every four female students reports sexual harassment; (b) severe consequences of sexual harassment affect individuals, but the effects on research and education quality are unknown; (c) there is almost no evidence supporting the supposed effects of major preventive measures; and (d) research on sexual harassment in higher education is lacking in several perspectives.<sup>87</sup>

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<sup>86</sup> Karmarkar, P. (2020 September 7). Sexual harassment at higher education institutes: what needs to be done?. Retrieved from <http://confluence.ias.ac.in/sexual-harassment-at-higher-education-institutes-what-needs-to-be-done/>.

<sup>87</sup> Bondestam, F., & Lundqvist, M. (2020). Sexual harassment in higher education—a systematic review. *European Journal of Higher Education*, 10(4), 397-419.



**1.8.40 Wood, L., Hoefler, S., Kammer-Kerwick, M., Parra-Cardona, J. R., & Busch-Armendariz, N. (2021). Sexual harassment at institutions of higher education: Prevalence, risk, and extent. *Journal of interpersonal violence*, 36(9-10), 4520-4544. (last accessed by the researcher on 15.03.2022)**

On college campuses, sexual harassment is a widespread issue. 16,754 students from eight academic campuses took part in an online survey that asked about sexual harassment victimisation by a faculty/staff member or a peer since starting at their institution of higher education (IHE). The effects of gender, race/ethnicity, sexual orientation, age at enrollment, student status, and time spent at institution on students' risk of peer- and faculty/staff-perpetrated sexual harassment victimisation, as well as the extent of victimisation for students who experience harassment, were investigated using an intersectional theory and hurdle models. Across all universities, 19 percent of students said they had been sexually harassed by teachers or staff, while 30% said they had been sexually harassed by peers. Intersectional impact hypotheses were somewhat validated, with the most significant findings in main effects. Both the risk and the extent of victimisation of both types of harassment were observed to increase with time spent at the institution. Harassment was shown to be more common among traditional undergraduate students, non-Latinx White students, female students, and gender and sexual minority students. Being female increases your chances of being sexually harassed by 86 percent and 147 percent, respectively, by faculty/staff and peers. Latinx students and students of a race other than white reported fewer incidents of victimisation, but those who reported sexual harassment experienced more harassment. These findings are discussed in terms of institutional programme planning and policy.<sup>88</sup>

**1.8.41 Clancy, K. B., Cortina, L. M., & Kirkland, A. R. (2020). Opinion: Use science to stop sexual harassment in higher education. *Proceedings of the National Academy of Sciences*, 117(37), 22614-22618. (last accessed by the researcher on 15.03.2022)**

It is heartening to see so many executives wanting to confront sexual harassment in their workplaces. The study brings out that the techniques, which many of these executive leaders are adopting, according to a huge body of social scientific evidence, simply do not work. Academia should take the lead in leading and inspiring change in other organizations. Instead, behind the

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<sup>88</sup> Wood, L., Hoefler, S., Kammer-Kerwick, M., Parra-Cardona, J. R., & Busch-Armendariz, N. (2021). Sexual harassment at institutions of higher education: Prevalence, risk, and extent. *Journal of interpersonal violence*, 36(9-10), 4520-4544.

military, we have the highest prevalence of sexual harassment. Over-sexualization of the problem, overreliance on quick fixes that fail to address long histories of exclusion in the academy, and an overemphasis on formal legal compliance are all obstacles to effective institutional responses to sexual harassment. Anti-harassment programs in higher education need to be completely redesigned. This is a difficult task, but decades of research can help.<sup>89</sup>

**1.8.42 Aina, A. D., & Kulshrestha, P. (2018). Sexual harassment in educational institutions in Delhi’NCR (India): Level of awareness, perception and experience. *Sexuality & Culture*, 22(1), 106-126.**

The level of awareness of sexual harassment in educational institutions in Delhi NCR was investigated in this study (India). Total 430 respondents were selected from 10 private and state universities by simple random sampling from their respective law faculties for this study, which was divided into two categories: private and state institutions. Frequency and chi square were used to analyze the data collected, and it was discovered that while private or privately owned institutions have a high degree of awareness, it lacks clarity and boils down to a lesser level of awareness when compared to state or government owned institutions. The studies also demonstrated that private institutions, like public universities, are subject to sexual harassment. Based on these findings, the author suggests that awareness programs be expanded in all universities, particularly private ones. New intakes might be required to complete sexual education classes, and final-year students could be re-oriented before graduating.<sup>90</sup>

**1.8.43 Aguilar, S. J., & Baek, C. (2020). Sexual harassment in academe is underreported, especially by students in the life and physical sciences. *PloS one*, 15(3), e0230312. (last accessed by the researcher on 15.03.2022)**

What variables influence academe's underreporting of sexual harassment? The study looked at 2,343 allegations of sexual harassment involving members of university communities using logistic regression and sentiment analysis. When compared to teachers, students were 1.6 times

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<sup>89</sup> Clancy, K. B., Cortina, L. M., & Kirkland, A. R. (2020). Opinion: Use science to stop sexual harassment in higher education. *Proceedings of the National Academy of Sciences*, 117(37), 22614-22618.

<sup>90</sup> Aina, A. D., & Kulshrestha, P. (2018). Sexual harassment in educational institutions in Delhi’NCR (India): Level of awareness, perception and experience. *Sexuality & Culture*, 22(1), 106-126.

more likely to hide their experiences. When compared to respondents from other disciplines, respondents in the life and physical sciences were 1.7 times more likely to not record their experiences. Men accounted for 90% of the alleged sexual harassment perpetrators. The written testimonies of respondents reveal differences in overall attitude based on discipline, student type, and type of institution attended, particularly when it comes to mental health. The findings imply that institutional and departmental impediments resulting from power imbalances play a significant role in underreporting.<sup>91</sup>

#### **1.8.44 Baruah, R. The Law against Sexual Harassment – A critical analysis of the laws available in India against sexual harassment at workplace.**

Sexual harassment is regarded as a breach of a woman's right to privacy. It violates international human rights standards established by conventions such as the UDHR and the CEDAW, the study reveals. Prior to 1997, India had neither a law nor a strong judicial pronouncement dealing with the threat of sexual harassment at work, aside from the Constitutional safeguards. As an alternate structure and approach, the Sexual Harassment Against Women at Workplace Act is welcome, but it needs a lot of work. The Committee must take an inquisitorial approach, assisting victims in making educated decisions regarding the various resolution paths, providing skilled conciliators, and settlement possibilities in the form of monetary compensation. After nearly four years, it is time to analyze the accusations levelled against it and, as a result, establish provisions that address the pressing needs of the time. The act looks to be even more overbroad in terms of redress mechanisms, which it has constructed by leaving gaps in the powers and functions of these non-judicially constituted organizations. Furthermore, some elements, such as the provisions for conciliation and penalty for false or malicious accusations, may have been more favorable to female victims. Problematic sections and unanswered questions create a conundrum for the Act's application, and should be explained for the Act's proper implementation.

Furthermore, a shift in perspective is critical at this time to grasp the concerns, compulsions, and pressures that women victim's face. Rather than criticizing the victim for inviting such sexual

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<sup>91</sup> Aguilar, S. J., & Baek, C. (2020). Sexual harassment in academe is underreported, especially by students in the life and physical sciences. *PLoS one*, 15(3), e0230312.

advances, it is critical to place blame on the perpetrators. The rule should cover issues that impact males as well, as they impede their productivity just as they do a woman's overall well-being.<sup>92</sup>

**1.8.45 Sipe, S. R., Johnson, C. D., & Fisher, D. K. (2009). University students' perceptions of sexual harassment in the workplace: A view through rose-colored lenses. Equal Opportunities International.**

The goal of this article is to see if there is a disconnect between student perceptions of sexual harassment in the workplace and reality. The US Supreme Court recognized sexual harassment as a cause of action under Title VII more than 20 years after the Civil Rights Act of 1964 was enacted. Despite the evolving law and public awareness, sexual harassment continues to exist in today's workplace, and its presence and impacts are undervalued by essential stakeholders, including university students. College students submitted perceptions on sexual harassment of self, sexual harassment of others, probable career impact of sexual harassment on self, and demographic information as part of the design/methodology/approach. Descriptive statistics are used to assess research issues, whereas t-tests are performed to see if there are any disparities across races and genders. Findings – The majority of respondents believe sexual harassment is not a substantial issue in the modern workplace, especially in terms of its influence on their own careers, according to the findings of the study. Practical consequences — In order to avoid discrimination or harassment, college students (and possibly members of the workforce) require continuing training and instruction. This misalignment between perception and reality has the potential to have negative implications for both businesses and individuals, and it raises the question of how education might be utilized to mitigate these consequences. Originality/value – This study gives college students a definition of sexual harassment and then asks if they believe it occurs (to them or others) and, if so, how it might effect their careers. The findings show that the rose-colored spectacles may impair their capacity to see professional realities.<sup>93</sup>

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<sup>92</sup> Baruah, R. The Law against Sexual Harassment – A critical analysis of the laws available in India against sexual harassment at workplace. Retrieved from <http://www.legalservicesindia.com/article/2545/The-Law-Against-Sexual-Harassment.html>.

<sup>93</sup> Sipe, S. R., Johnson, C. D., & Fisher, D. K. (2009). University students' perceptions of sexual harassment in the workplace: A view through rose-colored lenses. Equal Opportunities International.

## **JUDICIAL PRONOUNCEMENTS:**

### **1.8.46 Vishaka & Others vs State Of Rajasthan & Others; Supreme Court of India; AIR 1997 SC 3011; on 13 August, 1997**

An incidence of claimed savage gang rape of a social worker in a Rajasthan village prompted the filing of this writ petition. That incident is the subject of a separate criminal investigation, and the Apex Court did not feel it expedient to address it in this petition. The episode highlighted the dangers to which a working woman may be exposed, as well as the depths to which sexual harassment can devolve, as well as the need for alternative safeguards in the lack of regulatory regulations. In the absence of legislative action, an efficient alternative method to meet this perceived and urgent social need must be found.<sup>94</sup>

Every incidence violates the fundamental rights of 'Gender Equality' and 'Right to Life and Liberty.' It is an obvious infringement of the rights guaranteed by the Constitution's Articles 14, 15, and 21. One of the natural outcomes of such an incident is a breach of the victim's fundamental right under Article 19(1) (g) to "perform any profession or carry on any occupation, trade, or business." As a result, such infractions are subject to remedy available under Article 32 for the enforcement of women's basic rights. This is why a class action under Article 32 of the Constitution has been filed. If a writ of mandamus is to be successful in this case, it must be accompanied by prophylactic instructions, as this type of infringement of fundamental rights is a common occurrence. The right to work in any occupation, trade, or profession is contingent on the presence of a "safe" working environment. The right to life entails living a dignified life. The legislature and executive have primary duty for ensuring such safety and dignity through appropriate law and the implementation of a framework for enforcing it. When cases of sexual harassment resulting in violations of women's basic rights under Articles 14, 19, and 21 are submitted before us for redress under Article 32, a successful redress requires that some rules for the protection of these rights be established to fill the legislative void.<sup>95</sup>

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<sup>94</sup> Goel, A. (2021). Vishaka and Others vs the State of Rajasthan: The Importance of Due Process and Its Effectiveness in Addressing Sexual Harassment. Available at SSRN 3859309.

<sup>95</sup> Sharma, A. (2021). Construction of Statute; with Reference to Case of Vishaka & Ors. Vs. State of Rajasthan (1997) 6 SCC 241. *Supremo Amicus*, 24, 446.

### ***1.8.47 Usha C.S v. Madras Refineries:***

Considering the material and evidence on record and after hearing the parties, it was held by the Court there was no justification behind the allegations leveled by the employee about her promotion including that of study leave. The bench found that these decisions were taken in conformity with the departmental rules and policy. The Court further preferred to advise the other courts that their decisions should be driven by the facts brought out on record. A presumption that a woman shall always be a victim, can do miscarriage of justice. It has happened in cases of Domestic Violence and Dowry Harassment. Several persons have suffered because of such false allegations, prosecution and unfounded presumption. It is a fact that quite often it would be highly challenging for a man to establish his guiltlessness in false case brought against him. Nevertheless, there is no denying the fact that in the cases related to sexual offence, it would be similarly challenging for a woman narrate her experience before the people.<sup>96</sup>

### ***1.8.48 Anita Suresh vs Union of India & Others; Delhi High Court:***

The court ruled that the complaint dated 8 July 2011 is false after carefully considering the processes of the inquiry. The complaint included two incidences that took place in front of the petitioner's coworkers, staff, and others. The complainant was unable to identify anyone present at the time. Despite the fact that the witnesses were on duty on the day of the occurrence, they were unable to recall the identities of the employees. It's hard to believe that the petitioner couldn't recall anyone's name. During the investigation, the Committee discovered that no one backed up the petitioner's claims. Because of the modesty issue, the respondent has been left out of the complaint. The petitioner did not bother to report the false statements to the Committee. The petitioner in the denial gave "No reason or justification". The complaints of the petitioner appear to be untrue and fraudulent.<sup>97</sup>

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<sup>96</sup> Usha C.S. vs Madras Refineries Ltd. And Others (2001) 2 CLR 136.

<sup>97</sup> Anita Suresh vs Union Of India & Others (2019) W.P.(C) 5114/2015.

### **1.8.49 *N.N.S. Rana vs Union of India & Others; Delhi High Court:***

This case should have been filed on or before 04/11/97. This fact reveals that this lawsuit was filed in 2001, 4½ years after it accrued. The case is timed out already. Plaintiff had a continuous action in this matter because the departmental inquiry was still pending against him. In case of defamation, there can be no continuous cause of action for the Libel or Slander. One year limitation does not clearly reflect how serious an issue the issue is without departmental investigation. At this point in time, it is stated by the Plaintiff that he was charged with a false case so he deserves compensation because of malicious prosecution. This suit is for damages for slander and not for malicious prosecution. If the plaintiff wanted the defendant to be compelled to pay the compensation he deserved, he could have simply sued the defendant for malicious prosecution. However, 9 years without success. Plaintiff cannot change the nature of the case during the trial. The alertness of the defendants may have prevented a lot of years in the trial because the case was previously decided and was terminated. The question is settled in favour of the defendant and against the plaintiff, in my opinion. The appeal was dismissed because it lacked validity and substance, according to the court.<sup>98</sup>

### **1.8.50 *Vidya Akhave vs Union of India, Department of Women and Children & Others; Bombay High Court, O.O.C.J. W.P. No. 796/2015, decided on 04.10.2016***

Undisputedly, women are invariably prone to social and physical vulnerability. It is also undisputed that women face discrimination and hostility at their workplace thereby remaining under tremendous threats and fear of insecurity. As a result, the Act requires that each employer implement all reasonable precautions in his or her company to instill a sense of security in the minds of women, as well as to have and exhibit a zero tolerance policy for sexual harassment and associated offences. It is the duty of the employer to observe all his duties under the Act, in a religious manner and not as a mere ritual. The IC needs to demonstrate a fair, free and transparent conduct of proceedings and handling of complaints by them in an unbiased manner. The well-established philosophy always needs to be kept in mind that as per our basic social structure men

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<sup>98</sup> N.N.S. Rana vs Union Of India (UOI) And Others (2016) MA No. 2057/2016.

tend to view his own sexual demeanor in a void with a little regard to the surrounding and emerging social dynamics and what a woman would perceive it to be.

There are certain duties obligated upon the employer under the Act. Pursuant thereto, each employer has to see that such duties are fully complied with without any exception. Unbiased investigation and inquiry is the essence of entire complaint redressal mechanism under the Act. Therefore, the IC becomes duty bound to transact such function with utmost seriousness with full dedication in fair, free and transparent way to render justice to the aggrieved and the respondent, both together. Quite frequently, it is witnessed that the men tend to take sexual-conduct in a total vacuum and in isolation. While doing so he fails to appreciate the social dynamics and setting or the prevalent violence hazard, which a female employee faces quite frequently.<sup>99</sup>

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<sup>99</sup> Vidya Akhave vs Union of India, Department of Women and Children & Others (2016) W.P. No. 796/2015.



## **CHAPTER – 2**

### **SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013– ORIGIN AND EVOLUTION**

#### **2.1 INTRODUCTION**

The right to life and the right to liberty and security of person were reaffirmed in the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the United Nations General Assembly under the Universal Declaration of Human Rights (UDHR). These rights, as well as others in the UDHR, ICCPR, and International Covenant on Social, Economic, and Cultural Rights (ICESCR), are inter-alia considered as a violence against women. Further, the United Nations has repeatedly reiterated its commitment to securing and safeguarding men's and women's equal rights to higher living standards, freedom, and dignity. Earlier there was no explicit restriction against sexual harassment of women. It was simply viewed as a type of violence against women. Despite international conventions concluded under the auspices of the United Nations and specialized agencies, as well as resolutions, declarations, and recommendations adopted by the United Nations and specialized agencies promoting equality of rights for men and women, the State Parties to the CEDAW's Convention, held in 1979, expressed their concern that widespread discrimination against women still exists. In Beijing, the Fourth World Conference on Women was held. The Government of India made an official commitment at the said Conference. The commitment inter-alia includes initiatives like, formulating and operationalizing a national policy on women that will continuously guide and inform action at every level and in every sector; to establish a Commission for Women to act as a public defender of women's human rights; and to institutionalize a national level mechanism to monitor the Platform for Action's implementation. Supreme Court of India in Vishaka's case held that every incidence of workplace sexual violence violates the fundamental rights of 'Gender Equality' and 'Right to Life and Liberty.' It is an obvious infringement of the rights guaranteed by the Indian Constitution's Articles 14, 15, 19 and 21. In this backdrop, Vishaka' guidelines were issued by the Supreme Court of India culminating into making of POSH Act, 2013.

## 2.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) in 1948. Although this statement was not intended to be binding on member states, it has gained such widespread acceptance as a summary of fundamental human rights concepts that it is now regarded as a binding expression of customary law and an authoritative interpretation of the UN Charter. The right to life (Article 6)<sup>100</sup> and the right to liberty and security of person (Article 9)<sup>101</sup> were reaffirmed in the International Covenant on Civil and Political Rights (ICCPR), which protects the right to life (Article 6) and the right to liberty and security of person (Article 9) under Article 3<sup>102</sup> of the UDHR. These rights, as well as others in the UDHR, ICCPR, and International Covenant on Social, Economic, and Cultural Rights (ICESCR), are implicated in cases of violence against women, such as the right to equal protection under the law and the right to the highest standard of physical and mental health. As a result, as part of their commitments, states that are parties to these instruments have an implied obligation to protect women against abuse.<sup>103</sup>

The United Nations has reiterated its commitment to securing and safeguarding men's and women's equal human rights to higher living standards, freedom, and dignity. On September 3, 1981, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), one of the UN's most comprehensive and focused initiatives aimed at protecting and empowering women, entered into force.<sup>104</sup> India signed the convention on July 3, 1980, and ratified it on June 25, 1993, with a declaration to end any violations of women's rights by private individuals, groups, and organizations.

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<sup>100</sup> Article 6 of the Universal Declaration of Human Rights: "Everyone has the right to recognition everywhere as a person before the law."

<sup>101</sup> Article 9 of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary arrest, detention or exile."

<sup>102</sup> Article 3 of the Universal Declaration of Human Rights: "Everyone has the right to life, liberty and security of person."

<sup>103</sup> Baruah, R. A critical analysis of the laws available in India against sexual harassment at workplace. Retrieved from <http://www.legalservicesindia.com/article/2545/The-Law-Against-Sexual-Harassment.html>.

<sup>104</sup> Global Health Private Limited Vs. Local Complaints Committee, District Indore and others (2019) W.P. No. 22317/2017.

## **2.3 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

It was passed in 1979, at a time when workplace sexual harassment was only becoming more widely recognized. As a result, there was no explicit restriction against sexual harassment of women. It was simply viewed as a type of violence against women, and its prevention was deemed to be encompassed by the Convention's prevention of all forms of violence. Despite international conventions concluded under the auspices of the United Nations and specialized agencies, as well as resolutions, declarations, and recommendations adopted by the United Nations and specialized agencies promoting equality of rights for men and women, the State Parties to the present Convention expressed their concern that widespread discrimination against women still exists. The Convention has two goals: to eliminate prejudice and promote equality. The most significant change is that, for the first time, the Convention includes a broad definition of "discrimination against women" that includes any differentiation, exclusion, or restriction based on gender.<sup>105</sup> When women are subjected to gender-specific violence, such as sexual harassment in the workplace, equality in the workplace can be severely harmed, according to the Recommendation. All parties should take all legal and other steps necessary to offer effective protection for women from gender-based violence, sexual assault, and sexual harassment in the workplace, according to the Recommendation. Despite the fact that the CEDAW was signed in 1993, it took another two decades for laws to be enacted to protect and redress women who are sexually harassed at work.<sup>106</sup>

In Beijing, the Fourth World Conference on Women was held. The Government of India made an official commitment at the said Conference. The commitment inter-alia includes initiatives like, formulating and operationalizing a national policy on women that will continuously guide and inform action at every level and in every sector; to establish a Commission for Women to act as a public defender of women's human rights; and to institutionalize a national level mechanism to monitor the Platform for Action's implementation.<sup>107</sup>

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<sup>105</sup> Women, U. N. (1979). Convention on the elimination of all forms of discrimination against women (CEDAW). UN Women.

<sup>106</sup> Baruah, R. A critical analysis of the laws available in India against sexual harassment at workplace. Retrieved from <http://www.legalservicesindia.com/article/2545/The-Law-Against-Sexual-Harassment.html>.

<sup>107</sup> Vishaka & Others vs State Of Rajasthan & Others (1997) 6 SCC 241.

## 2.4 INDIGENOUS AND TRIBAL PEOPLES CONVENTION

This 1989 Convention is the only one that directly addresses the crime of workplace sexual harassment. It states that governments must do everything necessary to prevent discrimination between workers from the peoples to whom the Convention applies and other workers, including taking steps to protect them from sexual harassment.<sup>108</sup>

Different countries have implemented laws at the national level in different ways in accordance with the numerous international standards established through these agreements. Many countries have classified certain forms of harassment as a type of forbidden activity, such as sexual assault or defamation, without expressly referring to sexual harassment. It could also fall under the purview of more than one legal branch in the same jurisdiction. In Singapore, for example, it may fall under both tort and criminal law. In India, there is particular legislation as well as sections in the Penal Code that prohibit sexual harassment at work. Sexual harassment has been explicitly referred to and recognized as a distinct kind of some broader sort of forbidden behavior by courts and tribunals in a number of nations.<sup>109</sup> It is most often recognized as a kind of sexual discrimination and is outlawed under anti-discrimination or equality laws. Many other countries' legislatures have passed laws prohibiting workplace sexual harassment or have changed existing laws to do so. Sexual harassment at work is illegal in several nations, according to their labor laws.<sup>110</sup>

## 2.5 INDIAN SCENARIO

### 2.5.1 Vishaka Guidelines issued by Apex Court in Vishaka & Others vs State Of Rajasthan & Others<sup>111</sup>; Supreme Court of India; AIR 1997 SC 3011; on 13 August, 1997

The Supreme Court stated in its landmark decision that the immediate motive for the filing of this writ was an alleged horrific gang rape of a social worker in a Rajasthan hamlet. That the incident being the subject matter of a separate criminal investigation already going on, it would not be

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<sup>108</sup> Yupsanis, A. (2010). ILO Convention No. 169 concerning Indigenous and tribal peoples in independent countries 1989–2009: An overview. *Nordic Journal of International Law*, 79(3), 433-456.

<sup>109</sup> Swepston, L. (2015). Indigenous and Tribal Peoples Convention, 1989 (No. 169). In *The Foundations of Modern International Law on Indigenous and Tribal Peoples* (pp. 343-358). Brill Nijhoff.

<sup>110</sup> Baruah, R. A critical analysis of the laws available in India against sexual harassment at workplace. Retrieved from <http://www.legalservicesindia.com/article/2545/The-Law-Against-Sexual-Harassment.html>.

<sup>111</sup> Vishaka & Others vs State Of Rajasthan & Others (1997) 6 SCC 241.

desirable to address the same in the instant writ. The episode highlights the dangers to which a working-woman may be exposed, as well as the depths to which sexual harassment can devolve, as well as the need for alternative safeguards in the lack of regulatory regulations. In the absence of legislative action, an efficient alternative method to meet this perceived and urgent social need must be found.<sup>112</sup> Every incidence violates the fundamental rights of 'Gender Equality' and 'Right to Life and Liberty.' It is an obvious infringement of the rights guaranteed by the Indian Constitution's Articles 14, 15, and 21. One of the natural outcomes of such an incident is a breach of the victim's fundamental right under Article 19(1) (g) to "perform any profession or carry on any occupation, trade, or business." It is an obvious infringement of the rights guaranteed by the Indian Constitution's Articles 14, 15, and 21. As a result, such infractions are subject to remedy available under Article 32 for the enforcement of women's constitutional rights. This is why a class action under Article 32 of the Constitution of India has been filed. If a writ of mandamus is to be successful in this case, it must be accompanied by prophylactic instructions, as this type of infringement of fundamental rights is a common occurrence. The right to work in any occupation, trade, or profession is contingent on the presence of a "safe" working environment. The right to life entails living a dignified life.<sup>113</sup> The legislature and executive have primary duty for ensuring such safety and dignity through appropriate law and the implementation of a framework for enforcing it. When cases of sexual harassment resulting in violations of women's basic rights under Articles 14, 19, and 21 are submitted before us for redress under Article 32, a successful redress requires that some rules for the protection of these rights be established to fill the legislative void.<sup>114</sup>

### **2.5.2 Making of POSH Act, 2013**

Pursuant to and based on the Vishaka's guidelines the Central Government of India was working on making a suitable law to deal with the matter of sexual harassment of women at their

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<sup>112</sup> Pathak, N., & Vyas, A. (2018). Case Comment on Vishaka vs State of Rajasthan. *Supremo Amicus*, 3, 320.

