

The University Grants Commission (Prevention, Prohibition And Redressal Of Sexual Harassment Of Women Employees And Students At Higher Educational Institutions) Regulations, 2015- An Analysis Of Its Applicability And Interpretation

*Dr. Sangeeta Roy (Maitra)**

Abstract

Sexual harassment of women in the workplace is a burning issue in the nation, particularly after the recent RG Kar Medical College and Hospital incident in Kolkata. Sexual harassment in the workplace and more precisely sexual harassment of women employees and students in Higher Educational Institutions is not a much talked about topic. Experience shows that Institutions are apathetic to such incidents and most often there is a hush-hush attempt to hide the incident. Many times, students are discouraged from voicing out their grievances or traumas. In this background, the article is an attempt to analyze a few perspectives of the “University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students at Higher Educational Institutions) Regulations, 2015”. The article mainly attempts to understand the concept of sexual harassment in the workplace particularly, in higher educational institutions, and understand who all are covered under the Regulations and also looks into the Constitution of the ICC. Though the Regulations contain several other provisions as well, in this article the author attempts to highlight the analysis and interpretation of four core issues- the concept of sexual harassment; the applicability of the Regulation; the concept of workplace, and the constitution of ICC. A critical approach has been adopted to understand these issues.

Keywords: Sexual harassment, aggrieved women, employees, students, UGC Regulations, prevention, prohibition, redressal

* W.B.E.S. Assistant Professor of Law (Senior Grade), Government Centre of Legal Education, Chinsurah, Hooghly, West Bengal

I. Introduction

“The Prevention of Sexual Harassment of Women at Workplace ((Prevention, Prohibition and Redressal) Act, 2013” (henceforth to be referred to as the PoSH Act, 2013) paved the legislative system for the ‘prevention of sexual harassment of women in the workplace’. The Vishaka Guidelines, post the Bhanwari Devi Case were followed from 1997 till the coming of the ‘PoSH Act in 2013.’ ‘The University Grants Commission’ in pursuance of the powers conferred under Section 20(1)(g) of the ‘University Grants Commission Act, 1956’ enacted “The University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students at Higher Educational Institutions) Regulations, 2015”. These Regulations deal with the “prevention, prohibition, and redressal of sexual harassment” at higher educational institutions (HEI). The most distinguishing feature of these regulations is that they apply to students irrespective of gender. While the PoSH Act, 2013 is the parent statute relating to the ‘prevention, prohibition, and redressal of sexual harassment at the workplace’, the Act only takes within its ambit women. It means though the respondent may be a man or woman, the complainant has to be a woman. However, under the UGC Regulations, 2015, the Regulations apply to all students irrespective of gender. But it may be noted that in the case of women employees which refers to the teaching and non-teaching staff of a HEI, it is not gender neutral.

Although, the Regulations cover several aspects relating to “prevention, prohibition, and redressal of sexual harassment at HEIs”, this article shall concentrate only on a few key areas, which need explanation and interpretation. There are three aspects to be understood so far as the applicability of the UGC Regulations, 2015 is concerned. Firstly, who shall come under the purview of the Regulations; secondly, what would be the applicable periphery? and thirdly, the constitution of ICC under the Regulation for redressal of complaints. The author, being a member of ICC has practically faced interpretation issues relating to these three areas particularly, as in most cases the stakeholders are unable to understand and interpret the abovementioned three areas. Hence to understand this, the article has been broadly divided into four parts:

1. Concept of Sexual Harassment vis-à-vis HEI, because for the proper application, it is very important to analyse and understand what is sexual harassment.

2. Persons to whom the Regulations shall apply.
3. An analysis of the concept of Higher Educational Institutions (HEI) and workplace under the Regulations.
4. Constitution of ICC in HEI

The article shall begin with the concept of sexual harassment, tread on its applicability, and understand the concept of higher educational institutions and workplaces with respect to the 'UGC Regulations', and then dwell upon the constitution of the 'ICC' in HEI.

