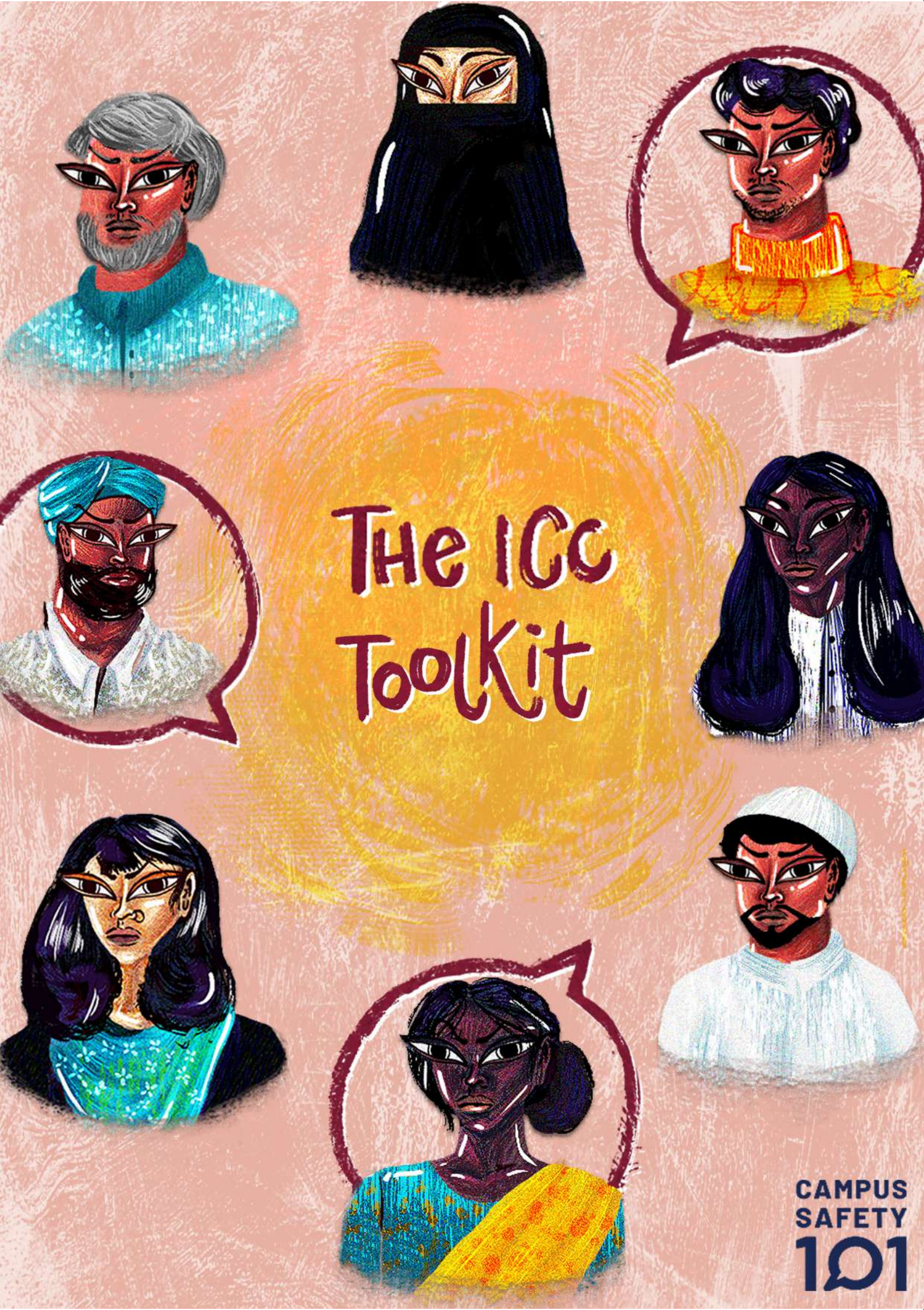
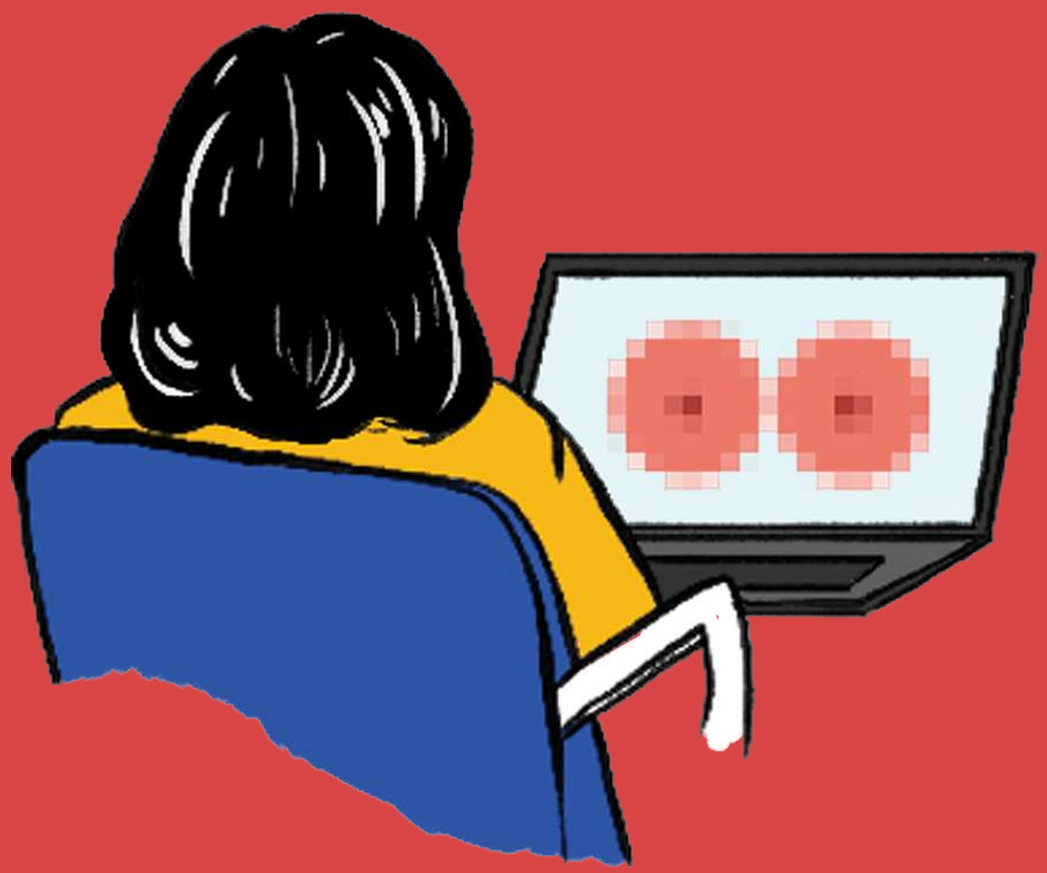

