

## Sexual Harassment in Higher Academic Institutions in J&K: A Study of Preclusion and Corrective Mechanism

Mohd Yasin Wani<sup>1</sup>  
Ashfaq Hamid Dar<sup>2</sup>  
Ajaz Afzal Lone<sup>3</sup>  
Dr. S. Kumar<sup>4</sup>

### Abstract

Ubiquitously in the globe, sexual harassment is recognised as an infringement on human rights. It is classified as a crime. It insults the honour and dignity of a woman as a person. The sexual harassment results in violation of the basic fundamental rights of women particularly their right to equality under articles 14 and 15 of the Indian constitution and their right to life and to live with dignity under article 21. An egregious violation of a woman's right to equality and respect is sexual harassment. Any instance of sexual harassment against a woman in a place of education is a violation of both her human and constitutional rights. It fosters a hostile and insecure climate which discourages women's participation in higher education thereby adversely affecting their economic empowerment and the goal of inclusive growth. It is belligerent at a very individual level and in a way demoralizes the right to equal opportunity and equal treatment of women in the educational institutions. Sexual harassment is characterised as unwelcome and sexually exploitative behaviour. It may take many different forms, including physical contact, excessive demands for sexual favours, and statements with sexual overtones directed towards a possible victim. It also covers behaviours like leering, cracking crude jokes, making sexual comments about someone's attire, physique, or attractiveness, as well as verbal or nonverbal sexual misbehaviour. Higher education institutions are the forerunners in high learning and are intended to provide a secure atmosphere in which faculty, staff, and students may pursue their academic objectives. Sexual harassment is still seen as an issue at these institutions of higher learning, despite the fact that they provide a favourable and welcoming environment for the teaching and learning process. The present study tries to examine the legal framework and scrutiny the prevention and redressal Mechanism of sexual harassment in higher education institutions in Jammu and Kashmir.

---

<sup>1</sup> Corresponding Author: Assistant Professor, School of Law, University of Kashmir, Hazratbal, Jammu and Kashmir

<sup>2</sup> Research Scholar, School of Law, University of Kashmir, Hazratbal, Srinagar

<sup>3</sup> Research Scholar, Department of Law, Aligarh Muslim University

<sup>4</sup> Assistant Professor, Department of Economics, S. Thangapazham Law College, Vasudevanallur, Tamilnadu, India. Email id : [kumarspm2013@gmail.com](mailto:kumarspm2013@gmail.com)

Keywords: Sexual Harassment, Gender justice, Intimidation, Sexual abuse, Educational Institutions.

## Introduction

Women around the world and across all ages, classes, religions and nationalities are subjected to violence in one form or the other. It is generally executed by men. Main reason behind this seems to be inconsistent and unequal power relations between men and women, which have prompted control and victimization of women thereby hampering their progress. Actions or dangers of savagery, regardless of whether occurring inside the home or locally, or executed or ignored by the State, ingrain fear and insecurity in the lives of women and are major impediments to the attainment of equality, progress and harmony. The perturbation of harassment is a permanent limitation on the potency of women which restricts their access to resources and fundamental affairs thereby constraining them into subordinate positions in contrast to men. Violence towards women has a devastating impact on society be it financially, strategically and socially. One such violence inflicted on woman is sexual harassment. It can be understood to mean harassment which entails the utilisation of sexual nuances together with unsolicited assurance of rewards in return for sexual approbation. It includes a variety of actions including verbal or physical conduct of sexual essence and assault.<sup>5</sup> Such conduct is unwarranted as it creates an atmosphere that is unfriendly or threatening, that meddles with an individual's work or school accomplishments. This can happen when one individual has control over another and utilizes it to constrain the individual to acknowledge undesirable sexual consideration. It can likewise happen among peers-for instance, if colleagues over and over again make sexual quips, post obscene photographs, or make unwanted sexual allusions to another associate. In its General Recommendation No. 19 (11th session, 1992), the Convention on the Elimination of All Types of Discrimination against Women adopted in 1979 concluded that gender-based abuse, which impairs or nullifies women's enjoyment of human rights and fundamental freedoms, is discrimination and therefore a violation of CEDAW. It further states that when women are exposed to gender-specific abuse, such as sexual harassment in the workplace, equality in jobs can be significantly undermined. Therefore both parties should take all appropriate legal and other steps to provide adequate protection for women against gender-based violence, sexual assault

