

A MICRO STUDY ON THE INTERNAL COMPLAINTS COMMITTEE ON SEXUAL HARASSMENT IN ACADEMIC INSTITUTIONS IN SOUTH BENGAL AND NEARBY

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ABSTRACT

The mushrooming of sexual harassment incidents at workplace is a growing concern which engenders the need to decipher the intricate aspects involved in such incidents. So, an extensive study has been made on the Institutional Complaints Committee, constituted under the 'Prevention of Sexual Harassment Act' (2013), to underscore its modus operandi and the way forward. The paper discusses the current state of affairs, with issues pertaining to the identification of legal representatives, definition of aggrieved women, employer-employee liability and gender-specific approaches. The paper further identifies the administrative discretion and, the extent and severity of institutional liability when there is a question of bias. Concludingly, the paper winds up with a few suggestive policies in relation to these issues and the empirical findings, to increase the efficiency of the Committee in academic institutions. To achieve the same, the paper employs a mix of theoretical and empirical approaches to reach conclusions.

Keywords: *Sexual Harassment, Academic Institution, Internal Complaints Committee (ICC), POSH Act, Administrative*

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I. Introduction

SEXUAL AND HARASSMENT, worldwide has varied connotations,¹ put together, some are consistent with the changing societal trends, while others lagging behind.² Its inclusion as an

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¹ Some common aggressive connotations of harassment are related to physical and mental torture, gender-neutral or specific exploitation, domination. Negative connotations of sexual may be nonconsensual intercourse, sexual violence, sexual exploitation and sexual harassment.

² Types of sexual harassment may include sexual coercion, physical or mental abuse or crude and offensive harassment, gender specific and sexist harassment, unwanted sexual attention, verbal or nonverbal conducts, hostile working environment; Three types of sexual harassment including gender harassment- crude and offensive and sexist and unwanted sexual attention are prevalent in particular: See, National Academies of Sciences, Engineering and Medicine, "Sexual Harassment of Women: Climate, Culture and Consequences in Academic Sciences, Engineering and Medicine", 41-42, (2018); Unrecognized types of sexual harassment include same sex offences, underlying operation of dissent in *prima facie* consensual sexual advances, that lack socio-legal recognition and thereby remain unidentified to a great extent in a number of countries.

offence in workplace is a new judicial venture into the paradigms of sexual offences in India³, gathering substantiation from legislative enactments, amendments and notifications. The welfare legislation governing sexual harassment at workplace, *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 (Prevention of Sexual Harassment Act, or POSH Act)*, is a praiseworthy endeavor which augments the objective of eliminating sexual offences against women. To effectuate its objective, the legislation establishes redressal mechanisms through the constitution of Complaint Committees within the vicinity of the workplace and at district level, to decide on matters connected to sexual harassment or incidental thereto. The Committees are empowered to take stringent disciplinary actions to prevent victimization of working women, or women associated with such workplace. The holistic ambit of such workplace extends to both formal and informal sectors, comprising all bricks and mortar and cyber space operating under a prescribed set of administrative or statutory code of conduct and having employed persons to discharge any function, or work; and households where women are employed for domestic work.

However, the position of the redressal mechanism or Internal Complaints Committee (ICC) in academic institutions, suffers various lacunae in relation to its jurisdictional extents, statutory compliance and statutory deficiencies and ambiguities of the enabling statute. This has primarily raised serious concern on the procedure adopted or followed by the quasi-judicial redressal mechanism in appreciating the varied nature of cases instituted before them. It is well established that the nature of sexual harassment at workplace in its conventional social setup is gender discrimination against women which violates her constitutional safeguards, but no sooner, attributed to the contemporary setup, the nature of such sexual harassment extends to be gender-neutral, thereby outgrowing its governing legislation. Under such circumstances, the long-standing gender-binary approach towards the designation of victims furthers the victimization of men and transgender victims. Similarly, issues concerning the territorial jurisdiction of the ICCs and the proportion of damages to be awarded when asserting employee or employer liability remain unattended, largely. The above indicated issues are prelude to other significant issues such as prejudice, discretion, power play, exercise of unjust agency and the like, which draw serious attention. In reference to such issues, the role of the institutional administration obligated to constitute the grievance

³ *Vishaka v. State of Rajasthan* AIR 1997 SC 3011 became the first case in India to formally recognize sexual misconduct within workplace as a form of sexual harassment. However, the idea of sexual misconduct in workplace prevailed prior *Vishaka* and found various expressions under the heads of insult of modesty of women and portrayal of public obscenity, molestation, as held in *Rupan Deol Bajaj v. K P S Gill* AIR 1996 SC 309 and *N. Radhabai v. D. Ramchandran* AIR 1995 SC 238, respectively.

redressal mechanism and the appointment of the members for handling of cases generates the need for maintaining transparency and accountability with possible allocation of liability, when principles of natural justice are transgressed. Such transgression is the inevitable corollary of unchecked quasi-judicial powers and administrative discretion.

So, the objective of the paper is to underscore the deficiencies of the *POSH Act* and to critically assess and evaluate the functioning of the ICCs within the ambit of the *Act* and its rules. The sample frame of the study comprises ICC members from Universities. The author targeted this population with the objective of gauging the *modus operandi* of the redressal mechanism. Accordingly, in order to fulfill the purpose, a mix-method approach has been employed so that the theoretical findings are vetted with the empirical observations which were derived through a micro survey conducted in four academic institutions, situated in South Bengal and nearby, between June 1, 2019 and August 1, 2019, to meet the ends of this paper.

II. Current Set of Protruding Issues

The provisions of the *POSH Act* provide equitable remedies for dealing with the offence of sexual harassment by means of unascertained compensation⁴, or conciliation⁵, or action for service misconduct with accord to service rules,⁶ compared to the criminal remedies provided by the *Indian Penal Code* in terms of its penal sanctions⁷. Both the *Act* and the *Code* have jurisdiction for dealing with matters related to sexual harassment with underlying distinction in terms of their interpretation and applicability with regard to, ‘who is in power’. Power is versatile⁸ and exercisable just like agency under the *Code*. It is not limited to the positional authority of an employer or institutional faculty, or an employee or student but extendable to variable circumstances.

In reference to higher academic institutions (colleges and universities, to be more specific), instances of sexual harassment are dealt with under the provisions of *University Grants*

⁴ The Prevention of Sexual Harassment Act, 2013 (Act 14 of 2013), s. 15.

⁵ *Id.*, s. 10.

⁶ *Id.*, s. 13.

⁷ The Indian Penal Code, 1860 (Act 45 of 1860), s. 354A (2) & (3): imprisonment for three years and one year respectively with fine.

⁸ Power (Macht) is a generalized phenomenon, while authority (Herrschaft) relates more specifically to institutionalization of command. ‘Power (Macht) is the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis upon which that probability rests’. This is a relational conception of power which emphasizes agency in conflict: Guenther Roth and Claus Wittich (eds.), *Economy and Society: An Outline of Interpretive Sociology* 53,212 (University of California Press, California, 1978).

Commission Regulations (UGC Regulations) which like the *POSH Act*,⁹ faces similar limitation in determining who exercises authority and thereby agency. Comparatively, the ambit of the *Code* is extensive again. In terms of applicability, the *POSH Act* is claimed to be in addition to pre-existing laws dealing with sexual harassment.¹⁰ Under the *Act*, the preliminary stage of admitting a complaint mandates written submission of complaint,¹¹ considering the binding effect of such and, in estopping the complainant *prima facie* from making any further alteration(s) in statement. Yet, this procedure of registration fails to specify those, other than her *legal heirs* by consanguinity or affinity, who shall qualify to be legal representatives for the aggrieved woman under circumstances indicating her incapability, for reasons related to illiteracy, physical handicap, occasional or usual unsoundness of mind, deaf, dumb and blind.¹² It must be asserted that, institution appointed social workers, members of free legal aid service, co-worker(s) from the concerned institution and legal representatives appointed by Court of law may be some of the primary legal representatives, *inter alia*.¹³

The definition of *aggrieved woman* and its jurisdiction is another issue worth addressing.¹⁴ The inclusion of minor females within the ambit of *aggrieved woman* under the *POSH Act* exhibits the remedial inconsistency,¹⁵ in light of equal treatment to equally situated persons.

⁹ The UGC-Regulations are applicable to all higher educational institutions in India: University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, (No. F. 91-1/2013 TFGS), (2015), *available at*: <https://www.ugc.ac.in/> (last visited on Jun. 28, 2021).

¹⁰ *Supra* note 4, s. 28; *X v. State of J & K and Anr*, The Jammu and Kashmir High Court held “while legislating this Act, framer of Act is aware of the provisions of the penal law and this Act and the consequential remedy available under the Act provides the additional remedy. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the women at work place better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 28 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar”: Provisions of law against sexual harassment at workplace are in addition to other laws, *available at*: <https://www.poshatwork.com> (last visited on April 24, 2021).

¹¹ *Supra* note 4, s. 9(1).

¹² *Id.*, s. 9(2).

