

**REPORT OF THE ENQUIRY CONDUCTED BY THE WOMEN'S
CELL, NORTH EASTERN HILL UNIVERSITY, ON THE CHARGES
OF SEXUAL HARASSMENT AGAINST PROF.VIVEK KUMAR
SRIVASTAVA, PROFESSOR IN THE DEPARTMENT OF HINDI,
NORTH EASTERN HILL UNIVERSITY, SHILLONG**

On 8th of June, 2005 the Vice Chancellor, North Eastern Hill University, herein after referred to as NEHU, received complaints of sexual harassment from 10 girl students of the Department of Hindi, NEHU. The students alleged that Prof. Vivek Kumar Srivastava of the Department of Hindi, NEHU, sexually harassed them over a long period of time in various ways. The students mentioned two clear incidents of attempts at physical harassment and maintained that even the rest of them had been victims of his obscene gestures (*Ashleel Dristi*). They also alleged that Prof.V.K.Srivastava had been threatening that he could destroy their careers. The details of the charges will be discussed later in this report.

Following the receipt of the complaints the Vice Chancellor forwarded the complaints to the Chairperson women's cell, NEHU, vide his letter No.NEHU-VCF/3-47/2005-1390 dated 8th June, 2005. (Letter appended. See appendix I). In the letter he asked the Women's Cell to conduct a *thorough inquiry* and to submit a report as early as possible for further necessary action. This action of the Vice Chancellor (VC) was in accordance with the provisions of the NEHU ordinance on Women's Cell, duly adopted by the University vide Executive Council's resolution NO: EC : 111: 2001: 5: 6 : (i).

Section 4 c), of the Ordinance empowers the cell "to examine complains (*sic*) against sexual harassment or sexual discrimination and take remedial measures wherever possible or submit its findings with recommendations to the chairman, Executive Council."

Section 4 f) empowers the Cell “ to report to the chairman , Executive Council , if there lies a prima-facie case for legal or disciplinary action against the perpetrator of the crime and to pursue the case to its logical end.” Section 5 a) provides that “Complaints shall be lodged with the cell by the victim concerned at the earliest but not later 30 (thirty) days from the date of occurrence of the incident of sexual harassment or sex discrimination Complaints may also be lodged by a third party or any member of the University community about any undesirable situation which directly or indirectly affects the women of the University community in general”

The VC also wrote to the Head, Hindi Department NEHU (Letter NO. NEHU-VCF/3-47/2005-1391 dated 8th June, 2005. See appendix II) ordering that Prof. Srivastava be dissociated from all examination work and that his award of internal assessment marks be subjected to strict moderation by a committee.

Accordingly on 9th June an emergent meeting of the Women’s Cell, NEHU was held at 10:00 A.M in the office of the Chairperson of the Cell. The meeting was attended by :

1. Prof. Manorama Sharma, Chairperson Women’s Cell and a Professor of History (in the Chair)
2. Ms Patricia Mukhim, Social worker and a columnist of repute who was conferred a Padmashri .
3. Mr. Allister Diengdoh, legal adviser women’s cell, a lawyer.
4. Prof. Veena Saraf, a professor of Library and information science.
5. Dr. S.K.Barik, a Reader of Botany
6. Mr. B.J.D Wahllang, STA, NEHU, Central Library.
7. Mrs. N.G.Marwein, an Assistant Registrar, NEHU.
8. Ms Gabriel Lyngdoh ,STA, NEHU Central Library.

Another member, Prof. Biloris Lyndem, Chair person State women’s commission, Meghalaya and a social worker, could not attend the meeting as she was busy with a seminar.

The Dean Student Welfare, NEHU, who is an ex-officio member of the Cell could not be contacted within that short time available to the Chairperson.

The meeting took note of the serious allegations and maintained that the students who lodged the complaint should be protected and their identity should not be revealed.

This position of the Women's Cell is supported by the guidelines laid down by the Hon'ble Supreme Court of India emphasising on the importance of protecting complainants of such cases from the fear of harming their reputation and facing retaliations. In the **Hira Nath Misra and others, (Appellants) vs. the Principal Rajendra Medical College, Ranchi and another**(AIR 1973 SUPREME COURT 1260) when the accused persons submitted that the enquiry, if any had been held behind their back; the witnesses who gave evidence against them were not examined in their presence, and that there was no opportunity to cross-examine the witnesses with a view to test their veracity , and further that the committees report was not made available to them and that for all those the enquiry was vitiated and the order passed by the Principal acting on the report was illegal, the High Court held that the rules of natural justice were not inflexible and that in the facts of the case the requirements of natural justice were satisfied. **The judgement in this case makes it clear that where girl students who might be apprehensive of exposing themselves to harassment and retaliation normal procedures could not be followed. While discussing the procedure followed in the above case the Court said "the police could not be called in because if an investigation was started the female students out of their sheer fright and harm to their reputation would not have cooperated with the police. Nor was enquiry before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did they would have most certainly exposed themselves to retaliation and harassment their after."** In another case **Avinash Nagra v.Respondent: Navodaya Vidyalaya Samity etc.** (Date of judgement-30/09/1996 bench K Ramaswamy, G B Pattanaik, Supreme Court of India Judgement information System) the SCI held that **"...it is very hazardous to expose the young girls for tortuous process of cross examination..."**

Accordingly the cell decided to keep the identity of the girls confidential because the accused happened to be a teacher of the complainants. He also headed the Department of Hindi, for last three years, where the girls were students. As the University had internal evaluation as a part of the examination system the teacher was in a position of power vis a vis the students. Fear of retaliation would have definitely crept in to the minds of the students while they would answer his questions in cross examinations by him.

The meeting then formed a Committee to investigate the case with the following members:

Chairperson, Women's Cell (Prof. Manorama Sharma)

Ms Patricia Mukhim

Mr. Alester N. Diengdoh

Prof. Veena Saraf.

The meeting also laid down the terms of reference for the Enquiry Committee (Appendix IV)

To facilitate the course of fair inquiry the meeting resolved that:

“The women's Cell felt that from the complaint it goes to show that there is a *prima facie* case and therefore recommends that the Vice Chancellor takes *Suo Moto* action and suspends the person against whom the allegations have been made till the investigations are over and direct him to co-operate with the investigations.”

The meeting was of the view that suspension was no punishment and it was merely a step to facilitate the inquiry. These minutes were forwarded to the Vice Chancellor on the same day with a request to put Prof. Srivastava under suspension so that the complainants would not feel intimidated by him.

On 10th of June the Registrar NEHU, suspended Prof. V.K.Srivastava vide Order No. 17-210/Estt.II/2002: 98 dated 10th June 2005. (See appendix III)

In the mean time on 8th June, 2005 itself the complainants came to the Chairperson Women's Cell and made the same complaint and each one of them signed the complaint in her presence. In view of sections 4 (c), 4(f) of the Ordinance of the North Eastern Hill University Women's Cell, discussed above, after receiving the complaints on the 8th of June, 2005 it became mandatory for the Cell to Enquire into the complaints lodged by the girl students against Prof. V.K.Srivastava. This requirement was further strengthened by the request of the Vice Chancellor for a thorough enquiry as mentioned above. The Enquiry Committee constituted by the Cell therefore decided to undertake a thorough enquiry immediately under the following procedures.

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I

PROCEDURE ADOPTED:

The committee formed by the Women's Cell found that the laws regarding sexual harassment are of rather recent origin. It was noticed that this category of the offences came to the limelight only with the famous case of Vishaka and others (petitioners) vs State of Rajasthan and others (Respondents) [(1997) 6 Supreme Court Cases 241]. A reading of some relevant cases pointed to the fact that in case of sexual harassment involving girl students, conducting the enquiry would require a special procedure and therefore decided to look through relevant case laws.

As to how to conduct an enquiry into delicate charges involving girl students, who might withdraw complaints or refuse to pursue a complaint under fear of losing reputation or retaliation later by perpetrators, the Committee decided to take the guidance from the Supreme Court of India's rulings in the **case Hiranath Misra and other (appellants) VS the Principal Rajendra Medical College, Ranchi and another, (respondent)**, and **Avinash Nagra v. Respondent: Navodaya Vidyalaya Samity etc. (Date of judgement- 30/09/1996 bench K Ramaswamy, G B Pattanaik, Supreme Court of India Judgement information System**, as discussed above.

The present case is strikingly similar to the cases cited above in that, a teacher who was in position of power to his girl students, who came from backgrounds where women generally are not in the habit of going to authorities with charges of sexual harassment, was charged with sexual harassment by young and naïve girl students. The general climate in the society would ordinarily inhibit such students from deposing in a public inquiry about sexual harassment. They would be frightened of losing reputation and of facing harassments.

Therefore, like in the cases cited, a special enquiry that would protect the complainants but would give the accused a fair chance of defending himself had to be devised.

It is necessary to keep in mind that principles of natural justice are important in all cases. But The Supreme Court of India has concluded in the case *Kesava Mills Co. Ltd. And another V Union of India and other respondents* that, “The concept of natural justice cannot be put in a strait- jacket. **The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly.**” *AIR 1973 SUPREME COURT 389.*

In the case *Maharashtra state Board of Secondary and Higher Secondary education v. K. S. Gandhi*, it was decided that, “ But the applicability of the principle of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case....” (1991) 2 SCC, 719 . In the same case, it was further stated that, “ **The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof, however, cannot be put in a strait-jacket formula. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.**”

The present inquiry is an enquiry by a legally constituted authority under an University ordinance and hence the committee needs to be guided by the principle stated above. The standard of proof will be constituted by the preponderance of probabilities tending to draw an inference that the fact must be more probable.

