

1 September 2017

The Chairperson,  
GSCASH Review Committee

Dear Sir,

This has reference to the meeting of Committee to review the existing GCSAH mechanism and forming Internal Complaints Committee held on 16 August 2016 brief instructions regarding the mandate of the committee and the documents provided for information and perusal. The mandate of the committee is informed as follows.

1. Constitute an Internal Complaints Committee (ICC) in compliance with section 4 of SHW Act 2013, and as per Regulations 2(i) and 4 (1) of UGC gazette notification dated 2 May 2016 to review the existing mechanism, i.e, GSCASH

I have gone carefully through the suggested provisions and GSCASH rules and procedures and the relevant provision of ACT and UGC Regulations mentioned above. The following are my findings, comments and observations.

### **Formation of Internal Complaints Committee**

#### **1. Compliance with the section 4 of SHW Act 2013**

The existing GSCASH is proven as an effective mechanism as a constitutional tool established in JNU in 1999 in conformity with the then rules and subsequent legislations and relevant provisions in the Indian Constitution and Indian Penal Code keeping in view of three functions: prevention, prohibition and redressal for addressing the problem of sexual harassment. GSCASH Rules and Procedures have also been subsequently subjected to amendments as and when new legislations are enacted or periodically.

The following points support the merit, quality, efficacy and legitimacy of existing GSCASH.

- a) GSCASH is established through a due process and deliberations in the past by experts on the subject, legal persons, etc and higher standards of review has been followed thereafter time to time for amendment of provisions.
- b) It is found that GSCASH rules and procedures is a well thought out and comprehensive document that covers the nature and complexity of the issue of sexual harassment in such a manner sensitive to JNU campus life.
- c) GSCASH is constituted not only as a law implementation body, but also as a body to fight against discrimination, humiliation, retaliation and harassment based on sex and gender. GSCASH has given primacy to prevention and prohibition rather than waiting for sexual harassment incident to happen.

- d) The SHW Act 2013 lay emphasis on employer-employee relations, but GSCASH rules consider teacher-student, teacher-staff and staff student relations into consideration in its rules and procedures, also consider past experiences in dealing with the issues of sexual harassment.
- e) JNU GSCASH rules and procedures are modelled in many universities in India such as Delhi University when they established their own mechanism.
- f) It is also to be noted that Justice Verma Committee report on Amendments to Criminal Law submitted in response to brutal gang rape occurred on December 16, 2012 in Delhi and nationwide outcry against it thereafter, when they discussed universities as workplace, emphasized that **“we are in receipt of certain submissions made the Jawahar Lal Nehru University which, in part, deal with the issue of sexual harassment. Those universities, in which Internal Complaint Committees have functioned successfully to deal with sexual harassment, should share their internal guidelines on combating sexual harassment in their University with other Universities across India. As an example, the internal complaint committee of JNU is known as Gender Sensitisation Committee against Sexual Harassment, which is stated to have been extremely effective in its working partly due to the diverse nature of its constituent members. This model may be examined.”**
- g) In an interaction meeting of GSCASH on 29 September 2009 with Supreme court judges of Bangladesh, Justice Syed Mahmud Hussain, Justice Qumrul Islam Siddiqui and advocate Salma Ali, the then Executive Director of Bangladesh National Women’s Lawyers Association, who authored the verdict on **sexual harassment against women in workplaces in Bangladesh, emphasised that they took the JNU GSCASH model forward in order to make it a model for workplaces and universities in Bangladesh. Justice Mahmud Hussain emphatically stated that the Indian Supreme Court judgement and JNU GSCASH were the first of its kind in the subcontinent. He said JNU is a model for the universities of neighbour countries** (Ref, GSCASH Annual Report, 2009, pp. 32-35).
- h) Whenever implementation of GSCASH recommendations were challenged the court uphold GSCASH rules and procedures and such cases returned to the University for Settlement within its purview as there was no issue of non-compliance of procedures and violation of natural justice or human rights principles.
- i) The increasing number of complaints file in GSCASH is evidence of it acquiring high degree of legitimacy and JNU community’s trust on the institution. In JNU mostly issues of sexual harassment have been addressed rather than concealing it.
- j) Therefore, the points above has to be taken into account when reconstituting GSCASH, and utmost care should be taken for not including/adding any provision that may defeat the very purpose for the law for which it has been enacted.