The ICC
Toolkit
CAMPUS
SAFETY
101

# UNDERSTANDING THE PREVENTION OF SEXUAL HARASSMENT ACT

## and how it applies to higher educational institutes



# CAMPUS SAFETY 101

*Created by*

**Jhatkaa.org**

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# 1 INTRODUCTION

This toolkit has been designed with the objective of providing the much needed information around sexual harassment of women employees and students in higher educational institutions in an easy to consume and simplified language.

The Constitution of India provides for ***equality of status*** and opportunity as well as the right to live with personal liberty and human dignity. These mandates make ***the right to have a safe workplace*** and educational institution campus a ***legal right***, and ***sexual harassment*** at the workplace ***is a gross violation*** of it. ***The Sexual Harassment of Women at Workplace*** (Prevention, Prohibition and Redressal) Act, 2013 (***POSH Act***) finds its genesis in these ***constitutional mandates***. This interpretation of the constitutional framework was done by the Supreme Court in the case of Vishaka vs. State of Rajasthan, through which the historical ***Vishaka Guidelines*** came into being. These guidelines later formed the roots and basis for the POSH Act, and the University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 (UGC Regulations). It is important for both the higher education institution, and its employees and students to ***be completely aware of their rights***, duties and the redressal mechanisms under the ***POSH Act***, and the ***UGC Regulations***, and that is what this toolkit aims to do.

# ABOUT US

Jhatkaa.org is a nonprofit, startup campaigning organisation committed to building grassroots citizen power across India in effective and innovative ways. Jhatkaa.org harnesses technology to help people take collective action on issues that interest or affect them, and create change that would not be possible if they acted alone. Jhatkaa.org envisions an inclusive, sustainable, and equitable India, built and maintained through the democratic power of an engaged citizenry. Jhatkaa.org envisions an inclusive, sustainable, and equitable India, built and maintained through the democratic power of an engaged citizenry.

## Our objectives are:

- To advocate solutions based on 21st-century realities defining a development pathway to address the challenges of access to clean water, food and air, ensuring enforcement of existing human rights laws, supporting the implementation of a new education system, and ensuring sufficient checks and balances to tackle corruption.

- To mobilize millions of people from all over India to weigh in on decisions for different issues.

- To make the powerful accountable, targeting the behaviour of governments, political parties, corporations and cultural institutions.

- To transform the public narrative on citizenship and democracy so that people no longer accept corruption and our social problems as inevitable and instead understand their role in shifting systems to make our democracy functional. All our plans and activities are driven by this long term vision.

# WHY HAVE WE CREATED THIS?

Cases of sexual harassment in colleges and university campuses are rampant in India, yet there is little to no discourse around it. Despite these campuses hosting thousands of young minds, we have rarely seen enough safety measures being taken by the education institutions authorities to protect the people it is obligated to protect.

The ***power hierarchy*** between the employer & employees of these institutions also ***affect many women*** working in these spaces, making them ***vulnerable to harassment*** and ***discrimination***. The very campus which is supposed to be a safe space, are marred by toxicity, discrimination and violence.

In 2018 we reached out to ***2 students facing*** the very same ***harassment and discrimination*** for reporting a ***professor of sexual harassment***. Despite there being a proper legal mechanism to protect these students and enabling provision for them to access redressal mechanisms, it took ***a year-long intervention*** from our side with ***multiple Twitterstorms***, ***a viral comic illustration, media hits, phone calls and formal letters to achieve victory*** and force the university to take sexual harassment seriously.

The process made us realise that one of the major tools to fight this and ensure that no other case of sexual harassment at campuses take this long to get addressed is ***to aware the concerned people of the rights, duties and mechanisms*** that law provides to ***protect them*** as well as to ***access justice***.

However, the ***legal language can be extremely complicated*** and overwhelming. In cases of people going through such harassment, ***unavailability of understandable information*** on the subject ***can be especially discouraging***. Institutions with a lack of realisation of its duties and obligations, unawareness, and absence of seriousness towards the issue can become a hosting ground of such harassment.

**Keeping this in mind,**
**this toolkit has been designed for -**

***Students and employees of the Higher Educational Institutions*** to make them ***aware of their legal rights*** and ***protections*** available to them in an ***accessible language***. With this toolkit, we aim to ***empower them with the knowledge*** they need to reach out to the authorities whenever needed. This toolkit also aims to ***enable students and employees*** to ***question if their campuses are safe*** and whether their educational institution is ***ICC compliant*** or not.

***Higher Educational Institutions and its Executive Authorities*** to be ***aware of their duties and obligations*** under the legal frameworks provided to ***protect students and employees*** from sexual harassment at the workplace. We also aim for this toolkit to be a ***101 on Campus Safety*** and be used by these institutions to fulfil their obligation under the POSH Act and the UGC Regulations to ***spread awareness*** among its community of the information on the mechanism put in place for ***redressal of complaints pertaining to sexual harassment*** and everything around it.