Another case that could guide the committee is **Apparel Export Promotion Council v. A.K.Chopra** (AIR 1999 SC 625) The following from this case are instructive for developing the procedure to be followed:

1. that on receipt of a complaint the accused was put under suspension.(p. 627)
2. That a charge sheet was served.
3. That the accused gave a reply denying the charges. (*ibid*)
4. The enquiry officer after considering the documentary and oral evidence and the circumstances of the case arrived at the conclusion that the respondent had acted against moral sanctions and that his acts against the victim did not withstand the test of decency and modesty. He therefore held the charges levelled against the accused as proved.
5. That the enquiry officer imposed the penalty of removing the accused from service with immediate effect.(p. 628)
6. Sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with the work performance and has the effect of creating an intimidating or hostile working environment to her. (p. 633) (Analogous to student-teacher relationship of the case to be inquired by the committee of Women's Cell, NEHU.)
7. The statement of the victim must be appreciated at the background of the entire case. SC 626
8. Each incident of sexual harassment at place of work, results in violation of fundamental rights to gender equality and the right to life and liberty- the two most precious fundamental rights guaranteed by the Constitution on India. SC 626

In view of the above the committee followed the following procedure. (Date Sheet and Record Sheet appended. See Appendix XXXIV)

An in camera hearing of the complainants was held on 11th June, 2005 at 9:00 A.M. Out of ten students nine came and one requested to be allowed to depose at a later date as she had to go home on an emergency. The written statements of the nine were received by the committee and they were also interrogated on their statements.

These statements were then handed over to the Chairperson Women's Cell for obtaining translated version as the statements were all in Hindi.

On 13th June, 2005 the Committee summoned the accused Prof. Vivek Kumar Srivastava for a preliminary hearing to inform him of the fact that during the course of enquiry he should not indulge in acts that might interfere with the enquiry and also that the charges would soon be handed over to him. The following statement was then read out to him in the presence of all the Committee members.

“The Women's Cell is a body constituted under an Ordinance of the University as per directions of the Supreme Court of India to deal with matters relating to sexual harassment.

A few girl students of the University have brought serious allegations of sexual harassment against you. These allegations have been made in the form of a signed statement which was made in the presence of the Vice Chancellor.

The matter is presently being investigated and considered by the Enquiry Committee constituted by the Women's Cell.

In keeping with the principles of natural justice the Committee hereby offers you the opportunity to respond to the charges made against you, a detailed list of which will be supplied to you shortly. You shall be afforded reasonable time to prepare your defence and submit them before the Committee, either in written or oral form or both. This summoning is with specific regard to information received by the University that you have been engaging in acts which would adversely affect the investigations as many students are being contacted, harassed and pressurised.

You are hereby strictly ordered to refrain from any such activity which would interfere with the proceedings which are to be conducted in a fair and just manner. Disobedience of these orders would call for stricter action against you by the University, and such actions on your part would be considered against you during the proceedings of the Committee.

If you have anything relevant which you would like to depose before the Committee now, you may do so.” (Appendix V Statement and reporting of June 13, 2005.)

The above statement was read out to Prof. Srivastava in the presence of all the four members of the enquiry committee. All the members signed the minutes of that day confirming that it was read out to Prof. Srivastava but when it was presented to him for his signature along with other papers he denied that such a statement was read out to him ever. He argued that he should have been asked to sign it on the day on which it was read out to him. This obviously was an attempt at hiding behind technicalities. He tried to hide behind technicalities even when on 12th July in his detailed response claims that he should have been allowed to engage a defence assistant despite the fact that he never asked for it during the period of enquiry till then. It became obvious to the committee that in all his attempt at defending himself Prof. Srivastava tried to raise technical objections. The committee however believes that in inquiries of this nature, carried out by non-judicial authorities, it is not the technicalities but fairness that should matter. We have quoted a judgement to this effect above (*AIR 1973 SUPREME COURT 389*. Cited above.). The committee by handing over all relevant documents to Prof. Srivastava and by giving him reasonable time to respond was being fair to him.

Except for the identity of the girls and the portions of their statements that might reveal their identity no other materials of this enquiry were treated by the committee as confidential. The enquiry committee took all possible steps to collect evidence and witnesses that might help test the veracity of the claims made by the plaintiffs and also the accused.

On the basis of the depositions of the complainants before the Committee (including statements before the committee both verbal and written), on 17th June 2005 Prof. Vivek Kumar Srivastava was given the charges . (See Appendix VI)

In order to gather a clearer picture of the case the committee on, 20th June 2005 called the faculty members of the Hindi Department, a girl student of the department who was not a complainant but was mentioned by the complainants during their deposition before the committee, an ex-student of Hindi department, Sumit Tripathy who reportedly brought messages from Srivastava to some of the complainants, the complainant who could not depose on 11, June and a fourth semester student of the Hindi department who expressed her desire to depose before the committee.

21st and 22nd June 2005, the Chairperson Women's Cell visited Gauhati University to enquire about the about the antecedents of Prof. V.K.Srivastava.

On 25th June, 2005, Prof. Vivek Kumar Srivastava appeared before the Committee with a written reply to the charges and prayed that he be allowed to present his witnesses. The Committee also interrogated him and recorded his statement which he read and signed before the Committee.

Between the evening of 25th June, 2005 and the 28th of June,2005 the Committee members made inquiries from various sources to test the veracity of the depositions before the Committee.

On 29th June, the Committee met and decided that Prof. V.K.Srivastava be called on 5th July, 2005 to appear before the Committee with his witnesses and also to cross-examine those who had deposed before the Committee and who had made statements which might go against Srivastava. The complainants were not allowed to be cross-examined by Prof. Srivastava.

On 5th July, Prof. V.K.Srivastava presented his witnesses whom the Committee interrogated. Prof. Srivastava also cross examined those whom he had requested to cross examine. The Committee also sought clarifications from Prof. V.K.Srivastava on some of the statements he had made before the Committee on 29th June, 2005 and placed before him the additional evidences collected by the Committee with regard to his depositions

and the complaints made by the complainants. The Committee also examined a student of the Hindi Department Abdul Hannan Ahmed, who had been reported to have shown undue interest in the case. The Proceedings of the day were recorded in short hand by Mr. Biswajeet Nandi, P.A, Registrar, NEHU and Mrs. N.G.Marwein, member Women's Cell, NEHU and A/R (P&S),NEHU.

On the same day (5th July), in the evening, all papers which had come before the Committee till that date were handed over to Prof. V.K.Srivastava and he was given time till 12th July, 2005 to respond to those papers in writing.

On 6th July, 2005, in view of some statements and claims(that amounted to alibi) made by Srivastava during the proceedings of the 5th July, the Committee had a meeting with the HOD, Hindi department to seek further clarifications on claims made by Srivastava.

On 8th July, Prof. V.K.Srivastava was called by the Committee to sign the transcripts of the Proceedings of 5th July. He made a request that day that he be given copies of the transcripts.

On 12th July, 2005, Srivastava brought his written responses to the papers given to him on 5th July, 2005. On the same day, as per his request, the Committee handed over copies of all proceedings of the 5th July, 2005 and relevant papers of the meeting with the HOD, Hindi Department on 6th July, 2005, along with all other papers that the committee thought was relevant for the case, to Prof. V.K.Srivastava with a request that he could respond to the latter in writing latest by 13th July, 2005, 3:00 P.M.

On 13th July Srivastava submitted his responses to the materials supplied to him on the 12th July, 05.

On 14th July 2005, the Chairperson, Women's Cell came to know from Head, History Department that in the meeting of the Heads and Deans the VC had informed that he had received life threats over the phone in connection with this case. Therefore on 15th July, 2005 the Committee wrote to the VC to give details of this matter to the Committee so that the Committee could take those into consideration while finalising recommendations.

On 14th and 15th July while going through Srivastava's responses the committee noted that in his responses Srivastava sought to build an alibi for January 2005 on the dates in which he was accused of committing some offence. Since this alibi was on the basis of records claimed by him to be available with Dean, Humanities and Education, on 18th July, 2005 the committee wrote to VC, NEHU, because Srivastava had sent a copy of his responses to the VC's office also, to supply the relevant records to verify whether the claims were based on facts,.

On 22nd of July the Committee received a letter from the VC enclosing a letter from the Dean, School of Humanities and Education, with only an application for SLP from Srivastava and the letter stated that the rest of the records were redundant.

On 25th July, 2005 the Committee wrote back to the VC that the records asked for must be supplied by the Dean's office latest by 4:00 P.M. on 25th July, 2005.

On 26th July, 2005 the Committee was called by the VC for a meeting with the Registrar and Prof. J.B.Bhattacharjee. (Minutes of the meeting appended, See appendix XXXI).

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II

NORMS OF NATURAL JUSTICE FOLLOWED BY THE COMMITTEE

From the procedure followed by the Committee it should be clear that the **Committee had taken care to see that natural justice was not denied to the accused.** As the cases discussed above had shown even the Highest Court in the case Hira Nath Misra and others, (Appellants) vs. the Principal Rajendra Medical College, Ranchi and another (AIR 1973 SUPREME COURT 1260) approvingly referred to Board of Education v Rice 1911 AC 179 where Lord Lorebourn “laid down that in disposing of a question which was the subject of an appeal to it the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, in as much as that was a duty which lay on everyone who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, he thought obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view”.

The Committee therefore collected all evidences possible through whatever means it had and made those available to Prof. Srivastava to controvert or correct. **In each occasion he was given reasonable time to respond. He was allowed to marshal all evidences and witnesses in his favour. He was allowed to cross examine all the witnesses whose statements could have gone against him, except the complainants who, according to the Apex Court’s decisions discussed above, could be exempted from cross examination by the accused. All records and statements that could controvert Srivastava’s claims were made available to him and he was given reasonable time to correct or controvert them.** The Complaints of the complainants, translated and names withheld, were supplied to Prof. Srivasava as soon as those were ready before the Committee, and he was given reasonable time to respond to the accusations. The Committee did not use any material which was not shown to Srivastava

to arrive at a decision about the veracity of the charges. (See Appendix VII for list of documents handed over to Prof. Srivastava).

III

CHARGES CONSIDERED

EXAMINATION OF COMPLAINTS AND DEFENCE

The complainants who lodged the complaints were unfamiliar with legal niceties and technicalities of law. It was apparent from the complaints lodged by them that they were unfamiliar with the provisions of the Ordinance governing the Women's Cell. A close examination of the narratives available in the complaints indicated that the complainants were accusing Srivastava with continuous sexual harassment over a long period of time. The Committee had to examine whether the charges levelled were within 30 days from the day of the receipt of the complaints by the Women's Cell because Clause 5 a) of the relevant ordinance stipulated that "Complaints shall be lodged with the Cell by the victim concerned at the earliest but not later than 30 (thirty) days from the date of occurrence of the incident of sexual harassment or sex discrimination." Scrutiny revealed that a charge brought by Miss S definitely fell within the 30 days time limit because the incident was alleged to have taken place on 23rd May, 2005 (Buddh Purnima) and the complaints were received on 8th June, 2005. Therefore it was necessary for the Committee to examine this charge very carefully.

