

GINNY JETLEY RAUTRAY

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Date: 25.05.2016

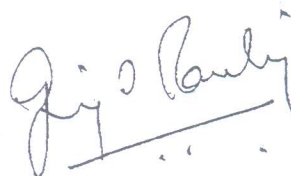
Opinion

We have been instructed by Jawaharlal Nehru University vide letter dated 19.05.2016, and our opinion has been sought with regard to the issue that whether the proposed amendments concerning GSCASH are legally in order and in the line with GSCASH norms enacted by the Hon'ble Courts.

We have also perused the proposed revision in tandem with The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 (hereinafter referred as 'The Act') and verified that no revision is made in contravention of the statute.

FACTS:

- Gender Sensitisation Committee against Sexual Harassment (GSCASH) is the body constituted by Jawaharlal Nehru University, New Delhi (vide the Notification dated 16 April 1999). The Executive Council vide Resolution 5.1 approved the revised rules and procedure of GSCASH. The revised GSCASH rules and regulation was effective from 18.09.2015.



- The Vice-Chancellor constituted a Committee to look into the revised rules and Regulations concerning GSCASH. The members of the Committee are:-
 1. Prof. Sonajharia Minz, SC&SS, Chairperson
 2. Prof. Umesh Ashok Kadam, CHS/SSS, Member
 3. Dr. K.B. Usha, CR&CAS/SIS, Member
- The Committee was constituted to examine and recommend necessary changes vide Notification No. Acad. II/(U)/1 (10) dated April 8, 2016.

STATUTORY PROVISIONS:-

V. COMPOSITION AND PROCEDURES OF GSCASH

V.1. Composition and Infrastructure GSCASH shall have a membership of twenty-three persons, of which at **least half the members** shall be women.

V.2. The Process for Formation of GSCASH

V.2 (i) The election for the specially elected representatives of students, teachers, staff, and officers (those referred to in Sections V.1 (i) – (iii) above) shall be conducted by an independent four members EC set up by GSCASH. The elections should be held simultaneously with the respective unions each year. The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University **from among the pool of elected representatives.**

PROPOSED AMENDMENTS

1. V. COMPOSITION AND PROCEDURES OF GSCASH

V.1. Composition and Infrastructure GSCASH shall have a membership of twenty-three persons, of which at least **thirteen** members shall be women.

V.2. The Process for Formation of GSCASH

g. j. b. u.

V.2 (i) The election for the specially elected representatives of students, teachers, staff, and officers (those referred to in Sections V.1 (i) – (iii) above) shall be conducted by an independent four members **Election Commission** set up by GSCASH. The elections should be held simultaneously with the respective unions each year **and the Election Commission must ensure representation from SC/ST/OBC/Minority/Differently Abled/Third Gender**. The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University.

2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. (2) The internal Committee shall consist of the following members to be nominated by the employer, namely:-

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total members so nominated shall be women.

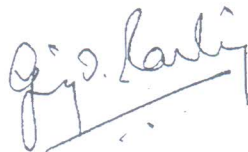
(5) Where the Presiding Officer or any Member of the internal Committee:-

(a) contravenes the provisions of section 16; or

b) has been convicted for an offence or an inquiry into an offence under any law for that time being in force is pending against him: or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.



V.2 (i) The election for the specially elected representatives of students, teachers, staff, and officers (those referred to in Sections V.1 (i) – (iii) above) shall be conducted by an independent four members **Election Commission** set up by GSCASH. The elections should be held simultaneously with the respective unions each year **and the Election Commission must ensure representation from SC/ST/OBC/Minority/Differently Abled/Third Gender**. The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University.

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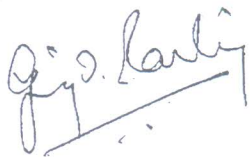
(5) Where the Presiding Officer or any Member of the internal Committee:-

(a) contravenes the provisions of section 16; or

b) has been convicted for an offence or an inquiry into an offence under any law for that time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.



Clause 10: Conciliation

(1) The Internal Committee or as the case may be, the Local committee may, before initiating an enquiry under Section 11 and at the request of the aggrieved women takes step to settle the matter between her and the respondent through conciliation.

