

***NATIONAL CONSULTATION
ON
SEXUAL HARASSMENT
ON UNIVERSITY CAMPUSES***

Hyderabad, 23-24 January, 1999

A Report

Indian Association for Women's Studies
and
Human Rights Programme, University of Hyderabad

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V. Padmini typed and formatted the entire manuscript. We would like to place on record our appreciation of her work.

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PREFACE

The Human Rights Programme of the Central University of Hyderabad under UGC Special Assistance commenced from June 1995, with the following objectives: to explore avenues to incorporate emerging human concerns in the core discipline of Political Science; to stimulate debates on different dimensions of human rights-concept and practices as to arrive at a better philosophical and theoretical understanding of this domain of social dynamics; to conduct specific micro level studies to gain an insight into the nature of violations and the deeper underlying socio-economic processes and the laws that govern the phenomenon and to build documentation to help scholars engaged in research on human rights.

Women's Studies as the Indian Association for Women's Studies conceives of it is a discipline which perceives women not just as subjects of social and economic forces, but also as agents of change. Its origins lie in women's movements the world over, which have raised issues of atrocities on women through concerted campaigns and advocacy. Being a membership based body the Indian Association for Women's Studies stands at the confluence of the work of scholars and activists and has from its inception underscored the indispensability of an activist orientation to scholarship - the need for reflection, struggle and scholarship to be coexist and be constantly in dialogue.

Given this history, the Indian Association for Women's Studies and the Human Rights Programme are naturally concerned about the rise in sexual harassment and violence against women on university campuses and in institutions of higher learning. Recent incidents in Rajasthan, Madhya Pradesh, Madras and Hyderabad, are but a few that have ranged from grievous injuries and rape to death of women on campuses. Apart from these grave incidents, there are the everyday encounters that women students, faculty, and non-teaching

employees have to deal with – encounters with fellow students, colleagues and teachers. While it has been possible to raise these issues in public and campaign against them outside, most campuses today continue to be cloistered communities that resist “outside” intervention even in the gravest instances. Campuses are often construed as “private” spaces and any attempt to build an environment or a network that would provide some measure of security for women and act as a check on the systematic undermining of their rights is viewed with suspicion all around. There is also the false assumption that institutions of higher learning are somehow above or beyond the law in this respect. Or worse still that each institution can exercise its discretion in whether or not to devise adjudicating/redressal mechanisms to deal with cases of sexual harassment, what kinds of mechanisms it devises and who should constitute these mechanisms. The worst hit are women students – research scholars finding themselves in the most disadvantaged position. In an age when we are saying that the family is no longer a private space, and that as citizens we will not tolerate any abridgement of women’s right to life within the family, the argument that educational institutions must be allowed the liberty to govern their spaces according to norms that are neither transparent nor democratic can hold no ground.

Both the Indian Association for Women’s Studies and the Human Rights Programme visualised this consultation as a dialogue on a specific issue, the purpose of which was to be able to devise some strategies on how the conclusions of this consultation can be brought to bear on institutions across the country. Campus groups elsewhere have suggested that the issue of sexual harassment be linked to service rules, credits and even grants to institutions. We have for the past fourteen months had a Supreme Court judgement against sexual harassment in the workplace which has the status of a statute till suitable legislation is put in place. A number of participants were unhappy about the fact that the guidelines circulated by

the University Grants Commission early last year has resulted in the token gesture of setting up grievance cells which have no powers of enquiry or redressal.

Some of the concerns debated in the consultation were: the exact implications of the Supreme Court judgement; the role of the University Grants Commission in the implementation of the judgement; the role of Teachers' and Students' Unions in providing support and solidarity to victims of sexual harassment; the constitution and composition of Enquiry Committees; what should be the nature of involvement of outside parties in the setting up of these committees; and most importantly the scope and limitations of grievance cells. The Consultation reflected at length on exactly how all this impacts on educational institutions.

This report, while summarising the discussions at the Consultation, also presents in detail the text of the Supreme Court judgment as well as substantive extracts of the draft policies presented at the consultation. In doing this, we hope this report will also serve as a ready reference for the drafting of policies in different institutions across the country.

Prof G. Haragopal
Coordinator
Human Rights Programme
University of Hyderabad

Dr. Kalpana Kannabiran
General Secretary
Indian Association for
Women's Studies

INAUGURAL SESSION: DEFINING AN AGENDA

The speakers at the inaugural session were:

- ◆ Mr. K.G. Kannabiran, Advocate, National President, Peoples' Union of Civil Liberties;
- ◆ Mr. Mihir Desai, Advocate, Director, India Centre for Human Rights and Law, Bombay;
- ◆ Prof. Pushpa Bhawe, President, Maharashtra Stree Abhyas Vyaspeeth;
- ◆ Ms. Nandita Haksar, Advocate and Reader in Human Rights, Cochin University of Science and Technology;
- ◆ Dr. Carolyn Elliott, Director, American Studies Research Centre, Hyderabad.

Mr. Kannabiran, in his inaugural address, traced the discourse on human rights historically, and stressed the need for a rights based approach as indispensable to a cultural and political transformation of society. Examining various contexts within which there has been an operationalising of human rights, he pointed to the fact that neither the Universal Declaration of Human Rights nor the Fundamental Rights enshrined in the Indian Constitution are exhaustive. Judicial activism therefore serves to fill in the gaps in rights based jurisprudence. The Supreme Court judgement on Sexual Harassment in the Workplace, according to him, is illustrative of the need for judicial activism especially in protecting the rights of women, where adequate safeguards are not guaranteed by the Constitution. *The purpose of the Supreme Court judgement, he said, was not to provide "guidelines" for institutions, but to formulate a statute on the basis of which institutions were required to amend their rules of conduct for employees. The option of whether or not to amend did not rest with institutions, he said, concluding that institutions that had not set this process in motion were in fact committing contempt of court. In this situation, the guidelines issued by the University Grants Commission could not replace/substitute the Supreme Court*

Judgement, as the latter had the status of statute, and thus overrode any stipulations by agencies like the University Grants Commission.

Mr. Mihir Desai provided a background to the *Vishakha vs. State of Rajasthan* case which resulted in the Supreme Court judgement. Mihir Desai offered a very nuanced interpretation of sexual harassment contained in the judgement: The pressure of circumstances, quid pro quo harassment as distinct from hostile work environment, provide for an interpretation of sexual harassment that treats the woman and her experience as central for the first time. He reiterated Mr. Kannabiran's point that institutions were bound to amend their statutes to include the law on sexual harassment, failing which they could be charged with committing contempt, and become liable to punishment. While the Supreme Court provides a broad framework to prevent sexual harassment, the modalities have to be worked out by each institution.

Prof. Pushpa Bhave spoke of the breakdown of communication within the campus as well as within the family. Citing the instance of the Jalgoan case, she said mothers of victims said their daughters had not spoken to them about their troubles. Speaking of the lack of a live communication so that verbal communication is not necessary, since it is not always possible to communicate experiences of abuse verbally, she addressed the need to provide a hotline for victims as well as the need for a third party involvement in cases of sexual harassment, as a way of ensuring that compromises are not made. To understand sexual harassment, she said, one had to look at it in the larger context of its social familial, and psychological dimensions.

Ms. Nandita Haksar commenced her talk welcoming the coming together of the Human Rights Programme and the IAWS. For a long period in its history, she said, the Human Rights movement concerned itself with the public domain, while feminist movements have exposed the ideological biases

in the public domain and brought the private domain into the centre. Although the two are intrinsically linked, the discourses have remained separate and to a large extent unconnected. This collaboration, according to her, is extremely significant. She underscored the need to initiate a debate on the difficult question of punishment, and to think through strategies for effective implementation. The law on sexual harassment, she stressed did not come in a vacuum. An almost thirty year struggle by women has led to this judgement. It is really a gain of the women's movement. In the shift from "eve teasing" to "sexual harassment", the seriousness of the issue, as well as its human rights dimension have been acknowledged.

Dr. Carolyn Elliott provided a background to sexual harassment legislation in the United States of America. The legal breakthrough on this issues she said came as a result of feminist agitation arguing that sexual harassment in the workplace should be seen as a form of discrimination, because it prevented a woman from doing her job properly and risked her continuing employment or advancement. The feminist argument was accepted by the US courts in a few landmark cases and drew on the Equal Employment Opportunity legislation, which is still the strongest legislation for women's opportunities, to declare sexual harassment illegal under civil law. In another series of cases, the courts extended protection to women and girls who are students, rather than employees, by placing sexual harassment under the law that guarantees Equal Educational Opportunity, the so-called Title IX of the Education Amendments of 1972.

Sexual harassment is a major but very difficult problem in US universities. Some thirty percent of undergraduates and forty percent of women graduate students have reported having experienced sexual harassment. Countless others have probably been uncomfortable with interactions with their professors, fellow students or others but have not recognised it as sexual harassment or not felt able to report it.