I. Concept of 'Sexual Harassment at Workplace' under UGC Regulations, 2015:

Sexual harassment denotes any harassment of a "sexual nature" that a woman employee or a student face in a Higher Educational Institution, whether it be a University, College, or deemed University. To simply understand, sexual harassment may be divided into three broad categories- Physical, Verbal, or Online. Physical sexual harassment implies when someone touches another with sexual intent. It means unwanted physical touch or unwelcome physical gestures. Verbal sexual harassment implies suggestive jokes or comments, innuendoes of a sexual nature, or maligning others by talking about their sex lives or sexual orientation. Online sexual harassment includes stalking on social media, sending unwanted messages of a sexual nature through mail or messaging apps, showing pornography or sending one's nude images, or asking for the same. Thus, sexual harassment is different from workplace harassment. Following up on work absences, reprimanding for unauthorized leave, or being late or reprimanding for failure to complete assigned work is not sexual harassment. For harassment to be sexual it has to have an element of sexual connotation. Sexual harassment at the workplace denotes asking for a sexual favour in return for benefits, unwanted sexual advancements, threats or retaliation to 'NO', and of course staring, cornering, following, blocking the pathway, staring, winking, and using endearments to name a few. Identifying the harassment as sexual harassment is one of the difficult tasks at hand when the ICC receives any complaint.

Regulation 2 (k) gives an exhaustive definition of "Sexual Harassment". It says that "sexual harassment" means "conduct of an unwanted nature which has sexual undertones, whether occasional or persistent; and such conduct demeans,

humiliates, or creates a hostile and intimidating work environment; or is calculated in a manner to induce submission-whether actual or threatened adverse consequences; and includes any one or more of the below mentioned unwelcome act or behaviour, whether express or implied:

- **Conduct** : Any unwelcome physical, verbal, or non-verbal conduct of a sexual nature;
- **Favours** : Demand or request for sexual favours
- **Remark** : Making sexually coloured remarks
- **Advances** : Physical contact and advances
- **Visuals** : Showing pornography.”

Precisely, “sexual harassment refers to any conduct or behaviour that is unwelcome, if:

- the recipient does not consent to it.
- regards it as offensive.”

“Even if the victim does not complain, it doesn’t necessarily imply that the conduct is welcome. Some comments and/or advances are blatant and crude and are inherently offensive: these will almost always be deemed as unwelcome. Unwelcome behaviour is something that makes a person feel bad, powerless, unwanted, invaded, and demeaning and causes anger, sadness, and negative self-esteem.”

Some examples of sexual harassment at the workplace may include:

- Staring, leering, obscene gestures, howling, making kissing sounds, smacking lips
- Showing sexually obscene/suggestive signs, objects or pictures
- Indecent comments, dirty jokes, comments on a woman’s dress/body
- Using power positions to request for favours, or
- threats of loss of privileges/loss of job

- Touching, petting, caressing, kissing, brushing against another's body
- Blocking, following and cornering
- Referring as honey, sweetie, etc., or making innuendos
- Making work discussions sound sexual
- Telling sexual jokes or stories
- Asking about sexual fantasies, spreading lies of sexual nature
- Winking, licking lips
- Touching a person's clothing, stalking
- Physical assault and rape

“If any one or more than one or all of the circumstances, if occur, or is present at a workplace, mentioned below, shall also come under sexual harassment as per Regulation 2(k) (ii):

- a) Express or implied preferential treatment as quid pro quo for sexual favours.
- b) Express or implied threat of detrimental treatment at the workplace
- c) Express or implied threat regarding the present or future status of the person who is the victim
- d) Creating or intimidating a hostile learning environment
- e) Any treatment of a humiliating nature that is likely to affect the health, safety, dignity, or physical integrity of the person facing such behaviour.”

Though there are five grounds mentioned above, the most pervasive forms of harassment are found in the form of “Quid Pro Quo and Hostile Work Environment”. Literally ‘Quid Pro Quo’ denotes ‘this for that’. “Applying this to sexual harassment, it means seeking sexual favours or advances in exchange for work benefits such as promises of promotion, higher pay, academic advancements, etc. This type of sexual harassment mostly holds a woman/student to ransom as her/his refusal to comply with a ‘request’ can be met with retaliatory action such as dismissal, demotion, memos, tarnished work records, and difficult

work conditions. 'Hostile work environment' is a less clear yet more pervasive form of sexual harassment. It commonly involves conditions of work or behaviour towards a female worker, which make it unbearable for her to be there. While the worker is never promised or denied anything in this context, unwelcome sexual harassment occurs simply because she is a woman." In fact points (b), (c) and (e) of the above paragraph constitute different manifestations of a 'hostile work environment.' Nevertheless, the attempt is praiseworthy as many a time it becomes difficult to assess a 'hostile work environment' and the Regulation very explicitly speaks out the various forms of 'sexual harassment' at HEIs may take place.