# GET INVOLVED!

## BRING THIS TOOLKIT TO YOUR CAMPUS!

**Email us at**
***info@jhatkaa.org***

**if you want to introduce this toolkit to your college, institution or university, or if you want us to conduct a workshop at your campus.**

# 2 IS THIS TOOLKIT FOR ME?

**If you answered "Yes" for any of these questions, this toolkit is for you!**

- Are you a student?
- Are you curious to know if your university is ensuring your safety?
- Do you want to know if you can file a complaint with your campus' Internal Complaints Committee?
- Do you want to understand the process of filing a complaint with your campus' Internal Complaints Committee and want to know what to expect from it to make an informed decision?
- Do you wish to assist someone who wants to file a complaint, enabling them to see their complaint through and ensuring a fair enquiry by the Internal Complaints Committee?
- Do you want to know how to make your university POSH complaint, and ensure that they have a fully-functioning, legally established Internal Complaints Committee.



# IS YOUR CAMPUS ICC COMPLIANT?

- ☐ Yes
- ☐ No
- ☐ I don't know

## LIST THE THINGS YOU KNOW ABOUT ICC AND ITS PROCEDURE

# 3 LET'S BREAK IT DOWN!

## UNDERSTANDING AND SIMPLIFYING THE POSH ACT AND THE UGC REGULATIONS

The POSH Act and the UGC Regulations can be complicated and can feel overwhelming at times. Knowing certain terminologies can help you overcome that confusion. Next are a few terminologies that can help you understand them better :

### Aggrieved woman

- Any woman who reports to have been subjected to any act of sexual harassment by any person employed by an organisation, or the employer themselves. The woman doesn't necessarily have to be employed in that particular organisation to seek redressal.

### Campus

- Anything and everything that is on the land of the Higher Educational Institution is covered under the term "campus". This includes, but is not limited to - libraries, laboratories, lecture halls, hostels, dining halls, bank counters, parking areas, playground etc.

### Employee

The POSH Act and the UGC Regulations have kept the definition of "Employee" quite broad. Here's who are covered under it -

- A person doing any kind of work for a company/organisation.
- Interns/ volunteers/whether paid/ unpaid.
- Trainee, apprentice, teaching assistants , research assistants, whether employed or not, including those involved in field studies, projects.

### Employer

- "Employer" is basically the biggest "boss" in any organisation or institution - anyone who is responsible for the management, super-vision and control of the workplace. Hence, for universities, it would be VC/Registrar, and for a college, it would be the Dean/Principal.

### Executive Authority

- The chief executive authority of the HEI, by whatever name called, in which the general administration of the HEI is vested. For example - Vice Chancellor, Registrar, Principal, Dean.

For public funded institutions the Executive Authority means the Disciplinary Authority.

## Higher Educational Institution (HEI)

Any University, College or Institution deemed to be a University recognised under the University Grants Commission Act, 1956 is a Higher Educational Institution. While it may sound technical, what needs to be remembered is the fact that it is mandatory for ALL educational institutions to set up an Internal Complaints Committee (ICC) to look into the complaints of sexual harassment.

## Local Committee (LCC/LC)

Local Committee is the Local Complaints Committee which every district officer is bound to constitute in district concerned to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted.

## Protected Activity

Reasonable opposition to a practice believed to violate sexual harassment laws on behalf of oneself or others, such as participation in sexual harassment proceedings, cooperating with an internal investigation or alleged sexual harassment practices or acting as a witness in an investigation by an outside agency or in litigation.

## Respondent

Respondent" is a legal term generally used for a person against whom the complaint has been made by the aggrieved woman.

## Internal Complaints Commitee (ICC)

An educational institution might already have a body functioning with the same objective as that of an ICC.
For example, many universities, colleges, and institutions have a functioning Gender Sensitisation Committee Against Sexual Harassment (GSCASH) body. Instead of creating a new body for ICC, these existing bodies can also be reconstituted as the ICC in consonance with the UGC Regulations, which once reconstituted, will fall under the ambit of UGC Regulations.

## Victimization

Any unfavourable treatment meted out to a person with an implicit or explicit intention to obtain sexual favour.

## Student

The term “student” covers -

- Current student - pursuing any course in the HEI through either regular or distance mode, including both short and long term training programs.
- Future student - in the process of taking admission in the HEI, but not yet enrolled.
- Deemed student - any student who is a participant in any activities in an HEI other than HEI where the student is enrolled.

For example - a student from x university participating in the cultural festival in y university, may be deemed to be a student of y university for the period of such participation.

## Third Party Harassment

- A situation where sexual harassment occurs as a result of an act or omission by any third party or outsider who is not an employee or student of HEI but a visitor in some other capacity or for some other purpose.