Finally, a key point in spurring institutions to develop sexual harassment policy, Dr. Elliott underscored, is the courts decision about liability. US courts have held employers and universities responsible for sexual harassment of their employees and students unless they can prove that they exercised reasonable care to prevent and promptly correct any sexually harassing behavior. This means that they are financially vulnerable for major claims of damages unless they can prove that they have taken all due steps.

The inaugural session in general drew out and elaborated on the implications and reach of sexual harassment legislation. In the course of doing this, what emerged very clearly was the responsibility of institutions to take the necessary steps and ensure their effective implementation. All the distinguished speakers in the inaugural session stressed on the liability of institutions to punitive action, if they failed to operationalise the requirements of the Supreme Court judgement.

STRATEGIES: OPEN SESSION

Sexual Harassment: Understanding the Complexities

Apart from concrete suggestions on how to constitute the committees and what their functions should be, participants actively debated the various issues that intersect with sexual harassment on campuses.

A number of participants felt that the issue of caste figures centrally in several issues of sexual harassment on campuses, with dalit women being targeted by upper caste men or upper caste women being harassed by dalit men. This issue is very clearly articulated on most campuses, therefore there is need to negotiate this issue with sensitivity. There is undoubtedly a polarisation of interests, which can scarcely be ignored. Very often, articulate women on campuses, most often come from upper class/upper caste backgrounds and large sections of progressive men on campuses are very active in dalit groups. The experiences of these groups in negotiating issues of sexual harassment have to be taken note of. In drafting policy, in the constituting of committees, or more importantly in devising strategies to get students unions to formulate policies and codes of conduct, this kind of dialogue is very important. In the absence of dialogue, any possibility of collaboration gets set aside, resulting in a deterioration in the situation. On closer examination we might find that the breakdown also comes essentially from differing cultural backgrounds. For instance, when there was an incident of rape on a campus some years ago, some dalit students suggested monetary compensation as a remedy. The women students reacted very sharply against this suggestion, to which the response of dalit students was, whenever there is an atrocity against dalits, the first measure suggested is monetary compensation.

The question of representation is a complex one. While it centres around caste in one area, in another it is region, state, religion, etc. These complexities have always existed and

everyone has experience of how gender is subsumed within this larger political scenario. It might not be possible to constitute a committee that is totally representative of caste, region, religion etc., but more thought needs to go into how people are taken on, and what procedures need to be followed to remove people from the committee. The dilemma arises because even elected people and representatives from elected unions practice right wing politics, which would only serve to undermine the very purpose of the committees.

A demand can be made for mandatory representation of dalits and women on all students' councils and NSS programmes.

Most universities in Maharashtra have special cells for solving problems of dalits and addressing issues of discrimination. There should be special cells for women on similar lines, or the jurisdiction of the special cells could be extended to both constituencies, necessitating a consciousness of and commitment to both issues on the part of those who assume responsibility in these cells. It must be emphasised that these cells would exist along with the mandatory committees and not instead of them.

One proposal for constituting the committee has been to put up notices and ask people to volunteer from all categories of the university community -- student, faculty, non-teaching - as nominations by the Principal or the Union might reinforce existing power structures rather than provide relief.

In science faculties in some universities, the viva voce is conducted on a one to one basis. This creates problems because there is only one teacher and one student. It might be advisable to modify the rules to say that there should always be two teachers. What are the safeguards for a student who works late hours in laboratories and is completely at the mercy of her supervisor? Cases of abuse have been most frequently reported from women students and research scholars from science

faculties. There is often no possibility to change the guide, the only option being for the student to change the discipline or leave the institute. When students actually take a stand against the guide, it means a life-long blot in the career, because the *brotherhood* in the academia is very strong and there is no way to make a dent in it. The university system has to devise alternatives for women who bring charges of sexual harassment against supervisors, as part of its policy.

Few women are willing to complain. However, proceedings cannot be initiated unless there is a verbal or a written complaint from the victim. In thinking about operationalising sexual harassment policy, we have to think about strategies that would enable girls and women to talk about these problems of their own accord.

In colleges, women staff members and students should meet atleast once a month to discuss problems. Women's organisations should be in constant dialogue with college and university communities as this linkage will help solve many problems easily. Special efforts must be made to draw non aided colleges into this campaign, as the problem has been found to be especially acute there.

Sensitisation programmes for students' unions, karmacharis' associations and teachers' associations should form an integral part of campus activity, and must be a mandatory component of the university calendar each year issued under the direction of the head of the institution. The process of initiating this debate and providing formal space for it should be the responsibility of the official machinery, with the proceedings being minuted and made public from time to time. Democratic participation of all communities must be ensured at all times. Students, lecturers and non-teaching employees should create joint forums to talk about the social atmosphere in the university and discuss problems as and when they come up. This process should be parallel to and relatively independent of the

functioning of the committee. Cases that come up here, however, must be referred to the committee.

Ensuring confidentiality of the complainant and protection are vital issues. Any enquiry committee should have at least three persons, two of whom should be women. If a complainant does not want to talk in the presence of the man, that possibility should be left open. In terms of process most universities have a one-person departmental enquiry. This would be a major change that universities would have to make. Further, unless the recommendations of the committee are mandatory they will not be implemented. It should be time bound in order to be effective.

In most reported cases of sexual harassment, the immediate remedy offered by university authorities has inevitably been an increase in security personnel on campuses and stricter controls on women's mobility. Not only do these measures fail to address the issue, more importantly they serve to further undermine women's rights, and curtail their freedom.

The UGC Standing Committee on Women's Studies was asked to circulate the UGC guidelines to all women's studies centers and in turn to the vice chancellor. However, this seems to have created a mistaken impression that it is the responsibility of the Standing Committee to deal with sexual harassment, and further that the UGC directive overrides the Supreme Court Judgment. In fact, however, guidelines issued by the UGC, like the present one, can at best be recommendatory *not mandatory*. University authorities must be informed that in not taking active steps to amend their statutes in accordance with the judgment, they are committing Contempt of Court.

A basic structure must be put in place – one that takes into account all the elements that form part of the Supreme Court judgment which has a very wide reach. The first step however,

is to work towards a consensus on the basic structure. The next step would be for each university to draft and/or amend its own statutes, with no deviation from the basic structure.

Composition and Functioning of University Committees against Sexual Harassment

The Committee against Sexual Harassment in Universities, once constituted, should ensure

- ◆ representation from all the communities within the university as well as outsiders. The Indian Association for Women's Studies further recommended that the vice chancellor/principal of the university/institution should be member of the committee *but should not be the chair of the committee and should not have the casting vote*. The chair of the committee preferably should be somebody from outside;
- ◆ that the principal at the college level and vice-chancellor at the university level must not be authorised to appoint people independently. They must do so only in consultation with and on the basis of recommendations from the members of the committee;
- ◆ that in the constitution of the committee fifty percent have to be women, the other fifty percent can be men or women - individuals whose caliber, qualification and attitude towards the issue is beyond doubt;
- ◆ that a representative of a women's organisation or a person with a known commitment to human rights, social justice and women's rights should be invited to head the committee;
- ◆ that the complainant should have the choice of being represented by a lawyer her choice. The institution should

constitute a panel of feminist and human rights lawyers who have experience of handling such cases. In the experience of the gathering, legal advisors of universities have rarely been gender sensitive or committed to issues of social justice;

- ◆ parents' involvement, because they may understand the problem of their daughter. However, where an aggrieved person feels that the presence of her parent might inhibit her participation in the proceedings, her decision in the matter must be final;
- ◆ that men students should also be in the committee;
- ◆ that in forming the committee there has to be provision for training the enquiry committee/ departmental committee especially in terms of evidence, minor and major penalties;
- ◆ the presence of a professional counsellor;
- ◆ that the findings of the Committee form the basis of a chargesheet;
- ◆ that it assists the complainant in the event of the latter wanting to file a criminal case.

SUPREME COURT JUDGMENT

ON

SEXUAL HARASSMENT AT THE WORKPLACE

**In the Supreme Court of India
Criminal Original Jurisdiction
Writ Petition (Criminal) Nos. 666-70 of 1992**

Vishaka & Ors. ...Petitioners

Versus

State of Rajasthan & Ors. ...Respondents

JUDGMENT

Verma, CJI

This Writ Petition has been filed for the enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan, That incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual

harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.

Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1) (g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A *writ of mandamus* in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind in a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a Law Officer to help us find a proper solution to this social problem of considerable magnitude. In addition to

(a) to abide by the Constitution and respect its ideals and institutions,...

xxx xxx xxx

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

xxx xxx xxx”

Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretations, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51

“51. Promotion of International peace and security – The State shall endeavour to –

xxx xxx xxx:

(c) Foster respect for international law and treaty obligations in the dealings of organised people with one another; and

xxx xxx xxx

Article 253

“253. Legislation for giving effect to international agreements – Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

Seventh Schedule

“List I – Union List

xxx xxx xxx”

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

xxx xxx xxx

In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil.

Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights

meaningful. Governance of the society by the rule of law mandates this requirement as logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned Solicitor General and other members of the bar who rendered valuable assistance in the performance of this difficult task in public interest.

The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that *these should be the guidelines and norms declared by this Court to govern the behaviour* of the employers and all others at the work places to curb this social evil [emphasis added].

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

Article 24

“States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention.”

The general recommendations of CEDAW in this context in respect of Article 11 are:

“Violence and equality in employment

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints, procedures and remedies, including compensation, should be provided.

The Government of India has ratified the above Resolution on June 25, 1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made an official commitment, *inter alia*, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women’s Rights to act as a public defender of women’s human rights; to institutionalise a national level mechanism to monitor implementation of the Platform for

Action. We have, therefore, no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in *Minister for Immigration and Ethnic Affairs vs. Teoh*, 128 ALR 353, has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

In *Nilabati Behera vs. State of Orissa*, 1993 (2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basis concept of gender equality in all spheres of human activity.

In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual

harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at the work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution (emphasis added).

The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention 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 behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured 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 Steps

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 penalty 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) Acts, 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 mis-conduct 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, a 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 take an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report 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 of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness

Awareness of 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.

.....CJI
.....J.
[Sujata V. Manohar]
.....J.
[B. N. Kirpal]

New Delhi;
August 13, 1997

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DRAFT POLICIES BASED

ON

THE SUPREME COURT JUDGMENT

I. Draft Policy to Prevent and Deal with Sexual Harassment

Draft by the Campaign Against Sexual Harassment, Bombay

The University of _____ is committed to creating an atmosphere in which teachers, students and non teaching staff can work together in an atmosphere free from sexual harassment. On 13th August, 1997, the Supreme Court in its Judgement in the case of *Visakha Vs. State of Rajasthan* issued certain guidelines pertaining to sexual harassment. Pursuant to these Guidelines the University Grants Commission has issued a Directive dated _____ calling upon the Universities to implement these Guidelines. Towards this implementation the present policy has been formulated by our University and has been approved by the Senate on _____. It shall be binding not only on the employees and the management but also on students and third party harassment on University or college premises. This Policy will be binding on all those who come within the purview of the University and it is expected that it will be implemented immediately and continuously.

Sexual harassment as generally understood is of two kinds: hostile environment and quid pro quo. Hostile work environment includes pornography in public places, foul language, etc. This may not be directed at any woman employee or student in particular, but the effect on the women is one of discomfort. Second, quid pro quo i.e. "in exchange" for favours such as promotions, employment perks, examination results, etc.

1. Short Title, Extent and Commencement

- (a) This Policy will be called the Policy concerning sexual harassment in educational institutions;
- (b) It extends to all the Departments and Faculties of the University, all the Constituent colleges and all the colleges

and institutions affiliated to the University, whether such colleges are state owned or privately owned and whether they are aided or unaided and whether they enjoy the minority status or not;

- (c) This policy will come into effect immediately on the date of issuance of this Directive.

2. Definitions

- (a) "Sexual Harassment", as is provided in the Supreme Court Judgement, includes any unwelcome sexually determined behaviour, direct or by implication, and includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography, any other unwelcome physical, verbal or non verbal conduct of a sexual nature.

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

- i. When *submission* to unwelcome sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature are made, either explicitly or implicitly, a term or condition of instruction, employment, participation or evaluation of a person's engagement in any university or college activity.
- ii. When unwelcome sexual advances and verbal, non-verbal, or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or e-mail, gestures, showing of pornography, lurid stares, physical contact or molestation, stalking, sounds or display of a derogatory nature have the purpose or effect of interfering with an individual's performance or of creating an intimidating, hostile or offensive University or college environment;
- iii. When any form of sexual assault is committed where a person uses, the body or any part of it or any object as an extension of the body in relation to another person

without the latter's consent or against that person's will, and

- iv. When any such conduct as defined in (i) and (ii) above is committed by a third party or outsider in relation to a member of the University's or college's community, or vice versa on the premises of the university or college.
- (b) "Employee" means any person on the staff of the University or any of the Colleges or Institutions to which this policy is applicable including any teaching or non teaching staff, temporary, part time, honorary, employee by whatever name called and would include employees employed on a casual or project basis and also employed through a contractor.
- (c) "Student" includes any person who is enrolled for any course, whether by attendance or distance education, with the University or with any of its affiliated colleges or institutions and includes a Post Graduate student, a Research Scholar and a repeater. It also includes a student of another University or another college who has been placed or has opted for placement with the University or any college to which the present policy applies.
- (d) "College" shall mean and include all colleges and other institutions separately affiliated to the _____ University
- (e) "Pool of experts and NGOs" includes any Non Governmental Organisation operating on a secular, non profit basis and involved in work concerning amelioration of status of women and children and includes individuals having expertise and experience in the field of amelioration of the status of women and children;
- (f) "Management" means the trustees or the managing or governing body by whatever name called, of any trust registered under the Bombay Public Trusts Act, 1950 or any society registered under the Societies Registration Act, 1860, under whose management a college is functioning.

3. Application of the Policy

The provisions of this Policy will apply to all the students and employees of _____ University and all the Colleges conducted by this University or affiliated to it as also to third parties to the extent specified in this policy.

4. Scope of the Policy

This Policy will be applicable to all allegations of sexual harassment by a student against an employee or a co student or a representative of the management , by an employee against a student or another employee or against a representative of the management , in either case, irrespective of whether sexual harassment is alleged to have taken place within or outside the college premises. It shall also be applicable in respect of all allegations of sexual harassment made by an outsider against a student or employee or made by a student or employee against a third party if the sexual harassment is alleged to have taken place within the college premises.

5. Constitution of the Anti Sexual Harassment Cell

- (a) The University shall, within 30 days of the issuance of this Directive establish a Cell concerning Sexual Harassment to be known as “University Cell”.
- (b) The University Cell shall consist of
 - i. Vice Chancellor of the University as the Ex Officio Chairperson;
 - ii. Four members of the teaching staff from the Post Graduate Departments, at least two whom will be women, to be nominated by the recognised Union of the Teaching staff. In the absence of a recognised union, the teachers to be so nominated shall be elected by the teaching faculty of all the Post Graduate Departments;

- iii. One teacher from the College of Social Work or the Department of Women's Studies to be nominated by the recognised Union of the Teaching staff. In the absence of a recognised union, the teachers to be so nominated shall be elected by the teaching faculty of the College of Social Work and the Department of Women's Studies;
- iv. Four principals of affiliated colleges, if any, at least two of whom will be women, to be nominated by the Principals' Association and so that Arts, Commerce, Science, Medical, Engineering and Education streams are represented by rotation and so that as far as possible all geographical regions of the University are represented;
- v. 4 members of the Under Graduate Teaching Staff, at least two whom will be women, to be nominated by the recognised Union of the Teaching staff. In the absence of a recognised union, the teachers to be so nominated shall be elected by the entire teaching faculty;
- vi. Four members, atleast two who will be women, as follows:
 - one member jointly from Class I and Class II non teaching employees;
 - one member from Class III non teaching employees;
 - two members from Class IV non teaching employeesto be nominated by the recognised Union of the Non Teaching Staff . In the absence of a recognised union, the employees to be so nominated shall be elected by the entire non teaching category to which the nominees are to belong;
- vii. 3 members from NGOs, at least one whom shall be a practising lawyer or a retired judge to be nominated by this Cell from the pool of the NGOs (as set out subsequently) in this policy.

viii. 4 Post Graduate students, at least two of whom will be a women, to be nominated from amongst themselves by the elected University Student's Council. In the event of the University not having any elected Student's Council, the Anti Sexual Harassment Cell shall invite applications from the Post Graduate students for being nominated on the Cell and upon the receipt of such applications the four Post Graduate teacher's representative on the present Cell shall nominate the Post Graduate Students to be on the Cell.

(c) At least 50% of the members of the University Cell shall be women.

(d) The term of office of the University Cell shall be 3 years.

(e) Provided however that a person shall cease to hold office as a member of the University Cell if he or she ceases to be an employee or student in case of any vacancy due to resignation, termination, death, by a student nominee becoming an ex student, or for any other reason whatsoever, the same shall be filled immediately in accordance with the procedure prescribed in Clause 2.

(f) The names of persons who are on the University Cell , from time to time, along with their contact places and telephone numbers will be displayed at all times in a prominent manner on a conspicuous part of the main Notice Board of the University and in all the colleges.