The committee found no discrepancy between the written statements and the verbal depositions. It came out from the statements and the depositions that on May 23, 2005, on the day of the Budh Purnima, Prof. Srivastava, visited the residence of a group of girl students who resided in a privately hired accommodation. One resident had gone home, the complainant (Miss S) was cooking food and another Miss N was cutting vegetables and Miss P was studying. The professor entered the house and began talking generally. Miss N started asking him some clarification on the course for the forthcoming examination. Miss S saw that while Srivastava was explaining to Miss N his eyes were not on Miss N but on Miss S's bosom, which made Miss S angry and a sense of disgust overwhelmed her. Miss S maintained that at that moment she did not have a Chunni (a sort of shawl to cover her breast region) on her. Even while leaving Srivastava looked

straight into Miss S's breasts and left. Miss S maintains that from that very day she sensed the sexual overtones in Prof Srivastava's behaviour and completely lost her faith on the teacher. Miss S's charge was corroborated by a statement of Miss N who maintained that even she was not having a Chunni on her at the time of coming of the Professor but she was covering herself with both her arms while talking to the teacher. She maintained that, she noticed where Srivastava's eyes were while he was speaking about the course. She stated that the teacher carried out responsibilities of a local guardian on the one hand and on the other gave them such dirty *sexually coloured* looks. (Translated versions of the statements of the girls with the names codified to maintain confidentiality are appended to this report. See Appendix VIII).

Srivastava's defence against this charge is to be found first in his response of 25.06.05, page 2, para 4. (See Appendix XVIII). In this response he merely denied the charge and made no other effort to prove that he did not commit the offence. Subsequently in para 22 of page 7 of his Rejoinder dtd. 12.07.05 (henceforth RS -1) [See Appendix XVI] and para iv in page 12 of the same document he tries to offer an alibi in the form of an application for Station leave permission (SLP) for a day. In para 22 he claims that HOD Hindi admitted that on 23. 5.05 Srivastava was on station Leave at Guwahati and that Dr. Radhey shyam Tiwari (Srivastava's Witness) states in writing and admits on cross examination that Srivastava arrived in Tiwari's residence at Guwahati around 8:00 A.M. 23rd May 2005 and left for Shillong in the early morning of 24th May. He therefore claimed that the charge was concocted. In page 12 of the same document he merely reasserts the above claim. **It is intriguing that in his denial embodied in his responses of 25.06.05 Srivastava did not claim that he was out of station on 23.05.05. He mentions this for the first time during the cross examination of HOD Hindi on 5th July, 2005.** Therefore it became necessary for the Committee to check the authenticity of this claim by checking the records in the Department of Hindi of the actual date of receipt of the SLP.

The Committee tried to ascertain the claim of station Leave by checking the records in the department of Hindi about the receipt of the station leave permission (SLP) letter and as the statements of the clerk, the HOD, witnessed by a faculty member Dr. S.K.Sharma revealed it was impossible to ascertain the date of actual receipt of such an

application. It was also revealed from the minutes of that day's (6th July, 2005) meeting of the members of the Enquiry Committee with the HOD, Hindi department (see Appendix IX) that the evidence sought to be based on the department's record cannot be relied upon because the HOD and the department were party to opening of Srivastava's room after his suspension in gross violation of the Order of the Registrar of the University to deny Srivastava access to his office room in the University. The HOD along with the clerk admitted that Srivastava was allowed access to his office room upto 13th June, 2005 though he was suspended by the Registrar on 10th June, 2005. This involvement of the office of the Hindi department in helping Srivastava to have unauthorised access showed that any evidence based on information offered by the HOD could not be relied upon. It is interesting to note that the only SLP the HOD had in his possession was of Srivastava for the 23rd of May, 2005 for which date Srivastava needed an alibi because he was charged with an offence to which there was a witness besides the victim. Generally all official records of the Departments of the University are in files in the custody of the departmental clerk. The clerk of the Hindi department made it clear that even on the 6th of July, 2005 the letter was not in the possession of the office but was kept separately by the HOD. The Committee wondered why in the file the HOD kept only one SLP. The HOD also claimed that there was no practice in the department of forwarding SLPs to the Registrar whereas only the VC had the authority to grant SLP. The Head repeatedly stated that there were no records whatsoever of casual leave, Earned leave and SLP maintained in his department. It is then pertinent to ask as to why only Srivastava's SLP for 23rd May, 2005 was available with the HOD of which he readily gave a copy to the Committee. He clearly stated that there was no way of determining the date of receipt of Srivastava's SLP. (see Appendix IX)

The Committee grew suspicious of the authenticity of the SLP because of a sentence in it. Srivastava writes, purportedly on 20.5.05, " I therefore request you to allow me to leave station *from 5 A.M on 23.5.05 (Monday).*" (Emphasis added) (See Appendix X). The Committee felt that in his bid to find a fool-proof alibi Srivastava probably became the only teacher to seek station leave exactly with effect from a particular hour, 5 A.M. This is an abnormal SLP to say the least. The department also appeared to be abnormal in that it claimed that it did not maintain any records of leave

but kept the record of only one SLP that could become handy for an accused if he needed an alibi. The witness Srivastava marshalled to substantiate this claim of his not being in Shillong on 23rd of May, 2005, Dr. Radhey shyam Tiwari, claimed in a written statement “ Professor Srivastava who was on a visit to Guwahati in connection with some personal work came to my house around at 8 A.M. on 23.5.05 (Buddh Purnima). He stayed with me and left for Shillong early in the morning at around 5 A.M. on 24.05.2005.” (See Appendix XI). On cross examination Tiwari claimed that he himself was the proof of Srivastava’s whereabouts on 23rd May 2005. It was surprising that Tiwari did not offer any other evidence, such as his family members or any other person in his house witnessing Srivastava’s visit. (See Appendix XII)

Tiwari’s written statement was in the form of a testimonial about Srivastava’s academic aptitude and helping and religious nature addressed to “Whom it may Concern.” It surprised the committee that such a testimonial should include mention of visit by Srivastava on a particular day on which he is supposed to have committed an offence. The Committee also found it difficult to accept this alibi because both Srivastava’s SLP and Tiwari’s testimonial claimed that Srivastava had personal work at Guwahati. Yet, Tiwari wrote that Srivastava arrived around 8.A.M on 23rd May, 2005, stayed with Tiwari and left for Shillong early in the morning at around 5 A.M on 24.05.05. These two evidences are corroborative to the dot creating suspicion about the authenticity of the claims made. This evidence needs to be placed in the context that the complainant Miss S had a witness in Miss N because both Miss S and Miss N were present on that occasion when Srivastava visited them in their residence on 23rd of May, 2005 and sexually harassed Miss S. The Committee therefore had to decide whom to trust - Srivastava, his witness Tiwari and the alibi sought to be presented through the SLP in the department or the two girls who accused Srivastava of sexually harassing Miss S.

The SLP in the Hindi department could not be trusted because the HOD himself went a long way to allow Srivastava access to his office by violating a clear order of the Registrar to the effect that Srivastava should not be allowed access to his office room after his suspension on 10th June, 2005. There is no doubt that if the University decides to go into this violation of Registrar’s order by the HOD Hindi department the HOD might face serious consequences. The conduct of the HOD during the period 10th to 13th June

2005 shows that he is not in the habit of strictly adhering to norms of official rules and regulations. The Committee therefore found it difficult to believe the HOD and found it extremely difficult to believe that there could be only one SLP in his possession and no other records of leave of the faculty.

The other witness, Tiwari, who tried to stand by Srivastava on this alibi refused to forcefully argue that Srivastava was indeed in Guwahati on the 23rd of May 2005. Committee also wondered why Srivastava did not claim that his wife knew that on 23rd of May, 2005 he left for Guwahati. Srivastava's reluctance to use apparently available verifiable evidence in support of his leaving station on 23rd May, 2005 casts serious doubt on his claim.

The Committee found that the version of the complainants was more plausible because the faculty members of the Hindi department testified that the girls of the department were of good conduct and would not unnecessarily do things to bring bad name to the department. In fact three faculty members clearly stated that they had faith in these girl students and that they would not bring these kind of charges if there was no basis to those. In fact all these three colleagues of Srivastava, did cast some doubt on his character. The only person in the Hindi faculty who did not say anything against Srivastava was the HOD. [See Appendix XIII (a), (b), (c), (d)]. The Committee's belief got further strengthened by the evidence it could collect about Srivastava's antecedents. In fact one of his former heads put it in writing that during his stint in Gauhati University girl students verbally complained against Srivastava. The HOD, Hindi, Gauhati University wrote: "During my tenure as Head of the Department of Hindi, Gauhati University I received verbal complaints from a number of female students that Dr. Srivastava tried to take advantage with immoral intentions on the plea that he was paper – setter and examiner." (See Appendix XIV). An ex-student of Srivastava from Gauhati University sent an unsigned but identifiable statement (name withheld on request of the ex-student) in which it was stated that the students "found him as a notorious, lustful and a man with loose character. He even threatened to the girl student (sic) not to make any friendship with boys except him." The student also referred to an incident in which Srivastava alleged to have offered a student the opportunity to write answers to third

paper in a separate answer script to replace the original answer script which was in his custody. (See Appendix XV). This evidence is being discussed later in the report.

