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In re: Jadavpur University in respect  
of sexual harassment of women.

I have considered the queries raised in the enclosure to the letter of the Registrar dated 24<sup>th</sup> July 2015 and I answer the same in the manner following:

1. a) Does the complaint of a female student of the University who alleges to have been subjected to any act of sexual harassment come under the purview of the internal Complaints Committee (ICC) under the Act of 2013 ?

**Ans:** In my opinion the complaint of a female student, who has been subjected to any act of sexual harassment, does not come within the purview of ICC under the Act of 2013.

The Act of 2013 has been brought into existence in order to provide protection against sexual harassment of woman at workplace. A female student cannot be said to be a woman at the workplace. Even though a female employee of a University or an educational institution comes within the purview of the said Act, a female student does not.

After taking note of the definition of an "aggrieved woman" to mean in relation to a work place, a woman, whether employee or not, who alleges to have been subjected to any act of sexual harassment, I am of the view that the object of the said Act is to give protection to woman who has been gainfully employed at a workplace, and not a student who comes to a University for education and training, vocational or otherwise.

In the circumstances, I am of the view that a female student of a University will not be entitled to lodge complaint to the ICC constituted under the said Act, if she is subjected to sexual harassment.

b) Clause 9 (1) of Chapter-IV of the Act 2013 specifies who can make complaint about sexual harassment to ICC; is the University a workplace for a female student?

**Ans:** Looking at the object of the said Act and the language used in various sections therein, the University cannot be said to be a workplace for a female student, though it may be a workplace for a woman employee.

c) Chapter I Clause 2 (a) defines "aggrieved woman" as "in relation to a workplace, a woman of any age whether employed or not, who alleges to have been



subjected to any act of sexual harassment by the respondent". Does this definition of an "aggrieved woman" include female student of the University?

d) If so, is it in contradiction with the definition of an "employee" as defined in Clause 2(f) of Chapter I?

e) If it is in contradiction, then can enrolment and registration of a female student in an academic course of study be considered as a contract with the University during her period of study, so that she comes under the ambit of an "employee", and accordingly her complaints can be brought under the scope and purview of the ICC under the Act of 2013?

**Ans:** The definition of "aggrieved woman" does not include female student of the University, in as much as the Act does not appear to be dealing with sexual harassment of a female student in a University. In the preamble to the Act it has been stated to provide protection against "sexual harassment of woman at workplace". A University is not a workplace for a female student.

The definition of "employee" as given in section 2(f) of the Act militates against the concept of a student being included therein. Though "trainee and apprentice" have been included in the term "employee" in section 2(f) of the Act, in my opinion, such expressions will have to be read with reference to the context in which these were used, namely "employed at a workplace for any work...."

Female student in a University does not work for the University. There is no employer – employee relationship between the University and her. She goes to the University for her own education, training and intellectual improvement. The relationship between the University and the female student is that of a teacher and pupil. Unless the female student, in course of her education and training in the University, has also taken up some work, e.g. of a tutor, guide, laboratory assistant, demonstrator etc. or any other services with the University, she cannot be brought within the scope and purview of ICC.

f) If complaints of female students can be brought under the scope and ambit of the ICC under the Act of 2013 then who is the employer of the student?

**Ans.** Since in my opinion the complaints of a female student cannot be brought under the scope and ambit of ICC under the Act of 2013, it is not necessary to answer the rest of the questions. In any event, in a simple student-teacher relationship, a female student does not have any employer in the University.



2. a) How should we interpret section 16 of Chapter V of the Act of 2013? Should it mean recommendations of ICC and actions taken by the employer be not reported to the Executive Council or Governing Council either?

