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Redressal of Sexual Harassment at the Workplace: A Study of Legal Educational Institutions in Ahmedabad, Gujarat

REPARAÇÃO DO ASSÉDIO SEXUAL NO LOCAL DE TRABALHO: UM ESTUDO DE INSTITUIÇÕES
DE ENSINO JURÍDICO EM AHMEDABAD, GUJARAT

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Abstract

The new-age India has been characterized by the participation of a higher number of women in the labour force. Unfortunately, the issue of sexual harassment in the workplace has also risen. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 is a significant piece of legislation aimed at preventing gender-based discrimination in the workplace. Following the enactment of this law, the University Grants Commission (UGC) issued the UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations of 2015.

This paper aims to study the existing legal framework for addressing the issue of sexual harassment in India. It analyses the state of implementation of UGC regulations at legal education institutions in Ahmedabad, Gujarat. The study involves a combination of primary and secondary data sourced via the UGC's online portal and a survey conducted among students at one law school in Ahmedabad. The results show poor compliance with the regulations, and, finally, this paper advocates for a more inclusive and independent grievance redressal mechanism.

Keywords

Sexual harassment; workplace; UGC regulations; legal education institutions.

Resumo

A Índia da nova era tem sido caracterizada pela participação de cada vez mais mulheres na força de trabalho. Infelizmente, o problema do assédio sexual no local de trabalho também tem aumentado. A Lei do Assédio Sexual de Mulheres no Local de Trabalho (Prevenção, Proibição e Reparação) de 2013 é uma peça legislativa significativa que visa prevenir a discriminação baseada no gênero no local de trabalho. Após a promulgação dessa lei, a Comissão de Bolsas Universitárias (UGC) emitiu, em 2015, o Regulamento UGC (Prevenção, Proibição e Reparação do Assédio Sexual de Mulheres Funcionárias e Estudantes em Instituições de Ensino Superior).

Este artigo tem como objetivo estudar o quadro jurídico existente para abordar a questão do assédio sexual na Índia. Analisa o estado de implementação dos regulamentos UGC em instituições de ensino jurídico em Ahmedabad, Gujarat. O estudo envolve uma combinação de dados primários e secundários obtidos por meio do portal on-line da UGC e uma pesquisa realizada entre estudantes de uma faculdade de Direito em Ahmedabad. Os resultados mostram um fraco cumprimento dos regulamentos, e este artigo defende um mecanismo de reparação de reclamações mais inclusivo e independente.

Palavras-chave

Assédio sexual; local de trabalho; regulamentações UGC; instituições de ensino jurídico.

INTRODUCTION

Sexual harassment of women in the workplace is a worldwide issue that compromises the quality of working life, jeopardizes the welfare of women, undermines gender equality, and imposes unnecessary costs on firms and organizations. By definition, sexual harassment is a type of sex-based discrimination. In recent years, women have been joining the workforce in increasing numbers. Sex-based discrimination, however, discourages a number of them from continuing employment, potentially because many women are reluctant to label their workplace experiences as ‘sexual harassment’ out of fear of repercussions, both professional and social (CHADHA, 2018, p. 1).

Thus, an ever-increasing incidence of sexual harassment cases has forced many women to leave the workplace (BHARAMGOUDAR, 2015, p. 1). This has had an adverse impact on their mental health, and yearly, thousands of still-working women relate instances of sexual harassment in their workplace. Harassment comes in many forms, for example, ‘*quid pro quo* harassment.’ Such kind of harassment happens when the harassing party is a manager or supervisor. In this situation, the employee is forced to choose between satisfying sexual demands or losing their job (MEDIRATTA, 2009, 81). The second form of harassment is known as a ‘hostile work environment,’ in which the female employee is prevented from carrying out her work duties in a satisfactory way. It is posited that it is because sexual harassment deprives victims of their professional confidence, among other deleterious effects. Therefore, “[a]ddressing the issue of sexual harassment is directly linked to the core corners of improved working conditions and respect for the dignity of workers” (MEDIRATTA, 2009, p. 82). An International Labor Organization (ILO) report titled as “Action against Sexual Harassment at Work in Asia and the Pacific” states that:

[...] the victim often avoids taking action against the harasser, not only for fear of reprisal but also so as not to have to remember and relive the incident or incidents again and again. The negative effects of harassment are, however, by no means confined to the individual. Research has shown very clearly that workplaces in which harassment is allowed to occur tend to have sharply falling productivity. (HASPELS *et al.*, 2001, p. ix)

Thus, sexual harassment is a loss to human dignity as well as to the economy. The ILO, in its reports, cited reasons why employers are eager to take action against sexual harassment. It is possible to evidence, among them: legal compliance, litigation costs, and business ethics, as well as the desire to avoid maligning the image of the institution and the aspiration to create a conducive environment for productivity and high performance. Another compelling reason cited is that female clients are ever-more present across industries, and, in order to make the organization gender-sensitive for business, employers are willing to act against those accused of sexual harassment (ILO, 2013).

In order to address concerns of sexual harassment, India introduced the POSH Act in 2013. Aiming specifically address complaints of sexual harassment in higher education

institutions, the University Grants Commission (UGC) introduced the “UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations” in 2015. The guidelines were designed to work within the framework of the POSH Act. Together, both POSH Act and UGC guidelines provided for a redressal mechanism to address complaints of sexual harassment. The present paper gives a broad overview of the legal mechanism available for redressal of concerns related to such harassment.

I. RECOGNITION OF SEXUAL HARASSMENT AS A DISTINCT CRIME

The term ‘sexual harassment’ harkens back to the 1970s. Feminist scholar Catherine Mackinnon is sometimes credited with popularizing the concept after the publication of her book *Sexual Harassment of Working Women* (1979). Before that, there was not much universal consensus on what ‘sexual harassment’ meant. The term first arose in the USA and, thereafter, began to be globally used. Many countries have developed frameworks for addressing sexual harassment in the workplace, starting in late 1980s and early 1990s.

As India lacks effective laws to prevent sexual harassment, the onus fell on the Supreme Court to take the necessary action. The Supreme Court, drawing from the UN’s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) treaty, provided a definition for the term ‘sexual harassment’ in *Vishakha v. State of Rajasthan*. The Indian Supreme Court’s definition closely aligns with that given under CEDAW:

Sexual harassment includes such unwelcome sexually-determined behaviour (whether directly or by implication) as:

- a. Physical contact and advances;
- b. A demand or request for sexual favours;
- c. Sexually-coloured remarks;
- d. Showing pornography;
- e. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Whenever any working woman experiences any, some, or all of the examples given above, the incident constitutes sexual harassment. It is defined that the woman may be anyone who is drawing a salary or honorarium in public or private undertaking. The court also affirms that such conduct can be humiliating and lead to physical and mental-health related problems. The apex court further stated that, until specific laws are enacted, the guidelines issued by the Court will be applicable to all public, private, organized or unorganized workplaces.

2. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSES) ACT, 2013 (POSH ACT) – MANDATE

In 2013, the Parliament enacted the POSH Act to ensure the safety of women in the workplace, particularly safeguarding them against sexual harassment. This legislation was necessary as sexual harassment was found to violate Articles 14 and 15 of the Constitution of India, as well as the fundamental right to live with dignity. The right to practice any profession or engage in business stipulates a safe environment, free from sexual harassment. The Government of India, having ratified the CEDAW convention on June 25th, 1993, was obligated to fulfil its commitments under the convention, leading the Parliament to pass the legislation.

(i) SEXUAL HARASSMENT IN THE WORKPLACE: DEFINITION AND OTHER RELATED CONCEPTS

The definition of sexual harassment in the workplace in the 2013 Act is the same as that established in the *Vishakha* judgment. The Act, under the definition of ‘aggrieved woman,’ includes women of all ages, whether employed or not, and also encompasses women working in dwelling houses (S. 2(a)). The term ‘employee’ includes ‘regular, temporary, ad-hoc, or daily wage workers, whether employed through a contractor or a main employer. It includes those employed for remuneration or not (S. 2(f)). The term “employer” has been defined to include all “organizations, undertakings, establishments, enterprises, institutions, offices, branches, or units of the appropriate Government or local authority.” It also includes those who are employed in dwelling houses (S. 2(g)). The ‘workplace’ has been defined in a comprehensive manner. It includes all government and private undertakings, hospitals or nursing homes, sports institutes, and dwelling places or houses (S. 2(o)). The definition of ‘sexual harassment’ includes both direct or indirect behaviour of physical contact and advances. Its scope includes spoken or non-spoken actions of a sexual nature (S. 2(n)).

Sexual harassment carries a wider connotation and includes, in its ambit, “sexual advances or other verbal or physical harassment of a sexual nature.” As per section, 2(n) of the Act, sexual harassment “includes unwelcome acts, physical contact, advances, demands or requests for sexual favours, making sexually coloured remarks, showing pornography.”

(ii) INTERNAL COMPLAINTS COMMITTEE

The Act demands all employers to establish an Internal Complaints Committee (ICC). The Act or its rules do not provide for a particular time period within which all employers must constitute their ICCs. However, workplaces with less than ten employees are exempt from the obligation to establish an ICC. All complaints within such workplace will be conducted to the Local Complaint Committee (LCC), set up as per the Act by officers in every district. Hence, the obligation to constitute an ICC is solely applied to employers with a workforce of ten or more employees in the workplace (PRASAD and MUKHERJEE, 2015, p. 70-71). In these cases, the ICC must be a permanent body. The committee must consist

of four members and the Act stipulates that half (1/2) of them must be women. Moreover, the chairperson shall be a senior female employee. In the event that such employee is not available, a presiding officer shall be nominated from any other workplace under the same employer. According to the law, the ICC has twin responsibilities: to conduct inquiries into issues of sexual harassment and also to create and take precautionary measures that help foster a working environment that is conducive for greater participation of female employees (JAISING, 2014, p. 140).

(iii) LOCAL COMPLAINTS COMMITTEE

The POSH Act lays provisions to raise a Local Complaints Committee (LCC) at the district level to address charges of sexual harassment. The LCC is established in line with the Vishaka Judgement to protect women in workplaces with less than ten employees (JAISING, 2014, p. 141). The Act stipulates that members of the LCC can hold office for a maximum of three years. It also specifies that women belonging to disadvantaged groups, including those from Other Backward Classes (OBCs), Scheduled Castes (SCs), and Scheduled Tribes (STs), ought to be included in the LCC.

(iv) DISQUALIFICATION OF ICC AND LCC MEMBERS

According to the POSH Act, members of an ICC or an LCC will be disqualified if:

1. the member breaches confidentiality in respect to publication or inquiry proceedings (S. 16);
2. the member has been convicted or under prosecution for any offense;
3. the member has been found guilty in a disciplinary action or any such pending action.

If any of the examples above is performed, such member must be removed from the ICC or LCC.

(v) LIMITATIONS ON FILING COMPLAINTS

Section 9 of the Act provides that a victim can file a complaint in writing within three months of an alleged incident. If it is not possible to file the complaint within this period, ICC/LCC may allow for a three-month extension, provided that there is a recording of the reason for the delay.

(vi) PROCEDURE FOR FILING A COMPLAINT

A complaint may be filed in writing by the aggrieved woman. Should she not be able to file the complaint in writing, ICC or LCC must assist her in doing so. If the woman is unable to file the complaint due to a “physical or mental disability, death or otherwise,” a relative, friend, colleague, or anyone from the National Women’s Commission can make the complaint (S. 9(2), read with rule 6 of the 2013 Act.).