6. *Disqualification of Chairperson and Members*

A person shall be disqualified for being appointed, elected, nominated or designated as, or for being continued as a member of the University Cell if there is any complaint

concerning sexual harassment, moral turpitude or serious criminal charges pending against him or if he is found guilty of sexual harassment.

7. *Vacancy of a Member Owing to Absence without Permission*

If a member elected or nominated or designated to the University Cell remains absent without permission of the University Cell from three consecutive meetings, her/ his office shall thereupon become vacant.

8. *Resignation of Member*

A member of the University Cell not being a member ex officio may resign his/ her office at any time by tendering his/ her resignation in writing to the Ex Officio Chairperson, and such person shall be deemed to have vacated his/ her office as soon as the Chairperson has received the resignation.

9. *Meetings of the University Cell*

- (a) The University Cell shall meet at least twice every year and six months shall not intervene between two successive meetings.
- (b) No such meetings shall be called within holidays or vacations or outside regular college hours or within 1 month of any final examinations for which a student member of the University Cell may be appearing.
- (c) The Chairperson of the University Cell may at any time, and shall upon the written request of not less than one third of the total number of members of the University Cell call a special meeting of the University Cell on a date not later than 15 days after the receipt of such request by the Chairperson.
- (d) The quorum for any meeting of the University Cell will be 50% of its members. If the quorum is not present at any

meeting it shall be adjourned for not more than 7 working days and if at the subsequent meeting a quorum is still not present the meeting shall proceed with those who are present and the proceedings of such a meeting will not be challenged on the ground of absence of quorum.

10. Powers and Duties of the University Cell

The powers and duties of the University Cell shall be as follows, namely:

- (a) To ensure implementation of this Policy in the University Departments and Colleges;
- (b) To ensure and supervise the proper constitution and functioning of the Anti Sexual Harassment Complaints Committees set up in various colleges and departments;
- (c) To organise regular workshops and training programmes for members of the Anti Sexual Harassment Complaints Committees;
- (d) To formulate programmes for the spread of awareness of the present policy amongst Managements, employees and students;
- (e) To hold annual programmes, regular seminars, workshops and meetings on the issue of sexual harassment, to propagate against sexual harassment amongst Managements, students and employees and for the purpose to invite experts or resource persons;
- (f) To bring out publications in English and Indian languages concerning sexual harassment and also concerning implementation of this policy;
- (g) To set up a pool of NGOs for carrying out the purposes of this Policy;
- (h) To act as the Appellate Body in respect of certain complaints as provided subsequently in this policy.

11. Pool of Experts and NGOs

- (a) The University Cell, shall within 30 days of its Constitution set up a pool of experts and NGOs.
- (b) For setting up such a pool, the University Cell shall, within 30 days of its first meeting, invite applications from various NGOs and individual experts by advertising the policy in at least two local newspapers, one in English and one in a regional language.
- (c) Within 30 days of such advertisement, the applications from various NGOs and individual experts will be placed before the University Cell. The Cell will decide to accept various NGOs and experts in the pool, there being no maximum limit of the number of NGOs and experts which will be in such pool.
- (d) If subsequently, any NGO or expert in the field applies for being accepted on the pool its application will be looked into on the same considerations as above.
- (e) No NGO or its members shall be involved in more than one investigation or enquiry of sexual harassment under this policy at any point of time.

12. Constitution of the Anti Sexual Harassment Complaints Committee

- (a) Each college shall within 30 days of this Directive set up a Anti Sexual Harassment Complaints Committee to deal with cases of alleged sexual harassment and to otherwise implement this policy.
- (b) The Anti Sexual Harassment Complaints Committee shall consist of :
 - i. Principal of the College;

- ii. 2 members of the Academic staff, at least one of whom should be a woman to be nominated by the recognised union or in the absence of any such recognised union to be elected by all teachers from amongst themselves;
 - iii. 2 women members from the Non Academic staff, one jointly from the Class II and Class III employees and one from Class IV employees to be nominated by the recognised union or in the absence of any such recognised union to be elected by all non teaching staff from amongst themselves;
 - iv. 2 students, at least one of whom shall be a girl student to be nominated by the union or in the absence of any such union to be nominated by the Principal. One of these students nominee will be from the final year and the other from the 2nd year.
- (c) At least 50% of the members of the Anti Sexual Harassment Complaints Committee shall be women.
 - (d) In the absence of women members in the academic or non academic staff, the Anti Sexual Harassment Cell of the University shall be asked to nominate women members to the present Committee;
 - (e) The term of office of the committee shall be 3 years.
 - (f) Provided however that a person shall cease to hold office as a member of the Anti Sexual Harassment Complaints Committee if he or she ceases to be a Principal, Registrar, employee or student in case of any vacancy due to resignation, termination, death, by a student nominee becoming an ex student, or for any other reason whatsoever, the same shall be filled immediately in accordance with the procedure prescribed in Clause 5.
 - (g) The Ex Officio Chairperson of the Committee will be the Principal, if the Principal is a woman, and if the Principal is a male, Chairperson will be the senior most woman member of the Academic staff who is on the committee.

- (h) The quorum for any meeting of the Anti Sexual Harassment Complaints Committee will be 50% of its members. If the quorum is not present at any meeting it shall be adjourned for not more than seven working days and if at the subsequent meeting a quorum is still not present the meeting shall proceed with those who are present and the proceedings of such a meeting will not be challenged on the ground of absence of quorum.
- (i) The names of persons who are on the Committee, from time to time, along with their contact places will be displayed at all times in a prominent manner on a conspicuous part of the main Notice Board of the College.

13. Disqualification of Chairperson and Members

A person shall be disqualified for being appointed, elected, nominated or designated as a member of the Anti Sexual Harassment Complaints Committee if there is any complaint concerning sexual harassment, moral turpitude or serious criminal charges pending against him or if he is found guilty of sexual harassment.

14. Vacancy of a member owing to absence without permission

If a member elected or nominated or designated to the Anti Sexual Harassment Complaints Committee remains absent without permission of the Committee from three consecutive meetings, her/ his office shall thereupon become vacant.

15. Resignation of Member

A member of the Anti Sexual Harassment Complaints Committee not being a member ex officio may resign his/ her office at any time by tendering his/ her resignation in writing to the Ex Officio Chairperson, and such person shall be deemed to have vacated his/ her office as soon as the Chairperson has received the resignation.

16. Meetings of the Anti Sexual Harassment Complaints Committee

- (a) Apart from meetings of the Anti Sexual Harassment Complaints Committee on receipt of complaint, the Anti Sexual Harassment Complaints Committee shall meet at least twice every year and three months shall not intervene between two successive meetings.
- (b) The bi annual meetings as provided in sub clause (i) above shall not be called within holidays or vacations or outside regular college hours or within 1 month of any final examinations for which a student member of the Anti Sexual Harassment Complaints Committee may be appearing.
- (c) The Chairperson of the Anti Sexual Harassment Complaints Committee may at any time, and shall upon the written request of not less than one third of the total number of members of the Anti Sexual Harassment Complaints Committee call a special meeting of the Anti Sexual Harassment Complaints Committee on a date not later than 15 days after the receipt of such request by the Chairperson.

17. Powers and Duties of the Anti Sexual Harassment Complaints Committee

The powers and duties of the Anti Sexual Harassment Complaints Committee shall be as follows, namely:

- (a) to implement the present policy concerning sexual harassment in the concerned college;
- (b) to formulate programmes for the spread of awareness of the present policy amongst employees and students;
- (c) to hold annual seminars, workshops and meetings on the issue of sexual harassment, to propagate against sexual

- (d) harassment amongst students and employees and for the purpose to invite experts or resource persons;
- (d) to bring out publications in English and Indian languages concerning sexual harassment and also concerning implementation of this policy;
- (e) to process individual grievances concerning sexual harassment and to take suitable action in the manner and mode more particularly provided hereafter
- (f) to exercise such other powers and perform such other duties as may be conferred or imposed on it by or under this Policy;
- (g) to do all such acts and things as may be necessary to carry out the objects of this Policy.

18. Punishment for Sexual Harassment

Any employee or student found guilty of sexual harassment shall be liable to be punished.

19. Penalties

- (a) An employee guilty of sexual harassment shall be liable for any of the following penalties:
 - i. Warning, reprimand or censure;
 - ii. Withholding of an increment for a period not exceeding one year;
 - iii. Reduction in rank;
 - iv. Termination of service
- (b) In addition to these penalties the employee concerned may also be fined up to Rs. 5,000/-, which amount will be used by the Management for achieving the aims and objectives of this policy.

- (c) Provided however, that in addition to all these penalties the employee can also be required to give a written apology to the victim and upon his failure to do so his punishment can be enhanced
- (d) A student guilty of sexual harassment shall be liable for any of the following penalties:
 - i. Warning, reprimand or censure;
 - ii. Suspension from the college for a period upto 1 month;
 - iii. Debarment from appearing for the final examination for a period up to 3 years;
 - iv. Rustication from the College.