The Regulations also define victimisation and third-party harassment. As per regulation 2 (n) 'victimisation' refers to "any unfavourable treatment which is meted out to a women employee/ student with an express or implied intention to obtain sexual favour." So, any act on the part of the respondent to treat a woman employee or student detrimentally to obtain favours of a sexual nature is referred to as victimisation. This definition is significant from the point of victimology as this is one of the laws which recognizes victimisation, as most of it is theoretical with less active inclusion in the laws. Though a Regulation, it is a small step towards acknowledging victim rights.

So far as third-party harassment is concerned, Regulation 2 (m) defines it as "a situation where an act of sexual harassment happens because of an act or omission by any third party, or outsider who is neither an employee nor a student of the HEI. That third party could be a visitor or had come to the HEI in any other capacity or for some other purpose or reason." For example, if a Trainer not a part of the HEI comes to give some training and sexually harasses any woman employee/ student, it shall be termed as third-party harassment.

A reading of the above definitions makes it clear that the definition of "sexual harassment" tries to cover every aspect of "sexual harassment" at HEI. It moves ahead of the Parent Act and extends the definition to include not only unwanted conduct but also moves ahead of "quid pro quo harassment and hostile work environment" harassment to take within its fold any express or implied behaviour in an HEI, with sexual undertones as actionable. In addition, the Regulation effectively addresses the issue of victimisation and third-party harassment as well.

II. Applicability of the UGC Regulations on PoSH

A. *Persons to whom the Regulations shall be applicable*

A reading of the long title and short title of the Regulations makes it amply clear that the Regulations apply to broadly two categories of people – women employees and students.

A women employee who is subjected to sexual harassment is termed as an ‘aggrieved woman’ under Regulation 2 (a) which says that “such a woman in relation to workplace, who is of any age, immaterial of the fact that whether she is employed or not; who alleges to have subjected to any act of ‘sexual harassment’ by the respondent. However, the harassment must be in connection to the workplace only.” Any other harassment even if ‘sexual’ in nature will not attract the regulations if it is not connected to the workplace which in this case is a HEI.

In addition, it may be noted that the term employee as pointed out in Regulations 2(f) uses the word person and not a female employee. The usage of the word person encompasses the complainant as well as the respondent. Further, Regulation 2 (f) includes not only full-time employees or employees in permanent positions but also includes

- a) ‘Trainee’
- b) ‘Apprentice (or called by any other name)’
- c) ‘Interns’
- d) ‘Volunteers’
- e) ‘Teacher Assistants’
- f) ‘Research Assistants’;

The above persons may or may not be employed and also include those who are involved in “field studies, projects, short visits, and camps.”

Thus, what we understand from the reading of the relevant provisions, it is amply clear that the Regulations apply to any category of employees working in a HEI. The complainant or respondent may be a teaching or non-teaching staff or even an outsourced staff and includes trainees, volunteers (whether paid or unpaid); teaching or research assistants, and such other persons who are a part of the HEI. However, applying the internal aids of interpretation it may be construed that

only female employees can lodge complaints of sexual harassment under these Regulations since the short title and long title use the word female employees. In addition applying the external aid of interpretation, the “PoSH Act, 2013” and “UGC regulations, 2015” are to be read “pari materia” as both deal with the same subject matter and the Regulations related to the main statute can be interpreted together, keeping consistency with the primary legislation. Therefore, though the term employee appears to be gender-neutral but in reality, a complaint of sexual harassment under these Regulations may be lodged only by women employees.

Coming to the second category of persons to whom the Regulations are applicable they are ‘students’. It is the most remarkable application of the law that unlike the ‘PoSH Act 2013’ where only a female employee can complain, the ‘UGC Regulations’ apply to males, females as well as third gender. The common nomenclature is ‘students’ which is absolutely gender neutral. So, what has to be understood is that under the UGC Regulations 2015, the complainant can be in the case of an employee, only a female employee as well as a student, whatever may be that person’s gender. There is often confusion that it is gender-neutral in the case of employees. But a reading of the previous paragraph makes it amply clear that in the case of employees, the complainant can only be a woman. No male employee is entitled to complain under the Regulation. However, so far as students are concerned it is absolutely gender-neutral. Any male, female, and third gender can be a complainant.

The only criterion that is required to be fulfilled for a student to file a complaint before the ICC is that the person must come under the purview of the exhaustive definition of student given in Regulation 2 (1). A reading of Regulation 2 (1) points out that there are three categories of students who may avail benefits of these Regulations.