(vii) INTERIM ORDERS

While an inquiry is pending, an interim order may be issued. It may be issued either at the instance of request by the aggrieved party or at the discretion of the ICC/LCC. The interim order may include transferring the accused to another workplace, granting leave for a period of three months, or another appropriate measure. If the accused respondent belongs to an educational institution, then the person may be restricted from supervising the aggrieved woman (S. 12 read with rule 8 of the 2013 Act.).

(viii) MONETARY COMPENSATIONS

During the inquiry, if the committee concludes that sexual harassment has taken place, the Act allows the committee to recommend the payment of monetary damages, in addition to disciplinary action in favor of the aggrieved woman. Should the respondent fail to pay monetary damages, the local committee may order the collection of these damages as land revenue by the relevant district officers (PRASAD and MUKHERJEE, 2015, p. 150).

(ix) CONCILIATION

When an aggrieved woman lodges a complaint under the Act and requests the ICC/LCC to settle the matter by way of conciliation, ICC/LCC may initiate appropriate processes so that the complainant and respondent can resolve the matter in such way. The conciliation must be recorded, and copies must be made available to both the complainant and respondent. There is also a concern over whether conciliation can lead to coercion of the complainant. On this issue, the Government has stated that conciliation would only begin at the request of the complainant (S. 10).

(x) PROSECUTION FOR FALSE AND MALICIOUS COMPLAINTS

The Act imposes penalties on the complainant if it is determined that the complaint is false and leads to prosecution. If ICC/LCC finds, during inquiry, evidence of a false complaint or false evidence given by a witness, then ICC/LCC may recommend to the employer that appropriate actions must be taken as per service or employment rules (S. 14).

(xi) APPEAL

Considering the existence of provisions for appeal in the service or employment rules, they should be “in accordance with the provisions of the applicable service rules” and excluded from the 2013 Act. Furthermore, the appeal must be filed within a time frame of 90 days (PRASAD and MUKHERJEE, 2015, p. 151).

(xii) FUNCTIONS OF THE EMPLOYER

The employer is obliged to create a conducive working environment for female employees. Their most important duty is to ensure that a complaint mechanism is established, which

facilitates the investigation and resolution of complaints. In case of failure to establish such mechanism, a fine of INR (rupees) 50,000 shall be imposed. For repeated offenses, the conciliation proceeding will not be engaged. In such cases, the offense is rendered non-cognizable, requiring a formal complaint to initiate legal action.

(xiii) DUTIES OF THE STATE AND ITS AGENCY

It is the duty of the government of India to notify the public of the rules under Section 29 of the 2013 Act. It is unfortunate that, despite the statute having been passed by Parliament and received the assent of the President as far back as April 2013, the Act's rules were only announced eight months later. Moreover, the Central Government was unable to make provisions to address difficulties in the Act for a period of at least two years post-enactment.

3. UGC (PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL HARASSMENT OF WOMEN EMPLOYEES AND STUDENTS IN HIGHER EDUCATIONAL INSTITUTIONS) REGULATION OF 2015

The University Grants Commission (UGC) issued a regulation titled as “UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulation, 2015.” This regulation was formulated as part of the POSH Act in order to specifically address cases of sexual harassment in higher education institutions (HEIs). It protects both employees and students. The regulation covers important definitions such as *aggrieved woman*, *employee*, *trainee*, *apprentice*, *intern*, *volunteer*, *teacher assistant*, *research assistant*, and *executive authority*, which refers to the heads of educational institutions. It also introduces the concept of the ICC and uses the same definition of sexual harassment as that published in the POSH Act of 2013. Within these regulations, ‘campus’ includes lecture halls, student centres, labs, and libraries and ‘student’ means anyone duly admitted to or pursuing a programme of study. This UGC regulation also covers third party harassment, in which sexual harassment occurs through an act by an outsider, someone who is not an employee or student of the HEI.

Through the guidelines, UGC has laid down the responsibilities of HEIs in addressing concerns of sexual harassment. HEIs must publicize the regulations against sexual harassment, organize training programmes or workshops, and provide all the necessary details published on the UGC's SAKSHAM portal. HEIs must also commit to a ‘zero tolerance policy towards sexual harassment,’ display such information on notice boards, inform employees and students about the resources available at their disposal, prepare annual status reports, and monitor the timely submission of these reports by the ICC.

In addition, HEIs must develop a supportive mechanism that includes counselling services, orientation programs, and more. Paragraph 4 of the regulation talks about the grievance redressal mechanism, which mandates that every executive authority of a HEI must have an ICC in place. The presiding officer of the ICC shall be a woman not below the level

of professor or associate professor. Three students shall be members in cases in which the matter involves one or more students. At least one-half of the members of the ICC shall be women, and the head of the HEI must ensure that the ICC enjoys autonomy.

Paragraph 5 of the regulation mentions the responsibilities of the ICC. Those responsibilities include providing support to an employee or a student to file a First Information Report (FIR), providing safety to the complainant and ensuring that the victims or witness are not persecuted. Paragraph 6 states the ICC will comply with the procedures provided under the POSH Act and the UGC regulations for filing complaints and conducting inquiry. Paragraph 9 of this regulation deals with interim redressal in which the complainant or the respondent can be transferred to another department and restricts the respondent from evaluating the work or performance of the complainant. Paragraph 10 of the regulation mentions punishment and compensation, which provides for a respondent who is a student to be deprived of access to the library and for their entry onto campus to be suspended for a given period of time.

Thus, UGC guidelines along with the POSH Act provide for a comprehensive framework for addressing cases of sexual harassment. This is in addition to any other mechanisms that might be available at any given time. Section 28 of the POSH Act states that “[t]he provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.” Therefore, any workplace without other applicable laws must necessarily comply with the POSH Act. On the other hand, workplaces subject to other applicable laws for dealing with this issue must comply with the provisions of the Act in addition to other laws.

4. IMPLEMENTATION OF UGC REGULATIONS, 2015: A QUANTITATIVE ANALYSIS OF THE ANNUAL REPORTS ON SEXUAL HARASSMENT IN HIGHER EDUCATIONAL INSTITUTIONS

The present section of this paper seeks to undertake a qualitative analysis of the sexual harassment data provided by higher educational institutions to the University Grants Commission (UGC). In 2015, the UGC issued the “UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations.”¹ Along with the POSH Act of 2013, the UGC regulations of 2015 take note of the peculiar nature of sexual harassment at universities and colleges and provide for various mechanisms to address it.

As such, all higher educational institutions need to prepare a yearly report. This report must provide details regarding the number of complaints received and disposed every year. These reports, available from 2015-2020, were accessed under the Right to Information Act

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1 Available at: https://www.ugc.ac.in/pdfnews/7203627_UCG_regulations-harassment.pdf.

of 2005.² The regulations also provide for all higher educational institutions to constitute an ICC for redressal of complaints and to conduct sensitization and awareness workshops.³

On the basis of these guidelines, the present study undertakes an analysis of reports specifically on the following parameters:

- number of universities/colleges that have filed annual reports;
- total number of sexual harassment complaints received by universities/colleges;
- whether an Internal Complaints Committee (ICC) has been constituted or not; and
- number of awareness workshops conducted during the year.

For the sake of clarity, the data has been organized in a manner to address each concern across different levels. It begins with an analysis of the number of universities and colleges that have filed annual reports with the UGC and further analyzes the total number of cases reported by universities and colleges across the country and within the state of Gujarat (as well as within law institutions in Ahmedabad).⁴ Similarly, the presence of ICCs is also investigated across Gujarat-wide universities and colleges and at Ahmedabad-specific law institutions. This is followed by an analysis of the awareness programmes conducted at various universities and colleges.

In addition to the reports made available by the UGC, a survey of students at a specific law school was also carried out.

4.1. ANNUAL REPORTS ON SEXUAL HARASSMENT

The annual data received from the UGC broadly divides itself into two different categories: universities and colleges. As per the UGC guidelines, all universities and colleges are required to have a sexual harassment complaints mechanism at their students' disposal. As of 2021, 988 universities in India are recognized by the UGC (see Graph 1).

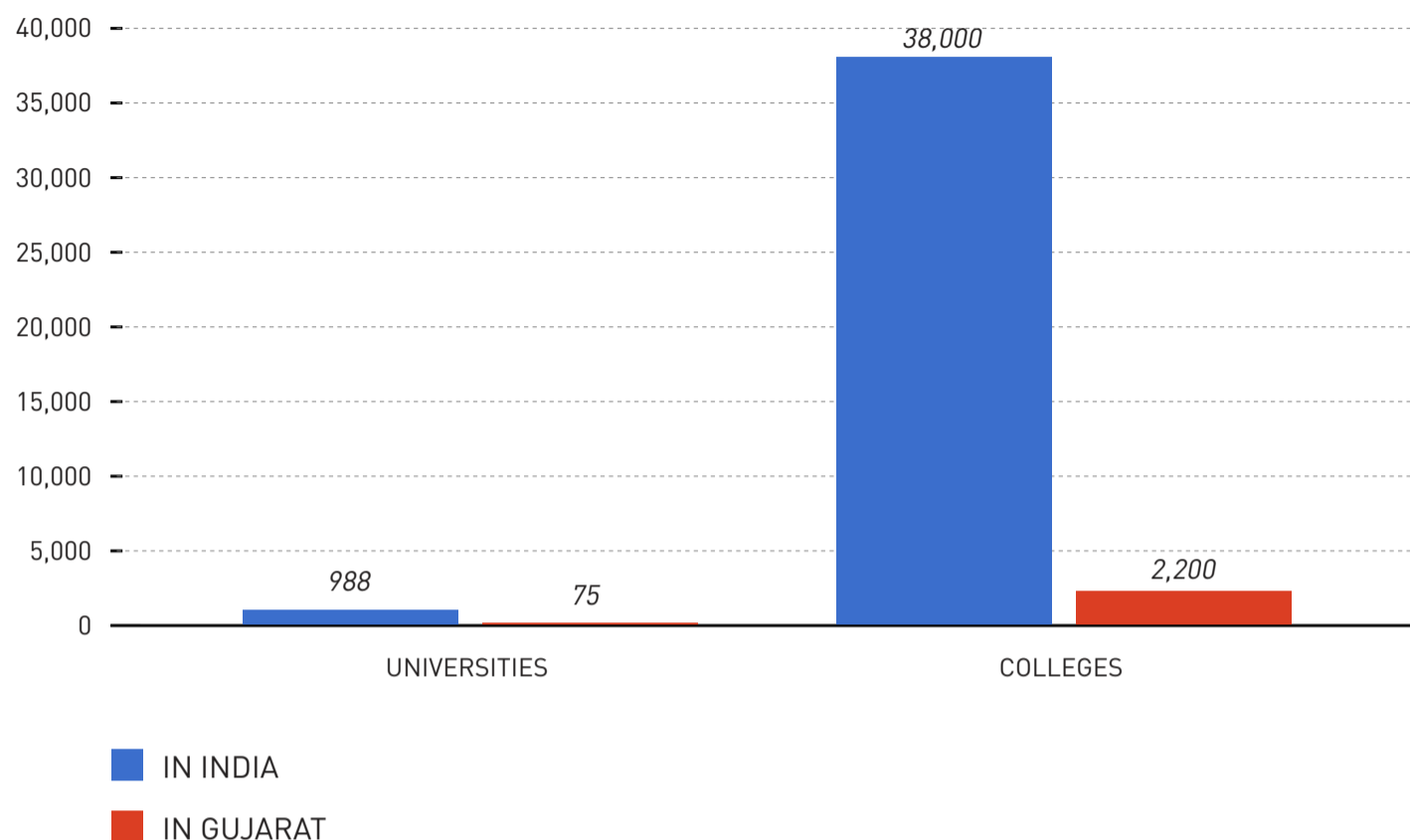
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² Registration number DOHED/R/E/21/00632/4 and DOHED/R/E/21/00632/8 dated 09.03.2021. Available at: https://www.ugc.ac.in/subpage/Gender_Sensitization_Data.aspx.