<sup>113</sup> Chopra, R. (1998). *Three Texts, One Issue Vishaka and Others vs State of Rajasthan and Others*, Judgement dated 13 August 1997. *Scale*, Vol. 5, 1997. Benokraitis, Nijole, V.(ed.), *Subtle Sexism: Current Practice and Prospects for Change*, Thousand Oaks, California: Sage Publications, 1997. *Sexual Harassment in Delhi University: A Report*. Gender Study Group, Delhi, 1996. *Indian Journal of Gender Studies*, 5(1), 116-121.

<sup>114</sup> *International Labour Law Reports*, E. Ind. 2 INDIA: Supreme Court of India (Before JS Verma Chief Justice, Sujata Manohar and BN Kirpal JJ) *Vishaka v State of Rajasthan Writ Petition (ERL) No. 666-70 of 1992*. *International Labour Law Reports Online*, 17(1), 172-181.

workplaces. Accordingly, a draft bill called as ‘The Protection Of Women Against Sexual Harassment At Workplace Bill, 2007’ was prepared by Government of India, Ministry of Women and Child Development with an object to provide for prevention and redressal of sexual harassment of women at workplace and for matters connected therewith or incidental thereto. This draft bill was widely circulated calling for the comments and suggestions from various stakeholders and the public feedback.<sup>115</sup> Consequently, keeping in view the principles as laid down by the Supreme Court of India and also in consultation with the National Commission for Women; and the comments and suggestions received from various stakeholders, the Bill titled as “The Protection of Women Against Sexual Harassment at Work Place Bill, 2010” was introduced on December 07, 2010 in the Lok Sabha. The Bill was referred to the Standing Committee on Human Resource Development. The Committee made a number of recommendations in its report, which was then submitted to Lok Sabha on November 30, 2011. Lok Sabha considered the bill along with recommendations made by the Standing Committee and passed it with several amendments on September 3, 2012.<sup>116</sup> The Rajya Sabha also passed the bill on February 27, 2013 without any substantial amendments, which was passed by Lok Sabha on September 03, 2012. The bill finally got assent of the President on April 22, 2013. Accordingly, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (No. 14 of 2013) was enacted. Consequently, in exercise of the powers conferred by sub-section (3) of Section I of the Act, the Central Government appointed the 9<sup>th</sup> day of December 2013 as the date on which the provisions of the said Act came into force through a Gazette Notification.<sup>117</sup>

### **2.5.3 Making of the University Grants Commission (prevention, Prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015**

Pursuant to making of POSH Act, 2013, the University Grants Commission, in exercise of the power conferred upon it by clause (g) of sub-section (1) of section 26<sup>118</sup> of the University Grants

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<sup>115</sup> Veluvali, P. (2021). THE WORKPLACE CONSTRUCT AND SAFETY–REVISITING THE POSH ACT, 2013 IN THE CONTEXT OF WORK FROM HOME. *International Journal of Management (IJM)*, 12(1).

<sup>116</sup> Kanskar, S., & Pal, D. (2021). Reconceptualizing Sexual Harassment: Extending the POSH Act, 2013. *Jus Corpus LJ*, 2, 467.

<sup>117</sup> Kapoor, S., & Wangdus, J. (2020). Making work places safer for women. *JIMS8M: The Journal of Indian Management & Strategy*, 25(1), 42-48.

<sup>118</sup> Section 26 of UGC Act, 1956 - Power to make regulations.

Commission Act, 1956, read with sub-section (1) of Section 20<sup>119</sup> of the said Act, has made the regulations, namely, “The University Grants Commission (prevention, Prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015”. These Regulations have come into force on May 02, 2016 i.e. the date of its publication in the Official Gazette. All concerned HEIs shall be required to adopt these regulations and implement in its true letter and spirit.

It is well established that the POSH Act, 2013 addresses the issue regarding protection of women alone, against sexual harassment and is not gender neutral. Thus, the males, if subjected to sexual harassment, cannot claim protection or relief under the POSH Act, 2013. However, the UGC had taken steps to make the extant Regulations as gender neutral while dealing with the cases of sexual harassment. Accordingly, some guidelines in this regard were issued by UGC to the Higher Educational Institutions (HEIs) in the past. Men can be subjected to sexual harassment in addition to ragging episodes, particularly if they are identified as members of a sexual minority. In such

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(1) The Commission<sup>15</sup> [may, by notification in the Official Gazette, make regulations] consistent with this Act and the rules made thereunder,—

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9;

(c) specifying the terms and conditions of service of the employees appointed by the Commission;

(d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of section 2;

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instruction;

(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

<sup>16</sup> [(h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;]

<sup>16</sup> [(i) specifying the matters in respect of which fees may be charged, and scales of fees in accordance with which fees may be charged, by a college under sub-section (2) of section 12A;]

<sup>16</sup> [(j) specifying the manner in which an inquiry may be conducted under sub-section (4) of section 12A;]

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d)<sup>17</sup> [or clause (h) or clause (i) or clause (j)] of sub-section (1) except with the previous approval of the Central Government.

<sup>18</sup> [(3) The power to make regulations conferred by this section [except clause (i) and clause (j) of sub-section (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.]

<sup>119</sup> Section 20 of the UGC Act, 1956 - Directions by the Central Government. (1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government. (2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

instances, all instructional, corrective, and, if required, punitive responses must be implemented using proper protocols.<sup>120</sup>

The UGC Regulations, 2015 on Sexual Harassment broadly use the framework laid down by the POSH Act, 2013, but differs from later in certain areas. One such area is its gender neutrality. The UGC Regulations, 2015 contain a definition of 'aggrieved woman' under Regulation 2 (a)<sup>121</sup>. Nevertheless, the term 'aggrieved woman' has not been used liberally in the Regulations. The term used in the Regulations is either "aggrieved person" or an "aggrieved party". Additionally, there is recognition of the respondent/accused person being either a male or a female.<sup>122</sup> Accordingly, the Regulations have been made gender neutral by UGC for the purpose of complaints of sexual harassment of students.

Although, such measures for protection and safety of women have been taken up in India, nonetheless, lot more still needs to be done. When the researcher examines the issue, NCRB has reaffirmed certain prevalent beliefs while refuting others. For the first time this year, the NCRB revealed not only state-level data, but also data on metropolitan areas, with Delhi ranking first in terms of violence against women. In 2016, the union territory reported 15,310 instances, down from 17,222 the previous year. During 2016, Uttar Pradesh recorded 14.5 percent of total cases of crimes against women (49,262 out of 3,38,954), followed by West Bengal (9.6%) (32,513 cases). According to the NCRB data, Delhi UT has the highest crime rate (160.4) compared to the national average of 55.2. The most common type of crime against women is 'Cruelty by Husband or His Relatives,' which accounts for 32.6 percent of all instances, followed by "Assault on Women with Intent to Outrage her Modesty," (25.0 percent), "Kidnapping and Abduction of Women," (19.0 percent), and 'Rape' (11.5 percent).<sup>123</sup>

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<sup>120</sup> University Grants Commission. (2012). Saksham Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization on Campuses.

<sup>121</sup> Regulation 2(a) of UGC Regulations, 2015 - "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;

<sup>122</sup> Mohanty, D. (2018 July 17). Sexual Harassment In The Workplace: What Indian Companies Need To Know. Retrieved from <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/720046/sexual-harassment-in-the-workplace-what-indian-companies-need-to-know>.

<sup>123</sup> Staff, W. (2017 Dec 1). Most Crimes Against Dalits Are Against SC Women: NCRB Data. Retrieved from <https://thewire.in/caste/ncrb-crimes-against-dalits-women>.



According to the study conducted by IANS<sup>124</sup>, only one in five cases that are reported is convicted. Oxfam India and the Social and Rural Research Institute conducted a survey in Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmedabad, Lucknow and Durgapur<sup>125</sup>. Further, the survey has given some eye-opening statistics about the rampant sexual harassment in Indian society. According to the survey, almost 17% of working women in India believe they have been sexually harassed at work, indicating a significant incidence of sexual harassment among working women in both the organized and unorganized sectors... Despite the fact that 87 percent of the general population and 93 percent of working women respondents said they were aware of workplace sexual harassment, the majority of victims did not take formal action against the predator. "Fear of losing my job," "lack of any complaints system at work," "fear of being branded," and "not aware of redressal method" were among the reasons given for not taking such action. The Supreme Court instructions against sexual harassment were also known by as many as 17% of respondents in the general community, according to the survey. When compared to other locations, metro cities had a higher awareness of the apex court recommendations, with 24 percent. The survey found that, despite the fact that sexual harassment of women is a very sensitive topic that has recently gained a lot of attention, most companies fail to recognize it as a problem. Overall, more than 80% of those polled believe that a special law should be enacted to deal with workplace sexual harassment. According to the National Health Survey data, 99.1% of sexual assault instances go unreported.<sup>126</sup>

POSH Act, 2013 is a legislation, which casts an obligation upon employers of all workplaces, including Central Government offices, higher educational institutions etc., to constitute Internal Committees for receiving complaints of sexual harassment of women at such workplaces. The Act casts an obligation on District Officers notified by the appropriate governments as defined under the Act, to constitute Local Committees in all districts for receiving complaints from organizations having less than 10 workers and the complaints against employers themselves. The Act covers all

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<sup>124</sup> IANS. (2012 November 27). '17 percent of Indian working women face sexual harassment'. Retrieved from [http://twocircles.net/2012nov27/17\\_percent\\_indian\\_working\\_women\\_face\\_sexual\\_harassment.html](http://twocircles.net/2012nov27/17_percent_indian_working_women_face_sexual_harassment.html).

<sup>125</sup> IANS. (2012 November 27). '17 percent of Indian working women face sexual harassment'. Retrieved from [http://twocircles.net/2012nov27/17\\_percent\\_indian\\_working\\_women\\_face\\_sexual\\_harassment.html](http://twocircles.net/2012nov27/17_percent_indian_working_women_face_sexual_harassment.html).

<sup>126</sup> Bhattacharya, P. & Kundu, T. (2018 April 24). 99% cases of sexual assaults go unreported, govt data shows. Retrieved from <https://www.livemint.com/Politics/AV3sIKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html>.

women, irrespective of their age, employment status or nature of work (whether working in shifts or otherwise). According to data from the National Crime Records Bureau (NCRB), a total of 57, 119, and 142 occurrences of insult to the modesty of women at work were reported in 2014, 2015, and 2016, respectively. Notwithstanding POSH Act, 2013, it is clear that the number of sexual harassment complaints have registered an upward increase over the years.<sup>127</sup>

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<sup>127</sup> Bureau, P.I. (2019 Feb 8). Cases of Sexual Harassment including Sexual Harassment at Workplace. Retrieved from <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1563588>.

## CHAPTER - 3

### COMPATIBILITY ANALYSIS OF THE LAW ON SEXUAL HARASSMENT WITH HEIs

#### 3.1 INTRODUCTION

This chapter analyzes and brings about the law against sexual harassment, the challenges before the employers and HEIs to deal with the problem. The legal regime on Sexual Harassment under the POSH Act, 2013 is specific to workplaces. The available legal jurisprudence is thus special in nature. This chapter aims to understand the effectiveness of the Act on the menace of sexual offences as prevailing at various workplaces and HEIs.

#### 3.2 THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH Act, 2013)

The POSH Act, 2013 protects every female with no reservation about age, type or nature of work, whether working in shifts or otherwise. It casts an obligation upon employers of all workplaces inter-alia, to constitute Internal Committee to get and address the grievance regarding sexual exploitation of women at such workplaces. Similarly, the Act casts an obligation on District Officers notified by the concerned states as defined under the Act, to constitute Local Committees in all districts for receiving and addressing the complaints from organizations having less than 10 employees and for receiving and addressing the complaints against employers themselves.<sup>128</sup>

#### 3.3 SEXUAL HARASSMENT AS A MISCONDUCT UNDER DISCIPLINARY RULES

Provision of section 19(i)<sup>129</sup> stipulates that sexual harassment shall amount to a misconduct under disciplinary rules; accordingly, the proceedings shall be initiated for such indiscipline. It is an

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<sup>128</sup> Sheriff, K. (2022 March 19). Explained: What is POSH, the law against sexual harassment in India?. Retrieved from <https://indianexpress.com/article/explained/everyday-explainers/explained-posh-law-against-sexual-harassment-in-india-7825733/>.

<sup>129</sup> Section 19 - Every employer shall—

(a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

established principle that whenever there is stipulation to take steps against such indiscipline, the implied meaning of the same would be a proceeding is to be initiated against the concerned employee under the Discipline and Appeal Rules applicable. This is also further clarified under the provision of Rule 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (POSH Rules, 2013)<sup>130</sup>, which is concerned with the situation where there is no service rule exists, the wording is “to take any action” and there is no stipulation to “initiate action” and there is difference in between the wording "to take action" and "to initiate action". “To take action” would mean the action is to be taken by the authority but “to initiate action” would mean that the action is to be initiated under the Discipline and Appeal Rule where the service rule exists.<sup>131</sup>

### **3.4 STUDY ON THE IMPACT OF THE POSH ACT, 2013 ON THE EMPLOYER VIS-À-VIS HEIs**

The study carried out by the researcher brings out following outcome:

#### **3.4.1 Contrary to POSH Act, 2013 the UGC Regulations are Gender Neutral**

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- (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
  - (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
  - (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
  - (f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;
  - (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;
  - (h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
  - (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
  - (j) monitor the timely submission of reports by the Internal Committee.

<sup>130</sup> Rule 9 of the POSH Rules, 2013 - Expect in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding or pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

<sup>131</sup> Singla, N., & Kumar, M. (2014). The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in India: An Analysis.

POSH Act, 2013 is primarily a gender specific legislation dealing with the issues related to women only. However, while addressing the issue of sexual harassment, “the University Grants Commission (prevention, Prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015” (“UGC Regulations, 2015”) recognizes helpless groups and seek for supportive measures to put in place for such helpless groups, which includes those whose sexual alignments may make them more exposed.<sup>132</sup> Thus, even a male student studying in higher educational institutions, who faces any sort of sexual harassment, can file a complaint of sexual harassment before the Internal Complaints Committee<sup>133</sup> for redressal of his grievance. As we know, the POSH Act, 2013 addresses the issue regarding protection of women only, against sexual harassment and is not gender neutral. As a result, if a man is sexually harassed, he cannot seek protection or relief under the Act of 2013. Nevertheless, the UGC had taken steps to make the HEIs gender neutral while dealing with the cases of sexual harassment in respect of students. Accordingly, some guidelines in this regard were issued by UGC to the HEIs in the past. It is well recognized that male students can also face sexual offence away from the ragging. Such harassment of male students occurs if they belong to a sexually non-majority group. Therefore, in order to properly address these cases of male students’ harassment, HEIs ought to take all initiatives for remedial or, if need be, the punitive interventions, after following due procedures.[<sup>134</sup>][<sup>135</sup>]

The one of the questions before the researcher is whether there is a need to broaden the scope of the POSH Act, 2013 to evolve it as a gender-neutral Act. This is because the Act does not include other genders and sexual orientations. A study<sup>136</sup> conducted during 1982 states, “Popular descriptions and debates of women's experiences with sexual harassment, on the other hand, are typically "balanced" with examples of men harassing women and "straights" harassing

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<sup>132</sup> Mohanty, D. (2018 July 17). Sexual Harassment In The Workplace: What Indian Companies Need To Know. Retrieved from <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/720046/sexual-harassment-in-the-workplace-what-indian-companies-need-to-know>.

<sup>133</sup> The committee under POSH Act is called as Internal Committee whereas the committee under UGC Regulation is called as Internal Complaints Committee.

<sup>134</sup> University Grants Commission. (2012). Saksham Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization on Campuses.

<sup>135</sup> Nath, B., & Rana, M. (2021). Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints. *Ilkogretim Online*, 20(4).

<sup>136</sup> Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. *Social problems*, 29(3), 236-251.

homosexuals. Although some tales acknowledge elements of authority or power, sexual harassment is portrayed as 'gender neutral.' In truth, it's a problem that virtually entirely affects women."<sup>137</sup> According to the PEW Research Statistics - 2014, 25% of women and 13% of men between the ages of 18 and 24 have experienced online sexual harassment. The statistics on male harassment are undeniable.<sup>138</sup>

Five years later, according to a report<sup>139</sup> published in the year 2019, there was no legal framework in India that allowed a woman [or a male person] to be prosecuted for sexual offences against a male. As of now also, only women are protected by the Indian law against sexual harassment. Meanwhile, Gender Neutral legislation have been adopted in 77 nations, including Denmark, Australia, Switzerland, the United States, and the United Kingdom, among others. There is a level of skepticism surrounding male sexual harassment, which may be due to a lack of data. It is almost as though the idea of a woman sexually harassing a man is still unthinkable in today's society. According to a 2010 survey<sup>140</sup> done by the Economic Times and Synnovate, 19 percent of the 527 men polled in India's major cities reported to have been sexually harassed. According to the study, 51% of the 527 males polled in various metros throughout the country said they had been sexually harassed at work. According to a similar poll performed by the Company for Viacom 18 in 2013, coworkers have sexually harassed 43% of male business executives.

However, in the current situation, one must also consider the progress of society as well as the diversity of our students, professors, and workforce. Most critically, the elimination of section 377<sup>141</sup>, it is now lawful to have a consenting homosexual relationship. In addition, the Transgender Persons (Protection of Rights) Act, 2019<sup>142</sup> arrests the discrimination against a transgender person in the workplace, including in recruiting and promotion. As a result, the Act's scope may

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<sup>137</sup> Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. *Social problems*, 29(3), 236-251.

<sup>138</sup> Stockdale, M. S., Gandolfo Berry, C., Schneider, R. W., & Cao, F. (2004). Perceptions of the Sexual Harassment of Men. *Psychology of Men & Masculinity*, 5(2), 158.

<sup>139</sup> Arora, K. (2019 November 18). Why India Inc. needs to protect Men against Sexual Harassment at Workplaces in India- case for gender neutral policies. Retrieved from <https://www.ungender.in/why-india-inc-needs-to-protect-men-against-sexual-harassment-at-workplaces-in-india-case-for-gender-neutral-policies/>.

<sup>140</sup> Arora, K. (2019 November 18). Why India Inc. needs to protect Men against Sexual Harassment at Workplaces in India- case for gender neutral policies. Retrieved from <https://www.ungender.in/why-india-inc-needs-to-protect-men-against-sexual-harassment-at-workplaces-in-india-case-for-gender-neutral-policies/>.

<sup>141</sup> Navtej Singh Johar & Others vs Union of India (2018) SC 4321.

<sup>142</sup> National Legal Services Authority vs Union of India and others (2014) W.P. (C) No. 604/2013.

necessitate a larger perspective in order to ensure a fair and secure workplace for all the employees irrespective of their gender and sexual orientation. This becomes essential keeping in view the dynamics of modern India where composition of workplace has been evolved, which not only includes women and men but also the employees from the LGBT community as well.

Nonetheless, the UGC Regulation, 2015<sup>143</sup> read with the POSH Act, 2013, addresses and covers the concerns of students of both the genders and women at workplace. Male employees of HEIs are covered neither under the UGC Regulations nor under the POSH Act, 2013. Thus, the study reveals that there is a need either to have an additional legislation in place or to re-visit the existing Act to better include other genders and sexual orientations. The diverse nature of our workforce today, as well as the evolution of society, may require the same, eventually.

### **3.4.2 Employer/HEI to Provide Safe Working Environment to Women**

A perusal of UGC Regulations, 2015 reveals that the duties of HEIs have been provided under its regulation 3<sup>144</sup>, while the duties of the employer are set out under chapter IV in section 19 of the

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<sup>143</sup> The University Grants Commission (Prevention, Prohibition and Redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015.

<sup>144</sup> Reg 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 regulation 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 Regulation;
- (b) Publicly notify the provisions against sexual harassment and ensure their wide dissemination;
- (c) organize training programmes or as the case may be, workshop for the officers for the officer, 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 wariness 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 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;
- (e) Publicly commit itself to a zero tolerance policy towards sexual harassments;
- (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

POSH Act, 2013. Sub section (a) thereof makes it obligatory upon the employer that he is liable to ensure a working environment at the workplace, which shall include safety of women from his own employees but shall also include safety from the visitors. Section 26 (1)<sup>145</sup> prescribes for

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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;

- (i) inform employees and students of the recourse available to them if they are victims of sexual harassment;
- (j) Organize regular orientation or training programmes for members of the ICC to deal with Complaints, steer the process of settlement or conciliation, etc.. with sensitivity;
- (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.

<sup>145</sup> Section 26 of the POSH Act, 2013 - Penalty for non-compliance with provisions of Act:

(1) Where the employer fails to

- (a) constitute an Internal Committee under sub-section (1) of section 4;
- (b) take action under sections 13, 14 and 22; and
- (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

- (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:



punishments for any breach of employer's duty, with a fine of fifty thousand rupees. However, the Act is silent about the civil liability in favor of a woman if her employer fails to provide her with a safe working environment. Further, the Researcher could not lay his hands on any prosecution of an employer for having failed to provide a safe environment at work.

In HEIs, sexual harassment is treated as a civil violation rather than a criminal offence. The focus is on education and correction rather than punishment. The prevention of sexual harassment through gender sensitization is a major responsibility of HEIs.<sup>146</sup> Women frequently express issues that males do not necessarily share; or the men in the proper perspective have not necessarily understood the concerns expressed by women. It is an established fact that females being socially and bodily susceptible tend to encounter security threats, during the course of their service at the work place. It is, therefore, obligatory on the part of her employer to put in place adequate safeguards at the workplace to provide due protection to the women from sexual offences and harassments.

Undisputedly, women are invariably prone to social and physical vulnerability. It is also undisputed that women face discrimination and hostility at their workplace thereby remaining under tremendous threats and fear of insecurity. Therefore, the POSH Act, 2013 mandates<sup>147</sup> that

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Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

<sup>146</sup> Adetutu Deborah Aina, Pradeep Kulshrestha; Sexual Harassment in Educational Institutions in Delhi' NCR (India): Level of Awareness, Perception and Experience; available at [https://www.researchgate.net/publication/318736784\\_Sexual\\_Harassment\\_in\\_Educational\\_Institutions\\_in\\_Delhi'\\_NCR\\_India\\_Level\\_of\\_Awareness\\_Perception\\_and\\_Experience/link/5a8b1d83aca272017e63997f/download](https://www.researchgate.net/publication/318736784_Sexual_Harassment_in_Educational_Institutions_in_Delhi'_NCR_India_Level_of_Awareness_Perception_and_Experience/link/5a8b1d83aca272017e63997f/download) (last accessed by the researcher on 29.05.2021)

<sup>147</sup> Section 19 of POSH Act, 2013 - Duties of employer.—

Every employer shall—  
provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

each employer shall put in place all adequate safeguards in his organization to inculcate a sense of security in the minds of women and not only to have but to demonstrate a zero tolerance for any incident of sexual harassment and related offences. It is the duty of the employer to observe all his duties under the Act, in a religious manner and not as a mere ritual. The IC needs to demonstrate a fair, free and transparent conduct of proceedings and handling of complaints by them in an unbiased manner. The well-established philosophy always needs to be kept in mind that as per our basic social structure men tend to view his own sexual demeanor in a void with a little regard to the surrounding and emerging social dynamics and what a woman would perceive it to be.<sup>148</sup>

### 3.4.3 Employer/HEI to constitute IC/ICC

There are certain duties obligated upon the employer under Section 19 of the POSH Act, 2013. Pursuant thereto, each employer has to see that such duties are fully complied with without any exception. Unbiased investigation and inquiry is the essence of entire complaint redressal mechanism under the Act. Therefore, the IC becomes duty bound to transact such function with utmost seriousness with full dedication in fair, free and transparent way to render justice to the

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(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

<sup>148</sup> Vidya Akhave vs Union of India, Department of Women and Children & Others (2017) LLR 357.

aggrieved and the respondent, both together. Quite frequently, it is witnessed that the men tend to take sexual-conduct in a total vacuum and in isolation. While doing so he fails to appreciate the social dynamics and setting or the prevalent violence hazard, which a female employee faces quite frequently.<sup>149</sup>

States of Telangana and Maharashtra, have recently stipulated that any failure by employers within their respective States to comply with the requirement of constitution and registration of IC, shall be punishable with a monetary fine of Rs. 50,000. Though the steps taken by Telangana and Maharashtra for non-registration of IC and consequent imposition of penalty may be difficult to withstand judicial scrutiny in the absence of any registration requirement under the POSH Act, 2013, nevertheless, it needs to be examined whether making such provision a part of the Act and UGC Regulation may serve any purpose.<sup>150</sup>

#### **3.4.4 Employer/HEI to Conduct Workshops; and Provide Training & Facilities to Internal Complaints Committee Members**

While deliberating on the issue of Training of members of Complaints Committees<sup>151</sup>, the “Parliamentary Standing Committee on Human Resource Development” observed that no fruitful purpose would be served merely by establishing the ICs in the workplaces. However, the Parliamentary Committee vehemently supported the idea of having two committees constituted right from the beginning under the POSH Act, 2013. The Parliamentary Committee submitted the said idea of having two committees based on the statics gathered about the usefulness and effectiveness of the institutional grievance redressal mechanism created pursuant to the Vishaka Guidelines issued by the Supreme Court in the year 1997. The members of various women organizations while interacting with the Parliamentary Committee vehemently submitted and argued that the members of ICs, if established by some employers, were unaware about their roles

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<sup>149</sup> Vidya Akhave vs Union of India, Department of Women and Children & Others (2016) W.P. No. 796/2015.