¹³ In case of physical incapacity, relative, friend, co-worker, office of NCW or SCW, any person who has knowledge of the incident with the written consent of the complainant, can make complain. In case of mental incapacity, relative, friend, special educator, qualified psychiatrist or psychologist, guardian or authority, person with knowledge of the incident, can make complain. In case where the aggrieved is unable to file the complain for any other reason or where the aggrieved has deceased, the complain can be made by any person with knowledge of the incident, provided written consent has been taken from the aggrieved or her legal heirs, as the case maybe: Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Government of India, Ministry of Women and Child Development, November, 2015.

¹⁴ *Supra* note 4, s. 2(a) (i), (ii).

¹⁵ The Internal Complaints Committee of Remal Public Senior Secondary School, Sector-3, Rohini, Delhi, presumably fails to provide for additional remedial measures and employ extra sensitive approach for its

This leads to treating a minor equivalent to a major, thus causing possible miscarriage of justice. In case of minors, designating a child below fourteen years of age as an employee or worker tends to contravene the pre-existing principles and statutory enactments,¹⁶ unless the contrary is provided by law. The psychological impact caused by any form of sexual abuse such as sexual harassment on such minors is much severe and distinct than that on a major.¹⁷ Here, the role of agency is imperative to understand the vulnerability of any child to be subjected to sexual harassment. The autonomy and agency of children who are victims of such incidents is repressed largely which is attributed to the unequal distribution of power between the accused and the victim in exercising their will. Accordingly, the remedial nature of the *POSH Act* tends to be insufficient in dealing with those circumstances irrespective of its parameter for assessing the severity of such a case.¹⁸ In other words, cases involving a minor either as an accused or as a victim shall attract the specific provisions of *Protection of Children from Sexual Offences Act* and *Juvenile Justice Act*, which employ a mixture of child-friendly mechanisms and approaches.¹⁹ However, such an approach cannot be

students, who, like in any other academic institution, share a fiduciary relationship with the teachers: *available at*: <http://www.remalpublicschool.in> (last visited on Jun. 28, 2021).

¹⁶ Child means a person who has not completed his fourteenth year of age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009 and therefore shall not be employed or permitted to work in any occupation or process: Child Labour (Prohibition and Regulation) Amendment Act 2016, (Act 35 of 2016), ss. 4(b)(2), 5(1); “Child” means a male or female child of the age of six to fourteen years: Right of Children to Free and Compulsory Education Act 2009, (Act 35 of 2009), s. 2(c); A survey conducted by Campaign Against Child Labour (CACL) during COVID-19 pandemic in the State of Tamil Nadu shows that there has been a significant increase of 79.6 percent in the proportion of working children between the age category of 6 to 18 in bakery shops, book stalls, two wheeler service workshops, newspaper distribution, ration shops, vegetable shops and as domestic helpers. About 18.9 percent of these children also suffered physical, mental and verbal abuse: P. A. Narayani, “Child labour increased during COVID-19: survey”, *The Hindu*, (Mar, 13, 2021).

¹⁷ The experience of sexual abuse can be analyzed in terms of four trauma-causing factors, or trauma genic dynamics, traumatic sexualization, betrayal, powerlessness and stigmatization. These trauma genic dynamics are generalized dynamics, not necessarily unique to sexual abuse they occur in other kinds of trauma. These dynamics alter children’s cognitive and emotional orientation to the world and create trauma by distorting children’s self-concept, world view and affective capacities: See David Finkelhor and Angela Browne, “The Traumatic Impact of Child Sexual Abuse: A Conceptualization” 55(4) *American Journal of Orthopsychiatry* 530-531 (1985); Students and alumni from six schools in Chennai reported and revealed that they suffered sexual abuse and harassment by their teachers in various forms which exhibited their predatory behaviour. Such incidents escalated due to the lackadaisical and reluctant attitude of the school administration in dealing with incidents: Zubeda Hamid and S Poorvaja, “A spate of sexual misconduct charges is rocking Chennai’s schools”, *The Hindu*, (Jun, 25, 2021), *available at* <https://www.thehindu.com/society/a-spate-of-sexual-misconduct-charges-is-rocking-chennais-schools/article34962649.ece/amp/> (last visited on Jun. 28, 2021).

¹⁸ *Supra* note 4, s. 15.

¹⁹ Protection of Children from Sexual Offences Act 2012, (Act 32 of 2012): The Act provides for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for recording of evidence, investigation and speedy trial of offences through designated Special Courts; Juvenile Justice (Care and Protection of Children) Act 2015, (Act 2 of 2015): Children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes

uniformly anticipated out of all Internal Committees.²⁰ To substantiate the same, the *prima facie* quasi-judicial nature of the Internal Committee mandated under the *POSH Act* treats sexual harassment as a form of ‘workplace misconduct’,²¹ thereby suggesting such incidents against minors to receive immunity under its veil. Having realized this, the rationale behind labeling sexual harassment against minors as workplace misconduct appears deceptive. It is quite apparent that the enactment tends to decentralize the judicial function through administrative bodies, yet its approach suffers defect.

The impending issue concerns the ambiguity apparent in determining the proportion of payment of compensation to the aggrieved woman, and circumstances when liability is likely to be imposed but otherwise subject to be barred by the *POSH Act*. Here, a crucial point to be realized is, what is the status (employed or unemployed) of the *respondent*, i.e., the accused, against whom the aggrieved woman files a complaint.²² The *Act* remains silent yet again as to this issue, which challenges the very criteria by virtue of which a complaint is registered in the Internal Committee for sexual harassment at workplace. The unemployed status of the accused is a pertinent factor for determining liability specifically under any workplace jurisdiction, when committed against an unemployed woman. The employment or institutional status of the victim is immaterial in asserting victimization^{23, 24} but the same is not *ipso facto* in case of the accused, considering the ample room it provides for jurisdictional conflict (i.e., territorial extents) with regard to workplace. It is the *locus in quo* determining the *locus standi* of the aggrieved woman. In other words, liability under the *POSH Act* can be *prima facie* asserted when there is a nexus between either, the victim or accused and the workplace or institution. The lack of such nexus, for instance, in a case involving an unemployed aggrieved woman and an unemployed respondent within such workplace or institution would raise some serious complications such as the determination of liability, which is *prima facie* dependent on the fact of employment status of the accused. The absence

provided and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

²⁰ An Internal Complaints Committee is a type of administrative grievance redressal mechanism, set up within the vicinity of an administration. Such mechanisms are primarily victim orientated, serving specific purposes, comprising primarily non-judicial members, deriving power from the enabling Statute or Constitution; *Supra* note 15; The School Complaints Committee of Delhi Public School, Hapur, Uttar Pradesh, conducts various gender sensitization programmes such, adolescent related programmes and other special programmes, all with reference to Protection of Children from Sexual Offences Act and self-defense training: *available at*: <http://dpshapur.com/antisexual.aspx> (last visited on Jun. 28, 2021).

²¹ *Supra* note 4, ss. 13(3)(i), 19(i).

²² *Id.*, s. 2(m).

²³ Victimization means any unfavorable treatment meted out to any person either explicit or implicit with the intention to seek sexual favour: *Supra* note 9, Reg. 2(n).

²⁴ *Supra* note 4, s. 2(a)(i).

of such employment status suggests sexual harassment cases to remain largely unregistered and, therefore, unregulated.

Now, as a part of redressing victim grievance through compensation, the *POSH* Act entrusts the obligation on the employer of the workplace or district officer, under circumstances where the respondent fails to make the payment of compensation.²⁵ Such compensation from employee is recovered by an order of recovering the payment as an arrear of land revenue.²⁶ It is quite reductive to infer such relief, however, instances where the employee pleads insolvency raises serious concern, if proved beyond reasonable doubt. This renders the concerned employee with impunity against any order for compensation in a sexual harassment case, *ab initio*. The absence of compensatory relief may be iniquitous under circumstances where the aggrieved woman is unemployed or unrelated to such workplace. At this juncture, the severity of the sexual misconduct is significant in determining the proportion of compensation. Hence, a compensatory exemption may not serve the purpose. This poses the need for an alternative recourse for the payment of compensation.

On the contrary, the right of victim compensation and its proportion under this *Act* does not find any elaborative expression before the Local Complaints Committee where the employer is the accused, or even the Internal Complaints Committee where the employee is the accused, where compensation is made through deduction in salary, notwithstanding the prescribed criteria for assessing the severity. This indicates the need for establishing a uniform system for determining the proportion of deduction in salary. In addition, alternative policies must be adopted to provide compensatory relief under unprecedented circumstances, as already discussed.

Having acknowledged the deficiency in the definition of aggrieved woman, employee and employer liability, the author cannot resist but realize the need for paradigm in apprehending who can be a victim to such incidents of sexual harassment. The gender specific nature of the *POSH Act* concerns itself in asserting a woman as a victim of sexual harassment and thereby an aggrieved party,²⁷ unless the contrary is proved.²⁸ Accordingly, the provision for *domestic worker* suffers the same vice, substantiated by the proportional majority rule.²⁹ It is well

²⁵ *Id.*, s. 13(3)(ii).

²⁶ *Ibid.*

²⁷ *Id.*, s. 2(a).

²⁸ *Id.*, s. 14(1).