³ Registration number DOHED/R/E/21/00632/4 and DOHED/R/E/21/00632/8 dated 09.03.2021. Available at: https://www.ugc.ac.in/subpage/Gender_Sensitization_Data.aspx.

⁴ There are a total of 13 law institutions (includes colleges and universities offering a course of Law in Ahmedabad).

GRAPH 1 – TOTAL UNIVERSITIES AS OF 2021



Source: UGC. Available at: <https://www.ugc.ac.in/oldpdf/Consolidated%20list%20of%20All%20Universities.pdf>.

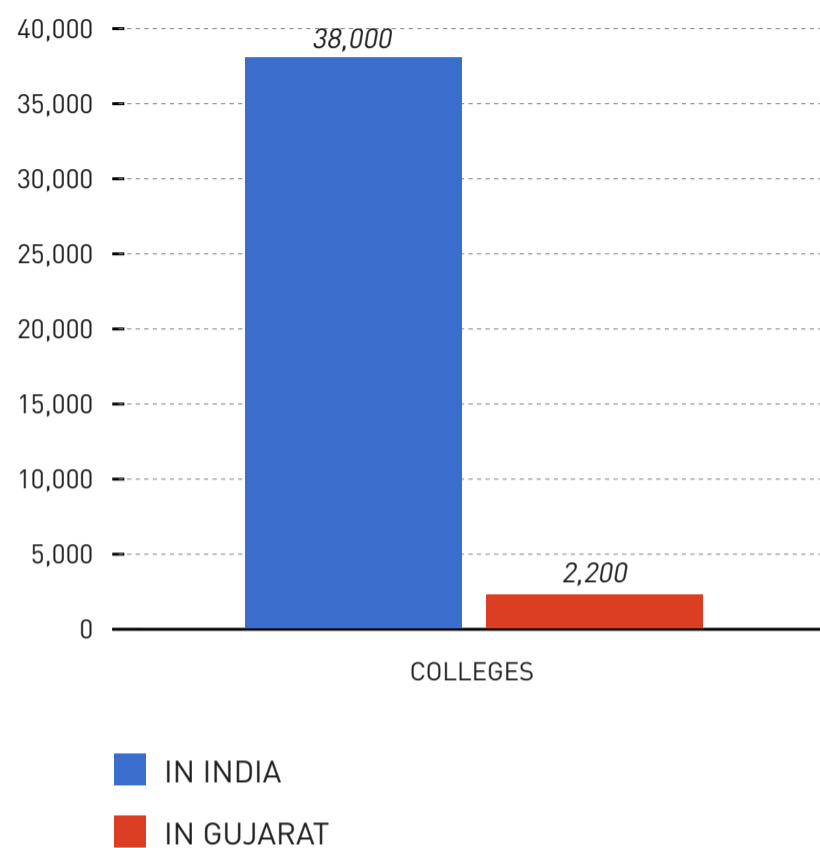
As far as the number of colleges is concerned, from 2015 onwards, there was a total of 36,000 in the country.⁵ Within the state of Gujarat, specifically, there are about 75 universities⁶ and over 200 colleges across different areas of study (see Graph 2).⁷

5 Available at: <https://aiu.ac.in/documents/index/All%20India%20Survey%20of%20Higher%20Education.pdf>.

6 Available at: <https://aiu.ac.in/documents/index/All%20India%20Survey%20of%20Higher%20Education.pdf>.

7 Available at: <https://thewire.in/education/how-did-india-end-up-with-over-36000-colleges>.

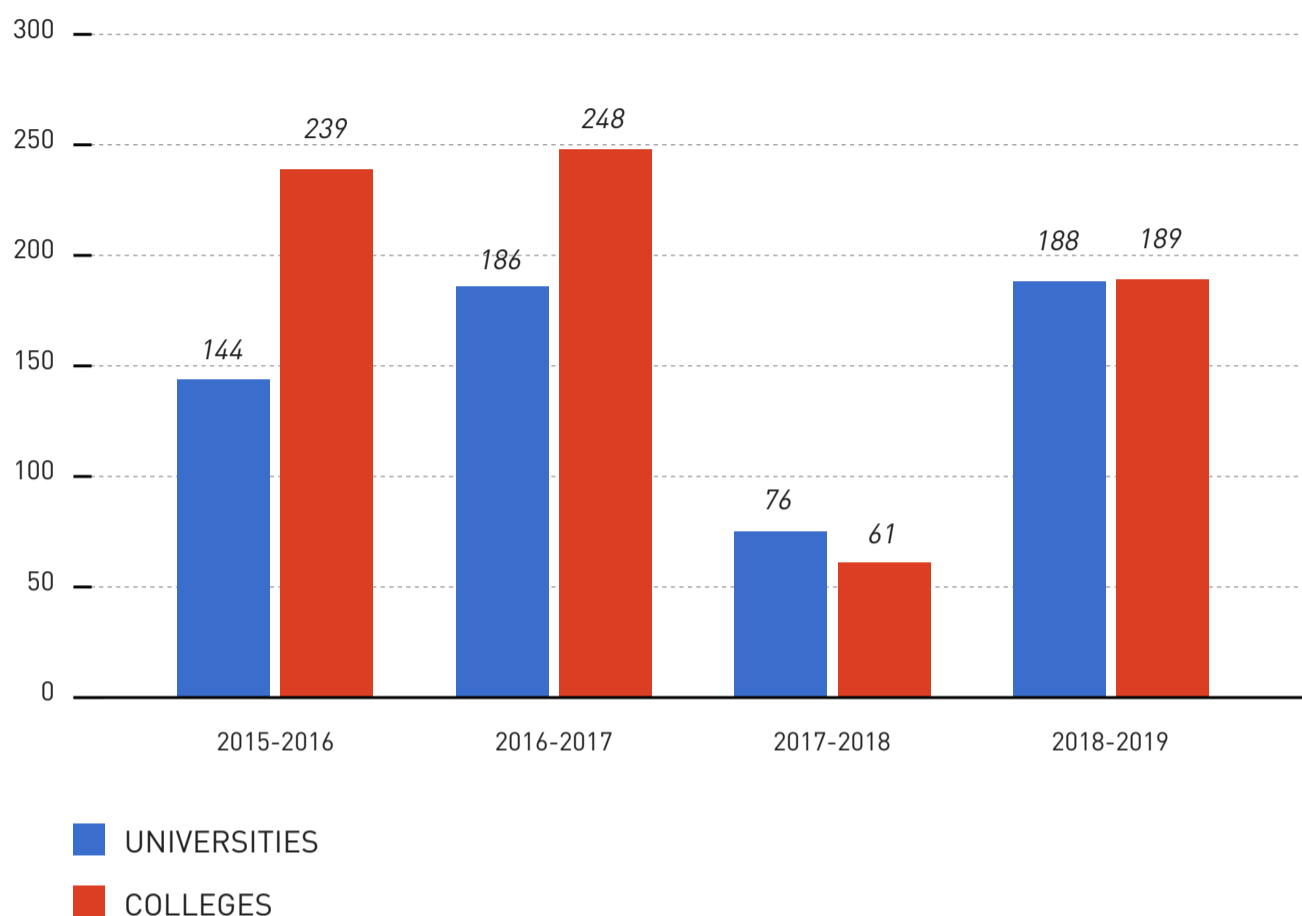
GRAPH 2 – TOTAL COLLEGES AS OF 2015



Source: Authors' own elaboration.

However, the number of universities and colleges that have responded to UGC's demand to provide annual reports is much lower. Starting from the years of 2015-2016, only 144 universities and 239 colleges provided annual reports. In 2016-2017, the number of universities and colleges that responded to the call for annual reports was 186 and 248, respectively. In 2017-2018, only 76 universities and 61 colleges submitted their reports and, in 2018-2019 (and up to January 2020), 188 universities and 189 colleges filed annual reports on sexual harassment (see Graph 3).

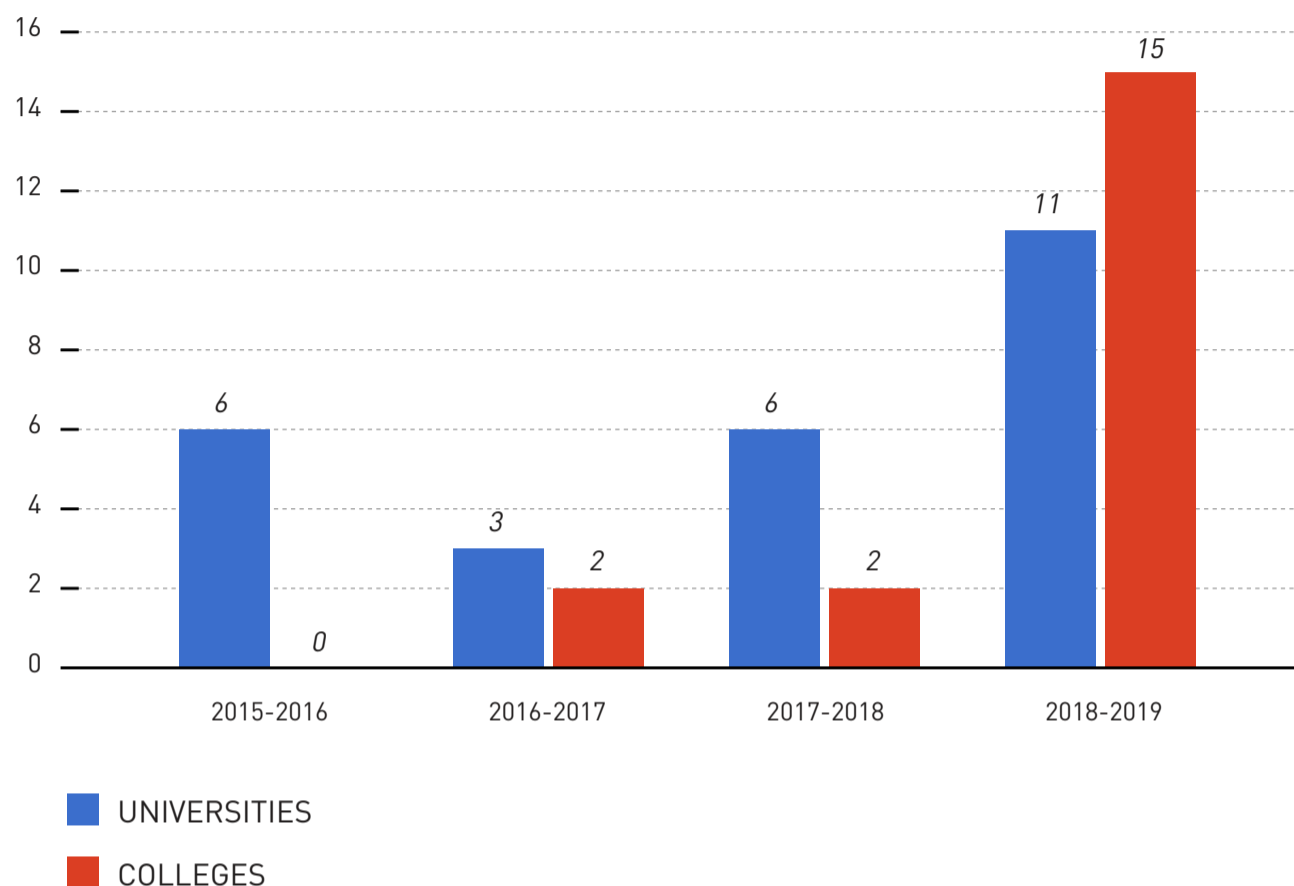
GRAPH 3 – **TOTAL UNIVERSITIES / COLLEGES THAT FILED ANNUAL RETURN ON SEXUAL HARASSMENT**



Source: Authors' own elaboration.

