

STATEMENT OF COMMITMENT ON GENDER AND SEXUAL DIVERSITY AT THE BIRLA INSTITUTE OF TECHNOLOGY AND SCIENCE, PILANI

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1. Glossary

Bullying is unwanted, demeaning, aggressive or humiliating behavior, whether physical, verbal, psychological, relational, emotional, or cyber and is usually marked by an imbalance of power. Bullying can disproportionately affect persons of non-normative sexual orientation and gender identities and can often be repetitive.

Cisgender refers to individuals, whose gender identity matches the sex they were assigned at birth.

Consent in the context of any sexual act means an unequivocal voluntary agreement, when a person by word, gesture or any form of verbal or non-verbal communication, expresses willingness to participate in a specific sexual act.^[1] The following aspects need to be borne in mind while understanding consent:

- Consent should not be regarded as freely given if the person giving consent has no genuine or free choice or is unable to refuse or withdraw consent without detriment.
- Absence of physical resistance to the act of penetration/sexual assault shall not be regarded as consent.^[2]
- Consent given in a state of intoxication is not meaningful consent, irrespective of whether the intoxicants were consumed voluntarily by the victim.

Gender connotes the range of behaviour and attributes that are identified with the social and cultural expectations of being male, female, or, outside of the binary of male or female. Gender is a social construct conceptualized on the complex interrelationship between the human body, identity, societal suppositions and cultural norms.

Gender dysphoria refers to discomfort or distress that is associated with a discrepancy between a person's gender identity and the sex assigned at birth.

Gender expression is a mode of expressing one's gender identity at a particular point in time (such as appearance, dress, mannerisms, speech patterns and social interactions).^[3]

Gender fluid persons transition between gender identities rather than committing to any one gender identity.

Gender identity is the perception of one's own gender at any given moment.^[4]

Intersectionality refers to the interconnectedness of categories that includes but is not exclusive to age, birth, caste, class, civil status, disability, economic and social situation, health (including HIV status), ethnicity, gender, indigeneity, language, national or social origin, migration, nationality, political beliefs, race, relationship or family status, religion, sex, or on the basis of opinions held.

Members include students on-campus, off-campus and visiting; faculty members – currently employed, adjunct, retired and visiting; lecturers; researchers, doctoral scholars and post-doctoral fellows; medical, clinical, library, administrative and technical staff; alumni; contractual employees; visitors and residents on campus; Deans, Directors, and may include any other employees of the Birla Institute of Technology and Science, Pilani not defined herein.

Non-binary gender is a spectrum of gender identities that are not exclusively masculine nor feminine

Relationship status is a legally or socially recognized condition of an individual in a sexual/romantic/conjugal/affianced relationship with a partner(s).

Sexual assault is any form of sexual contact or threat of sexual contact without a person's consent.^[5]

Sex assigned at birth is biologically assigned on the basis of chromosomes and/or genitalia and/or internal reproductive organs.

Sexual harassment means

- 1) an unwanted conduct with sexual undertones, if it occurs; or which is persistent and which demeans, humiliates or creates a hostile and intimidating environment; or is calculated to induce submission by actual or threatened adverse consequences; and includes any one or more or all of the following unwelcome acts or behaviour (whether directly or by implication), namely-
 - (a) any unwelcome physical, verbal or non-verbal conduct of sexual nature;
 - (b) demand or request for sexual favours;
 - (c) making sexually coloured remarks;
 - (d) physical contact and advances;
 - (e) lewd or sexually suggestive comments, jokes, innuendoes, or gestures;
 - (f) commenting about or inappropriately touching an individual's body;
 - (g) showing pornography against the will of the person
 - (h) comments and conduct in (a) to (g) predicated on gender identity or sexual orientation of a person

- 2) any one (or more than one or all) of the following circumstances, if it occurs or is present in relation or connected with any behaviour that has explicit or implicit sexual undertones-
- (a) implied or explicit promise of preferential treatment as quid pro quo for sexual favours;
 - (b) implied or explicit threat of detrimental treatment in the conduct of work;
 - (c) any sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome;
 - (d) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance, where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person;
 - (e) implied or explicit threat about the present or future status of the person concerned;
 - (f) creating an intimidating, offensive or hostile learning environment;
 - (g) humiliating treatment that is likely to affect the health, safety, dignity or physical integrity of the person concerned.^[6]

Sexual orientation is an intrinsic characteristic by which individuals are attracted physically/emotionally/romantically to other individuals of a different sex or the same sex or more than one gender identity.^[7]

Sexual violence is an umbrella term used to connote sexual harassment and sexual assault and includes all forms of physical, mental, emotional discrimination, violence and harassment on the grounds of sexual orientation, gender, gender identity that may not already be exhaustively covered herein.

Stakeholders include members of the Birla Institute of Technology and Science, Pilani and their families.

Transgender is an umbrella term for persons whose gender identity and/or gender expression is not aligned to the sex assigned to them at birth. Transgender persons include persons who do not identify with gender. Transgender persons also include those who intend to undergo Sex Re-Assignment Surgery (SRS), or have undergone SRS, to align their biological sex with their gender identity in order to become male or female. The term transgender does not imply any specific form of sexual orientation.^[8]

Yogyakarta principles refer to those human rights that allude to sexual orientation and gender identity and these were enunciated at Yogyakarta in Indonesia. These principles may be accessed at <https://yogyakartaprinciples.org/>