(2) Where a settlement has been arrived at under subsection (1) the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

Clause 26: Penalty for noncompliance with provisions of Act

(1) Where the employer fails to:-

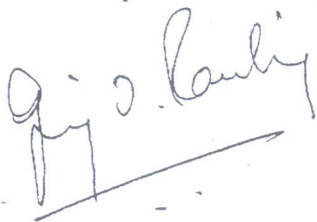
(a) Constitute an internal Committee under sub-section(1) of section 4;

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

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

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

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



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

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

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

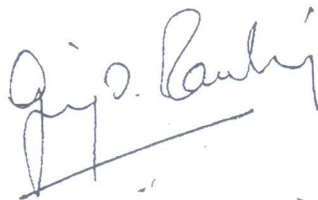
3. The written guidelines for constituting the Election Commission and for the conduct of elections of GSCASH members may consider the following:

- a. Independent four member- Election Commission to be set up by GSCASH- The associations/ unions after approval of the respective general bodies may forward the names to GSCASH for constituting the Election Commission.
- b. One member from GSCASH must be nominated as Observer to oversee the conduct and proceedings of election for GSCASH members.
- c. Representation of every section SC/ST/OBC/Minority/Differently Abled/Third Gender must be ensured.
- d. An NGO with religious and /or political affiliation will not be eligible for empanelment.

ANALYSIS & CONCLUSION

A. With respect to point no. 1 the above stated amendments recommended by the Committee can be made and there is no embargo on this.

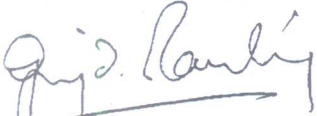
B. By adding definitions mentioned under The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 in the revised draft report



of committee about Rules and Procedures of GSCASH there is no ambiguity or scope for misinterpretation of the terms of the Rules.

C. With respect to the recommendation no. 3 for constituting the Election Commission it is noted that 'The Act' does not prescribe for election and only prescribe for nomination of the members of ICC. GSCASH rules in its wisdom has chosen to create a pool of elected members from whom the Vice- chancellor would nominate the members for inclusion in Inquiry Committee. Therefore, the guidelines for constituting of Election Committee would not contravene with any provisions of 'The Act' and the suggested guidelines, therefore, be considered for approval by the Executive Council.

It is opined accordingly.



G. J. Rautray . . .

Advocate

Reg/1914
29.10.15

The Vice-Chancellor
JNU

Dear Sir,

This refers to the Minutes of the Meeting of the Executive Council held on 18 September 2015 (circulated last week for comments).

We wish to draw your attention to the item 5.1 regarding the GSCASH rules, especially the Annexure containing the approved version of the said rules, for modification of Section V.2 and Section VI.2 as they do not reflect the agreement reached at the EC meeting. The last sentence of V.2(i) - reading "The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University from among the pool of elected representatives" - should have been deleted to ensure that the electoral outcome is not in any way disrespected. Likewise, "mediation" in section VI.2 was to be left out of the ambit of the functions of GSCASH. Instead, the title of the section could read, "Assistance and Crisis Management". Accordingly provision VI.2(i) about mediation will have to be deleted altogether before the rules are officially notified.

Finally, most matters listed under Item 3 (pages 5-20) read as if they are pre-action agenda items rather than action taken by the Executive Council. A reference to the Minutes of the earlier meetings of the EC will clarify about the correct method of recording decisions of this nature.

It is requested that the Minutes and the relevant portions of the GSCASH be corrected before they are placed for confirmation at the next meeting of the Executive Council.

With warm regards,

Yours sincerely

(Signature)
(Ashish Agnihotri)

(Signature)
13/10/2015
(Neelima Mondal)

(Signature)
13/10/2015
(C.S.R. Murthy)

Recto-I
Rep.

Acad. Branch-II

कुलपति कार्यालय, ज.ने.वि.
VC's Office, J.N.U.
डायरी सं./Dy. No. 4934
दिनांक/Date 29/11/2015

It is submitted that the Academic Branch-II, vide Notification dated October 6, 2015 (F/A) notified the revised Rules and Procedures of GSCASH and also uploaded to JNU website. In view of above, the comments received from the 3 EC members is submitted for kind perusal. If approved, we may forward the comments to the Chairperson, GSCASH for comments and reply to the letter suitably.
Submitted please.

