

Handbook On

Anti-Sexual Harassment Law at Universities & Colleges

University Grants Commission Regulation, 2015
(Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees
and Students in Higher Educational Institutions)

Foreword

As a lawyer practicing in the field of women's rights, I have been dealing with cases of sexual harassment for well over two decades. Despite the judgment of the Hon'ble Supreme Court in *Vishaka v. The State of Rajasthan*¹, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, the Saksham Report² and the UGC Regulations, 2015, on sexual harassment, there is a lot of hesitation in women/students to access the law. Added to the difficulty of articulating the traumatic experience of the sexual harassment, is the labyrinth of law and legal procedure.

This situation becomes even more difficult when it comes to the experiences of young students in higher educational institutions. Dominant obsequious attitude by teachers/professors and their significant clout over students make sexual harassment in universities difficult to talk about for both students and women employees within the system. Varied forms of sexual harassment continue in higher educational institutions including in online campuses. In 2020, an independent survey revealed that 57 out of 567 female students were sexually assaulted in higher education institutions.³ None filed an FIR and only a meagre 15.7% filed an official complaint with any relevant committee in the institutions.

Against this backdrop, the **Himmat Handbook** is a much needed intervention to boost education and awareness by giving a definitive vocabulary to the various kinds of sexual harassment faced at higher educational institutions by students (which includes males, females and third gender) and women employees or a third party. One of the challenges to access the law is to first understand it. Law is often seen as a web for process and procedure. This Handbook speaks to students from a non-law background in its simple and straightforward language, and illustrations. It provides a condensed overview of legal rights, and obligations, remedies and redressal mechanisms in a clear and comprehensible manner and, where necessary, case laws to support. It clearly lays down each stage of the procedure in an inquiry and conciliation proceedings against the respondent.

The Handbook is one step towards a more informed conversation about the lines that cannot be crossed under the guise of the teacher-student relationship or casual friendships. Having been put together by young lawyers, one hopes that it will give students the language and the courage to access the law. Empowering students with this information is essential, as they will one day be a part of and lead organizations and hopefully implement their formative learning there!

In conclusion, I would like to congratulate the team behind the **Himmat Handbook** for their initiative and drive of curating the Handbook seeing it through to its fruition. More power to all of you! It is with such consistent efforts and collaboration between students and lawyers that we can together make incremental progress towards a more equal society in fact and practice.



Warmly, Veena Gowda
Women Rights Advocate

1. *Vishaka v. State of Rajasthan* (Supreme Court, 1997).

2. Report by the Saksham task force set up by the University Grants Commission (UGC) Available at: https://www.ugc.ac.in/pdfnews/5873997_saksham-book.pdf

3. Available at: <https://thewire.in/women/sexual-assault-higher-education-institution>

Preface

In 1997 when the Hon'ble Supreme Court held that the right to equality includes the right to protection against sexual harassment at the workplace, it became a landmark judgment in Indian feminist history. However, it took 16 years for the parliament to materialize this right and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, was finally brought into force in 2013. Subsequently, in the wake of Nirbhaya, the country came to the extremely delayed realization that more drastic changes were required to protect those vulnerable to sexual crimes.

The University Grants Commission thereafter set up a Task Force to look into how increasing lack of safety and sexual harassment affected students at the university level. This was detailed in the Saksham Report, which took note of the uniquely vulnerable position of the student community. Unlike the previous discourse on sexual harassment, this report took an intersectional approach by acknowledging how different vulnerable groups were disproportionately affected by sexual crimes. Overall, this report and the UGC Regulations that came thereafter were much-needed steps towards protecting the diverse student community across India. However, unfortunately, the awareness surrounding the rights brought by these guidelines was exceedingly low, making the Regulations ineffective

Having knowledge of legal options and rights is vital if we want the #MeToo movement to lead to fairer legal system. We at Himmat believe that justice is subjective for a survivor. The process of winning a case may fulfil the criteria of justice for one but might be jarring for another. The idea behind increased awareness is to allow each survivor to make that informed choice for themselves. Thus, one should choose a course of action based on their circumstances. This is our vision behind the Himmat Handbook.

As students, we believe that when aware of our rights, our collective strength as allies can create the ripple effect that is needed to demand accountability from college administrations and create safe college spaces for everyone.

Our hope for this handbook is that it assists the student community tackle oppressive institutions, fight systemic injustice and ease the layered difficulties that survivors face while navigating legal recourse in whatever little way it can.

*On behalf of Team Himmat
Megha and Sreeja*

We are proud to have as our logo partners





Disclaimer

This handbook has been compiled based on the UGC Regulations 2015, Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 and relevant cases. The contents of this Handbook are not to be construed as legal advice.

The authors of this handbook and Himmat cannot be held liable for any acts committed or omitted to be done by any person, in reliance upon its contents. If you want to pursue legal action at your University, you are advised to reach out for professional help. *(We also offer free legal assistance to student survivors of sexual harassment at www.safecollegespace.com)*

The contents may be triggering due to the sensitive nature of the subject matter. You are advised to exercise caution while reading the Handbook.

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Glossary

● UGC Regulations

University Grants Commission (Prevention, Prohibition And Redressal Of Sexual Harassment Of Women Employees And Students In Higher Educational Institutions) Regulations, 2015

● POSH Act

Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013

● HEI

A Higher Educational Institution includes a national, state or provincial University recognised by the UGC, a college affiliated to a University that is recognized by the UGC or an institute that is deemed to be a University by the the UGC

● Survivor

A person who has experienced sexual harassment

● Complainant

A Survivor who has chosen to file a complaint, is known as a Complainant during the case

● Respondent

A person against whom an allegation of sexual harassment is made

● Executive Authority

The authority who heads the administration of the HEI i.e, the Vice Chancellor/ Registrar

● Service Rules

The rules and regulations that govern the employees and employers and their conduct

● Internal Committee

A body that must be constituted by the University to address complaints of sexual harassment

PART I

**THE CONCEPT
OF SEXUAL
HARASSMENT
IN HIGHER
EDUCATIONAL
INSTITUTIONS**



CHAPTER 1:

WHAT IS SEXUAL HARASSMENT?

The legal definition includes one or more of the following unwelcome acts or behaviour (direct or implicit):

- Physical, verbal or non verbal conduct of sexual nature
- Demand or request for sexual favours
- Making sexually coloured remarks
- Physical contact and advances
- Showing pornography



What is Consent?

For any sexual act/advance there must be consent from the persons involved. Consent must be positive in nature, it cannot be presumed. The lack of resistance or passive submission cannot be understood as consent. Consent must be actively and continuously given throughout the sexual activity. Once consent is given, it cannot be presumed to apply for all continuing acts. For each specific sexual act, there must be consent separately taken. Consent can be revoked at any time during or before the sexual act.

Consent must also be free and informed, which means that consent under the influence of alcohol, or other substances, in an unconscious state, or given due to threat, coercion, fraud, or mental incapacity is not consent.

Whether the act is sexual harassment or not, must be analysed from the perspective of the Survivor.¹ The lack of rejection or no “no” from the Survivor does not indicate that there was consent. What may seem like a harmless interaction for the Respondent, is sexual harassment for the Survivor.² Thus, the IC must see it from the understanding of the Complainant. What constitutes sexual harassment is not limited to the above definition or illustrations³, any other conduct that is sexual in nature and unwelcome is sexual harassment and may also fall under the definition.⁴

1. *Punita K Sodhi vs. Union of India* (Delhi High Court, 2010).

2. *Punita K Sodhi vs. Union of India* (Delhi High Court, 2010).