- i) “Current Students i.e. a person duly admitted and pursuing a program of study through regular mode or distance mode, and includes Short Term Training Programmes in a HEI.”
- ii) “Future Students i.e. a person who is in the process of taking admission in the HEI but not yet enrolled.”
- iii) “Deemed Students i.e. any student who is a participant in any activities in a HEI other than the HEI where the student is enrolled. For example- a student from ABC University

participating in XYZ University may be deemed to be a student of XYZ University for the period of such participation.”

Hence what can be deduced is that the UGC Regulations, 2015 would include the following cases, where-

- i) A teacher sexually harasses another teacher;
- ii) A student sexually harasses a co-student;
- iii) Harassment of students by peers from outside the limits of the HEI, like in case of fests;
- iv) Where a teacher sexually harasses a student on account of the hierarchical relationship; and
- v) A student sexually harasses a teacher.

Interestingly, a question came before the Calcutta High Court, in the case of *Malabika Bhattacharya v. ICC, Vivekananda College and Ors*¹ “the concern was whether a complaint lodged against a Respondent of the same gender as the complainant was maintainable. The case challenged the Internal Complaints Committee of a higher educational institute as it refused to accept a complaint since the complainant and respondent belonged to the same gender i.e. female. The Court gave its decision in the affirmative and said same-gender lawsuits under the PoSH Act are maintainable.”

B. An analysis of the concept of Higher Educational Institutions (HEI) and workplace under the Regulations

“The Regulations have been framed by UGC in pursuance of powers conferred by clause (g) of sub-section 1 of Section 26 of the University Grants Commission Act, 1956, read with sub-section (1) of Section 20 of the said Act.”

Regulation 2 (h) defines a “Higher Educational Institution (HEI)”, with reference to the UGC Act, 1956 to include:

- a. University²

¹ 2021(1) SCT 431 (Calcutta)

² “Section 2(f), the University Grants Commission Act, 1956- "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.”

- b. College³
- c. Deemed University.⁴

Since the Regulations primarily deal with sexual harassment at the workplace, what is often construed is that workplace means the premises of the place where one is working. But Regulation 2 (o) categorically mentions what all would come under the concept of workplace. “Regulation 2 (o) states three categories of places that are to be construed as workplaces under the Regulations. The first category relates to *any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit that is established, owned, controlled, or wholly or substantially financed directly or indirectly by the appropriate HEIs*. The second category relates to *any sports institute, stadium, sports complex, or, competition or games venue whether residential or not, used for training, sports, or other activities relating thereof in HEIs*. The third category is the most comprehensive and mentions *any place visited by the employee or student “arising out of and in the course of employment or study” and includes transportation that is provided by the Executive Authority of the HEI to undertake the journey to the HEI for study.*”

Hence a regular understanding is that it includes the University or college where a female employee is working or the students are enrolled. “So, what we get is that workplace means the campus of HEI, or any sports institute, stadium, etc. used for activities related to the HEI. It also includes any place visited by an employee or student arising out of or during their employment or study including transportation provided by the Executive Authority.” So, if a student goes to

³ “Section 12A (1) (b) The University Grants Commission Act, 1956- college means any institution, whether known as such or by any other name which provides for a course of study for obtaining any qualification from a university and which, in accordance with the rules and regulations of such university, is recognised as competent to provide for such course of study and present students undergoing such course of study for the examination for the award of such qualification.”

⁴ “Section 3, the University Grants Commission Act, 1956- Application of Act to institutions for higher studies other than Universities .-The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.”

another Institution to attend a fest and faces sexual harassment on the campus of that institution, for the purpose of this Regulation, the same will be treated as the workplace. “The definition of “workplace” just like the definition of “employee” is quite broad. Whoever the complaint is filed against, it needs to be ensured that the institution is their workplace. In the case of students, their respective universities, colleges, or institutions can be considered as their workplace, unless it is third-party harassment. Hence workplace is not only the premises we go to, it is beyond that.” The most significant thing is that the workplace is not confined to four walls of the classroom/department/ institute/office but it extends to every place where a woman employee or student goes for their employment or study. However, some specific places need to be included like an auditorium, research laboratories, hostels/halls/residential homes/ quarters *inter alia*. Since the definition is exhaustive and experience shows that most cases of harassment happen in these areas which are outside the purview of the definition in Regulation 2(o), it is important that these places too be included by amending the Regulations.