## Workplace

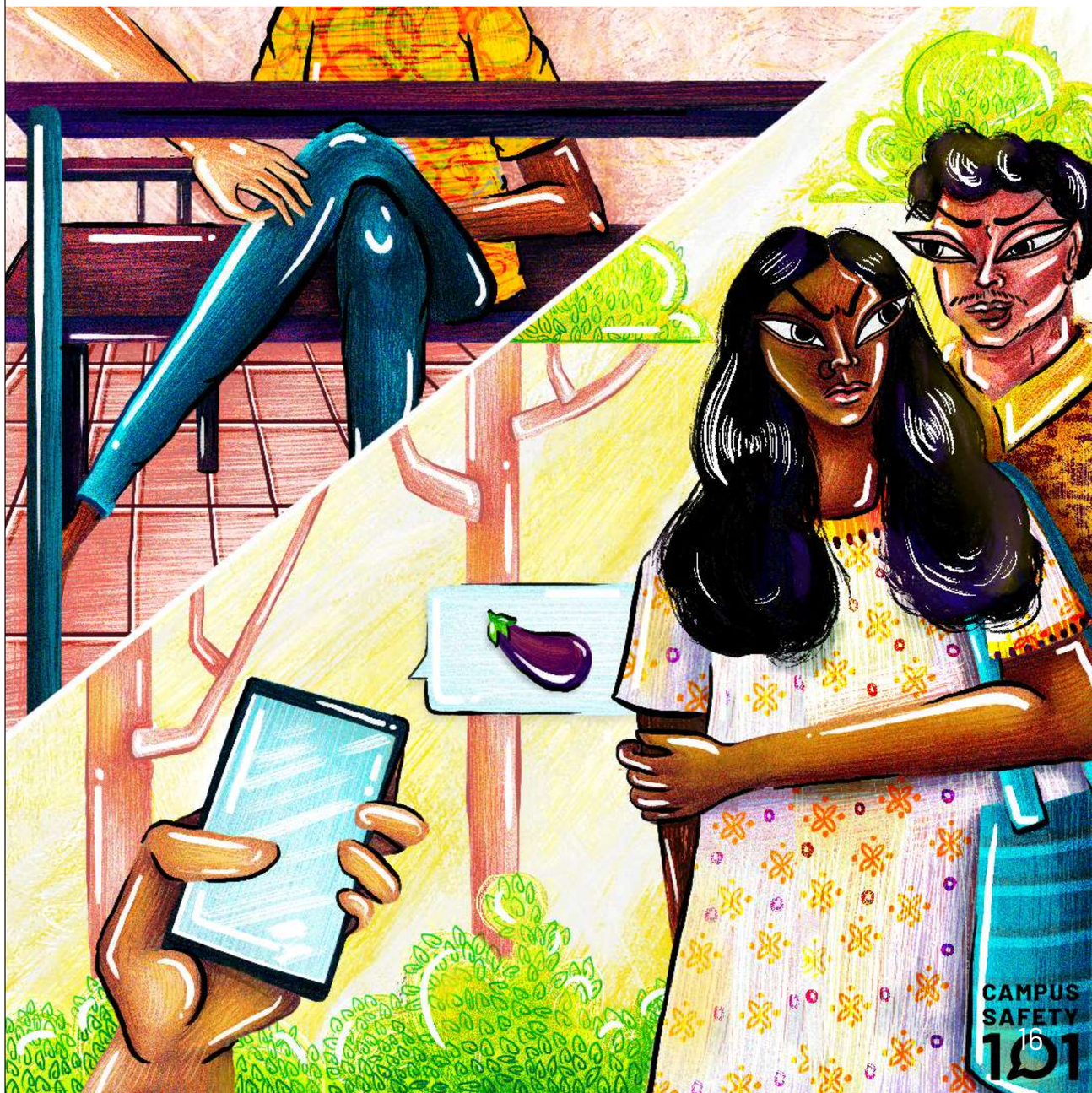
- Workplace means the campus of Higher Educational Institution including any department, establishment, office etc funded by and the HEI, or any sports institute, stadium etc used for activities related to the HEI. It also includes any place visited by an employee or student during the course of their employment or study including transportation provided by the Executive Authority.

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 case of students, their respective universities, colleges or institutions can be considered as their workplace, unless it’s a third party harassment. (See page 15 third party harassment)



## NOTE :

Any places visited by a person as a student of the HEI, including the transportation provided for the purpose of their commute to and from the institution is also covered under the scope of “campus” even though the location may be outside the institution. Hence, student visits like field trips, internships, study tours, placements, cultural festivals, sports meet and other such activities where the person is participating in the capacity of an employee or a student of the HEI, is covered under the ambit of “campus”, giving the term a comprehensive meaning.



# 4 KNOWING THE "WHATS"

## What Constitutes Sexual Harassment?

Sexual harassment, in general, can be understood as an unwanted conduct with sexual undertones if it occurs or which is persistent and

- which demeans, humiliates or creates a hostile and intimidating environment
- is calculated to induce submission by actual or threatened adverse consequences.

## What are some acts that can be considered as sexual harassment?

Sexual harassment includes one or all of the following unwelcome acts or behaviour, whether directly or by implication -

- Physical contact or advances
- A demand or request for sexual favours
- Making sexually coloured remarks
- Showing pornography or asking if you want to see pornography
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

## What would constitute "Sexual Harassment at the Workplace?"

Sexual Harassment at Workplace includes one or more of the following circumstances with explicit or implicit sexual undertones -

- Implied or explicit promise of preferential treatment in her employment.
- Implied or explicit threat of detrimental treatment in her employment.
- Implied or explicit threat about her present or future employment status.
- Interference with her work or creating an intimidating/ offensive/hostile work environment for her.

Humiliating treatment likely to affect her health, safety or integrity.

## What exactly is an ICC?

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and the University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations 2015, makes it mandatory for all employers and HEI respectively to constitute an Internal Complaints Committee to look into the matter of sexual harassment at workplace.

**ICC mainly has the following three-fold functions -**

- Receive complaints on sexual harassment at the workplace from an aggrieved woman.
- Inquire into the complaint received.
- Make recommendations to the employer on the action required pursuant to its inquiry of such complaint made.

These functions are carried out by the members of Internal Complaints Committee (ICC). Every Executive Authority in HEI shall constitute an ICC with an inbuilt mechanism for gender sensitization against sexual harassment. All the members are to be nominated by the Executive Authority.

**The ICC shall have the following composition -**

- Presiding Officer: A woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution.
- Employee Members: Two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
- External Member: One member from amongst non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

Apart from these, ICC ought to have 3 students in the committee if the matter involves students. These students shall be enrolled at the undergraduate, master's, and research scholar levels respectively, and should be elected through transparent democratic procedure.

**NOTE :**

Persons in senior administrative positions in the HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning.

The UGC Regulations also provides for any existing body which is already present at the HEI and functioning with the same objective as the ICC to be reconstituted as the ICC.

For example - many universities have bodies like Gender Sensitisation Committee Against Sexual Harassment (GSCASH) which has similar objectives and functioning as that of an ICC. In such cases, HEI can reconstitute GCASH as ICC and ensure that the reconstitution is as required under the UGC regulations.