The numbers are even more surprising for the state of Gujarat. In the years of 2015-2016, only 6 universities filed annual reports, and very few universities and colleges have done the same in subsequent years. In 2016-2017, only 3 universities and 2 colleges filed their annual reports; in 2017-2018, that number was 6 and 2, respectively and, in 2018-2019, 11 and 15, respectively (see Graph 4).

GRAPH 4 – **TOTAL UNIVERSITIES / COLLEGES IN GUJARAT THAT FILED ANNUAL RETURN ON SEXUAL HARASSMENT**

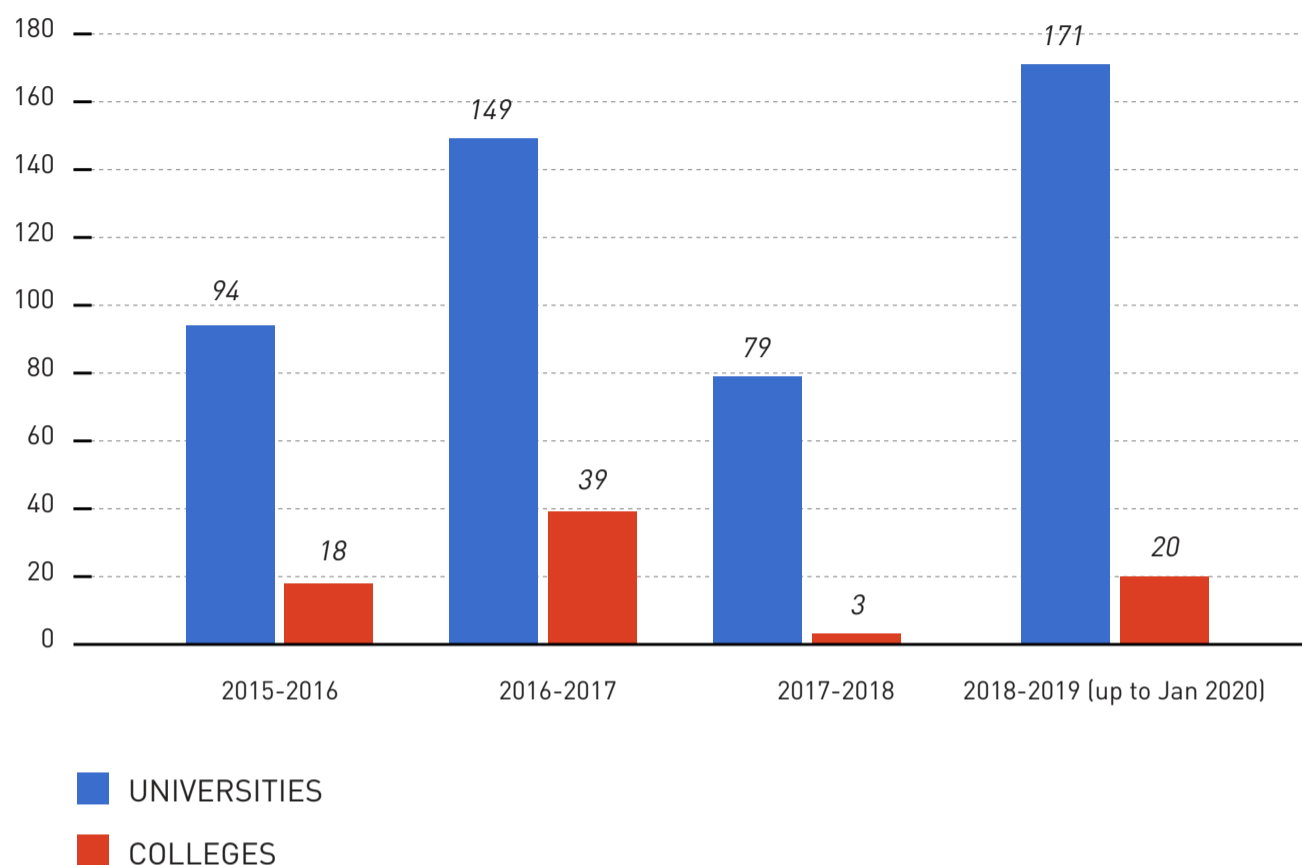


Source: Authors' own elaboration.

4.2. NUMBER OF SEXUAL HARASSMENT CASES RECEIVED

In terms of the annual number of cases reported, in the years of 2015-2016, a total of 112 complaints of sexual harassment were received by those universities and colleges that filed annual reports. Similarly, in the years of 2016-2017, the number of complaints reported was 187; in the years of 2017-2018, that number was 82 and, in 2018-2019 (up to January 2020), the number reached 181 (see Graph 5). We must keep in mind that these numbers only include those universities and colleges that filed their annual reports. There remains a large chunk of universities and colleges that chose not to do so. Thus, there is no way of knowing the exact number of sexual harassment complaints received across all institutions.

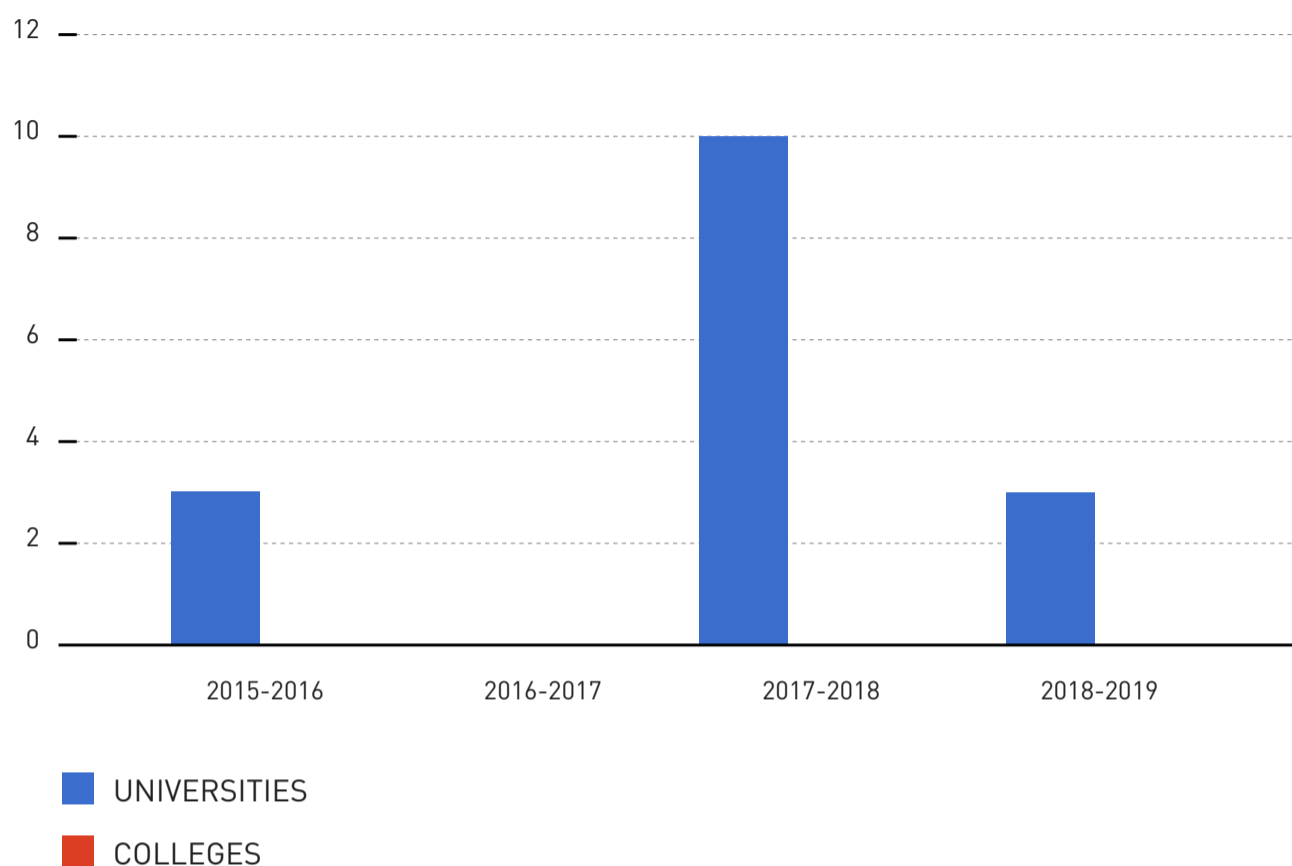
GRAPH 5 – **TOTAL NUMBER OF SEXUAL HARASSMENT COMPLAINTS REPORTED IN THE ANNUAL REPORT**



Source: Authors' own elaboration.

As far as the universities and colleges of the state of Gujarat are concerned, only 3 complaints were reported in the years of 2015-2016 and 2018-2019, whereas 10 complaints were filed in the years of 2017-2018. Meanwhile, in the years of 2016-2017, not a single complaint of sexual harassment was reported across all colleges and universities in the state (see Graph 6).

GRAPH 6 – TOTAL SEXUAL HARASSMENT COMPLAINTS REPORTED IN GUJARAT

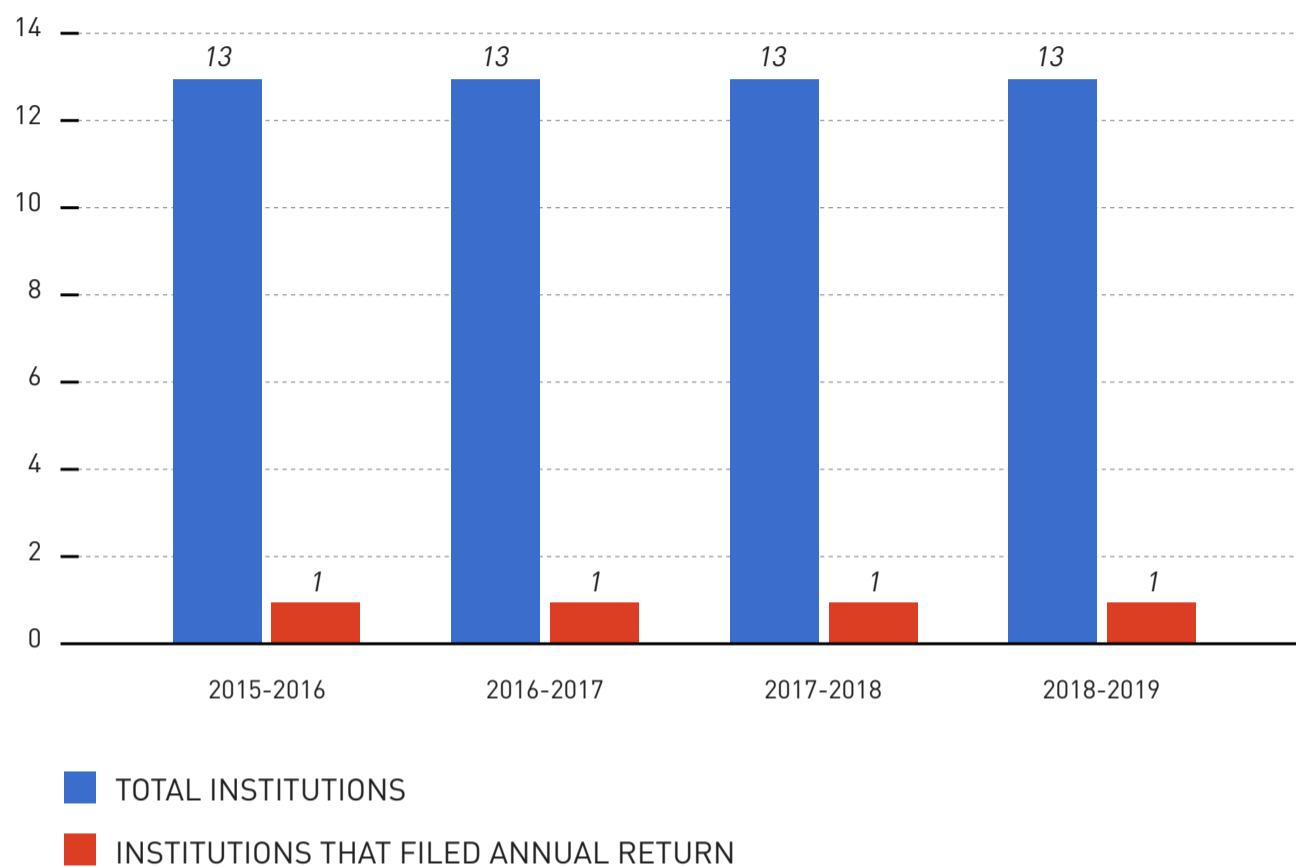


Source: Authors' own elaboration.