These evidences together with the general tenor of the statements of three of his present colleagues forced the Committee to come to the conclusion that the version of the Complainant Miss S was more plausible than Srivastava's alibi. In arriving at this conclusion the Committee was guided by the reasoning used in the case Maharashtra state Board of Secondary and Higher Secondary education v. K. S. Gandhi, cited above wherein it was stated that "The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable." If Srivastava's own colleagues believe he was capable of committing sexual harassment, if one of his ex-student testifies that he was in the habit of taking sexual advantages from his students, if his former Head had stated in writing that girl students verbally complained against him that he tried to take advantage by misusing his position as an examiner and a paper setter then when a student accuses him of sexually harassing her and when another claims to have witnessed such an act then in all probability he had committed that act. **The Committee is of the opinion that he is guilty of sexually harassing Miss S.** The Committee also kept in mind Justice Krishna Iyer's words in State of Harayana v. Rattan Singh (K.Iyer J.) [paras.2-4] S.C 1513 AIR 1977 : "There is no allergy to hearsay evidence provided it has reasonable nexus and credibility." As we shall examine later there is enough of hearsay evidence with nexus and credibility to lead the Committee to the conclusion that Srivastava is capable of committing the offence that Miss S charged him with on 23rd of May, 2005. Srivastava's attempts at shielding himself under cover of technicalities as depicted in para 23 of his RS-1 (See Appendix XVI) also led the Committee to believe that his defence on this case was rather weak. **The Committee therefore concluded that Srivastava did commit the offence as stated by Miss S and corroborated by Miss N. The Committee also was convinced that Miss S had no reason whatsoever to bring a false charge against Srivastava and that Miss N had no reason whatsoever to falsely corroborate that charge by standing witness.**

This incident of sexual harassment appeared to be only the tip of the Iceberg because the same student, (Miss S), had alleged that earlier to this incident she had been given a

handwritten notebook by Srivastava in which there was a lot of pornographic writing with details relating to the conjugal rites of a married couple on their wedding night which was in no way related to her course of studies. (See Appendix VIII) She claimed that she was asked by Srivastava to read the note book and to return it to him. She was specifically asked to come alone to return it. This incident according to the students took place on April, 24 2005, when Miss S and Miss N had gone to the teachers' house to show him some notes that the students had prepared. Miss N while corroborating insists that she remembered that Srivastava asked only Miss S to read the material in the note book and asked her to return it alone. In this charge too it is clear that there was a witness.

Srivastava in his written response 12.07.05 (See Appendix XVI) and also in his deposition before the committee merely denies this act and claims that the charge is concocted etc. Here too he tried to hide behind a technical point. In his rejoinder to the committee on 12.07.05 he pointed out that while plaintiff stated in her written complaint that the event took place on 24.04.05 in her deposition before the committee on 11th June when she was asked as to "what was the nature of the material which was there in the note book which Srivastava gave her on 23.5.05? Miss S did not deny (sic) the date 23.5.2005 and implies her admission for the date 23.5.2005. The two dates about the same alleged incident speaks itself about the nature of the allegation which is concocted and fabricated." This defence indeed reflects a desperate attempt by an offender to shield himself behind an obvious error committed by the person deposing before the committee. Bringing a charge of sexual harassment against one's own teacher is an arduous task for girl a student coming from a conservative society. Deposing before an enquiry committee again is an experience not quite enjoyable to a young girl student. It is quite possible that Miss S got confused of the dates. For her, the committee surmises, reliving the embarrassing incident itself was a torture. So, her inability to correct the date at that point need not be a proof of the charge being false. Srivastava was not in position to prove that Miss N who claimed that she was a witness to the supplying of the sexually suggestive note book to Miss S was lying. In fact he failed to react to the fact that the minutes of the committee for the same date in which Miss S did not correct the date showed that Miss N was asked by the committee as to what was the nature of the material in the note book

given to Miss S on 24.4.05. Miss N said that she was present when it was given and that it was of sexually suggestive nature which had descriptions of a couple's first night together. Here in this part of the minutes the date 24.4.05 was confirmed by a witness. Srivastava had nothing to say about that.

It is important to note that Miss S asserted in her written statement that she returned the said text not alone but with Miss P, thus trying to ensure that she did not return it alone. There is also a hearsay corroboration of this charge when Srivastava cross examined Mr. Tripathi, one of his colleagues in the department whether he had seen Srivastava carrying sexual materials/ books. Tripathi replied that he had not seen but the girls told him that they could not procure a photocopy of it otherwise they would have submitted it as evidence. (See Appendix XVII) Committee also came to know from the HOD Hindi that between 10th and 13th of June 2005 Srivastava got some books out of his room despite the strict order of the Registrar of the University denying him access to his office. The question is, did Srivastava remove the said text from his office room? The probability is that he did. In view of the above Srivastava's attempt at defending himself on the basis of alleged confusion about dates does not hold any water. The Committee is of the opinion that there is preponderance of probabilities that Srivastava supplied asexually suggestive texts to one of his girl students and thus sexually harassed her.

There indeed is a chain of events involving sexual harassment of girl students by Srivastava. Therefore the charges brought by the girl students cannot be treated as separate charges. This is a continuous act of sexual harassment by Srivastava which was ultimately brought to the notice of the Women's Cell on the 8th of June 2005.

Miss S also narrates another incident in which three girl students including her had gone to keep company of Srivastava's wife when he had gone to Arunachal for some work. She claims that on that night she was sleeping with Mrs. Srivastava and suddenly she woke up because she found that some one was pulling the blanket from over her head. She cried out of fear and then the wife told her that the professor had come back. Srivastava had not come back at the time she had gone to bed but at that moment the wife told her that her husband had come back and she should go and sleep in the other

room. She wondered how the teacher came in without ringing the calling bell. She then discovered that the kitchen door was open. She believes that the door was deliberately kept open. Though she did not specify she seems to imply that probably the wife connived with Srivastava's sexual exploits. The Committee did not press this charge primarily because it would have been a lengthy affair involving investigation of corroborative evidence from various sources. The only source where material evidence of Srivastava's visiting Aurnachal could have been his own department because as a matter of official record his leave and SLP applications of that occasion would have been present. But the Committee was aware of the strange situation in the department that the Head claimed that from the inception of the department there had been no practice of maintaining any record of leave etc. Srivastava's antecedents and his proved involvement in sexual harassments discussed above creates a suspicion in the mind of any wise person that such an act by him was not only probable but very much possible .

The story of Srivastava's involvement in sexual harassment did not stop here. There is evidence to show that he had been sexually harassing other students. Miss P, one of the complainants claims that, she has been receiving undue attention from Vivek Srivastava and that he was trying to lure her to an illicit sexual relationship. She claims that one day when she had sprained her ankle and was in severe pain, that Srivastava came to know of it and came to the house in which she and other friends resided. He was carrying some ointment and began applying it to the sprained ankle of the girl student in the presence of her friends Miss K and Miss N who were present on the occasion. Miss K and Miss N in their statements corroborated this. (See statements of Miss K and Miss N in Appendix VIII). The friends of Miss P repeatedly told Srivastava not to do it himself and offered that they would apply it to their friend. Miss P herself told Srivastava not to apply the ointment himself. But she claims that Srivastava argued that he was like a father and insisted on massaging her despite her protestations. This is corroborated by Miss K. Miss P claims that that was the beginning of his pursuing her. In this incident Srivastava continued physical contact with his girl student Miss P despite explicit resistance from the victim herself and two other friends who were present. Touching and massaging the leg of a girl student against her and her friends' wishes is definitely a case of sexual harassment and as the witnesses bear it Srivastava did commit

this offence. In his defence in this particular case Srivastava maintained that “one of the so-called student had sprained her ankle which was informed to me by some of her friends of that particular student(sic!) probably in the month of September 2004 and at that time my wife had given the ointment to them and they left. But neither me nor my wife had visited the said student and as such the allegation of my applying ointment on her legs and massaging her legs are totally false, and concocted and put the complainant into the strict proof of it”.(See Appendix XVIII para 8).

The strict proof of it was indeed available. There were two witnesses claiming to be present at the time when it happened to Miss P. Srivastava had only the denial as his defence. If as he had claimed in his response it was his wife who had supplied the ointment then it was rather strange that Srivastava did not produce her as a witness before the Committee to substantiate his claim. It is necessary to keep in mind that Srivastava had voluntarily produced witnesses from outside Shillong to defend himself. His failure to produce his wife in this case indicates that there was some problem in his version of the story. In this case it is the words of three of his students against Srivastava's lone voice. The Committee is convinced that Srivastava did commit this offence and he was guilty of sexually harassing his girl student Miss P.

Miss P narrates various instances of Srivastava visiting their residence and propositioning her, at times trying to lure her with monetary gain. Most of these charges are corroborated by statements of other girl students some of whom claimed to have witnessed such incidents. Miss P's friends maintain that Srivastava was particularly pursuing Miss P because she comes from an economically weak background. This is borne out by an episode narrated by Miss P and to which there are more than one witness. Miss P claims that on the Dewali day four of her friends had gone home and she and another friend were staying in the house where six of them used to stay. She claims that, though she herself thought that going home for a day or two did not make sense and that she wanted to stay back and study, yet, it was also a fact that Srivastava was advising her to stay back. She claims that on that day when only two of them were in the house Srivastava came. Miss P now suspects that the other friend Miss R was probably

expecting the visit by the professor because she had cut some fruits and kept those ready to serve. The professor according to Miss P came directly to their room. She was sitting on the bed and seeing the professor she stood up and requested him to sit in the chair. But he instead of sitting in the chair sat near where she was sitting and asked her to sit down. As her opinion of the teacher till then was not very bad she sat down. Her friend went in to the kitchen to make tea for the teacher. The teacher held her hand. She tried to take it away but as she knew that the teacher knew palmistry she thought that he was trying to read her hand and she did not object too much. But the teacher instead of reading the hand began stroking it. Then he started talking in terms of his hiding with her etc in a suggestive manner. She claims that a look at the eyes of the teacher revealed to her his lecherous intentions. Details of this conversation were minuted by the committee as told by the victim. (See Appendix XX)

The description of the behaviour of the other girl student (Miss R) contributes to a charge made by quite a few of the complainants that Miss R and the wife of the teacher connived with him in his attempts at sexual exploits. This charge gets credence from the fact Miss R did not co-operate with the committee. She appeared once for a preliminary hearing, carried a written statement to the effect Srivastava was not guilty. when the committee asked her how she was so sure that the teacher had not committed those acts she withdrew the statement. She was summoned for a hearing again but she did not respond and virtually went in to hiding.(see, Appendix XIX Minutes of the enquiry committee for 5th July 2005, After Adul Hannan cross examination) Miss P claims that she tried to escape the teacher by going over to the kitchen where R was, and began telling her about the teachers' behaviour and requested her not to leave her alone but R only laughed. According to Miss P, after this Mr. Srivastava's wife came and took R away to buy some vegetables and then Srivastava again made propositions to her asking her to develop a relation with him which would make her physically and mentally happy, that her future would be made and she would not even earn a bad reputation. Because the wife had asked her to make tea she went into the kitchen the teacher pursued her there also and made the same propositions.(see Appendix VIII : Translated statements of the Girls.) After this incident Miss P was so distressed that she had to be hospitalised. Proof of

hospitalisation is with the Committee. While Miss P was narrating all this before the Committee she broke down and cried.