3. *Sapna Korde Nee Ketaki vs. State of Maharashtra* (Bombay High Court, 2019); *Shanta Kumar vs. Council of Scientific and Industrial Research* (Delhi High Court, 2017).

4. *Ajay Tiwari vs. University of Delhi* (Delhi High Court, 2019).

Illustrations

- **A** makes lewd comments about **B**'s breasts. **A** then makes kissing gestures towards **B**. **A** then proceeds to touch **B**'s body. **B** finds all these acts unwelcome and did not consent to any of this. All of the above comments, gestures and acts constitute sexual harassment.
- **C**, while sitting in class starts watching pornography on their phone. **C** then shows this to **D**, by keeping the phone in front of **D**, without taking **D**'s consent. This act constitutes sexual harassment.
- **E** makes a verbal comment about the number of men **F** has slept with and calls **F** a fag/whore/slut. Both these acts constitute sexual harassment.
- **G** and **H** are in a relationship. **H** has been pressurizing **G** to engage in sexual behaviour even though **G** has made it clear that they not want to. At a party **H** kisses **G** when **G** is drunk. Since **G** is drunk, **G** is not in a position to consent. All the above acts by **H** constitute sexual harassment.



Sexual harassment can also take place in various other circumstances where the lack of consent is less apparent. In situations where the Respondent is in a position of power over the Survivor, the Survivor may feel pressured to engage in a sexual act or feel that they cannot reject the sexual advance, this would qualify as sexual harassment.¹

Also, where the incident happened outside the premises of the HEI campus, after the incident if the Respondent continues to create a hostile environment² at the HEI, it may also be sexual harassment at the HEI.³

1. 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.

2. Hostile work environment is when one's behavior within a workplace creates an environment that is difficult or uncomfortable for another person to work in.

3. Saurabh Kumar Mallick vs. The Comptroller & Auditor General of India and Another (Delhi High Court, 2008).

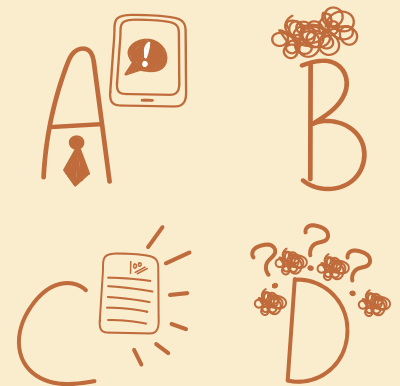


The circumstances listed below would also qualify as sexual harassment if they take place in connection to unwelcome sexual conduct:

- Implied or explicit promise of preferential treatment in exchange for sexual favours
- Implied or explicit threat of detrimental treatment at the HEI
- Implied or explicit threat about the present or future status of the person concerned
- Creating an intimidating offensive or hostile learning or working environment
- Humiliating treatment likely to affect the health, safety, dignity or physical integrity of the person concerned

Illustrations

- **A** is a professor. During an interaction with student **B**, **A** makes a comment calling **B** “hot” in **B**’s social media pictures. This comment amounts to sexual harassment.
- **C**, a professor, offers **D**, one of **C**’s students, extra marks on the exam if **D** performs sexual favours for **C**. Even if **D** performs the sexual favour, this amounts to sexual harassment.



More examples are available [here](#)



IDENTIFY THE AGGRIEVED PERSON

CHAPTER 2:

WHO IS AN AGGRIEVED PERSON?

Under the UGC Regulations, an Aggrieved Person means any survivor in relation the HEI.

An Aggrieved Person can be a:

- Student
- Employee
- Third party

Student

The UGC Regulations are **gender neutral for students**. A student who is a Survivor can file a complaint irrespective of their gender identity.

The UGC Regulations define a student as:

- A person duly admitted and pursuing a programme of study in a HEI (regular mode or distance mode, including short-term training programmes)
- A person who is in the process of taking admission in HEI's campus but has not yet been admitted
- A student participating in any of the activities organised by or taking place in a HEI other than the HEI in which they are enrolled



Under the UGC Regulations, students identifying with any gender/non-binary/non-conforming/queer identity may file a complaint of sexual harassment.

Regulation 3(1)(d) of the UGC Regulations includes persons who identify as women, men and third gender. According to the NALSA judgement,¹ third gender includes persons who identify as neither man or woman. The right of a transgender person to self-identify has been upheld under the POSH Act as well.²

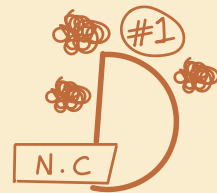
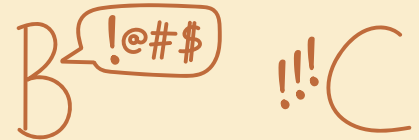
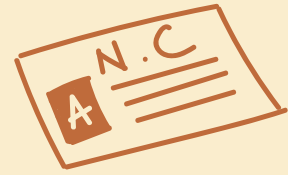
Additionally, it is also stated in Regulation 3.2(3) that an HEI must protect groups that are vulnerable to sexual harassment by reason of their minority identity, this would include all members of the gender spectrum, queer and non-conforming identity.



1. *National Legal Services Authority vs. Union of India* (Supreme Court 2014).
 2. *M. Srinivasan vs State & Neka* (Madras High Court, 2020).

Some Illustrations of a “Student” include:

- **A** is pursuing their bachelor’s degree at the esteemed National College (NC). **A** is a student of NC.
- **B** and **C** have come to National College (NC) to pay fees and complete their admission process. Before they are duly admitted as students, **B** makes offensive sexual remarks to **C**. Both **B** and **C** are students for the purposes of the UGC regulations and **C** may file a complaint against **B** at NC.
- **D** is a student at National College. **D** goes to another college, Public College (PC) for a competition. **D** faces sexual harassment at PC. **D** may file a complaint at PC.
- **E** is taking a law course through (NC) National College’s distance education program. One day, **E** receives a letter from their professor, containing sexually explicit messages. **E** is a student of NC and may file a complaint at NC.



Employee

The Regulations define “employee” to mean a person employed at a workplace for any work on a regular, temporary, ad hoc (on a need basis) or daily wage basis, either directly or through an agent, including a contractor. There is no requirement that the person employed must work for remuneration and can also be working on a voluntary basis.

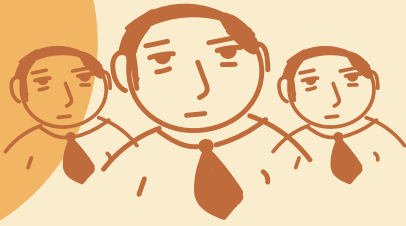
Employees can include a co-worker, a contract worker, probationer, trainee, apprentice, interns, volunteers, non-teaching staff, teaching assistants or research assistants, including those involved in field studies, projects, short-visits and camps.



Illustrations

- **A**, is a female clerk at the HEI. If **A** is sexually harassed by **B**, a student of the HEI, then **A** is an Aggrieved Person and can file a complaint against **B**.





Third Party

The Aggrieved Person may also be a third party or outsider, such as a visitor to the HEI. (In some other capacity, purpose or reason other than as a student or employee).

Illustrations

- **V**, is a female guest speaker at an event at the HEI. **X**, a student at the HEI sexually harasses **V**. **V** is an Aggrieved Person and can file a complaint against **X**.