Another important thing that needs to be categorically mentioned is the inclusion of online activities of HEI within the definition of workplace. The COVID-19 pandemic and ensuing lockdown have changed the work culture of the entire world. It is now recognized that online meetings/work/classes through various mediums like Zoom, Google Meet, or Teams do come within the purview of the PoSH Act. There have been numerous complaints where woman employees and students have been subjected to sexual harassment virtually. But since the Regulation is silent several perpetrators try to take advantage of the loophole. Hence when online courses and online classes are gradually becoming a common practice, workplaces should mention internet space/ virtual space to be included in the definition to avoid any confusion or mischief.

1. Constitution of “Internal Complaints Committee”

The “Internal Complaints Committee or ICC” as it is commonly known, was introduced in the parent Act for the redressal of complaints, the speedy disposal of PoSH complaints as well as to maintain confidentiality. While in 2016 an Amendment changed the name of ICC to IC for all organisations having more than ten employees. However, the UGC Regulations, 2015 still retains the name ICC.

“According to Regulation 4 of the UGC Regulation, 2015 the ICC is to be constituted by the Executive Authority of a HEI. The ICC needs to have an inbuilt mechanism for gender sensitization against sexual harassment in the workplace. The Constitution is as follows:

- i) Presiding officer- The Presiding Officer has to be a senior woman faculty, not below the rank of a Professor in a University and an Associate Professor or Reader in a College, who is to be nominated by the Executive authority. However, if a senior-level woman employee is unavailable, the Presiding officer may be appointed from any other office or administrative unit of the workplace. In case of unavailability from other offices or administrative units, the Presiding officer may be nominated from any other workplace of the same employer or other department or organization.
- ii) Faculty members and non-teaching staff- Two faculty members and two non-teaching employees who are preferably committed to the cause of women or have experience in social work or legal knowledge, nominated by the Executive Authority.
- iii) Students- Three students, who must be enrolled in undergraduate, master.s and research scholar levels respectively. These three members are to be elected through a transparent democratic process and their participation is required only if the complaint of sexual harassment involves students.
- iv) External Member- There shall be one External member who is either from an NGO or association, committed to the cause of women, or a person who is familiar with issues relating to sexual harassment, nominated by the executive authority.”

“It must be noted that at least fifty percent of the total members shall be women. It must also be kept in consideration that persons in senior administrative positions in the HEI whether a Vice-Chancellor or Pro Vice-Chancellor or Rectors or Registrar or Deans or Head of departments or the Principal or Teacher-in -Charge of a College, shall not be members of ICC to prevent any influence and ensure autonomy in their functioning. The term of ICC is three years, though every HEI is free to adopt a system whereby one-third of the members may change every year.”

“It is experienced that most HEIs do not understand the role and importance of an External Member. As a matter of fact, majority believe that there has to be a member from an NGO but forget to read the complete provision which says that the External member should be well versed with issues relating to women and more specifically sexual harassment at the workplace. The clause adds that even a person familiar with issues of sexual harassment can be an external member. Some HEIs have somehow roped in a member of an NGO who works for street animals. Such a person cannot be expected to understand the nuances of sexual harassment at the workplace. The majority of institutions are not aware of the PoSH Act or the UGC Regulations. They are still following the now obsolete Vishaka guidelines. The HEIs don’t understand why the concept of an External member was introduced. The reason is that the Committee is called Internal Complaints Committee and all the members are from within the HEI. The external member has to be an independent, impartial person who will balance any biases in the proceedings of the ICC.”

III. Conclusion

A critical reading of the above paragraphs makes it amply clear that the UGC Regulations, though a very positive one in terms of a gender-neutral approach in the case of students and a very appreciable and exhaustive definition of sexual harassment, does require a lot of attention in its interpretation and implementation part. The concept of sexual harassment needs to be simplified for easy understanding of non-law faculty, non-teaching staff, and students. Similarly, the application part too needs to be revised along with the definition of workplace. Online sexual harassment should be adequately addressed as that is the most common form of harassment in today’s digital era. The Constitution of ICC should be strictly adhered to and the responsibilities performed. Most HEIs consider issues relating to sexual harassment to be a hassle and just constitute an ICC for the sake of paperwork with no sensitization for faculty, non-teaching staff, or students. Most students are ignorant of the existence of such a law and silently face the trauma of sexual harassment mostly in the form of victimisation. Hence the task at hand is to implement the law strictly and the Higher Education Department in every State should set up a nodal cell to oversee the same.