

About the Sexual harassment cell: Vishakha

Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourage women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. With this idea the legislature formulated the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

Similarly UGC, to protect the independence of employees, came up with the Saksham report in which sexual harassment at Universities or Higher Education Institutes (HEI) is discussed extensively and clear guidelines are issued. Universities/HEIs are primarily the spaces for students and their wellbeing should be treated as a priority. Sexual or any harassment generally arises through power relations. Patriarchy normalises sexual harassment of women. But it needs to be looked as human rights violation and should be treated sensitively. Not just female students, male students may also face sexual harassment owing to the power relations especially in case of research students where their supervisors have the power. Considering this, UGC has directed that students of all genders can complain if they face sexual harassment at their college/university. UGC guidelines to this particular law of sexual harassment at workplace have made the redressal available to students of all genders.

Along with students; women faculty and women staff members can make complaint of sexual harassment. This law is not gender neutral, it recognizes the patriarchal bias and power imbalance among men and women. It specially came into force to deal with sexual harassment of women at workplace as women are more vulnerable to sexual violence than men. Understanding the spirit and purpose of this law, universities/HEIs should treat it as a priority.

In this context, the sexual harassment cell named "Vishakha" of Sonamukhi college has been established and it aims to protect the dignity of students and staffs from all spheres.

BRIEF ANALYSIS OF THE POSH ACT AND RULES

Vishakha guidelines, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("the Act") was enacted with the objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matter connected therewith or incidental thereto.

The Act defines sexual harassment as unwelcome acts or behavior (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Any act of unwelcome and sexual nature shall be considered as sexual harassment. The Act also provides the circumstances under which an act may amount to sexual harassment. These are:

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment ; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

Working procedure

- 1) The important feature of the Act is that it envisages the setting up of Internal Complaints Committee at every organisation or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment. Where the number of employees are less than 10, the Act provide for setting up of Local Committee in every district by the District Officer. The committee while inquiring into such complaint shall have the same power as vested in a civil court. An aggrieved woman can file a written complaint to ICC/LC from three months from the date of the incident and in case of series of such incidents within three months from the last such incident. However, any delay in filing the complaint can be condoned by the committee upto further three months. In case of physical or mental incapability of the aggrieved woman, her legal heirs or such other person as described in Rule 6 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("the Rules") may make a complaint.
- 2) On receiving the complaint the committee, before initiating an inquiry, may take steps to settle the matter between her and the respondent through conciliation and when a settlement is arrived no further inquiry is conducted. If the conciliation fails or any term of the settlement arrived at has not been complied with by the respondent, the committee shall proceed further with the inquiry.
- 3) In case of a domestic worker, the Local Committee shall, if prima facie case exists, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of Indian Penal Code or any other relevant provisions of the said Code where applicable.
- 4) Where both the parties are employees, the principle of natural justice is followed and both the parties are heard and opportunity is given to make representations against the findings of the committee. For the purpose of making an inquiry, the committee shall have the same powers as are vested in a civil court. The committee has to complete the inquiry within a period of 90 days. The committee can give certain interim reliefs to the aggrieved woman during the pendency of the inquiry.
- 5) The committee within 10 days after completion of the inquiry shall provide the report of its findings to the employer/District Officer and the concerned parties. When the allegation against the respondent has been proved the committee shall recommend the employer/District

Officer to take action for sexual harassment as misconduct in accordance with provisions of service rules or where no such rules have been made, as prescribed in Rule 9 of the Rules and to pay such sum to the aggrieved woman as it consider appropriate, in accordance with the provisions of section 15, from the salary of the respondent. The employer/District Officer shall act upon the recommendations within 60 days.

6) In case of filing of false or malicious complaint or false evidence the committee may recommend to the employer or District Officer to take action in accordance with the provisions of service rules or where no such service rules exist, in such manner as prescribed in Rule 10 of the Rules.

7) An appeal can be filed against the recommendations made by the committee before the court or tribunal, within 90 days from the recommendations, in accordance with service rules and in absence of service rules, to the Appellate Authority under Section 2 of the Industrial Employment (Standing Orders) Act, 1946.

There is a prohibition on publication of identity of the aggrieved woman, respondent, witnesses, contents of the complaint, inquiry proceedings or recommendations of the committee, except information regarding the justice secured to any victim of sexual harassment. In contravention of Section 16 of the Act, such person shall be liable for penalty in accordance with service rules and in absence of service rules, in accordance with Rule 12.

The non compliance of the provisions of the Act by the employer may result in fine which may extend to fifty thousand rupees and can also lead to cancellation of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be.

Link to Vishakha guidelines-

<https://drive.google.com/file/d/1b4nFqSB7MR1Qi8JioXJmJ9Lg4xIMBAS/view?usp=sharing>

Contact us-

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To submit any complaint related to sexual harassment mail us at-

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