**Ans.** From a reading of section 16 of the Act it is quite clear that the recommendation shall not be published communicated or made known to the public, press and media in any manner. It does not talk of the Executive Council or Governing Council. The purpose of the Section is to protect the privacy of the complainant, being the "aggrieved woman". In respect of a female employee of the University, who may be an aggrieved person in terms of the Act, there is no reason why with regard to the complaint made by her under Section 9, her identity and address may not be brought before the Executive Council or Governing Council, if the purpose of doing so is to bring justice to the "aggrieved woman". Proviso to section 16 permits dissemination of information that justice has been secured to the victim of sexual harassment under the Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the "aggrieved woman" and the witnesses. Since it is for the University to secure justice for the victim, the decision making authority in the University, be it the Executive Council or the Governing Council, will have to be furnished with the requisite information and details in order to enable it to perform its duties enumerated in Section 19 (g), (h) and (i) of the Act.

b) If so, is it not in contradiction with the next part of the same section 16 ?

**Ans.** The answer to this query has been provided in the answer to the earlier question..

c) Does the information which may be disseminated under the proviso include summary findings of the ICC, its recommendations and actions taken by the employer on that basis?

d) To whom such information may be disseminated?

**Ans.** Under Section 11 of the Act an enquiry into the complaint before the ICC is made in accordance with the service rules, where the respondent is an employee, and where no such rules exists, in such manner as may be prescribed. On the basis of its findings, it is the duty of the employer under Section 19(g) and (h) to assist the woman to file complaint or to cause initiation action under the Indian Penal Code or any other law



for the time being in force against the perpetrator. Furthermore, section 19(i) obligates the employer to initiate action treating sexual harassment of the complainant as misconduct under the service rules.

3. Implementing recommendations of ICC:

a) Statute 113 of Jadavpur University First Statutes 1982 specifies the action to be taken in case of teaching and non-teaching staff by the Disciplinary Authorities. Do the same apply in case of implementing the recommendations of ICC in case of a student against whom allegations of sexual harassment is found to be correct.

**Ans.** In view of my opinion given above, the question of applying the provisions of the Act in case of an allegation of sexual harassment against a student does not arise. ICC does not have the Jurisdiction to make recommendation regarding a female student. However, in case of complaint against a teaching staff or a non-teaching staff of a sexual harassment against a female student of the University, disciplinary proceedings thereunder may be initiated for misconduct of the teaching or non-teaching staff as the case may be as laid down in Statute 113 of the First Statutes.

4. Generally: The Constitution of India expressly prohibits by Article 15 discrimination on the grounds, inter alia, of sex, and enjoins upon the State to make special provisions for women and children. The Fundamental Rights expressly guaranteed in the Constitution of India embodied the basic concept of gender equality in all spheres of human activity. This has been expressly noted by the Supreme Court of India in Vishaka's case reported in (1997) 6 SCC 241. In that case the Supreme Court laid down the Guidelines and Norms for due observance at all work places or "other institutions", all effective enforcement of the basic human rights of gender equality and guarantee against sexual harassment and abuse, after taking note of the fact that there was no legislation yet enacted for the purpose.

In the Guidelines and Norms prescribed by the Supreme Court in paragraph 12 it has been specifically noted that it was necessary and expedient for employers in work places and other responsible persons or institutions to observe certain guidelines to ensure prevention of sexual harassment of woman. The said Act is the legislative expression of the said judgement.

Even though the said Act, following Vishaka's case, is primarily directed towards combating the allegation of sexual harassment of women at work places, there is no



reason why taking a cue from the said Act provisions cannot be made by the Universities and educational institutions formulating principles and procedures for protecting human rights of female students of a University, who may be exposed to sexual harassment by the teachers, employers, male students or employees and staff of the University. In fact, the Supreme Court itself has felt the need to find an effective alternative mechanism in the absence of legislative measure. In para 16 of the judgement, the Supreme Court has stated that in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment, abuse, more particularly against sexual harassment at workplace, the Court laid down the guidelines and norms for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose.

In view of the above, in my opinion, the University should, in the absence of legislation on the subject of sexual harassment of a female student in the precincts of the University, frame rules and formulate guidelines, including setting up an Internal Committee for making inquiry into the complaint made by a female student, in line with and for discharging functions similar to those of the Internal Complaints Committee under the Act. Since such Internal Committee will be enquiring into complaints of female students of the University, it is advisable that such Committee should also have students as members.

  
(Jayanta Kumar Mitra)

Dated, Kolkata, the 20<sup>th</sup> August, 2015