

## Some comments on the Draft Report prepared by the Committee to Frame Guidelines against Sexual Harassment in Delhi University

### 1. Definition of Sexual Harassment

In the draft report formulated by the Committee, sexual harassment has not been defined. While we believe that examples can serve the purpose of illustrating the problem they can not take the place of a definition. In order to formulate a policy or to legislate, it is necessary to define a phenomenon as a generalised statement. Furthermore, despite the qualification that the list is not exclusive, examples present the danger of being subjected to very technical interpretations, whereby many forms of sexual harassment and gender violence may not be recognised as being so because they may not have been laid out in the examples.

Following from this we believe that rather than laying out the instances of sexual harassment it would be more useful to present the principles and categories of sexual harassment. As an illustration, "Making false promises of jobs/lending books, notes etc. / asking her to come to the room repeatedly" should be presented as a case of what is called *quid-pro-quo* – sexual favours in return for other favours – failing which "(T)hreatening to deny permanency/ promotion/ confirmation/ transfer etc." Furthermore, what is crucial for the conceptualisation of what constitutes sexual harassment is the non-consensual nature of the situation. In other words, all situations described will not amount to sexual harassment when the 'victim' does not perceive them as harassment. For instance "loitering in the corridors" may not necessarily constitute sexual harassment unless a person perceives it as threatening or as harassment.

In August 1997 the Supreme Court Judgement in the case Visakha and others vs. the State of Rajasthan defined sexual harassment. Following from the judgement, policies drafted by universities (for example, Bombay University and JNU) have clearly defined sexual harassment. Further, in the case well known by

Delhi University – the SC Bhatia case – Justice Wad laid out a definition of sexual harassment taking into consideration the university context. The Wad committee has split the definition of sexual harassment into 1) *quid pro quo* and 2) hostile environment. In our policy we built on these definitions.

Moreover, the document does not clearly state whether it considers that both men and women can be victims of sexual harassment. In our policy we used the term gender violence where gender refers to socially determined relations between men and women, men and men and women and women. This was seen as particularly important given the same sex harassment that takes place in the university, especially in the hostels. We defined gender violence as an inclusive category, which refers to sexual harassment, rape, and gender based discrimination. In this gender based discrimination is defined as all forms of discriminatory conduct based on the gender identity of a person. We feel that in the university situation, there is a specific need to consider gender based discrimination. For example, sustained diminishing of women's capabilities through remarks and other means of discrimination is deeply violative of their rights and sense of personhood.

We believe that the term 'code of conduct' in the Draft Report (pg. 12) leaves room for misinterpretation since it may blur the distinction between consent and non consent and may also lead to policing of women's and men's behavior.

## **2. Constitution of Committees**

In the Draft Report the process by which the centre committee will be constituted has not been specified. In order to maintain the relative autonomy of the committee from the power structures of the university we believe that care should be taken in laying out the process by which the centre committee will be constituted. This is particularly important given the past history of cases of sexual harassment in Delhi University.

With regard to the constitution of the college committees, we feel that this should not be left to the staff council. Given the power structures of the University in which hierarchies exist between teaching, non teaching staff and students, and between men and women, we believe that a procedure in which the powers of constituting the committee rest with the staff council, is not adequately democratic. Not only are the students and karmacharis absent from the staff council but the power of one category of the university community is sought to be used over the other categories. We believe that all the three categories have their union bodies who could be involved in the election and/or nomination process. The JNU policy for instance follows a principle of election while our policy suggests that there can be a balance between the principle of nomination and election.

Further, the constitution of the committees of all the three kinds of committees the document outlines – centre (apex), department and college – need to be defined separately and in greater detail.

### 3. Procedures

The Draft Report states under the heading 'functions of each committee' that each committee will 'work out its own procedures for the prevention of the acts of harassment, for its resolution, redressal settlement or prosecution for the acts of sexual harassment'. This lack of uniformity will lead to further ambiguity especially in the absence of corresponding guidelines of punishment commensurate with the nature of offence.

We would also like to underline the importance of stating the fact that complaints should only be filed with the consent of the victim. We feel that the procedural aspects of investigative committees and the implementation processes of the findings need to be worked out in greater detail. For instance, the provision that holds that an investigative committee will informally investigate the complaint before setting up an enquiry committee leaves room for ambiguity. We would

also like to urge you to consider that the findings of an enquiry report must be taken to the Executive Council by the Vice Chancellor rather than leave it to the discretion of the head of the institution.

#### **4. Prevention and Deterrence**

The functions of the various committees vis-à-vis prevention and deterrence need to be spelt out more clearly. Moreover relationships between the committees and the proctorial office and the police are ambiguous.

In the section on prevention and deterrence, the draft report suggests that no rickshawallah and dhabas wallah be allowed within 100 yards of colleges, hostels and institutional premises. This recommendation not only assumes that these categories of people are primarily responsible for sexual harassment, but it will serve to increase possibilities of sexual harassment.

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