**Problems cited on the difficulties in the Implementation of Act and observations**

- i) Criticism has been raised from many quarters regarding the difficulty of implementation of this ACT in its entirety, although the Act is a very positive step.
- ii) The workplace Act 2013 provides a lot of scope for interpretation also.
- iii) The revision of rules as per ACT should reflect the complex nature of sexual harassment in the context of university campus, and as our social structure is based on extreme patriarchal norms and inequality, there should be relation between standards of rules and procedures and the objectives to be achieved.

### **Nature of GSCASH Rules**

- i) GSCASH rules are more inclusive and gender neutral than the new ACT. Act provides protection only for women and does not consider the fact that men or third gender can also be harassed sexually. This gives space for female prejudice. But GSCASH consider both men and women and also sexual orientation and third gender.
- ii) The new Act does not provide protection for victims adequately, but GSCASH does. GSCASH seems to have taken the Act 2013 in its true spirit.
- iii) Equity principles upholding fair enquiry, natural justice and the right to fair procedures are more effective in GSCASH rules and procedures.
- iv) GSCASH upholds the great legacy of long struggle for women's rights and gender justice in its rules and procedures.
- v) The enactment of new ACT 2013, validates earlier provisions as the law affirms the *Vishakha* guidelines and is in addition to other existing laws and do not defer relevant legislations. It is also to be noted that the *Vishakha* guidelines had the force of law.
- vi) GSCASH reveals that in JNU employer took the issue of sexual harassment very seriously and already implemented the earlier *Vishakha* guidelines and the new Act in the campus effectively. Therefore, the employer stands as he/she has observed full compliance of the legally required obligation.

## **2. Compliance to UGC regulation 2(i) to constitute Internal Complaints Committee.**

As JNU already has a highly appreciated (domestically and internationally) mechanism to address multifaceted issues related to sexual harassment quite effectively, no new committee is required to be constituted in JNU.

- i. It should be noted that a UGC letter D.O.No.F.91 -3/201 4(GS) dated 6 June 2017 requests the universities and colleges “to constitute **an Internal Complaint Committee (ICC)** and **a Special Cell** in their respective institutions to deal with the issues of gender based violence and to conduct gender sensitization programme.” This letter is clear that there should be two bodies, ICC and Gender Sensitization Committee. Therefore “the Rules and Procedures of the Gender Sensitisation Committee against Sexual Harassment (GSCASH)” may be renamed as “the Rules and Procedures of the Internal Complaints Committee (ICC) and the

Gender Sensitisation Committee against Sexual Harassment (GSCASH)”. This format will be more effective to achieve the goals of Prevention, Prohibition and Redressal. Therefore, in the case of JNU reconstitution of ICC with a drastic change is not required, but a renaming with minor modifications in certain provisions may suffice.

- ii. Although it is directed by the UGC to reconstitute the already existing bodies like JNU, GSCASH nothing precludes JNU to retain the name GSCASH along with ICC as the provisions of the law is in conformity with relevant articles of constitution, Vishakha guidelines, sections of IPC and international law for protection of women’s rights and dignity, and GSCASH rules and procedures are found more inclusive and gender neutral than prescribed in the provisions of law, which is very important to retain for a democratic space like university campus harbouring huge diversity in terms of class, caste, gender, disability, religion, region, urban, rural, occupation etc.

### **3. Compliance to 4(1) of UGC regulations (Grievance redressal mechanism).**

- i. This again upholds the above observation. JNU GSCASH already has an effective inbuilt mechanism for gender sensitization against sexual harassment as the name itself reflects.
- ii. If ICC members are to be nominated by Executive Authority directly, the following issues may emerge. Care may be taken to avoid anything which contradicts the purpose of law.
  - a) UGC regulation 4(3) which states “persons in senior administrative positions in the HEI, such Vice Chancellor, Pro-Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc shall not be members of ICCs in order to ensure autonomy of their functioning” is important regarding formation of ICC. The autonomy and confidentiality of ICC will be called into question, when the nominated members tend to act as representatives of executive authority which is also disciplinary authority. Such nominees, if they fail to maintain their autonomy and oath of confidentiality as members of ICC, may lead to undue intervention from Executive Authority and thereby manipulation of enquiries on sexual harassment complaints.
  - b) Persons who stand strongly against sexism and sexual harassment in professional spheres are potentially to be targeted and challenged by nominees appointed by executive authority.
  - c) ICC could be used for targeting faculty, staff and students in a retaliatory manner and this may lead to potential victimization of a complainant by employer. ICC eventually may become a hub of victimization and retaliation in violation of its actual mandate.
  - d) People in positions of power, using their positions, can act for trivializing sexual harassment and to take revenge against women who have complained or testified against them in violation of their statutory obligation.
  - e) Such contexts of huge power relations prevent women to complaint in ICC, which ends up in exploitation and discrimination to be continued and it may defeat the very purpose of law and regulations.

