

Prof. S.C. Garkoti
Rector-II
Jawaharlal Nehru University
New Delhi

Dear Prof. S.C. Garkoti

On the occasion of our meeting with you, following the orders of the Delhi High Court, we would like to submit the attached document as the basis for our initial discussion.

Prof. Madhu Sahni

CGS/SLLCS

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Dated 9 November 2017

**TEACHERS' SUBMISSION TO THE MEETING BETWEEN TEACHERS
(REPRESENTED BY PROF. MADHU SAHNI, PROF. RAJAT DATTA, AND PROF.
AYESHA KIDWAI) AND THE JNU ADMINISTRATION**

The GSCASH was instituted on 8 March 1999, as a committee of 13 persons. Since then, its composition and Rules & Procedures have been approved by the Executive Council of Jawaharlal Nehru University four times, the last most recently in 2015. The initial proposal to constitute such a body was communicated to the University Grants Commission (UGC) on 14 October 1998 (Annexure 1).

<i>EXECUTIVE COUNCIL DECISION</i>	<i>DETAILS</i>
1. <i>The Karuna Chanana Working Group on Sexual Harassment: A Plan and Institutional Mechanism to Combat Sexual Harassment on Campus</i> is approved by the JNU Executive Council	Resolution 5.5, meeting on 6 May 1998.
2. JNU Executive Council approves the GSCASH Rules & Procedures based on the Ashok Mathur Committee Report.	Resolution 6.7, meeting on September 28, 2001.
3. JNU Executive Council approves the GSCASH Rules & Procedures, 2008.	Resolution 6.8, meeting on June 2, 2005.
4. JNU Executive Council approves the GSCASH Rules & Procedures, after the incorporation of the provisions of the <i>Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal Act, 2013</i> and the Saksham Report of the UGC).	Resolution 5.1, meeting on September 19, 2015.

Jawaharlal Nehru University has, over the past eighteen years, consistently maintained in all its official communications that the GSCASH is the university's official body to inquire into all complaints of sexual harassment, as required by the *Vishaka* judgment (1999-2013) and then by the *Sexual Harassment in the Workplace Act 2013*. As recently as February 3, 2017, in *Arshad Alam vs. Jawaharlal Nehru University*, JNU has affirmed this in the Delhi High Court (Annexure 2). In the Self-Study Report presented on 9 October 2017 to the visiting National Assessment and Accreditation Council Peer Review team, JNU has once again presented the GSCASH as the body responsible for gender sensitisation and

inquiring into complaints of sexual harassment in the university (Annexure 3). The abrupt dissolution of GSCASH on 18 September 2017 has therefore taken the whole university by surprise, as this move does not appear to have arisen from any need felt by the university community to revisit the composition and rules of the GSCASH itself but from what we see as an erroneous reading of the provisions of the *UGC (Prevention, Prohibition & Redressal of Sexual Harassment of Women Employees & Students in Higher Educational Institutions) Regulations 2015*, as published in the Gazette of India on May 2, 2016 (henceforth, UGC-ICC Regulations).

In this brief initial submission, we would like to impress upon you that this reading is unwarranted, that the dissolution of GSCASH was entirely unnecessary. Further, we wish to emphasize that a composition of the GSCASH through elections is not only the most egalitarian method that works best in the interests of employees and students, but is also one that protects the office of the Vice-Chancellor and other senior functionaries of the JNU administration from allegations of bias and undue influence.

I. THE INSTITUTIONAL LEGITIMACY OF THE GSCASH

From the data available, compiled from annual reports of the GSCASH up to the 2015-16, GSCASH has since its inception received a total of 268 complaints, at an average of 15 complaints a year. All members of the JNU community have accessed the committee's redressal processes from time to time: 226 complaints have been made by students, 30 by the non-teaching staff (permanent or contractual, including security guards and service providers and *safai karamcharis*), 9 by faculty, and 3 by residents. Of the 184 complaints made in this class, even as 163 complaints have been made by women against men, 13 by men against women, 2 by men against men and 6 by women against women. The latter three figures demonstrate that the gender-neutrality of the GSCASH has proved to be truly relevant. Roughly 15% of the complaints by students are against employees (12 each against staff and officers, 19 against faculty), showing that the GSCASH has been able to inspire faith in the student community that it can and

will impartially address complaints based on the nature of the grievance and not position in the power hierarchy of the institution.