The hospitalisation episode as narrated by Miss P and corroborated by at least three witnesses present on the occasion is revealing. During interrogation Miss K and Miss D (see Appendix XX Minutes of the enquiry committee Women's Cell NEHU) all claimed that Srivastava insisted with the hospital authorities that she be given a single room and that being her Local Guardian he would stay with her, though her girl student friends were willing to stay with her. But a single room being not available Miss P was put into a partitioned room and then Srivastava went away. Miss P claimed during interrogation that she thought her friends saved her that night. Miss P stated in her written statement that Srivastava paid her hospital bill and told her that he would give her money every month which she would deposit into his bank account and told her not to tell anyone about it.

Srivastava while replying to this charge maintained in his responses both of 25.6.05 and 12.07.05 that it was some friends of Miss P who came to his house seeking help and that he and his wife brought a taxi, took her to hospital and the concerned Dr. admitted her. It is rather strange that Srivastava had nothing to say as to whether he claimed to be the local guardian of the girl and whether he wanted to stay the night with her in a single room. An independent witness Miss D who was present during the hospitalisation episode claimed that she heard Srivastava insisting in the hospital that he was the Local Guardian and that the girl should be given a single room where he could stay with her. The above is corroborated by another witness Miss K. (See Appendix VIII : Appendix XX)

In his defence Srivastava merely says that he and his wife paid the bill because the girl did not have money and that the girl returned the sum after levelling these charges by depositing it to his bank account. He claims that the girl asked for the bank account before. While Miss P claimed that Srivastava himself gave the bank account number and told her he himself would give the money to her to deposit in his bank account,

Srivastava claimed that the girl asked for the bank account number and promised to repay the loan. While Miss P's account tended to corroborate her charge of Srivatava's proposition to her for entering into a relationship in return for monetary gains Srivastava's claim tried to blame the girl for delaying repayment.

From the circumstances narrated it is difficult to believe in Srivastava's account. The question that arises in the mind is – will a student ask a teacher the bank account number to refund a loan taken from him? Ordinarily a student who borrows from a teacher would refund in cash and in person unless the teacher specifically directs that the payment be made to his bank account. Moreover, two witnesses claim that they knew that Srivastava himself offered to pay. These witnesses did not say that the girl asked for a loan. It is therefore probable that Srivastava did make a proposition to Miss P that the loan need not be paid by her but himself would give the money to her which she could deposit to his bank account. The attempt obviously was to get a tight grip over the girl to make her submit to his lustful designs. In fact Miss P clearly states that it was Srivastava himself who offered the money and thus tried to tempt her to enter into a liaison with him.

There are two more angles to this episode that need to be considered. Why did the friends of Miss P go to Srivastava for help? The reason is obvious they maintain that Srivastava was their local guardian. Or obvious reasons Srivastava denied being local guardian to any of the complainants including Miss P. But the HOD maintained that as per official record Srivastava was the local guardian of the girls residing near his residence (see, Appendix XIII d). Another senior teacher of the department Dr. Pandey too insisted that he knew that Srivastava was the local guardian of all students from Assam.(see Appendix XIII a) Srivastava himself said that he did look after the needs of these girls, including personal requirements, accommodation Gas Cylinder arranging (See Appendix XIX P. 13) A land lord gave it in writing that Srivastava was the prime negotiator in renting a house for the girls. (see, Appendix XXI). The Committee tried to find out from the guardians of the girl students whether Srivatava was the Local guardian or not to further verify the statements given by the girls and also two teachers of the Hindi department.

The girls were busy preparing for their last internals and end semester examination scheduled only a couple of weeks later. It was difficult for the Committee to contact all the parents but it succeeded in contacting at least one who was employed in the nearby city of Guwahati. In response a query by the Committee a letter was received from the father of one of the girls which also clearly stated that he had requested Srivastava to be the local guardian of his daughter and that Srivastava agreed.(See Appendix XXII) From the above evidences it is clear that Srivastava was the Local Guardian of these girls who stayed near his residence. Had it not been for this he would not have done the things for them that he claimed to have done for them. It is not difficult to understand that if he indeed was the local guardian the friends of Miss P would obviously go to him for help when she fell ill. The question that one would ask is why did Srivastava lie and denied that he was the local guardian of these girls including Miss P. The plausible answer is obvious. Srivastava knew that if he admitted that he was the local guardian of these girls then it would be difficult for him to convince people that he never visited them in their residence and if he admits that he visited them then many of the charges of sexual harassment which were based on what he did to the girls inside their residence would appear to be true. But the evidences discussed above clearly shows that Srivastava was lying and any ordinary wise person would conclude from this that by hiding behind lies Srivastava was only admitting his guilt.

The Committee therefore has no doubt that Srivastava is guilty of continuously sexually harassing girl students who were under his charge as his wards. This reflects a perverted mind, absolutely unworthy of a teacher.

The most pathetic case that came before the Committee was the written statement and the verbal narration of Miss BD. The victim stated in minute details as to how on 2nd of January, 2005 Srivastava lured her to visiting his house in the pretext of giving her some notes. According to the complainant Srivastava was staying with his wife and she realised that the wife was not there only when she was in the house of the teacher. She claims that she was confined in the house for over four hours during which period the teacher molested her. From the narration it became clear to the Committee that the girl had a very narrow escape. As per the guide lines derived from a well-known case cited

above (Hiranath Misra and other appellants VS the Principal Rajendra Medical College, Ranchi and another, respondent), it is necessary to maintain strict confidentiality about the identity of the complainant. Since the detailed narration of the molestation could be highly embarrassing to the complainant and because these details do not have any significant bearing on verification of truth we refrain in this case from reproducing the narration but the narration was presented both in writing and in verbal form to the Committee.(See Appendix VIII) The members of the Committee took notice of the details and witnessed the agony that the complainant suffered while deposing before the Committee.(See Appendix XX). The members of the Committee also noted that both in her interrogation and in her written statement she gave a detailed description of the internal settings of Srivastava's house to the extent that she said that the last room in the house beyond the kitchen was another small room. She was also able to recount vividly the colour of the blanket on the bed in the bedroom and the position of the double bed. The ability to describe the setting of the house was a clear indication of the fact that she indeed had visited that house and as claimed by her was taken by Srivastava to the last room behind the kitchen.

Srivastava, while responding to this charge did not contest the description of the layout inside the house but flatly denied that Miss BD visited his house. His not being able to find fault with the description of the inside of his house by Miss BD would lead one to believe that Miss BD was indeed taken inside the house and was forced to set foot in all the rooms of the house including the bedroom and the last room in the house behind the kitchen. But Srivastava's own defence against this particular charge becomes a tell tale evidence of his offence, particularly in view of his propensity to lying. In his deposition before the Committee on 25th of June, 2005, Srivastava claimed that he was the head of the Department and stayed back in Shillong during the winter vacation of 2004-2005. The Committee specifically asked him "Where were you during winter vacation?" Srivastava answered "I was Head of the Department and stayed back in Shillong."(See Appendix XXIII) There was no indication in this answer given on 25th of June, 2005 that during the winter vacation he was out of station for any period of time. In fact records from the Registrar's office show that on 18.2.2005 Srivastava wrote to the Deputy Registrar (Estt. II) through the Dean, School of Humanities and

Education,(SH&E) stating that “During the winter vacation from 20th December, 2004 to 18th February, 2005 (i.e.60 days) I was on duty in the Department of Hindi, Shillong. I therefore request you to kindly convert above mentioned 60 days into earn(sic) leave as per rule and credit it in my earn(sic) leave account.”(See Appendix XXIV) The above claim forwarded by the Dean(SH&E) on 21.02.05. This clearly belies Srivastava’s claim that he was on Station Leave on 2nd January, 2005. This leave is credited to a teacher for carrying on official duty during the period of vacation. On 25th June 2005 therefore Srivastava’s claim was that he was in station for the entire period of the winter vacation including the day of 2nd January, 2005 the date on which Miss BD claims that she was taken to Srivastava’s house and was molested. It is important to remember that on 25th of June 2005 Srivastava had not seen the details of Miss BD’s narration and therefore he stood firmly by his claim that he stayed back in Shillong during the winter vacation. The details of Miss BD’s narration were handed over to him on 5th of July, 2005, and then Srivastava in his response of 12th July, 2005 finds an alibi. The alibi is similar to the one which was proved to be non- existent as per records in the Hindi department discussed above. To defend himself in this charge of causing sexual harassment to Miss BD on 2nd January 2005, Srivastava claimed that he had applied for station leave permission (SLP) for one whole week from 2nd January 2005. (Appendix XXIV). This application for SLP appears to be a very strange document. It is purported to have been written on 20th of December 2004. On the right hand corner someone had written in hand 29/Hindi. This number could not have been given in Hindi Department because the HOD Hindi, as shown above, had claimed the there was no practice of keeping any leave record etc. from the inception of the department. In the other SLP of Srivastava discussed above there was no number in the body of the letter. The number 29/Hindi therefore might have been given in the Dean’s Office. However there is no date of despatch and issue number from the department of Hindi. The application was addressed to the Dean, School of Humanities and Education. The Dean signed on the application itself with the date 21.2.05. There is a seal of the Dean’s office not under the signature of the Dean. This seal bears the date 01.2.05. The normal procedure in the Dean’s office is that the application would be entered into a receipt register which would bear the date of receipt and also the number and date of despatch from the source of the letter. The Committee wrote to the

Vice Chancellor to provide the Committee with the receipt/ despatch register etc. so that the veracity of the claim made by Srivastava that it was submitted on 20th December 2004 could be ascertained. (See Appendix XXV). The response of the Dean was even stranger. She declared the documents sought for as redundant and insisted that her letter and the SLP be accepted as the evidence. She also cast serious aspersions on the Enquiry Committee. (See Appendix XXVI). The Committee however wrote back to the Vice Chancellor on 25th July pointing out that these records were absolutely essential and their redundancy or otherwise was for the Committee to decide. The Committee also gave a deadline of 4:00P.M. of 25th July, 2005 to receive those records and if by that time the records did not come the Committee would assume that the records do not exist and would proceed accordingly. (See Appendix XXXII). The records did not reach the Committee by 5:00 P.M. on 25th July, 2005 and not even on the morning of 26th July, 2005. The Committee therefore concluded that the application for SLP was a doctored document and the Dean SH&E appears to be in collusion with the accused. Thus the nature of the SLP and the reaction of the Dean to attempts at verification made this alibi questionable. The alibi became further unacceptable to the Committee because the University had granted Srivastava compensatory earned leave for the entire period of 60 days of the winter vacation of 2004-2005. That the application for SLP received by the Dean SH&E is an afterthought and that the document itself was fabricated becomes clear from the fact that the Dean signs both the application for SLP and the application for compensatory earned leave claimed by Srivastav for the period including the week in which he claims to be out of station on the same day. It clearly shows that when the Dean and Srivastava tried to fabricate a document serving as an alibi they did not realise that both of them had already sent records signed by themselves to Registrar's office that can prove that this alibi was false, concocted and that it was pushed in to office much much latter than the date in which it was to be put in. It is interesting to note that the application for compensatory earned leave submitted by Srivastava (because it was a genuine document) bore the usual date and number as is found in any genuine document while both his SLP applications, sought to be used as alibis, did not have such dates and numbers and that is why both the Dean's and Hindi H.O.D's office failed to produce

receipt and issue registers etc. These are poor efforts at fabricating alibis. The Committee believes that the Dean's role needs to be investigated by the University separately.