4.3. REPORTED SEXUAL HARASSMENT CASES IN AHMEDABAD

The data provided by the UGC also provides a glimpse of the sexual harassment cases reported by various law institutions in the city of Ahmedabad. There are a total of 13 law institutions (which includes colleges and universities offering the course of law) in Ahmedabad out of which, in 2015-2016, only 1 institution filed an annual report on sexual harassment with the UGC. In subsequent years, that number has remained the same. Only 1 institution has filed the annual report with the UGC from 2016 to 2019 (see Graph 7).

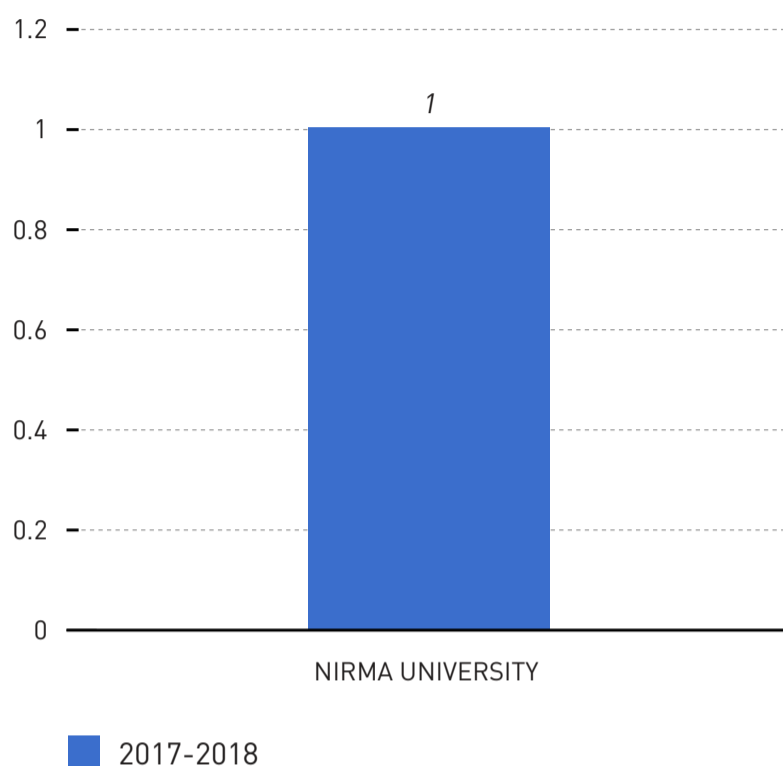
GRAPH 7 – TOTAL LAW INSTITUTIONS IN AHMEDABAD THAT FILED ANNUAL RETURN ON SEXUAL HARASSMENT



Source: Authors' own elaboration.

Out of these, only one has reported a case of sexual harassment which occurred in 2017-2018. Other than this, no legal institution in Ahmedabad has reported any cases of sexual harassment between the years of 2015 to 2019 (and up to January 2020) (see Graph 8).

GRAPH 8 – INSTITUTION-WIDE NUMBER OF CASES OF SEXUAL HARASSMENT IN AHMEDABAD

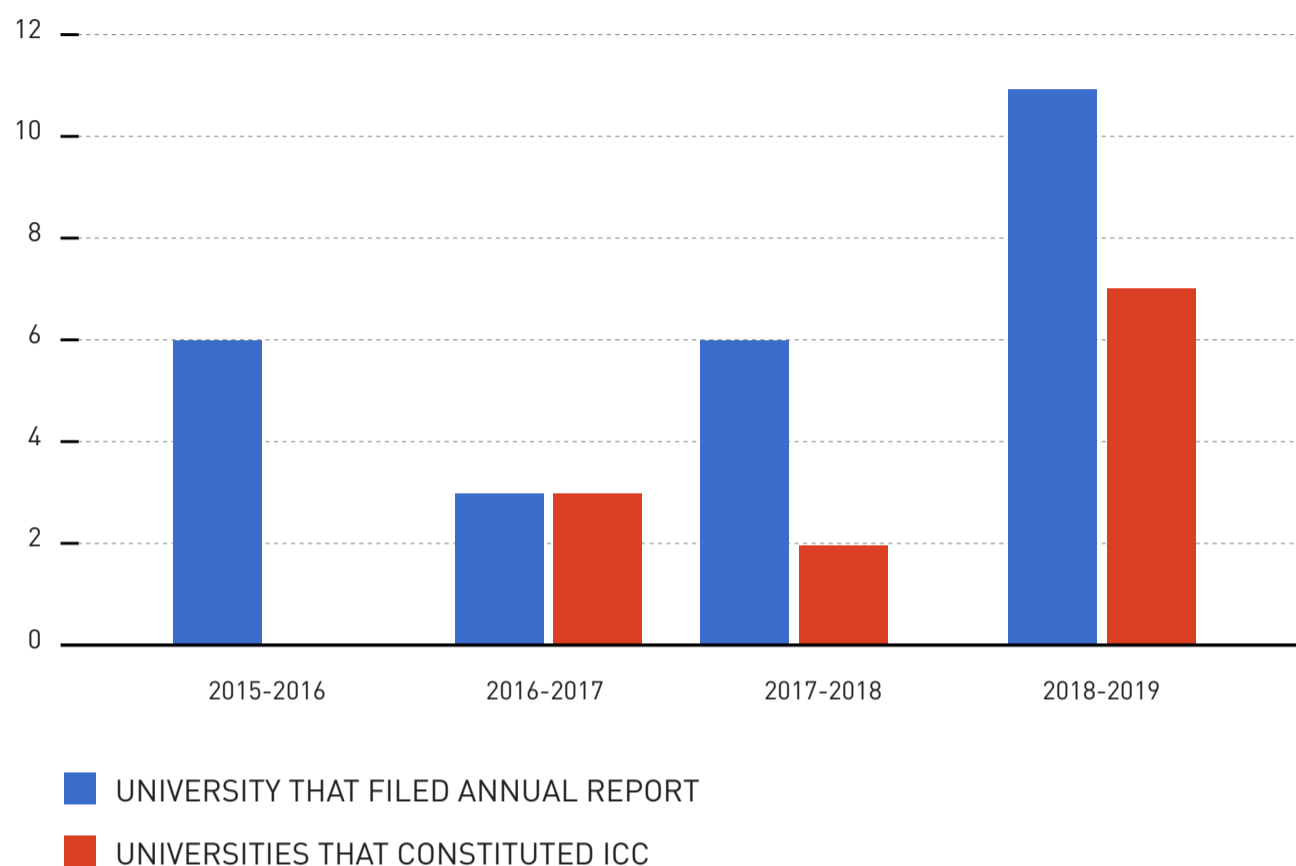


Source: Authors' own elaboration.

4.4. CONSTITUTION OF INTERNAL COMPLAINT COMMITTEES – ENFORCEMENT

The UGC guidelines of 2015 mandate the constitution of Internal Complaints Committees (ICC) for redressal of sexual harassment complaints. However, very little data is available with regard to whether or not ICCs have been constituted by universities and colleges. In 2015-2016, despite 6 universities in Gujarat have actually filed their annual reports, no data was requested nor provided on whether the ICC had been implemented. In 2016-2017, 3 universities filed their annual report and all of them confirmed to have constituted an ICC. However, in 2017-2018, out of the 6 universities that filed annual reports, only 2 confirmed to have constituted an ICC, while the others did not provide any information regarding such implementation. Similarly, in 2018-2019, out of the 11 universities that filed annual returns on sexual harassment, only 7 universities had constituted an ICC; 2 universities denied having constituted one, while the remaining 2 did not provide any information regarding the formation of an ICC. (See Graph 9.)

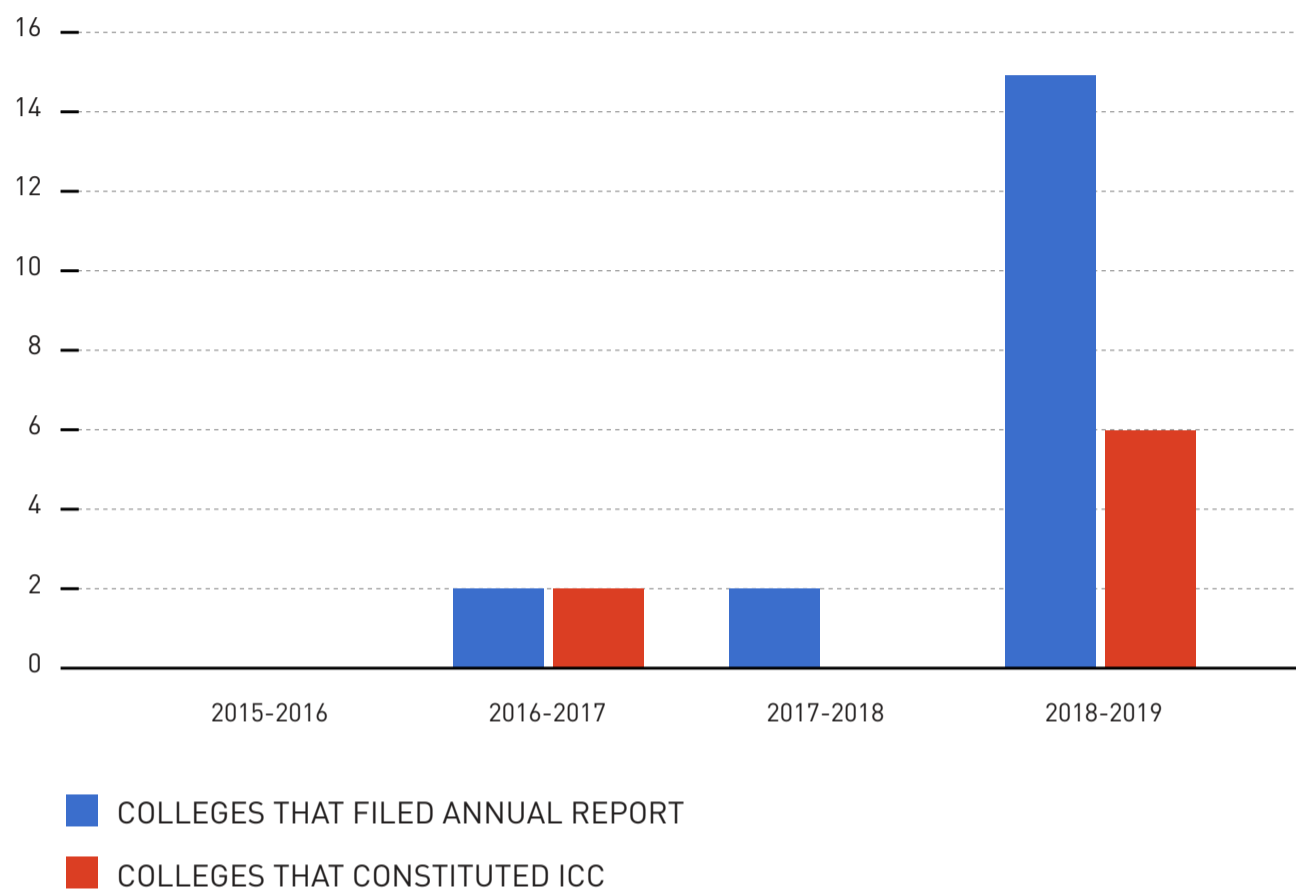
GRAPH 9 – **TOTAL UNIVERSITIES IN GUJARAT THAT HAVE CONSTITUTED INTERNAL COMPLAINTS COMMITTEES**



Source: Authors' own elaboration.