²⁹ *Id.*, s. 2(e); Dominance of the general will is prominent when opinion becomes unanimity and the general will is found by counting votes. In other word only majority vote could express the general will. To achieve the

realized that the ratio of female *domestic workers* is comparatively higher than males³⁰ and transgender but the same is not absolutely monopolistic so as to completely exclude the male and transgender sectors employed for such services.³¹

The author realizes the welfare objectives behind the legislation for protecting women from the long-standing practices of sexual offences against them³² yet, strongly contests against victim designation based on gender categorization in reference to the current state of affairs. Victim identification based on gender is often premised in the conventional outlook of superiority and inferiority in gender and the instant piece of legislation tends to reflect the same. In other words, the mandates of the *POSH Act* certainly promote reverse discrimination by relegating men and transgender to an inferior position of victims. Such gender specificity as a qualifying factor or criteria fails to address and mitigate the prevailing criminality against women³³ and, rather opposes the purposes of public policy of guaranteeing equality of all before laws and equal protection of the law, mandated under *Article 14* read with *Article 15* of the Constitution.³⁴ Instances of sexual harassment among men and the transgender are as much prevalent as against women,³⁵ yet, redressal and exercise of rights against the same are

majority vote, proportional majority rule is applied: Victor Gourevitch (ed.), *Rousseau: The Social Contract and Other Later Political Writings* 126-127 (Cambridge University Press, Cambridge, 2nd edn 2019); By virtue of proportional majority rule important issues are addressed and changes take place accordingly attributed to its requirement of large majorities. These changes are however more difficult in proportional majority and also biased in favour of the status quo considering the requisite of large majorities: Paul Weirich, 47(1), "Rousseau on Proportional Majority Rule", *Philosophical and Phenomenological Research*, 112, (1986).

³⁰ The number of females per 1000 males during Periodic Labour Force Survey (2017-18) is 952 in rural and 965 in urban households. Also, male is inclusive of transgender under the Survey: Annual Report 2017-18, Periodic Labour Force Survey, available at: <http://mospi.nic.in/Periodic-Labour-Surveys> (last visited on Jun. 28, 2021).

³¹ *Ibid.*

³² The gender-specific inclusion of victims in the POSH Act tends to effectuate the objective of impeding and regulating the atrocities against women committed through sexual means. The fundamental right of working women to have a safe environment was reiterated along with the need to establish redressal forums for appreciating sexual harassment cases: Government of India, *Report of the Committee on Amendments to Criminal Law* (Ministry of Social Justice and Empowerment, 2013).

³³ Sexual harassment of women has increased tremendously irrespective of the legislative enactment for reasons related to labour issues of women in informal sectors, failure of the executive bodies to establish redress mechanisms, weak protections for domestic workers, fear of reprisals, lack of trust in internal committees, lack of proper investigations and defamation suits: See, No #Me Too for Women Like Us, Human Rights Watch, available at: <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>.

³⁴ The Constitution of India, arts. 14, 15.

³⁵ In a 2012 Economic Times-Synovate Survey, of the 527 people queried across seven cities, Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune—19 percent said they have faced some kind of sexual harassment at office. In Bangalore, 51 percent of the respondents had been sexually harassed, while in Delhi and Hyderabad, 31 percent and 28 percent of those surveyed said that they had been sexually harassed. In Chennai, Kolkata, Mumbai and Pune, the figure was 3 percent, 11 percent, 5 percent and 5 percent, respectively: "Even men aren't safe from sexual harassment at workplace: Survey", *Economic Times*, (Aug, 22, 2010); Sexual harassment against transgender is prevalent in educational institutions, healthcare, informal and formal workplaces, law enforcement and the like, which largely remains unregulated due to the non-inclusion of

available to one specific gender considering the long-established notion that women are the sole victims.³⁶ The pre-existing plight of transgender persons is indeed poignant and sexual misconduct in workplace adds to that. To be precise, exercise of authority and agency can be employed by any of the gender so as to benefit or victimize the other. Accordingly, when exercise of authority and agency is gender-neutral, victimization as a corollary must not be gender specific, thereby amounting to discrimination.

III. Reflections from the Internal Committees on Sexual Harassment Cases

Roles, Powers and Functions of the Internal Committees

Instances of sexual harassment within an institution can be entertained either by formal or informal justice delivery systems (*i.e., judicial bodies or administrative mechanisms, respectively*). The Internal Complaint Committee (ICCs) is one such statutory body that is constituted in various institutions and workplaces, including academic institutions, in consonance with the mandates of the *POSH Act*. The Committee is an administrative body that exercises quasi-judicial functions in dealing with instances of sexual harassment. It exercises powers similar to that of a Civil Court while trying such instances. In addition, such Committee plays the role of a mediator between parties at the discretion of the complainant, other than primarily being an inquisitorial body probing into complaints. In terms of victim representation, the ICCs tend to employ a gender-specific approach in identifying victims, irrespective of the implied provision reflecting gender-neutral representation of respondents and committee members for dealing with such instances.³⁷

In academic institutions such as universities and colleges, ICCs act as a check valve for addressing incidents of sexual misconduct. For students, a gender-neutral approach is prescribed under the *UGC Regulations*,³⁸ which must be read with the *POSH Act* to widen its

gender-neutral laws and policies: Government of India, *Report of the Expert Committee on the Issues relating to Transgender persons* (Ministry of Social Justice and Empowerment, 2014).

³⁶ Portrayal of women as solely victims or agents is neither accurate nor adequate to explain the complex realities of women's lives. It is crucial for feminists and feminist legal theorists to understand and explore the role of both victimization and agency in women's lives and to translate these understandings into the theory and practice that we develop: Elizabeth M. Schneider, 9 "Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering", *Women's Rights Law Report* 221, (1986).

³⁷ *Supra* note 4, s. 7.

³⁸ "Student" means a person duly admitted and pursuing a programme of study either through regular or distance mode, including short-term training programmes in a Higher Educational Institution (HEI); a student who is in the process of taking admission in HEIs campus, although not yet admitted, shall be treated as a student of that HEI along with those students who participates in any of the activities in a HEI other than the HEI where (s)he is enrolled; act decisively against all gender based violence perpetrated against employees and students of all sexes recognizing that primarily women employees and students and some male students and students of the

application. However, the scope of this application often fails to be recognized due to the exercise of discretion by institutions and their ICCs that tend to solely rely on the *POSH Act* for dealing with instances of sexual misconduct.

Now, one of the primary functions of the Committee mandates the submission of an annual report to the appropriate authority on the number of cases filed before it, the failure to which attracts liability for the employer. Also, non-compliance to the constitution of the Committee attracts liability for the employer and, for academic institutions, the appointing head of the institution, or any other body or person(s) vested with all powers as of the employer. The Committee exercises power over its own members, wherein any member accused in a sexual harassment case is temporarily suspended and stripped off powers in relation to any nature of inquisition or decision on the concerned matter. The Committee invokes such power in view of the natural justice principle, *nemo judex in causa sua*. Further, the ICC is empowered to transfer the aggrieved woman to any other workplace with less or no checks at all, thus raising necessary concerns with regard to follow up with the procedural formalities and the victim-friendly approach of the mechanism.

Research Methodology

In order to evaluate the modus operandi of the Internal Committees, the author conducted field surveys across a few universities to gauge the effectiveness of the *POSH Act* with reference to academic institutions. To achieve the same, as part of the theoretical study, the paper employed a content analysis method and as a part of the empirical study, it employed a survey method. So, the author has adopted a lottery method of random selection of three academic institutions comprising Private, Autonomous and State along with one compulsory selection of the sole Central academic institution, all in South Kolkata and nearby, for the purpose of conducting a survey while rounding up two members including, one student or the president or either teaching faculty or a social worker or a person of legal knowledge, from each Institutional Internal Committee. Accordingly, a schedule was prepared as a survey tool with a five-choice response format for opinion part.³⁹ Responses were collected from the four universities. From the sample frame comprising the ICC members of universities, opinions of minimum two members from each of the Internal Committees were amassed. The author,

third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation: See *Supra* note 9, Reg. 2(l).

³⁹ A copy of the schedule is attached with the paper as Annexure A. Due regards to (Asst. Prof.) Mr. Rajat Banerjee, School of Law and Justice, Adamas University, West Bengal, who was the primary resource person and mentored the author in the empirical study and rendered valuable comments and suggestions in course.

however, failed to collect complete numerical data and opinion on the questionnaire part of the Schedule from a few Internal Committee members for reasons related to their denial. A total of twelve respondents complied, some partly and others completely, with the interview process adopted for survey purpose. With limited samples, a comparison among the same has been produced through simple pie charts and for the suggestion part, the different opinions of Internal Committee members have been compiled in a comparison chart. The opinionative part has ten questions and five questions in the suggestive part along with five more in the numerical portion, all put up in the annexed Schedule.

Limitations of the Study

The empirical findings of the study are limited to the conclusions and analogies drawn from the opinion based and suggestive questions, as put up in the annexed schedule.

The scope of the study is limited due to the lack of numerical representation in light of denial of the respondents in rendering the same.

The area of the study circumscribes South Bengal and its neighbouring area *stricto sensu*.