- **Where the Respondent and the Survivor are both either an employee or student of the HEI**
The Survivor can initiate proceedings before the IC of the HEI.
- **Where the Respondent is a student / employee of the HEI but the Survivor is not an employee or student of the HEI (third party or visitor to the HEI)**
The Survivor can initiate proceedings before the IC even if they aren't a student/ employee because an Aggrieved Person also includes persons visiting the campus. *Clarification:* if they have come for enrollment, a short/online/long distance, competition, conference etc - they are a student.
- **Where the Respondent is a third party (not an employee or a student) but the Survivor is an student of the HEI**
The UGC Regulations specifically provide for "third Party Harassment".¹ The IC can assist the survivor in filing a complaint before the appropriate forum.

1. Regulation 2(m) of the UGC Regulations defines "third Party Harassment" as "a situation where sexual harassment occurs as a result of an act or omission by any third party or outsider, who is not an employee or a student of the HEI, but a visitor to the HEI in some other capacity or for some other purpose or reason."



CHAPTER 3:

WHAT IS A “CAMPUS”?

If the conduct falls within the broad parameters of the definition of sexual harassment, the next step is to identify whether the sexual harassment took place at the “campus” of a HEI.

If the incident of sexual harassment took place on “campus” then the IC has jurisdiction to receive complaints of sexual harassment.

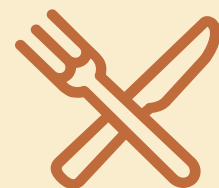
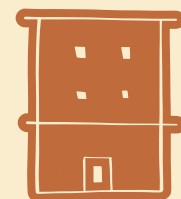
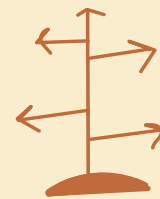
A “campus” is the location or the land on which a HEI and its related institutional facilities are situated and any extension of campus. This includes:

- 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.
- Any 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 HEI on field trips, internships, study tours, excursions, short-term placements, places used for camps, cultural festivals, sports meets.
- And any place where other activities are being conducted, when a person is participating in the capacity of an employee or a student of the HEI.

The campus is not limited to the geographical boundary of the HEI¹ and extends to places associated with the HEI’s activities OR places in proximity to the HEI OR controlled by its management OR activities undertaken as a student/employee of the HEI. This may include a wide range of activities, and has a broad meaning.

Illustrations

- A separate branch of the HEI, situated away from the main HEI constitutes a campus/workplace.
- Accommodation outside campus in a hotel for an event is included within the definition of a campus, since it is a place visited by the students arising out of the course of their study. This also includes the transportation.
- If the students visit a sports complex to represent their HEI for a competition and an incident of sexual harassment occurs there, then such place is a campus. The bus or car or any other transportation using which the students commuted, also falls within campus.
- A group of professors and students go to a restaurant outside the HEI for the purposes of a work meeting. Since this is in the course of learning and employment, this would constitute a campus/workplace.
- The HEI provides cab services for professors and students who wish to commute from other places around the city to the HEI. If an incident of sexual harassment occurs within the cab, it would be included within the campus/workplace.



1. *Ayesha Khatun vs. State of West Bengal* (Calcutta High Court, 2012).

Instances of sexual harassment on virtual platforms may occur in work-from-home/learn-from-home situations/online activities.¹

1. *Sanjeev Mishra v. Bank of Baroda* (Rajasthan High Court, 2021).

Illustrations of Sexual Harassment on Virtual Platforms:

- During the semester, a student sends unwelcome sexual messages to a fellow student on WhatsApp. This amounts to sexual harassment on the campus.
- In an online interaction, a student shares vulgar images with a female professor. This amounts to sexual harassment on the campus.



PART II

REMEDIES AVAILABLE AND HOW TO FILE A COMPLAINT



CHAPTER 4:

REMEDIES AND PROTECTION AVAILABLE

Besides taking steps for prevention and prohibition of sexual harassment, the POSH Act mandates every Executive Authority to constitute a body to deal with complaints in cases where sexual harassment has taken place. The Internal Committee or IC, is essentially a body created to receive and redress complaints of sexual harassment for students, employees or third parties in relation to the HEI Campus. The IC provides students and employees the option to pursue a formal course of action through the HEI.

There are two remedies available via the IC - Inquiry and Conciliation.

In a conciliation, at the behest of the Complainant, both the parties mutually agree to a solution acceptable to them. Here, the IC does not adjudge guilt or punishment. In an inquiry, the IC determines the guilt of the Respondent. The IC conducts the hearing and if the evidence is in favour of the Complainant, then it shall find the Respondent guilty. Accordingly, the IC will determine punishment for the Respondent.¹

The IC has limited powers of a Civil Court and thus it is empowered to summon or enforce the attendance of any person, order the production of documents, and perform any other matters as may be prescribed.

As per the UGC Regulations, in addition to conducting an inquiry or conciliation, an IC's responsibilities also include the following:

- Provide assistance if an employee or a student chooses to file a complaint with the police.
- Protect the safety of the Complainant by keeping their identity confidential.²
- 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 Respondent etc.³
- Ensure that the Complainant or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment.
- Ensure that there is no retaliation or adverse action taken against the Complainant or individuals who have assisted the Complainant⁴ (such as by filing the complaint, cooperating with the inquiry, participating in the inquiry, etc) or even individuals closely associated with those who assisted the survivor (eg. student, employee or guardian).

1. To know more about the range of punishments, go to Chapter 7, page 20 of this Handbook.

2. Regulation 5(c), UGC Regulations.

3. For a better understanding, go to Chapter 7, page 20, of this Handbook.

4. Regulation 5(e), UGC Regulations.

The IC shall consist of:

- A **Presiding Officer** who shall be a woman faculty member employed at a senior level (not below a Professor in case of a HEI, and not below an Associate Professor or Reader in case of a college) at the HEI, nominated by the Executive Authority
- **Two faculty members** and **two non-teaching employees**, committed to the cause of women or having experience in social work or legal knowledge, nominated by the Executive Authority
- **Three students**, if the matter involves students, who shall be enrolled at the undergraduate, master's, and research scholar levels respectively, elected through transparent democratic procedure
- **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



At least one-half of the total members of the IC should be women. Persons in senior administrative positions in the HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., cannot be made members of ICs in order to ensure autonomy of their functioning.

However, the Vice Chancellor can nominate an additional member from the academic staff or the non-teaching staff on a case-to-case basis.



CHAPTER 5: HOW AND WHEN TO FILE A COMPLAINT

As discussed above, a Survivor can proceed with conciliation or an inquiry if they have been sexually harassed on campus. But first, to avail any remedy from an IC, the **Survivor must file a complaint in writing**. In case a complaint cannot be made in writing by the Survivor, the Presiding Officer or any Member of the IC is required to provide all reasonable assistance to the Survivor for making the complaint in writing.¹

The complaint must be **filed within 3 months of the incident of sexual harassment**. Where a series of incidents of sexual harassment has occurred, the complaint must be filed within three months from the date of the last incident. Details on how a complaint can be drafted are available here.²

This time period may be extended in certain circumstances. In some cases, it may not be possible to file the complaint within the time period. In such cases, the IC may permit an extension of the time period by another 3 months within which the complaint must be filed. In order to do so, the Survivor must provide reasons to show that their circumstances prevented them from filing a complaint within the stipulated period of three months.³

If there is no IC in place, it can be argued that the complaint is not time barred.⁴

If the Survivor is unable to make a complaint on account of physical incapacity or death or mental incapacity, then a friend, relative, co-student, colleague, or anyone associated with the Survivor may file a complaint.⁵

1. In some University Policies, where the allegation is against the head of the HEI, such as the Vice Chancellor or a member of the Executive Authority, the complaint is filed before the Local Complaints Committee.

