

BACKGROUND TO THE PROPOSED POLICY

The need for mechanisms and institutions to redress complaints of sexual harassment and other forms of gender violence in Delhi University, have long been felt. Over the years, numerous instances of sexual harassment, taking on different forms, have occurred in many different arenas like the classrooms, canteens, DTC specials etc. Consequently, many spontaneous protests have taken place, organised by individuals, groups and bodies such as the *Goonda Virodhi Abhiyan*, *Swabhiman* and Gender Study Group. The effort of these groups and individuals was to advocate an atmosphere, which would ensure the personal dignity and autonomy of all its members. Unfortunately, the University, upon which it is incumbent to create the necessary mechanisms, has not taken any initiative in this matter

In 1996, a report brought out by Gender Study Group, Delhi University, drew attention to the severe harassment experienced by women on campus. The report documents in detail the way in which students residing in women's hostels, on the north campus in particular, faced severe sexual harassment on the campus streets on an everyday basis. Most of these students did not know of the existence of the joint control room, purportedly a body to take disciplinary action against sexual harassment. The few who had complained to the authorities stated that sexual harassment was trivialised and women themselves were blamed for provoking men to harass them. The report stressed that everyday violence women students face, usually trivialised as 'eve-teasing', must be recognised as large-scale violence that creates an intimidating work environment for them.

Sustained campaigns in the late 1980s and 1990s around the S. C. Bhatia, Bina Rani and MAMC cases have highlighted the urgent need for institutional mechanisms, which are autonomous, accountable and accessible. The Wad Committee, which had investigated the S.C. Bhatia case, had recommended the constitution of such a body and

the recent Supreme Court judgement has also made mandatory the provision of a complaint mechanism for redressal of complaints. Other Universities in the capital (such as IIT and JNU) have already implemented a policy on sexual harassment.

In this policy, we define sexual harassment and other forms of gender violence. We also outline mechanisms for constituting accountable and autonomous institutional structures which can help make the University a space wherein the rights of all its members to personal integrity, autonomy and full intellectual growth is ensured and respected. The larger context for these specific formulations that will follow is based on a close look at how the University responded to the various cases it took cognisance of over the years.

The existing ordinance XV(B) of the Delhi University has articulated sexual harassment as a law and order problem. Not only has sexual harassment not been recognised as violence against women or as a violation of their rights, but no one definition of sexual harassment has either been devised or adopted. While defining sexual harassment as an infringement of the rights of women to work in an environment free of violence, we also look at the various forms of sexual harassment and other violence in the University. These have never been recognised as forms of violence by the Delhi University. For example, each year young men face an inordinate amount of gender violence in the form of ragging, however this is not recognised as gender based violence. We therefore define gender violence as an inclusive category, which refers to sexual harassment, rape, as well as all other forms of discriminatory conduct based on the gender identity of a person.

Due to lack of statutory specifications, inordinate delay on the part of the University in taking cognisance of the complaint and submitting a report has become a matter of routine. It has therefore been difficult to hold the University more accountable. In most cases, it was also found that the University acted only when public protest was organised, before it responded to the complaint. In addition, the way in which the University has appointed enquiry committees in the past reveal certain grave flaws in the existing mechanisms. There are no systematised procedures on how the members of the

enquiry committee are nominated. Within the prevailing ideologies, women's complaints about incidents of sexual harassment are not taken seriously. Further, since the person against whom the complaint is brought may be in a position of power, the process of nomination can, and does, become a means to shield the person charged and deny redressal to the complainant. The issue of making the report public to the deciding bodies, whilst ensuring the confidentiality of the complainant if she so desires, is not addressed. For example, in the Ramjas College ragging case where a woman student was stripped, the Enquiry Committee's Report was not made available even to the members of the Executive Council (which is the highest decision making body in the University). Nor are there systematised gradations of punishment defined, which are commensurate with the nature of the offence. This was also a major point of contention in the infamous S.C. Bhatia case.

Further in the Bhatia case, the misconduct of the person charged was compounded by the fact that he was head of the institution and every one had been kept in temporary positions. This vastly enhanced his power over the complainant and other employees who may have been able to provide support to the complainant. The Wad committee found that over 20 women left the department because they were so intimidated by the head of the institution. The power vested in him, which ranged from recommending leave to writing confidential reports, were used to create a pernicious work environment and stifle all attempts to bring his offences to light. After a long struggle the University nominated an Enquiry Committee (Baviskar Committee) which could not instil enough confidence in the complainants that it would function independently especially because all the complaints had to be routed through the offending head. The committee did not take cognisance of the acts of sexual harassment and simply side tracked the issue by treating the harassment being faced by the complainant as a 'personality clash' with the head. Finally, a long and sustained struggle, at each stage, was required to ensure action against the person charged.