In addition to these penalties the employee concerned may be fined upto Rs. 5,000/- and the student concerned may also be fined up to Rs. 500/-, depending on the financial capacity of the guardian of the student, which amount will be used by the Management for achieving the aims and objectives of this policy.

Provided however, that in addition to all these penalties the employee or the student can also be required to give a written apology to the victim and upon his failure to do so his punishment can be enhanced.

20. Classification of Penalties

The penalties shall be classified as minor and major penalties as under:

(a) minor penalties

- i. reprimand,
- ii. warning,
- iii. censure,
- iv. withholding of an increment not exceeding one year
- v. suspension from the college for a period upto one month.

(b) major penalties

- i. Withholding of increment for more than 1 year;
- ii. Reduction in rank;
- iii. Termination of service
- iv. Debarment from appearing for the final examination for a period up to 3 years;
- v. Rustication from the College.

In case a minor penalty has been imposed on the accused on an earlier occasion, on a second conviction, he shall be imposed with a major penalty irrespective of the gravity of the second offence.

21. Grievance Procedure

- (a) Any woman employee or female student will have a right to lodge a complaint concerning sexual harassment against a male student or employee or an outsider with any of the members of the Anti Sexual Harassment Complaints Committee.
- (b) Such a complaint may be oral or in writing.
- (c) If the Complaint is oral the same shall be reduced in writing in detail by the committee member to whom the complaint is made.
- (d) The Complainant will be afforded full confidentiality at this stage.
- (e) Immediately upon receipt of the Complaint, and within not more than 2 working days, the member of the Committee to whom the Complaint is made shall communicate the same to the Chairperson of the Anti Sexual Harassment Complaints Committee. However, if the Complainant so desires, her name shall be kept confidential and will not be divulged even to the Anti Sexual Harassment Complaints Committee.

- (f) Within a period of 5 working days from the date of such communication, the Chairperson shall convene a meeting of the Anti Sexual Harassment Complaints Committee.
- (g) At this meeting, the Anti Sexual Harassment Complaints Committee shall nominate three persons from amongst themselves (known as the Enquiry Committee) and one persons from the "Pool of Experts and NGOs" for proceeding with the Complaint.
- (h) At least three of these persons so nominated will be women.
- (i) In case of the dispute involving a student, at least one of the members so nominated will be a female student.
- (j) No person against whom a Complaint is made shall be part of the Enquiry Committee.

22. Procedure for Initiating Action

- (a) Within 5 working days of the Enquiry Committee being set up, the said Committee will convene a meeting of which advance intimation will be given to the Complainant.
- (b) At this meeting, the Complainant will be entitled to remain present personally or through a representative.
- (c) At the first meeting of the Enquiry Committee, the Complainant or her representative shall be heard and the Enquiry Committee shall decide whether the Complaint requires to be proceeded with. The Complaint will be dropped only if the Complaint on the face of it, does not disclose an offence of sexual harassment.
- (d) In case the Enquiry Committee decides to proceed with the Complaint, the wishes of the Complainant concerning the issue shall be taken into account and if the Complainant so wishes the accused will be called to a meeting of the Enquiry Committee, heard and if necessary, warned about his behaviour and the matter concluded with a recording to

that effect made in the Complaints Register of the Anti Sexual Harassment Complaints Committee.

- (e) If the Complainant however, wishes to proceed ahead with the Complaint beyond a mere warning to the accused, the same will be proceed with in the manner prescribed subsequently in this policy.

23. Procedure for Imposing Minor Punishment

In case the Enquiry Committee decides to impose a minor punishment, the accused shall be given in writing an opportunity to explain within one week why he should not be for good and sufficient reasons be punished for the act of sexual harassment on his part. The nature and quantum of punishment if any to be imposed on him shall be decided after considering the explanation, if any, given by the accused.

24. Procedure for Imposing Major Punishment

- (a) If an accused is alleged to be guilty of sexual harassment and if there is reason to believe that in the event of the guilt being proved against him, he is liable for imposition of any major penalty the Enquiry Committee shall, first decide whether to place the accused employee under suspension. If the accused employee is to be placed under suspension the provisions of suspension and subsistence allowance as prescribed under the Statutes for other misconduct will apply.
- (b) If a person is charged with physical molestation or rape on the University or college premises, he shall be immediately placed under suspension pending the completion of the investigation and enquiry. In all other cases, the Enquiry Committee shall within 3 days decide whether the charged person shall be placed under suspension or not and in either event it shall communicate its decision and the reasons for the decision to the Management which shall then implement the decision forthwith.

- (c) Within 3 days of the first meeting of the Enquiry Committee, it shall communicate to the accused by hand delivery duly acknowledged or by registered post acknowledgement due the allegations and demand from him a written explanation within 7 days from the date of receipt of the statement of allegations.
- (d) If Enquiry Committee finds the explanation of the accused not satisfactory or if no explanation is given by the accused, the Enquiry Committee will decide to hold an enquiry against the accused.
- (e) The Convenor of the Enquiry Committee will be the senior most employee from the teaching faculty.
- (f) The meetings of the Enquiry Committee will be held during the office hours in the college premises but not during vacations.

25. Procedure for Enquiry

- (a) The Enquiry Committee shall prepare a charge sheet containing specific charges and shall hand over the same together with the statement of allegation and the explanation of the accused to the Complainant as well as to the accused by hand delivery duly acknowledged or by registered post acknowledgement due, within 3 days of the Enquiry Committee having decided to conduct the enquiry
- (b) Within 10 days after the accused receives the copies of the chargesheet and the statement of allegations,
 - i. If accused desires to tender any written explanation to the chargesheet, he shall submit the same to the convenor of the Enquiry Committee in person or send it to her by registered post acknowledgement due;
 - ii. If the Complainant or the accused desire to examine any witnesses they shall communicate in writing to the

Convenor the names of witnesses whom they propose to so examine;

- iii. If the Complainant desires to tender any documents by way of evidence before the Enquiry Committee, it shall supply true copies of such documents to the accused. Similarly if the accused desires to tender any documents in evidence before the Enquiry Committee he shall supply true copies of such documents to the complainant.
- (c) Within 3 days after the expiry of period of 10 days specified in clause (a), the Enquiry Committee shall meet to proceed with the enquiry and give 7 days notice by hand delivery duly acknowledged or by registered post acknowledgement due to the Complainant and the accused to appear for producing evidence, examining witnesses, etc., if any.
- (d) The Enquiry Committee shall see that every reasonable opportunity is extended to the Complainant and to the accused, for putting forward and defending their case.
 - i. The Complainant shall have the right to lead evidence and the right to cross examine witnesses examined on behalf of the employee or the student, as the case may be.
 - ii. The accused shall have the right to be heard in person and lead evidence. He shall also have the right to cross examine witnesses examined on behalf of the Complainant. Sufficient opportunities shall be given to examine all witnesses notified by both the parties.
- (e) All the proceedings of the Enquiry Committee will be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token of authenticity thereof. The refusal to endorse the same by either party shall be endorsed by the Convenor.

- (f) The enquiry shall ordinarily be completed within a period of 900 days from the date on which the Show Cause Notice is given to the accused.
- (g) The Complainant and the accused will be responsible to see that nominees and the witnesses if any are present during the enquiry. However, if the Enquiry Committee is convinced about the absence of either of the parties to the disputes or any of the members of the Enquiry Committee on any valid ground the Enquiry Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of the person concerned if he or she fails to remain present for the said adjourned meeting.
- (h) The Convenor of the Enquiry Committee shall forward to the Complainant and the accused as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by hand delivery duly acknowledged, or by registered post acknowledgement due, within four days of the completion of the above steps and allow them a time of seven days to offer further explanation, if any.
- (i) The Complainant or the accused, as the case may be shall submit their further explanation to the Convenor of the Enquiry Committee within a period of seven days from the date of receipt of the summary of proceedings etc., either personally or by registered post acknowledgement due.
- (j) On receipt of such further explanation or if no such further explanation is offered within the aforesaid time, the Enquiry Committee shall complete the enquiry and communicate its findings on the charges against the accused and its decision on the basis of its finding to the Management for specific action to be taken against the accused within 10 days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by hand delivery duly acknowledged or by registered post acknowledgement due to the Complainant and to the

accused. A copy of the findings shall also be forwarded to the Anti Sexual Harassment Complaints Committee. The findings of the Enquiry Committee shall be binding on the Anti Sexual Harassment Complaints Committee. Thereafter the decision of the Enquiry Committee shall be implemented by the Management which shall issue necessary orders within 7 days of the date of receipt of decision of the Enquiry Committee, by hand delivery duly acknowledged or by registered post acknowledgement due. The Management shall also endorse a copy of its order to the Complainant and to the Anti Sexual Harassment Complaints Committee.