2. Visit <https://www.safecollegespace.com/how-to-draft-the-complaint>

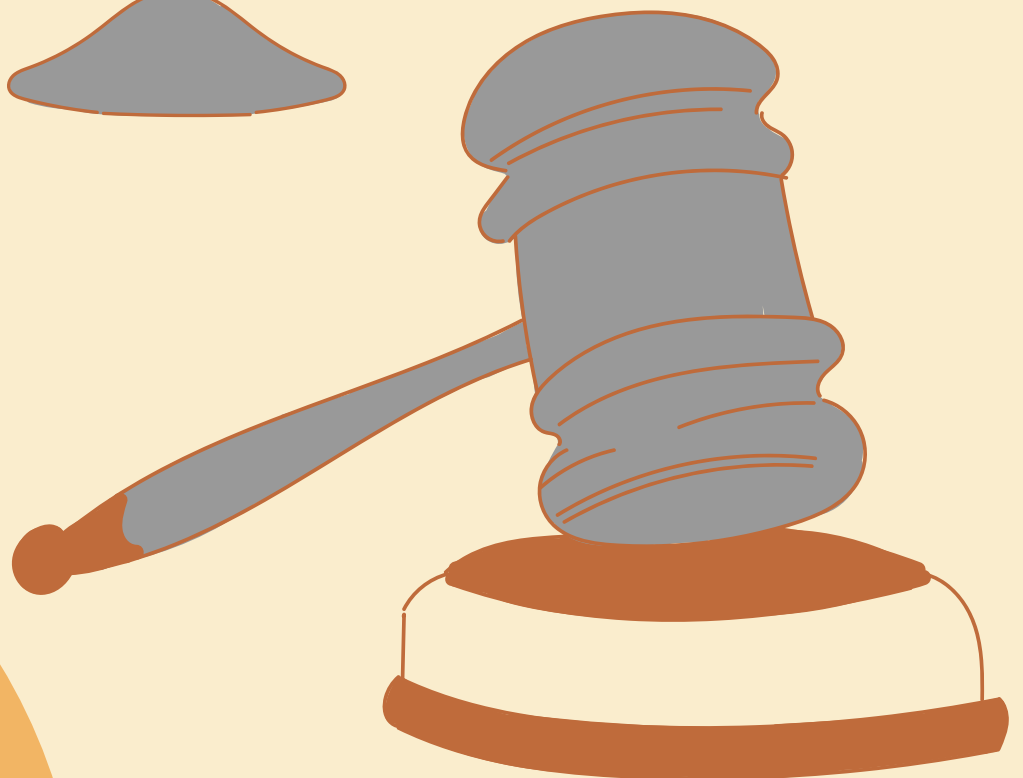
3. Section 9, POSH Act; Regulation 7, UGC Regulations.

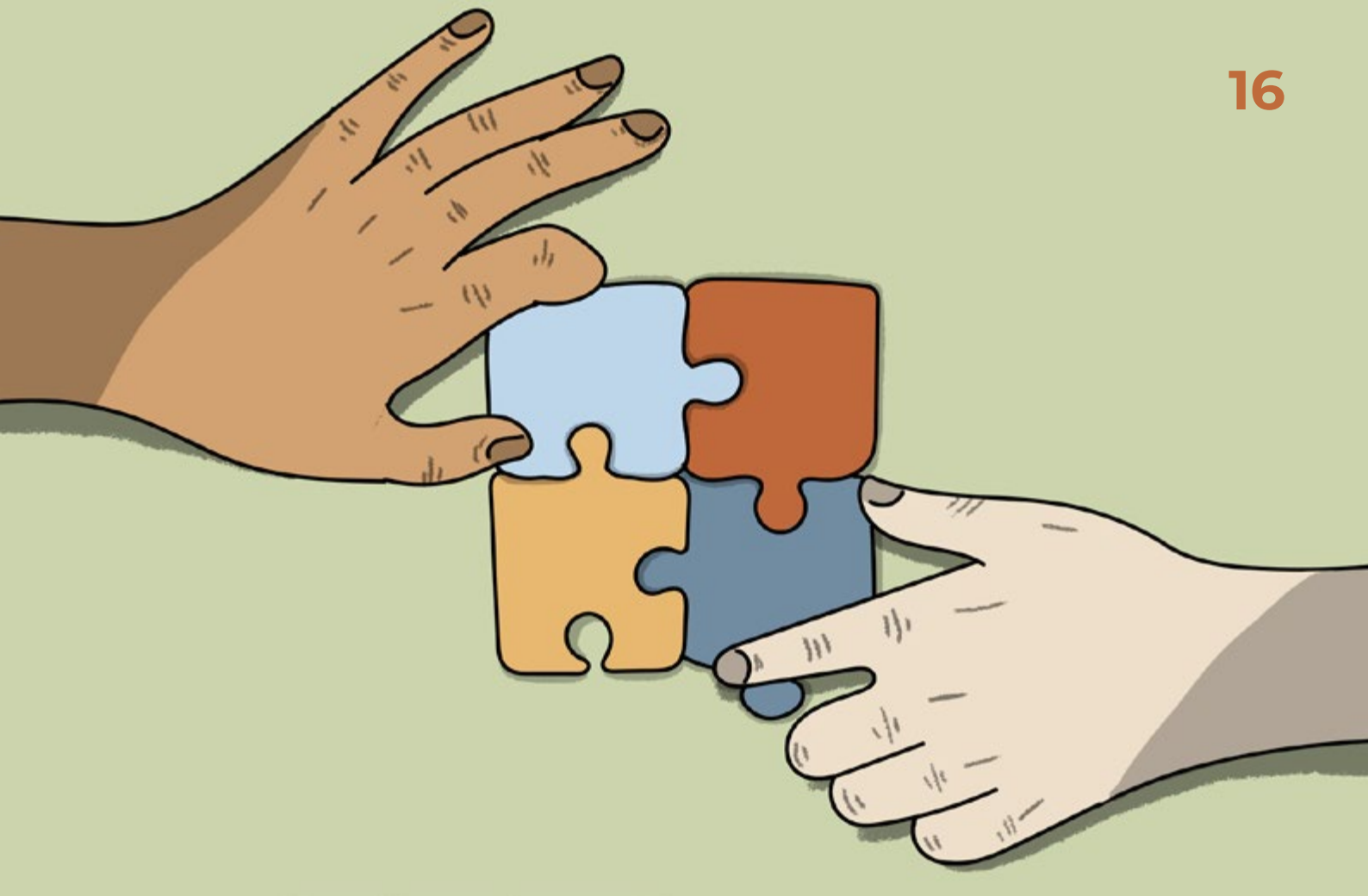
4. *Vishwesh Dayal Shrivastava vs. Union of India* (Allahabad High Court 2015).

5. Regulation 7, UGC Regulations.

PART III

PROCESS





CHAPTER 6:

WHAT IS THE PROCESS OF CONCILIATION?

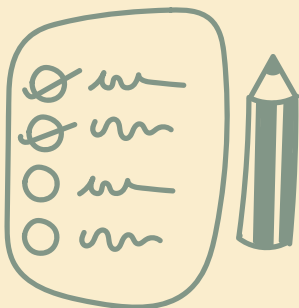
Conciliation is a non-adversarial process by which the Complainant and the Respondent, via the IC work out a solution acceptable to both, known as a **settlement**. If the Complainant chooses conciliation, the IC will assist the parties to resolve the matter. This should be done without undermining both parties' rights. A Complainant can go forward with conciliation if an inquiry is not suitable for their circumstances.