<sup>150</sup> Prakash, A. & Choudhury, A. (2019 July 9). Maharashtra And Telangana: State Governments Mandate Registration Of Internal Committee Constituted Under PoSH Act. Retrieved from <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/823608/maharashtra-and-telangana-state-governments-mandate-registration-of-internal-committee-constituted-under-posh-act>.

<sup>151</sup> Mahmood, Q. K., & Ahmad, I. (2011). Perception of sexual harassment at workplace, knowledge and attitude of working women towards Workplace Harassment Act 2010. Social sciences review of Pakistan, 22.

and responsibilities under the Act. Therefore, the Parliamentary Committee was convinced that there is a need to organize awareness programs with the help of various Trade Unions and State-Legal-Aid-Forums. Further, the requisite awareness and sensitization about roles & responsibilities as mandated under the Act, needs to be generated among administrative machineries, officers and general employees in the organizations. The Parliamentary Committee underlined the justification for the concerned Ministry to act in a proactive manner with a proper synchronization with the National Women Commission and the State Women Commissions. While doing so, the experience and the lessons learnt by the members of existing committees constituted under Vishaka guidelines shall be highly useful and relevant. It will have simply a theoretical value if merely the task of organizing the awareness programs is entrusted, without caring for and proper monitoring of the mandate given under the Act. Ultimate approach should be to achieve the objective by generating requisite awareness and through proper sensitization of the employees regarding the issues involved, to ensure effective implementation of the Act.

Each employer with frequent periodicity shall conduct workshops and organize appropriate programs in order to generate requisite awareness among its employees. Such programs shall also help sensitizing the workforce about the nuances of the Act and help impart the requisite training to the IC members in conformity with the Rule 13 of POSH Rules, 2013<sup>152</sup>. Similar provision in UGC Regulations, 2015 under regulation 3<sup>153</sup> thereof. Thus, it shall be obligatory upon every employer, as follows:

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<sup>152</sup> Rule 13 of POSH Rules, 2013 - Manner to organize workshops, etc. – Subject to the provisions of section 19, every employer shall –

- (a) Formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and Redressal or sexual harassment at the workplace intended to promote gender sensitive safe space and remove underlying factors that contribute towards a hostile work environment against women;
- (b) Carry out orientation programmes and seminars for the Members of the Internal Committee;
- (c) Carry out employees awareness programme and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and other body as may be considered necessary;
- (d) conduct capacity building and skill building programmes for the Members of the Internal Committee;
- (e) declare the names and contact details of all the Members of the Internal Committee;
- (f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitizing the employees with the provisions of the Acts.

<sup>153</sup> Reg 3 of UGC Regulations, 2015 - 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 regulation 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 Regulation;

- (a) Each employer shall design an appropriate prevention of sexual offences policy and adequately propagate the same with an intent and aim to encourage and build an environment that is sensitive, safe, secure and protective for the women;
- (b) Each employer shall organize appropriate alignment programs, seminars and workshops for the IC Members;
- (c) Each employer shall organize appropriate awareness and gender sensitization programs for its employees with the help of local bodies;
- (d) To build up and enhance the skills & capacity of the IC members, each employer shall organize appropriate programs;

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- (b) Publicly notify the provisions against sexual harassment and ensure their wide dissemination;
  - (c) organize training programmes or as the case may be, workshop for the officers for the officer, 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 wariness 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 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;
  - (e) Publicly commit itself to a zero tolerance policy towards sexual harassments;
  - (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;
  - (i) inform employees and students of the recourse available to them if they are victims of sexual harassment;
  - (j) Organize regular orientation or training programmes for members of the ICC to deal with Complaints, steer the process of settlement or conciliation, etc.. with sensitivity;
  - (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.

(e) Each employer shall duly and prominently display at conspicuous places the names and contact details of all the IC Members;

(f) While organizing awareness programs etc., each employer shall place requisite reliance on the building blocks developed by the appropriate State Governments in this regard.

The employer also needs to provide necessary facilities to the Internal Committee or the Local Committee. It is obligatory upon the employer that the alleged predator and the witnesses, if any, are brought before the IC. It is further obligatory on him to firstly, help provide the relevant information to the IC, as may be demand by them. Secondly, the employer is mandated to assist the victim female employee in lodging a police complaint under IPC or any other applicable law. Thirdly, each employer shall incorporate sexual harassment in the definitions of misconduct in its discipline rules and effectively implement such provision. Fourthly, each employer shall put in place appropriate measures to ensure that the IC is submitting the reports regularly and within the prescribed time lines.

It has been seen quite often that the ICs constituted by employers under the Act and the ICCs constituted by the HEIs under the UGC Regulation, may have certain untrained committee-members who may not be so qualified or may even lack expertize to tackle the legalities while taking up inquiry proceedings under the Act. Section 19<sup>154</sup> brings out certain compliance issues at

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<sup>154</sup> Section 19 - Every employer shall—

- (a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;
- (b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;
- (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;
- (h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) monitor the timely submission of reports by the Internal Committee.

the level of an employer. The Employer shall be responsible to provide a safe working environment. He shall also be responsible to exhibit at all prominent locations in the workplace, the penalties for the offence of sexual harassment. He shall also display at conspicuous locations the details, names, contact numbers and email IDs of the members of the IC constituted in the workplace. It is further obligatory on the part of the employer to conduct at frequent intervals the requisite awareness programs and workshops to sensitize its workforce about the nuances of the Act. Further, the employer shall also organize programs for aligning the IC members in the prescribed manner. Of late, it has been seen that few employees are more susceptible to sexual offences. They are younger generation and the fresher, especially in the educational institutions. This fact needs to be acknowledged without any reservations. The employer is expected to have prudence to identify key drivers of misconduct of sex related offences and to address them appropriately. Further, it would also be a reasonable expectation from each employer that he should develop a system whereby probable blockades obstructing filing of complaints by vulnerable groups, are identified from time to time, and timely steps are taken to remove such blockades.<sup>155</sup>

However, notwithstanding the above, the employers have not so far understood the seriousness of these provisions and the duties entrusted upon them under the POSH Act, 2013. According to one survey<sup>156</sup>, despite the fact that the POSH Act, 2013 requires it, 40% of respondents have yet to train their ICC members. According to the same poll, 44 percent of respondents' workplaces did not exhibit the legal repercussions of sexual harassment in prominent places. As a result, during judicial scrutiny of the decisions taken by and through such ICs or ICCs, under Section 18<sup>157</sup> of

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<sup>155</sup> Carter, B. (2015). Rebuilding the village: supporting families where a parent has a disability. Office of the Public Advocate (Vic).

<sup>156</sup> Stephen, T. K., & Sasi, A. (2017). Analysis of potential legal strategies for mitigation of workplace bullying in India. *Management and Labour Studies*, 42(1), 20-38.

<sup>157</sup> Section 18 of POSH Act, 2013. Appeal.—

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

the POSH Act, 2013 it becomes easy for the lawyers to find holes in the IC proceedings, causing embarrassment not only to all the stakeholders, including the employer and the victim. Therefore, it is obligatory upon the Employer to impart requisite training to the IC members to make them adequately equipped to conduct tenable investigation and proper inquiry into the sexual harassment complaints.

Section 19 brings out certain compliance issues at the level of an employer. The Employer shall be responsible to provide a safe working environment. He shall also be responsible to exhibit at all prominent locations in the workplace, the penalties for the offence of sexual harassment. He shall also display at conspicuous locations the details, names, contact numbers and email IDs of the members of the IC constituted in the workplace. It is further obligatory on the part of the employer to conduct at frequent intervals the requisite awareness programs and workshops to sensitize its workforce about the nuances of the Act. Further, the employer shall also organize programs for aligning the IC members in the prescribed manner. Of late, it has been seen that few employees are more susceptible to sexual offences. They are younger generation and the fresher, especially in the educational institutions. This fact needs to be acknowledged without any reservations. The employer is expected to have prudence to identify key drivers of misconduct of sex related offences and to address them appropriately. Further, it would also be a reasonable expectation from each employer that he should develop a system whereby probable blockades obstructing filing of complaints by vulnerable groups, are identified from time to time, and timely steps are taken to remove such blockades.<sup>158</sup>

However, notwithstanding the above, the employers have not so far understood the seriousness of these provisions and the duties entrusted upon them under the Act. According to one survey<sup>159</sup>, 40% of the respondents are yet to train their ICC members, although the Act specifically mandates this. In the same survey, it has emerged that 44% of the respondents' organizations did not display the penal consequences of sexual harassments at conspicuous places.

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<sup>158</sup> Carter, B. (2015). Rebuilding the village: supporting families where a parent has a disability. Office of the Public Advocate (Vic).

<sup>159</sup> Stephen, T. K., & Sasi, A. (2017). Analysis of potential legal strategies for mitigation of workplace bullying in India. *Management and Labour Studies*, 42(1), 20-38.



### **3.4.5 Employer/HEI to Facilitate Filing of FIR by Aggrieved Woman**

Section 19 lists various obligations entrusted on an employer. Vide these obligations, inter-alia an employer shall help and assist an aggrieved female, who is a victim of the sexual offence, in reporting the matter to the concerned police station by filing a complaint under IPC or any other enactment, as may be applicable. This he shall do at the request of the victim woman. Immediately following to this provision, there is yet another obligation on the employer. It requires appropriate legal steps to be taken by the employer against the predator, he being not an employee of the same organization, under IPC or any other applicable law.

### **3.4.6 Anonymous complaints**

The other issue emerging before the researcher is regarding admissibility of anonymous complaints of sexual harassment. Under the POSH Act, 2013 there is no provision to entertain anonymous complaints. According to one study<sup>160</sup>, many complainants may wish to remain anonymous in order to avoid being identified and/or being subjected to societal pressure and stigmatization. Rather than assuming that there is no legal need to act on the complaint, an employer should attempt to soothe the anonymous complainant and encourage him or her to come forward so that the appropriate process can be launched. When anonymous complaints about a certain person are received repeatedly, the employer may want to investigate further while taking all necessary precautions. It is seen that in many situations the victim is afraid to file the complaint due to various constraints, pressures and or threats. In such situation, the predator continues with the harassment with impunity, though many of the group members are aware of the act of harassment. Therefore, the study also focusses on the feasibility of making admissible the anonymous complaints under the Act and the UGC Regulation, to further enhance their effectiveness. There is a need to realize that in many situation the victim is afraid to file the complaint due to various constraints, pressures and threats. If anonymous complaints are made admissible under the Act, it will further enhance the effectiveness of the same.

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<sup>160</sup> Team, C. [CAM. \(2016 August 11\). Challenges Faced by Employers in Addressing Sexual Harassment Complaints. Retrieved from https://corporate.cyrilamarchandblogs.com/2016/08/challenges-faced-employers-addressing-sexual-harassment-complaints/](https://corporate.cyrilamarchandblogs.com/2016/08/challenges-faced-employers-addressing-sexual-harassment-complaints/) Corporate Team.

### 3.5 CONCLUDING REMARKS

“UGC Regulations, 2015”<sup>161</sup> recognizes helpless groups and seek for supportive measures to put in place for such helpless groups, which includes those whose sexual alignments may make them more exposed. Thus, even a male student studying in higher educational institutions, who faces any sort of sexual harassment, can file a complaint of sexual harassment before the Internal Complaints Committee. However, in order to properly address these cases of male students’ harassment, HEIs ought to take all initiatives for remedial or, if need be, the punitive interventions, after following due procedures. The analysis reveals that there is a need either to have an additional legislation in place or to re-visit the existing Act to better protect the male employees also in HEIs, against sexual harassment. Simultaneously, the POSH Act, 2013 needs to be evolved as a gender-neutral legislation because it does not include other genders and sexual orientations. It is believed that evolution of society and the diverse nature of our workforce today warrants the same. There should be an enforcing mechanism to ensure that the Employers do impart requisite training to the IC members. It will make the ICC members adequately equipped to conduct tenable investigation and proper inquiry into the sexual harassment complaints.

Another conclusion is regarding non-admissibility of anonymous complaints. It has surfaced during the study that in many situation the victim is afraid to file the complaint due to various constraints, pressures and threats. In such situation, the predator continues with the harassment with impunity, though everybody knows about the act of harassment. If anonymous complaints are made admissible under the Act, it will further enhance the effectiveness of the same.

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<sup>161</sup> The University Grants Commission (Prevention, Prohibition and Redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015

## CHAPTER - 4

### APPLICABILITY & ADEQUACY OF PROVISIONS OF POSH ACT, 2013 AT HIGHER EDUCATIONAL INSTITUTIONS

#### 4.1 UGC REGULATIONS, 2015 - SCENARIO IN EDUCATION SECTOR

In reply<sup>162</sup> to an un-starred question No. 3754 if Government of India is having any knowledge regarding the gender issues faced by the educational sector? In such a case, the particulars of such cases along with reasons be furnished; Minister of Human Resource Development replied to the questions on 19.03.2018 that there exist such issues. It was further added that during the year 2015-16, for male students at the level of secondary education, the Gross Enrolment Ratio (GER) was 79.16% and for and female students it was 80.97%. However, the ratio was comparatively at a lower level during the same year i.e. 2015-16 at the Higher Secondary level. According to the reply submitted, it was 55.95% and 56.41% respectively, for boys and girls students in the year 2015-16. In the following year i.e. 2016-17, the ratio slipped to 25.2% for boys students and for girl students it was at 24.5%, according to All India Survey conducted on Higher Education. However, according to a different dimension, this demonstrates an eloquent testimony to the fact that notwithstanding overall fall in the ratio, there was no huge gap on gender lines. The reply further adds that the girls' students' enrollment in Indian Institutes of Technology was somewhere 8%, 14%, 17% and 20% during the years 2016, 2018-19, 2019-20 and 2020-21, respectively. The reply states that supernumerary seats shall be created to increase such a truncated girls' students' enrolment in IIT. The reply further stated that a gender-audit was carried out under the aegis of UGC in the year 2014-15 and 2015-16. The findings revealed some gender related issues. Of-course, the issues related to sexual offences at the campuses also appeared in the findings. Consequently, various steps and measures were taken up by UGC. Directions were issued by UGC to all HEIs to constitute and put in place a monitoring Cell to better watch and address the cases related to sexual harassment offence. The HEIs were directed to organize conferences, to hold seminars, and to conduct workshops; to create awareness among the faculty/students/non-faculty members and to sensitize them about the issue. In this regard, the policy of zero tolerance towards

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<sup>162</sup> Sabha, L. (2019 March 19). Government of India, Ministry of Human Resource Development, Lok Sabha, Unstarred question No. 3754. Retrieved from <https://loksabha.nic.in/Members/QResult16.aspx?qref=65589>.

sexual offences was also echoed by UGC. Pursuant thereto, in exercise of the power conferred upon it by clause (g) of sub-section (1) of section 26 of the University Grants Commission Act, 1956, read with sub-section (1) of Section 20 of the said Act, the UGC made the regulations, namely, “The University Grants Commission (prevention, Prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015”. These Regulations have come into force on May 02, 2016 i.e. the date of its publication in the Official Gazette. On similar lines, AICTE has also issued its Regulations, 2016 governing all Technical Educational Institutions thereunder. All concerned HEIs shall be required to adopt these regulations and implement in its true letter and spirit. In order to deal with the grievance of the students and women employees, Centrally Funded Higher Education Institutions, was also advised by the Ministry of Human Resource Development, Government of India to constitute ICs.<sup>163</sup>

A survey<sup>164</sup> was conducted among the students of HEI at pan-India level. The students included were the existing students, as well as the past students. The objective of survey was to understand the prevalence of sexual harassment in Higher Educational Institutions. It was revealed that 57 out of 567 respondents were subjected to sexually harassment by at least one predator in their own educational institutions. Out of these 57 victims, 50 victims were assaulted by the students; 6 were assaulted by a faculty members and 1 (one) was battered by a non-faculty member. Out of total 57 victims, multiple predators assaulted 12% of the victims. It was also an outcome of the survey that the age-old command structure system providing inherent advantage and power to males over the female counterparts could not be so far altered even in the educational institutions! The most alarming outcome of the survey was that none of the survivors of the sexual harassment approached the police by filing an FIR with them. Moreover, only a meagre i.e. less than 16% out of the 57 students filed their complaints before any committee like Internal Complaints Committee, Committee against Sexual Harassment etc. in the educational institutions. Another outcome of the survey was that 40.3% out of the 57 victims remained totally silent, while 61.4% of them shared the incident with their friend or senior. This came as a matter of surprise because an overwhelming number i.e. 33 of the 57 victims were

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<sup>163</sup> Sabha, L. (2019 March 19). Government of India, Ministry of Human Resource Development, Lok Sabha, Unstarred question No. 3754. Retrieved from <https://loksabha.nic.in/Members/QResult16.aspx?qref=65589>.

<sup>164</sup> Dasgupta, S. & Mukherjee, A. (2029 Oct 4). Survey of 500 Women Finds 1 in 10 Had Been Sexually Assaulted in Higher Education Institutions. Retrieved from <https://thewire.in/women/sexual-assault-higher-education-institution>.

fully aware of the existence of anti-harassment committees being in place, as reported by them during the survey. This obviously reflects failure of the committees to comply with the statutory mandate under the Act, 2013. It can, thus, be concluded that the prevailing environment was not free from hostility and it lacked an encouraging scenario for the females to voice their grievances naming the predators without fear of any kind of backlash.<sup>165</sup>

A perusal of various provisions contained under the Sexual Harassment at Workplace Act 2013 reveals that the said Act does not apply to students since it contains no provisions for students-specific penalties. Hence, the UGC/AICTE Regulations and the Act 2013 together can provide some road map on how to deal with the issue of Sexual harassment in HEIs. Here, students who are under 18 years of age, it shall be subject to the provisions contained under Protection of Children from Sexual Offences Act, 2012, hence shall lodge an FIR thereunder. The Court had taken into account the sensitivity of the situation as well as the greater public interest in maintaining discipline and decorum in an educational institution where young children were studying in one case.<sup>166</sup> The Court held, "If these instances [of sexual harassment] are allowed to occur on school grounds, it is unlikely that education will be provided in a peaceful environment."<sup>167</sup>

#### **4.2 MONITORING OF THE REDRESSAL MECHANISM**

The ministry of women and child development informed the Lok Sabha as back as in December 2016 reply that all the ministries and departments under the government of India had by then constituted ICCs. As per the Press Release posted on 08 February 2019, the National Crime Records Bureau started compiling data in respect of sexual harassment cases at workplace. This data was reflected under the classification 'Insult to the modesty of women' at workplace since 2014. In 2014, 2015, and 2016, a total of 57, 119, and 142 examples, respectively, were displayed in this category. There was an upsurge in complaints to the National Commission for Women

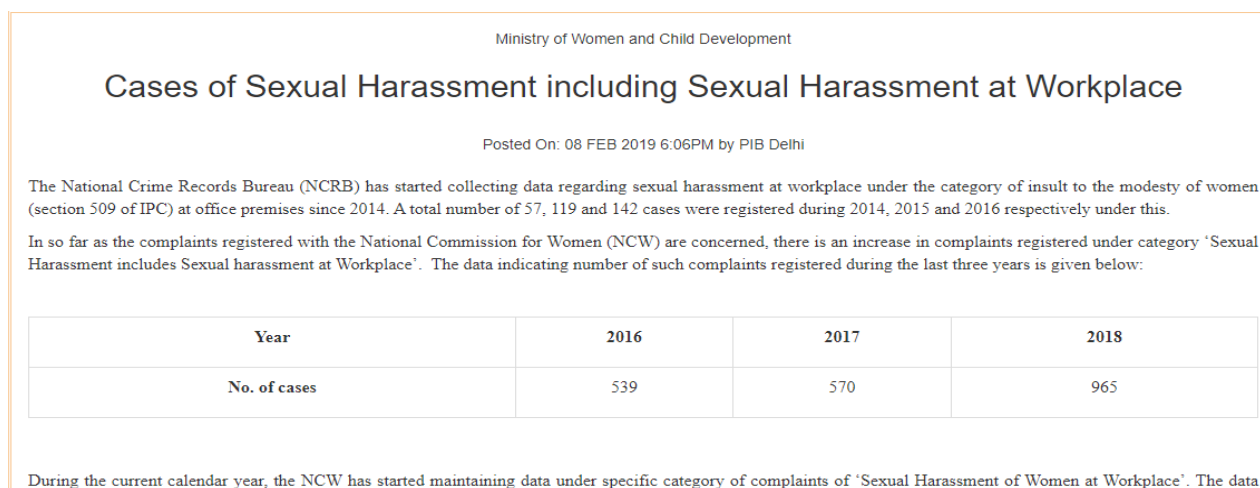
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<sup>165</sup> Dasgupta, S. & Mukherjee, A. (2029 Oct 4). Survey of 500 Women Finds 1 in 10 Had Been Sexually Assaulted in Higher Education Institutions. Retrieved from <https://thewire.in/women/sexual-assault-higher-education-institution>.

<sup>166</sup> Nath, B., & Rana, M. (2021). Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints. *Ilkogretim Online*, 20(4).

<sup>167</sup> K.Hema Latha vs State Of Tamil Nadu (2018) W.P(MD)No.5182/2013.

under the category of 'Sexual Harassment including Sexual Harassment at Workplace.' Figure No. 4.1 shows the data for the number of such complaints filed during the course of the next three years:



indicating number of such cases registered during January, 2019 is given below:

| Category     | Registered cases |
|--------------|------------------|
| No. of cases | 29               |

The Ministry of Women and Child Development, Government of India has developed an online complaint management system titled Sexual Harassment electronic-Box (SHe-Box) for registering complaints related to sexual harassment at workplace by women, including government and private employees. So far, 423 complaints have been registered on the She-Box portal. Out of which, 114 cases have been disposed off.

The setting up of Internal Committee in each and every Government department/institution/autonomous body is mandated as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Associated Chambers of Commerce & Industry of India (ASSOCHAM), Federation of Indian Chambers of Commerce and Industry (FICCI), Chamber of Commerce & Industry (CCI), and National Association of Software and Services Companies (NASSCOM) have been requested by Ministry of Women and Child Development, GOI to ensure effective implementation of the Act amongst their members in private sectors.

All State Governments and UT Administrations have also been requested to advise the Secretary Industries/Commerce to organize similar workshops and awareness programmes in each and every industry, business house, private sector entity of the States/UTs.

The above Information was given by Minister of State for Women and Child Development, DR. VIRENDRA KUMAR in reply to a question in the Lok Sabha, today.

**Figure 4.1**

Source: National Commission for Women; Source: Press Release dated 08.02.2019 of Ministry of Women and Child Development; available at <https://pib.gov.in/newsite/pmreleases.aspx?mincode=64> (last accessed by the researcher on 19.07.2021)

The Ministry of Women and Child Development, Government of India, has asked the Associated Chambers of Commerce and Industry of India, the Federation of Indian Chambers of Commerce and Industry, Chamber of Commerce and Industry, and National Association of Software and

Services Companies to ensure effective implementation of the POSH Act, 2013 among their members in the private sector, as shown in Figure No. 4.1. The law imposes a penalty of up to Rupees fifty thousand on those employers who fail to implement the provisions of the Act in the workplace or even do not constitute ICC. Nevertheless, the reported number of defaulting employers who do not comply with the law show that there is little monitoring of the redressal mechanism.

The study conducted in the year 2015 by *Reining in Sexual harassment at Workplace*, by Ernst and Young reveals that there was a high rate of non-compliance in the private sector. As per the said study, forty percent of the IT companies were unmindful of the need to set up ICC and fifty percent of the advertising and media companies had not conducted training programs for ICC members.

#### **4.3 CONCLUDING REMARKS**

A perusal of various provisions contained under the POSH Act, 2013 reveals that the said Act does not apply to students since it contains no provisions for students-specific penalties. Hence, the UGC Regulations, 2015/the AICTE Regulations, 2016 and the POSH Act, 2013 together can provide some road map on how to deal with the issue of Sexual harassment in HEIs. Here, for the students who are under 18 years of age<sup>168</sup>, it may also attract the provisions contained under Protection of Children from Sexual Offences Act, 2012, hence may be required to lodge an FIR, as it may require thereunder. Analysis revealed that it might prove to be counterproductive on the part of the Higher Education Institutions (HEIs) to discourage filing of sexual harassment complaints in order to protect reputation of their organization. Lesser number of complaints or for that matter nil complaints would rather establish an eloquent testimony to the gender insensitivity of the University.

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<sup>168</sup> Libnus vs State of Maharashtra (2021) Cr. App. No. 445/2020.

## CHAPTER - 5

### SEXUAL HARASSMENT IN HEIs: LIMITATIONS AND ISSUES BEFORE ICCs

#### 5.1 INTRODUCTION<sup>169</sup>

In Aja Okorie (2014)<sup>170</sup>, the problem of sexual harassment has been classified into three categories in the HEIs, namely; when student is harassing other student, when student is harassing the teacher/non-teacher, and when a teacher/non-teacher is harassing the student. Research undertaken out by another researcher<sup>171</sup> has further strengthened a dimension of this theory by showing that about 99% of respondents found that there is an increase in the sexual harassment cases involving male lecturers committing this crime on the female students.<sup>172</sup> In an Indian study Reena and Saheab (2014)<sup>173</sup>, it is revealed that the Indian Central Government confirmed that in Kendriya Vidyalayas and Navodaya Vidyalayas there were existing of sexual harassment cases against students in these educational institutions. The then Central Cabinet Minister Mr Shashi Tharoor, while speaking in Rajya Sabha, stated that there were as many as 14 number of sexual harassment cases reported in Navodhaya vidhyalaya and 42 number of cases reported in Kendriya vidhyalaya. Out of the above 56 number of cases, guilt was duly established in the inquiries in respect of a total 24 number of accused and accordingly the appropriate actions were taken against them. Aditi et al. (2016) undertook a survey,<sup>174</sup> whereby the study of 408 number of students out of 420 undergraduates of identified technical institutions of the Udupi district, Karnataka, India brought out that the understanding and opinion of undergraduates in respect of sexual harassment differ depending on their age, gender and program of learning.<sup>175</sup> The outcome of analysis, nevertheless,

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<sup>169</sup> Nath, B., & Rana, M. (2020). Study of Law against Sexual Harassment in Higher Educational Institutions in India and Its Limitations.