- (k) The Enquiry Committee may consider as relevant any earlier complaints against the person charged. However, the Complainant's past sexual history will not be probed into or enquired during the proceedings before any of the committees.

26. Provisions for Appeal

- (a) In the event of the Anti Sexual Harassment Complaints Committee or the Enquiry Committee not taking action on a complaint or in the event of the Complainant being dissatisfied with the action taken by any of the aforesaid committees the Complainant shall have the right to appeal to the University Cell.
- (b) A meeting of the University Cell shall be convened within 10 days of the receipt of such grievance.
- (c) The University Cell shall go into the grievance of the Complainant and after hearing the Complainant, if it is satisfied that the matter needs to be further enquired into, it shall take the following steps:
 - i. In the event of there being an incomplete or no enquiry by the Enquiry Committee, the University Cell shall appoint from within itself a three member Enquiry

Committee which shall follow the same procedure, carry out the same functions and have the same powers as the Enquiry Committee;

- ii. In the event of the Complainant being dissatisfied by the decision of the Enquiry Committee after a concluded enquiry, the Enquiry Committee shall act as an Appellate Body with all powers of the Appellate Court under the Code of Civil Procedure.

27. Protection Against Victimisation

- (a) In the event of the complainant being a student and the accused being a teacher, during the pendency of the investigation and enquiry and even after such an enquiry if the teacher is found to be guilty, the accused will not act as an examiner for any examination for which the student appears.
- (b) In the event of the Complainant and the accused both being employees, during the pendency of the investigation and enquiry and even after such an enquiry if the accused is found to be guilty, the accused shall not write the Confidential Reports of the complainant, if he is otherwise so authorised.
- (c) If the Accused is an outsider, during the pendency of the investigation and enquiry and even thereafter, if he is found to be guilty, the accused shall not be allowed to enter the college or University premises except for the purpose of attending the present enquiry.

28. Obligation of the Management

Management of the University and Colleges shall provide all necessary assistance for the purpose of ensuring full, effective and speedy implementation of this policy. It shall be bound by the decisions of the various committees as set out in this

scheme and shall implement such decisions in an expeditious manner.

29. *Third Party Harassment*

In case of third party sexual harassment the University Cell/ Anti Sexual Harassment Complaints Committee will actively assist and provide all its resources to the Complainant in pursuing the complaint and ensure her safety at least in the University/ College premises.

30. *Savings*

- (a) The provisions of this Policy shall apply notwithstanding any contrary Statute, law, Directive or Ordinance.
- (b) The proceedings under this policy shall not be stalled or postponed merely because the complainant is proceeding against the accused under any other provision of civil or criminal law.
- (c) The provisions of this Policy shall not restrict the powers of the Management or the complainant to proceed against the alleged offender for any other misconduct or pursue the criminal or civil remedies.

Changes in the Policy if Mandatory Recommendations of the Policy Interfere with the Existing University Statutes

1. The Enquiry Committee is called and acts as the Investigation Committee.
2. Clause 22e and section 25 are deleted
3. Section 23 and 24 are replaced by the following:

23. Procedure for Investigation

- (a) If the Complainant wishes to proceed ahead with the Complaint beyond a mere warning to the accused, the accused shall be given in writing by the Investigation Committee an opportunity to explain within one week why he should not be for good and sufficient reasons be punished for the act of sexual harassment on his part.
- (b) If the written explanation of the accused is not found to be satisfactory or if he does not provide any written explanation, the Investigation Committee will decide whether the offence deserves a minor penalty or a major penalty.
- (c) In the event of the Investigation Committee deciding that the accused shall be imposed a minor penalty the said penalty will be recommended by the Investigation Committee to the Management and such a recommendation shall be binding on the Management. The Management will thereupon, expeditiously act on this recommendation and impose a minor penalty as prescribed by the Investigation Committee on the accused.

24. Obligation of the Management

24. Procedure for Imposing Major Punishment

- (a) If the Investigation Committee comes to the conclusion that the accused, in case of his guilt being proved, should be imposed a major penalty, it shall make such a

recommendation to the Management. This recommendation shall be binding on the Management and the Management shall be bound to institute a departmental enquiry as per the Statutes against the accused.

- (b) The Investigation Committee shall also recommend whether to place the accused employee under suspension. If the accused employee is to be placed under suspension the provisions of suspension and subsistence allowance as prescribed under the Statutes for other misconduct will apply.
- (c) If a person is charged with physical molestation or rape on the University or college premises, he shall be immediately placed under suspension pending the completion of the investigation and enquiry.
- (d) In the event of a domestic enquiry being instituted against the accused, a member of the Investigation Committee shall act as the representative of the management for presenting the case against the accused.
- (e) The provisions of the Statutes and other legal provisions shall be followed for the purpose of conducting the departmental enquiry and for implementing its decision.
- (f) However, the Complainant's past sexual history will not be probed into or enquired during the proceedings before any of the committees.

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Draft Policy on Sexual Harassment and Other Forms of Gender Violence (1998)

Delhi University, Forum Against Sexual Harassment

I. Preamble

The University of Delhi is committed to creating and maintaining a community in which students, teachers, and non-teaching staff can work together in an atmosphere free of all forms of violence and harassment, exploitation, or intimidation, as well as, gender violence. This includes all forms of sexual harassment and discrimination on the basis of gender. The University of Delhi recognises the scale and nature of gender violence and especially the manner in which it places severe constraints on the day to day functioning and mobility of women, denying them the basic human right to pursue their professional, academic, and personal lives with dignity and self respect. The Constitution of India states that discrimination on the basis of sex is a violation of the fundamental right to equality. The Supreme Court in its August 1997 judgement (*Vishaka vs. State of Rajasthan*) states that each instance of sexual harassment is a violation of the rights under Articles 14, 15 and 21 of the Constitution and also a violation of the fundamental right under article 19(i)g (which is the right to practice any profession or to carry out any occupation, trade or business).

On August 13, 1997, the Supreme Court of India made it:

...the duty of the employers in work places as well as other responsible persons or 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.

Every member of the University community should be aware that while the University is committed to the right to freedom of expression and association, it is strongly opposed to gender violence. Such conduct is prohibited both by law and by University policy. It is the intention of the University of Delhi to take necessary action in order to prevent and punish conduct that violates this policy.

II. Definition of Gender Violence

Gender¹ violence is an inclusive category, which refers to sexual harassment, rape, as well as all other forms of discriminatory conduct based on the gender identity of a person.

Discriminatory conduct constitutes *Gender violence* -

1. when submission to or rejection of *unwelcome* sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature are made, either explicitly or implicitly, a term or condition of instruction, employment, participation or evaluation of a person's engagement in any University activity;
2. when *unwelcome* sexual advances, and verbal, non-verbal or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or e-mails, gestures, showing of pornography, lurid stares, physical contact or molestation, stalking, sounds or display of a derogatory nature have the purpose or effect of interfering with an individual's performance or of creating an intimidating, hostile, or offensive University environment;

¹ Gender is a reference to socially determined relations between men and women, men and men, and, women and women.

3. when any form of sexual assault is committed where a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person *without the latter's consent or against that person's will*; and

4. when any such conduct as defined in (1), (2) and (3) above is committed by a third party or outsider in relation to a member of the University community, or vice versa; and

5. when *deprecatory* comment(s) or conduct or any such behaviour that is based on the gender identity of the person and/or when the classroom, or other public space of the University is used to *denigrate or inferiorise a person(s)*, and such statement(s) and behaviour is based on the gender identity of the person, which has the purpose or effect of interfering with the individual's performance or of creating an intimidating, hostile, or offensive University environment.

III. Structure of Complaint and Redressal Mechanisms

1. An *Apex Committee* will be instituted in Delhi University as defined below in V(C). The Apex Committee will act as a *complaint redressal committee as well as a disciplinary body* for all of Delhi University. The Apex committee will have a *quasi-judicial* function.

2. The *College and Department Committees* will be instituted in each college and department of Delhi University as defined in V (A) and (B).

2 (A). The Department/College committees will function as *complaint redressal committees*, and will have *recommendatory powers*.

2 (B). The committees as defined in V (A), (B) and (C) will also be involved in the *prevention and deterrence* of sexual harassment and all other forms of gender violence. By

prevention and deterrence it will be meant that the Department/College/Apex committees will create awareness by publicising the definition of gender violence and gender based discrimination, the existence of the Committees and the mechanisms of redressal and complaint. It will also mean that the Department/College/Apex committees will actively be involved in the prevention and deterrence of gender violence, particularly at the time of *holi*, college festivals and admissions and in the case of third party harassment.