The settlement arrived at through conciliation can include a verbal or written apology, counseling, a bond of good conduct undertaken by the Respondent or any other outcome acceptable to both parties. However, it cannot include any monetary settlement/compensation. For example, the parties can agree to that the Respondent give a written apology and maintain distance from the Complainant.

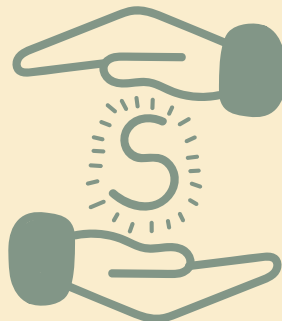
The settlement must be in writing and the copy of must be given to the Complainant, Respondent and Executive Authority. If the terms of settlement are not upheld by the Respondent, the Complainant can approach the IC and if the IC finds that the terms have not been followed by the Respondent, it shall start the process of inquiry.



CHAPTER 7:
**HOW IS AN INQUIRY
CONDUCTED?**



Stages of Inquiry

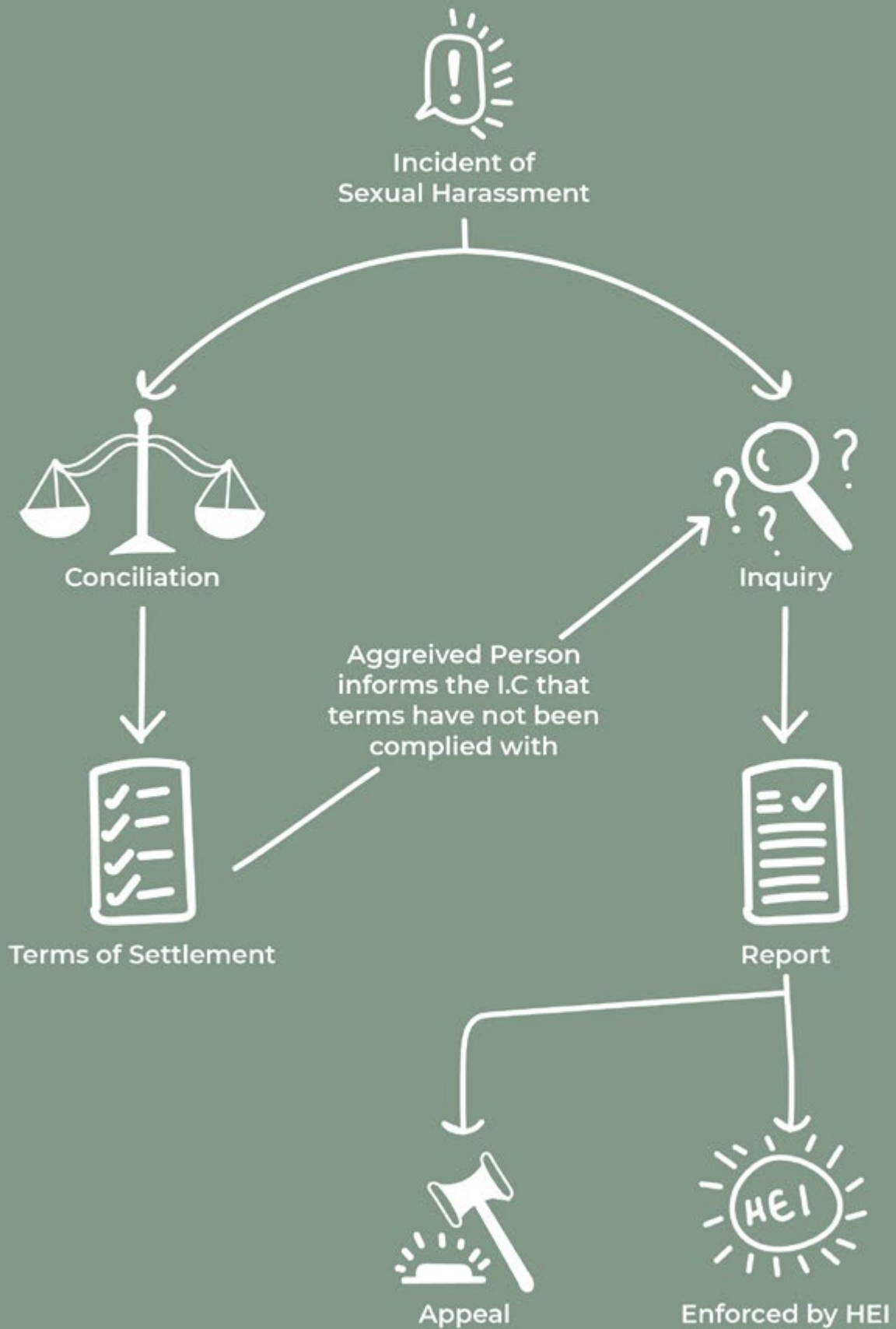


Confidentiality,
Anonymity and
Protection of
Complainant



Appeal

STAGES OF INQUIRY



Stages of Inquiry

● Informing the Respondent:

As mentioned above, to initiate an inquiry a complaint must be submitted to the IC. The IC must ensure that one copy of the complaint is sent to the Respondent within seven days from the date of receipt of the complaint. In order to defend themselves, the Respondent must reply to the complaint and provide a list of any evidence and witnesses within 10 working days of receiving the complaint from the IC.

● Rules followed during the process:

The proceedings follow the principles of natural justice which include 'rule against bias', 'rule of fair hearing' and 'rule of reasoned decision'. This means that the parties must be given a reasonable and fair opportunity to present their case, none of the members of the IC should be biased towards/against the parties and the final report should contain reasons for reaching the decision.

The principles of natural justice aim to ensure a fair and unbiased hearing. They are not fixed rules and are not defined in any Act. They are flexible and are moulded according to the circumstances of the case to ensure that justice is attained. Therefore, the rules given below may not be strictly or uniformly followed in every situation.

Usually, an inquiry consists of giving written or oral testimony by both parties and witnesses, submitting evidence, cross examination of both parties and witnesses, etc.

The IC should obtain a list of witnesses from both parties. If a witness or the Respondent does not cooperate, the IC can summon them as the IC has powers similar to a civil court while conducting an inquiry. Additionally, the IC may terminate the inquiry or give a decision based on the available evidence (known as an ex-parte decision) if either of the parties fail to present themselves for three consecutive hearings without sufficient reason.¹

The Complainant and the Respondent have the right to cross examine each other and their witnesses.² Both parties have the right to rebut any statements made against them during the proceedings.

The Complainant may feel uncomfortable with giving their testimony or being cross-examined in the presence of the Respondent. Depending on the facts, the IC may take necessary action to ensure that the Complainant/witnesses do not feel intimidated or threatened by the presence of the Respondent.³ This may also be done to protect them from victimisation.⁴

1. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, Rule 7(5).*

2. *Cross examination is when there is a verification of truth of the evidence by asking questions to the person who has presented such evidence/testimony*

3. *For example, the IC may ask the Respondent to switch their camera off during virtual proceedings, conduct the cross examination without the Respondent present, with a list of questions from the Respondent instead, etc.*

4. *Delhi University & Ors vs (Prof.) Bidyug Chakraborty.* (Supreme Court, 2010).