Employees have also accessed the GSCASH complaints resolution process through the years. Faculty members have made only 9 complaints to the GSCASH, where none of these complaints have been against other faculty – there have been 4 each against staff and student(s), with at least one complainant being a man. Staff have made 30 complaints, of which 22 have been made against other staff, 5 against faculty, and 3 against students.

Data for penalties imposed is not, at the current time, available for the full span of 18 years, but the available information for the last five years from 2012 onwards, shows that at least 16 students have been given a range of reformatory to punitive penalties, 5 faculty members have been awarded penalties in accordance with the service conditions as have at least 2 members of the staff, and 1 faculty member from another university has been declared out of bounds.

There has been hardly any litigation on GSCASH enquiries by either of the parties to the proceedings. This has partly to do with the rule bound appellate process incorporated in the GSCASH Rules and partly to do with the rigorous guarantees of the principles of natural justice its Rules afford, duly inflected with concerns for gender sensitivity. The only completed court proceedings against a GSCASH inquiry and recommended penalty in these eighteen years is *S. Raju Aiyer v. Jawaharlal Nehru University* (WP(C) No.2541/2011) upheld the GSCASH Enquiry Committee and the JNU Appeals Committee, with Justice Valmiki ruling on March 13, 2013:

“The enquiry committee has arrived at correct findings and given the correct recommendations. ... I find that both the enquiry committee and the appeals committee has after detailed analysis and compelling reasons found the petitioner guilty of sexual harassment of the respondent No.5. In no manner, the exhaustive and analytical findings of the enquiry committee can at all be interfered by this Court.”

In the *Arshad Alam* case cited earlier, the Delhi High Court refused to entertain

the writ petition observing that the appeals process as specified in the GSCASH Rules is under way. In another case, *Amitabh Kundu v. Jawaharlal Nehru University* (W.P.(C) 2013/2013 and CM No. 3831/2013 (Stay)), the High Court refused to stay a GSCASH inquiry proceedings, merely asking the University to “*strictly follow the GSCASH Rules, which are the Rules for conducting of enquiries into allegations of sexual harassment*”.

Furthermore, the GSCASH has earned the university great prestige for its innovative character, from the positive observations on it by the Justice Verma Committee (GSCASH was one of the 80-odd persons invited by the committee to appear before it), and from the fact that it was the model that Supreme Court of Bangladesh extended to address the issue of sexual harassment against women in workplaces. More recently, the University Grants Commission of Sri Lanka has also formulated guidelines for universities in that country, using the JNU GSCASH model. The JNU GSCASH’s innovations has also been featured in the journal of the Association of Commonwealth Universities, and in fact the visit of experts from JNU to Sri Lankan universities to guide the UGC Committee there on matters of composition and process have been supported by the ACU.

Eighteen years of history has successfully embedded the GSCASH in the institutional practices of the university and campus culture – from the integration of sensitisation and diversity components into orientation programmes for students, to the development of gender sensitive and just procedures by which the Executive Council discusses and implements penalties on complaints of sexual harassment, respect for the GSCASH restraint order and the maintenance of confidentiality. Most of all, the GSCASH Rules have created and maintained an atmosphere that is conducive to the sober and lawful disposal of complaints of sexual harassment, without any need for public outcry or public airing of grievances. This is amply attested by the fact that public restraint is exercised on complaints are filed and examined, and that none of the parties involved (or the general public) indulge in public outcry or slander. In fact, even after penalties have been imposed on respondents in inquiries, the confidentiality of the complainant is always respected, and the rights of proven perpetrators to register objections to the inquiry process using the channels conceived of in the GSCASH

Rules (i.e., the appeals process), are not challenged. Finally, due to its legitimacy in the eyes of the university community, the GSCASH's very existence is an effective deterrent to sexual harassment and empowers many constituents to object to discriminatory and unjust conduct.