Recto-II/2836
30x-5

6310/Acad-II
3-11-15

Urgent AP
29/10/15
S.O. (Acad)

1128/Acad-II
29/10/15

(Signature)
A.R. (Acad.)
29/10/15

(Signature)
Resig/30x
29/10/15

(Signature)
Recto-I
29/10/15

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V.C.
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31/10/15


JAWAHARLAL NEHRU UNIVERSITY
ACADEMIC BRANCH-II

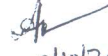
No. Acad.II/U/6 (56)/

October 06, 2015

NOTIFICATION

The Executive Council at its meeting held on 18.09.2015 vide Resolution 5.1 approved the revised Rules and Procedures of the Gender Sensitization Committee against Sexual Harassment (GSCASH) prepared by the Committee set up by the Vice-Chancellor incorporating the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The revised GSCASH Rules & Procedures as annexed, will be effective from the date of approval of Executive Council i.e. 18.09.2015.


(Sanjay Kumar)
Assistant Registrar (Academic)


06/10/15

Co:

1. All Deans of Schools of Studies
2. All Chairpersons of Centres/Special Centres
3. Dean of Students/Associate Dean of Students
4. All Provosts/Wardens of Hostels
5. Chief Proctor/Proctors
6. Chairperson, GSCASH
7. President/Secretary, JNUTA/JNUSU/JNUOA/JNUSA
8. OSD/PS to VC/Rector-I/Rector-II/Registrar/FO/CoE/Librarian
9. All JRs/JR(Finance)/DRs/DFOs/Incharge Engineering
10. All ARs/AOs/AFOs/PRO
11. Directors, HRDC/JNIAS/AIRF/USIC/EOO/International Collaboration
12. Chief Coordinator, LEC
13. CMO/Chief Security Officer
14. Director, CIS (for uploading on JNU Website)
15. Hindi Officer – with a request to kindly provide Hindi version of the Revised GSCASH Rules & Procedures
16. All SOs/E-governance Cell
17. Notification File

JAWAHARLAL NEHRU UNIVERSITY
ACADEMIC BRANCH-II

.II/U/6 (56)/

October 06, 2015

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The Executive Council at its meeting held on 18.09.2015 vide Resolution 5.1 approved the revised Rules and Procedures of the Gender Sensitization Committee against Sexual Harassment (GSCASH) prepared by the Committee set up by the Vice-Chancellor incorporating the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The revised GSCASH Rules & Procedures as annexed, will be effective from the date of approval of Executive Council i.e. 18.09.2015.

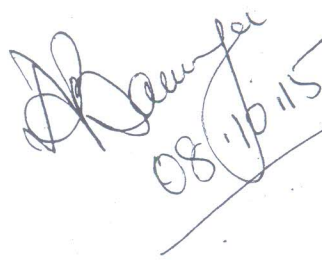

(Sanjay Kumar)

Assistant Registrar (Academic)

Cc:

1. All Deans of Schools of Studies
2. All Chairpersons of Centres/Special Centres
3. All members of the Committee for Counting of Past Service of Teachers
4. PS to VC/Rector-I/Rector-II/Registrar/FO/CoE/Librarian
5. President, JNUTA, Secretary, JNUTA
6. S.O. (Acad. I)/Acad.-III/RC
7. Director, CIS (for uploading on JNU website)
8. Notification File
9. Chairperson, GSCASH
10. AR (Legal Cell)

714/Acad-II
08-10-15


08-10-15

April

JAWAHARLAL NEHRU UNIVERSITY
ACADEMIC BRANCH-II

No. Acad.II/U/1 (10)

April 08, 2016

Notification

The Vice-Chancellor has constituted a Committee to look into the revised rules and regulations concerning GSCASH and to examine and recommend necessary changes consisting of the following with immediate effect:

- | | | | |
|----|----------------------------------|---|-------------|
| 1. | Prof. Sonajharia Minz, SC&SS | - | Chairperson |
| 2. | Prof. Umesh Ashok Kadam, CHS/SSS | - | Member |
| 3. | Dr. K. B. Usha, CR&CAS/SIS | - | Member |

However, while reviewing the GSCASH rules, the Committee will ensure that Workplace Act, 2013 be adhered to.

An
12/4/2016

(A.D. Bahuguna)
Section Officer (Academic - II)

To:

All Members of the Committee

CC:

- 2043/Acad.II
12/04/16
1. All Deans of Schools of Studies
 2. Dean of Students/Associate Dean of Students-I/Associate Dean of Students-II
 3. Chief Proctor
 4. Chairperson, GSCASH
 5. All Chairpersons of Centres /Special Centres
 6. CMO, SAG, Incharge, Health Centre
 7. Director, HRDC, CIS, USIC, JNIAS, AIRF, NEISP, IQAC,
 8. PRO/CSO
 9. All JRs/DRs/DFOs/ARs
 10. PS to VC/Rector-I/Rector-II/Registrar/CoE/FO/Librarian
 11. S.O. (Acad-I)/Acad-III/Recruitment Cell
 12. Notification file/OOF.