● Time period:

An inquiry must be completed within a period of 90 days. However, if the proceedings extend beyond 90 days, they are not automatically invalidated.¹ Instead, the Court may issue directions to the IC to fast track the proceedings to avoid further delay.²

● Post Inquiry:

Upon completion of the inquiry, the IC must submit its report (whether the Respondent is guilty or not) and recommendations (punishment, if guilty) to the Executive Authority, within 10 days. The Executive Authority must implement the report within 30 days unless an appeal is filed within that time by either party. Where the charges against the Respondent stand proven, the IC is under an obligation to record a definite conclusion of them being guilty of the offence.³

● Punishment:

The punishment may vary depending on the offence. The punishment must be proportionate to the offence. The perspective of the victim can also be factored in.⁴ If the Respondent is an employee, they are punished as per Service Rules of the HEI.

Some examples include:

- Withholding privileges of the student such as access to the library, auditorium, halls of residence, transportation, scholarships, allowances, and identity card.
- Suspending or restricting entry into the campus for a specific period; expel and strike off name from the rolls of the HEI and deny readmission.
- Order reformatory punishments like mandatory counseling, performance of community services.
- The Regulations also provide for an award of compensation, irrespective of whether the Complainant is a student or employee, payable by the Respondent, as recommended by the IC.

If awarded, the Compensation should account for the mental trauma and suffering, any loss of career opportunity, any medical expenses including psychiatric treatment borne by the Complainant and the income and status of the Respondent.⁵

If the IC finds that a complaint was **falsely or frivolously filed** after conducting the inquiry, then they have the power to punish the Complainant.⁶ However, the mere inability to substantiate a complaint or furnish adequate proof does not amount to a false/frivolous complaint. An IC should be sympathetic to the Complainant instead of being preemptively suspicious before the inquiry.⁷ They cannot doubt the Complainant unless malicious intent is established via the inquiry.

1. *Tanushree Chopra vs. Ministry Of Women And Child Development*. (Delhi High Court, 2015).

2. *Ashok Kumar Singh vs. University of Delhi* (Delhi High Court, 2017).

3. Section 13(3) POSH Act; *Ashok Kumar Singh vs. University Of Delhi*. (Delhi High Court 2017).

4. *Vidya Akhave vs. Union of India* (Bombay High Court 2016).

5. Regulation 10(3), UGC Regulations.

6. Regulation 11, UGC Regulations.

7. *Ms. (X) v. Union of India*, (Delhi High Court, 2020).

● Post Report:

The IC must send its report and any recommendations within 10 days after the inquiry has ended to the Executive Authority of the HEI. Once the IC has sent its recommendations across to the Executive Authority, the HEI has two options:¹

1. It can deviate from the recommendations of the IC. This means that the guilty/not guilty verdict shall remain the same, but the HEI can provide for a different punishment. If the HEI deviates, it must provide written reasons which are to be conveyed to the IC and both the parties to the proceedings.
2. It can uphold the recommendations of the IC. The Executive Authority shall issue a show cause notice, answerable within ten days, against the guilty party. The Executive Authority of the HEI shall proceed only after considering the reply of the Complainant.

Confidentiality, Anonymity and Protection of Complainant/Covered Individuals

● Confidentiality

Confidentiality refers to an obligation of an individual to refrain from sharing information classified as 'confidential' with the public apart from those who are legally authorised to access this information.

As per the UGC Regulations, the identity of the aggrieved party, witnesses and Respondent shall be kept **strictly confidential**. This means that the Complainant and Respondent will be aware of each other's identities and the identities of the witness,² but apart from them and the members of the IC, the information should not be shared with any other person.

As per Section 16 of the POSH Act, apart from the **identities** of those involved in the proceedings, the **contents of the complaint, any information** relating to conciliation and inquiry proceedings, **recommendations** of the IC, **the action taken** shall not be published, communicated or made known to the public, press and media in any manner.³ Apart from the members of the IC or any person entrusted with such information, this obligation is also applicable to the participants of the proceeding. Thus, the Complainant, Respondent, witnesses and members of the IC cannot reveal such confidential information.

If any person entrusted with the duty and obligation to handle such confidential information breaches their obligation to keep it confidential, Section 17 of the POSH Act places a penalty on them.⁴

1. Regulation 8(6), UGC Regulations.

2. In certain circumstances they may not be, read the next section for more information.

3. Section 16, POSH Act states that "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."

4. They 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, a fine of INR 5,000 may be imposed as per Section 12 of POSH Rules.

● Anonymity

As mentioned above, while a Complainant's identity cannot be revealed to members of the public, it is not withheld from the members of the IC and the Respondent. Therefore, an anonymous complaint, which is a complaint that does not reveal the name of the Complainant, cannot be filed.¹ However, under extremely exceptional circumstances, the IC may choose to not disclose the identity of the Complainant/s. This might be done in a situation where there are multiple complaints against an influential individual, for example- the senior faculty of a HEI,² or where there has been gross misconduct,³ etc. This would not lead to a violation of the principles of natural justice as it would be in the interest of protecting Complainants from further harassment or victimization.⁴

Witnesses presented by the Complainant may be kept anonymous and their identities may be protected if the circumstances require it.⁵ An example of such a situation could be if the Respondent is an individual in a high ranking position. However, this is not a rule or obligation under the Act.⁶

Protection Against Victimization/ Discrimination/Retaliation

Every IC has an obligation to:⁷

- Ensure that Complainants or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment.
- Ensure prohibition of retaliation or adverse action against persons or those closely associated to persons who have engaged in protected activity.⁸

Interim Relief (Temporary Protection Measures)

In situations where the Complainant is feeling uncomfortable, potentially unsafe, in imminent danger or at the risk of being discriminated against, the IC can intervene to protect the Complainant. This power can be exercised by the IC only after the complaint has been filed and extends until the final decision has been taken by the IC. Interim measures can be required in various circumstances ranging from close proximity to the Respondent, the Respondent holding a position of power and authority to retaliate/victimize the Complainant, imminent danger or any such scenario involving harm to the Complainant.

1. *Mr. Bader Sayeed vs. The Southern India Education* (Madras High Court, 2012).

2. *Sardar Vallabhbai National Institute of Technology and Ors. vs. Ranjit Roy and Ors* (Gujarat High Court, 2016).

3. *Hira Nath Mishra & Ors. vs. The Principal, Rajendra Medical College* (Supreme Court, 1973).

4. *Hira Nath Mishra & Ors. vs. The Principal, Rajendra Medical College* (Supreme Court, 1973).

5. *Delhi University & Ors vs (Prof.) Bidyug Chakraborty* (Supreme Court, 2010).

6. *Institute of Hotel Management, Catering Technology and Applied Nutrition & Ors. vs. Suddhasil Dey & Anr* (Calcutta High Court, 2020).

7. Regulation 5(d) & 5(e), UGC Regulations.

8. According to Regulation 2(j) of the UGC Regulations, "protected activity" includes participating 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).

A request for interim relief must preferably be made in writing and must explain the grounds or circumstances for which the relief is being sought. Even in the absence of an application, the IC must protect the Complainant to prevent further harm to them.¹ The measures should be taken according to the circumstances and gravity of the complaint and what is necessary for protecting the Complainant during the pendency of the inquiry.

If according to the IC there appears to be a situation that requires intervention it may order interim relief by recommending the head of the HEI to: ²

- Transfer the Complainant or Respondent to a different department or section to minimize the risk involved in contact or interaction.
- Grant leave to the Complainant with full protection of status and benefits for a period up to three months.
- Restrain the Respondent from reporting on or evaluating the work or performance or tests or examinations of the Complainant.
- Ensure that Respondent are warned to keep a distance from the aggrieved, and wherever necessary.
- If there is a definite threat, restrain their entry into the campus (in the case of virtual interaction, this could amount to a restraining order from contacting the Complainant).
- Suspend the Respondent from work or the HEI (as the case may be) till the completion of the inquiry.³
- 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.