IV. Scope of the Policy

The jurisdiction of the Department/College/Apex committee will extend to all the members who are employed by, are students of or affiliated to the University and will not be limited only to the geographical area of the University. In case of third party harassment, the Department/College/Apex committee will actively assist and provide all its resources to the complainant in pursuing the complaint and ensure her/his safety at least on the University premises.

V (A) The Department Committee

The Department committee will consist of:

1. Two representatives from the teaching faculty.
2. Two representatives from the administrative staff. The category of administrative staff will also include the library and the laboratory staff.
3. Two representatives from the maintenance staff.
4. Two representatives from the students category, with at least one researcher and one other student.
5. One outsider, either a woman faculty member, who does not belong to the said Department or College and is known

to have worked consistently against gender violence in the University and/or belongs to a women's organisation.

- In the categories 1- 4 mentioned above, at least one representative will be a woman.
- The co-ordinator of the committee will be a woman faculty member from category 1.
- For the appointment of the committee members it will be incumbent on the department to put up a notice, well in advance and call for the meeting of the respective bodies to elect their representatives, as soon as possible.
- The outside member will be nominated by the committee.
- The quorum for the Department Committee will consist of five members with at least one member from the complainant's category.
- The Committee will be constituted at the beginning of every academic session, and it will stay functional for a minimum period of one year or a maximum period of two years.

Investigative Committee

The Department committee will form an *investigative committee* to investigate the charges. This Committee will comprise of three members. One person from the complainant's category, one outsider and one person from any other category outlined above. At least two members of the investigative committee will be women.

V (B). College Committee

The College Committee will consist of:

1. Three representatives from the teaching staff. *Of these, two will be elected by the staff association and one nominated by the previous Committee.*
2. *Three representatives from the non-teaching staff.* One representative will be elected by the union of the college

administrative staff, which will include the library and the laboratory staff. The second representative will be elected by the maintenance staff. The third representative will be nominated by the previous Committee, alternatively from the two categories.

3. *Three representatives from the students* (one nominated by the previous Committee and two elected by the students). The Committee will comprise at least one student each, from the second and the third year.
4. *One outsider*, either a woman faculty member, who will not belong to the said Department or College and known to have worked consistently against gender violence in the University and/or belongs to a women's organisation.
 - In the categories 1-3 defined above, two out of the three representatives will be women.
 - The woman faculty member of the college will act as the co-ordinator of the Committee. If there is more than one women faculty member then the committee will elect one of the two women faculty members as the co-ordinator.
 - For the appointment of the Committee, it will be incumbent on the college to put up a notice, well in advance and call for the meeting of the respective bodies to elect their representatives. In the first instance, all the members of the college committee will be elected by the respective categories.
 - The outsider will be appointed by the College Committee.
 - The quorum for the College Committee will consist of five members with at least one member from the complainant's category.
 - The Committee will be formed for a minimum period of one academic year and a maximum period of two academic years.

- If the Committee feels the need to refer the matter to the Apex Committee of the University, it may do so with the approval of the complainant.
- Each college committee will appoint a counsellor to provide free and sensitive counselling to those who have suffered gender violence and/or its threat, if the complainant so desires.

Investigative Committee

The College Committee will form an Investigative Committee, which will then *investigate the charges*. The Investigative Committee will consist of three members with at least one person from the complainant's category, one outsider and one person from any other category outlined above. Two of the three members herein will be women.

V (C). The Apex Committee

The *Visitor of the University of Delhi* will appoint a two-member search committee. The search committee will nominate five members for the Apex committee. These five members will consist of:

1. Two women members from women's organisations in Delhi.
2. Two faculty members (with at least one-woman faculty member) from the University.
3. The search committee will also nominate the *chairperson of the committee, who will be an outsider to the University of Delhi either from academic institutions, judiciary and/or women's groups*, preferably those who have worked in this area.
4. Eight members of the Apex committee will be nominated from the various department and college committees. The college committees and the department committees of the

University of Delhi will meet once a year to nominate one person from each category (i.e., students, maintenance staff, teachers and administrative staff). Thus four members will be nominated from college committees and four will be nominated from department committees.

- The primary function of the committee will be to expeditiously provide redressal to the complainant such that the complainant's right to bodily integrity and autonomy is ensured.
- In certain cases, disciplinary action may be considered necessary if the complaint is substantiated by the investigations of the committee and a *prima facie* case is established.
- The *quorum* of the Apex committee will consist of seven members including the chairperson of the Apex committee, one member of the complainant's category and one member belonging to the category of the accused.
- The Apex committee will appoint counsellors (at least two, one in the South campus and one in the North Campus) to provide free and sensitive counselling to those who have suffered gender violence, if the complainant so desires.

Investigative Committee

The Apex committee will appoint a three member investigative committee with at least one member of the complainant's category and one woman member from the category 1-2 as defined above, to investigate the charges. Two of the three members herein will be women.

The decision taken by the Apex committee, based on the report of the investigative committee will be referred to the Executive Council (EC) of Delhi University. The EC may refer the decision back to the Apex committee but it may only do so once. It will be incumbent on the EC to state the grounds for reconsideration. The Apex committee may reconsider the

matter. After due consideration, the decision of the Apex committee will be binding on the EC.

Complaint Procedures

1. The complaint can be given to *any* member of the Department Committee or College Committee or Apex Committee, who can then convene the Committee.
2. If the Department/College Committee feels the need to refer the matter to the Apex Committee of the University, it may do so with the approval of the complainant.
3. The complaint can be given directly to the Apex committee.
4. The meeting of the Department committee or College committee or Apex committee will be called to constitute an investigative committee as soon as possible and no *later than seven days of receiving the complaint*.
5. The investigative committee will seek a full statement from both the parties. A copy of the statements will be made available to both the complainant and the person charged and the complainant will be asked to respond to the statement of the person charged.
6. In addition, the committee will take due steps to ensure the confidentiality of the complainant if the complainant so desires.
7. The complainant should preferably complain to the committee before making the matter public, however this should not be held against her/him if s/he fails to do so.
8. The complainant and the person charged will not be called to depose at the same time by the investigative committee.

9. During the proceedings the complainant will be accompanied by one person if the complainant so desires, who may not however represent the complainant.
10. The investigative committee will consider relevant any earlier complaints against the person charged.
11. The investigative committee will submit its findings no later than fifteen working days.
12. The Department/College Committees will act on the findings of the investigative committee, no later than seven working days. The Apex committee will act on the findings no later than fifteen working days.
13. The Department/College/Apex committee will take cognisance of any harassment the complainant, witnesses and supporters of the complainant may face subsequent to the complaint and will take appropriate action.
14. The complainant will have the right to lodge a fresh complaint with the Apex committee if s/he so desires.

Guidelines for Punitive Action

The punitive action:

- Will be commensurate with the nature of offence.
- It could range from official reprimand, charges being recorded in the confidential report, suspension, dismissal, expulsion or termination.

- If the person charged holds an administrative post or any such position then s/he will step down until the completion of the enquiry.

- In an extreme case of physical assault or rape, the person charged will be immediately suspended until the completion of the enquiry.

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III. Extracts of Recommendations on Policy Against Sexual Harassment

Working Group on Sexual Harassment, Jawaharlal Nehru University

Note: *The Working Group was constituted in response to all components of the university community'. It was assigned two tasks, namely, (i) to formulate a plan to combat the menace of sexual harassment on the campus and (ii) to make recommendations to the Vice-Chancellor on the institutional structure, the jurisdiction, the terms of reference and other modalities to meet this challenge.*

A Standing Committee on Sexual Harassment

Strategies have to be devised to implement policies to discourage sexual harassment. In order to do this,

- ◆ a standing committee should be set up which will
 - i. implement a policy on sexual harassment
 - ii. implement and further evolve a plan of action.

This committee will have statutory status and handle all complaints relating to sexual harassment. It should be autonomous. It will function throughout the year handle permanent matters relating to sexual harassment and will conduct enquiries on its behalf.

In accordance with the specific instructions laid down by the Supreme Court about the nature and terms of reference of such a committee, and keeping in mind the nature and size of JNU, such a committee should be headed by a woman faculty member and include

- ◆ One representative of an NGO reputed to be knowledgeable about matters of sexual harassment. Since

very few NGOs are working on sexual harassment issues, reputed NGOs will be considered subject to their representatives undergoing orientation at JNU.

- ◆ An eminent woman academic from outside the university with proven experience in dealing with matters of sexual harassment.
- ◆ One teacher, one karamchari, one official from the administration and two students (one hostel resident and one day scholar) to be elected for the duration of the committee by the teachers, karamcharis, staff and students for the specific purpose of serving on this committee. In order to safeguard the autonomy of the committee its members shall not be part of the executive of any union.
- ◆ Two wardens, at least one a woman, elected by other wardens.
- ◆ One teacher and one student representative each from an organisation known to have worked on cases of sexual harassment such as the Gender Studies Forum.
- ◆ A Counselor, who has to be selected on the basis of her experience in dealing with matters of sexual harassment. Preferably someone who is appointed at the JNU.