To

May 5, 2016

The Vice-Chairperson
Jawaharlal National University,
New Delhi 110062

Dear Sir,

This is to forward to you the Report of the Committee constituted by you to look into the revised rules and regulations concerning GSCASH and to examine and recommend necessary changes vide the Notification No. Acad. II/U/1 (10) dated April 8, 2016. The Committee received the mandate from the Rector I vide his letter dated April 18, 2016 to confine to look into:


V.1. Composition and Infrastructure of GSCASH


V.2. The Process for Formation of GSCASH


The Committee recommends specific amendments pertaining to the mandate of the Committee. However, some general recommendations to be considered in consultation with GSCASH are also forwarded for your consideration.

Thanking you.

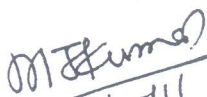
Yours sincerely,


05/05/2016
(Sonajharia Minz)
Chairperson


5/5/16
(Umesh Ashok Kadam)
Member


5/5/16
(K.B. Usha)
Member

Rector I
Chair: GSCASH | may examine as per norms; Recommendations to be placed before EC for amendments


9/5/16

Seen & to be placed in GABM on 4/05/2016.
Umesh Ashok Kadam

कुलपति कार्यालय, ज.न.यू.
VC's Office, J.N.U.
डायरी सं./Dy. No. 1335
दिनांक/Date 10/05/2016

Discussed at the meeting.
Umesh Ashok Kadam

The Report of
The Committee to look into the Revised Rules and Regulations
concerning GSCASH and to Examine and
Recommend Necessary Changes

The Vice-Chancellor constituted a Committee to look into the revised rules and regulations concerning GSCASH and to examine and recommend necessary changes vide the Notification No. Acad. II/U/1 (10) dated April 8, 2016. Following are the members of the Committee,

1. Prof. Sonajharia Minz, SC&SS, Chairperson
2. Prof. Umesh Ashok Kadam, CHS/SSS, Member
3. Dr. K.B. Usha, CR&CAS/SIS, Member

With reference to the letter dated 18th April, 2016 from the Rector I the Committee received its mandate confining to look into:

V.1. Composition and infrastructure of GSCASH

V.2. The Process of Formation of GSCASH

The Committee held a total of four meetings on 18-04-2016, 25-04-2016, 02-05-2016 and 03-05-2016. As per the mandated specified in the letter of the Rector I dated 18-04-2016 to confine to look into the clauses V.1 and V.2 of the revised GSCASH Rules & Procedures notified vide No. Acad.II/U/6(56) dated October 06, 2015, the Committee examined the two clauses.

The committee interacted with Prof. C.S.R. Murthy and members of GSCASH including student members to receive their inputs. The committee deliberated on the sub-points and all aspects of the clauses V.1 and V.2. Also considering the inputs received from the invitees to the deliberations the committee recommends the following amendments to clauses V.1 and V.2 (i).


S.N.	Existing	Proposed Amendment
1.	V.1 Composition and Infrastructure GSCASH shall have a membership of twenty-three persons, of which at least half the members shall be women.	V.1 Composition and Infrastructure GSCASH shall have a membership of twenty-three persons, of which at least thirteen members shall be women.
2.	V.2 (i) The election for the specially elected representatives of students, teachers, staff, and officers (those referred to in Section V.1 (i) – (iii) above) shall be conducted by an independent four members EC set up	V.2 (i) The election for the specially elected representatives of students, teachers, staff, and officers (those referred to in Section V.1 (i) – (iii) above) shall be conducted by an independent four members Election Commission set up by

	by GSCASH.	GSCASH.
3.	V.2 (i) The elections should be held simultaneously with the respective unions each year.	V.2 (i) The elections should be held simultaneously with the respective unions each year and the Election Commission must ensure representation from SC/ST/OBC/Minority/Differently Abled/Third Gender.
4.	V.2 (i) The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University from among the pool of elected representatives.	V.2 (i) The nomination of the elected members (teachers, staff and students) will be vested with the Vice Chancellor of the University.

It is opined that legal opinion be obtained on the proposed amendments. Further it is recommended that the procedure laid down in revised Rules & Procedures of GSCASH, Clause X(4) (ii) – “Amendments shall effected by a decision in a Special Meeting of GSCASH called for the Purpose.” be followed.