- f) If women come forward to complain, “Women misuse the law” assumption may emerge so that the law itself can be emasculated.
- g) Since the Act provides overburden on employers, considering the reputation of the institution, the employers may even tend to think not to appoint women as they are viewed as potential “problematic” “trouble makers” inviting bad name for the institution. Such attitude will end up in not appoint women and consequent the invisibilization of women from workplaces.
- h) It should also be noted that whenever we try to analyse the merit of a sexual harassment case, it will very naturally enter into the circuits of politics of class, caste, ideology, professional rivalry and existing power relations. The justice system in the country has been widely criticised for its dual nature concerning different social groups. The persons from upper castes and the ruling dispensations responsible for perpetrating heinous crimes are given escape routes but the punishment is swift for those from Dalit, minority, poor and other vulnerable sections.
- i) Therefore, the norm in the existing GSCASH that “the nomination of elected members vested with the Vice Chancellor” may be retained as it will bring a more inclusive and socially sensitive ICC with representation from respective vulnerable social groups. In this regard I uphold the recommendations of Sonajharia committee dated 5 May 2016 for implementation.

## **Suggestion**

### **Expansion of Review Committee**

The current review committee may be expanded with representation from current GSCASH, staff, student, disabled, third gender, dalit and minority communities so that to make it more inclusive and representative.

### **General observations**

#### **1. Mandate**

Can add a Mandate Statement in the beginning of the introductory section of Rules and Procedures as given below.

As mandated by law, Jawaharlal Nehru University shall be fully committed to a violence and risk free campus, zero tolerance for sexual harassment and gender discrimination, and to ensure a safe and secure workplace and study environment for all women in the campus and to respect to women’s dignity and promote gender justice and women’s right to equality and opportunity.

#### **2. Introductory Paragraph**

Suggest adding one small paragraph in the definition section stating the severity of sexual harassment of women in work place as the sample below.

[Sexual harassment is a humiliating assault on women's dignity and constitutes a gross violation of women's fundamental right to equality and opportunity as guaranteed by various articles (14, 15 19 & 21) and relevant provisions enshrined in the Indian Constitution. Since gender hierarchy is the result of deep-rooted socio-cultural behavioural patterns and patriarchal values favouring male privileges, sexual harassment reflects an act of undermining women's empowerment coercing women to be confined to their traditional roles. Sexual harassment shall not be treated as a trivial/natural male behaviour, "harmless flirtation" or jokes women enjoy. On the contrary, it is a strong manifestation of gender discrimination which adversely affects women's physical and psychological well-being, career advancement, life and livelihood; leads to stress, disempowerment, feeling of distrust, loss of dignity, hopelessness, shame, poor productivity and sustains gender inequality and subjugation of women. It is to be noted that there is a widespread culture of reluctance of non-reporting or not speaking out on sexual harassment issues due to fear of reprisal from the harasser, loss of job, shame, harm to personal and professional reputation, etc. This may affect the more socially and institutionally vulnerable sections, especially students the most. Sexual harassment, therefore, prevents women's contribution to social and national development.]

### **3. Definition of sexual Harassment**

- i) This section should begin with the statement that sexual harassment is rooted in unequal power relationships created by multiple hierarchies of gender, class, caste, religion, region, location (rural/urban), age, ability, occupation, etc. It includes "discrimination on grounds of gender" and "discrimination and harassment on the grounds of sexual orientation". Men as well as women can be sexually harassed by persons of the same or opposite sex.
- ii) Given technological advancement and rise of cybercrimes, the sexual harassment using digital devices, hacking computers, technologically advanced instruments, mobile phones, illegal video recording and distribution of doctored videos with malicious intentions are to be specified and incorporated in the definition.

Separate handbook should be prepared for gender sensitization, orientation and training.

Legal awareness training should be given to GSCASH members.

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CRCAS, SIS,

**Offices held**  
Chairperson GSCASH (2008-2010)  
Programme Coordinator, National Service Scheme (2014-2016)  
Member, Anti-Ragging Committee (2014-2016)  
Warden, Chandrabhaga hostel (2007-continuing)

Course Incharge: **Gender in International Politics** (MA, International Relations and Area Studies, Core course).