---

<sup>5</sup> Sexual Harassment, available at:

[https://en.wikipedia.org/wiki/Sexual\\_harassment#:~:text=Sexual%20harassment%20is%20a%20type,to%20sexual%20abuse%20or%20assault](https://en.wikipedia.org/wiki/Sexual_harassment#:~:text=Sexual%20harassment%20is%20a%20type,to%20sexual%20abuse%20or%20assault), (last visited on January 28, 2021).

and sexual harassment.<sup>6</sup> Furthermore, the Declaration on the Elimination of Violence against Women<sup>7</sup> defines violence against women as physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practises harmful to women, non-spousal violence, and exploitation violence. It also includes physical, sexual, and psychological violence that occurs within the general community, such as rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions, and elsewhere, human trafficking, and forced prostitution, in addition to physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.<sup>8</sup> Moreover, it requires the state to reject such violence against women and further not to invoke any custom, practice or religious consideration in order to escape their duty to eradicate it.<sup>9</sup> In 1989, convention on rights of children<sup>10</sup> was adopted which came into force in 1990. Article 2<sup>11</sup> of the convention prohibits discrimination on the basis of sex. Similarly, Article 19<sup>12</sup> accentuates protection of the child below 18 years from all forms of physical or mental violence, injury or abuse, negligent treatment, maltreatment or exploitation, including sexual abuse. Additionally, Article 34<sup>13</sup> calls for children to be protected from all types of sexual harassment and sexual assault. In India the policy makers have long before realised that violence against women particularly sexual harassment is a genuine limitation to the accomplishment of country's aims and goals. This concern has triggered legal changes, new legislation, improving the institutional framework for women's advancement and developing policies aimed at resolving the vulnerability of women in different realms. India is also a signatory to various international instruments addressing violence towards women prominent among them being CEDAW and Convention on the rights of children. Sexual Harassment violates the constitutional right of a woman to gender equality and her right to life and to live with dignity, under Articles 14 and 21 of the Constitution of India respectively. In addition, Parliament has also passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The Act was passed with the aim to provide protection

<sup>6</sup>CEDAW, General Recommendations, *available*

at:<https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>, (last visited on January 29, 2021).

<sup>7</sup>Proclaimed by General Assembly resolution 48/104 of 20 December 1993, *available at*:

[https://www.un.org/en/genocideprevention/documents/atrocitycrimes/Doc.21\\_declaration%20elimination%20va w.pdf](https://www.un.org/en/genocideprevention/documents/atrocitycrimes/Doc.21_declaration%20elimination%20va w.pdf), (last visited on January 29, 2021).

<sup>8</sup>*Ibid.*, Article 2.

<sup>9</sup>*Ibid.*, Article 4.

<sup>10</sup> Convention on Rights of Children, *available at*:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, (last visited on January 29, 2021).

<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment.<sup>14</sup> Similarly, Protection of Children from Sexual Offences Act, 2012, protects children below the age of 18 years from the offences of sexual assault, sexual harassment and pornography, all of which have been clearly defined in this law. A part from this, relevant provisions of Information Technology Act 2000 can also be put to use with the aim to prevent sexual harassment. Judiciary in India is convinced of the fact that there is dire need of empowering women through the legal system. Insofar as women are concerned, the Indian Constitution has made significant strides toward eradicating the lingering consequences of such harmful factors. Affirmative action for women is specifically included in our constitution. It establishes the groundwork for ensuring equal opportunity for women in all spheres of life, including education, employment, and participation. It forbids all forms of discrimination against women. The judiciary has actively contributed to upholding and improving the constitutional provisions pertaining to women's rights and protection. It has made a number of attempts to interpret local law in the context of current international accords. In *Delhi Public Interest Litigation Domestic Working Women's Forum v. Union of India*, six working professional women were raped by seven members of the military while travelling on the Muri Express. In this case, the apex court issued directives for the treatment and financial recompense of rape victim. In *Vishakha v. State of Rajasthan*<sup>15</sup>, executive Guidelines for Sexual harassment of Women at Workplace were laid down by Supreme Court. The Court in this case reiterated that onus is on the employer to protect women employees from sexual harassment. The Supreme Court said unequivocally that it has the jurisdiction to issue such guidelines under Section 32 in order to defend their basic rights of citizens under Articles 14, 19, and 21.