The Committee would like to submit the following general recommendations to be discussed with GSCASH:

1. The full name of the Act, “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” must be inserted in the **I. Background of the Rules and Procedures** and other appropriate places in the Rules and Procedures.
2. Following clauses in the Act may be considered for incorporation:
 - a. Clause 26 pertaining to Penalty for the non-compliance with provisions of Act.
 - b. Clause 10 pertaining to Conciliation.
 - c. Chapter II 4.(2) (c).
 - d. Chapter II Clause 5.
3. The Written Guidelines for constituting the Election Commission and for the conduct of elections of GSCASH members may consider the following:
 - a. Independent four member-Election Commission to be set up by GSCASH – The associations/unions after approval of the respective general bodies may forward the names to GSCASH for constituting the Election Commission.
 - b. One member from GSCASH must be nominated as Observer to oversee the conduct and proceedings of election for GSCASH members.
 - c. Representation of every section SC/ST/OBC/Minority/Differently Abled/Third Gender must be ensured.
 - d. An NGO with religious and/or political affiliation will not be eligible for empanelment.


05/05/2016

(Prof. Sonajharia Minz)
Chairperson


05/05/16

(Prof. Umesh Ashok Kadam)
Member


05/05/16

(Dr. K.B. Usha)
Member



जवाहरलाल नेहरु विश्वविद्यालय
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067
ACADEMIC BRANCH - II

URGENT

No. Acad.II/U/1(10)

18.08.2016

Subject: Amendment in existing GSCASH rules – reg.

One of the members of the Executive Council in its meeting held on 22 March 2016 raised the issue of amendment of certain clauses of GSCASH Rules and Procedures of the Gender Sensitization Committee against Sexual Harassment (GSCASH) already approved by the Executive Council in its meeting 18.09.2015 vide Resolution No. 5.1. Accordingly the Vice-Chancellor has constituted a three-member Committee to examine the relevant clauses. The Vice-Chancellor has given the following observations: “while reviewing GSCASH Rules, ensure that work place act (2013) are adhered to”. The Committee was notified vide Academic Branch-II Notification dated April 08, 2016:

- | | | |
|-------------------------------------|---|-------------|
| 1. Prof. Sonajharia Minz, SC&SS | - | Chairperson |
| 2. Prof. Umesh Ashok Kadam, CHS/SSS | - | Member |
| 3. Dr. K.B. Usha, CR&CAS/SIS | - | Member |

The Committee submitted its report to the Vice-Chancellor on May 05, 2016. The Committee also suggested some general recommendations to be discussed with GSCASH. Apparently, the report of the Committee was forwarded to the Legal Cell for obtaining legal opinion on this issue. The Legal Cell has requested Ms. Ginny Jetley Rautray, University’s legal counsel to give their opinion on the report of the Committee. The Legal counsel forwarded its opinion on 25.05.2016 through the Legal Cell of the University. The Legal Cell vide their note dated 26.05.2016 stated that “the Legal Counsel has opined/concluded that there is no embargo on the amendment proposed by the Committee, hence the Report of the Committee may be placed before the Executive Council for consideration and approval.”(F/A)

The Report submitted by the Committee along with Legal opinion was forwarded on 06.06.2016 to the Chairperson, GSCASH for comments/views. Dr. Urmimala Sarkar Munsri, Chairperson, GSCASH vide her note dated 16.08.2016 (F/B) submitted comments/views of GSCASH as under:

“In the table listing proposed amendment by the Committee to look into the Revised Rules and Regulations concerning GSCASH and to examine and recommend necessary changes, the third proposed amendment says “and the election Commission must ensure representation from SC/ST/OBC/Minority/Differently Abled/Third Gender”. It is not clear what the import of this amendment is. Is it that the GSCASH has to ensure such representations in the constitution of the Election Commission or whether this clause is meant to apply to the elected members of GSCASH?

Till this clarification is received, GSCASH cannot consider amendments to its rules and procedures.

It may also be noted that as per rule X(4) (i) of 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 Judgment, 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.

Thus, GSCASH has to ascertain the conformity of the recommendations of the Committee with this clause. It may also be noted that any amendment to GSCASH rules has to be done in the special meeting of the GSCASH and only after GSCASH accepts the amendments can it be placed before the EC as per rules X(4) (ii to v)”