II. THE DISSOLUTION OF GSCASH IS CONTRARY TO LAW AND JNU STATUTES AND REGULATIONS

On the 18th of September, however, this all-important component of the JNU community and its administration was excised by an Executive Council (EC) resolution. The reason for this was purportedly the adoption of the UGC-ICC Regulations 2015 by the EC, and particularly the misreading of Clause 2(1), which states that *“any existing body already functioning with the same objective (like Gender Sensitization Committee Against Sexual Harassment – GSCASH) should be re-constituted as the ICC”*, provided that in the *“latter case the HEI shall ensure that the Constitution of such a Body is required for ICC under these regulations. Provided that such a body shall be bound by the provisions of these Regulations”*.

This clause does not state that GSCASH ought to be superseded. All it says is that it “should” be “re-constituted” as an ICC. In other words, the Executive Council is required to institute a new body **only** if it was first decided that GSCASH was not an internal complaints committee of JNU. This is contrary to both law and fact, as GSCASH has always been avowed to be JNU's internal complaints committee, both in the courts and to the UGC. In the *Arshad Alam v. Jawaharlal Nehru University* case cited above, vide order dated 3.2.2017, the Delhi High Court stated that the enquiry report of the GSCASH fell within the meaning of *“enquiry report under Section 13(3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”* (para 1).

The function of GSCASH as JNU's internal committee had been recognized by several bodies such as the 2013 Justice Verma Committee Report which recommended the GSCASH “as a model” that may be examined. The very next year, the UGC's Task Force on measures necessary to ensure the safety of women on university campuses included the GSCASH Rules as Appendix 12 of its

SAKSHAM Report, observing that the resource provided by the experience of a long-standing complaints committee is one from which many other HEIs had expressed a keen eagerness to learn and draw inspiration from.

The members of Saksham Committee have also recently in a statement clarified that it had never recommended the supersession of the JNU GSCASH: *“Our Report made it clear that our proposals for the composition of Anti-SH committees were intended for campuses where ICCs were not in existence or were not Vishakha-compliant – they were never intended to replace or supersede committees like those of JNU’s GSCASH which we had found to be fully Vishakha-compliant.”* (See Annexure 2 for the complete statement issued after the dissolution of GSCASH).

In superseding the GSCASH, the Executive Council has also ignored Clause 3 (a) of the UGC-ICC Regulations 2015, which states that *“wherever required, appropriately subsume the spirit of the above definitions in its policy and regulations on prevention and prohibition of sexual harassment against the employees and the students, and **modify its ordinances and rules** in consonance with the requirements of the Regulations.”* (emphasis added). This clause makes it clear that the only way such modification could be done under the extant regulations on 18 September 2017 was by the GSCASH. The procedure outlined in Clause X (4) of the GSCASH regulation of JNU had to be followed; i.e. the UGC-ICC Regulations 2015 and the Garkoti Committee recommendations and issues raised in the Executive Council should have been referred to the GSCASH for consideration with the requirements of Clause X.4., which is reproduced below.

Clause X (4) Amendment to the Rules & Procedures of GSCASH

- i. *Amendments to the Rules and Procedures of GSCASH shall have effect only if they are in consonance with the letter and spirit of the Supreme Court Judgement, the Report of the Working Group on Sexual Harassment headed by Karuna Chanana, the Policy, and the Rules and Procedures based on the guidelines laid down by the Hon’ble Supreme Court of India, in its ruling on the Writ Petition (Criminal) Vishaka vs. State of Rajasthan (reported as 1997 (6) SCC 241) on 13 August 1997, on the prevention and deterrence of Sexual Harassment at the Workplace, SAKSHAM guideline by UGC, Justice J.S. Verma Committee Report and Work Place Act.*
- ii. *Amendments shall be effected by a decision taken in a Special Meeting of*

GSCASH called for the purpose.