<sup>170</sup> Aina, A. D., & Kulshrestha, P. (2018). Sexual harassment in educational institutions in Delhi'NCR (India): Level of awareness, perception and experience. *Sexuality & Culture*, 22(1), 106-126.

<sup>171</sup> Joseph, J. (2015). Sexual harassment in tertiary institutions: a comparative perspective. *Temida*, 18(2), 125-144.

<sup>172</sup> McKinney, K. (1990). Sexual harassment of university faculty by colleagues and students. *Sex Roles*, 23(7), 421-438.

<sup>173</sup> Reena, M., & Saheab, O. (2014). Sexual harassment against women at educational institutions. *International Journals of Science and Research*, 3(12), 914-917.

<sup>174</sup> Gurung Ms, A., Priyadarshini Ms, S., & Margaret Ms, B. E. (2016). Perception of Sexual Harassment among the Undergraduate Students. *Manipal Journal of Nursing and Health Sciences*, 2(1), 12.

<sup>175</sup> Gurung Ms, A., Priyadarshini Ms, S., & Margaret Ms, B. E. (2016). Perception of Sexual Harassment among the Undergraduate Students. *Manipal Journal of Nursing and Health Sciences*, 2(1), 12.



does not address the issue of the potential variation of the interpretation based on the different type and form of institutions. A study covering teenage schoolgirls in Tirunelveli, Tamil Nadu, India undertaken by Pavithra et al. (2018)<sup>176</sup> has brought out multiple types of sexual harassment prevailing, ranging from forceful unwelcome genital exposures to physical contact<sup>177 178</sup>.

Here, the researcher has also considered an important and relevant aspect born out of 'Me Too' movement. The 'Me Too' movement and the emerging debates therefrom have given a lift to the awareness regarding workplace sexual harassment menace. Nevertheless, the stoic silence on sexual harassment in academic institutions was broken with a Google sheet developed by a Law student. The list inter-alia contained the names of predators of sexual harassment in both Indian and foreign universities. This had resulted into a stormy debate in the campuses.<sup>179</sup> There were several who condemned the list claiming that the declarations were unsubstantiated. The student who circulated the list vehemently justified her act. In pursuit of her endeavor to generate adequate awareness, she decided to alert the women of the predators of sexual harassment because notwithstanding registering the allegations several times with the authorities, nothing could happen.<sup>180 181</sup>.

In the year 2013 the Law on the prevention, prohibition and redressal of sexual harassment of women at workplace came into being. During the period of 2014-15, about 75 number of complaints were registered in the Indian universities. This data was emerged from a UGC study on the sexual assault complaints against women lecturers, professors and research scholars from 84 number of universities. Most importantly, while analyzing this aspect, we cannot ignore that

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<sup>176</sup> Aina, A. D., & Kulshrestha, P. (2018). Sexual harassment in educational institutions in Delhi'NCR (India): Level of awareness, perception and experience. *Sexuality & Culture*, 22(1), 106-126.

<sup>177</sup> McKinney, K. (1990). Sexual harassment of university faculty by colleagues and students. *Sex Roles*, 23(7), 421-438.

<sup>178</sup> Sinha, B. (2013). Blowing the whistle: Sexual harassment and redressal among female university students in India. *Learning Community-An International Journal of Educational and Social Development*, 4(1), 13-17.

<sup>179</sup> Marshall, C., Dalyot, K., & Galloway, S. (2014). Sexual harassment in higher education: Re-framing the puzzle of its persistence. *Journal of Policy Practice*, 13(4), 276-299.

<sup>180</sup> Cantalupo, N. C., & Kidder, W. C. (2018). A systematic look at a serial problem: Sexual harassment of students by university faculty. *Utah L. Rev.*, 671.

<sup>181</sup> Karmarkar, P. (2020 September 7). Sexual harassment at higher education institutes: what needs to be done?. Retrieved from <http://confluence.ias.ac.in/sexual-harassment-at-higher-education-institutes-what-needs-to-be-done/>.

there are several unreported incidents due to various reasons inter-alia that the subject of sexual harassment carries a stigma [<sup>182</sup>] [<sup>183</sup>].

A most recent UGC study conducted for the period April 2018-March 2019, reported that there were 171 number of incidents in 188 number of universities only, while 149 number of complaints were registered during the period 2016-2017. According to the UGC published data, there were total 945 number of universities including private universities during the period under study. In response to a question whether, in accordance with the Act, the Internal Complaint Committee were established; 29 number of universities out of the total 188 number of universities, which had submitted the report, had provided 'NIL' information, even though the Internal Complaint Committee was to be established mandatorily complying with the provisions of the POSH Act, 2013. Further, only 417 awareness/sensitization sessions organized during the period under study in the said 188 universities. Considering that there would be about 40 participating students in a group, the estimated coverage for the entire lot of 188 universities would be about 16,680 students. The total enrolment in higher education has been estimated to be 34.6 million with 18.6 million boys and 16 million girls, as per the Sixth Report on All India Survey on Higher Education (AISHE) for the year 2015-16 [<sup>184</sup>]. Therefore, the dismal number of awareness program organized by these 188 universities, reflects true picture regarding seriousness demonstrated about the initiatives taken for implementation of POSH Act, 2013, by the HEIs.

Additionally, there remains concerns regarding interpretation of the law and the process of investigation & inquiry. A major challenge is no response or inadequate response from the HEIs to the problems presented. The student behind the 'name and shame list' justified her actions based on the same reason. Several students have stated that the authorities in their institutions are shielding the accused and ignoring their concerns. Most of the times, the complaints were not even registered, and at all they were allowed to file their complaints, they despite being victims were asked offending questions, such as "What did you wear?" "Why did you get there?" "Who was with you?" Such reactions are quite usual and this has penetrated deep into our psyche and in our

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<sup>182</sup> Akhtar, C. (2013). Sexual harassment at workplace and in educational institutions: A case study of District Srinagar, Kashmir. *International NGO Journal*, 8(3), 54-60.

<sup>183</sup> Karmarkar, P. (2020 September 7). Sexual harassment at higher education institutes: what needs to be done?. Retrieved from <http://confluence.ias.ac.in/sexual-harassment-at-higher-education-institutes-what-needs-to-be-done/>.

<sup>184</sup> Karmarkar, P. (2020 September 7). Sexual harassment at higher education institutes: what needs to be done?. Retrieved from <http://confluence.ias.ac.in/sexual-harassment-at-higher-education-institutes-what-needs-to-be-done/>.

culture, while dealing with the complaints of sexual harassment and sexual abuses. Obviously, the authorities concerned at the HEIs often act with the same roguish mindset under these circumstances<sup>[185]</sup>.

Several students comfortably share their experiences of victimization during the investigation process before the ICC. In some cases, the ICC may recommend not pursuing the matter because the respondent has a brilliant career ahead or a higher social or academic standing; or for the reason that the HEI may be projected in the unfavorable light in the outer world, or for any other motivated reasons. Some of the students also prefer to approach the police authorities rather than approaching the ICC in certain situations and with an obvious apprehension in their mind. This strongly highlights a lack of trust of the students in the ICC for (obvious) reasons. Such reasons may be e.g. the respondent himself being a member of the ICC, the perception that the ICC would protect the respondent, sometimes there is a suspected fear of adverse impact on the job or academic pursuits of the victim i.e. complainant, and quite often the ignorance on the part of the victim students regarding complaint redressal mechanism being in place! Importantly, for any such absence of trust in the system, belief or perception about fairness of the ICC, fear of retaliatory impact on the job/academic pursuits of the complainant, and general unawareness of the appropriate redressal mechanism being in place, it is the appropriate Government who shall be largely responsible. There is no denying the fact that for generating awareness, trust and confidence among the law protected, it shall be the mandatory duty of the appropriate Government. <sup>[186]</sup> <sup>[187]</sup>.

## **5.2 SOME KEY SECTIONS UNDER THE POSH Act, 2013**

- 1) **Section 2(n)**: "Sexual harassment includes any of the following improper actions or activities (whether directly or by implication): physical interaction and advancement; sexual favour or request; sexually flavored remarks; pornographic display; any other sexually unwelcome physical, verbal or non-verbal conduct.

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<sup>185</sup> Karmarkar, P. (2020 September 7). Sexual harassment at higher education institutes: what needs to be done?. Retrieved from <http://confluence.ias.ac.in/sexual-harassment-at-higher-education-institutes-what-needs-to-be-done/>.

<sup>186</sup> Dogra, A. & Ahluwalia, N.K. (2015 Feb 3). Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013: A Critical Analysis. Retrieved from <https://www.lawctopus.com/academike/sexual-harassment-workplace-prevention-prohibition-redressal-act-2013-critical-analysis/>.

<sup>187</sup> Cantalupo, N. C., & Kidder, W. C. (2018). A systematic look at a serial problem: Sexual harassment of students by university faculty. *Utah L. Rev.*, 671.

- 2) **Section 3(2):** Sexual harassment may constitute, inter alia, the following situations in which sexual harassment occurs or is present in connection with or in connection with any act or behavior of sexual harassment: an implicit or explicit promise of preferential treatment in her employment; an implicit or explicit threat of adverse treatment in her employment; an implicit or explicit threat to her current or future employment;
- 3) **Section 2, (p):** 'Unorganized industry' means an enterprise run by individuals or self-employed workers engaged in the manufacture or sale of products or any service of any kind in relation to the workplace, and where the enterprise employs workers, the number of such employees is less than ten.
- 4) **Section 3 (m):** "respondent" means a person against whom a complaint under section 9 has been lodged by the aggrieved woman.
- 5) **Section 26: – Penalty for noncompliance with provisions of Act**
  - (1).Where the employer fails to—
    - (a) Constitute an Internal Committee pursuant to sub-section (1) of section 4;
    - (b) take action pursuant to sections 13, 14 and 22;
    - (c) breach or threaten to breach any other provision of this Act or any provision thereunder; and be punishable by a fine of up to 50,000 rupees.
  - 2). If an employer subsequently committing and is convicted of the same crime after being previously convicted of a punishable offence under the present Act shall be liable for twice the penalty that may firstly be levied, subject to the maximum punishment provided for in the same offence; provided that that the Court is properly informed of that fact in the event of higher punishment,

### **5.3 CHALLENGES IN FILING COMPLAINTS IN UNIVERSITIES AND HIGHER EDUCATIONAL INSTITUTIONS**

Establishing an Internal Committee (IC) is mandatory in every establishment, which has 10 or more employees, according to POSH Act, 2013. However, *Fostering Safe*

*Workplaces*<sup>188</sup>, at the behest of the Federation of Indian Chamber of Commerce and Industry conducted a study during the year 2015. The study reveals that more than 35% of domestic companies and around 25% of MNCs had not yet constituted ICs in their respective establishments. The study further reveals that out of the 120 companies, about 50% admitted that their respective IC members were without any proper training. EY Fraud Investigation & Dispute Services conducted a survey titled 'Reining in sexual harassment at the workplace in India' to measure corporate India's perception of the transformation in the wake of the POSH Act, 2013. The key findings reveal the focus of the employers on driving an unfettering change, although uncertainty, caution and contemplation are still highly prevalent.

Section 26<sup>189</sup> of the Act, 2013 reflects an uncertainty & silence about fixing up the responsibility. A question arises if the employer has failed to constitute the Internal Committee, who shall be held accountable for such failure? Who shall be authorized to initiate action against the employer for such failure to form the Internal Committee? Thus, it requires a far more speaking & defined structure properly prescribing for the duty to monitor establishment of such committee by the employer. The POSH Act, 2013 is further silent about the issues of victim women who were dismissed in a retaliatory manner or for some motivated reasons before they could even file their complaint. Thus, there is a strong

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<sup>188</sup> Sharma, D. (2016). Sexual Harassment at Workplace: Revisited. LBS Journal of Management & Research, 14(1), 53-63.

<sup>189</sup> Section 26 of POSH Act, 2013 - Penalty for non-compliance with provisions of Act:

(1) Where the employer fails to

(a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

need to put in place a structure providing for requisite accountability & responsibility for effective enforcement of the provisions under section 26. [<sup>190</sup>] [<sup>191</sup>].

#### **5.4 SALIENT FEATURES OF UGC/AICTE REGULATIONS FOR DEALING WITH HARASSMENT COMPLAINTS**

UGC Regulations, 2015 and AICTE Regulations, 2016 are quite comprehensive to deal with the sexual harassment complaints. The regulations are known as “The UGC (Prevention, prohibition and solution of sexual harassment of women employees and students of higher schools) Regulation 2015” and “The AICTE (Gender Sensitization, Prevention and Prohibition of Sexual Harassment of Women employees or students and Resolution of complaints in Technical education universities) Regulations, 2016”. These respective regulations along with relevant provisions of the Act, 2013 read with rules made thereunder, are mandatory to be followed by the universities and the institutions established thereunder; as the case may be. It is obligatory on the part of the HEIs/TIs to take five steps, as follows. Firstly, that the HEIs/TIs should constitute Internal Complaints Committees as per the provisions of UGC Regulations. Secondly, the HEIs/TIs should organize training programs for the Committee Members on regular intervals to equip them to handle the grievances coming to them. Thirdly, to organize programs generating requisite awareness among the students, faculty and staff. Fourthly, the HEI/TI should treat sexual assault as a violation of the laws & human rights and should impose appropriate penalty on such predators. Fifthly, due regard must be given to the research ethics, which should be religiously followed. This becomes essential because researchers are more prone to sexual harassment [<sup>192</sup>].

#### **5.5 CONSTRAINTS IN HANDLING OF HARASSMENT COMPLAINTS IN HEIs**

Analysis in the following sub-heads reveals various challenges faced by HEIs in handling of complaints:

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<sup>190</sup> Dogra, A. & Ahluwalia, N.K. (2015 Feb 3). Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013: A Critical Analysis. Retrieved from <https://www.lawctopus.com/academike/sexual-harassment-workplace-prevention-prohibition-redressal-act-2013-critical-analysis/>.

<sup>191</sup> Cantalupo, N. C., & Kidder, W. C. (2018). A systematic look at a serial problem: Sexual harassment of students by university faculty. *Utah L. Rev.*, 671.

<sup>192</sup> Karmarkar, P. (2020 September 7). Sexual harassment at higher education institutes: what needs to be done?. Retrieved from <http://confluence.ias.ac.in/sexual-harassment-at-higher-education-institutes-what-needs-to-be-done/>.

### 5.5.1 Arresting violation of the provisions of the Act

The possibility of filing of false cases cannot be ruled out. People may sometimes level sexual harassment allegations, which sounds like a respondent's way of taking revenge because he and the victim had a sweet friendship in the particular situation. The POSH Act, 2013 already contains a provision to deal with the false or malicious complaints or evidence and prescribes for appropriate punishment under Section 14<sup>193</sup>. On the same lines, UGC Regulations, 2015 and AICTE Regulations, 2016 also contain provision to deal with the false or malicious complaints or evidence and prescribes for appropriate punishment under Regulation 11<sup>194</sup> of both the Regulations. However, both the Regulations i.e. UGC Regulations, 2015 or the AICTE Regulations, 2016, or the POSH Act, 2013 contain no appropriate mechanism as to how to detect false complaints. To have such a procedure/mechanism in place shall be extremely essential

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<sup>193</sup> Section 14 of the POSH Act, 2013 - Punishment for false or malicious complaint and false evidence.—

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

<sup>194</sup> Reg 11 of UGC Regulations, 2015 - Action against frivolous complaint - To ensure that the provisions for the protection of employees and students from sexual harassment do not get misused, misused, provisions that the allegations made and publicized 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 complaint shall be liable to be punished as per the provisions of sub-regulations (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.

to prevent abuse of the POSH Act, 2013 and UGC Regulations, 2015 or the AICTE Regulations, 2016, as the case may be, and equip the HEIs/Tis/Employers to effectively implement the law and penalize the false allegations.

#### **5.5.2 Issues concerning Internal Complaints Committee (ICC)**

- (i) The POSH Act, 2013 provides for constitution of Internal Committee at each place of work in all administrative units or divisions under the establishment. The composition of such committee shall include two workers from the organization itself who can ideally work for the cause of women, or who have social or legal awareness or expertise. The third person who shall be a woman employed at a senior level at workplace from amongst the employees, shall be the Presiding Officer of the committee. The fourth person shall be a non-employee taken from outside. Thus, in all, there shall be minimum four committee members. As an essential condition, minimum 50% of the total committee members must be women. However, such composition of Internal Committee as prescribed under the Act, may not serve the purpose in respect of HEIs where we have a composite population consisting of faculty, non-faculty, and students. The students have a further segment consisting of research scholars'. Therefore, the UGC and AICTE, respectively, have enlarged the composition of the Internal Committee as per their extant regulations, while calling the same as 'Internal Complaints Committee' as provided under the POSH Act, 2013. The enlarged composition of the Committee requires additional representation of two faculty and two non-faculty members. Further, additionally, three students shall be inducted in the Committee, if the matter involves students. The Regulations further provide that these three students who shall be enrolled at the undergraduate, master's and research scholar levels respectively, shall be elected through transparent democratic procedure. Notwithstanding, there may be a situation where some employers may not have the employees in his organization who are committed to the cause of woman or who had experience in social work or have legal knowledge. POSH Act, 2013 has not duly considered such



situation being face by the employers. Not only this, there is no discussion under the Act, as to how the honesty and competence of the members of the Committee, which is of paramount consideration to give justice to the purpose, shall be ensured by the employer.

- (ii) Section 8<sup>195</sup> of the POSH Act, 2013 provides for the grants that the Central Government of India may make to the State Governments to utilize he same for the payment of fees or allowances referred in Sub Section (4) of Section 7<sup>196</sup> of the POSH Act, 2013. While it is the responsibility of the employer to organize awareness/sensitization programs and training workshops, such responsibility is attached to the ICC under the UGC Regulations, 2015 and the AICTE Regulations, 2016. The Regulations, however, are silent on the budget allocation for the Internal Complaints Committees, to enable them to discharge such functions. The Regulations should provide what money should be allocated to the ICCs, where the ICCs will get its finance from, and how to utilize them, etc. Further, there is a need to prescribe under the Act about the responsibility of the ICC in the concurrent criminal proceedings going on in the Courts. This shall clear doubts that may be existing in the minds of the ICC and the people and generate requisite awareness.

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<sup>195</sup> Section 8 of POSH Act, 2013 - Grants and audit.—

(1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in subsection (4) of section 7.

(2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

<sup>196</sup> Section 7 (4) of the POSH Act, 2013 - The Chairperson or Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

- (iii) Section 11(3)<sup>197</sup> of the POSH Act, 2013 empowers the Committee to exercise the powers of a civil court to call for discovery and production of any document considered relevant by it. These powers as vested in the Internal Committee shall be the prerogatives of a judge, in the eye of law. The Act 2013 and the UGC/AICTE Regulations do not prescribe for any legal background or some training requirement on relevant legal aspects for the Committee members. Such a provision if kept in the Act, 2013, shall pave the way for effective implementation of the Law.<sup>198</sup>
- (iv) Moreover, the investigation and inquiry process while dealing with the complaints is not uniform, transparent, especially with regard to the documents, and related paperwork.
- (v) The time extension beyond 180 days i.e. six months is not admissible under the POSH Act, 2013 and under the UGC/AICTE Regulations, as well. It is expedient that the period of six months considering its inadequacy in some of the genuine cases, may be allowed to be extended by further six months in exceptional cases, with justifications duly recorded by the Committee.

## 5.6 CONCLUSION

Most people often face sexual harassment at work, but not many speak out. In general, they are afraid of losing their jobs, of facing humiliation in the hands of society, of being trapped in never-ending legal cases or of other unsaid reasons. It is worth mention that still there is inadequacy of legal remedies being available to the victims and a number of lacunas are still existing, which still need to be addressed. The POSH Act, 2013 was primarily enacted to deal with sexual harassment cases of women at workplace and thus did not include men and educational institutions with a fair detail in the framework of the act, as such, does not adequately address the challenges faced by

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<sup>197</sup> Section 11 (3) of POSH Act, 2013 - For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.

<sup>198</sup> Dogra, A. & Ahluwalia, N.K. (2015 Feb 3). Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013: A Critical Analysis. Retrieved from <https://www.lawctopus.com/academike/sexual-harassment-workplace-prevention-prohibition-redressal-act-2013-critical-analysis/>.

the HEIs. Therefore, necessary steps must be taken to address this gap. The institutionalization of the Act, addressing the grey areas and aligning the same to the needs of HEIs, no longer entails a taboo subject for sexual assaults at workplace. The POSH Act, 2013 primarily ought to give the women in the country a key to justice. Through the adoption of proposals and continuing further initiatives over time, we trust that this act will further improve our educational environment and conditions of our society.

## 5.7 SUGGESTIONS

As per analysis, each HEI/TI should constitute a High-Power Monitoring Committee in their respective institutions. Such High Power Monitoring Committee shall meet, at least twice a year, in order to oversee larger compliance of the provisions of the Act and other relevant aspects under the Act. Section 10(1)<sup>199</sup> of the Act (and similarly Regulation 8 (7)<sup>200</sup> of the UGC Regulations, 2015 and AICTE Regulations, 2016) provide for Conciliation at the discretion of the victim at the start of the proceedings. Such a provision contradicts the very spirit of Vishaka Guidelines. Although Regulation 2(j)<sup>201</sup> of the UGC Regulations, 2015 and AICTE Regulations, 2016 does contain provision covering Protected Activity, yet the same is limited firstly to ‘any opposition to violation of sexual harassment laws’, secondly to ‘any participation in sexual harassment proceedings’, and thirdly to ‘any cooperation with an internal investigation or acting as a witness’. The UGC/AICTE Regulations or the POSH Act, 2013 are silent on providing protection to the aggrieved against any retaliatory action. Therefore, there should be some provision, which grants effective protection to the complainant and the witnesses against any retaliatory action against

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<sup>199</sup> Section 10 of the POSH Act, 2013 - Conciliation —

- (1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

<sup>200</sup> Regulation 8 (7) of the UGC Regulations, 2015 - 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 sought. The resolution of the conflict to the full satisfaction of the aggrieved party wherever possible, is preferred to purely punitive intervention.

<sup>201</sup> Regulation 2 (j) of the UGC Regulations, 2015 “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;

them. This will encourage the witnesses to provide their testimony during the proceedings without any fear, judiciously.

## CHAPTER- 6

# ANALYSIS OF FAKE SEXUAL HARASSMENT COMPLAINTS, JUDICIAL PRONOUNCEMENTS AND MENTAL HARASSMENT AT HIGHER EDUCATIONAL INSTITUTIONS

### 6.1 INTRODUCTION

The social construct that the society has developed over a period of time about its male constituents, contains an inherent tendency to justify the violence unleashed against women by men. Sexual harassment is shown by the perceptions of men as being "harmless" or "casual relationships to which only overly-sensitive women object."<sup>202</sup> The Indian Parliament promulgated the POSH Act, 2013 with the aim of protecting them from and remedying harassment at the workplace.<sup>203</sup> However, in stray cases it has been seen that there was an attempted exploitation of the provisions of the Act to fulfil some feud or due to some other reasons. Obviously, no one can, may it be a woman, be allowed to abuse the law to settle some score or to use the law as a weapon to secure personal gains. Therefore, the POSH Act, 2013 vide its section 14<sup>204</sup> also seeks to punish false and malicious complaints. The statistics released from time to time by the National Commission for Women (NCW) show that complaints regarding sexual harassment at the

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202 U.S. Verma, Principal, D.P.S., Faridabad vs National Commission For Women & others (2009) WP (C) No.1730/2001.

203 Gulyani, M. (2014). Protection of Women from Sexual Harassment at Workplace: Some Reflections. Asian Journal of Research in Social Sciences and Humanities, 4(10), 364-373.

204 Section 14 of the POSH Act, 2013 - Punishment for false or malicious complaint and false evidence.—

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

workplace are on a constant rise. The statistics are also revealing that the number of malicious complaints have also commensurately risen<sup>205</sup>. However, the first challenge in regard to the fake complaints would be to determine whether or not the allegations are born out of malicious or frivolous conduct of the complainant because complaints can be considered malicious only if there exists such an intent behind the complaint. It is provided under section 14<sup>206</sup> that malicious intent on the part of the complainant has to be established after an inquiry to be conducted in accordance with the prescribed procedure.

Here the Internal Committee has to be conscious about the theory of ‘no evidence’ and ‘absence of evidence’ to arrive at the conclusion of malicious intent. Just because someone has not seen some other person being struck by lightning, does not mean that lightning does not hit people thereby causing damage to the life and property. Thus, if someone has not witnessed such lightning it would then be a case of absence of evidence and not of the *no evidence*’.<sup>207</sup> However, malicious intent is more difficult to evaluate but is still plausible. Surveys reveal that when a significant number of employees receive undue performance reviews, this results into complaints from their

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<sup>205</sup> Paula, M. (2021 Dec 13). Settling sexual harassment complaints through conciliation: What complaints settle and what complaints don't. Retrieved from <http://eprints.qut.edu.au/219523/>.