A serious problem with the constitution of the enquiry committees has been that the authorities nominate the committee within the framework of unequal power. Often

there is no representation from the complainant's category on these committees. Sexual harassment and other forms of gender violence are often exacerbated by class, caste, racial, ethnic or communal discriminations. This needs to be borne in mind while conceptualising redressal mechanisms to ensure that they operate within a framework of equal power. In the more recent Bina Rani case, caste forces have exacerbated the existing hierarchies within the University. This has meant that the complainant has been doubly vulnerable as a woman and as a woman from the lower caste. Again, after protests, when an enquiry committee was finally appointed by the governing body, it had no woman member initially, and no one from the complainant's occupational and social category. Later during the investigation, the accused and the complainant were called simultaneously and the complainant was not allowed to be accompanied by a representative. This proved to be ultimately the means by which the Enquiry Committee could proceed to state that the complainant had made certain statements, which she had consistently denied. The fact that the complainant had gone public in the case was held against her. She and her supporters in the campaign for redressal were harassed with various charges filed against them.

Similar and other issues have surfaced in the MAMC case. The accused was the head of the Department who was supervisor and examiner of the complainants. The internal enquiry committee was constituted within this framework of unequal power, and fell short of definitive indictment of 'a colleague', as the enquiry committee comprised other faculty members. The offending head was represented as a 'disciplinarian'. Further protests met with reprisals and in a travesty of justice the complainants not only suffered physical injury but have criminal charges slapped against them. This points to the violent backlash that those who have dared to protest against sexual harassment have had to face.

All this reiterates the need for standing autonomous institutions to enquire into instances of sexual harassment and other forms of gender violence. We recognise that not all cases of sexual harassment may fall into the situations analysed here. Nevertheless, the complainant and the person against whom the complaint is brought could be positioned within the structures of authority in the University and therefore could often

be unequally placed in terms of power in the University hierarchy. The appointing authority should, therefore ideally lie outside the University hierarchy. We have therefore tried to make the institutions autonomous of the direct ambit of the University's authority structure through a mechanism, which we outline in the policy. We have also tried to find a way of constituting the complaint redressal committees without a simple principle of nomination or an existing system of elective bodies but tried to balance the two principles in specific ways.

We also outline the need not just for statutory mechanisms, but also counselling centres and other facilities in the University. These could be run with the help of women's groups, or other student or faculty groups on campus that have worked consistently on women's issues. In addition, there is also a need to create awareness about what constitutes *sexual harassment* and *gender violence* and the mechanisms of redressal available to the members of the University community.

Finally, we need to recognise that the University constitutes a space somewhat different from other work places. Here a large segment of the community comes in to be trained in various capacities, but more importantly to be able to expand their personalities and achieve fully their potentialities. We have found that sustained diminishing of women's capabilities through remarks and other means of discrimination has been deeply violative of their rights and sense of personhood. Further, we agree that any form of discriminatory conduct based on any individual's gender identity, has the effect of diminishing their sense of personhood and growth. We believe that gender discrimination, sexual harassment and other forms of violence lie on a continuum. The policy has been drafted with this conceptual understanding.

UNIVERSITY OF DELHI

**DRAFT POLICY ON SEXUAL HARASSMENT AND OTHER
FORMS OF GENDER VIOLENCE (1998)**

I. PREAMBLE

The University of Delhi is committed to creating and maintaining a community in which students, teachers, and non-teaching staff can work together in an atmosphere free of all forms of violence and harassment, exploitation, or intimidation, as well as, gender violence. This includes all forms of sexual harassment and discrimination on the basis of gender. The University of Delhi recognises the scale and nature of gender violence and especially the manner in which it places severe constraints on the day to day functioning and mobility of women, denying them the basic human right to pursue their professional, academic, and personal lives with dignity and self respect. The Constitution of India states that discrimination on the basis of sex is a violation of the fundamental right to equality. The Supreme Court in its August 1997 judgement (Vishaka vs. State of Rajasthan) states that each instance of sexual harassment is a violation of the rights under article 14, 15 and 21 of the Constitution and also a violation of the fundamental right under article 19 (i)g (which is the right to practice any profession or to carry out any occupation, trade or business).

On August 13, 1997, the Supreme Court of India made it:

...the duty of the employers in work places as well as other responsible persons or institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

Every member of the University community should be aware that while the University is committed to the right to freedom of expression and association, it is strongly opposed to

Every member of the University community should be aware that while the University is committed to the right to freedom of expression and association, it is strongly opposed to gender violence and that such conduct is prohibited both by law and by University policy. It is the intention of the University of Delhi to take whatever action may be needed to prevent and correct such conduct, which violates this policy.

II. DEFINITION OF GENDER VIOLENCE

Gender¹ violence is an inclusive category, which refers to sexual harassment, rape, as well as all other forms of discriminatory conduct based on the gender identity of a person.