Another point needs to be noted in regard to the above alibi of Srivastava. The Dean in her letter claimed that she was out of station when the SLP was submitted and that she received it only after the vacation was over. This position is not at all acceptable because under the University rules when a Dean is out of station or on leave the Vice Chancellor himself acts as the Dean. Therefore if we were to believe the Dean then Srivastava's SLP would have gone to the Vice Chancellor's office and there would have been a number of receipt from VC's office on the SLP. Moreover SLP can be availed only if it was granted and there is no evidence to show it was granted to Srivastava. Considering the fact that Srivastava was the HOD it was necessary to hand over charge if he had left station. The SLP only requested the Dean to look after the Department in his absence and on a date when the Dean herself was out of station. There is no evidence to show Srivastava actually handed over charge of the department. **There is no evidence to show that he has actually left Shillong on those dates. On the contrary there is evidence to show that he had claimed to the University that he was actually performing duty in Shillong and asked for compensatory leave to be credited to him for the period in question. In view of the above the SLP does not appear to be a genuine document.**

In any case merely applying for SLP does not prove that he had actually left station. The alibi becomes more questionable in view of the fact that Dean in question had already taken sides in the case by giving a good conduct certificate to the accused and also by bringing imaginary charges against the Enquiry Committee. (See Appendix XXX and Appendix XXVI.) The Committee became convinced that Srivastava's claim of being out of station from 2nd to 9th January, 2005 was false also because of the fact that he claimed compensatory earned leave for being in duty for the entire period of 60 days of vacation which included the day in which (2nd January, 2005) he took Miss BD home and molested her. Official records show that he was granted compensatory earned leave for the entire period on the basis of an application written by him in which he claimed that he was in station in Shillong during the period in question. . (Appendix XXVII). It is strange Srivastava tells the Committee on 25th June, 2005 that he stayed back in Shillong

and looked after the Department during winter vacation which included the days 2nd to 9th of January , 2005 and then produces a document to show that he had sought permission to be out of station for a whole week during the period doing important work in Pune and then applies to the University to give him compensatory earned leave even for those days for which he claimed to have sought permission to leave station. There is no doubt that the alibi is concocted and that he was actually in Shillong on 2nd of January and committed the offence on that day. The attempted alibi becomes an admission of guilt.

Srivastava's desperate attempt to get rid of this charge brought by BD is clear from the fact that he tried to argue that since this charge belonged to a period more than thirty days before the complaints were lodged before the Women's cell therefore this charge will have to be dropped on that technical ground. But as we have argued above the complaints as came to the Women's Cell are a chain of events that shows how Srivastava has been sexually harassing his girl students of whom he was also the local guardian. Therefore these complaints must be treated as an offence involving serious moral turpitude and sexual harassment brought to the notice of Women's Cell on 8th June, 2005 which is well within permissible period of reporting an act of sexual harassment. The technical legal point has no bearing on this. It is a very serious offence involving careers of students. If left alone, such offenders can affect the futures of students not only of the present batch but also of future batches.

It is important to keep in mind that, three Fourth Semester students, who are seniors of the complainant, said in their written statement that after this experience she talked to them and expressed the great distress she was in. The seniors in their statements maintained that they had some inkling of the character of Srivastava and actually were warned by their own seniors that they should avoid going alone to this particular teacher. In view of the fact that these three witnesses were not direct victims and revelation of their statements would not embarrass them in any way we are appending these to the report. Wherever the name of the complainants were mentioned we obliterated those in the written statements appended.(Appendix VIII) These seniors of the complainant also maintained in written statements that seeing the plight of this girl student they decided to try and expose Srivastava's nature so that others did not suffer in future. We need to note

that these students have no grudge to bear against Srivastava and therefore their charges gain credibility.

A fourth independent witness who had no common interest with the complainant and who was not an original signatory came before the committee to depose. In her written and verbal depositions she told the committee that she stayed in the hostel with three other girls but as Srivastava was their local guardian they used to go to his residence but he never disturbed her. She claims that she heard that Srivastava did not have good character. She then stated that when she came to know of the plight of Miss BD and Miss P she decided to support them. She also claims to have heard that Srivastava had called a teacher of her old college to bail him out of this problem and that Srivastava had paid that teacher Rs. 1000.00. to collect statement from the girls exonerating him of the charges. She stated that she told the college teacher that she was involved in complaining against Srivastava and that she was not ready for any kind of compromises. This seems credible in view of the fact that the Chairperson women's cell herself received calls from a Morigaon College Hindi lecturer, who identified himself as one Mr. Chauhan on 11th June, 05 at night and again on 18th June around 9 P.M. He wanted to discuss the case of Srivastava. First day, he was suggesting that these charges should not be publicised because then these girls would not be able to carry on their studies in Shillong. He was obviously trying to threaten the Chairperson by drawing her attention to the possible social embarrassment the girls might face. The Chairperson told him to keep out of it. Next time he tried to find out the progress of the case on the plea that the girls were his ex-students. It is important to note that though the identities of the complainants were kept confidential Chauhan seemed to know who the complainants were! Was it because Srivastava himself told Chauhan? How did Srivastava correctly guess who could complain against him? This needs to be noted because it directs the needle of suspicion to Srivastava. The Chairperson told Chauhan that if he was an interested party he should come before the committee to depose and that otherwise he should not interfere in an internal matter of the University. It is therefore plausible that Srivastava was trying to use Chauhan to extract statements from girls.

There is further corroboration of this in the conduct of Miss R referred to above. As discussed before she came before the Committee on 20th June with a written statement that Srivastava was not guilty of any sexual harassment. When the Committee asked her how she was so sure about this fact, she withdrew the statement. This is minuted. In view of the fact that one of the faculty members of Hindi department stated before the Committee that though ten students had complained there is one more who was a victim but had not come out till then and that she was also a topper. It is clear from the evidence of Miss P about the Diwali day that Miss R who had a special relation with Srivastava. In the interrogation by the Committee other complainants too complained that Miss R had a special relation with this teacher and that she was completely under his control. They of course maintained that she was a good student but that she apparently took advantage from Srivastava in exchange for favours. One witness who stayed with the six girls along with Miss R in the same house pointed out that Miss R's place in that house was specially covered by a curtain and there were occasions when Srivastava remained behind that alone with her but tried to cover it up by various means. (Witness P in her description before the Committee).

The Committee carefully examined the evidence both oral and written given by another complainant Miss K. She like all others maintained that when she came initially Srivastava was very helpful and became her Local Guardian. This is a claim made by all the complainants and corroborated by the witness of the Hindi faculty. Miss K narrates an incident when she and her friend Miss R referred to above came from their homes after a holiday before the other girls who stayed with them could come. Srivastava on that occasion insisted that these two girl students should stay in his place instead of staying alone in the rented house. That night Miss K and Miss R (Miss R who had made contradictory statements earlier refused to appear before the Committee when summoned on the 5th July, 2005) slept in one room in Srivastava's house. Miss K remembered that the door was closed but at night she woke up and felt as if someone was coming in. She then woke up her friend Miss R and told her about it. Since nothing else happened she fell into a deep sleep. She said that next morning she narrated the experience to Srivastava, his wife and Miss R and she told the committee that when she revealed that

she was always aware of whatever happened around her even when she was asleep Srivastava went pale. She narrated another incident when one day when she was alone in the rented house Srivastava came in and bolted the door from inside and asked her to sit next to him on the bed. Miss K said that she refused and she could see that Srivastava looking at her from head to toe with a very strange smile. She found the look obscene and looked for an opportunity to get out.

Miss K told the Committee that Srivastava began to control the lives of these girls living in that accommodation near his house and was offended if they talked to boys even if they were of their own class. She claimed that Srivastava used to rebuke them for talking to boys. She wondered what was wrong in talking to their own male class friends. But then Srivastava , according to Miss K, showed his extreme jealousy when he rebuked the girls when another male teacher of theirs , Bharat Tripathy, visited them one day. If true this and similar incidents of expression of extreme jealousy, as borne out by the statement of one of his colleagues indicated that probably Srivastava suffered from some serious psychological problem which affected his relation and conduct *vis-à-vis* his girl students. This in turn has the potentiality of adversely affecting the academic activities of his girl students.

There of course were charges made that he used his power as an examiner to punish those who did not submit. (Evidence of Miss D corroborated also by a statement, on the condition of anonymity, therefore name withheld, received from an ex-student of Srivastava from the 1998-99 batch of Gauhati University See Appendix XV). This aspect of sexual harassment could not be thoroughly examined by the Committee because of the problems created by the disappearance of the records of some of the internal assessment marks, conducted under the Headship of Srivastava, from the office of the Hindi department. (Evidence available in the letters received from the present Head of the Department See Appendix XXIX).