## What is the Nature of ICC?

The ICC is empowered to make recommendations to the employer post the inquiry and has similar powers as vested in a civil court under Code of Civil Procedure 1908 when trying a suit. (See page 22 - How does ICC inquire into a complaint?)

In this context, ICC can make various recommendations that are in the form of civil remedies, disciplinary action and compensation.

**NOTE :**

- 50% members of the ICC must be women.
- Presiding Officer and every member of the ICC should not hold office for more than 3 years.
- Any such bodies reconstituted shall be bound by the provision of the UGC Regulations.
- The three months leave provided to the respondent would be in addition to leave she would be otherwise entitled to.

## What recommendations can ICC make?

There are three contexts in which ICC can make recommendations -

- Interim relief - granted during the pendency of inquiry/complaint.
- Against the respondent - if the charges are proved.
- Against the complainant - if the allegations are proved to be malicious.
- Compensatory recommendation.
- Dismissal - if charges are not proved.

### Interim Relief:

During the pendency of the inquiry, on written request made by aggrieved woman, ICC may recommend employer to -

- Transfer the complainant or the respondent to another section or department to minimise the risks involved in contact or interaction.
- Grant leaves to the aggrieved with full protection of status and benefits for a period up to three months.
- Restrict the respondent from reporting on or evaluating the work, performance, tests or examinations of the complainant.
- Ensure that the respondent is warned to keep a distance from the complainant.
- Restrain the entry of the respondent into the campus, in case of definite threat.
- Take strict measures to provide a conducive environment of safety and protection to the complainant against retaliation and victimisation as a consequence of making a complaint of sexual harassment.

## B Against the respondent:

If the committee arrives at the conclusions that the charges against the respondent have been proved, the first step that needs to be taken by the HEI is to lavy punishment on the offender in accordance with the service rules of the HEI.

**NOTE :**

Service rules of the HEI is only applicable in cases where the offender is an employee of the HEI.

***In case where the offender is an employee, apart from abiding by the service rules, the HEI may take the following actions -***

- Withholding of promotion, pay rise or increments.
- Termination of service.

***In cases where the offender is a student, the HEI may take the following actions -***

- Withhold privileges of the student such as access to the library, auditoria, halls of residence, transportation, scholarships, allowances, and identity card.
- Suspend or restrict entry into the campus for a specific period.
- Expel and strike off name from the rolls of the institution, including denial of readmission.

***In addition to other punishments, the following actions can also be taken against both the employee and student offenders***

- Ask to render an apology in writing.
- Issue a warning.
- Offence committed and the action taken can be mentioned in the offender's permanent records.
- Award reformative punishments like undergoing mandatory counselling or performance of community services.

## C Against the complainant:

The POSH Act and the UGC Regulations inculcate certain provisions against false or malicious complaints, to ensure that the Act and the Regulation introduced for the protection of employees and students from sexual harassment do not get misused.

If the complainant is an employee of the HEI, they shall be punished as per the service rules and additional punishment mentioned in page 23, and if the complainant is a student, they shall be punished as per the punishments mentioned for offenders who are students of the HEI and additional punishment mentioned in page 23

**NOTE :**

A mere inability to substantiate a complaint, or provide adequate proof does not count as false or malicious complaint. To make the complainant liable for punishment, there should be an inquiry that lays down clear and enough proof

- Of a frivolous or a malicious complaint, or
- That the complaint was made knowing it to be untrue, or
- That forged or misleading information has been provided during the inquiry

If any witness has given false evidence or produced forged/ misleading documents, then the employer of the witness can be asked to take action. Irrespective of the behaviour of the complainant and respondent, if the evidence provided by the witness is found out to be false, it is the witness who will be liable for the punishment.

## D Compensatory recommendation:

The aggrieved person is entitled to the payment of compensation. Hence, the ICC can make recommendations for the payment of compensation to the aggrieved woman. The HEI shall issue directions to the offender for the payment of such compensation as recommended by the ICC, and is agreed upon by the Executive Authority.

- The compensation decided shall be based on the following parameters - Mental trauma, pain, suffering and distress caused to the aggrieved person: one can submit their doctor's report(s)/therapist's report(s) saying their mental health has deteriorated to ascertain it.

- The loss of career opportunity due to the incident of sexual harassment: For example - did not get promoted, did not get confirmed as a permanent employee, did not pass their course, did not graduate on time, their grades or work performance dropped, they were forced to drop out or quit etc.

- The medical expenses incurred by the victim for physical, psychiatric treatment: one can submit their therapy bills, any psychiatric medicines bills/prescriptions etc to ascertain it.

- The income and status of the alleged perpetrator and victim: It is important to remember that the respondent's ability to pay is an important factor while deciding compensation. The ICC/LCC can only recommend what the respondent can pay.

- The feasibility of such payment in lump sum or in instalments.

- The employer may deduct the compensation money directly in case the offender is an employee. If the employer is unable to deduct due to respondent being absent from duty or termination of contract, the ICC may direct the respondent to pay the sum directly to the aggrieved woman.



## E Dismissal:

If the ICC arrives at the conclusion that allegations against the respondent have not been proved, it can recommend to the employer to take no further action on the complaint.

If the respondent fails to make the payment, the ICC/LCC can forward the compensation order to the district officer, who then can enforce this and recover the money from the respondent.

The employer must act upon the ICC recommendations within 60 days of receipt of report.

## What other options does one have?

Apart from filing a complaint with ICC, you can also opt for the following options -

A

## Settlement through Conciliation

- The ICC or LC may, at the request of aggrieved woman and before initiating an inquiry, take steps to settle the matter between her and the respondent through conciliation. As per the UGC Regulations, "The resolution of the conflict to the full satisfaction of the aggrieved party wherever possible, is preferred to purely punitive intervention."

- In case a settlement is reached through conciliation, the ICC/LC should record the settlement and forward to employer/ District Officer and copies of the settlement should be provided to both, the aggrieved woman and the respondent. No further inquiry should be conducted where a settlement has been reached.