<sup>206</sup> Section 14 of POSH Act, 2013 - Punishment for false or malicious complaint and false evidence.—

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

<sup>207</sup> Nath, B., & Rana, M. (2021). Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints. *Ilkogretim Online*, 20(4).

colleagues<sup>208</sup>. In one survey<sup>209</sup>, 12% of respondents said that malicious complaints increase after evaluations and half of those who received malicious complaints do not know about malicious complaints after employee performance assessments. During the period of January 2015 to April 2015, Fraud Investigation & Dispute Services conducted a survey titled "Intensive Rehabilitation in Sexual Harassment at Workplace in India" via online interrogatory. It was hosted in India on the EY website. Different events organized by the firm gave hard copies of the questionnaire to participants. The survey received a significant number of replies. The survey indicated that, contrary to the specific mandate under the Act, only 40 percent of the respondents could train their IC members. In the same survey, 44% of respondents' organizations did not display the criminal implications of sexual harassment in prominent locations. In India, the first legislation to specifically address the issue of sexually abusive activities at workplace was the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act of 2013. The year 2013 has also seen the Criminal Law (Amendment) Act, 2013, which defined the offences like 'sexual harassment, stalking and voyeurism' as Criminal Offence. But, the fact remains that there may be many and varied forms of sexual harassment. It is not limited to seeking for sexual favors alone, which occur in the face of threats of adverse labor consequences.

Nevertheless, it is not only the women who are the victims in all cases. Study reveals that contrary to legislative intent under the Act, 2013, in number of cases, may be in low percentage, men also face the sexual harassment or become victim of fake complaints against them. Rather, in some of the cases, men in the workplace were more vulnerable to sexual harassment, especially in the educational institutions.

## 6.2 MALICIOUS COMPLAINTS

A proper investigation will ensure a fair, objective and thorough process of fact-finding including the identification, collection and evaluation of evidence. At the outset, it has to be viewed whether the alleged complaint contains a prima facie element of sexual harassment? Here, a superficial understanding of harassment would not be sufficient. Similarly, a superficial analysis solely

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<sup>208</sup> Welsh, S. (2000). The multidimensional nature of sexual harassment: An empirical analysis of women's sexual harassment complaints. *Violence Against Women*, 6(2), 118-141.

<sup>209</sup> Nath, B., & Rana, M. (2021). Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints. *Ilkogretim Online*, 20(4).

relying on what the complainant has alleged, or not looking at how the harassment affects the complainant, shall also be inadequate.<sup>210</sup> The evidence has to be assessed in totality to determine whether any specific behaviors constitute sexual harassment or something else, such as interpersonal conflicts or unprofessional behavior, miscommunication, or potentially criminal behavior (stalking) etc.. A process-based assessment is fundamental to a careful, objective, and thorough examination of the facts using the requisite "balance of probabilities" that is the civil standard of proof.<sup>211</sup>

The statute provides that the law enforcement officials will not retaliate against the complainants who have alleged that the Act was not properly followed or when complainants report false or malicious claims. According to the law, if during the investigation Internal Committee or the Local Committee concludes that the plaintiff has made the allegation false or malicious or the complaint was made knowing that the allegation was false or forged or misleading, disciplinary actions may be taken against the plaintiff according to the organization service rules.<sup>212</sup> <sup>213</sup>The law establishes the procedure for disciplining an employee. However, if the organization does not have its own service rules in place, then the organization may impose the punishment recommended by IC/LC, which may include warnings, reprimands, write up, reprimand, withholding of pay increases, community service, counselling sessions, suspension, termination or termination with benefits. As long as the complainants have evidence to back up their claims, it is fine to deem their claims as true, even if they fail to disclose facts of which they have conclusive evidence. [<sup>214</sup>][<sup>215</sup>]

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<sup>210</sup> Summers, R. J. (1996). The effect of harasser performance status and complainant tolerance on reactions to a complaint of sexual harassment. *Journal of Vocational Behavior*, 49(1), 53-67.

<sup>211</sup> Sharma, D. (2016). Sexual Harassment at Workplace: Revisited. *LBS Journal of Management & Research*, 14(1), 53-63.

<sup>212</sup> Summers, R. J. (1996). The effect of harasser performance status and complainant tolerance on reactions to a complaint of sexual harassment. *Journal of Vocational Behavior*, 49(1), 53-67.

<sup>213</sup> Pierce, C. A., Broberg, B. J., McClure, J. R., & Aguinis, H. (2004). Responding to sexual harassment complaints: Effects of a dissolved workplace romance on decision-making standards. *Organizational Behavior and Human Decision Processes*, 95(1), 66-82.

<sup>214</sup> Welsh, S., Carr, J., MacQuarrie, B., & Huntley, A. (2006). "I'm not thinking of it as sexual harassment" understanding harassment across race and citizenship. *Gender & Society*, 20(1), 87-107.

<sup>215</sup> Sigal, J. (2006). International sexual harassment. *Annals of the New York Academy of Sciences*, 1087(1), 356-369.



### 6.3 PERSPECTIVE

Whilst sexual harassment is a reality since humans first lived on earth, recently it has only been recognized as a serious and real problem, especially at the workplaces. The practice of sexual harassment could be at least a century old, when sexual harassment has been defined as unwanted sexual relations between subordinates at work and superiors. Sexual coercion, for example, was an integral element in African American women's slavery without the law being protected. The survival reports of women who were engaged in manufacturing and clerical activities in the late 19th century also refer to different contexts of sexual relationships imposed by men. Initially, because the tort law gave women no adequate protection against gender-related crimes to seek compensation for damages against sexual assaults, it was used as a weapon against women for sexual coercion at the workplace. It gave rise to damages action to the extent that the assaulted woman was injured on a male property. Sexual harassment in Australia, Canada, New Zealand and Japan was first coined in the United States of America. It was later in the year 1975 come to known as Public media.<sup>216</sup>

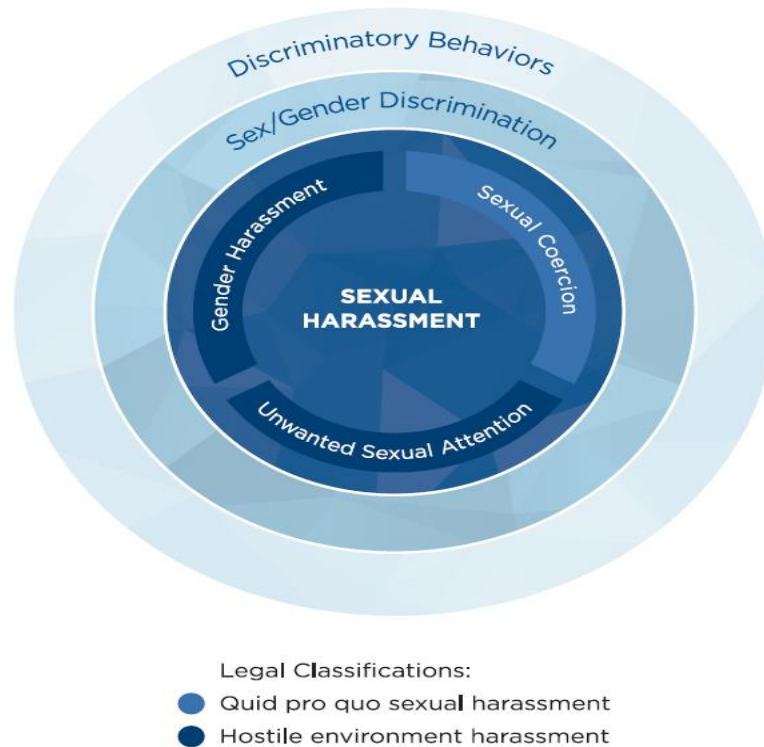
### 6.4 SEXUAL HARASSMENT

In the area of sexual harassment at workplace, jurisprudence has been evolved to a great extent. The entire circumstances leading to the sexual harassment have since been crystalized into two main types of workplace sexual harassments, as follows; Hostile Work Environment and Quid Pro Quo (Figure 6.1). However, instead of applying a narrow and pedantic meaning, the term "sexual harassment" should be used to describe the concept as it is understood on international platforms such as the United Nations resolutions under the CEDAW Convention, the Beijing Declaration, and the Beijing Platform For Action. India is a signatory to these platforms, "where 'sexual harassment at work' is held to be an act of human rights violation." The rights of women to live in decency and to be protected from all forms of discrimination must be respected. It is commonly understood that no effective removal of sexual harassment is feasible without achieving substantive equality between men and women in the workplace, as it is a barrier to their abilities

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<sup>216</sup> Nath, B., & Rana, M. (2021). Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints. *Ilkogretim Online*, 20(4).

to fight for a safe, healthy working environment and to advance in their careers. It is clear from the international positions on sexual harassment enshrined in the CEDAW Convention. [217]



**Figure 6.1**<sup>218</sup>

(Discriminatory behavior, sex/gender discrimination, sexual harassment, gender harassment, quid pro quo sexual harassment, and hostile environment harassment all have a link. While sexual coercion is by definition quid pro quo sexual harassment, unwelcome sexual attention might be considered quid pro quo sexual harassment if it becomes a precondition or condition of employment to tolerate it.)<sup>219</sup>

<sup>217</sup> Global Health Private Limited Vs. Local Complaints Committee (2019) WP No.22317/2017 & 22314/2017.

<sup>218</sup> Fitzgerald, L. F., Gelfand, M. J., & Drasgow, F. (1995). Measuring sexual harassment: Theoretical and psychometric advances. *Basic and applied social psychology*, 17(4), 425-445.

<sup>219</sup> Fitzgerald, L. F., Gelfand, M. J., & Drasgow, F. (1995). Measuring sexual harassment: Theoretical and psychometric advances. *Basic and applied social psychology*, 17(4), 425-445.

## **6.5 EMPOWERMENT NEEDS TO BE INTRODUCED INTO THE WORKPLACE**

It is time to move beyond compliance and into creating company cultures that are welcoming and supportive of employees. Failure to deal with sexual harassment charges now are no longer be acceptable. This critical issue has brought to light the fact of widespread workplace gender-based sexual harassment and abuse. Even if a societal shift demanding greater accountability for workplace sexual harassment is taking place in the open, we must consider what interventions are being made behind closed doors. An in-depth examination of corporate circles suggests that existing regulations are ineffectual, and that the prevention of sexual harassment is more socially based. Unfortunately, a large proportion of businesses fail to address situations of sexual harassment, which has a detrimental impact on the workplace. [<sup>220</sup>].

## **6.6 RESEARCH SHOWS THAT HARASSMENT TRAINING MAKES MEN MORE LIKELY TO BLAME THE VICTIMS**

Why training on harassment raises a backlash in the workplace? That doesn't seem reasonable. The main problem with training is how it is presented. This action assumes that men must be forced to make payments for it. And it touches on prohibited behaviors, which signals that they do not know where to draw the line. In this story, the message is that men can be fixed. Start a presentation by telling people they are the cause of the problem, and they will react in fear and defence. Once they are challenged, they are much less willing to support the reforms. Research shows that training men to not respond to harassment makes them more inclined to actually harass other women in turn. According to a 2018 study carried out by the Pew Research Center, 31 percent of men said sexual harassment is a major problem. Meanwhile, 58 percent of women who had been harassed said not being believed is a major problem<sup>221</sup>.

## **6.7 INTRODUCTION ABOUT INTERNAL COMMITTEE**

The Internal Committee (IC) is a mandatory committee that every workplace, having 10 or more employees, must have, which makes sure that sexual harassment complaints are properly handled.

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<sup>220</sup> Global Health Private Limited Vs. Local Complaints Committee (2019) WP No.22317/2017 & 22314/2017.

<sup>221</sup> Yahnke, K. (2018 April 16). Sexual Harassment Statistics: The Numbers Behind the Problem. Retrieved from <https://www.i-sight.com/resources/sexual-harassment-statistics-the-numbers-behind-the-problem/>.

In the scenario when the organization has its offices at multiple locations, it is important to have an IC constituted for each of such offices since employer has to address the issues of sexual harassment across the offices and across the organization. Every large company needs to have in place an effective IC<sup>222</sup>.

## 6.8 THE INTERNAL COMPLAINT MEMBERS

The Internal Complaints Committee must comprise of:

- 1) **Presiding Officer:** The presiding officer shall be a woman, at a senior rank to work in accordance with the Internal Committee policy.
- 2) **Internal Members:** It is important that at least two members of the Internal Committee should be selected from among the employees who are actively committed to women's causes or who have had social work experience or who have legal knowledge.
- 3) **External Member:** An external member of NGOs or women's organizations or persons familiar with issues of sexual harassment.
- 4) **50% Women:** Each ICC must have at least half women members.

## 6.9 RESPONSIBILITIES OF INTERNAL COMMITTEE (IC)

Every organization must have a safe and conducive work environment. If a customer files a complaint under POSH Act, 2013, then IC is only responsible body to investigate, and with no biasness. The IC, legally, is required to respond to complaints quickly. So, the IC is assigned to intervene in everything related to sexual harassment complaints. The sexual harassment cases tarnish the name of not only the complainants and the accused, but of the organization and its goodwill as well. Internal Committee (IC) shall be obligated to receive complaints and provide protection against sexual harassment. The Internal Committee (IC) is to be constituted at all levels of the organization and its policies should be widely published. (Reference POSH Act, 2013).

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<sup>222</sup> Admin. (2020 July 5). Composition and Duties of the Internal Complaints Committee. Retrieved from <https://muds.co.in/composition-and-duties-of-the-internal-complaints-committee/>.

## **6.10 POWERS OF THE INTERNAL COMMITTEE**

The Internal Committee makes a crucial contribution towards the advancement of the policy on sexual harassment Complaints. The primary purpose of the Internal Committee (IC) is (reference POSH Act, 2013):

- Implementation of Prevention of Sexual Harassment Policy.
- Resolving complaints by aggrieved people on the basis of policy.
- Recommending actions of employer

When conducting an inquiry, the Internal Committees enjoy the powers of a Civil Court as provided under the Code of Civil Procedure, 1908. These powers include summoning and compelling attendance of any person, interrogating him under oath, requiring the discovery and production of documents, and any other issue that may be specified. This makes the function of these committees extremely difficult and time-consuming, and further, it will be subjected to judicial scrutiny. Any lapse in their performance could lead to a faulty judgement, which could jeopardize the concerned person's reputation, career, and life. This may also have disastrous consequences for his family.

## **6.11 RESPONSIBILITIES OF INTERNAL COMPLAINTS COMMITTEE**

- Receives sexual harassment complaints.
- Conduct an investigation/inquiry.
- Submit findings and recommendation to the employer.
- Coordinate with the employer so as to implement appropriate action.
- Keep confidentiality throughout the process.
- Submit the mandatory annual reports to the appropriate authorities.

## **6.12 FALSE CASES OF SEXUAL HARASSMENT AT WORKPLACE**

Some of the important court cases concerning false complaints are as follows:

**6.12.1 *Usha C.S v. Madras Refineries*<sup>223</sup>:** Considering the material and evidence on record and after hearing the parties, it was held by the Court there was no justification behind the allegations leveled by the employee about her promotion including that of study leave. The bench found that these decisions were taken inconformity with the departmental rules and policy. The Court further preferred to advise the other courts that their decisions should be driven by the facts brought out on record. A presumption that a woman shall always be a victim, can do miscarriage of justice. It has happened in cases of Domestic Violence and Dowry Harassment. Several persons have suffered because of such false allegations, prosecution and unfounded presumption. It is a fact that quite often it would be highly challenging for a man to establish his guiltlessness in false case brought against him. Nevertheless, there is no denying the fact that in the cases related to sexual offence, it would be similarly challenging for a woman narrate her experience before the people.

**6.12.2 *Anita Suresh vs Union of India & Others; Delhi High Court*<sup>224</sup>:** The court ruled that the complaint dated 8 July 2011 is false after carefully considering the processes of the inquiry. The complaint included two incidences that took place in front of the petitioner's coworkers, staff, and others. The complainant was unable to identify anyone present at the time. Despite the fact that the witnesses were on duty on the day of the occurrence, they were unable to recall the identities of the employees. It is hard to believe that the petitioner couldn't recall anyone's name. During the investigation, the Committee discovered that no one backed up the petitioner's claims. Because of the modesty issue, the respondent has been left out of the complaint. The petitioner did not attempt to explain himself.

**6.12.3 *N.N.S. Rana vs Union of India & Others; Delhi High Court*<sup>225</sup>:** This case should have been filed on or before 04/11/97. This fact reveals that this lawsuit was filed in 2001, 4½ years after it accrued. The case is timed out already. Plaintiff had a continuous action in this matter because the departmental inquiry was still pending against him. In case of defamation, there can be no continuous cause of action for the Libel or Slander. One year limitation does not clearly reflect how serious an issue the issue is without departmental

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<sup>223</sup> Usha C.S. vs Madras Refineries Ltd. And Others (2001) IILLJ 148 Mad.

<sup>224</sup> Anita Suresh vs Union Of India & Others (2019) W.P.(C) 5114/2015.

<sup>225</sup> N.N.S. Rana vs Union Of India (UOI) And Others (2004) 3 SLJ 372 CAT.

investigation. At this point in time, it is stated by the Plaintiff that he was charged with a false case so he deserves compensation because of malicious prosecution. This suit is for damages for slander and not for malicious prosecution. If the plaintiff wanted the defendant to be compelled to pay the compensation he deserved, he could have simply sued the defendant for malicious prosecution. However, 9 years without success. Plaintiff cannot change the nature of the case during the trial. It can be said that he was the leader of Ld. .'s Counsel for the defendant wants to use the issue of the lawsuit being time barred to justify the request. The alertness of the defendants may have prevented a lot of years in the trial because the case was previously decided and was terminated. There was no merit or substance found in appeal, hence dismissed.

### **6.13 AMENDMENT REQUIRED TO FIX RESPONSIBILITY FOR ADDRESSING THE FALSE CASES**

The dark reality of the Indian society that devastates any person's soul, disrupting his self-respect and purges the hope of living for many is that of false cases of rape, sexual assault, sexual harassment, and sexual abuse.<sup>226</sup> No wonder the rate is 14.3 for every 100,000 inhabitants of male suicide for the whole of India. The value ranges up to 3.5 times for men in comparison to women.<sup>227</sup> According to data from the National Crime Records Bureau, there were 133,623 suicides reported in India in 2015, with 91,528 (68%) men and 42,088 women.<sup>228</sup> (Figure 6.2).

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<sup>226</sup> Huntington, C., Berkowitz, A. D., & Orchowski, L. M. (2022). False accusations of sexual assault: Prevalence, misperceptions, and implications for prevention work with men and boys. In *Engaging Boys and Men in Sexual Assault Prevention* (pp. 379-399). Academic Press.

<sup>227</sup> Metz, J., Myers, K., & Wallace, P. (2021). 'Rape is a man's issue:' gender and power in the era of affirmative sexual consent. *Journal of gender studies*, 30(1), 52-65.

<sup>228</sup> Saha, D. (2017 May 19). Looking At Male Suicides in India. Retrieved from <https://thewire.in/culture/reporters-diary-male-suicides-india>.

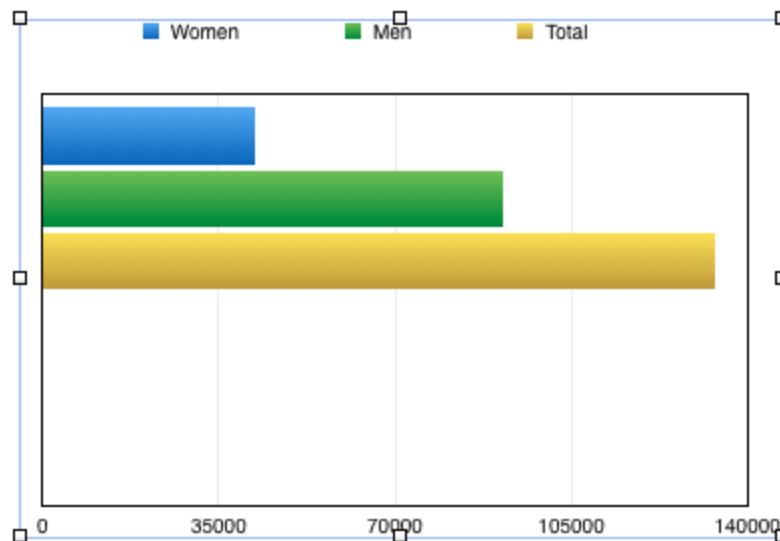


Figure: 6.2

**Credit: NCRB, 2015<sup>229</sup>**

According to the NCRB, males accounted for 70.2 percent of suicide fatalities in 2019, while females accounted for 29.8%. In 2015, 91,528 men committed suicide, with daily wage earners (20,409) accounting for 23% of the total, followed by people working in the agricultural sector (11,584) and self-employed people (11,584). (11,124). According to reports, men commit suicide at a higher rate than women. This tendency may be seen all around the world. In the United Kingdom, for example, men committed 76 percent of suicides in 2014. According to the Indian Psychiatric Society, women are three times more likely than men to attempt suicide, as reported by the Times of India in September 2016. If this is accurate, as gruesome as it may sound, then the suicides rate is less in women as compared to men.<sup>230</sup>

Despite all the ingredients of Section 209<sup>231</sup> of Indian Penal Code, victims either do not know or are so shaken that they do not file prosecution despite being the victims of false and fraudulent cases. In some cases, if he has the courage and the money left, the system makes sure he lets the struggle go. A man seldom fights to take it to logical conclusion, but convictions were indeed made

<sup>229</sup> Saha, D. (2017 May 19). Looking At Male Suicides in India. Retrieved from <https://thewire.in/culture/reporters-diary-male-suicides-india>.

<sup>230</sup> Saha, D. (2017 May 19). Looking At Male Suicides in India. Retrieved from <https://thewire.in/culture/reporters-diary-male-suicides-india>.

<sup>231</sup> “Dishonestly Making False Claim in Court”



including in the false allegations levelled against Mr Ranjan Gogoi, former Chief Justice of India.<sup>232</sup> This will further have catastrophic effect on his family as well. For example, a senior executive working for Genpact India allegedly killed himself at his home in Noida after being suspended from his job over sexual harassment allegations, which he said in his suicide note were untrue. According to police, his wife along with a purported suicide note, which reads as follows, discovered the body of the man: In its suspension letter the company stated that until the investigation against him had been completed, he would be prohibited from participating in official work. In his note he denied all claims and wrote that his reputation has been tarnished even if it has been proven innocent. The victim married two years ago. In 2007, he became a process developer and became a corporate ladder, according to his LinkedIn profile. It was just before the incident that he was promoted to the highest position.<sup>233</sup>

#### 6.14 THE CONSEQUENCES OF FALSE CASE ON MEN

- The victim is severely affected in physical, mental, psychological, social and economic health.
- Loss of employment in competitive times, loss to businesses
- The plight of these victims is rarely emphasized in our media publishers.
- False propaganda that leads to social status loss and support
- Although the social needs of women victims of abuse in society are recognized, the aid of male victims of abuse is virtually non-existent.

#### 6.15 NEED FOR WOMEN SENSITIZATION

The need to warn the female employees that the POSH Act, 2013 contains a punitive provision for false accusations or frivolous complaints by female employees is also important for female employees. If the IC finds that the allegations are malicious or the complaint has been made by

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<sup>232</sup> Huntington, C., Berkowitz, A. D., & Orchowski, L. M. (2022). False accusations of sexual assault: Prevalence, misperceptions, and implications for prevention work with men and boys. In *Engaging Boys and Men in Sexual Assault Prevention* (pp. 379-399). Academic Press.

<sup>233</sup> Tyagi, T. (2018 Dec 20). Facing sexual harassment probe, Genpact executive commits suicide in Noida. Retrieved from <https://www.hindustantimes.com/india-news/assistant-vice-president-of-genpact-kills-self-in-noida/story-YcqAhV0kavbhwmg8cP8OtM.html>.

the accused woman knowing that the complaint is false, the employer may be recommended that it take action against such employee. In addition, the employer may also proceed against the individual if she/he has produced a forged or misleading document. This makes it unquestionably necessary for the plaintiff to present a substantial case based on evidence and proper professionals to avoid charging him with a malicious complaint.<sup>234</sup> However, the Law also says that the prosecutor shall not attract action under this section merely on the ground that she was incapable of justifying a complaint or providing appropriate evidence. It may rather show that the complainant could be subject to any negative consequences merely because of non-substantiation of the complaint or for the reasons of failure to adduce sufficient proof during the inquiry. In addition, the Act provides for the Malicious intention of the complainant to be established following an inquiry according to the procedure prescribed before any step is suggested, as an additional safeguard in order to ensure that complainants are not harassed on the mere allegation of frivolous complaints. The procedure for such an investigation would always ensure that the complainant has fair opportunity to defend herself before taking any action against her. The Act the discouraging the malicious complaints made by women does not only strike a balance so that males do not confront fake charges of sexual harassment, but also recognizes the difficulties of gathering evidence for women who are faced with sexual wrongdoing. The Act, therefore, needs to be tested seriously.<sup>235</sup>

The recommended amendment to the role of the IC committee in identifying fraud cases through such committee within the existing IC that collects evidence for both sides and presents it to the IC, and this way of investigation has less chance of prejudice and the IC's judgement is more objective and judicious.

## 6.16 CONCLUDING REMARKS

In the analysis it is found that with regular awareness campaigns conducted across the organization and possession of requisite evidence analytical skills by the IC members, they can equip themselves to differentiate between a complaint with 'absence of evidence' and a complaint with

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<sup>234</sup> Nath, B., & Rana, M. (2021). Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints. *Ilkogretim Online*, 20(4).

<sup>235</sup> Nath, B., & Rana, M. (2021). Need to revisit law relating to sexual harassment: with special reference to fake complaints and mental harassment cases due to sexual harassment complaints. *Ilkogretim Online*, 20(4).

‘malicious intent’. Therefore, first and foremost would be to generate awareness among employees and other stake holders about the false complaints. This needs to be done primarily by the employer. The employer inter-alia needs to sensitize the entire work force about penal provisions for putting up a grievance that is fabricated or malicious. Additionally, appropriate trainings must be organized for the IC members so that they can truly understand the concept of ‘no evidence’ and ‘absence of evidence’ while dealing with the sexual harassment complaints based on which the conclusion can be reached whether the complaint fall under the ‘proven’ category or ‘not proven’ category or it falls under the category of ‘malicious’. There may be a situation where administrative machinery at the workplace is in possession of some information, which brings out that the complaint was made pursuant to some pre-planning or malicious design. In such a scenario, there should be an attempt to invigorate the process of conciliation. However, as the Law provides, the option of conciliation rests with the victim woman alone, which must not be forced upon her by the IC. Evidence, which comprise of documented behavior, messages and emails, should be considered contextually instead of considering them in isolation.