The study is exploratory in nature with a sample size comprising twelve respondents.

The scheduled questions were oriented towards gauging the efficiency of the 'quasi-judicial body of the institutional administration' and, the conclusions derived thereof. This leaves ample room for future developments on the issue.

Further research may be conducted to comprehensively study and identify the victims of sexual harassment who are subjected to physical violence, sexual harassment through cyber space, quantitative studies to gauge sexual harassment of men and transgender persons in workplace, devising or proposing alternate modes for case resolution in amicable ways, identifying the rights of the accused and the like.

Literature Review

Previous studies on sexual harassment in academic institutions involved comparison between State and Private Universities and the level of awareness prevailing in their department of law of the concerned State.⁴⁰ Some were oriented towards the nature of offenses amounting to

⁴⁰ A. D. Aina and Pradeep Kulshrestha, 22 "Sexual Harassment in Academic Institutions in Delhi NRC (India): Level of Awareness, Perception and Experience", *Sexuality and Culture* (2018).

sexual harassment of women,⁴¹ while other studies, both empirical and theoretical were oriented towards the victimization and endurance of the respondents (primarily women) towards sexual harassment along with proposals for redressal, for meeting the ends of their research.⁴² For instance, certain studies recognized the role of human resource development to extents concerning their 'role' in grievance redressal of female victims,⁴³ thereby applying a sociological perspective for understanding sexual harassment in educational institutions along with the psychological impact of the same.⁴⁴ However, in a conventional sense, majority of these studies made gender specific selection of victims, i.e., women, considering the nature of the *POSH* Act.

Realizing the aforementioned objects and the targeted population, the author deviated from the victim-based and gender-oriented selection of population and rather aimed for the decision-making body approached in such incidents of sexual harassment. This approach has enabled the author to, understand and identify the administrative discrepancies, assess the procedural formalities discharged by ICCs for redressing grievance, their much-required opinionative reflection on potential issues or denial to such. The approach is applied on a micro scale, but with a wider representation of the nature of universities and their respective approaches. Selection of ICCs has subsequently enabled the author to have a more or less vivid representation of gender-neutral respondents from various academic departments attributed to the composition of ICCs.

Empirical Findings

All data amassed through the opinionative and suggestive portions of the Schedule were compiled and collated accordingly. They are represented in two different comparison charts, i.e., pie-charts with percentage (for the opinionative part) and a simple tabular chart (for the suggestive part), in Part A and Part B respectively.

⁴¹ Chesfeeda Akhtar, 5(5) "Eve Teasing as a form of violence against women: A Case Study of District Srinagar, Kashmir", *International Journal of Sociology and Anthropology*, 168-178 (2013); Chesfeeda Akhtar, 8(3) "Sexual harassment at workplace and in educational institutions: A case study of District Srinagar, Kashmir", *International NGO Journal*, 54-60 (2013); M. Pallavi Jane Pereira and Edmundo J. Rodrigues, 36(4) "Sexual Harassment at Workplace in India Medico-Legal Aspects", *Journal of Indian Academy of Forensic Medicine* 421-424 (2014).

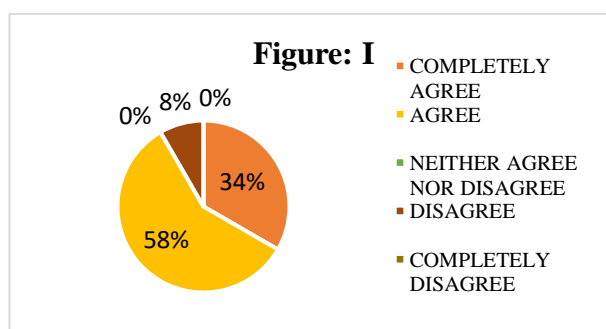
⁴² M. Reena and Onur Saheeb, 3(12) "Sexual Harassment against Women in Educational Institutions", *International Journal of Science and Research* 914-917 (2014); Aditi Gurang, Sangeetha, Priyadarshini, *et.al.*, 6(2) "Knowledge of sexual harassment among the undergraduate students in Udupi district" *Nitte University Journal of Health Science* 4-9 (2016).

⁴³ Sharon Pande, Saumya Bansal, *et.al.*, 7 "A Mis-fit: Case of Sexual Harassment at the Workplace", *Human Resources Management & Ergonomics* 57-69, (2013).

⁴⁴ Aligi Shrikant, 7(3) "Incidents of Sexual Harassment at Educational Institutions in India: Preventive Measures and Grievance Handling", *Asian Review of Social Sciences* 108-113 (2018).

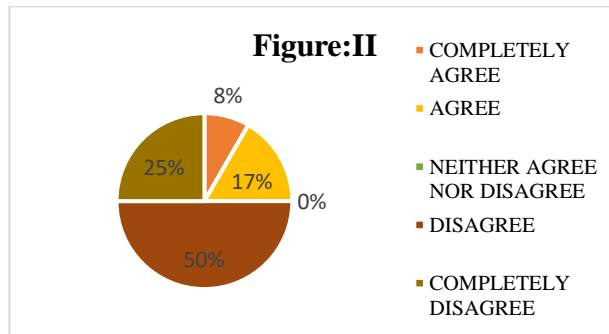
Part A

A total of ten questions were framed in the opinionative part which represents a comparison among the opinions of the twelve respondents with regard to the functioning of their respective ICCs. The binding nature of the decision(s) of the ICC is seemingly apparent considering its quasi-judicial nature, but compliance of parties is subjective. Instances of non-compliance of the parties to the decision, or re-victimization of the victim, or repetition of the offence(s), or institution of fictitious cases raises grave concern and the need for employing stringent preventive measures, which if left unattended, may cause grave injustice, leading to a mockery of the justice-delivery mechanism. It is imperative that such measures be additionally followed in case of institution of complaints, which if entertained orally, imposes a higher magnitude of risk due to possible alteration(s) in the statement(s). Here, the inability of victims is acknowledged and the need to cater their needs. Gender-neutral representation of victims in academic institutions is the need of the hour to realize the gender-neutral nature of the offense. Liability of Committee members for delivering wrong decisions is creating a new paradigm and, therefore, requires stringent actions. Responses pertaining to procedural aspects reflect the need for increase in time for disposal of cases. Further reflections indicate the absence of a standard operating system for grievance redressal mechanism. The opinion of the respondents on a victim-friendly approach is again scattered due to various intrinsic and extrinsic factors such as follow up with the procedure, sensitization programmes, and additional measures. The probability of such cases involving physical violence is implicit and thereby acknowledged. Again, the sufficiency of the governing statute read with the *UGC Regulations* for Higher Educational Institutions, attracts conflicting opinions, thus indicating the need for making necessary amendments.



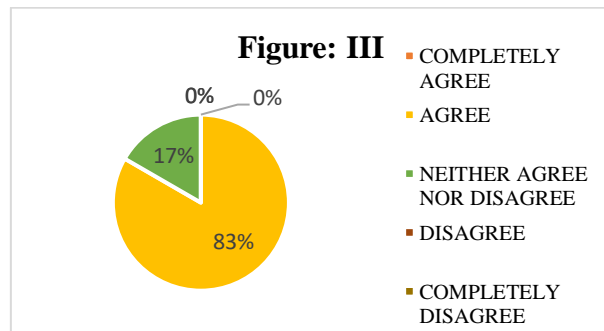
Hypothesis I: The decision of the committee is binding on the parties.

A total of 58 percent of the respondents agreed and 34 percent of the respondents completely agreed. However, 8 percent respondents disagreed.



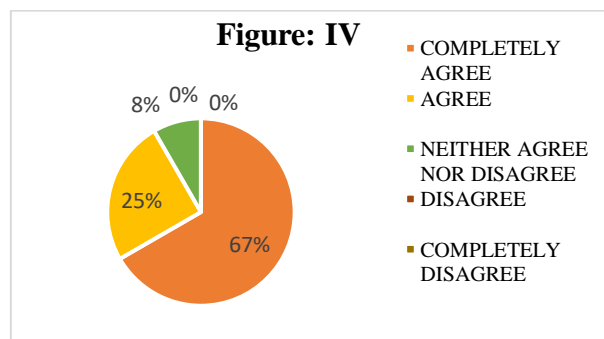
Hypothesis II: Oral complaints must be entertained.

A total of 50 percent respondents disagreed while 25 percent respondents completely disagreed. However, 17 percent respondents agreed and 8 percent completely agreed.



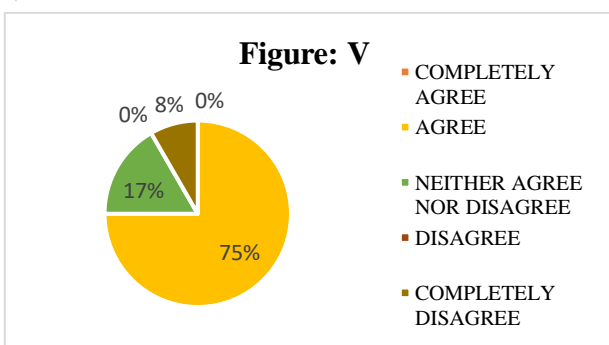
Hypothesis III: Fictitious cases are filed.