- If the aggrieved woman informs the ICC that any term or condition of the settlement has not been complied with by respondent, the ICC shall proceed to make an inquiry into the complaint

B

## Filing an FIR:

Apart from reaching out to the ICC, the complainant is also free to approach the nearest police station to file an FIR. The complainant, if she chooses to do so, may both file FIR with the police and a complaint with Complaints Committee simultaneously. The ICC shall provide assistance if an employee or a student chooses to file a complaint with the police.

# 5 KNOWING THE "HOWS"

## How does one file a complaint?

An aggrieved person is required to submit a written complaint to the ICC within three months from the date of the incident. In case a series of incidents have happened, a person may file the complaint before the ICC within a period of three months from the date of the last incident.

A written complaint addressed to the ICC needs to be submitted with the committee. In case the complainant is unable to submit a written complaint for any reason, it is the responsibility of the ICC to provide her all the assistance that is needed for her to submit the complaint in written form.

## How do I reach out to the ICC?

As per the UGC Regulations, it is the responsibility of the HEI to make all sections of the institutional community aware of the contact details of members of Internal Complaints Committee, as well as the complaints procedure. However, if this is not done, then one can contact the employer/head of the department or institution/human resource department to obtain information about the ICC constituted.

## How does ICC inquire into a complaint?

The Complaints Committee will conduct an inquiry by calling all the concerned parties i.e. complainant, respondent, witnesses etc. Minimum of 3 ICC members including Presiding Officer/Chair-person must be present while conducting inquiry.

For the process of inquiry, the ICC will have same powers as vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters -

- Summoning/enforcing the attendance of any person and examining them on oath.
- Requiring the discovery and production of documents.
- Any other matter which may be prescribed.

**NOTE :**

The inquiry must be completed within a period of 90 days.

## How does the proceeding take place?

### 1 Procedure

The complainant shall submit 6 copies of the complaint along with supporting documents to the ICC. They also need to submit names and addresses of witnesses.

The ICC shall send one copy of the complaint to the respondent within a period of seven working days of receiving the complaint. Upon receipt of the copy of the complaint, the respondent shall file their reply to the complaint along with the list of documents, and names and addresses of witnesses within a period of ten working days.

ICC will make inquiry into complaint in accordance with principle of natural justice

- **Rule against bias:**
  They should proceed fairly, and the inquiry should be conducted in an unbiased manner. Bias can be both conscious and unconscious, and may include - personal bias, pecuniary bias, subject-matter bias, departmental bias, preconceived notion bias.

- **Rule of Audi Alteram Partem:**
  Both the parties should be given an equal opportunity to be heard. No decision should be taken without hearing both the parties.

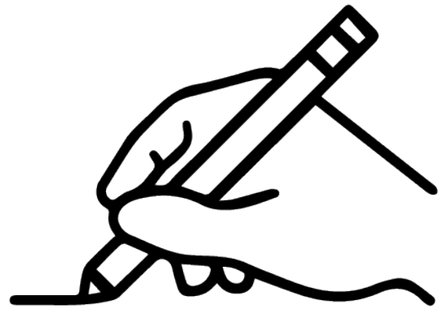
**NOTE :**

- Parties are not allowed to bring legal representation at any stage of the proceedings.

- ICC can terminate the proceedings or give an ex-parte decision if the respondent or the complainant fail to show up for three consecutive hearings. However, this termination/ex-parte order must be passed only after giving a 15 days written notice in advance to the failing party. The complainant can also ask the ICC to make an ex-parte decision if the respondent has acted in the above mentioned manner.



### 2 Confidentiality



There are certain details related to the case that shall not be shared with the press, media or the public in general, and cannot be put up in any public domain. These details include -

- Identities and addresses of the complainant, respondent and the witnesses. The respondent shall not tell anyone who they are or where they live.
- Information related to conciliation and inquiry proceedings.
- Contents of the complaint that reveals the identity of the respondent.
- ICC recommendations.

**NOTE :**

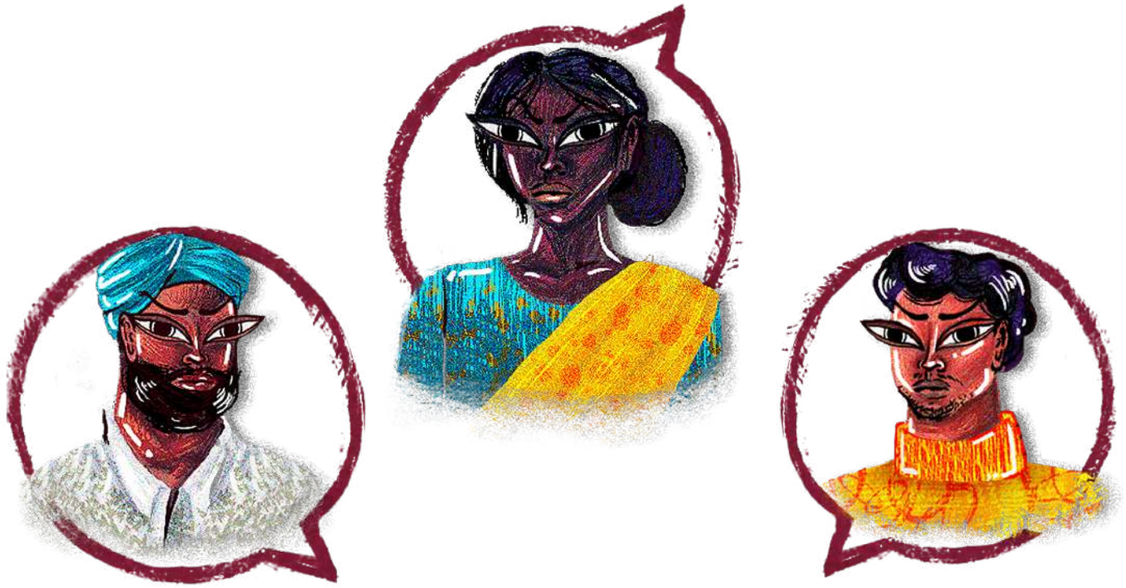
- Anyone who breaches confidentiality is liable for punishment and the employer can recover Rs 5,000 from the failing party for such violation.

