

New Delhi: What happens when one university's due process finds a faculty member guilty of sexual harassment, but another university gives him a clean chit for the same complaint? Ashoka University's students and administration are on opposing sides of the 'due process versus public trial' debate after the university found the accused, assistant professor Mitul Baruah, guilty of workplace misconduct, but not sexual harassment – after he was banned from another university's campus for “manipulative consent” and “the abuse of patriarchal power in the professional sphere”.

A group of Ashoka students and alumni (who have chosen to remain anonymous “to ensure that the focus is on the particular case” as they told *The Wire*), with consent from the survivor and complainant in this case, have created a [website](#) and released an open letter detailing the ways in which they think Ashoka violated its own due process policies. In addition to demanding punitive action against Baruah, they have also demanded reparations for the survivor (whose proceedings lasted for 280 days), counselling services for future complainants and speedier proceedings.

The letter

According to the letter, it all started in April 2017, when an unnamed university in Delhi banned Baruah from its campus after finding him guilty of “manipulative consent” and an “abuse of patriarchal power in the professional sphere centred around the workplace” in his interactions with the complainant to the university's committee against sexual harassment (CASH).

Notably, in November that year, Baruah's name also featured on the anonymously sourced list of South Asian academics accused of sexual harassment and/or assault – the letter, however, clearly states that his name was added by another survivor and not this complainant.

After this unnamed university's final decision was released, Ashoka's own CASH took up the case as Baruah is an Ashoka faculty member. Although it remains unclear if Ashoka was legally obligated to act on another university's findings or not, according to the letter, Ashoka reached out to the survivor and “accepted her complaint.”

According to the authors of the letter, Ashoka violated several clauses of its own policies, resulting in a “gross miscarriage of justice.”

The ad-hoc committee

Ashoka’s policies require a five-member screening committee to review complaints and determine if they deserve a full inquiry by its CASH. In this case, however, the university constituted a four-member ad-hoc committee instead, which comprised two members of its actual CASH and one Ashoka non-CASH member. The letter mentions no reason for why the ad-hoc committee was composed in this way and Ashoka’s vice-chancellor, Pratap Bhanu Mehta, remained unavailable for comment. Nonetheless, this was seen as a deviation from due process.

After the ad-hoc group contacted the survivor in October 2017, she deposed in front of them on November 6. According to the letter, the committee did not ask the survivor to “furnish any evidence or a list of witnesses” in this meeting. It adds that the only request for details came in the form of an email from a CASH member who was not part of the ad-hoc group, and that too from this member’s personal email id, not official Ashoka email address. The survivor, according to the letter, submitted evidence to this non-ad hoc member on November 16, 2017.

The ad-hoc screening committee presumably found enough cause to recommend a full inquiry by the Ashoka CASH because the survivor received a copy of the official CASH committee’s report on December 18, 2017 (but not of the ad-hoc committee’s findings).

However, the report’s version allegedly did not match the survivor’s. According to the letter, the report “underlined that the survivor submitted evidence after the ad-hoc committee completed its inquiry.” The survivor sees this as inaccurate, as she says she was not asked for evidence in her deposition and provided the information, in a personal capacity, to the non ad-hoc member on November 16. In her official response to the CASH report, she also stated “that by not providing the survivor with a copy of the report before it was finalised and not allowing her to make a representation (comments and disagreements) against the findings, the CASH procedure was in violation of Section 20 (e) and 20 (f) of the university’s CASH policy.”

Other discrepancies

These are not the only discrepancies that the letter alleges. The survivor has also stated that the university ignored her request for a transcript of her deposition. The

authors of the letter believe Ashoka withheld the transcript because it interpreted the CASH's confidentiality clause to protect the defendant over the complainant's interests.

According to CASH's official policy, both parties' confidentiality is to be maintained during the screening process, and any committee member who violates this is immediately disqualified from the process. Another section of the policy states, "Once a complaint has been filed with CASH, both the Complainant and the Defendant are bound by the confidentiality clause, and cannot talk about the case or share materials with people outside the Committee other than his/her representatives."

The document does not explicitly say anything about the sharing of deposition transcripts with the involved parties themselves.

Contradictory findings

Apart from the discrepancies in procedure, the CASH's actual findings not only contradict the other university's decision but also its own conclusion.