### **Sexual harassment in Educational Institutions**

Since right to education has become a fundamental right throughout the world there has arisen a need to provide students with an environment which is non-discriminatory and conducive so that they are in a position to learn whatever they are being taught. In the last few years the issue of women's safety has become a focal point of public attention and concern in India. Women are being subjected to all kinds of harassment and humiliation. The same goes true with educational institutions. Sexual Harassment for the most part happens when there is power contrast among people for instance student/teacher, research scholar/ supervisor,

---

<sup>14</sup> Available at: <http://legislative.gov.in/sites/default/files/A2013-14.pdf>, (last visited on January 29, 2021)

<sup>15</sup> AIR 1997 SC 3011

teaching/ non-teaching staff etc. Forms of sexual harassment relating to a campus setting include: requests for sexual favours followed by veiled or open promises of preferential treatment or threats related to the job or student status of a person, physical and verbal abuse resulting from the above, contact or display of obscene letters, posters, cartoons or images, disparaging remarks and gestures made in work or study places with prejudicial intent directly related to the gender issue, abuse by unwanted phone calls or e-mail, uninvited chasing or blackmailing in or outside the campus. There are five types of sexual harassment in a university setting these include gender harassment, seductive behaviour, sexual bribery, sexual coercion and sexual imposition or assault.<sup>16</sup> A study conducted in University of California concluded that in a random sample of undergraduate women at a major campus in United States, 30% reported of having received unwanted sexual attention from at least one male instructor during their four years at college.<sup>17</sup> In India the incidents of sexual harassment in educational institutions have been widely reported over the years. As per a report<sup>18</sup> by UGC, 171 complaints of sexual harassment were reported by universities. It is pertinent to mention here that the report has included data from only 188 universities, while the number of universities is much higher.

### Measures Taken

To combat sexual harassment on college campuses, the University Grants Commission (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 were enacted in 2015. The University Grants Commission has mandated that all educational institutions set up an Internal Complaint Committee and a specific cell to address gender-based violence. The committee is also tasked with ensuring that rules against sexual harassment of women in the workplace are widely disseminated. The Regulation specifies the responsibilities of colleges and universities with regard to the elimination of sexual harassment in the workplace. Since the UGC Regulations are legally binding, they must be followed by all schools in the country. Institutions may take several different steps to make sure students know about the available channels for redress and who to go to if they're having issues. Notices on bulletin boards, complaint boxes in visible locations throughout campus, anti-sexual harassment regulations

<sup>16</sup> L. F. Fitzgerald, A. J. Ormerod, "Perceptions of sexual harassment: The influence of gender and academic context", 15 *Psychology of Women Quarterly*, 281–294 (1991).

<sup>17</sup> D. J. Benson, G. E. Thomson, "Sexual Harassment on a University Campus: The confluence of authority relations, sexual interest and gender stratification" 29(3) *Social Problems*, 236-251, available at: <http://www.jstor.org/stable/800157> (last visited on January 30, 2021).

<sup>18</sup> Available at: [https://www.ugc.ac.in/pdfnews/5873997\\_SAKSHAM-BOOK.pdf](https://www.ugc.ac.in/pdfnews/5873997_SAKSHAM-BOOK.pdf), (last visited on January 31, 2021).