- RTI can still be filed for information that can be made public. For example - Number of complaints received by the ICC, number of cases where recommendations were made, time taken to make recommendations etc.

## 3 Responsibility

Apart from enabling and ensuring fair trial, ICC has various other responsibilities.

- It needs to provide assistance if an employee or a student chooses to file a complaint with the police.
- Provide mechanisms of dispute redressal and dialogue without undermining complainant's rights.
- Protect the identities of all parties involved.
- Provide interim relief during the pendency of the complaint.
- Provide mandatory relief by way of sanctioned leave or relaxation of attendance requirement.
- Ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints
- Ensure prohibition of retaliation or adverse action against covered individual.





# 6 WHAT'S NEXT

## 1 What to expect?

Once the inquiry is over, the inquiry report with recommendations has to be submitted within ten days from the completion of the inquiry to the Executive Authority of the HEI. Copy of the findings or recommendations shall also be served on both parties to the complaint.

The Executive Authority of the HEI ought to act on the recommendations of the committee within a period of thirty days from the receipt of the inquiry report.

**NOTE :**

If an appeal against the findings of the ICC is filed within 30 days time by either party, the Executive Authority cannot act upon the report.

## 2 What if I am not satisfied?

In case either party is not satisfied with the findings/recommendations, they can file an appeal -

- With the Executive Authority of the HEI: An appeal against the findings or recommendations of the ICC may be filed by either party before the Executive Authority of the HEI within a period of thirty days from the date of the recommendations.

- In the court or tribunal: Both, the complainant (for non-implementation of ICC recommendations) and accused (for grievance caused by such recommendations) have the right to make an appeal to court or tribunal within 90 days of ICC recommendations.

If the dissatisfaction is because of the reason that the ICC was not lawfully constituted, one can also file a complaint with the Local Committee.
One can also file a writ petition with the High court or file an appeal before the Appellate authority under Section 2(a) of the Industrial Employment (Standing Orders) Act.

## 3 What all can be appealed?

An appeal can be filed against one or more of the following -

- Any recommendations of ICC/LCC in inquiry report.
- False evidence/ malicious complaint.
- Penalisation for breaching confidentiality.
- Non-implementation of recommendations.
- Non-compliance or non-adherence of the POSH Act or UGC Regulation.



# 7 COUNTING ACCOUNTABILITY!

## 1 Responsibilities of the Higher Educational Institution

- Ensure that the provisions against sexual harassment is notified publically and that it is frequently disseminated widely.

- Organise training programs and workshops officers, functionaries, faculty and students according to the SAKSHAM Report, for sensitisation and awareness.

- Act decisively against all gender based violence perpetrated against employees and students of all sexes recognising that primarily women employees and students and some male students and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation.

- Publicly commit itself to a zero tolerance policy towards sexual harassment and reinforce its commitment to creating its campus free from discrimination, harassment, retaliation or sexual assault at all levels.

- Display the penal consequences of sexual harassment, order constituting ICC, at a conspicuous, accessible location. In this regard, the HEI must display the information and contact details of members of the Internal Complaints Committee, complaints procedure etc.

- Organise regular orientation or training programmes for the members of the ICC to deal with complaints, steer the process of settlement or conciliation, etc., with sensitivity.

- Provide necessary facilities to ICC for conducting the inquiry.

- Since research students and doctoral candidates are particularly vulnerable the HEIs must ensure that the guidelines for ethics for Research Supervision are put in place.

- Proactively move to curb all forms of harassment of employees and students whether it is from those in a dominant power or hierarchical relationship within HEIs or owing to intimate partner violence or from peers or from elements outside of the geographical limits of the HEI.

- Treat sexual harassment as a misconduct under service rules and initiate action for misconduct if the perpetrator is an employee, and as a violation of the disciplinary rules (leading up to rustication and expulsion) if the perpetrator is a student.

- Monitor the timely submission of reports by the ICC.

- Prepare an annual status report.



## 2 Non-Compliance penalties

Penalties can be levied against an institution by the ICC for -

- If the HEI fails to constitute an ICC

- Fully contravenes or repeatedly fails to comply with the obligations and duties under the POSH Act as well as the UGC Regulations.

- Does not implement the provisions of the ICC.

If the HEI fails to fulfil its responsibilities or duties, the ICC may, among other penalties, withdraw its declaration of fitness to receive grants, declare the institution ineligible for consideration for any assistance, inform the general public through newspaper and other media outlets that the university does not provide for a zero tolerance policy against sexual harassment, recommend the affiliating university for withdrawal of affiliation, recommend the Central or State government to withdraw its recognition of the HEI.

These penalties are serious in nature and have been provided so that the HEIs take active steps to ensure a zero tolerance policy against sexual harassment and strict compliance to the ACT and Regulations.

**NOTE :**

No action shall be taken by the Commission under these regulations unless the Institution has been given an opportunity to explain its position and an opportunity of being heard has been provided to it.

# 3 Responsibilities of the ICC

## Annual Report

The ICC is responsible for creating an annual report and submitting it to the HEI. This annual report needs to be prepared every calendar year and should incorporate the following -

- Number of complaints of sexual harassment received in the year.
- Number of complaints disposed off in the year.
- Number of cases pending for more than 90 days.
- Number of workshops/awareness programmes against sexual harassment carried out in the year.
- Nature of action taken by the employer.

# 4 Sensitization and Awareness of Diversity and Vulnerabilities

One of the best aspects of the UGC Regulations is its inclusive language. The Regulations have been drafted after taking into consideration the diverse identities of individuals, and recognises the fact that certain sections of the society are more vulnerable to harassment and discrimination than others because of their marginalised and/or intersectional identities.

The Regulations mandates the HEI to act decisively against all gender based violence perpetrated against employees and students of all sexes recognising that primarily women employees and students, and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation.