On the one hand, the letter states that the CASH "ostensibly" found that Baruah's conduct "did *not* fall within the ambit of sexual harassment at the workplace as defined under Ashoka's CASH policy and the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act 2013 and rules under it." [emphasis added]

However, at the same time, it adds that the "allegations made in the complaint are of a fairly serious nature and could possibly involve a criminal offence" and recommends that the university's vice chancellor take "appropriate measures to inquire as to whether the defendant is guilty of misconduct".

Guilty – but not of sexual harassment

The university acted on this report by convening a three-member disciplinary committee comprising individuals from Ashoka's board. They, in turn, found Baruah "guilty of misconduct according to all ethical norms of professional conduct at the workplace". And added that the university should seek "legal advice" in the matter.

According to Ashoka's own policy, the complainant and defendant are both entitled to the documents and reports that emerge from their case; however, the survivor states that she was only allowed to see the disciplinary committee's report two-and-

a-half months after it was signed – after she sent multiple emails requesting a copy of the report.

When she complied with the university’s request to collect a physical copy of the report from Ashoka, the survivor ran into Baruah himself. The letter’s authors see this as a violation of Section 13(e) of Ashoka’s sexual harassment and assault policy which states that a complainant and defendant should not come in contact with each other at any point of the “receiving and screening procedure”.

However, the clause says nothing about what to do once the screening has been concluded and, in this case, the defendant has been found guilty – but not of sexual misconduct.

The details of the penalty

The letter also adds that the administration dismissed the survivor’s request to know what action was taken against Baruah, and told her to be happy that “at least some action has been taken” and that they are not obligated to tell her what “quantum of action has been taken” since Baruah was found not guilty of sexual harassment.

According to Ashoka’s own policies, if a faculty member is found guilty then “the penalty awarded shall be recorded in his/her Confidential Record” but does not mention whether a complainant has the right to be informed about the penalty.

Late on Friday night, July 6, Ashoka’s vice chancellor Pratap Bhanu Mehta sent an email to students, alumni, the university’s founders and faculty, addressing the case and the letter’s allegations. Mehta assured the ‘Ashoka community’ that a final decision was taken and communicated to those involved in the case. As of July 7, Baruah is still listed as an assistant professor on the university’s website and has an active Ashoka email address, although he did not respond to *The Wire*’s request for a comment.



Important Ashoka Update

Pratap Bhanu Mehta <pratapb.mehta@ashoka.edu.in>

Fri, Jul 6, 2018 at 11:46 PM

To: Ashoka Staff <staff@ashoka.edu.in>, Ashoka Alumni <alumni@ashoka.edu.in>, Ashoka Students <students@ashoka.edu.in>, Faculty <faculty@ashoka.edu.in>, AF <founders@ashoka.edu.in>, Vineet Gupta <vineet@ashoka.edu.in>, Ali Imran <ali.imran@ashoka.edu.in>

Dear Members of the Ashoka Community,

During the last few hours you might have come across press reports, social media mentions, and a website concerning a particular sexual harassment case at Ashoka. I want assure the Ashoka community that:

a) the case has been decided and the final outcome was communicated to the parties concerned a few days ago.

b) Ashoka has adjudicated this case with the highest standards of integrity, due process and fairness. We are deeply grateful to all members of the different committees involved in examining various aspects of this case as thoroughly as possible, and for showing the highest regard for justice.

I would therefore request you to treat all the material appearing in public with due caution. A lot of this material seems to be based on unsubstantiated speculation, or very selectively leaked materials. I want to assure you that Ashoka is deeply committed to zero tolerance on sexual harassment. But a public trial that prejudices the matter without regard to the full evidence or due process does not serve the cause of justice. And we are concerned that the appearance of selective leaking of documents may only deter future complainants from coming forward. I know the Ashoka community is deeply committed to the goal of zero tolerance. But it is important that the process not be vitiated by baseless public speculation that does not seem to have any regard for due process or justice. I know the Ashoka community will exercise discerning judgment in this regard.

warmly,

Pratap

An email from Ashoka University vice-chancellor Pratap Bhanu Mehta. Credit: You Too Ashoka

Mehta did not address any of the specific points raised in the letter, but wrote, “Ashoka has adjudicated this case with the highest standards of integrity, due process and fairness.” He further advised the email’s recipients to treat “all the material appearing in public with due caution” saying that a lot of it is based on “unsubstantiated speculation, or very selectively leaked materials.”