Illustrations of interim relief:

- **X** and **Y** formed a part of the same project team under a particular supervisor when **Y** sexually harassed **X**. During the pendency of the inquiry against **Y**, the IC may recommend the head of the HEI to transfer **Y** to a different project team.



- **Y** is a professor at a HEI. One day, he tells one of his students, **X**, that if she wants to pass her examinations, she will have to perform sexual favours for him. During the pendency of the inquiry against **Y**, the IC may recommend the head of the HEI to restrain **Y** from reporting on or evaluating the work of **X**.



1 Page 30 of the Handbook by the Ministry of Women and Child Development.

2 Regulation 9, UGC Regulations.

3 Professor Ashish Kumar Das vs. North Eastern Hill University (Meghalaya High Court, 2017).

- **X**, a student at a HEI forms a part of the team of seventy students being supervised by **D**. One day, **D** asks **X** for sexual favours. After the complaint is filed, a written request for the suspension of **D** from the HEI during the pendency of the inquiry is made to the IC by the Complainant.

If after examining the material available on record, the IC records a prima facie (preliminary) finding that **D's** conduct does not merit his suspension and / or removal from campus, the IC may recommend an alternative interim relief accordingly.¹



1 Ms. Pi and Ors. vs. Jawaharlal Nehru University and Ors (Delhi High Court, 2018).

Appeal

If either party wishes to challenge the outcome of the inquiry or the manner in which it was conducted, they may file an appeal before the Executive Authority of the HEI . The appeal has to be filed within **30 days** of the date on which the order and recommendations of the IC are notified. If an appeal is successful, it will nullify the order and recommendations by the IC. Grounds for Appeal could include instances where there is:

- Non compliance with Principles of Natural Justice
- Apparent Error
- Non-Compliance by HEI
- Error in Constitution of IC

Non Compliance with Principles of Natural Justice

As the principles of natural justice must guide the IC proceedings¹, any departure from them during the inquiry can become a ground for appeal. Some broad instances where appeals may be upheld for non-compliance with Principles of Natural Justice are:

- Not providing a reasoned order i.e. not listing out the reasons on the basis of which the said conclusion was reached.²
- Not providing the opportunity for an effective cross examination without any reasonable explanation.³ However, the IC has the flexibility to alter the procedure of cross-examination depending on the circumstances.⁴



1. Rule 7, POSH Rules.

2. Providing reasons in an order/judgement is a core principle of the principles of natural justice Siemens Engg. and Mfg. Co. of India Ltd. vs. Union of India (Supreme Court, 1976).

3. Manjeet Singh vs. Indraprastha Gas (Delhi High Court, 2016).

4. L.S. Siby vs. Air India (Kerala High Court, 2014).



- Not providing the Respondent an opportunity to lead evidence or make representations regarding their case.¹
- Not providing the Respondent contents of statements that may have been made by the petitioners.²
- Constitution of biased IC.³ For example where the IC has been appointed and constituted by the Respondent themselves⁴ or where a member has personal knowledge or interest towards one of the parties.

1. *Sardar Vallabhbhai National Institute of Technology and Ors. vs. Ranjit Roy and Ors* (Gujarat High Court, 2015).
2. *Sardar Vallabhbhai National Institute of Technology and Ors. vs. Ranjit Roy and Ors* (Gujarat High Court, 2015).
3. For examples see Chapter 8.
4. *Linda Eastwood vs. Union of India* (Delhi High Court, 2015).
5. *U.S. Verma and Ors. v. National Commission for Women and Ors* (Delhi High Court 2009).



Apparent Error

Recommendations made by the IC suffer from an error that is apparent by merely examining the reasoned order, such as non-consideration of relevant material, an obvious misinterpretation or ignorance of the law and an award that is in excess of jurisdiction of the IC.¹

1. *Vidya Akhave vs. Union of India* (Bombay High Court, 2016).



Non-Compliance by HEI

The HEI refuses to/does not implement the recommendations made by the IC.¹

1. *Debjani Sengupta vs. Institute of Cost Accountants of India* (Calcutta High Court, 2019).

Error in Constitution of IC

If the IC is not constituted as per POSH Act¹ eg. the majority does not consist of women or there is no external member in the IC.

1. *Ruchika Singh Chhabra vs. Air France India and Ors* (Delhi High Court, 2018).





Approaching the High Court (Writ Jurisdiction)

If either party is unsatisfied with the procedure, final order or action taken by the HEI, they can approach the High Court. Either party can file a writ petition¹ before the High Court in the state or union territory where the HEI is situated. The power of the High Court includes striking down the order of the IC or directing the IC to conduct a fresh inquiry. If the party wishes to challenge the decision of the IC, they can challenge the IC order or/and recommendations. On the other hand, if the party wishes to challenge the action taken by the Executive Authority, they can challenge the punishment order given by the Executive Authority.²

Ordinarily the High Court does not interfere with IC proceedings. High Courts interfere if the order is contrary to the law, if relevant factors were not considered, if irrelevant factors were considered or if the decision is not reasonable. Also, The High Courts do not generally interfere with the amount of compensation awarded, unless it is shockingly disproportionate or not in accordance with the law.³ Whether the Court will interfere with the proceedings or not would be determined on a case to case basis.

1. A writ is an order by a higher court to a lower court or courts, directing them to do something or stop them from doing something. Writ is a form of written command in the name of the court.

2. *Pradip Mandal vs. Union Of India & Ors* (Calcutta High Court, 2016).

3. *Wednesbury Principles* referred to in the case of *Vidya Akhave vs. Union of India* (Bombay High Court 2016).

PART IV

RESPONSIBILITY OF THE HEI



CHAPTER 8:

CONSTITUTION OF AN IC

The primary responsibility of the Executive Authority of the HEI is to constitute an IC in accordance with the UGC Regulations and implement the recommendations of the IC.

The composition of an IC should be in strict compliance with the POSH Act. Any departure from the provisions of the POSH Act makes the committee liable to be reconstituted, and start an inquiry afresh. Persons in senior administrative positions in the HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICs in order to ensure autonomy of their functioning.

It is to be noted that even if the committee is constituted according to the POSH Act and the UGC Guidelines, but there exists an apprehension of bias at the time of the constitution of the committee, it may invalidate the proceedings undertaken by the IC.¹ The burden to establish a reasonable and real likelihood of bias is on the party claiming the same.²

Some examples of an Improperly Constituted IC are:

- An external member appointed to the IC does not possess the broad qualifications required by the law. The constitution of the IC stands invalidated and the proceedings are liable to be set aside and started afresh.³

3. Ruchika Singh Chhabra vs. Air France India and Another (Delhi High Court, 2018).

- If the constitution of the IC is of such a nature that its members are subordinates of the person against whom the matter is being heard; there exists reasonable apprehension that any inquiry conducted by such an IC would be invalidated due to bias.⁴ The report of such an IC shall be liable to be set aside, and a new committee shall be constituted in compliance with the POSH Act and the UGC Regulations.