The Regulations also state that vulnerable groups are particularly prone to harassment and also find it more difficult than others to complain. Further, it provides for who may be recognized as vulnerable groups. Vulnerability can be socially compounded by region, class, caste, sexual orientation, minority identity and by being differently abled. Enabling committees must be sensitive to such vulnerabilities and special needs.

This being part of the UGC Regulations mandates HEI to pay special attention to employees and students falling in the vulnerable groups. HEI should conduct not only regular gender sensitisation training, but also awareness and sensitivity training for all sections of the HEI towards vulnerable groups. This is because the nature of the UGC Regulations is not directive, but informative. A thorough reading of the Regulations make it clear that the language adopted in it aims not towards providing punitive measure against sexual harassment, but to prevent it before happening. Hence, it is extremely important that the HEI takes all measures to not only aware its community of the what sexual harassment is and the redressal mechanisms under the POSH Act, but also to sensitize and aware its community through regular workshops on various aspects of diversity, vulnerabilities, gender and gender based harassment, violence and discrimination.

# 8 THINGS TO KEEP IN MIND!

**Filing a complaint can be intimidating and overwhelming, especially without guidance or easy to access information on the subject. For quick help, here are a few things to keep in mind while filing a complaint -**

- Set out every single instance of harassment that you can remember in your first complaint itself as this forms the basis for the entire ICC proceedings, and any proceedings thereafter as well.

- When you're putting together evidence, look at ways to establish a pattern of behaviour. Go through all the screenshots on your phone, Whatsapp chats, emails, SMS etc and attach as much "proof"/ evidence as you can to your complaint. This includes any conversations in general that you had about this person who harassed you being awful, any conversations regarding POSH Act/ICC/MeToo/etc, any conversations where your friends/relatives were encouraging you to file a complaint/address the harasser's behaviour in any way. Most important is any conversations with the harasser themselves, including work-related communication, that you can use to show proof of any of the behaviours alleged. While it is rarely, if ever, possible to have concrete proof of harassment, given the nature of sexual harassment, your focus should instead be on convincing the ICC that there is a greater probability that they did in fact harass you, than that they did not.

- When you are taking screenshots of chats/messages/emails to submit along with your complaint, try to get the date stamp in - having things with specific dates helps you make your case more robust.

- Ask your friends, relatives, classmates who you have spoken to about the harassment if they would be willing to be your witness, and start drawing up a list of possible witnesses from day one itself. You can also ask anyone else who has had similar experiences with the person you are filing a complaint against if they are willing to be your witness.

- If the harassment you faced was ongoing or prolonged or basically took place over a period of time, try to cull out how this person's behaviour towards you established a pattern of harassment and how this made the workplace atmosphere bad and hostile for you, worsened your ability to work, made you feel unsafe at work, made you feel uncomfortable, made you monitor/check your own behaviours in ways that you would not otherwise.

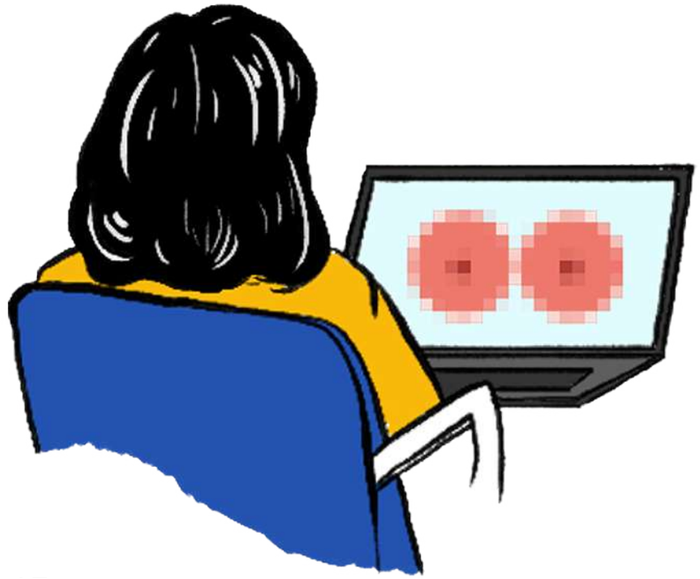
- Ask your friends, relatives, classmates, anyone at all that you spoke to about what you were going through, to read your complaint and add anything they remember you said to them.

Try to use formal as well as the language of the Act, and also refer to the provisions of the Act while writing your complaint. By referring to provisions from the Act, you are basically giving the ICC no option but to take up your complaint as you have not only clearly laid out everything you have experienced, but are also telling the ICC how and why this constitutes sexual harassment as per the Act.

In your complaint, mention any other harassment that you are facing as a result of you filing a complaint against someone, speaking out against them, harassment or discrimination by peers due to your complaint, or the harassment you are facing for rejecting this person's advances. For example - professor grading you poorly, getting reprimanding letters, any act that is hampering your academic progress/career progress.

Talk about your mental health taking a toll, proof of family members or friends checking up on you post the harassment.

Whenever you refer to any document in any written communication to any authority - administration, ICC, LCC etc, and particularly any document that is important for your case, make sure you give as many identifying details about the document as possible - date, what the document is called, who it was sent to/sent by, if it has any specific number assigned to it (for e.g. complaint number, letter number etc.)



**NOTE :**

Always ask for a signature and date, preferably with some stamp if possible, acknowledging receipt of all your communication with LCC, ICC.



# IS YOUR CAMPUS ICC COMPLIANT?

- ☐ Yes
- ☐ No
- ☐ I don't know

If you think your HEI doesn't have a functioning ICC, please write to your Executive Authority and ask them to constitute it properly.

If you do not get a response within a week, or if you do not get a positive response, file a complaint with the LCC after a week of writing to the Executive Authority. Use the 1 week to prepare your LCC complaint which would include your ICC complaint, and the exact reason why your ICC in particular is not the right forum to approach as they are not constituted properly or because the ICC doesn't exist.

# 9 REFERENCES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