## **CHAPTER-7**

### **A FIELD STUDY ON SEXUAL HARASSMENT IN HIGHER EDUCATIONAL INSTITUTIONS IN INDIA**

#### **7.1 INTRODUCTION**

In regard especially to the Higher Educational Institutions (HEIs), according to one study<sup>236</sup>, women carefully monitor and try to avoid instructors who harass them. However, when harassment occurs in more established student teacher relationships, women often lose their academic self-confidence and become disillusioned with male faculty. Such prevalence of sexual harassment has the cumulative effect of eroding women's commitment to careers in male-dominated areas.

Sexual harassment is widespread throughout the HEIs. It has a bearing and telling effect on the students & faculty in particular and the HEIs in general. Adverse working environment, lack of proactive approach on the part of HEIs to address the issues relating to sexual harassment, a casual compliance of the HEIs duties to implement legal provisions to arrest such incidents, inadequate conduct of awareness and gender sensitization programs in the organization, a culture of luke warm response to the complaints of sexual discrimination, and a lack of active and effective functioning of Internal Complaints Committees; are all the major causes for the rampant sexual harassment cases.

The aim of this study is to examine and study the scenario prevailing in various HEIs in India and to arrive at an outcome thereon.

#### **7.2 HYPOTHESIS**

There is an imperative need to amend POSH Act, 2013 to align its provisions to address the needs of higher educational institutions, in letter and spirit.

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<sup>236</sup> Benson, D. J., & Thomson, G. E. (1982). Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. *Social problems*, 29(3), 236-251.

### **7.3 RESEARCH QUESTIONS**

In this light, the Researcher conducted a survey during the year 2021-22, using Google forms among current and former students of higher educational institutions across India, in order to understand the prevalence of sexual harassment in HEIs. A questionnaire was developed based on the various challenges envisaged above. It contained initial five questions asking for personal details of the respondents while the remaining eight questions were asked on the aspect of sexual harassment in HEIs in India, as follows:

- 7.3.1 Does your institution discourage filing of sexual harassment complaints to protect its image?
- 7.3.2 Have you heard about cases of sexual harassment in your institution?
- 7.3.3 Was any training or education imparted to you on prevention of sexual harassment, when you were inducted in your institution?
- 7.3.4 Are you aware of an 'Internal Complaint Committee' existing in your institution?
- 7.3.5 Do you think lack of awareness of the provisions of POSH Act, 2013 makes people fall victim of sexual harassment?
- 7.3.6 Is there any relation of power with sexual harassment by men with formal authority over women, in your Institution?
- 7.3.7 Does POSH Act, 2013 contain adequate monitoring provisions to enforce its implementation in your institution?
- 7.3.8 Are there any areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions?

### **7.4 RESEARCH METHODOLOGY**

The study relies on the doctrinal methods as well as field survey. It has studied the pros and cons of the POSH Act, 2013, aiming at a research in the direction of getting it (the Act) aligned with the needs of higher educational institutions. The material has been gathered from various enactments and different Landmark Judgments, case laws decided by the different Courts including the Supreme Court of India, relevant books, Articles, research papers, reports etc. The Higher Educational Institutions are University of Petroleum and Energy Studies, Adamas University, OP Jindal Global University, Amity University, Himgiri Zee University, Garhwal

University, IIT-Roorkee, NIT Rourkela, IIM-Lucknow, IIM-Vishakhapatnam, MDI-Gurgaon, Indian Institute of Foreign Trade, Graphic Era University and Uttaranchal University.

### **7.5 UNIVERSE OF STUDY**

For the purpose of this study, ‘Universe’ refers to the students who have studied or who have been presently studying and the faculties in Higher Educational Institutions across length and breadth of India. However, keeping in view the financial constraints and lockdown in the wake of COVID-19, the scope of the present research has been limited to using Google Forms, which was convenient for the researcher to invoke for data collection from various students across several Indian states. An attempt has been made to extract ground realities concerning scenario prevailing in Higher Educational Institutions arising from sexual harassment. With this aim, the target population irrespective of their age includes female students and Male students all of them who have studied or are studying in Higher Educational Institutions, whether privately run or Government run, including faculties across genders.

### **7.6 THE SAMPLE AND SAMPLING DESIGN**

In this study, random sampling has been used to select the respondents. It is because sexual harassment largely refers to the perception of the aggrieved rather than findings its prevalence as per the literal definitions. Therefore, to carry out a study like this, it is not necessary to select only those respondents who have themselves been the victims of sexual harassment; rather the perception of those shall also be equally important who have witnessed such scenario from a distance. Thus, requisite efforts have been made to give good regard to various demographic characteristics of the respondents such as specific gender of the respondent and the type of institution (privately run or government run) they belong to. A Survey Questionnaire containing 8 statements has been administered in the public domain via Google Forms. A total of 202 responses were received.

### **7.7 LIMITATION OF THE STUDY**

This study is primarily based on a short survey conducted with the help of a questionnaire. It is entirely based on the views and ideas reflected by the respondents. The accuracy and authenticity

of the study depends on the truthfulness of the revelations of the respondents. The results cannot be so accurate if the respondents keep themselves away from speaking the truth. An attempt has been made to extract honest responses from the respondents. However, some limitations of this research are as follows:

- 7.7.1 While the questionnaire has been designed carefully, nevertheless, because of lack of personal meeting with the respondents to clarify doubts, if any, some element of bias might have crept in the questionnaire, which have been placed in public domain via Google Forms;
- 7.7.2 Some of the respondents might not have experienced the sexual harassment. Nevertheless, they might have submitted their responses based on their own perception coming through hearsay;
- 7.7.3 Lack of any financial support.

## 7.8 ANALYSIS

The states wise and cities wise spread of the respondents is contained under Figure 7.1 and 7.2, respectively. A reasonable spread of study across various states (24 states in all) and cities thereunder was attempted to consider the legal challenges faced by HEIs at pan India level. In all 202 responses from 24 number of different states have been received. The gender wise break-up of the respondents was 52.97% females and 47.03% males.

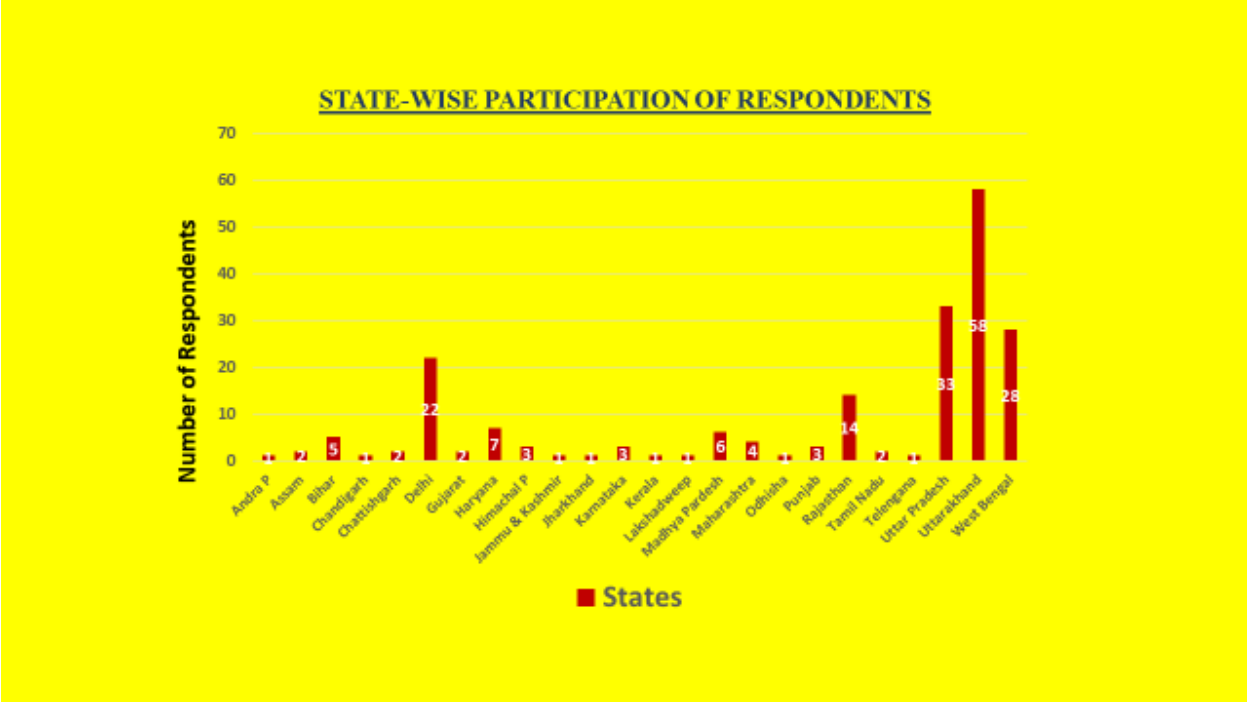


Table 7.1

State-wise participation of Respondents

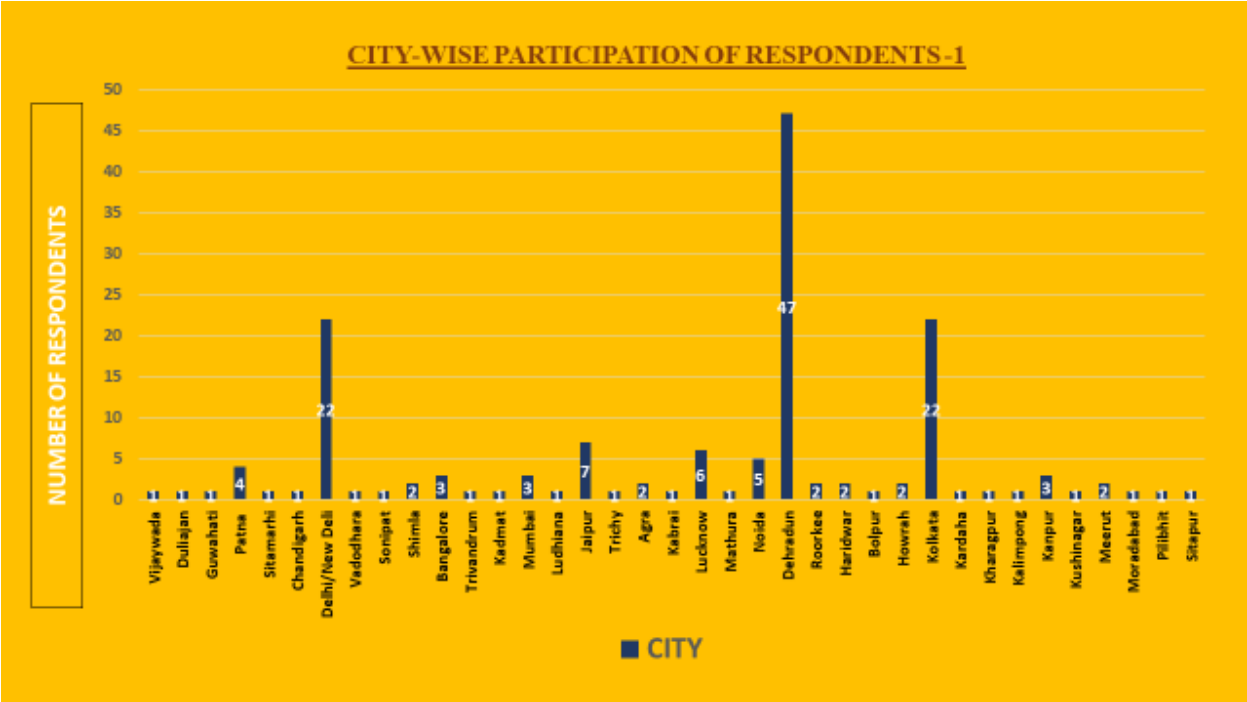


Table 7.2 (a)



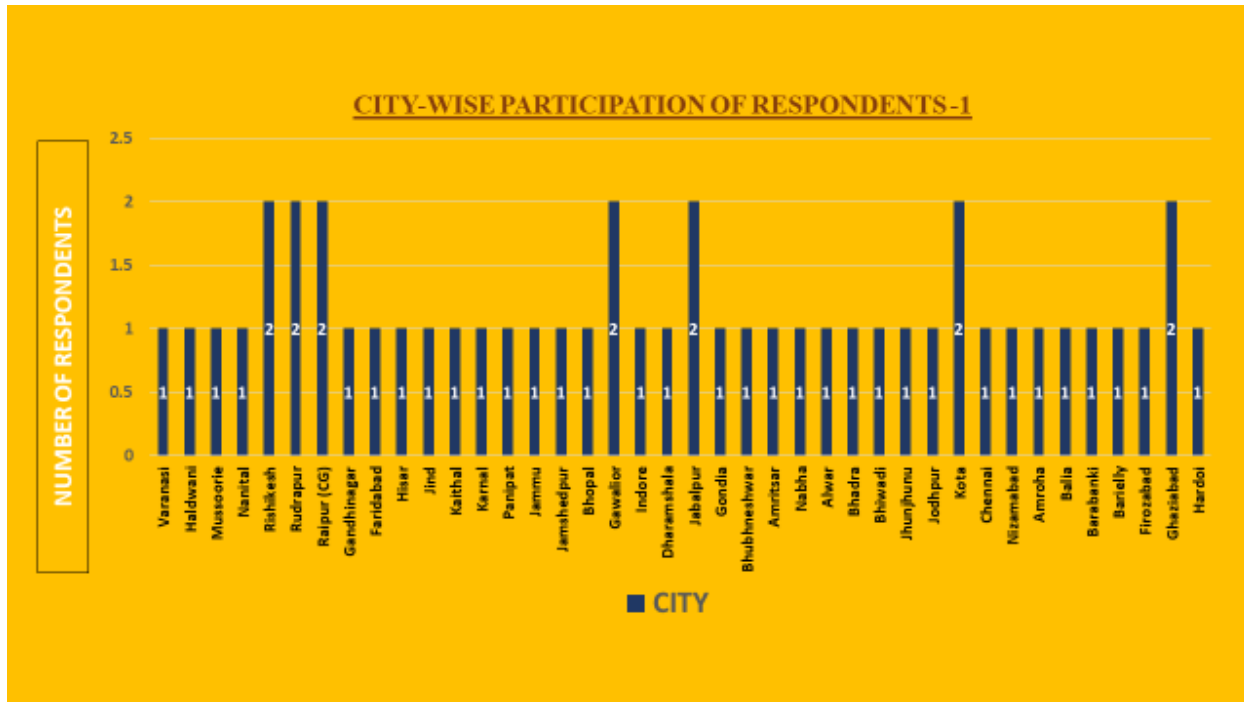


Table 7.2 (b)

**City-wise representation of Respondents.**

**7.8.1 Whether HEIs discourage filing of sexual harassment complaints in order to protect their image?**

According to regulation 2(k) (i) and (ii), of the University Grants Commission (Prevention, prohibition and redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 201, sexual harassment has been defined, as follows:

(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 behavior (whether directly or by implication), namely; -

- (a) Any unwelcome physical, verbal or non-verbal conduct of sexual nature;
- (b) demand or request for sexual favors;
- (c) making sexually colored 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 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 person concerned;’’

Explanatorily, the first two provisions of the above definition deal with unequal power relations between the employer/supervisor and employee/subordinate (Smit and Du Plessis 2011)<sup>237</sup>. Spirit underlying these two provisions reflects expectation or demand of sexual favour by the superior from the one lower in hierarchy, in lieu of academic or other benefits/decisions etc... The third provision addresses existence of a hostile work environment where the hostility interferes with the satisfactory work performance of the victim (Ladebo 2003)<sup>238</sup>.

In furtherance, the respondents were asked the attitude of the institutions towards the complaint filed before their respective university authorities. They were specifically asked whether their institutions discourage filing of sexual harassment complaints to protect its image. The study revealed that 75.75% of the respondents were of the view that their institutions did not discourage filing of sexual harassment complaints to protect its image. The large differences between two groups is seen significant by the researcher. Thus, this was an interesting outcome of this study, which establishes the fact that today’s HEIs are demonstrating a more positive approach towards encouraging filing of sexual harassment complaints in their institutions. However, out of the total

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<sup>237</sup> Smit, D., & Du Plessis, V. (2011). Sexual harassment in the education sector. Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad, 14(6), 173-217.

<sup>238</sup> Ladebo, O. J. (2003). Sexual harassment in academia in Nigeria: how real?. African Sociological Review/Revue Africaine de Sociologie, 7(1), 117-130.

respondents who have given positive feedback majority belongs to females constituting a share of 53.59% while 46.41% of men respondents submitted their positive feedback. Thus, 24.25% of the total respondents stated that their institution discourage filing of sexual harassment complaints to protect its image and among them 51.02% population were women. (Table 7.3)

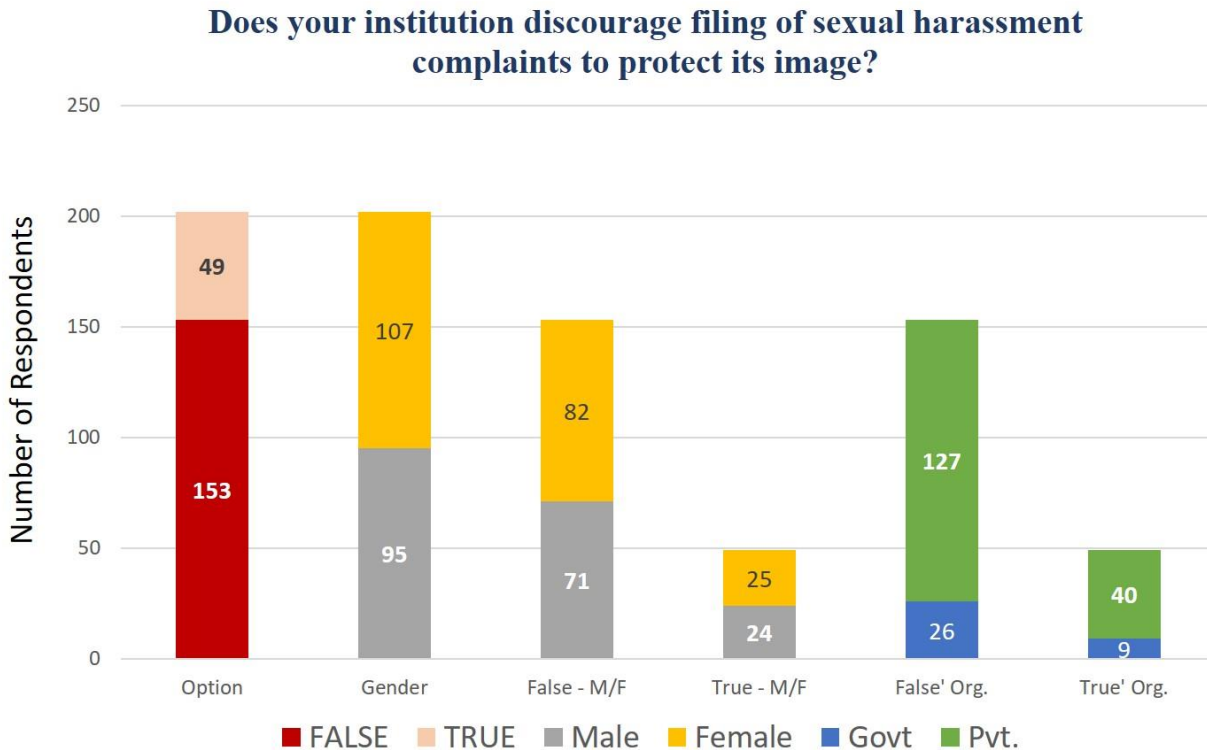
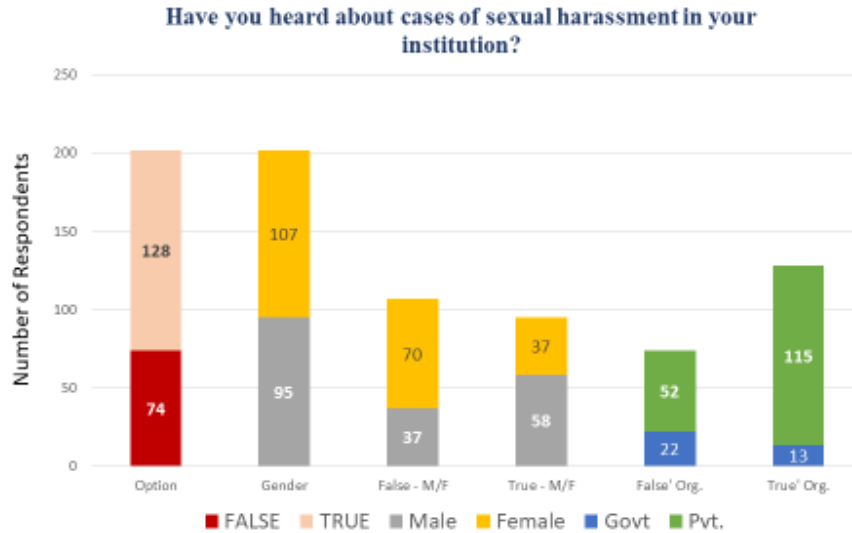


Table 7.3

### 7.8.2 Prevalence of cases of sexual harassment in institutions

- To study about prevalence of sexual harassment cases in the HEIs, the respondents were asked whether they have heard about cases of sexual harassment in their institutions. 36.63% of the respondents confirmed having heard about such cases in their institutions while the remaining 63.37% gave different feedback. However, when the responses were analyzed in relation to Government vis-à-vis Private institutions, a significant outcome emerged. 29.73% of respondents from Government institutions stated that there were cases of sexual harassment in their institutions while in the Private Institutions 70.27% of the respondents stated the same. This indicates that Private institutions are more prone to the cases of sexual harassment than Government institutions. Thus, this was an interesting

outcome of this study, which establishes that Private institutions are more prone to the cases of sexual harassment than Government institutions. (Table 2.4)



**Table 7.4**

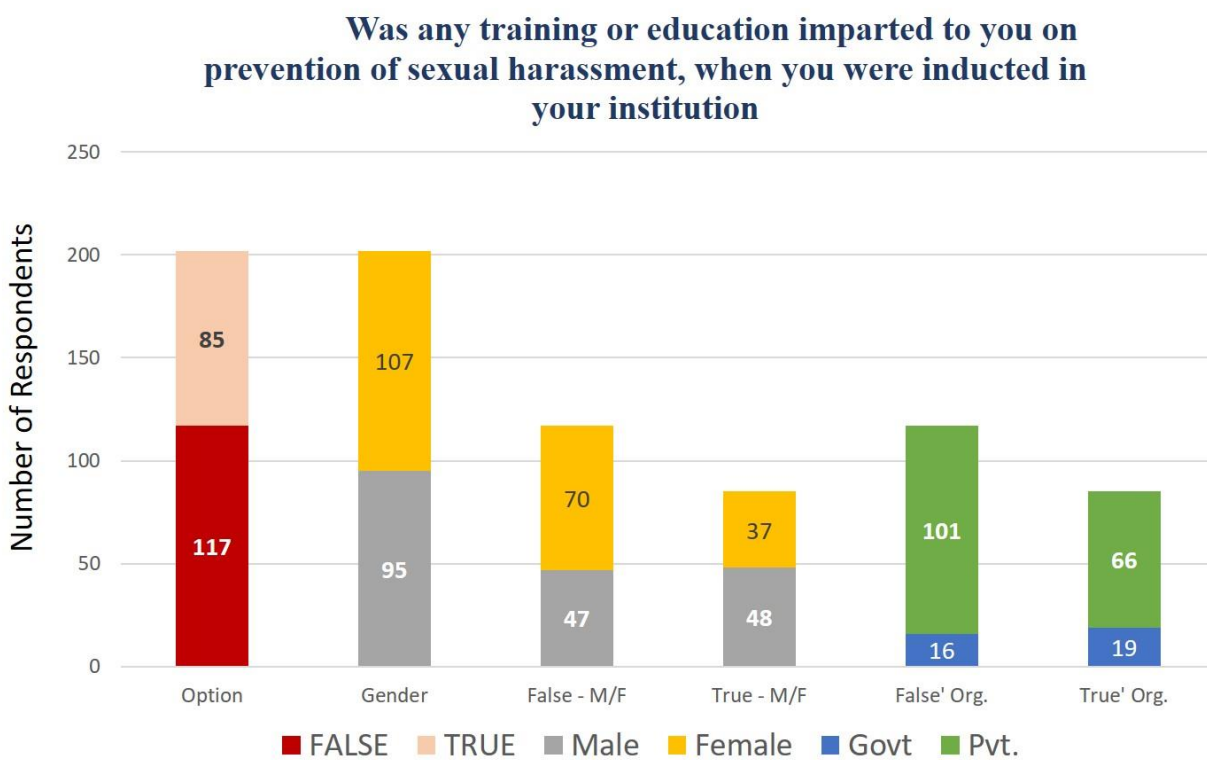
**7.8.3 Whether any training or education imparted to you on prevention of sexual harassment, when you were inducted in your institution?**

Section 19 of the POSH Act, 2013 prescribes for the duties of employer. Sub-section (c) thereof provides that every employer shall organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act and orientation programs for the members of the Internal Committee in the manner as may be prescribed.

Similarly, regulation 3 (c) of the UGC Regulations, 2015 prescribes that every HEI shall organize training programs or as the case may be, workshop for the officers for the officer, functionaries, faculty and students, as indicated in the SAKSHAM Report (Measures for Ensuring the Safety of Women and Programs for Gender Sensitization on Campuses) of the Commission, to sensitize them and ensure knowledge and wariness of the rights, entitlements and responsibilities enshrined in the Act and under these regulations.