Misuse of power as an examiner:

However, the charge that he misused his power as an examiner to try to take advantages from his girl students is proved to a considerable extent when the committee

investigated charges brought by two complainants. Miss K alleged that Srivastava reduced her internal assessment marks from 10 out of 15 to 9 ½ out of 15 in course no. 103. The committee called for the script and found the allegation true. Miss D alleged that her marks in the same course were reduced from 11 out of 15 to 9 ½. Miss D claims that when she asked Srivastava as to why her marks were reduced the teacher told her that she made very few grammatical errors and that her writing was good. But as she stayed near the teacher's house giving her high marks might make people suspicious of their relationship. In his response Srivastava claimed that he was not an examiner for the course and that he did not reduce marks and that he did not say those things to his student. But examination of the script by the committee showed that the marks indeed were reduced under Srivastava's signature though he was not the examiner. The teacher concerned had not reduced the marks. The department has a system of moderation. But when marks are moderated it is done by a committee. Interestingly the committee discovered that of the lot of the scripts the committee requisitioned, in two scripts marks were reduced but those were marked moderated. Those two scripts did not belong to the complainants. But in the two scripts of the complainants marks were reduced but those were not marked moderated. (See Appendix XXXIII)

There could be two possibilities (1) Marks were moderated for all but Srivastava as the head wrote moderated on scripts of the students from whom he did not want to extract favours but in the scripts of the victims he did not write moderated because he wanted to prove to these girls that he could actually reduce or increase marks at will. If this message could be carried he could then force these two students to submit to his lust by threat or by allurements. Or, (2) the scripts of the complainants were not moderated but Srivastava reduced marks just to show his power so that he could make them submit to his lustful designs. In any case the reduced marks and signature of Srivastava under reduced marks proved that what these students said was right. In view of the fact that Srivastava was found lying by the committee on many other counts it was natural for the committee to believe that girls told the truth and that Srivastava misused his position to garner sexual favours. The committee found him guilty in this count too.

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IV THE EMERGING THEORY OF SEXUAL HARRASSMENT.

The above facts and evidences often corroborated with witnesses lead the Committee to believe that Prof. Vivek Kumar Srivastava was in the habit of sexually harassing the girl students who lived near his house, from all reliable accounts and circumstantial evidences, apparently under his local guardianship. In this the Committee was guided by the definition of sexual harassment given by the Supreme Court in Vishaka and Others Versus State of Rajasthan and Others. In this case the Hon'ble Court defined sexual harassment as:

“ ... 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.”

The definition of sexual harassment in the NEHU's ordinance was based on this guideline provided by the Supreme Court.

The Committee also suspects that the charge of molestation brought by Miss BD would appear to be plausible if viewed in the broader circumstances of Srivastava's conduct and antecedents. (Particularly in View of charges from one of his ex-students from Gauhati University). The fact also indicates that probably Srivastava's wife and a student Miss R connived with him in these cases of harassment. The conduct of Miss R during her deposition before the Committee, trying to submit a clean chit certificate to Srivastava and subsequent withdrawal of it makes us suspicious about her role. But these beliefs of

the Committee and the theory of habitual sexual harassment needed to be tested against Srivastava's own version of the story.

Prof. Srivastava was summoned on 13th June, 2005 to apprise him of the situation. He of course was already in the know of the events because he was suspended by the University on 10th of June itself. Prof. Srivastava was told by the Committee on the 13th June, 2005 that the Charges would be formally handed over to him at a later date. The charges were formally framed and handed over to him by the Committee on the 17th June, 2005 with a request that he responded to those charges by 25th June, 2005 in written form. He was thus given 8 days time to respond. He was asked also to meet the Committee on that day. On 20th June, 2005 through a letter he pleaded for more time, and asked for the names of the complainants and all relevant ordinances. The Committee explained the urgency of the matter and refused therefore to extend the time. The Committee also declined to reveal the identity of the complainants as per recent legal practices in such cases. (Ref. case Hiranath Misra and other appellants VS the Principal Rajendra Medical College, Ranchi and another, respondent and Avinash Nagra v. Respondent: Navodaya Vidyalaya Samity etc. discussed above). The Committee informed Srivastava that the relevant Ordinances may be obtained from the University.

On 20th June, 2005 the faculty of the Department of Hindi, Miss D, Miss R and an ex-student of the Department, Sumit Tripathy, and another girl student who was not among the original signatories but who wished to depose before the Committee in support of the complainants were called. Their statements were recorded and duly signed by the Committee members. The evidences from these which went against Srivastava were supplied to him on 29th June, 2005. But in the meantime on 25th June, 2005 as requested by the Committee Srivastava appeared before it and replied to the charges in writing. (Appendix XVIII). As is evident from the Appendix XVIII he denied all charges and maintained that in the absence of documents and texts he was unable to write his reply effectively. He reserved his right to file additional reply. He specifically denied ever visiting the residents of the lady students of Hindi department and in the process in effect denied all charges of sexual harassment. He denied having called any student to his room and detaining her for long hours. He denied applying ointment on a student

mentioned in the charge and maintained that he and his wife did not visit the student. He further denied all allegations of his visiting the residents of the students in question and in any way sexually harassing them. He however admitted that the student referred to as Miss P above along with some friends came to his house sometime in the month of October to inform him about her sudden illness and requested him and his wife to render help to take her to doctor and accordingly he and his wife fetched a Taxi and brought the girl to the nursing home along with her friends and that she was admitted by the concerned doctor. He also claimed that because he was informed that Mss P did not have money and that on humanitarian grounds he and his wife paid the bill with an assurance from Miss P for repaying the same. He stated that she refunded the money after levelling false allegations only on 9.6. 2005 by depositing it in his account number which the girl had obtained before. He also expressed his intention of cross-examining the complainants and the witnesses and to produce his own witnesses in his favour. He wanted to substantiate his reply at the time of hearing.

During his interrogation by the Committee the same day Prof. Srivastava specifically denied that he was the Local guardian of any of the girls except some who stayed in the Dhankheti hostel. During interrogation he developed the theory that because these girls who stayed near his residence had a late night birthday party with some boys and the landlady of the house complained to him and then in turn he scolded the girls and that therefore they were trying to take revenge on him. Towards the end of his interrogation he also maintained that these girls wanted hostel seats and implied that the complaint was made to facilitate such accommodation. He insisted that it was an act of revenge. The Committee made some investigations and found that Prof. Srivastava's version was untenable for the following reasons:

1. His claimed that he never visited these girls appeared to be a blanket denial designed to disprove allegations of sexual harassment. But all the girls staying in that accommodation except Miss R, who was charged with connivance, stood witnesses to his frequent and unannounced visits to the house and his sexually coloured gestures and acts of sexual harassment committed by him in many of these visits.

2. His denial that he was not a local guardian to any of these girls met with repeated insistence by all the girls that he indeed was their local guardian. This acquired further strength because one of the land owners of a residence hired by these girls gave the committee a signed statement that Srivastava acted as the main negotiator on behalf of the girls when they hired his house. The head of the department of Hindi, NEHU, clearly stated that as per official record Srivastava was the local guardian of the girls residing near his house. This was corroborated by another faculty member. Moreover as shown above Srivastava himself admitted that he looked after the requirements of those girls, including Gas Cylinders. He also took care of the girls medical requirements including lending money for paying hospital bills. It was also noted that at least one guardian claimed in writing that Srivastava agreed to be the local guardian. In view of such evidence his denial about being local guardian of the girls who charged him with sexual harassment clearly becomes an attempt at defending himself in an indefensible situation. **The Committee is convinced that Srivastava indeed acted as the local guardian of those girls and that his denial does not hold any water and further that this denial was an attempt at shielding himself against the charges of sexual harassment.**
3. His conspiracy and revenge theory falls through because the cause of revenge (the late night birthday party by the girls and the subsequent scolding of them by Srivastava) was found to be non-existent by the Committee because the old land lady gave a signed statement that there was no late night party, that the party was only in the evening, and that she never complained to Srivastava.(Appendix XXVIII) Srivastava himself gave contradictory statements about the cause of revenge. In his deposition and written response of 25th June, 2005 he claimed that he rebuked the girls for holding a late night party and therefore they were taking revenge by bringing these charges but in his deposition of 5th July, 2005 he claimed that he merely counselled them. . When the committee asked him as to why should the girls be vengeful for counselling Srivastava had no answer to that

question.(see, Page 13 of Appendix XIX) Clearly the theory of revenge does not hold water.

4. Srivastava's claim that some of the complainants wanted to use these charges to facilitate hostel accommodation. (See appendix XXIII) This theory was found to be baseless because there was no evidence to show that the girls used that plea to get hostel seats.

All this shows that Srivastava had been lying to cover up his misdeeds. This completely demolishes his credibility as a defendant. It is thus clear that Srivastava's defence against the charges of sexual harassment was sought to be built on the basis of his two denials:

- A) Denial of ever visiting students staying in the house in which most of the incidents seemed to have taken place. If substantiated his claim of never visiting them would have made it improbable for him to have committed any of those offences that were claimed to have been committed against the residents of that house inside the house itself. In plain words, 'If I had never gone to the house how could I do what I was supposed to have done inside that house?' But as we showed above there are many witnesses to his visiting the house
- B) Denial of being a local guardian if proved would have showed that if he was not familiar with the girls how could he have had easy access to them? And without being close how could he have asked any of them to sleep in his house either to keep company of his wife or to save at least the two girls the trouble of spending the night alone in the house when their friends were not there? But the head of the department officially says Srivastava was the local guardian of the girls in question. This proves that Srivastava was lying on these two counts. One would wonder that if he was innocent why should he resort to such falsehoods?

We have cited above the case, Maharashtra state Board of Secondary and Higher Secondary education v. K. S. Gandhi, to show that the **“The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof, however, cannot be put in a strait-jacket formula. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.”**

The statement of the girl students and the statements of the Head of the Department and other faculty members must therefore be accepted as proof here. On the bases of these proofs we can safely conclude that Srivastava resorted to falsehood and there definitely exists a preponderance of probabilities that such falsehood would be resorted to only by a guilty person. The committee therefore is of the opinion that Srivastava is guilty.

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V

ASSESSING THE PROOF OF GUILT

The moot question is- is it necessary for an enquiry like the present one to prove a person guilty beyond any doubt? We have at the beginning of the report clearly stated that it is an enquiry instituted by the Women's Cell of the University. It is therefore not a judicial enquiry. The task of the enquiry committee is not that of a judge in a criminal complaint because the provisions of the Indian evidence act are not applicable in cases of this kind. The words of justice Krishna Iyer in the State of Haryana V Rattan Singh,

“It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the evidence act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act”.