- iii. *The proposed amendment (s), together with the objectives and reasons thereof, shall be recorded in writing and circulated by the proposer of the amendment (s) at least fifteen working days prior to the Special Meeting called for the purpose.*
- iv. *An amendment motion shall be adopted by two-thirds of the members present and voting. In the event of a tie on an amendment motion, it shall be put to vote one more time. If a tie recurs, the amendment motion shall be reconsidered by another Special Meeting to be called after at least fifteen working days. In the event of a tie occurring for the third time, the decision of the Chairperson shall be final.*
- v. *GSCASH amended rules should be placed before the Executive Council prior to adoption*

Further, every time the GSCASH Rules have sought to be amended, the version prepared by the GSCASH has been circulated in advance for comments to all the unions and Associations of employees and students. This practice is extremely important as it ensures the addressing of concerns that all stakeholders have *prior* to the adoption of regulations pertaining to sexual harassment. This practice was not followed in the last instance, and an opportunity not to proceed on a mistaken reading of the UGC-ICC Regulations was lost.

III. THERE IS NO IRRECONCILABLE CONFLICT BETWEEN THE UGC-ICC REGULATIONS AND THE GSCASH COMPOSITION AND RULES

The GSCASH Rules were amended by the Executive Council on September 18 2015. This harmonisation exercise with the Sexual Harassment in the Workplace Act and the Saksham Guidelines of the UGC, brought the GSCASH Rules in line with both. The UGC-ICC Regulations effectively derive their substantive content from both of these, and therefore there can be no presumption that no further harmonisation is possible.

As per our understanding, there are three major points of difference between the UGC Regulations and the GSCASH Rules. The first is that the composition of the Committee itself — it has more members than those specified in the UGC-ICC Regulations and its numerical strength is 23 rather than 7. This does not render the GSCASH non-compliant with the UGC-ICC Regulations however, as the Regulations specify the minimum standards. This is spelled out in the Saksham

Committee Report, which points out that “It should be noted that the composition is conceived as the basic minimum, as the size of an ICC may vary depending on the requirements of the institutions (p 85)”. In a residential university with nearly 8000 students on the rolls, about 1600 employees, and another 1500 odd residents and service providers, a complaints committee of 23 members is certainly an institutional requirement. This is made even more necessary by the fact that as awareness has increased, the volume of complaints to the GSCASH has increased, and a number of inquiries need to be conducted simultaneously. Not all 23 members sit on each inquiry, as the GSCASH Rules limit inquiries to a maximum of five, and a minimum of three, persons. You will also recall that the membership of GSCASH was expanded from 13 to 23 for this very reason.

There are similar good reasons for the inclusion of wardens, representatives of unions and associations, an eminent women academic as well as NGO(s) as members of the GSCASH. In a residential university, wardens play a crucial crisis mediation role and in ensuring a non-hostile atmosphere in the campus. Union and association representatives are important for the work of gender sensitisation and the prevention of sexual harassment; eminent women academicians along with NGOs play crucial dual roles in advising and guiding the internal complaints committee in its gender sensitisation activities as well as serving as the watchdogs in inquiries. The minimum standard set by the UGC Regulations do not bar their inclusion. It is instructive here to take note of the remarks made in the Dr. B. N. Ray vs Ramjas College & Ors. judgment by Justice V.K. Jain:

“It is very much in the domain and competence of the University to provide ...that the members of the Committee would include representatives from all the sections of the college community. In our view, such a composition also meets the objective of ensuring that all sections of the college community have full faith in the functioning of Committee on account of presence of their representatives on it. The findings of such a broad based Committee are likely to be better received and accepted by all the sections of the college community. In fact, inquiry by a Committee, as against inquiry by an individual, which normally is the case in case of Government

servants, is likely to be more fair, objective and impartial, particularly when all the sections are represented in it.”