With regard to colleges in Gujarat, in 2015-2016 and 2017-2018, no data related to the constitution of an ICC was requested or provided by any of the state's colleges. In 2016-2017, 2 colleges filed annual data, and both affirmed the constitution of an ICC. In 2018-2019, 15 colleges filed annual reports, out of which only 6 affirmed the constitution of an ICC, while others failed to provide any data on the issue (see Graph 10).

GRAPH 10 – **TOTAL COLLEGES IN GUJARAT THAT HAVE CONSTITUTED INTERNAL COMPLAINTS COMMITTEES**



Source: Authors' own elaboration.

Among the legal institutions in Ahmedabad, specifically, only 1 institution in 2016-2017 provided information and affirmed the constitution of an ICC.

4.5. WORKSHOPS AND AWARENESS PROGRAMMES CONDUCTED

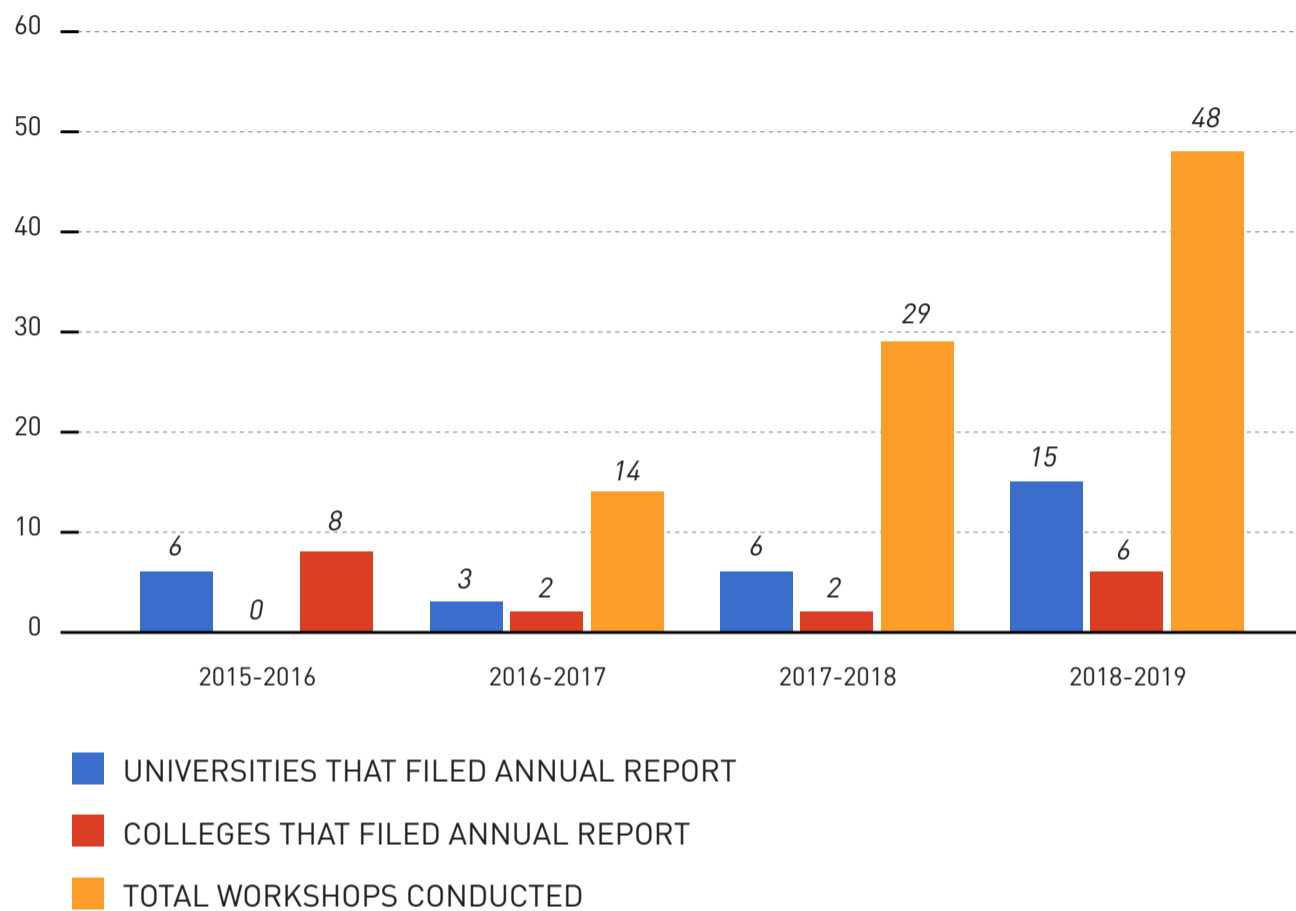
Data was also collected on the total number of awareness programmes conducted at each university in Gujarat and, specifically, in Ahmedabad. In 2015-2016, a total of 8 workshops were conducted across 6 universities that filed annual reports. In 2016-2017, a total of 14 workshops were conducted across the 3 universities and 2 colleges that filed the annual report.

In 2017-2018, the total number of workshops conducted across 8 colleges and universities was 29 and, in 2018-2019, the total number of workshops conducted was 48 across 21 universities and colleges that filed the annual report.

The total number of workshops conducted, however, fails to reflect the true scenario. While some universities and colleges have conducted multiple workshops in a given year, others have failed to conduct even a single workshop or awareness event. For instance, out of the 48 workshops conducted in 2018-2019, 30 were carried out by just 3 universities, while 9 colleges and 3 universities failed to conduct even a single workshop during that year.

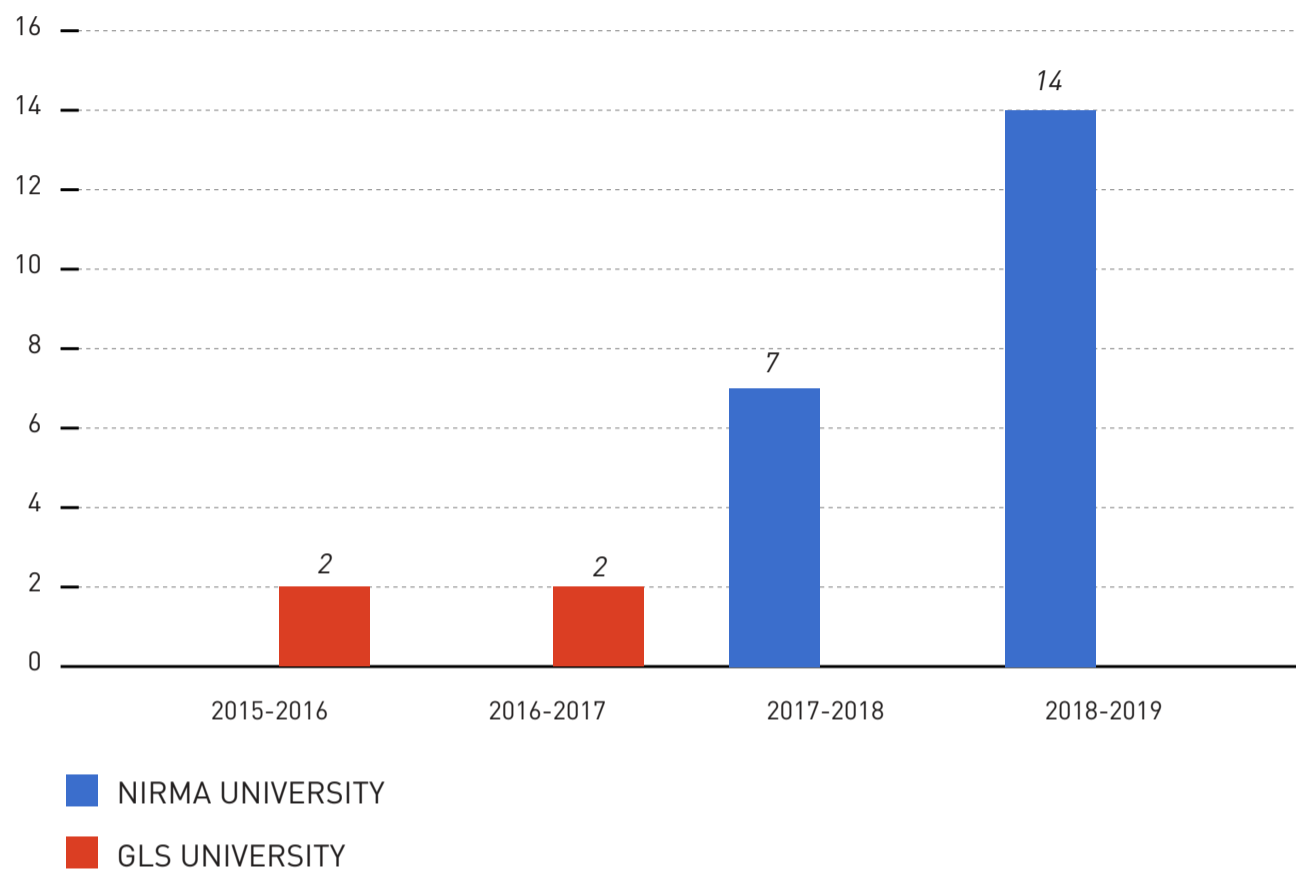
Within the legal institutions in Ahmedabad, specifically, a total of 25 workshops were conducted by 2 universities between 2015 and 2019. See Graphs 11 and 12.

GRAPH 11 – **TOTAL WORKSHOPS CONDUCTED AT UNIVERSITIES IN GUJARAT**



Source: Authors’ own elaboration.