A majority of 83 percent respondents agreed while 17 percent respondents could neither agree nor disagree.



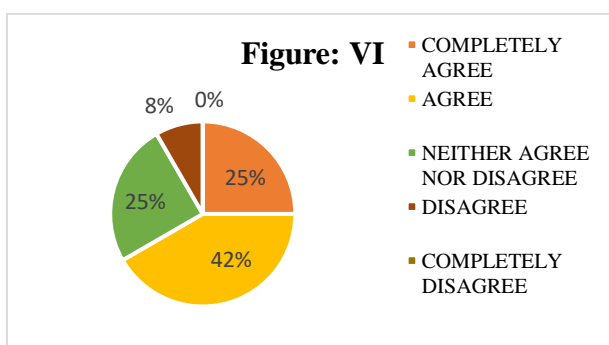
Hypothesis IV: Males and transgender persons must be protected under the POSH Act.

A total of 67 percent of the respondents completely agreed and 25 percent completely agreed. However, 8 percent could neither agree nor disagree.



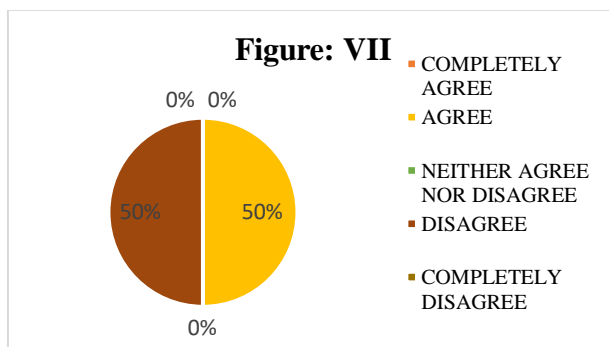
Hypothesis V: In the event of a wrong decision, action must be taken against the members of the committee.

A majority of 75 percent respondents agreed. However, 8 percent respondents completely disagreed while 17 percent of the respondents could neither agree nor disagree.



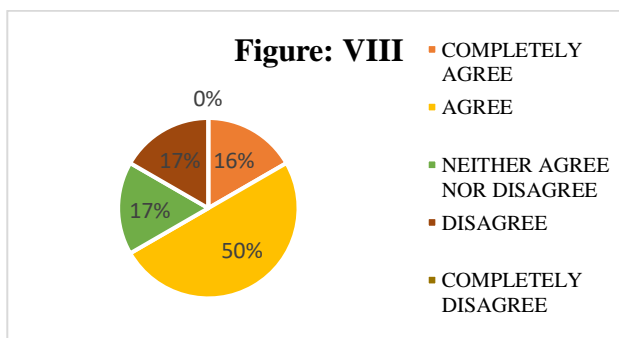
Hypothesis VI: Cases are disposed within the stipulated period.

A total of 42 percent respondents agreed and 25 percent respondents completely agreed. However, 8 percent respondents disagreed and 25 percent respondents could neither agree nor disagree.



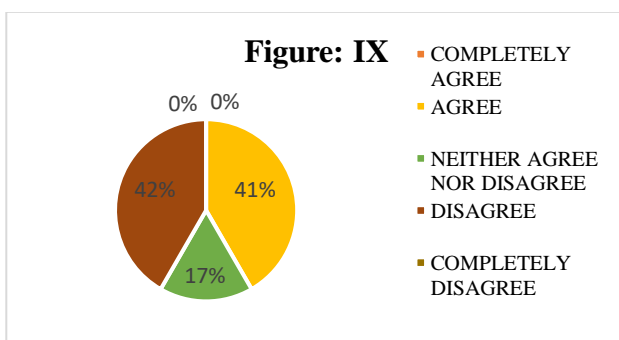
Hypothesis VII: There must be a formal procedure for adopting and appreciating cases.

A total of 50 percent respondents agreed while other 50 percent respondents disagreed.



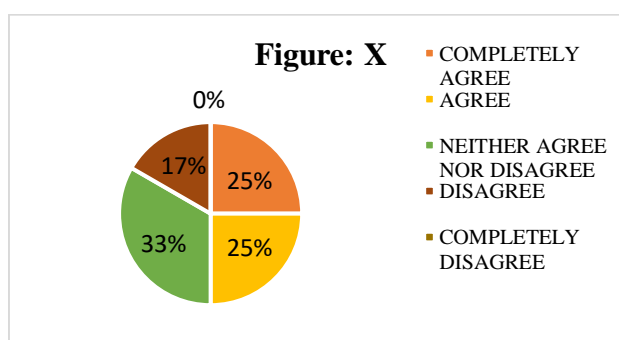
Hypothesis VIII: The procedure is victim-friendly.

A total of 50 percent respondents agreed and 16 percent completely agreed. However, 17 respondents disagreed while 17 percent respondents could neither agree nor disagree.



Hypothesis IX: Physical torture is involved in such cases.

A total of 41 percent of the respondents agreed and 42 percent disagreed while 17 percent could neither agree nor disagree.



Hypothesis X: The provisions of the Act read with the rules and UGC notification is not sufficient.

A total of 25 percent respondents agreed and 25 percent completely agreed. However, 17 percent respondents disagreed while 33 percent respondents could neither agree nor disagree.

Part B

A total of ten responses could be collected for the suggestion part for reasons already indicated. To be precise, the role of witnesses in any case of sexual harassment in Central and

Autonomous Universities is considered of high stature, wherein their testimony is treated as a source of primary evidence, either against or in favor of the concerned parties. Such evidence is either in the form of electronic visual recording or eye witnesses. The Private University also follows a standard operating procedure, but in case of the State University, complaints are presumably unauthentic, due to the lack of any standard procedure to assess their veracity. Compensation during mutual conciliation has been perceived by 3/4th of the universities to be unethical and against the very principles of the justice delivery system. The premise for such is based on the rationale that monetary inflow dilutes the purpose of justice. Contrarily, for the Central University, compensation is determined with accords to the gravity of the damage incurred by the victim. The adverse effects of sexual harassment on victims are asserted by a few respondents with regard to the apprehension and probability of the same to extent where job resignation is imminent. The role of the Committee to provide such victims with psychological assistance and empathetic work environment is a major step in ensuring a victim-friendly approach. Now, to deal with incidents where committee members indulge or engage themselves in activities amounting workplace misconduct, a consensus is reached amongst those respondents to whom the same is applicable. Severance from committee and independent inquiry against the accused is one basic proposal. The responses from the ICC members of the Private University were recorded to be same since they rendered those in unison. A consensus is reached by all the respondents on the increase of the efficiency of the Committee, through diverse means best suited as per their stance on dealing with cases.

| Sl. No. | Scheduled questions | R-1 | R-2 | R-3 | R-4 | University |
|---------|---|--|---------------------------------------|---------------------------------------|--|-------------------|
| 1 | <i>How do you testify the authenticity of cases filed before the Committee?</i> | There is a standard operating system. | There is a standard operating system. | There is a standard operating system. | There is a standard operating procedure. | Private |
| | | NA. | NA. | NA. | - | State |
| | | Call for witness. | Witnesses are important. | - | - | Central |
| | | Witness statements from both sides are taken, or CCTV footages are | - | - | - | Autonomous |

| | | | | | | |
|---|--|--|--|---|---|-------------------|
| | | taken for verification. | | | | |
| 2 | <i>Do you think monetary compensation during mutual conciliation should be there, if yes then why, if no then why?</i> | No. | No. | No. | No. | Private |
| | | No. It impedes the justice delivery process. | No. The process will affect the justice delivery process. | No monetary compensation, since it does not meet the ends of justice. | - | State |
| | | Money should not compensate the injury incurred. | If loss is suffered then yes. | - | - | Central |
| | | No. | - | - | - | Autonomous |
| 3 | <i>Do you think sexual harassment creates a deterrent effect on the victim to the extent where she resigns from the workplace?</i> | No. | No. | No. | Varies from case to case. | Private |
| | | No. | No. | Maybe. But the Committee will stand with the victim. In case of psychological issues, Councilors are there to deal with the depression of the victim. | - | State |
| | | Yes. | No. But even events occur then the Committee will stand with her. | - | - | Central |
| | | Yes. | - | - | - | Autonomous |
| 4 | <i>How do you deal with sexual harassment if any member of the Committee is involved?</i> | The member has to step down from the Committee till the decision is taken. | The member has to step down from the Committee till the decision is taken. | The member has to step down from the Committee till the decision is taken. | The member has to step down from the Committee. | Private |
| | | In the appropriate | NA. | NA. | - | State |

| | | | | | | |
|---|---|---|--|--|---|-------------------|
| | | manner as decided by the Committee. | | | | |
| | | The perpetrator will be asked to step down as a member of the Committee. He should be isolated for a proper trial. | The situation has to be handled. The authority and ICC will work for it. | - | - | Central |
| | | The member should recuse and an independent investigation needs to be carried out. | - | - | - | Autonomous |
| 5 | <i>Do you think the Committee needs to increase its efficiency and if yes, then how?</i> | Yes. There must be experienced persons from outside. | Yes. There must be experienced persons from outside. | Yes. There must be experienced persons from outside. | Yes. Incorporation of people from diverse fields. | Private |
| | | Yes. A law officer and a student must be included in the Committee to increase efficiency. | Yes. Cannot say since no cases have been filed as yet. | Yes. Workshops, sensitization programs. | - | State |
| | | Yes. By contributing more time to the identification and disposal of cases. There may also be awareness programmes. | Awareness policies, appellant body, workshops, seminars. | - | - | Central |
| | | The committee | - | - | - | Autonomous |

| | | | | | | |
|--|--|---|--|--|--|--|
| | | should have a definite schedule of wearing irrespective of the complaints received. | | | | |
|--|--|---|--|--|--|--|