Discriminatory conduct constitutes *Gender violence* -

1. when submission to or rejection of *unwelcome* sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature are made, either explicitly or implicitly, a term or condition of instruction, employment, participation or evaluation of a person's engagement in any University activity;
2. when *unwelcome* sexual advances, and verbal, non-verbal or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or e-mails, gestures, showing of pornography, lurid stares, physical contact or molestation, stalking, sounds or display of a derogatory nature have the purpose or effect of interfering with an individual's performance or of creating an intimidating, hostile, or offensive University environment;
3. when any form of sexual assault is committed where a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person *without the latter's consent or against that person's will*; and

¹ Gender is a reference to socially determined relations between men and women, men and men, and, women and women.

5. when *deprecatory* comment(s) or conduct or any such behaviour that is based on the gender identity of the person and/or when the classroom, or other public space of the University is used to *denigrate or inferiorise a person (s)*, and such statement (s) and behaviour is based on the gender identity of the person, which has the purpose or effect of interfering with the individual's performance or of creating an intimidating, hostile, or offensive University environment.

III. STRUCTURE OF COMPLAINT AND REDRESSAL MECHANISMS

1. An *Apex Committee* will be instituted in Delhi University as defined below in V(C). The Apex Committee will act as a *complaint redressal committee as well as a disciplinary body* for all of Delhi University. The Apex committee will have a *quasi-judicial* function.

2. The **College and Department Committees** will be instituted in each college and department of Delhi University as defined in V (A) and (B).

2 (A). The Department/College committees will function as *complaint redressal committees*, and will have *recommendatory powers*.

2 (B). The committees as defined in V (A), (B) and (C) will also be involved in the *prevention and deterrence* of sexual harassment and all other forms of gender violence. By prevention and deterrence it will be meant that the Department/College/Apex committees will create awareness by publicising the definition of gender violence and gender based discrimination, the existence of the Committees and the mechanisms of redressal and complaint. It will also mean that the Department/College/Apex committees will actively be involved in the prevention and deterrence of gender violence, particularly at the time of *holi*, college festivals and admissions and in the case of third party harassment.

IV. SCOPE OF THE POLICY

The jurisdiction of the Department/College/Apex committee will extend to all the members who are employed by, are students of or affiliated to the University and will not be limited only to the geographical area of the University. In case of third party harassment, the Department/College/Apex committee will actively assist and provide all its resources to the complainant in pursuing the complaint and ensure her/his safety at least on the University premises.

V (A). THE DEPARTMENT COMMITTEE

The Department committee will consist of:

- 1) Two representatives from the teaching faculty.
- 2) Two representatives from the administrative staff. The category of administrative staff will also include the library and the laboratory staff.
- 3) Two representatives from the maintenance staff,
- 4) Two representatives from the students category, with at least one researcher and one other student.
- 5) One outsider, either a woman faculty member, who does not belong to the said Department or College and is known to have worked consistently against gender violence in the University and/or belongs to a women's organisation.

- In the categories 1- 4 mentioned above, at least one representative will be a woman.
- The co-ordinator of the committee will be a woman faculty member from category 1.
- For the appointment of the committee members it will be incumbent on the department to put up a notice, well in advance and call for the meeting of the respective bodies to elect their representatives, as soon as possible.
- The outside member will be nominated by the committee.
- The quorum for the Department Committee will consist of five members with at least one member from the complainant's category.
- The Committee will be constituted at the beginning of every academic session, and it will stay functional for a minimum period of one year or a maximum period of two years.

Investigative Committee

The Department committee will form an *investigative committee* to investigate the charges. This Committee will comprise of three members. One person from the complainant's category, one outsider and one person from any other category outlined above. At least two members of the investigative committee will be women.

V (B). COLLEGE COMMITTEE

The College Committee will consist of:

- 1) *Three representatives from the teaching staff*. Of these, two will be elected by the staff association and one nominated by the previous Committee.
- 2) *Three representatives from the non-teaching staff*. One representative will be elected by the union of the college administrative staff, which will include the library and the laboratory staff. The second representative will be elected by the maintenance staff. The third representative will be nominated by the previous Committee, alternatively from the two categories.
- 3) *Three representatives from the students* (one nominated by the previous Committee and two elected by the students). The Committee will comprise at least one student each, from the second and the third year.
- 4) *One outsider*, either a woman faculty member, who will not belong to the said Department or College and known to have worked consistently against gender violence in the University and/or belongs to a women's organisation.

- In the categories 1-3 defined above, two out of the three representatives will be women.
- The woman faculty member of the college will act as the co-ordinator of the Committee. If there is more than one women faculty member then the committee will elect one of the two women faculty members as the co-ordinator.
- For the appointment of the Committee, it will be incumbent on the college to put up a notice, well in advance and call for the meeting of the respective bodies to elect their

representatives. In the first instance, all the members of the college committee will be elected by the respective categories.