It is therefore necessary to keep in mind that this enquiry is not to try and prove a case of criminal offence beyond doubt. It is in the nature of thorough enquiry. In such cases the provisions of the Indian evidence act of 1872 are not applicable. It was held in N. Rajarathnam versus State of T.N. and Another (1996 10 Supreme Court Cases 371, para 3) that imposition of punishment of dismissal on finding the delinquent guilty of demanding and accepting illegal gratification merely on the basis of the solitary evidence, held, not illegal and not warranting interference by Supreme Court. It is undeniable that sexual harassment of the kind narrated by the students in the case particularly by a teacher is worse than accepting illegal gratification and therefore the standard of proof defined in terms of solitary witness in the above case is applicable in the charges under enquiry. We have shown in the discussions of the statements of the complainants that in more than one case there were at least one witness to the sexual harassment.

The discussion of the charges of sexual harassment, the statement of witnesses, assessment of circumstantial evidences and unreliability of the alibi offered by Srivastava leaves no doubt in the mind of the Committee that Srivastava is guilty of sexual harassment. However something else must be kept in mind while assessing such charges of sexual harassment brought by students coming from the backgrounds of rural societies and small towns of India. In our society talking of sex is even today considered to be taboo. Moreover in a society where girls are taught to be submissive, shy and comely it is very difficult for them to come out publicly with charges of sexual harassment. This difficulty becomes almost insurmountable when the offender happens to be a teacher. Our students are socialised to be respectful towards teachers to the extent that far from bringing charges of sexual harassment a student would not even refuse to obey a teacher even when unreasonable demands are made. It is well known that minor sexual offences go unreported in our society. Therefore it is reasonable to believe that the sexual harassment suffered by these girls in the hands of Srivastava must have become unbearable to force them to go to the Vice Chancellor to complain against their own teacher. It is also necessary to remember that even when a fool-proof case of sexual harassment or sexual assault is brought by a woman and the guilty is punished, even then, in our society the woman who brings the charge is made to suffer a sense of shame. Therefore, it is plausible to examine such a case as this with considerable amount of sympathy for the girls. This realisation confirmed our belief that Srivastava is an atrocious and habitual sexual offender.

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VI

RECOMMENDATION FOR PUNISHMENT

Education is a social activity which involves high moral standards in the relation between the teacher and the taught. Sexual harassment of a student by a teacher therefore is a heinous crime. While deciding the case Avinash Nagra vs Navodaya Vidyalaya Samiti, discussed above, Justices K Ramaswamy and G.B.Pattanaik drew our attention to Dr. Radhakrishnan's argument that the success of the educational process depended considerably on the teacher for it was the teacher who had to implant aims, and to build the character of the students. They had quoted Gandhi to the effect that a teacher cannot be without character. If he lacked it he would be like salt without its savour. A teacher must touch the hearts of the students. The same judgment quoted from Dr. Radhakrishnan, "We in our country look upon teacher as Gurus or as Acharyas. An *acharya* is one whose *achar* or conduct is exemplary. He must be an example of *sadachar* or good conduct". The question that arises is, is Srivastava's conduct befitting of a teacher? The answer is a definite NO. Our enquiry had strictly followed the norms of natural justice and gave Srivastava every chance to defend himself. All evidences collected against him were given to him for his responses. He was given a chance to marshal his witnesses and evidences. As we have shown above he failed miserably to defend himself and resorted to demonstration of concocted evidences and alibis. He had even tried to produce some good conduct certificates but those merely stated that he was a teacher of high quality and none of his certifiers stated that he was not capable of committing sexual harassment.(See Appendix XXX). Even the two friends of his that he brought over to Shillong to testify before the Committee did not maintain that he was incapable of such sexual harassment.(See Appendix XI and Appendix XIX) . Therefore his reputation, so far as sexual morals are concerned is not befitting that of a teacher. The presence of such a person in the faculty of a University is prejudicial to the interest of academics and immeasurably harmful to the image of the University. The Committee recommends that his services be terminated with immediate effect so that he does not get

a chance of committing the heinous crime of sexually harassing students in future. This will also help maintain the image of the University in the sense that it will send out the signal that the University is committed to protect its students from all sorts of sexual harassment.

The University may also consider rewarding these brave girls suitably for helping the University to bring an end to this shameful episode. This case and this brave act of these girls should have a salutatory effect on NEHU and other institutions and go a long way to deter all possible offenders if there are any.

This recommendation of the termination of the services of Srivastava must be implemented in a manner which will not leave any legal loopholes. The guilty must be punished as soon as possible under the relevant provisions of the University's rules. In this context we recommend that the Statute 27 of the North Eastern Hill University statutes on the Removal of Teachers be invoked to remove V.K.Srivastava on the ground of misconduct with immediate effect. Such misconduct is defined in the Central Services Conduct Rules of 1964 as "if the act or conduct the servant is grossly immoral that all reasonable men will say that the employee cannot be trusted." (See p. 322 of the Central Civil Services Rules published vide G.I., M.H.A., Noti. NO. F. 7/2/63-Ests.(A), dtd. 20th November, 1965). By sexually harassing his own students and by misusing his position as an examiner force his students to submit to his lustful ways V.K.Srivastava has proved himself to be totally unreliable and untrustworthy to his employer. His conduct would obviously be considered by all reasonable men and women as grossly immoral and therefore he is guilty of gross misconduct deserving removal from services of the University under Statute 27.

We would also like to place on record our conviction that suspension is no punishment and that long period of suspension pending trial or investigation is not proper ground for reinstatement of a teacher. This conviction is based on the Supreme Court judgment in the case Allahabad Bank vs Deepak Kumar Bhola (1997) 4 SCC 1: 1997[3] JT 539: 1997(1) LLJ 854 : 1997(2) SLR 236: 1997 (1) LJ 761 cited in the Central Civil Services Rules referred to above. This is being stated in view of the meeting of the Enquiry Committee with the Vice Chancellor and two other officials of the University on 26th July, 2005 in which the University Administration sought to argue that in view of the

suspension of a period of more than a month and in view of the fact that Srivastava is said to have lost some higher position in some other organisation because of these charges he should be reinstated. (Minutes Appended. See Appendix XXXI) The Committee draws the attention of the University authorities to the fact that the Highest Court in the country views sexual harassment as a serious offence and has repeatedly upheld the decisions of authorities to remove employees from their services when such employees were found guilty of such offences by an inquiry committee. We are of the firm opinion that the presence of an offender, like Prof. Srivastava, even for a day in the University can seriously affect the academic life in an adverse manner causing enormous harm to the reputation of the University. The University can protect its reputation by ensuring that he does not return to the services of the University.

We finally recommend that Prof. V.K.Srivastava's services should be terminated and his suspension should continue till the termination order takes effect.

NOTE:

In view of the fact that sexual harassment jurisprudence and the laws governing such offences are of recent origin the committee had to depend heavily on the case laws as evident from the judgements of higher Judiciary both for adoption of procedure and admission of evidences. The cases depended on are listed below. The texts of the cases are enclosed.

1. **Hira Nath Misra and others, (Appellants) vs. the Principal Rajendra Medical College, Ranchi and another.**
2. **Vishaka and others (petitioners) vs State of Rajasthan and others (Respondents).**
3. **Avinash Nagra v.Respondent: Navodaya Vidyalaya Samity etc.**
4. **Kesava Mills Co. Ltd. And another V Union of India.**
5. **Maharashtra state Board of Secondary and Higher Secondary education v. K. S. Gandhi.**
6. **Apparel Export Promotion Council v. A.K.Chopra.**
7. **Board of Education v Rice 1911 AC 179.**
8. **State of Harayana v. Rattan Singh .**

9. N. Rajarathnam versus State of T.N. and Another.

10. Allahabad Bank vs Deepak Kumar Bhola

APPENDICES:

- Appendix I: VC's letter asking for a thorough inquiry
 Appendix-II: Letter NO. NEHU-VCF/3-47/2005-1391 dated 8th June, 2005.
 Appendix III: Order No. 17-210/Estt.II/2002: 98 dated 10th June 2005.
 Appendix IV : Terms of Reference for the Enquiry Committee as laid down by the Women's Cell
 Appendix V :Statement and reporting of June 13, 2005.
 Appendix VI : Charge Sheet
 Appendix VII : List of documents supplied to Srivastava
 Appendix VIII : Translated statements of the Girls.
 Appendix IX : Minutes of meeting with HOD, 6th July , 2005
 Appendix X: Srivastava's SLP letter.
 Appendix XI: Radhey Shyam Tiwari's statement.
 Appendix XII: R.S Tiwari's cross examination
 Appendix XIII: (a), (b), (c), (d): Depositions of faculty of Hindi Department
 Appendix XIV: Letter of HOD, Hindi, GU.
 Appendix XV : Letter of ex-student GU (name withheld).
 Appendix XVI : Srivastava's Rejoinder dated 12th July, 2005
 Appendix XVII: B.P Tripathi's cross examination by Srivastava
 Appendix XVIII: Srivastava's response of 25.06.2005
 Appendix XIX: recordings of the enquiry committee for 5th July 2005
 Appendix XX: Minutes of the enquiry committee Women's Cell NEHU
 Appendix XXI :Statement of the land lord
 Appendix XXII : Statement of Mr Kalita
 Appendix XXIII: Srivastava's Deposition before the Committee on 25th June, 2005.
 Appendix XXIV : Srivastava's SLP of 20.12.2004
 Appendix XXV :Committee's Letter to the VC, dated 18th July, 2005 requesting records from the office of the Dean, School of Humanities and Education
 Appendix XXVI : Letter of Dean, Humanities and Education, dated 21st July, 2005.
 Appendix XXVII: Records from Registrar's office.

Appendix XXVIII : Statement of the land lady

Appendix XXIX : Letters of HOD Hindi

Appendix XXX : Testimonials from Sujata Miri, Temsula Ao and F.A. Qadri

Appendix XXXI: Minutes of the meeting of the Enquiry Committee with VC and other University officials on 26th July, 2005.

Appendix XXXII: Letter of Enquiry Committee to VC dtd. 25th July, 2005.

Appendix XXXIII: Photocopy of cover of Scripts

Appendix XXXIV: Date Sheet and Record Sheet.

(Prof.Manorama Sharma)

(Prof.Veena Saraf)

(Ms Patricia Mukhim)

(Mr. Alester. N. Diengdoh)