Summarized Findings

In course of the empirical study, the author came across various factors that were responsible in determining and empowering the ICCs in restricting their mandated functions. Accordingly, in the first set of primary observations, neglect towards adopting a formal procedure for appreciating cases, lack of student representation and inclusion of law officers and external members in ICC(s), neglect towards *UGC Regulations* and potential legal ramifications attributed to gender-specific attitude of the ICCs towards designation of victims and the lack of legal sensitization reflect the position of the ICCs. From the above indicated observations, operating independently or collectively, an inference may be drawn wherein the ICCs are predominantly restricted from reaching their potential peak of decision making. To elaborate the same, the State University presumably lacks any standard operating system to authenticate or assert the veracity of a case, which ultimately asserts the inefficiency of its ICC in dealing with sexual harassment cases, thereby invoking judicial scrutiny, or engendering the reconstitution of the ICC to curb the administrative menace. This is a follow up to ensure the due process of law. However, the inception of such repercussion is more or less indomitable, acknowledging the fact that the inefficiency of the ICC is somewhat attributed to its failure to address sexual misconduct and the application of standard procedure for dealing with the same, thereby amounting to deficit rules or no rules, as the case maybe.

Lack of adequate representation of ICC members is a surprising finding in the study that indicates the institutional disregard towards *UGC Regulations* and the compliance towards statutory mandates. The opinions of respondents collected from the Private University indicates complete or partial non-compliance of statutory mandates, wherein external members from varied fields of expertise such as social work, legal field and non-governmental organization, do not find representation in the ICC. A similar trend is followed in the State University where legal officers do not find any representation in the ICC,

irrespective of the nature of workplace misconduct and its potential legal ramifications. In addition, the lack of student members in the ICC of the State University reflects the institutional disregard towards *UGC Regulations*, applicable to all higher educational institutions in India. So, it is arguably implicit that the decision of the ICC on sexual harassment cases involving student(s), may produce, or be claimed to produce, adverse effects on the interest of such student(s), when the redressal mechanism fails to include student members and their opinionative representation in the decision-making process.

In light of inadequate representation, gender-specific admission of female victims must be argued, concomitantly. The uncertain opinion of eight percent (*Figure IV*) respondent(s) raises concern with regard to the attitude of ICC members towards gender-neutral victims. It is imperative to understand and possibly reform such uncertainty while realizing the rationale in operation. Possible apprehension of re-victimization of female victims or respondents by male complainants is one supposition, where reverse victimization by the redressal forum may occur due to fabrication and manipulation of evidence or personal influence exerted by the complainant. Nevertheless, such apprehension must not be admitted uncontested, for it shall suggest a gender-specific approach towards the male respondents who are equally vulnerable to fictitious complaints, instituted against them.⁴⁵ Uncertainty over the inclusion of transgender victims must be looked into to ensure gender autonomy. Diversion from the same shall tantamount to gender discrimination under the constitutional mandates.

The statutory non-compliance and failure to exercise diligence by the ICCs of some of the academic institutions is conspicuous in the above indicated findings which further encompasses institutional liability for the State and Central Universities for reasons related to inadequate or zero endeavor towards organizing awareness programmes and gender sensitization workshops or the like, to indoctrinate their employees and students on sexual harassment at workplace and academic institutions as mandated under the *POSH Act* read with the *UGC Regulations*.

⁴⁵ In *Rashi v. Union of India* W. P. (C) 3396/2019 & CM APPL, a false complaint was filed by the petitioner after she was removed from the service on grounds of irregularity and non-punctuality; In *Anita Suresh v. Union of India & Ors* LPA 527/2019, it was found that the petitioner filed a fictitious case against the respondent in order to damage his reputation. It was found that none of the witnesses corroborated the testimony of the petitioner. Therefore, she was imposed with a fine of Rs. 50, 000; *Union of India v. Reema Srinivasan Iyengar* W.P. Nos. 10689, 24290 and 2339 of 2019: it was held that the POSH Act cannot be allowed to be misused by women to harass someone with exaggerated or non-existent allegations; As per the National Crime Records Bureau Report, 2019, more than 1, 25, 657 men were acquitted from false allegations such as rape, sexual harassment and dowry under gender-specific laws: For detailed study, see, *Decoding the NCRB Data 2019*, Vaastav Foundation, available at: <http://vaastav.org/2020/10/decoding-the-ncrb-data-2019/>.

During the second set of observations, the author came across the evidentiary aspect embedded in the process of appreciating cases, wherein fastening of liability is dependent on witness testimony, or close-circuit television footage. Here, a common issue dealt by any decision-making body concerns the determination of a *prima facie* case which, likewise in any other case, is a mandate for a quasi-judicial body as well. In reference to the same, an issue subsequently identified in course, concerns as to how the lack of testimonial authenticity ultimately tantamount to decision-making in fictitious cases, frivolous in law along with implied ramifications. To understand the same, the following *hypothetical case* may be referred to.

Hypothetical Case:

X, the Internal Complaints Committee of a Private University, registers a complaint of victim Y against Z on grounds of sexual misconduct, *suo motu*. The nature of evidence put forth by Y and her representatives was testimonial in nature comprising two eye witnesses, Q, R. It was discovered at a much later stage after the complete adjudication of the matter that there was zero veracity in their statements. The adjudicating body delivered its decision premised on witness testimony, primarily.

In the instant case, two incidents were operating, *firstly*, the *suo motu* cognizance of the matter and, *secondly*, absence of parameters for determining authenticity. The statutory enactment does not empower the body to exercise jurisdiction on a *suo motu* basis. Such jurisdiction is accompanied with unauthenticated statements which may jeopardize the decision-making process, thereby, prompting a trade-off between the supposed victim and accused and vice-versa. This suggests the need for establishing check valves or adopting precautionary measures. In case of the Central University, the need for an efficient process for case identification and disposal has been proposed. Case identification through inquisition into the cause of action, merits of the case and veracity of testimonial or documentary evidence are some of the measures. Such stringency shall enhance the procedure followed for appreciating complaints in the preliminary stage and would reduce the filling of fictitious cases pertaining to serve ulterior motives of the complainants. Increased time for disposal of cases shall also prove beneficial for examining the evidence admitted.

The third set of observation focuses primarily on the principle of potential bias and how it vitiates the entire process of adjudication. To understand that, it is essential to realize that the

position of ICC is no less than a Civil Court under the statute, which imposes a similar nature of accountability and responsibility, like that of a judicial body for ensuring just and fair procedure established by law along with the principles of natural justice. Any diversion in establishing the same corresponds to a mechanism that manifests arbitrariness and capriciousness. Diversions in the form of bias infused in procedure by quasi-judicial adjudicators through their subject-matter or pecuniary or personal and preferential interest paralyzes the adjudicating mechanism. The same has been unanimously agreed by all the respondents. Complete exclusion or suspension or recusal is a general proposal, applicable in accordance with the severity of the matter. The response is aligned with the observations made by the author in case of the State University with regard to its lack of standard operating procedure, *inter alia*, which is further accompanied with the inevitable scope of bias in decision-making. The onus of such possible transgression is unequivocally vested on the ICC itself and by extension, the concerned institution. A vicarious shift of liability on the institution is implicit and, therefore, must be identified.