Due process versus public trial

Universities’ due process for sexual harassment allegations has been under increased scrutiny since **Raya Sarkar released her list last November**. And this case raises even more questions about the uniformity of due process and loopholes in the procedure. Several policies and clauses have been interpreted differently by the authors of the letter, the survivor, Ashoka’s administration and CASH of the other university that decided in the survivor’s favour. During the course of these proceedings, the survivor even filed an FIR because she was receiving threatening phone calls, with

Baruah listed as the primary suspect – another aspect of a survivor’s experience which is not entirely addressed in these proceedings.

Contradictory findings, in addition to multiple interpretations and the long-drawn nature of the process, have clearly resulted in a loss of faith in due procedure for this survivor and her supporters in the Ashoka community. Mehta’s email, meant to placate, has not had the desired impact with the authors of the letter telling *The Wire*, “The vice chancellor’s mail does not address the points we have raised except for reiterating some of the points that the administration had already mentioned in their previous emails.”

Ashoka University - Official Statement

The sexual harassment case regarding Dr. Mitul Baruah was originally referred to Ashoka University by Jawaharlal Nehru University (JNU). Over the course of the last year, the University conducted extensive inquiries into the matter. There were some circumstances specific to this case that necessitated protracted inquiries. Throughout this process, Ashoka University was fully committed to seeking truth and justice.

The case was first examined by Ashoka's Committee Against Sexual Harassment (CASH), which found Prof Baruah not guilty of sexual harassment. This finding was consistent with the finding of the JNU Committee as well, which had also found him not guilty of sexual harassment. However, since the CASH Committee raised some possible concerns about Prof. Baruah's conduct not relating to sexual harassment, the Ashoka Board of Management appointed another Committee to look into matters pertaining to this case to ensure that no facet was left unexamined. This Committee also concurred with the original finding that there was no case for sexual harassment. Its findings were referred to the Board of Management, which, as per Ashoka Faculty Disciplinary guidelines, referred the findings to a Judicial Committee. All throughout, the proceedings were conducted with an absolute commitment to fairness. The salient points of the process are summarized below:

1. All Committees that have looked into the matter found Prof. Baruah NOT GUILTY of sexual harassment. A total of four Committees have looked into the matter, including three at Ashoka and one at JNU. NONE of the Committees found him guilty of sexual harassment. This is the verdict of all the committees, and we should respect that verdict.
2. A wide range of faculty members and other representatives were involved in these committees. They conducted the proceedings with integrity and commitment to truth, guided by no consideration other than the evidence at hand, and all of them agreed on the core findings.
3. Since one of the committees had raised the possibility of there being infractions not related to sexual harassment, the subsequent committees looked into that matter as well. These infractions, not relating to sexual harassment, were dealt with as per Ashoka University Norms.

Ashoka University is fully committed to ensuring a campus that is free of sexual harassment. The commitment and fairness shown by so many of our colleagues during this process illustrates that Ashoka's processes meet the highest benchmarks of integrity. Respecting the confidentiality of the process requires that we not conduct public trials based on speculation or second-guessing evidence; further, any breach of confidentiality may only disempower future victims from coming forward. The committees which have studied the matter have looked at the totality of the evidence, in its proper context, before delivering their findings, and a commitment to fairness requires that we respect that outcome.

DUE PROCESS AT ASHOKA UNIVERSITY

#YOUTOASHOKA #330DAYSOFINJUSTICE
#330DAYSOFTRAUMA

WHY HASN'T THE ADMINISTRATION CONVEYED THE ACTION TAKEN AGAINST MITUL BARUAH TO THE SURVIVOR?

1

Mitul Baruah has been found "guilty of misconduct according to all ethical norms of professional misconduct and conduct at workplace" based on the survivor's complaint by Ashoka's Disciplinary Committee. As per principles of natural justice the action taken on Mitul Baruah has to be conveyed to the survivor.

WHAT ABOUT "ABUSE OF PATRIARCHAL POWER" AND "MANIPULATIVE CONSENT"?