In furtherance, the respondents were asked whether any training or education imparted to you on prevention of sexual harassment, when you were inducted in your institution. 42.08% of the

respondents answered favorably while the remaining 57.92% of the respondents denied any training or education imparted having been imparted to them on prevention of sexual harassment, when they were admitted in their institution. Thus, significant majority of respondents stated that HEIs were not discharging their responsibility towards this aspect satisfactorily. Interestingly, out of the 42.08% of the respondents who confirmed satisfactory performance of HEIs in this regard, the majority of 77.65% were belonging to Private Institutions. Thus, a complacency was seen on the part of the Government institutions when it comes to discharge of their responsibility towards this aspect. (Table 7.5).

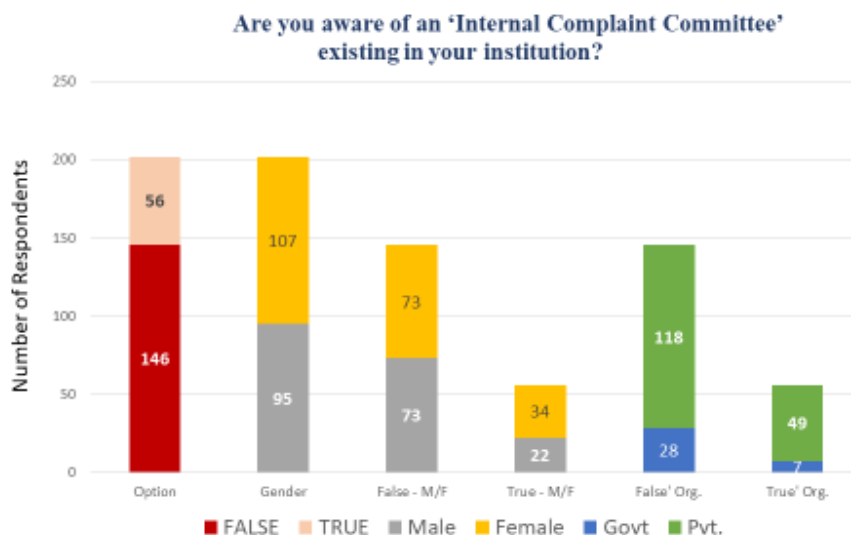


**Table 7.5**

**7.8.4 Whether ‘Internal Complaint Committee’ have been in place in the institution.**

As per Section 4 of the POSH Act, 2013 it is mandatory on the part of the employer to constitute Internal Committee to adjudicate upon the complaints of the sexual harassment. Similarly, regulation 4 of the UGC Regulations, 2015 makes it obligatory on the part of every executive Authority of the HEI to constitute an Internal Complaints Committee.

Pursuant to these statutory provisions and to assess the present scenario, the respondents were asked a question, “Are you aware of an ‘Internal Complaint Committee’ existing in your institution?” In response significantly 72.28% of the respondents stated that there is an ICC in their institution, while 27.72% of the respondents stated in negative. Out of these 72.28% of the respondents, females and males are equally distributed @50% each. Thus, the study proves that there was a satisfactory compliance of Section 4 and Regulation 4 apparently. In the absence to further any query having been asked from the respondents as to whether the constitution of the committees was as per norms, there was no outcome in this regard in the present study. (Table 7.6).

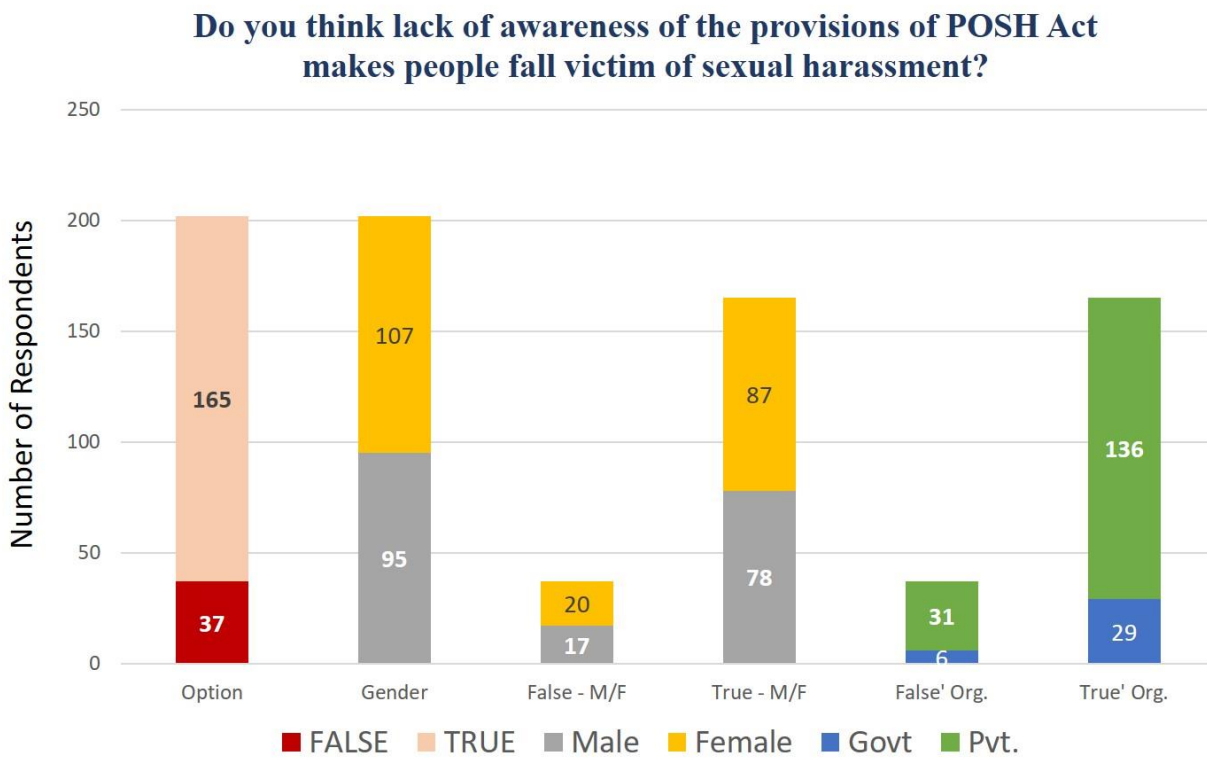


**Table 7.6**

**7.8.5 Whether lack of awareness of the provisions of POSH Act, 2013 makes people fall victim of sexual harassment.**

Further, the researcher has looked into the aspect of whether lack of awareness of the provisions of POSH Act, 2013 makes people fall victim of sexual harassment. The general pattern of response that emerged from the study was that notwithstanding whatever being done, there is an alarming lack of awareness regarding provisions of POSH Act, 2013. Thus, it can also be inferred that there is also a lack of awareness about extant UGC Regulations, 2015 among the students, faculty and

non-faculty at HEIs. Out of the total respondents, 81.68% of the respondents have confirmed lack of awareness of these provisions, out of which 52.73% are females and 47.27% are males. Majority respondents giving negative response belongs to females constituting a share of 54.05% while 45.95% of men respondents submitted their negative responses. Thus, 81.68% of the total respondents stated that there is an alarming lack of awareness regarding provisions of POSH Act, 2013. The large differences between two groups is seen significant by the researcher. Hence, the outcome is very relevant and credible. (Table 7.7).



**Table 7.7**

### **7.8.6 Whether there is any relation of power with sexual harassment by men with formal authority over women?**

Apparent analysis of responses received against the question whether there is any relation of power with sexual harassment by men with formal authority over women, reveals that a minority of respondents are supporting this view. As many as 36.63% of the respondents feel that there is a relation of power with sexual harassment by men with formal authority over women, whereas

63.37% of respondents feel otherwise. However, out of the 63.37% of the respondents who feel otherwise, the outcome is evenly distributed among males and females @ 50% each, while the among 36.63% of the respondents, who are supporting the view a whopping majority of 58.11% represents the female category. Thus, the study reveals that most of the males do not support the idea that there is any relation of power with sexual harassment by men with formal authority over women. However, when it comes to the females, they overwhelmingly support the idea. Significantly, under the group believing that there is a relation of power with sexual harassment by men with formal authority over women, majority belongs to the female category. Thus, the survey reflects the fact that the existing power hierarchy of males over females does not have a place in an environment of educational institutions, as well. (Table 7.8).

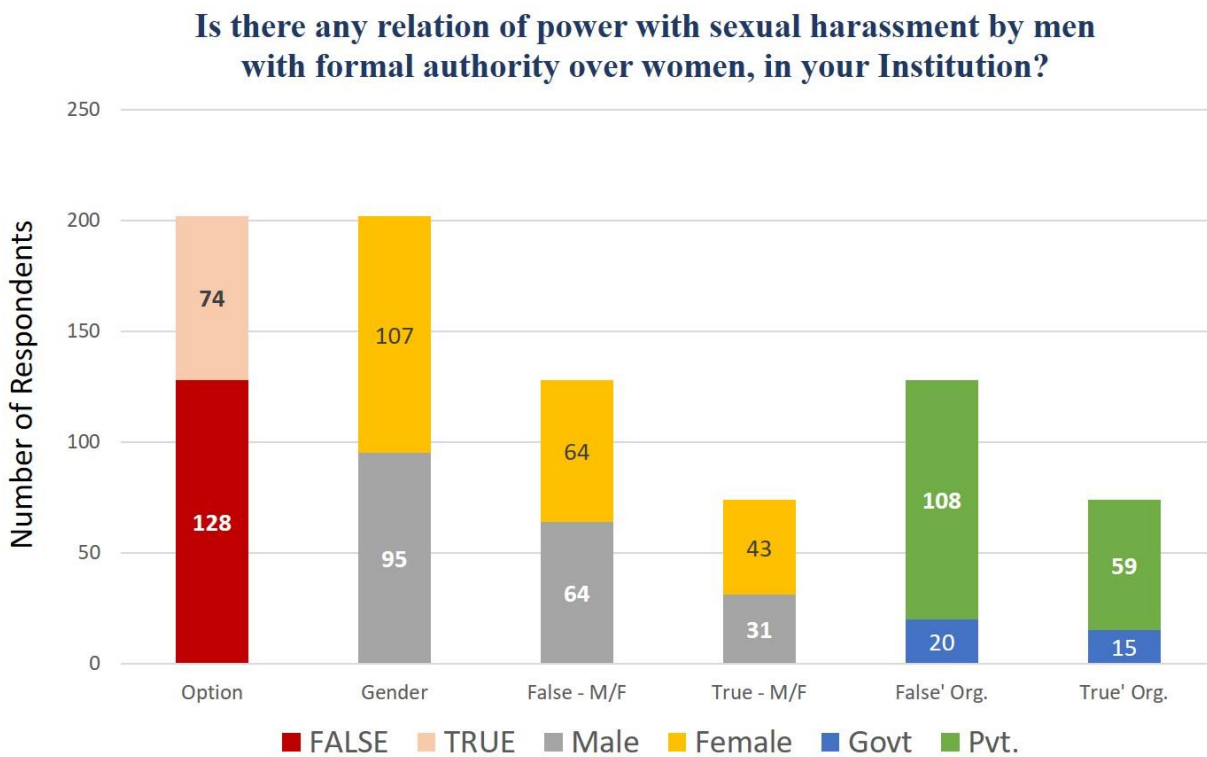


Table 7.8

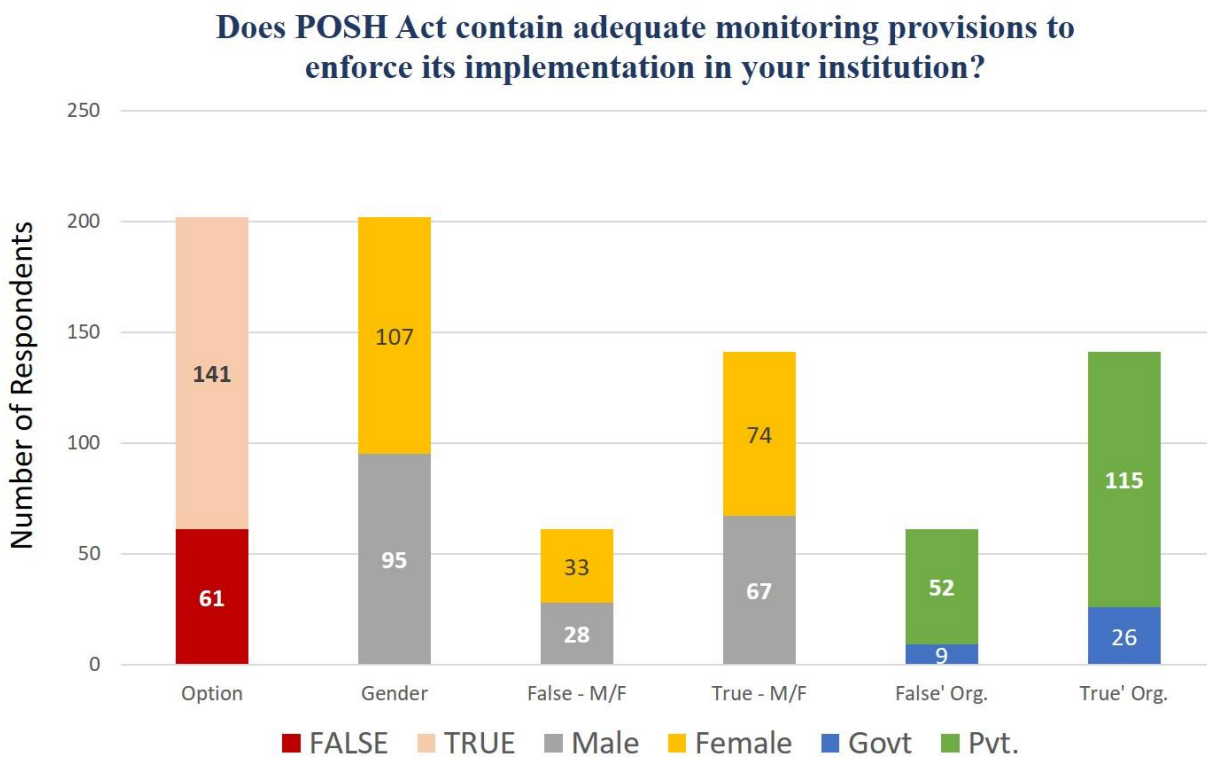
### 7.8.7 Whether POSH Act, 2013 contains adequate monitoring provisions to enforce its implementation in HEIs?

Chapter VIII of the POSH Act, 2013 contains miscellaneous provision from its Section 21 to 26. Section 21 requires the IC and LC to submit annual reports; Section 22 requires the employers to



include information regarding number of cases filed in their respective annual report; Section 23 mandates appropriate Government to monitor implementation and to maintain data on the number of cases filed and disposed of; Section 24 casts responsibility on the appropriate Government to take measures to publicize the POSH Act, 2013; Section 25 vests the power with the appropriate Government to call for information and inspection of record of any employer, if it is necessary in public interest; and Section 26 prescribes for penalty for non-compliance with the provisions of the Act. In this backdrop, a question was asked from the respondents, “Does POSH Act, 2013 contain adequate monitoring provisions to enforce its implementation in your institution?”

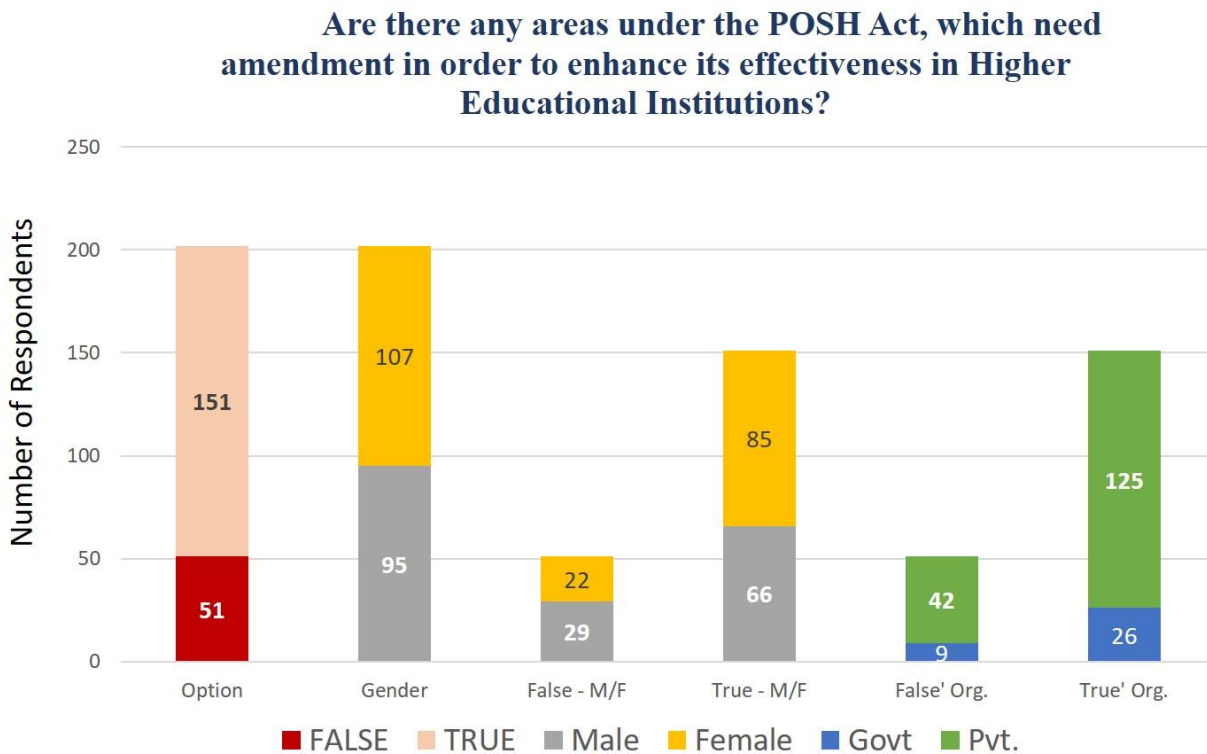
As many as 69.80% of the respondents feel that POSH Act, 2013 contains adequate monitoring provisions to enforce its implementation in their respective institutions. Only a meagre population of 30.20% felt opposite of it. Out of the 69.80% who expressed their satisfaction about adequacy of monitoring provisions in the POSH Act, 2013, 52.48% were females and 47.52% were males. Significantly, an overwhelming 81.56% respondent from Private Institutions demonstrated their satisfaction about these provisions. (Table 7.9).



**Table 7.9**

**7.8.8 Whether there are any areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions?**

Further, the researcher has looked into the aspect of whether there are any areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions. The outcome of the study is interesting, which is skewed in as much as 74.75% of respondents have stated that there are any areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions. The large differences between two groups is seen significant by the researcher, which makes the outcome to be reliable. The study shows that out of the above said 74.75% of responses, 56.29% were females and 43.71% are males. Thus, it can also be inferred that there is also a need to identify the areas under the extant UGC Regulations, 2015 to make the provisions more effective for its implementation to derive the desired objectives. Interestingly, 82.78% of the respondents from private institutions have felt that there exists such a need. (Table 7.10).



**Table 7.10**

## **7.9 CONCLUDING REMARKS**

- 7.9.1 The study establishes the fact that today's HEIs are demonstrating a more positive approach towards encouraging filing of sexual harassment complaints in their institutions.
- 7.9.2 The study established that Private institutions are more prone to the cases of sexual harassment than Government institutions.
- 7.9.3 In the study, a complacency was seen on the part of the Government institutions when it comes to discharge of their responsibility towards imparting training or education on prevention of sexual harassment at the time of induction.
- 7.9.4 The study revealed that there was a satisfactory compliance of Section 4 of the POSH Act, 2013 and regulation 4 of UGC Regulations, 2015 regarding constitution of Internal Complaints Committee.
- 7.9.5 The study revealed that there was a total lack of awareness regarding provisions of POSH Act, 2013 in the institutions.
- 7.9.6 The study reflects the fact that the existing power hierarchy of males over females does not have a place in an environment of educational institutions.
- 7.9.7 In the study, an overwhelming majority expressed their satisfaction about adequacy of monitoring provisions in the POSH Act, 2013.
- 7.9.8 The study revealed that there are areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions.

## CHAPTER - 8

### CONCLUDING REMARKS AND SUGGESTIONS

#### 8.1 CONCLUDING REMARKS

8.1.1 Mahatma Gandhi has said, “Because of the plight of our women, many of our campaigns come to a halt halfway through.” Indeed, the enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act, 2013”) was a historical legislative milestone in development of the law against sexual harassment at work place. With introduction of “UGC Regulations, 2015/AICTE Regulations, 2016” a legal framework against sexual harassment at workplace particularly at the HEIs, has been put in place.

8.1.2 Based on the research it has emerged that the number of sexual harassment complaints have registered an upward increase over the years. In respect of HEIs, when such harassment is witnessed in student teacher relationships, she is the woman who often loses her academic self-confidence and becomes disenchanted about male faculty, as a whole.

8.1.3 Such prevalence of sexual harassment has the cumulative effect of eroding women's commitment to careers in male-dominated areas. Thus, on the part of HEIs it requires a more focused and serious approach in implementing the provisions of the Act, and utmost zero tolerance while dealing with the complaints.

8.1.4 However, the POSH Act, 2013 does not contain adequate monitoring provisions to enforce its implementation in Higher Educational Institutions. A perusal of various provisions contained under the Sexual Harassment at Workplace Act 2013 reveals that the said Act does not apply to students since it contains no provisions for students-specific penalties. Hence, the UGC Regulations, 2015 and AICTE Regulations, 2016 and the POSH Act 2013 together could provide some road map on how to deal with the issue of Sexual harassment in HEIs. Here, students who are under 18 years of age<sup>239</sup>, it shall be subject to the provisions contained under Protection of Children from Sexual Offences Act, 2012, hence shall lodge an FIR thereunder also.

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<sup>239</sup> Libnus vs State of Maharashtra; Bombay High Court (Nagpur Bench); Criminal Appeal No. 445 Of 2020; decided on 15.01.2021 (inter-alia held that act of holding minor girl's hands and opening her pants zip will not come under POCSO Act, 2012. However, such act would amount to sexual harassment under IPC.)

8.1.5 “UGC Regulations, 2015” recognizes helpless groups and seek for supportive measures to put in place for such helpless groups, which includes those whose sexual alignments may make them more exposed. Thus, even a male student studying in higher educational institutions, who faces any sort of sexual harassment, can file a complaint of sexual harassment before the Internal Complaints Committee. However, in order to properly address these cases of male students’ harassment, HEIs ought to take all initiatives for remedial or, if need be, the punitive interventions, after following due procedures.

8.1.6 Most people often face sexual harassment at work, but not many speak out. In general, they are afraid of losing their jobs, of facing humiliation in the hands of society, of being trapped in never-ending legal cases or of other unsaid reasons. It is worth mention that still there is inadequacy of legal remedies being available to the victims and a number of lacunas still exist, which still need to be addressed. The POSH Act, 2013 was primarily enacted to deal with sexual harassment cases of women at workplace and thus did not include men and educational institutions with a fair detail in the framework of the POSH Act, 2013, as such, does not adequately address the challenges faced by the HEIs. Therefore, necessary steps must be taken to address this gap. The institutionalization of the POSH Act, 2013 addressing the grey areas and aligning the same to the needs of HEIs, no longer entails a taboo subject for sexual assaults at workplace. The POSH Act, 2013 primarily ought to give the women in the country a key to justice. Through the adoption of proposals and continuing further initiatives over time, researcher trusts that the POSH Act, 2013 will further improve our educational environment and conditions of our society.

8.1.7 Section 10(1) of the Act (and similarly Regulation 8 (7) of the UGC Regulations, 2015 and the AICTE Regulations, 2016) provide for Conciliation at the discretion of the victim before start of the inquiry proceedings. The provision has a potential to be misused or abused in certain cases to pressurize the victim to invoke the same.

8.1.8 Although Regulation 2(j) under the UGC Regulations, 2015 and the AICTE Regulations, 2016, does contain provision covering Protected Activity, yet the same is limited firstly to ‘any opposition to violation of sexual harassment laws’, secondly to ‘any participation in sexual harassment proceedings’, and thirdly to ‘any cooperation with an internal investigation or acting as a witness’. The UGC Regulations, 2015 or the AICTE Regulations, 2016 or the POSH Act,

2013 are, however, are silent on providing adequate protection to the aggrieved against any retaliatory action.

8.1.9 In the analysis it is found that with regular awareness campaigns conducted across the organization and possession of requisite evidence analytical skills by the Internal Committee members, they can equip themselves to differentiate between a complaint with 'absence of evidence' and a complaint with 'malicious intent'. Therefore, first and foremost would be to generate awareness among employees and other stake holders about the false complaints. This needs to be done primarily by the employer. The employer inter-alia needs to sensitize the entire work force about penal provisions for putting up a grievance that is fabricated or malicious. Additionally, appropriate trainings must be imparted to the Internal Committee members so that they can truly understand the concept of 'no evidence' and 'absence of evidence' while dealing with the sexual harassment complaints based on which the conclusion can be reached whether the complaint fall under the 'proven' category or 'not proven' category or it falls under the category of 'malicious'.

8.1.10 The study is inconclusive about the relation of power with sexual harassment by men with formal authority over women in Higher Educational Institutions.

8.1.11 There are ample and path breaking judicial pronouncements on the POSH Act, 2013, which make it an effective remedy for the victims. However, there are the areas under the POSH Act, 2013, which need amendment in order to enhance its effectiveness in Higher Educational Institutions, because the purpose of law is not to give a remedy but rather to curb it altogether. For example, making the anonymous complaints admissible under Section 9 of the POSH Act, 2013; making the POSH Act, 2013 as gender neutral to include other genders and sexual orientations; and aligning the penalties prescribed under rule 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 with the students.