This makes it a total of 11 persons including the chairperson who will be selected by the members of the committee from among themselves or from among faculty members within the university. At least fifty percent of these members have to be women. A reasonable number of the committee members should reside on campus. These members will also be the advisors on sexual harassment. They will make themselves available for consultation and advice during their tenure.

The committee will be assisted by

- a woman lawyer who will be chosen from among 2 - 3 lawyers who are familiar with issues of sexual harassment and who will be on the panel of the university.

- a woman doctor, well versed in matters of such medicine who has to be on campus.

Functions

The committee will have three main functions:

- ◆ sensitization and awareness generation.
- ◆ crisis management and mediation.
- ◆ formal redressal and enquiry.

Sensitization will be an ongoing activity, crisis management and mediation will require an informal procedure. A formal procedure will have to be set up for conducting an enquiry. However, the guiding principles will be the same. (see p. 78).

Sensitization and Orientation: A Working Plan

The Committee, with the help of volunteers and professionals, will undertake to sensitize the entire campus about issues concerning sexual harassment.

Students, teachers, karamcharis and staff, administration and even senior officials must be made aware of issues relating to gender equality and sexual harassment. This can be done in the first instance by using the expertise of specialized groups (who are listed in annexure) who can help train our own volunteers who can then take over. These people can hold discussions and workshops across the board. This has to be done as an ongoing process. We should encourage gender sensitive teaching in the courses but the most immediate would be to adopt a policy on sexual harassment.

In order to facilitate the implement the Working Plan, an Implementation Committee of 4-6 members may be constituted by the Standing Committee. The Implementation Committee may undertake the following steps:

- ◆ develop a code of conduct for university faculty/staff/students and circulate it widely even if it already exists.
- ◆ undertake a comprehensive study that attempts to map and analyze all aspects of sexual harassment as well as prevailing attitudes.
- ◆ undertake periodic surveys among students, staff and faculty to find out the extent of the problem.
- ◆ provide social and personal counselling on the lines of medical consultants.
- ◆ provision of medical, and legal advise. Therefore, professional experts from outside JNU who have established themselves as being gender sensitive ought to be made available on regular basis. These experts will also play a crucial role in the awareness and sensitising campaigns.
- ◆ develop a procedure to inform new entrants to JNU of sexual harassment policy and procedures.
- ◆ organise sensitization workshops and seminars focusing on staff, faculty and students
- ◆ publicize and disseminate policy and procedures through pamphlets, posters and flyers. The Supreme Court specifically directs that '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 this subject) in a suitable manner'.
- ◆ set up a grievance procedure and develop and disseminate information about it.
- ◆ identify a sexual harassment advisor per building (hostel specifically) but also for academic buildings, who is authorised to receive confidential complaints. All those vested with authority and official responsibility will have to be well informed of the procedure and will have to be sensitized to take prompt action.

Mediation and Crisis Management

Mediation and Crisis management will also include provisional relief (legal, medical and psychological and any other feasible assistance) to the complainant. The Committee will form a Crisis Group(which must include some members of this Committee) who will be available to deal with emergencies and go on the spot when needed. The telephone numbers of these people (some of whom must live on campus) should be made widely available. This group will be knowledgeable about what to do in different sorts of crises and counsel wardens or anyone else who needs advice. Such a group should have at least fifty percent women. Ideally this should have at least one faculty, one student, one karamchari, one counselor and one doctor. It can always call upon any other member of the larger committee or the JNU community and take help from volunteers. The first level of contact will consist of wardens, student and faculty volunteers and sexual harassment advisors in various schools.

Formal Redressal

When the complaint cannot be resolved informally the Committee shall conduct inquiries and recommend punitive action against offenders, if necessary. It shall do so by constituting smaller inquiry committees (comprised of about 3 members, who will include at least one third party, i.e. the NGO representative or the eminent academic or both, and including the constituency of the offender-for instance, if the complaint is brought against a student, students will be on the inquiry committee). These inquiry committees shall bring their report before the larger committee who will finalize their recommendations.

Terms of Reference

- ◆ To implement a policy in order to maintain a learning environment that is free of sexual harassment.

- ◆ To adopt a proactive role in the prevention of sexual harassment and to prepare and implement a broad based plan sensitization and orientation of the JNU Community.
- ◆ To identify volunteers/persons and to lay down as informal procedure for crisis management and mediation.
- ◆ To take cognisance of acts of sexual harassment and to conduct enquiries to provide redressal to the complainant and take deterrent action against the harasser.

Jurisdiction

All employees of JNU (whether full time, part time, daily wage, contract labour, voluntary workers and casual employees) and students (whether full time, part time or casual) affected by sexual harassment within and outside the campus even if only one party is affected by it either as a complainant or as the harasser.

Guiding Principles

- Everyone who agrees to be associated with the prevention and redressal of sexual harassment will undergo periodic orientation.
- Confidentiality of both parties will be maintained.
- Filing of a grievance or complaint will not reflect upon/adversely affect the individual's status, future evaluation of grades, assignments employment, promotion etc.
- Third party intervention may be by Sexual Harassment Advisors, members of the Committee, faculty or staff or any Counselor.
- The harasser's group/community will be associated with the enquiry i.e. if there is a complaint against a karamchari the karamchari representative will be associated with the

enquiry provided he/she is elected/selected to the standing committee for this purpose only.

- Volunteers who have taken consistent interest and devoted their time and energy to such issues/incidents must be identified and given the responsibility.
- Adequate representation of women and of sections of the JNU Community.

Procedure

- Complaints can be filed by the victim either through proper administrative channel or directly. Both will be treated with equal urgency and importance.
- Complaints can be given to persons identified for the purpose at various levels.
- Third party complaints will also be entertained.
- Witness can file a complaint and his/her name will also be kept confidential. Third party complaints will also be treated in confidence.
- Formal grievance or disciplinary procedures can be initiated through the Committee on Sexual Harassment. The Committee can initiate investigations, and is committed to stopping sexual harassment, taking the help of the Law where necessary.
- Directly writing to warn the Harasser: The victim or any third party can write to the person who they believe is harassing them, and ask them to stop. The Committee or any Sexual Harassment Advisor can help them draft such a letter and also counsel those who receive such letters.

- Consultation is available from any members of the Committee on Sexual Harassment, Counselors, etc: Consultation will be available for anyone who wants to discuss issues related to sexual harassment, whether or not 'harassment' actually has occurred, and whether the person is involved or is a third party.
- An annual report will be prepared which will be submitted to the university.

Making the Campus Safe

The insecurity felt by the women students was evident and was conveyed directly as well as through the concern and anguish of the wardens. The problems of security as well as of poor lighting and of intra-campus communication and transport were brought to our notice.

1. For revamping security in consultation with wardens, students (not necessarily elected representatives) faculty members from different residential sectors, the following steps are suggested:
 - 1.2 Security jeeps to go around in the afternoon even on the bus stops.
 - 1.3 In campus bus service from one place to another even for the day scholars
 - 1.4 Improve lighting in areas frequented by students e.g. the library.

Recommendations

- 1.1 To adopt a Sexual Harassment Policy.
- 1.2 The plan for prevention of sexual harassment will be implemented so that the most urgent steps are taken immediately.

1.3 The university admission brochure will publish a short note on sexual harassment policy and procedure. The sexual harassment policy and procedure should be widely disseminated.

2.1 The university should constitute a standing committee with a permanent secretariat attached to it. It should have a statutory status and be autonomous. It should enjoy the status of an enquiry commission so that it can call for evidence and witnesses.

2.2 It should follow a standard procedure and well publicized time frame for each step of the complaint, investigation, resolution and appeal process.

2.3 Orientation programmes need to be conducted on sexual harassment for the different sections of the university on an ongoing basis.

2.4 The standing committee will be able to co-ordinate electrical, engineering and security department as well as the bus service which, when inefficient, increase sexual harassment on campus.

PARTICIPANTS

3. Appoint two counsellors, at least one of whom will be a woman. Social and personal counseling services are to be provided as soon as possible. There is general agreement among all sections of JNU community about its imperative need.

4. Overhauling of the security system. This overhauling should be done in consultation with other experts. Campus security should be handled sensitively, and indeed the security officers and guards need to be sensitized and educated on how to handle any incident.

- ◆ A panel of 2 – 3 lawyers familiar with issues/cases of sexual harassment must be constituted and ensure their availability.
- ◆ In addition, a woman medical doctor conversant with the medical dimensions of sexual harassment should be appointed. Initially, she may be on call but ideally a full time doctor- in- residence is recommended.
- ◆ Also liaise with the media for publicity of the steps taken by the university administration.

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