2

Without providing any clear understandable explanations, the CASH and Disciplinary Committee Reports have evaded the aspects of abuse of patriarchal power in the workplace and manipulative consent mentioned in the CASH report of the university where the complaint was first filed.

OBFUSSION THROUGH THE USAGE OF THE TERM 'MISCONDUCT'

3

CASH report of Ashoka University talks of treating sexual harassment as misconduct. Disciplinary Committee over looks this & uses the term 'professional misconduct' without any explanation. Through a play of words, aspects of sexual harassment, manipulative consent, abuse of patriarchal power are overlooked, thus protecting Baruah from any/all consequences of his actions.

WHERE IS THE AD-HOC COMMITTEE REPORT?

4

The survivor was not provided with the ad-hoc committee report based on which both the CASH and Disciplinary Committee made its findings. The transcription of her deposition was also not provided. In addition to this, she was not given an opportunity to make comments on the CASH report before it was finalised as per Ashoka CASH Policy.

SCREENING COMMITTEE OR AD-HOC COMMITTEE?

5

Why didn't the screening committee comprising of CASH members take a look at the case as per CASH policy? Why was an ad-hoc committee formed comprising of one member not part of CASH?

WHY WAS THE SURVIVOR MISLED AND PROVIDED WITH FALSE ASSURANCES AND HOPE?

6

The survivor has written 5000 words of emails till now to the administration. She was told by the administration that the Board of Management will take final action based on a meeting on March 28th 2018 after her repeated mails. Instead, she was called to campus on April 18th 2018 to collect the disciplinary committee report which was in fact signed on January 23rd 2018, 2.5 months ago.

EXCERPTS OF CASH REPORTS

#YOUTOASHOKA #MITULBARUAH #WHATACTIONHAVEYOU TAKEN

CASH REPORT OF A UNIVERSITY IN DELHI

"...the interactions were largely structured around the premises of the workplace especially the defendant's office and the commutes to and from the workplace"

"...it involved manipulative consent on the part of the defendant with the abuse of patriarchal power in the professional sphere centred around the workplace."

"the defendant engaged in inappropriate and unprofessional behaviour given his position in the hierarchy vis a vis the complainant as a high ranking employee of the university in which both the complainant and the defendant had been working..."

"...CASH Enquiry Committee recommends that -
The complaint should be forwarded to Internal Complaints Committee at Ashoka University for a detailed enquiry."

"The defendant should be declared 'out of bounds'..."

ASHOKA UNIVERSITY CASH REPORT

"CASH is in agreement with the views expressed by the ad hoc committee in so far as the jurisdiction of the ad hoc committee is restricted to complaints regarding sexual harassment at the workplace as prescribed under the Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013 and the rules thereunder."

"Separately, Section 19 of the Act inter alia places an obligation upon the employer to treat sexual harassment as misconduct within the service rules of the University. The key difference here being that misconduct as contemplated under Section 19 of the Act is not restricted to sexual harassment at the workplace but includes within its ambit sexual harassment generally."

"The allegations made in the complaint are of a fairly serious nature and could possibly involve a criminal offence. If found true, it would amount to serious misconduct. In light of the prima facie evidence that there has been gross misconduct on the part of the defendant, but without expressing a final opinion on the guilt of the defendant...in light of the obligation placed upon the University by Section 19 of the Act, CASH deems it necessary to recommend that the Vice Chancellor take appropriate measures to inquire as to whether the defendant is guilty of misconduct as per the service rules of the University and as to what action should be taken."

DISCIPLINARY COMMITTEE REPORT

"...the Committee finds Dr. Baruah's conduct unbecoming of a faculty member of Ashoka University and in violation of the norms of adherence to the 'highest academic standards' and 'ideals of Ashoka University..."

"...in her testimony before this Committee repeatedly stressed that she is not only seeking justice for herself but also seeking to ensure conditions conducive to the safety concerns of women students at the university"

"The Committee unanimously finds that

...the Committee therefore agrees with the findings of the ad hoc committee set up by the CASH committee that the actions of the defendant 'would not fall under the ambit of sexual harassment at the workplace.'

However, Dr. Baruah is guilty of misconduct according to all ethical norms of professional conduct and conduct at the workplace as his relationship with ... continued while both were employees of unequal status of Ashoka University..."