- The outsider will be appointed by the College Committee.
- The quorum for the College Committee will consist of five members with at least one member from the complainant's category.
- The Committee will be formed for a minimum period of one academic year and a maximum period of two academic years.
- If the Committee feels the need to refer the matter to the Apex Committee of the University, it may do so with the approval of the complainant.
- Each college committee will appoint a counsellor to provide free and sensitive counselling to those who have suffered gender violence and/or its threat, if the complainant so desires.

Investigative Committee

The College Committee will form an Investigative Committee, which will then *investigate the charges*. The Investigative Committee will consist of three members with at least one person from the complainant's category, one outsider and one person from any other category outlined above. Two of the three members herein will be women.

V(C). THE APEX COMMITTEE

The *Visitor of the University of Delhi will appoint a two-member search committee*. The search committee will nominate *five* members for the Apex committee. These five members will consist of:

1. *Two women members from women's organisations in Delhi.*
2. *Two faculty members (with at least one-woman faculty member) from the University.*
3. The search committee will also nominate the *chairperson of the committee, who will be an outsider to the University of Delhi either from academic institutions, judiciary and/or women's groups*, preferably those who have worked in this area.
4. *Eight members of the Apex committee will be nominated from the various*

department and college committees. The college committees and the department committees of the University of Delhi will meet once a year to nominate one person from each category (i.e., students, maintenance staff, teachers and administrative staff). Thus four members will be nominated from college committees and four will be nominated from department committees.

- The primary function of the committee will be to expeditiously provide redressal to the complainant such that the complainant's right to bodily integrity and autonomy is ensured.
- In certain cases, disciplinary action may be considered necessary if the complaint is substantiated by the investigations of the committee and a *prima facie* case is established.
- The *quorum* of the Apex committee will consist of seven members including the chairperson of the Apex committee, one member of the complainant's category and one member belonging to the category of the accused.
- The Apex committee will appoint counsellors (at least two, one in the South campus and one in the North Campus) to provide free and sensitive counselling to those who have suffered gender violence, if the complainant so desires.

Investigative Committee

The Apex committee will appoint a three member investigative committee with at least one member of the complainant's category and one woman member from the category 1-2 as defined above, to investigate the charges. Two of the three members herein will be women.

The decision taken by the Apex committee, based on the report of the investigative committee will be referred to the Executive Council (EC) of Delhi University. The EC may refer the decision back to the Apex committee but it may only do so once. It will be incumbent on the EC to state the grounds for reconsideration. The Apex committee may reconsider the matter. After due consideration, the decision of the Apex committee will be binding on the EC.

COMPLAINT PROCEDURES

1. The complaint can be given to *any* member of the Department Committee or College Committee or Apex Committee, who can then convene the Committee
2. If the Department/College Committee feels the need to refer the matter to the Apex Committee of the University, it may do so with the approval of the complainant.
3. The complaint can be given directly to the Apex committee.
4. The meeting of the Department committee or College committee or Apex committee will be called to constitute an investigative committee as soon as possible and **no later than seven days of receiving the complaint.**
5. The investigative committee will seek a full statement from both the parties. A copy of the statements will be made available to both the complainant and the person charged and the complainant will be asked to respond to the statement of the person charged.
6. In addition, the committee will take due steps to ensure the confidentiality of the complainant if the complainant so desires.
7. The complainant should preferably complain to the committee before making the matter public, however this should not be held against her/him if s/he fails to do so.
8. The complainant and the person charged will not be called to depose at the same time by the investigative committee.
9. During the proceedings the complainant will be accompanied by one person if the complainant so desires, who may not however represent the complainant.
10. The investigative committee will consider relevant any earlier complaints against the person charged.
11. The investigative committee will submit its findings no later than fifteen working days.
12. The Department/College Committees will act on the findings of the investigative committee, no later than seven working days. The Apex committee will act on the findings no later than fifteen working days.

13. The Department/College/Apex committee will take cognisance of any harassment the complainant, witnesses and supporters of the complainant may face subsequent to the complaint and will take appropriate action.
14. The complainant will have the right to lodge a fresh complaint with the Apex committee if s/he so desires.

GUIDELINES FOR PUNITIVE ACTION

The punitive action:

- Will be commensurate with the nature of offence.
- It could range from official reprimand, charges being recorded in the confidential report, suspension, dismissal, expulsion or termination.
- If the person charged holds an administrative post or any such position then s/he will step down until the completion of the enquiry.
- In an extreme case of physical assault or rape, the person charged will be immediately suspended until the completion of the enquiry.

DELHI UNIVERSITY FORUM AGAINST SEXUAL HARASSMENT

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