The second major point of difference is that unlike the UGC-ICC Regulations, the GSCASH Rules are *gender-neutral* (we prefer the term *gender-plural*) the JNU ICC Regulations state the ICC to admit, in the main, complaints from women alone (although there exists a provision for men to approach the ICC as well). The fact that the GSCASH allows for a larger class of potential complainants than just women is however more befitting a university setting, in which reservation to transgender candidates is given, pursuant to a Supreme Court judgment. Moreover, sexual harassment does not happen to women alone, and it is not only they who are committed to justice in all such cases. The available data indicates that about 11% of the complaints to GSCASH over the past 18 years have been involved parties of the same sex or men as complainants charging women, and to create a mechanism that simply excludes the possibility of such complaints belies the spirit behind much of sexual harassment legislation and jurisprudence.

Third, the GSCASH Rules differ from the UGC-ICC Regulations in specifying the method by which GSCASH members come to be designated as members the Committee for all constituents. The GSCASH Rules constitute the pool by elections of teachers, students, and staff directly elected to the GSCASH from which the Vice-Chancellor nominates, whereas the UGC-ICC Regulations do so only for student representatives. This fact of the matter is that the Regulations are simply silent about the criteria that must be employed by the Vice-Chancellor in making such nominations so as to encourage faith in the autonomy and credibility of the complaints committee. In JNU, the nomination vs election was discussed threadbare in the open fora organised by the Karuna Chanana Working Group twenty years ago. The compact in the university for the last two decades, and reaffirmed by the JNU Executive Council no less than four times since then, is that constitution of the pool by elections is the only fair method, for the following reasons:

- It is the only method that provides a universally accessible fair opportunity to all constituents of the workplace to be part of a mechanism dedicated to the prevention and deterrence of sexual harassment in the workplace.
- It is also the least subjective means by which credentials regarding commitment to the cause of gender justice and suitability for nomination can be evaluated.
- It also ensures greater transparency and accountability in the institution, and assures the stakeholders that the employer/institution is commitment in redressing complaints of sexual harassment in the same manner.
- Elections also insulate both the inquiring authority and the executive authority from charges of seeking of bias and the exercise of undue influence and/or manipulation due to pressure from senior levels in a way that nomination by a single individual can never achieve.
- The electoral process enables workers and other constituents to raise and discuss the issue of sexual harassment (as mandated by Vishaka) and to spread awareness and education.
- Institutions structured by the electoral process inspire greater confidence because they give all constituents an equal stake in ensuring the impartial functioning of the committee.

There is nothing in the UGC-ICC Regulations that preclude use of elections as a method of constructing the pool from which the Vice-Chancellor may nominate the members of the complaints committee. It may also be noted that nomination from a pool provided by employees in particular and students does not take away from the Vice-Chancellor's rights to nomination or prevent the exercise of the various other powers invested in him as an Executive Authority. Indeed, following the Saksham guidelines of the UGC (as was mandated by the UGC through many letters in 2014-2016) may indicate that it is imperative to allow for a method other than direct nomination by the Vice-Chancellor. The Saksham report specifically advises that ICC members must be representative and that "such representation must not be directly nominated by the employer; rather, transparency and a

principled basis for membership on the ICC should be arrived at after involving all sections of the HEI community” (pp 75–76).

We hope that you will consider our preliminary submissions in this document as an invitation to further dialogue in order to achieve a resolution of the dispute that has forced the petitioners to approach the court. We would like to make further submissions with regards to multiple problems with the UGC-ICC Regulations in JNU in the very near future, and preferably before the Executive Council meeting on the 16th of November 2017. We hope also that you will brief members of that body about this meeting.

Prof. Madhu Sahni
Petitioner

Prof. Rajat Datta
Petitioner

Prof. Ayesha Kidwai
President JNUTA

9 November 2017