So, in order to assess the extent of liability on the institution with regard to ICC members rendering biased decisions during their tenure on matters related thereto, a scale of 1 to 5 has been deliberately incorporated, which shall further identify the severity of victimization of the beneficiaries of the mechanism. The author opted for the scale with the purpose of representing the hierarchy in institutional liability. It is to be realized that, the severity of the scaling in identifying liability and victimization is dependent on the role of the institution which might be either *advertent* or *inadvertent*, *i.e.*, allocation of degree of onus, or none, as the case maybe. This is attributed to the proportion of onus which may be either evenly distributed between the institution and its ICC member(s) (50:50), or variable (30:70 or vice-versa) or vested in the institution *in toto* (100:0). Proportion plays a significant role in assessing the extent of vicarious liability imputable. With each successive scale, the elementary stages of decision-making become more susceptible to the *cause* and *effect* nexus of potential bias and its potential outcome. The stages could be easily identified, since they act as check valves in the early process of decision-making for the concerned stakeholders (Board of Appointment and ICC members). Each effect drawing their respective degree of severity is attributed to arbitrary and capricious discharge of administrative powers under some ordinary administrative events, *i.e.*, establishment of adjudicatory body for grievance redressal, right to hearing, role of adjudicators, powers of adjudicators and opinion of

adjudicators. Here, it is essential to realize that each stage of the prescribed order can be subject to bias.

| <i>Sl. No.</i> | <i>Scale</i> | <i>Effect</i> |
|----------------|-------------------------|--|
| 5. | <i>Dangerously high</i> | Non-compliance of the notice and comment rule in administrative rule-making. Breakdown of the adjudicating machinery amounting to victimization through violation, rather subversion of the principles of natural justice. |
| 4. | <i>Extremely high</i> | Travesty of justice or complete diversion through adjudication due to exercise of bias by the adjudicating body, or follow up on a constructive notice. |
| 3. | <i>High</i> | Adjudicator(s) become accused in a case and no recusal from the post or the matter itself. |
| 2. | <i>Moderate</i> | Concentration of excessive discretionary powers; Defunct rationale of Board of Appointment amounts to preferential appointment of Committee members. |
| 1. | <i>Low</i> | Often undetectable. Primarily includes conflict of interests among adjudicating members. |

The scale represents various administrative discrepancies which determine the degree of severity, yet victimization is the destined corollary for each, irrespective of the proposed degrees. The *first* scale concentrates on the internal conflicts of members that ensue or transpire as an outcome of equal power allotment, superiority and inferiority complexity of personality, fabrication of data, negative competition. A higher magnitude of the same (*second* scale) is reiterated through the concept of authority and the powers therewith, *i.e.*, exercise of unchecked, discretionary powers by ICC members, or exercise of *personal bias* in decision-making by the Board of Appointment. Application of independent reasoning is predominant in the concept of authority when exercised in individual capacity, for any purpose. For instance, the members of the Board of Appointment apply their individual or collective rationality to arrive at a *reasoned decision*.⁴⁶ Here, the role of rationality must be

⁴⁶ Reasoned decision must be adhered to by an adjudicator or decision-maker to eliminate friction and arbitrariness and ensure equity, fairness and transparency. The reasoning of the adjudicator must incorporate both subjectivity and objectivity. Objective reasoning is the crux of a reasoned decision, where a posteriori

ascertained, for it is the pinnacle in decision-making, which qualifies the effects of any decision to be just and fair. Accordingly, the assumption over the degree of rationality employed for the decision becomes at par with irrationality, the application of either of them, completely or partially, is inevitable. When irrational, they do not necessarily produce the asserted possibility of preferential appointment for instance, rather the same is the outcome of rationality as well, the line of distinction being determined by the exercise of prudence in the application of selective perspective in the latter case. For instance, the lack of standard operating system in the State University would be *prima facie* immaterial, if the order passed in any sexual harassment case produces a just and fair decision.

Again, an elevated category of irrationality can be perceived in the principle of *nemo judex in causa sua* (third scale). Rationality suffers the most in this stage, wherein violation of natural justice is the ultimate by-product. Such circumstances arise when the decision-maker(s) exercises *subject-matter bias* in order to serve his conflicting interest critical in the case. The corollary of the same simply immobilizes the decision-making process.

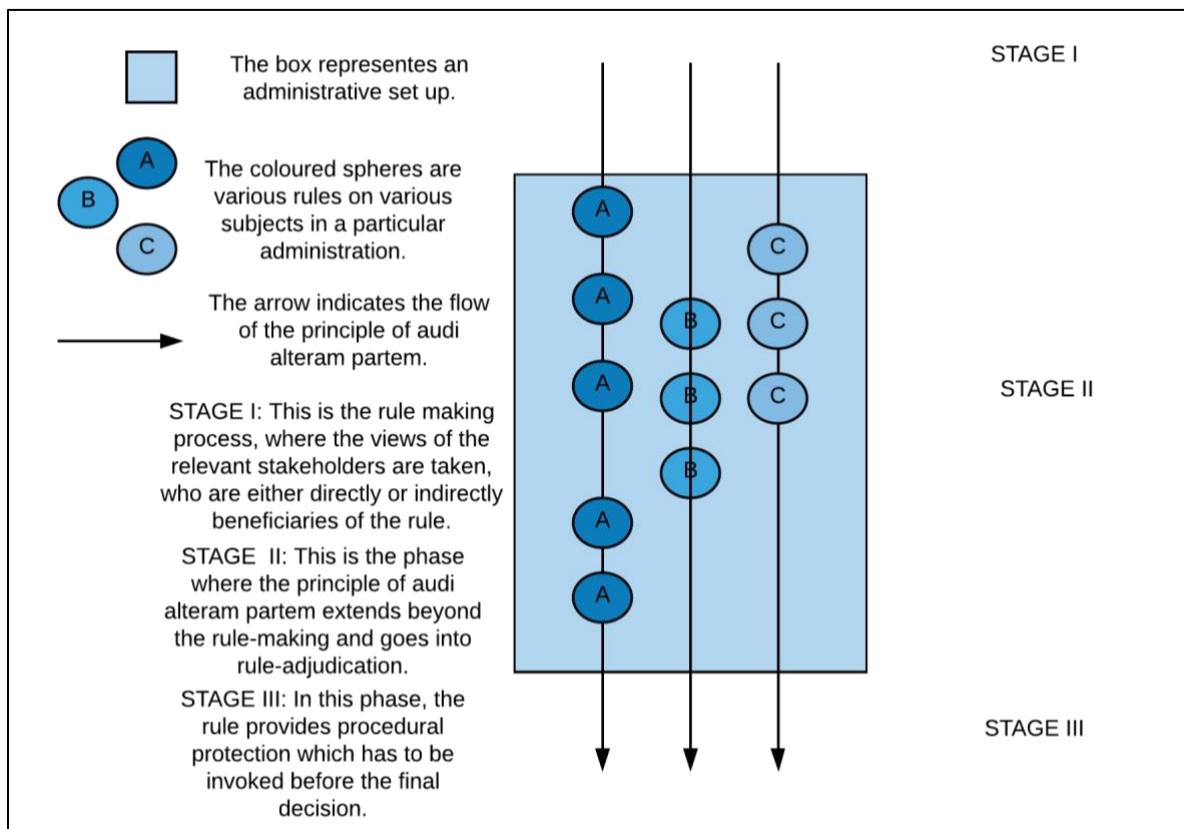
In the *fourth* scale, bias follows the ordinary course of administrative adjudication, where it affects the process of appreciating cases, intimation of scheduled trials, admission of evidence and decision-making, while passing down its effects on the beneficiaries of such mechanism. This simply leads to diversion from the procedure established by law. *Let it be exemplified*: a deliberate omission of persons in a public (constructive) notice issued by a quasi-judicial body manifests arbitrariness through the exercise of *departmental bias* and therefore, a possible transgression of the right to fair hearing.

At this juncture, it is crucial to realize that bias may be employed in the preliminary stages of rule-making where representation of diverse opinion is significant to make such rule applicable. For instance, there may be *departmental bias* in operation when the *notice* and *comment* rule become inconsiderate, as indicated in the *fifth* scale. Violation of the principle of *audi alteram partem*⁴⁷ is inevitable in such case, since an element of bias may operate in

inductive reasoning is employed by the adjudicator. Here, morality and rationality interspaces each other at a region after a continuous process of filtration to form the reasoning of the adjudicator in relation to the concerned matter. It must be realized that while applying a posteriori reasoning, the adjudicator comes across various probabilities which contest to be the means to his end. So, he applies a selective perspective in moving from particular to general so as to attain his desired outcome.

⁴⁷ The right of fair hearing has its codified inception in the *Magna Carta* (1215), wherein it ensures a fair hearing of the complaints without any arbitrariness. The right has been reiterated by Lord Kenyon in *R. v. Benn and Church*, [(1795) 6 Term Rep. 198], under the Latin term, '*audi alteram partem*'. It establishes stringent check valves in the adjudication process to ensure that the other side is being heard who is a stakeholder or holds any interest in the concerned matter.

the appointment process, or framing of administrative code of conduct, where decision-making becomes highly indecisive, or apathetic, thus subverting the primary objective of ensuring just and fair procedure in accordance with law. For elucidative purposes, the following *illustration* may be referred to, which further reiterates the significance of the principles of natural justice in any administrative agency, or quasi-judicial body, or other informal justice delivery mechanisms.



The *illustration* is a hypothetical situation that captures the flow of *audi alteram partem* in an administrative agency. Supposedly, in the *first* stage the principle becomes applicable in rule-making where rule-makers frame procedural mandates, regulatory policies, substantive implementation of laws and policies, interpretation of the extent of adjudicator's accountability, all in consonance with the enabling Statute or Constitution, responsible for its establishment. The *notice* and *comment* rule runs subsequently during the rule-making process for gauging the responses of relevant parties interested or involved in the same. Due adherence to this rule often proves beneficial for the relevant parties. It can be assumed that the adjudicatory body is especially benefitted since opportunity for realizing its lacuna is ensured. During the *second* stage, transgression of rules (established during rule-making) invokes rule-adjudication, where equal opportunity of hearing for both parties is to be

ensured during the trial. The interplay of natural rights is much prominent at this stage, considering the follow up with the procedural mandates. Their predominance in a law or the making of such law by an adjudicatory mechanism is made inherent with the intent of making the enabling Statute applicable. Any diversion from the obligation amounts to, unfair and biased trial. The *third* stage arrives at this juncture where procedural protection is laid out in case of any transgression of the adjudicatory obligation (for instance, failure to serve the notice of a scheduled trial). Intimation of such transgression must be rendered by the aggrieved party prior the final decision. However, this does not correspond to waiving of natural rights, considering the available recourse to judicial review.