4. M. Rajendran vs. Daisyrani and Others (Madras High Court, 2018).



1. M. Rajendran vs. Daisyrani and Others (Madras High Court, 2018).

2. Somaya Gupta v Jawaharlal Nehru University (Delhi High Court, 2018).



**"IF YOU DON'T HAVE A PLAN FOR
INCLUSIVITY, YOUR PLAN IS TO BE
EXCLUSIVE"**

Catrice M. Jackson

CHAPTER 9:

SPECIALLY VULNERABLE GROUPS IN HIGHER EDUCATION INSTITUTIONS

Vulnerability can be socially compounded by religion, region, class, caste, sexual orientation, minority identity and disability. As per Regulation 3(2)(3) of the UGC Regulations, vulnerable groups are particularly prone to harassment and also find it more difficult to complain. In pursuance of the same, the UGC Regulations impose a duty on the HEI to be sensitive to such groups and their needs.

As mentioned above,¹ the UGC Regulations also recognize that those who identify as third gender are vulnerable to many forms of sexual harassment, humiliation and exploitation.

The Saksham Report, which was a precursor to the UGC Guidelines highlights various intersections of identities and backgrounds of students that make them vulnerable to sexual Harassment. The following are important **excerpts** from the Report.

Students with disabilities can be particularly susceptible to harassment or abuse. Women with disabilities are placed in relations of unique dependency because they are disabled. This situation is exacerbated by the lack of facilities on campuses which are built only with the able bodied in view. This is also why campuses must be disability friendly. Access to institutional structures such as anti-ragging committees or ICs must be enabled and facilitated. Some HEIs have provided for enabling committees to address the special needs of the students with disabilities and it is suggested that these committees work with women 's cells to provide counseling and facilitation in terms of access to ICs where needed.

It is important to take note of the backgrounds of 'women,' their caste/regional experiences, including harassment with regard to normative notions of women. Obscene comments, imposition of dress codes, assumptions about sexual availability, could be exacerbated by religious, regional, or caste power/difference.

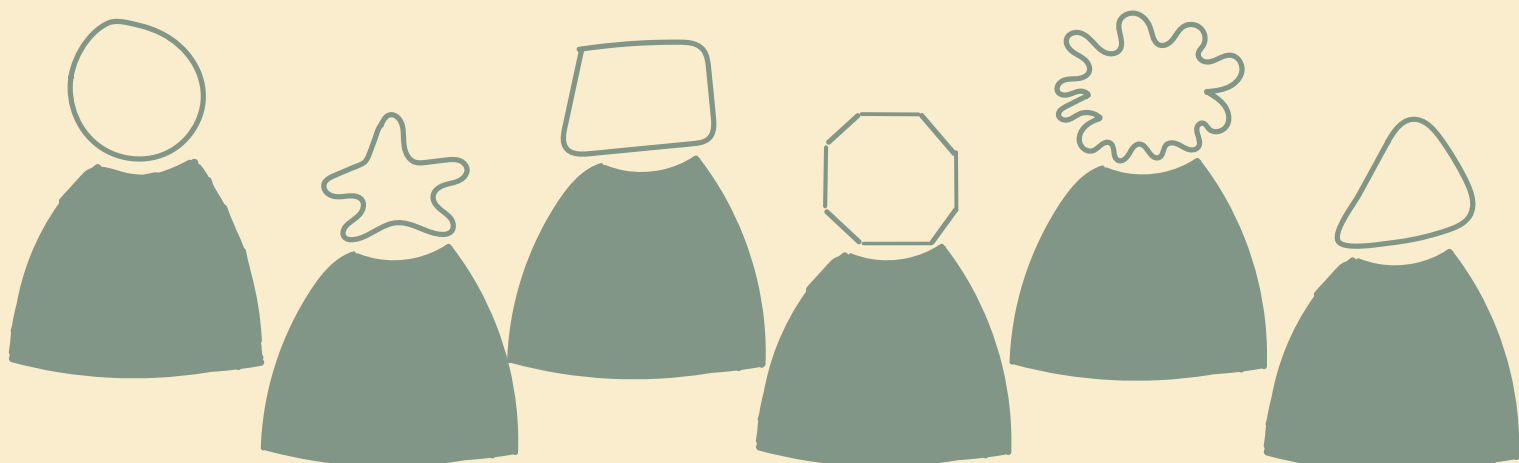
1. Chapter 2, page 5 of this Handbook.

Situations of harassment could be compounded and lead to acute vulnerability for dalit or minority women. Students who chose to wear the hijab have been observed to be subject to odd comments. Encouragement must be provided to minority students to express their experiences of harassment or discrimination in an atmosphere of safety and confidentiality.

Students from regions such as the North East also reported the compounded experience of racial and sexual stereotyping.

The issue of students from rural and more 'traditional' backgrounds into larger city HEIs may need special attention in the sense that it is not just experiences of discrimination but also different ideas about 'appropriate' behaviour for men and women creates confusion and alienation among students which needs to be explicitly addressed.

The Saksham Report provides a clear and well rounded perspective on what is needed to make Campuses safer spaces. It serves as a tool to better understand the context in which UGC Regulations were drafted and mirrors the needs of a modern HEI set up.



CHAPTER 10:

OTHER IMPORTANT OBLIGATIONS

Every HEI has the responsibility to prevent and prohibit sexual harassment. As a part of this obligation, it is important that HEIs work towards creating a positive interpersonal climate on campuses. As the Saksham Report states, *“It is not enough to focus on harassment or make penal provisions. The HEI is a living space as well as a work space where it should be possible to think further about equality, to take risks, to experiment, to learn about how not just to tolerate but to live well with others who are different— socially, economically, in terms of religion, race, sexual orientation or ability.”*

To ensure this there are various mandatory measures that need to be undertaken to tackle sexual harassment at campuses including regulations, awareness, compliance with the law, supportive measures, sensitization etc. According to the UGC Regulations, each HEI must:



HEI Policy and Rules

- Incorporate definitions and provisions of the UGC Regulations within the HEI's policy/regulations for prevention of sexual harassment
- Publicly notify these provisions, commit to a zero-tolerance policy towards sexual harassment, and display information regarding penalties, redressal mechanisms, etc in a prominent place
- Treat sexual harassment as a misconduct under Service Rules (for employees) or violation of disciplinary rules (for students)

Awareness

- Organise training programs or workshops for students, faculty, officers, staff and functionaries
- Conduct of workshops for sensitisation for students, faculty and non-teaching staff as per the Saksham Report¹
- Create awareness about what sexual harassment is, inform employees and students about recourse as victims



1. Refer to page 48 of the SAKSHAM Report, available at <https://www.ugc.ac.in/pdfnews/5873997SAKSHAM-BOOK.pdf>

- Organise orientation and training programs for IC members

Compliance



- Ensure creation and proper functioning of IC
- Proactively try to curb all forms of harassment
- Monitor timely submission of IC reports
- Prepare annual status reports

Supportive Measures



- Update and revise rules from time to time
- Provide institutional resources for IC functioning
- Be sensitive to intersectionality
- Have guidelines for research supervision for research students and doctoral candidates
- Half yearly review of implementation
- Gender-sensitisation programs
- Counselling services
- Proper security (including women's security, well-lit campus, reliable transport, construction of women's hostels and other supporting infrastructural measures)
- No discriminatory rules for women in the name of safety
- Adequate health facilities, including gender sensitive doctors, and a gynaecologist

What can be done if a HEI does not comply with its obligations?

You may register a grievance with the UGC online. Then the following sanctions may be taken by the UGC:

- Withdrawal or withholding of grants
- Removal of HEI from the list maintained by the UGC
- Declaration that the HEI is unfit to receive assistance under any general or special assistance programs
- Informing public through prominently displayed notice
- Recommendation for withdrawal of affiliation or declaration as deemed to be HEI or status as a HEI

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