GRAPH 12 – INSTITUTION-WIDE NUMBER OF WORKSHOPS ON SEXUAL HARASSMENT IN AHMEDABAD

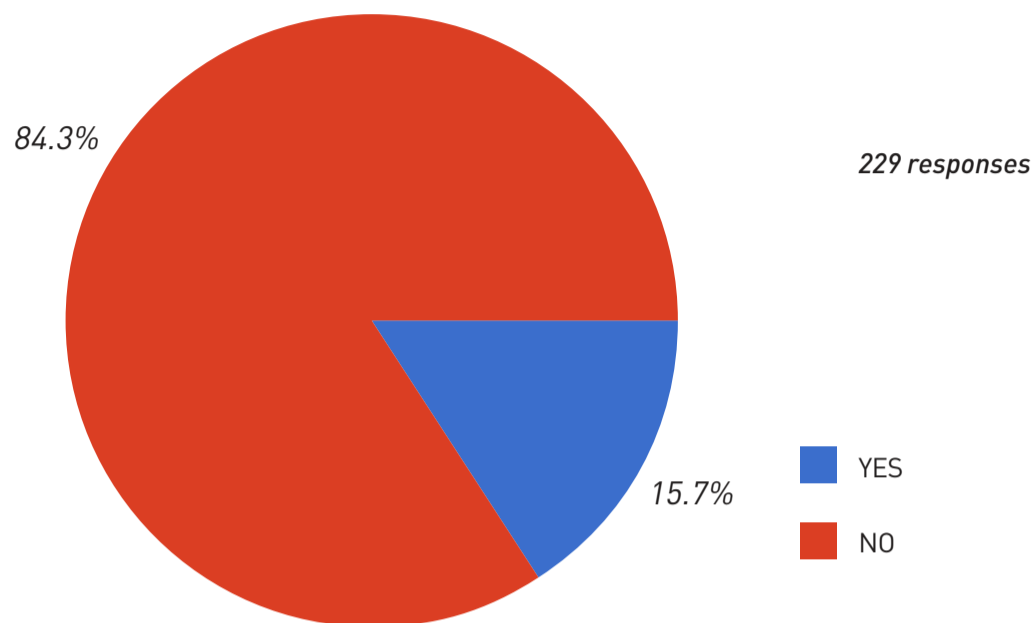


Source: Authors' own elaboration.

4.6. SURVEY CONDUCTED AMONG STUDENTS

In addition to the data made available by the UGC, an internal survey was also conducted among students at one particular law school, which produced some interesting results. With regard to workshops, 84.3% of the students failed to attend any workshops organized by the university (see Graph 13).

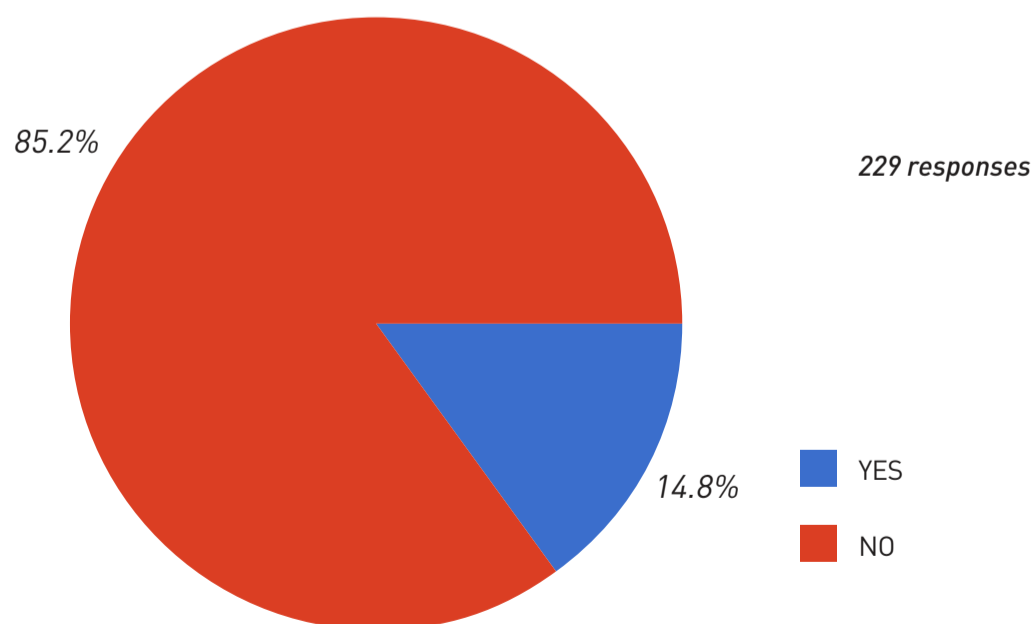
GRAPH 13 – **HAVE YOU ATTENDED ANY WORKSHOP/ AWARENESS DRIVE ORGANIZED BY YOUR UNIVERSITY ON POSH ACT?**



Source: Authors' own elaboration.

Also, with regard to the availability of information regarding the UGC regulations of 2015, 85.2% denied having seen any information available on the notice boards at the institution (see Graph 14).

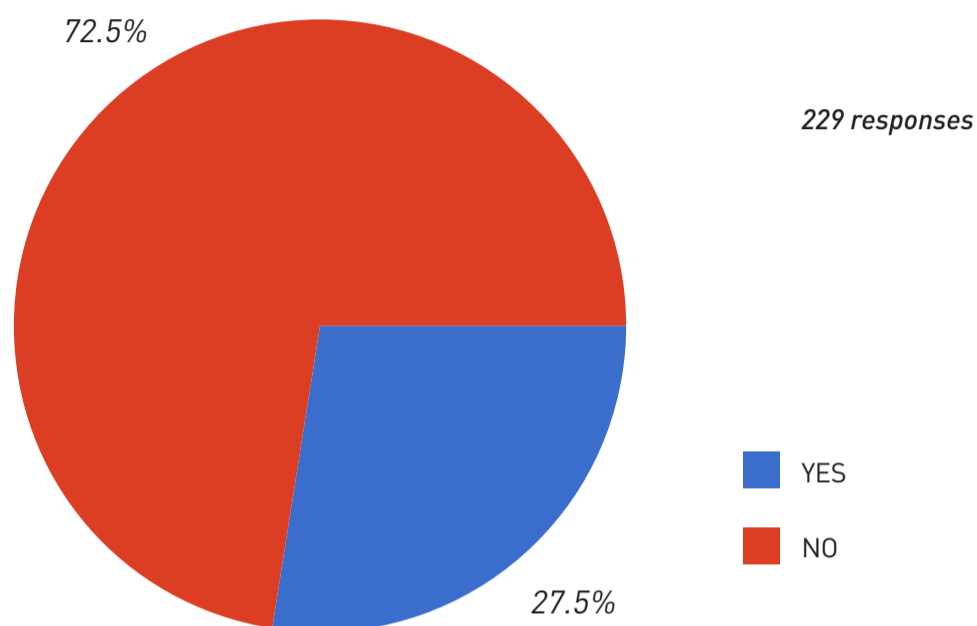
GRAPH 14 – **HAVE YOU SEEN ANY NOTIFICATION REGARDING THE 2015 UGC REGULATION ON THE NOTICE BOARD OF YOUR INSTITUTION?**



Source: Authors' own elaboration.

With regard to awareness of the UGC guidelines, 72.5% of the respondents denied having read the 2015 UGC regulations (see Graph 15).

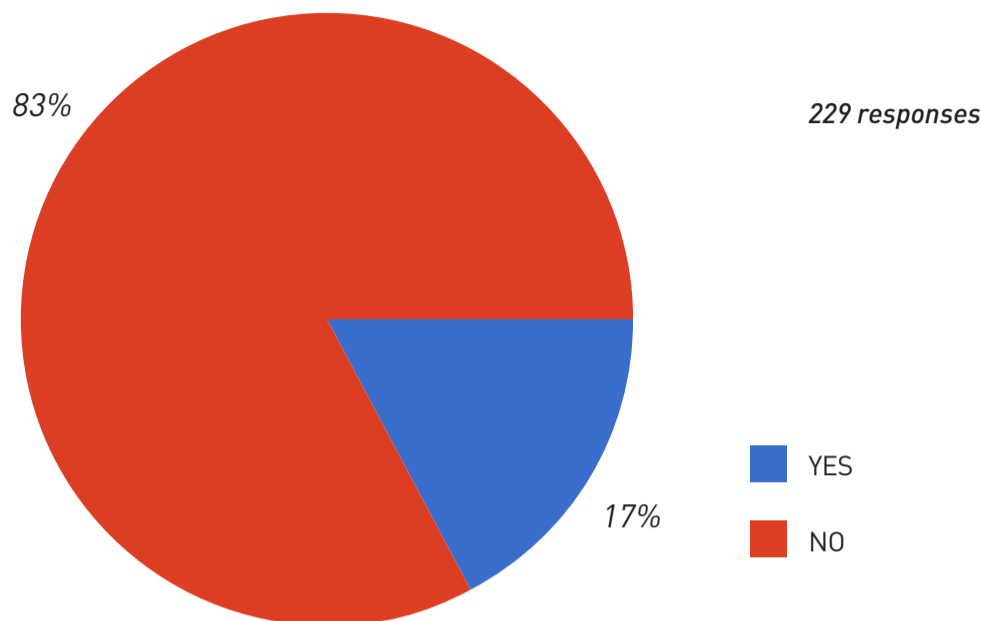
GRAPH 15 – **HAVE YOU READ THE UGC REGULATION ON 2015 POSH ACT?**



Source: Authors' own elaboration.

Awareness regarding members of the ICC was also quite low among students, as 83% of the respondents did not know who the members of the ICC at their institute were (see Graph 16).

GRAPH 16 – DO YOU KNOW THE MEMBERS OF ICC CONSTITUTED IN YOUR INSTITUTION?



Source: Authors' own elaboration.

4.7. DISCUSSIONS AND FINDINGS

The available data on the UGC portal and the survey conducted among law students highlight serious issues with regard to the implementation of the UGC regulations at HEIs. Moreover, many universities and colleges have failed to file their annual reports and the number of complaints received is quite low. The same pattern is reflected across the state of Gujarat.

Only a few universities have complied with the mandate to file annual returns or conduct regular workshops. The survey conducted among students also corroborates a lack of awareness drives and workshops on the part of the universities and colleges. Moreover, many students do not know the details regarding ICC membership and their role.

CONCLUSIONS AND RECOMMENDATIONS

A quantitative analysis of the data made available by universities and colleges across the country is insubstantial in terms of transparency and implementation of the 2015 UGC regulations. It is also important to note that the survey was carried out at only one law school, as pandemic-induced lockdown and restrictions on mobility prevented the authors from conducting extensive field surveys at different law schools and institutions. However, the results of such survey do corroborate the data collected from secondary sources.

I. INCENTIVES FOR COMPLIANCE

One of the patterns that has emerged in the analysis of the data is that most universities

and colleges have not complied with regulations when it comes to filing annual reports. By observing the data available it is clear that the majority of the universities have failed to file annual reports in any given year. When it comes to colleges, the numbers are even lower. The same trend continues with universities and colleges in the state of Gujarat. Among the responding higher education institutions, many of them have not provided crucial details pertaining to the constitution of an ICC or the implementation of any workshops and awareness campaigns.

Given the low compliance rates, it is suggested the development of institutional mechanisms to ensure such compliance by universities and colleges that have failed to conform to the requirement of annual reporting. While the UGC Regulations of 2015 already provide for consequences for non-compliance,⁸ adopting an *incentive-based approach* might also be helpful. Institutions following best practices in relation to UGC regulations can be eligible for special grants and prestigious recognitions. Specific importance is given to these recognitions as a criterion for assessment and accreditation of universities as well.

The issues dealt with by the ICC are extremely sensitive and are not often properly dealt. Adequate training needs to be provided to the members of the ICC to ensure effective discharge of their duties under the regulations. The entire system, in fact, needs to be survivor-centric and made in tune with the objectives of the regulations (PATHAK, 2022).