The fourth set of observations puts emphasis on the efforts, additional mechanisms and policies adopted by institutions and their more or less successive endeavor in assuring smooth discharge of functions. For instance, a superior decision-making body within the same institutional framework governed by an independent set of institutional rules has been constituted by the Autonomous University. This Appellate body, known as the ‘Appeals Commission’ exercises the same power as ICC under the institutional policy. The members are nominated by the Vice-Chancellor of the institution for a period of three years, consisting of two students, two faculties and one member. For invoking its jurisdiction, there must be an apparent error on the part of the ICC in the decision-making process or material irregularity. This ultimately tends to provide for institutional checks on the first decision-making body exercising original jurisdiction, *i.e.*, ICC. Such an appellate body, or a reviewing committee, or any other similar body may be constituted in all institutions to increase the efficiency in the disposal of cases, provide an extended opportunity to the right to hearing through appeal and establish institutional check valves on the ICC.

In addition, the empathetic approach towards female victims, as proposed or even possibly employed by the respondents from the State and Central Universities, indicate their efforts in promoting a victim-friendly mechanism to redress incidents of sexual misconduct, when such victim may resign from the institution. Counseling sessions and a victim-friendly work environment are the primary goals which institutions must ensure for realizing the objectives of the redressal mechanism. A victim-centric approach shall go a long way in consolidating the normative framework mandated under the *POSH Act*.

IV Suggestive Policies

Several inferences crossed the author's conscience in course of the construction of the paper. A few have been summarized to plausible extents *inter alia*, administrative shortcomings (inadequacies and discrepancies), procedural checks, unauthorized jurisdiction, violation of principles of natural justice, institutional liability, along with statutory deficiencies of the *POSH Act*. The limitations are acknowledged simultaneously, where some are self-imposed, while others are situation-based. Accordingly, potential recourse for meting out the indicated issues has been proposed herein forth.

Adopting Additional Mechanism for Case Resolution

An appellate body constituted with a wider extent of powers shall serve two purposes: act as a check valve for the ICC and its decision-making by exercising appellate jurisdiction and the power to review; retain the independence of the body exercising original jurisdiction. The members of such body may comprise both internal and external members such as employees, students, non-employed members such as social workers, representatives from non-governmental organizations, two or more legal officers, counselors and external advisors. This would ensure the sanctity of the decision-making process, thereby, minimizing the scope of any potential bias exercisable by the ICC in the course. In addition, this would ultimately discharge judicial burden and prove to be a cost-effective procedure.

Expressive Gender-Neutral Law

The etymological understanding of the victim implies a gender-devoid idea of a 'sufferer', who is recognized as 'victim' under legislative heads. The preconceived idea of a victim is gender-specific where females are designated as the sole sufferer. The *POSH Act* read with the *UGC Regulations* construes a gender-neutral concept of the victim which has been reduced to discretionary compliance. The wide range of academic institutions comprises a widely dispersed ideology of victim, which is often inclined towards the female gender. To prevent such exclusion, specific provisions of gender-neutral concept of victimization must be incorporated in the *POSH Act*.

Follow Up with the Procedure

It is pertinent to do away with the discretionary compliance or reluctance of the ICC in adopting or following a standard operating system. A tentative or moderate follow-up with

the procedural fundamentals would suffice to some extent. Omitting both shall tantamount to excessive, unchecked administrative discretion and bias. Therefore, the minimum standards must be adhered to.

Institutional Liability

Institutional liability is two-folded: liability under circumstances indicating the employer as an accused, or non-compliance towards statutory mandates of the *POSH Act* and *UGC Regulations*; liability of the nomination committee or Board of Appointment for appointment of inefficient members, or even hoax appointments. In case of appointment, it shall be determined by the exercise of bias by concerned decision-makers. Accordingly, quarterly or monthly inspections, varying in accordance with the progress of the ICC shall serve the purpose. Such surveys shall enable the inspection body to make a substantive assessment of the internal situation. This shall regulate any institutional bias in the appointment of inefficient internal members and institutional non-compliance to statutory mandates.

Employer-Employee Liability

To determine the payment of compensation in a lump sum when the respondent is declared insolvent, a victim compensation mechanism may be adopted where a pool of funds may be created in the workplace through contributions made by the employer and employees on an annual basis or at regular intervals. While determining the payment of compensation, a standard proportion of payment must be adhered to. In the case of the employee, one-fourth deduction in the salary may be made in each of the salaried months, until compensation is recovered or lump sum be paid. In the case of the employer, one-sixth of the income may be deducted in a lump sum or each of the salaried months, until compensation is recovered, on the first conviction and two-sixth deduction on the second conviction for the same offence under the *Act*. Such proportion must be adhered by the ICCs and LCCs as a determinant of the compensatory relief in their decision-making.

Nevertheless, legislative recognition is imperative for achieving the proposed resolutions. Devoid of such recognition, the resolutions shall fail to be realized and, the ambit of administrative discrepancies and inadequacies reflected through this paper shall reach its zenith.

V. Conclusion

The administrative prerogative of discretion exercised by the ICC has posed itself as a primary concern in this paper, especially with regard to the discharge of its fundamental obligations, *i.e.*, mode of case resolution, moderate adherence to procedural protocols and, mandatory compliance with the principles of natural justice and statutory provisions. The indisputable nature of the obligations being fundamental is inherently attributed to the very nature of the ICC, *i.e.*, statutory body discharging quasi-judicial functions. Transgression of such obligation creates serious repercussions. Findings such as lack of standard operating procedure and non-compliance of statutory mandates and *UGC Regulation* by ICC and the institution, validates the above indicated repercussion. Under such circumstances, violation of the principles of natural justice is conspicuous. Discrepancy attributed to victim identification based on biological attributes is a statute-sponsored issue. The same has been found to be evident in the responses collated on the issue by the members of some of the ICCs, notwithstanding the *UGC Regulations*. The statutory ambiguity inherent in the definition of *aggrieved woman* is a significant issue which encompasses minor females within its ambit. Such inclusion indicates the lack of a child-friendly and sensitive approach towards minor victims and accused, as the case maybe. The absence of provision(s) for determining the proportion of compensatory relief to be awarded and provision for compensation under unprecedented circumstances is a matter of concern when establishing the liability of the employer or employee. Similarly, the absence of expressive provisions for establishing institutional liability in cases indicative of a bias in the nomination of members is a significant issue worth addressing to ensure due adherence to the principles of natural justice. Another poignant issue concerns the absence of legal sensitization in some of the academic institutions visited by the author for conducting the empirical study. In addition, the paper transpired the much needed suggestive policies, as proposed by the ICC members, on issues such as, need for an effective mechanism, inclusion of external members, legal sensitization, and gender-neutral identification of victim and increase in time for case disposal.

ANNEXURE – A**SCHEDULE TO RECORD SEXUAL HARASSMENT CASES IN ACADEMIC INSTITUTIONS**

NAME:

AGE: SEX:

NAME OF INSTITUTION:

PART A

| Sl. No. | | 2016 | 2017 | 2018 |
|---------|---|------|------|------|
| 1) | Number of cases filed? | | | |
| 2) | Number of cases disposed off? | | | |
| 3) | Number of cases withdrawn? | | | |
| 4) | Number of cases pending? | | | |
| 5) | Number of cases dealt with through mutual conciliation? | | | |

PART B**Feedback of the Internal Committee members on cases relating to sexual harassment:****6) Do you think the decisions taken by the committee are binding on the parties?**

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

7) Do you think oral complaint should also be entertained?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

8) Do you think that some of the cases which are filed are fictitious in nature?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

9) Apart from females, whether males and transgender should be protected by such provisions?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

10) Do you think in the event of a wrong decision, action can be taken against the members of the committee?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

11) Are the cases disposed within the stipulated period as provided by the section 11 of the Prevention of Sexual Harassment Act?

N.B: The feedback received through this schedule will be used for educational purposes.

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

12) Is there any formal procedure for adopting and appreciating the cases?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

13) Is the procedure victim-friendly?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

14) Is physical torture involved in these cases?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

15) Do you think that the provisions of this Act read with the rules & UGC notification are sufficient?

| | | | | |
|------------------|-------|----------------------------|----------|---------------------|
| Completely agree | Agree | Neither agree nor disagree | Disagree | Completely disagree |
|------------------|-------|----------------------------|----------|---------------------|

PART C

16) How do you testify the authenticity of cases filed before the Committee?

17) Do you think monetary compensation during mutual conciliation should be there, if yes then why, if no then why?

19) Do you think sexual harassment creates a deterrent effect on the victim to the extent where she resigns from the workplace?

20) How do you deal with sexual harassment if any member of the Committee is involved?

18) Do you think the committee needs to increase its efficiency and if yes, then how?

Date:

Place:

N.B: The feedback received through this schedule will be used for educational purposes.