posted on the college website, and emails to students and employees are all good ways to encourage people to report incidents of sexual harassment. Institutions of higher learning have a number of responsibilities that were laid forth in Regulation 3 of the UGC (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Education Institutions) Regulation, 2015. Regulation 5 of the 2015 Regulation includes the duties of the Internal Complaints Committee (ICC). According to Regulation 6 and Regulation 8 of 2015, educational institutions are required to provide the ICC with all necessary facilities to aid in the investigation and hasten its conclusion. Provisions against false or malicious complaints must be made and publicised within all higher education institutions to ensure that the provisions for the protection of employees and students from sexual harassment are not abused, as required by Regulation 7 of the UGC (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions), Regulations, 2015. The penalties for sexual harassment of any kind are spelled out in Article 10 of the 2015 Regulation. As a check and balance on the actions of higher educational institutions in combating sexual harassment of female employees and students in their respective territories, Regulation 12 of the 2015 Regulation is extremely important. This regulation addresses the consequences of non-compliance with the provisions outlined in the 2015 Regulation. The establishment of positive mechanisms to address sexual harassment and gender-based violence, such as Internal Complaints Committees with elected student representatives in all colleges, is a key component of the regulation, which is a major step forward in ensuring equal access to higher education for women in the country. It makes it mandatory for universities to prevent all forms of sexual assault, harassment, and discrimination on campus. In addition, it contains a long list of supplementary metrics that acknowledge students' heightened susceptibility as a consequence of their region, class, caste, sexual orientation, minority identification, and being differently-abled. On the other hand, the rules make it crystal clear that concern for the safety of female students cannot be used to impose discriminatory rules for female students in hostels and that campus safety policies should not result in securitization, such as over-monitoring, policing, or restricting freedom of movement, particularly for female employees and students. Other measures that should be taken include prioritising the building of women's hostels; guaranteeing the availability of public transportation; providing gender-sensitive health care facilities and counselling, installing sufficient lighting in campus buildings and implementing sensitization programmes for teachers, administrators, and security guards.



### Position in Jammu and Kashmir

In Jammu and Kashmir too, incidents of sexual harassment in educational institutions have been reported. A study conducted in district Srinagar of Jammu and Kashmir revealed that 21% respondents reported of suffering sexual harassment at workplace/educational institutions of which 34.9% were university students.<sup>19</sup> There are laws in place, for instance, the Jammu and Kashmir Protection of Children from Sexual Violence Act, 2018, which was enacted with the aim to protect children from sexual violence including sexual assault, sexual harassment and pornography.<sup>20</sup> In addition to this the government of Jammu and Kashmir has also approved the Jammu and Kashmir Criminal Laws Bill, 2018, and the Prevention of Corruption Bill 2018 with the sole objective to ban sexual exploitation of women by any public servant, or people in a position of authority or sharing a fiduciary relationship.<sup>21</sup>

### Conclusions

However, despite all these measures the menace of sexual harassment in educational institutions continues unabated and most of these incidents remain unreported. This may be due to the lack of awareness regarding sexual harassment, since the victims may not be aware that they are actually being sexually abused. A survey conducted in US revealed that the victims of sexual violence had more risk to suffer from depression, post-traumatic stress disorder, use of drugs, alcohol and suicidal ideations.<sup>22</sup> The frequency of incidents peaks between the ages of 12-34 yrs. It has a hindering impact in the lives of people. It is therefore important that students have awareness about sexual assault so that appropriate interventions can be made. Aside from that, the government and regulatory bodies lack a way to monitor and analyse whether institutions are abiding by the law. There should be a policy for sexual harassment, general harassment and also detailed guidelines as to how sexual harassment cases should be examined in the organisation in the event of a complaint. Training should be provided to campus officials who receive sexual harassment complaints and educate others on campus about sexual harassment policy, the formation and operation of the intake committee, and the remedial alternatives available to the aggrieved individual

<sup>19</sup>ChasfeedaAkhtar, “ Sexual harassment at workplace and in educational institutions: A case study of District Srinagar, Kashmir”, 8(3) *International NGO Journal* 54(2013).

<sup>20</sup>Available at: <http://jklaw.nic.in/pdf/Sexual%20Violence.pdf>, (last visited on January 30, 2021).

<sup>21</sup>Jammu and Kashmir becomes first Indian state to ban sexual exploitation of women, available at: <https://www.indiatoday.in/education-today/gk-current-affairs/story/jammu-and-kashmir-becomes-first-indian-state-to-ban-sexual-exploitation-of-women-1412118-2018-12-18>, (last visited on January 30, 2021).

<sup>22</sup>Statistics.[Online].available at: <http://www.rainn.org/statistics>, (last visited on January 31, 2021).