II. EXPLORING POSSIBILITIES OF AN INDEPENDENT GRIEVANCE REDRESSAL MECHANISM

One of our main concerns is the low number of reported cases, in comparison to some other studies conducted across universities and colleges (BAPAI, 1999; SRIKANTH, 2018; DASGUPTA and MUKHERJEE, 2020). While in 2015-2016, a total of 112 complaints of sexual harassment were received by universities and colleges that filed annual reports, in 2016-2017, the number was 187; in the year of 2017-2018, it was 82 and in 2018-2019 (and up to January 2020), 181. Upon a closer look at the available data, it is clear that a significant majority of universities received only one complaint of sexual harassment within a given year. While this low number may initially inspire optimism, a more thorough look at the information available raises questions about the low number of complaints and possible underreporting.

The studies cited above highlight several reasons for underreporting of instances of sexual harassment. One of the crucial factors attributable to this issue is the intimidating presence of institutional employees, including deans or professors, on the ICC responsible for dealing with complaints of sexual harassment. Many of the victims do not report instances of sexual

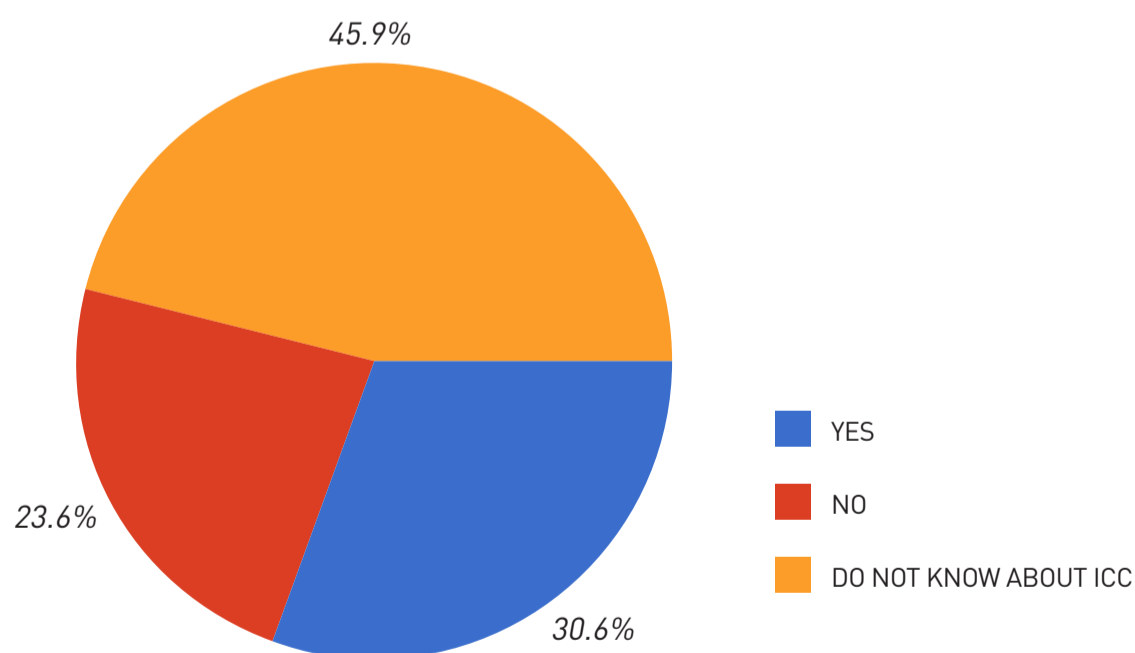
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⁸ Section 12 of the 2015 UGC guidelines.

harassment, as they feel apprehensive for their future due to the presence of their faculty on the committee. This debilitating effect on the ICC has also been raised in the Supreme Court of India through a Public Interest Litigation (PIL) filed on an analogous issue, one of addressing caste-based discrimination in higher educational institutions.⁹ The PIL claims that the presence of faculty members makes students fear for their academic results, impacting their actions on the matter of the harassment.

While the UGC Regulations of 2015 provide for a comprehensive framework to deal with instances of sexual harassment, the smaller number of cases and documented concerns of students fearing for their academic futures in the presence of faculty members on committees begs for measures to make the ICCs more accessible and inclusive in their functioning. Further reasons for not approaching the committee with complaints include lack of faith in the committee's actions and a lack of awareness about available mechanisms, as pointed out by the reports cited above. Lack of faith in the functioning of the ICC has been corroborated to a certain extent by the internal survey conducted as part of the project. Out of the 229 responses received, 54 students do not trust the functionality of the ICC. In response to the same question, 45.9% stated that they were not even aware of the ICC (see Graph 17).

GRAPH 17 – **DO YOU THINK INTERNAL COMPLAINT COMMITTEES WORK IN A FAIR AND INDEPENDENT MANNER?**



Source: Authors' own elaboration.

9 Available at: <https://www.livelaw.in/top-stories/sc-issues-notice-on-pil-by-mothers-of-rohit-vemula-and-dr-payal-tadvi-148270>.

In light of these responses, exploring an alternative mechanism that fulfills the criteria of good faith and inclusivity will help highlight the extent of the problem that sexual harassment poses across higher educational institutions. An attempt was made for a more inclusive mechanism through a student-elected body at Jawaharlal Nehru University. The university holds a student-elected committee, the Gender Sensitization Committee against Sexual Harassment (GSCASH),¹⁰ which was later replaced with the ICC. While GSCASH included members of the faculty, the strong presence of elected student members ensured that all cases of sexual harassment were dealt with in a fair and transparent manner. These concerns of transparency and fairness were raised by many individuals, as the GSCASH was replaced by the ICC, including mostly teachers and university administrators.¹¹ These concerns are further aggravated as the university fails to meet strict punishment guidelines even in cases reported to the ICC.¹² It is equally important that the members of the ICC have a good understanding of societal hierarchies such as gender, caste, religion, etc. (THAKUR and KUMAR, 2019). The regulations envision that the selection of ICC members shall be made from among individuals who possess a sound understanding of gender construct and not merely from among those occupying pivotal positions in the organization. Only after that ICC can be called independent.

III. PROVISIONS FOR CONTINUOUS MONITORING

While the UGC has provided for the constitution of ICCs, the regulations do not provide for a mechanism of continuous monitoring that might assess whether or not the regulations are being implemented. Non-compliance by many universities and colleges, related to setting up ICCs, is an evidence that not all universities and colleges have conformed to the regulations. In light of this, an oversight or monitoring mechanism to continuously evaluate the implementation of regulations, both in letter and spirit, would be greatly beneficial in addressing concerns related to sexual harassment.

The problem of non-compliance exceeds the constitution of ICCs and also involves lack of regular awareness activities and workshops, as well as of sexual harassment-education materials available to students, among other issues. Many of the universities and colleges

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10 An archive of GSCASH is available at <https://www.jnu-gscash-archive.org/the-gscash-rules-a-history-in-docum>.

11 <https://thewire.in/education/how-dismantling-of-gscash-has-impacted-the-dignity-and-freedom-of-women-in-jnu>

12 Some of the universities and colleges filing the annual report have mentioned that they have dealt with the issues by giving the accused a warning or making them apologize to the victim. Reports are available at https://www.ugc.ac.in/pdfnews/7203627_UGC_regulations-harassment.pdf.

that have filed annual reports admitted not having conducted any workshops on sexual harassment over their academic year, a fact corroborated by internal survey, wherein 94% of the students denied having attended any workshops. Also, students responding to the survey reported an absence of information on UGC regulations across notice boards at the institution.

In light of such findings, it is suggested that a monitoring mechanism to oversee the implementation of UGC regulations will assist in creating awareness and ensuring effective implementation.

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REFERENCES

ABRAHAM, J. *et al.* Sexual Harassment in Delhi University: A Report. Gender Study Group, Delhi, 1996. *Indian Journal of Gender Studies*, v. 5, n. 1, p. 116-121, 1998.

AINA, Adetutu Deborah; KULSHRESTHA, Pradeep. Sexual Harassment in Educational Institutions in Delhi-NCR (India): Level of Awareness, Perception and Experience. *Sexuality & Culture*, [s.l.], v. 22, n. 1, p. 106-126, 2018.

BAPAI, Asha. Sexual Harassment in University and College Campuses in Mumbai. *The Indian Journal of Social Work*, Mumbai, v. 60, n. 4, 1999. p. 608-609.

BHARAMGOUDAR, Ratna R. Sexual Harassment at Workplace: A Dignity Wrong on Women. *Indian Journal of Law & Justice*, West Bengal, v. 6, n. 2, p. 5-14, 2015.

BONDESTAM, Fredrik; LUNDQUIST, Maja. Sexual Harassment in Higher Education: A Systematic Review. *European Journal of Higher Education*, [online], v. 10, n. 4, p. 397-419, 2020.

CHADHA, Anuradha. Law Relating to Sexual Harassment of Women at the Workplace in India: A Critical Review. *SSRN*, [online], May 12th, 2018. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3171264. Accessed on: Aug. 22th, 2020.

CHOPRA, Radhika. Three Texts, One Issue Vishaka and Others vs State of Rajasthan and Others. Judgement dated 13 August 1997. *Scale*, v. 5, 1997.

DASGUPTA, Satyaki; MUKHERJEE, Annesha. Survey of 500 Women Finds 1 in 10 Had Been Sexually Assaulted in Higher Education Institutions. *The Wire*, Oct. 4th 2020. Available at: <https://thewire.in/women/sexual-assault-higher-education-institution>. Accessed on: Oct. 19th, 2023.

HASPELS, Nelien *et al.* *Action against Sexual Harassment at Work in Asia and the Pacific*. Bangkok: International Labour Office, 2001.

INTERNATIONAL LABOUR ORGANIZATION – ILO. *Guidelines on Prevention of Sexual Harassment at Workplace in India*. 2013. Available at: https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_630227/lang--en/index.htm. Accessed on: Oct. 18th, 2023.

JAISING, Indira. *Sexual Harassment at Workplace*. 2nd ed. New Delhi: Universal Law Publishing House, 2014.

JOHN, Mary E. Feminism, Sexual Violence, and the Times of #MeToo in India. In: FERNANDES, Leela. *Routledge Handbook of Gender in South Asia*. 2nd ed. London: Routledge, 2021. p. 335-350.

MEDIRATTA, Surinder. *Oxford Handbook of Law, Women, and Employment: Policies, Issues, Legislation and Case Law*. New Delhi: Oxford University Press, 2009.

MENON, Nivedita. Sexual Violence and the Law in India. In: WEST, Robin; BROWMAN, Cynthia Grant (eds.). *Research Handbook on Feminist Jurisprudence*. Cheltenham: Edward Elgar Publishing, 2019. p. 184-212.

PATEL, Vibhuti. A Brief History of the Battle Against Sexual Harassment at the Workplace. *Infochange News & Features*, 2005.

PATHAK, Disha. Evaluating the Effectiveness of UGC's Policy to Prevent Sexual Harassment: A Systematic Review. *Artha Journal of Social Sciences*, [s.l.], v. 21, n. 1, p. 43-68, 2022.

PRASAD, Shivangi; MUKHERJEE, Attreyi. *Handbook on the Law of Sexual Harassment at Work Place*. New Delhi: Thomson Reuters, 2015.

SRIKANTH, Aliqi. Incidents of Sexual Harassment at Educational Institutions in India: Preventive Measures and Grievance Handling. *Asian Review of Social Sciences*, [s.l.], v. 7, n. 3, p. 108-113, 2018.

THAKUR, Sai; KUMAR, Shewli. Sexual Harassment in Academic Spaces: A Comparative Analysis of Legal Processes in India and Pakistan. *Jindal Global Law Review*, [s.l.], v. 10, n. 2, p. 173-196, 2019.

VISHAKAHA vs. State of Rajshtan (1997) 6 SCC 241.

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