8.1.12 The hypothesis that there is a need to amend POSH Act, 2013 to align its provisions to address the needs of higher educational institutions, has been proved right in this study.

8.1.13 Despite a law in place, sexual harassment continues to plague HEIs. If left unchecked, this could be devastating to not only the lives and careers of individual faculty, staff, students and their families, but also invariably affect productivity and the morale of the entire institution.

Notwithstanding imparting trainings to employees and faculties across institutes at different locations, menace of sexual harassment continues to persist. Although, most developed countries could recognize and address the sexual harassment much earlier, nevertheless, despite extensive study undertaken inter-alia based on empirical research, HEIs could not lead to any firm conclusions about its antecedents and consequences, both at the students and institutional levels. Through this research, the researcher has found that even inoffensive remarks such as simple comments, innuendos or inappropriate jokes over time do contain a potential to cause substantial psychological distress to the victims. This makes it necessary for the HEIs to impart serious trainings with frequent vital updates to the Internal Complaints Committee members.

## **8.2 SUGGESTIONS**

Apart from the general awareness against the sexual harassment at workplace, following specific suggestions are proposed after the study:

8.2.1 Each HEI/TI should constitute a High-Power Monitoring Committee in their respective institutions. Such High Power Monitoring Committee shall meet, at least twice a year, in order to oversee larger compliance of the provisions of the Act and other relevant aspects under the Act.

8.2.2 Therefore, there should be an adequate provision, which grants effective protection to the complainant and the witnesses against any retaliatory action against them. This could be in the form of seeking periodical feedback by the Internal Complaints Committee from the victims and witnesses. This will encourage the witnesses to provide their testimony during the proceedings without any fear, judiciously besides ensuring protection to the victim.

8.2.3 Another suggestion relates to non-admissibility of anonymous complaints under the Act. It has surfaced during the study that in many situation the victim is afraid to file the complaint due to various constraints, pressures and threats. In such situation, the predator continues with the harassment with impunity, though everybody knows about the continuing act of harassment. If anonymous complaints with verifiable details are made admissible under the Act, it will further

enhance the effectiveness of the same. Thus, making the anonymous complaints admissible under Section 9 of the POSH Act, 2013, may be a good step forward.

8.2.4 Study revealed that it might prove to be counterproductive on the part of the Higher Education Institutions (HEIs) to discourage filing of sexual harassment complaints in order to protect reputation of their organization. Lesser number of complaints or for that matter nil complaints would rather establish an eloquent testimony to the gender insensitivity of the University.

8.2.5 The study reveals that there is a need either to have an additional legislation in place or to re-visit the POSH Act, 2013 to protect the male employees also in HEIs, against sexual harassment. Thus, the POSH Act, 2013 needs to be evolved as a gender-neutral legislation because it does not include other genders and sexual orientations. It is believed that evolution of society and the diverse nature of our workforce today warrants the same. This will further pave way to promise fair and secure workplace for all the employees irrespective of their gender and sexual orientation.

8.2.6 The HEIs should impart serious training to the Internal Complaints Committee members with frequent updates from time to time. It will make the Internal Complaints Committee members adequately equipped to conduct tenable investigation and proper inquiry into the sexual harassment complaints.

8.2.7 The penalties have been prescribed under rule 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 keeping in view the workplace dynamics, which may not be relevant in the case of students. Hence, there is a need to align the same with the students.

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**Reference:** Visakha Guidelines issues by the Supreme Court of India in the matter: Vishaka and others vs State of Rajasthan and others, (AIR 1997 SUPREME COURT 3011).

“It is necessary and expedient form employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women :

**1. Duty of the Employer or other responsible persons in work places and other institutions:**

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

**2. Definition:**

For this purpose, 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.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

**3. Preventive Step:**

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

#### **4. Criminal Proceedings:**

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

#### **5. Disciplinary Action:**

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

#### **6. Complaint Mechanism:**

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.



## **7. Complaints Committee:**

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

## **8. Workers' Initiative:**

Employees should be allowed to raise issues sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer - Employee Meetings.

## **9. Awareness:**

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

## **10. Third Party Harassment:**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central / State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.”

# The Gazette of India

EXTRAORDINARY  
PART II – Section I  
PUBLISHED BY AUTHORITY

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**No. 18] NEW DELHI, TUESDAY, APRIL 23, 2013/VAISAKHA 3, 1935 (SAKA)**

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

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**MINISTRY OF LAW AND JUSTICE  
(Legislative Department)**

New Delhi, the 23<sup>rd</sup> April, 2013/Vaisakha, 3, 1935 (Saka)

The following Act of Parliament received the assent of the President on the 22<sup>nd</sup> April, 2013, and is hereby published for general information:-

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

ACT NO. 14 OF 2013

[22<sup>nd</sup> April, 2013]

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any

occupation, trade or business with includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:

## **CHAPTER I PRELIMINARY**

### **1. Short title, extent and commencement.—**

- (1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

### **2. Definitions. — In this Act, unless the context otherwise requires, —**

(a) “**aggrieved woman**” means—

- (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
- (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

(b) “**appropriate Government**” means—

- (i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(a) by the Central Government or the Union territory administration, the

Central Government;

(b) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

(c) “Chairperson” means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

(d) “District Officer” means an officer notified under section 5;

(e) “**domestic worker**” means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

(f) “**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 such name;

(g) “**employer**” means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

**Explanation.** —For the purposes of this sub-clause “management” includes the person or

board or committee responsible for formulation and administration of policies for such organization;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(h) “Internal Committee” means an **Internal [Complaints]<sup>1</sup> Committee** constituted under section 4;

(i) “Local Committee” means the Local [Complaints]<sup>2</sup> Committee constituted under section 6;

(j) “Member” means a Member of the Internal Committee or the Local Committee, as the case may be;

(k) “prescribed” means prescribed by rules made under this Act;

(l) “Presiding Officer” means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

(m) “respondent” means a person against whom the aggrieved woman has made a complaint under section 9;

(n) “**sexual harassment**” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

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<sup>1</sup> Repealed by Ministry of Law and Justice, Government of India vide Repealing and Amending Act, 2016 published in extraordinary Gazette Notification, Part II, Section I, No. 26, on May 09, 2016.

<sup>2</sup> -do-

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(o) “**workplace**” includes—

(i) 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 Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house;

(p) “**unorganised sector**” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

### **3. Prevention of sexual harassment.—**

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:—

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment ; or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.

**CHAPTER II**  
**CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE**

**4. Constitution of Internal Complaints Committee.—**

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal [Complaints]<sup>3</sup> Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

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 (1):

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 organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

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<sup>3</sup> Repealed by Ministry of Law and Justice, Government of India vide Repealing and Amending Act, 2016 published in extraordinary Gazette Notification, Part II, Section I, No. 26, on May 09, 2016.



(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16; 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.

### CHAPTER III

## CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

#### 5. Notification of District Officer —

The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

#### 6. Constitution and jurisdiction of Local Committee.—

(1) Every District Officer shall constitute in the district concerned, a committee to be known as the “Local [Complaints]<sup>4</sup> Committee” to receive complaints of sexual harassment from establishments where the Internal [Complaints]<sup>5</sup> Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local [Complaints]<sup>6</sup> Committee within a **period of seven days**.

(3) The jurisdiction of the Local [Complaints]<sup>7</sup> Committee shall extend to the areas of the district where it is constituted.

#### 7. Composition, tenure and other terms and conditions of Local Complaints Committee.—

(1) The Local [Complaints]<sup>8</sup> Committee shall consist of the following members to be nominated by the District Officer, namely: —

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<sup>4</sup> Repealed by Ministry of Law and Justice, Government of India vide Repealing and Amending Act, 2016 published in extraordinary Gazette Notification, Part II, Section I, No. 26, on May 09, 2016.

<sup>5</sup> -do-

<sup>6</sup> -do-

<sup>7</sup> -do-

<sup>8</sup> Repealed by Ministry of Law and Justice, Government of India vide Repealing and Amending Act, 2016 published in extraordinary Gazette Notification, Part II, Section I, No. 26, on May 09, 2016.

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(3) Where the Chairperson or any Member of the Local [Complaints]<sup>9</sup> Committee—

(a) contravenes the provisions of section 16; or

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<sup>9</sup> Repealed by Ministry of Law and Justice, Government of India vide Repealing and Amending Act, 2016 published in extraordinary Gazette Notification, Part II, Section I, No. 26, on May 09, 2016.

(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) 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 Chairperson 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.

(4) The Chairperson or Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

#### **8. Grants and audit.—**

(1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in subsection (4) of section 7.

(2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in

such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

## **CHAPTER IV COMPLAINT**

### **9. Complaint of sexual harassment.—**

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

### **10. Conciliation —**

(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

#### **11. Inquiry into complaint.—**

(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made

available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

## **CHAPTER V**

### **INQUIRY INTO COMPLAINT**

#### **12. Action during pendency of inquiry.—**

(1) During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—

(a) transfer the aggrieved woman or the respondent to any other workplace; or

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

**13. Inquiry report.—**

(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:



Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

**14. Punishment for false or malicious complaint and false evidence.—**

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as

the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

#### **15. DETERMINATION OF COMPENSATION:**

For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to—

- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) the loss in the career opportunity due to the incident of sexual harassment;
- (c) medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) the income and financial status of the respondent; and
- (e) feasibility of such payment in lump sum or in instalments.

#### **16. Prohibition of publication or making known contents of complaint and inquiry proceedings.—**

Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

**17. Penalty for publication or making known contents of complaint and inquiry proceedings.—**

Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

**18. Appeal.—**

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of **ninety days** of the recommendations.

**CHAPTER VI  
DUTIES OF EMPLOYER**

**19. Duties of employer.—**

**Every employer shall—**

(a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

**(i) treat sexual harassment as a misconduct** under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

## **CHAPTER VII**

### **DUTIES AND POWERS OF DISTRICT OFFICER**

**20. Duties and powers of District Officer.**—The District Officer shall, —

(a) monitor the timely submission of report furnished by the Local Committee;

(b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

## **CHAPTER VIII MISCELLANEOUS**

### **21. Committee to submit annual report.—**

(1) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received under subsection (1) to the State Government.

**22. Employer to include information in annual report.—**The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

**23. Appropriate Government to monitor implementation and maintain data.—**The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

**24. Appropriate Government to take measures to publicise the Act.—**The appropriate Government may, subject to the availability of financial and other resources, —

(a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace;

(b) formulate orientation and training programmes for the members of the Local Committee.

**25. Power to call for information and inspection of records.**— (1) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,—

(a) call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;

(b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

(2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

**26. Penalty for non-compliance with provisions of Act:**

(1) Where the employer fails to

(a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

**27. Cognizance of offence by courts:**

(1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be non-cognizable.

**28. Act not in derogation of any other law:**

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

**29. Power of appropriate Government to make rules.—**

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the fees or allowances to be paid to the Members under sub-section (4) of section 4;

(b) nomination of members under clause (c) of sub-section (1) of section 7;

(c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;

(d) the person who may make complaint under sub-section (2) of section 9;

(e) the manner of inquiry under sub-section (1) of section 11;

(f) the powers for making an inquiry under clause (c) of sub-section (2) of section 11;

(g) the relief to be recommended under clause (c) of sub-section (1) of section 12;

(h) the manner of action to be taken under clause (i) of sub-section (3) of section 13;

(i) the manner of action to be taken under sub-sections (1) and (2) of section 14;

(j) the manner of action to be taken under section 17;

(k) the manner of appeal under sub-section (1) of section 18;

(l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and



(m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of section 21.

(3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

**30. Power to remove difficulties.—**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

## **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.**

### **Ministry of Women and Child Development**

#### **NOTIFICATION**

**New Delhi, the 9<sup>th</sup> December, 2013**

G.S.R 769 (E) – In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), the Central Government hereby makes the following rules, namely:-

1. **Short title and commencement** – (1) These rules may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions** – In these rules, unless the context otherwise requires –

(a) “Act” means the Sexual Harassment of Women at Workplace (Prevention, Prohibition

and Redressal) Act, 2013 (14 of 2013)

(b) “Complaint” means the complaint made under section 9;

(c) “Complaint Committee” means the Internal Committee or the Local Committee, as the case may be;

(d) “Incident” means an incident of sexual harassment as defined in clause (n) of section 2;

(e) “section” means a section of the Act.

(f) “Special educator” means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;

(g) words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. **Fees or allowances for Member of Internal Committee** – (1) The member appointed from amongst non – government organizations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by tum or travel, whichever is less.

The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

4. **Person familiar with issues relating to sexual harassment** – Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub – section (1) of section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following;-

(a) a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favorable towards empowerment or women and in particular in addressing workplace sexual harassment.

(b) a person who is familiar with labour, service, civil or criminal law.

5. **Fees or allowances for Chairperson and Members of Local Committee** – (1) The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty per day for holding the proceedings of the said committee.

(2) The members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub – section (1) of section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The District Officer shall be responsible for the payment of allowances referred to in sub – rules (1) & (2).

6. **Complaint of sexual harassment** – For the purpose of sub – section (2) of section 9.

(i) Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by –

(a) her relative or friend ; or

(b) her co – worker, or

(c) an officer of the National Commission for Women or State Women's Commission

or

(d) any person who has knowledge of the incident, with the written consent of the aggrieved women;

(ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by –

(a) her relative or friend ; or

(b) a special educator ; or

(c) an qualified psychiatrist or psychologist ; or

(d) the guardian or authority under whose care she is receiving treatment or care; or

(e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

(iii) where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of her legal heir.

(iv) where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent for her legal heir.

7. **Manner of inquiry into complaint** – (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaint Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaint Committee shall send one of the copies received from the aggrieved woman under sub – rules (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub – rule (1).

(4) The complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex – parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the presiding Officer or the Chairperson, as the case may be, shall be present.

8. **Other relief to complainant during pendency of inquiry** – The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to –

(a) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;

(b) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

9. **Manner of taking action for sexual harassment** – Expect in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding or pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.
10. **Action for false or malicious complaint or false evidence** – Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document. It may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of rule 9.
11. **Appeal** :- Subject to the provision of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clauses (i) or clause (ii) of sub –section (3) or section 13 or sub – section (1) or sub – section (2) or section 14 or section 17 or non – implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).
12. **Penalty for contravention of provisions of section 16** – Subject to the provisions of section 17, if any person contravenes the provisions of section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.
13. **Manner to organize workshops, etc.** – Subject to the provisions of section 19, every employer shall –
  - (a) Formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and Redressal or sexual harassment at the workplace intended to promote gender sensitive safe space and remove underlying factors that contribute towards a hostile work environment against women;
  - (b) Carry out orientation programmes and seminars for the Members of the Internal Committee;
  - (c) Carry out employees awareness programme and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women’s groups, mothers’ committee, adolescent groups, urban local bodies and other body as may be considered necessary;
  - (d) conduct capacity building and skill building programmes for the Members of the Internal Committee;
  - (e) declare the names and contact details of all the Members of the Internal Committee;

(f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitizing the employees with the provisions of the Acts.

14. **Preparation of annual report** – The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details;-

- (a) number of complaints of sexual harassment received in the year;
- (b) number of complaints disposed off during the year;
- (c) number of cases pending for more than ninety days;
- (d) number of workshops or awareness programme against sexual harassment carried out;
- (e) nature of action taken by the employer or District Officer.

(F.No. 19-5/2013 –WW)

Dr. SHREERAMJAN, Jt. Secy

**The University Grants Commission (Prevention and redressal of sexual harassment of woman employee and students in higher educational institutions) regulation, 2015**

**No. F 91-1/2013(TFGS)- In exercise of the power conferred by clause (g) of sub-section (1) of section 26 of the University Grants Commission Act, 1956, read with sub-section (1) of Section 20 of the said Act, the University Grants Commission hereby makes the following regulation, namely:-**

**1. Short title, application and commencement-**

- (1) This regulation may be called the University Grants Commission (prevention, Prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulation, 2015.
- (2) They shall apply to all higher educational institution 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 Woman at Workplace (Prevention, 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, park-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 trip, 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 student of the HEI;

(d) “Commission” means the University Grants Commission established under section 4 of the University Grant Commission Act, 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 Service (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 regulation. 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 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 behavior (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 behavior 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 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 or distance mode, including short-term training programmes in a HEI; provided that a student who is in the process of taking admission in HEI's campus, although not yet admitted, shall be treated, for the purposes of these

regulation, 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 visitor to the HEI in some other capacity or for some other purpose or reason;

(n) “Victimization” means any unfavorable treatment meted it 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, organization, undertaking, establishment, institution, office, branch or unit which is established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate HEIs;

(b) Any sport instituted, stadium, sports complex or completion 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 transmutation provided by the Executive Authority for undertaking such journey for study in HEIs;

### **3. Responsibilities of the Higher Educational Institution –**

#### **3.1 Every HEI shall-**

(a) Wherever required, appropriately subsume the spirit of the above definitions in its policy and regulation 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 Regulation;

(b) Publicly notify the provisions against sexual harassment and ensure their wide dissemination;

(c) organize training programmes or as the case may be, workshop for the officers for the officer, 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 wariness 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 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;

(e) Publicly commit itself to a zero tolerance policy towards sexual harassments;

(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;

(i) inform employees and students of the recourse available to them if they are victims of sexual harassment;

(j) Organize regular orientation or training programmes for members of the ICC to deal with Complaints, steer the process of settlement or conciliation, etc.. with sensitivity;

(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, regulation 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 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 complain, Vulnerability can be socially compounded by regain, 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 reviews of the efficacy and implementation of their anti-sexual harassment policy.
- (6) All Academic Staff Colleges (now known as Human Resource Development Centre (HRDCs) and Regional Centres for Capacity Building (RCCBs) must incorporate session 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 course for administrators conducted in HEIs must have a module on gender sensitization and sexual harassment issues. Regular workshops are to be conducted for all section of the HEI community.
- (8) Counseling services must be institutionalized in all HEIs and must have well trained full-time counselors.
- (9) Many HEIs having large campuses have a deficit in lighting are experienced as a 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 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 employment 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 toe attend programmes in the evenings.
- (12) Residential HEIs should accord priority to construction of women’s hostels. For the growing population of young woman 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 safely 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 these must include gender sensitive doctors and nurses, as well as the services of a gynecologist.

(15) The Woman'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 sanitization 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, Provost, 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 redressed 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 below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority;

Provided that 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 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 comminuted by the Executive Authority;

(c) There students, if the matter involves students, who shall be enrolled at the undergraduate, master's, and research scholar levels respectively, elected though transparent democratic procedure;

(d) One member from amongst non-government organizations 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 on-half of the total members of the ICC shall be woman.

(3) Persons in senior administration position in the HEI, such as Vice- Chancellor, Pro Vice-Chancellor, 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 IIC shall be for a period of three years. HEIs may also employ a system whereby one-third of the members of the IIC may change every year.

(5) The Member appointed from amongst the non-government organizations or association 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, or also provide for the transfer of the offender;

(d) ensure that victims or witnesses are not victimized 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 conduction 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 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 or 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, 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 situation 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) 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 within Copy of the complaint, the respondent shall file his or reply to the complaint the respondent shall file his or her reply to the complaint along with the list of document, 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 HEI. 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 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 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 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 minimize the risks involved in contact or interactions 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 retaliating and victimization 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 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) Awards reformatory punishment like mandatory consoling 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 incident of sexual harassment;

(d) the income and status of the alleged perpetrator and victim; and

(e) the feasibility of such payment in lump sum or in installments.

#### **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 that the allegations made and publicized 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 sub-regulations (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 redressed of sexual harassment of employees and students, take one or more of the followings actions after providing due notice: -

(a) withdrawal of declaration of fitness to received 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 for consideration for any assistance under any of the general or special assistance programmers of the Commission;

(e) informing the general public, including candidates for employment or admission, through a notice displayed prominently in the newspapers or other 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 for declaration as an institution deemed to be university , in case of an institution to be 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 compile 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.

**All India Council for Technical Education (Gender Sensitization, Prevention and Prohibition of Sexual Harassment of Women Employees and Students and Redressal of Grievances in Technical Educational Institutions) Regulations, 2016.**

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(All India Council for Technical Education)

**NOTIFICATION**

New Delhi, the 10th June, 2016

All India Council for Technical Education (Gender Sensitization, Prevention and Prohibition of Sexual Harassment of Women Employees and Students and Redressal of Grievances in Technical Institutions) Regulations, 2016.

**No. F. AICTE/WH/2016/01.** In exercise of the powers conferred by Section 23 (1), Chapter VI of **All India Council for Technical Education Act, 1987 (52 of 1987)**, the **All India Council for Technical Education** hereby makes the following regulations, namely:-

**1. Short title, application and commencement-** (1) these regulations may be called the **All India Council for Technical Education (Gender Sensitization, Prevention and Prohibition of Sexual Harassment of Women Employees and Students and Redressal of Grievances in Technical Educational Institutions) Regulations, 2016.**

(2) They shall apply to all technical 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 Technical Institution (TI) 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 TI 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 TI;

(d) "Council" means the All India Council for Technical Education established under section 3 (Chapter 1 of All India Council for Technical Education Act, 1987 (52 of 1987) ;

(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 duly employed by the TI and also 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 TI, by whatever name called, in which the general administration of the TI is vested;

(h) "Technical Institution" (TI) means an AICTE approved Institution;

(i) "Internal Complaints Committee" (ICC) means Internal Complaints Committee to be constituted by an TI under sub regulation (1) of regulation 4 of these regulations and shall include any duly constituted Body already functioning with the same objective (like the

Gender Sensitization Committee Against Sexual Harassment (GSCASH)); Provided that in the latter case the TI 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 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; and

(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 TI:

Provided that a student who is a participant in any of the activities in a TI other than the TI where such student is enrolled shall be treated as a student of that TI 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 TI, but a visitor to the TI 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 TI, 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 Tis;

(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 TIs;



(c) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey for study in TIs.

### **3. Responsibilities of the Higher Educational Institution –**

#### **3.1 Every TI 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 women employees and the students, and modify its ordinances and rules in consonance with the requirements of the Act;

(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, 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. Wherever a Gender Sensitization Committee against Sexual Harassment (GSCASH) already exists it must be brought additionally in consonance with the composition mandated by the Act;

(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 or GSCASH 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 TIs or owing to intimate partner violence or from peers or from elements outside of the geographical limits of the TI;

(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 or GSCASH to curb and prevent sexual harassment on its campus.

(m) Treat sexual harassment as 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 or GSCASH;

(q) Prepare an annual status report with details on the number of cases filed and their disposal and submit the same to the Council.

### **3.2 Supportive measures-**

(1) the rules, regulations or any such other instrument by which ICC or GSCASH 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 TIs 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 TIs must ensure that the guidelines for ethics for Research Supervision are put in place.

(5) All TIs must conduct a regular and half yearly review of the efficacy and implementation of their anti-sexual harassment policy.

(6) Orientation courses conducted in TIs for administrators must have a module on gender sensitization and sexual harassment issues. Regular workshops are to be conducted for all sections of the TI community.

(7) Counselling services must be institutionalised in all TIs and must have well trained full-time counsellors.

(8) Many TIs 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.

(9) 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.

(10) TIs must ensure reliable public transport, especially within large campuses between different sections of the TI, 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. Shuttle buses must be provided to enable employees and students to work late in libraries, laboratories and to attend programmes in the evenings.

(11) TIs must build requisite women's hostels, which is a priority area. For the growing population of young women wishing to access higher education, hostel accommodation is a necessity in both urban and rural areas and at all levels of higher education which provides a modicum of protection from harassment of all kinds,

(12) 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.

(13) Adequate health facilities are equally mandatory for all TIs. In the case of women this must include gender sensitive doctors and nurses, as well as the services of a gynaecologist.

(14) 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.

(15) Hostel Wardens, Provosts, Principals, Legal Officers and other functionaries must be brought within the domain of accountability through amendments in the rules or Ordinances where necessary.

#### **4. Grievance redressed mechanism –**

(1) Every TI 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;

(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 (comprising of atleast one girl student) of Pre-Final/Final year at Undergraduate/ Diploma level Institute, as the case may be.

(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 positions such as Chairman, Secretary of the Society & Principal / Director etc. shall not be the 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. TIs may also employ a system whereby one –third of the members of the ICC may change every year.

#### **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 conduction inquiry –**

The ICC shall comply with the procedure prescribed in the Act, for making a complaint and inquiring into the complaint in a time bound manner. The TI 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-**

- (1) An aggrieved person is required to submit a written complaint along with supporting documents and names and addresses of the witnesses if any 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.

(2) 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 TI. Copy of the findings or recommendations shall also be served on both parties to the complaint.

(4) The Executive Authority of the TI 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 TI within a period of thirty days from the date of the recommendations.

(6) If the Executive Authority of the TI 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 TI 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 TI shall facilitate a conciliation

process through ICC or GSCASH, 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 offender shall not be made public or kept in the public domain especially during the process of the inquiry.

## **9. Interim redressal –**

The TI 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 TI, if the offender is an employee. Depending upon the severity of the offence, the punishments may include any one or more such as a written apology, warning, reprimand, censure, undergoing counselling or carrying out community service, withholding of promotion, withholding of pay rise or increments and terminating the respondent from service.



(2) Where the respondent is a student, depending upon the severity of the offence, the TI 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 TI 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 –**

(1). 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 TIs. If the ICC or GSCASH 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 sub-regulations (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.

## **12. Consequences of non-compliance –**

(1) The Council 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.
- (b) removing the name of college from the list maintained by the Council;
- (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 Council;
- (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 Council, 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) Taking such other action within its powers as it may deem fit and impose such other penalties as may be provided in the All India Council for Technical Education Act, 1987 for such duration of time till the institution complies with the provisions of these regulations.

(2) No action shall be taken by the Council 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.