2. Statement of Commitment

1. The Birla Institute of Technology and Science, Pilani (mentioned as BITS Pilani hereafter) recognizes that all human beings are born free and are equal in dignity and rights. The Institute recognizes that all human beings of all sexual orientations and of all gender identities are entitled to the full enjoyment of all human rights. This recognition is in accordance with the *Yogyakarta Principles* (2006 and 2017) as acknowledged by the Supreme Court of India (*National Legal Services Authority versus Union of India and Others*, 15 April, 2014).
2. BITS Pilani recognizes that discrimination, violence and harassment on the basis of gender identity and sexual orientation is a serious challenge that undermines the physical and mental health, all round well-being, as well as the security of individuals, of communities, and of the nation at large. All members of BITS Pilani should have the ability to live, work, study and participate in activities within a safe and healthy campus environment free from any sexual violence and free from any form of discrimination, violence and harassment on the basis of gender identity, gender expression and sexual orientation.
3. BITS Pilani recognizes that liberty and dignity of a person require both acknowledgement as well as protection under the law, of their sexual orientation and gender identity. BITS Pilani shall take all appropriate steps to ensure that persons of non-normative gender identity and/or sexual orientation do not face any form of discrimination, violence, harassment or stigmatization.
4. BITS Pilani recognizes that individuals from historically marginalized communities as well as those belonging to diverse, non-normative gender and sexual identities may be disproportionately affected by sexual violence.
5. BITS Pilani recognizes that discrimination, violence and harassment on the basis of gender identity and sexual orientation may occur against individuals regardless of their age, caste, class, relationship status, sex, sexual orientation, gender, gender identity or gender expression. Simultaneously, BITS Pilani recognizes that sexual orientation, gender identity, gender expression and sexual characteristics can be grounds of discrimination - separate or intersectional.
6. BITS Pilani is an equal opportunity provider and shall not discriminate on the basis of gender identities or sexual orientation. The Institute prohibits all kinds of discrimination, violence and harassment on the basis of gender identity and sexual orientation.
7. BITS Pilani recognizes that gender and sexual minorities may have unsupportive families. The Institute shall be sensitive to the right to privacy of its members.
8. BITS Pilani recognizes that any kind of discrimination, violence and harassment require sensitization and a comprehensive response. Therefore, the Institute insists upon the willful, deliberated and collective efforts of all its members and its stake holders.

9. BITS Pilani is committed to redressing the grievances arising out of any act of gender or sexual violence or discrimination involving its members.
10. BITS Pilani is committed to making resources available for the sensitization of its members and for examining the possibility of creating gender-neutral spaces.

The translation of the words contained in this document into effective practice is the expected outcome of this 'Statement of Commitment'.

3. Guidelines for effectuating the commitment

1. BITS Pilani is committed to sensitization of its members and stakeholders through devising processes, programmes and policies, which may be revised and updated at regular intervals according to the demands generated by specific contexts and for the procurement of justice.
2. BITS Pilani recognizes that the mental health of students of non-normative gender identities and sexual orientations are likely to be adversely impacted as they learn about their gender identities and sexual orientation. BITS Pilani is committed to providing counselling through trained mental health professionals on-campus, specifically equipped to deal with psychological and emotional health centered on gender and sexuality, including issues of gender dysphoria.
3. In furtherance of its commitment towards prevention, prohibition and protection from any incident of discrimination, violence and harassment on the basis of gender identity, gender expression and sexual orientation involving its members, BITS Pilani shall endeavor to:
 - 3.1. Conduct programmes on gender and sexuality sensitization as part of its orientation for new students and their parents in every academic year.
 - 3.2. Take periodic measures for gender and sexual awareness programmes.
 - 3.3. Include material pertaining to human rights as well as gender and sexual diversity in the curriculum, teacher training and professional development programmes.
 - 3.4. Include prevention, prohibition and protection from discrimination, violence and harassment on the basis of gender identity and sexual orientation in the ambit of the primary goals of Gender Champions (pursuant to UGC's letter No. F.91-2/2014 (GS) or any other subsequent UGC directives that may follow) to outline the activities/awareness campaigns/sensitization efforts/discussions on gender equality and gender justice.
 - 3.5. Create a gender and sexuality forum for conducting discussions and awareness programmes on gender and sexuality. The forum should endeavour to create the modalities for anonymous support systems for persons struggling to come to terms with their gender identity and sexual orientation.
 - 3.6. Ensure that counselling services available on campus are specifically equipped to deal with issues of discrimination, violence and harassment on the basis of gender identity and sexual orientation.
4. BITS Pilani shall endeavor to redress all complaints of bullying, discrimination, sexual harassment and violence, irrespective of gender identities and sexual orientations of the concerned parties through all/ any of the following:
 - 1) Internal Complaints Committee; and
 - 2) Anti-Ragging Committee;
5. It would be useful for the Internal Complaints Committee, the Anti-Ragging Committee, the disciplinary committee - and a separate committee, if constituted, pursuant to the present statement - to adopt the definitions in the glossary contained in this Statement of Commitment, and:

- 5.1. Document complaints in writing including those orally made. An oral complaint will be reduced into writing by the relevant committee/authority, which will be signed by the complainant.
- 5.2. Take *suo motu* action on instances of sexual violence or discrimination, violence and harassment on the basis of gender identity, gender expression and sexual orientation that may occur in their presence, or when they come to know of through another source in the public domain such as the social media or any similar reportage.
- 5.3. Determine if the authorities would want to consider complaints from persons, who are not the victims but are known to the victim/or are informed of an incident that would demand the attention of the authorities.
- 5.4. If a committee is opening itself to complainants from those who are not the victims of an instance of discrimination, violence or harassment, then it may consider developing a threshold for when such instances would be entertained and ensure that the victim in question would be willing to consent to any proceedings being undertaken by the committee before taking action on such a complaint.
- 5.5. Ensure that questions of what constitutes discrimination, harassment or violence will be questions of fact guided by the preponderance of probabilities and the positions of power occupied by the victim and the perpetrator.
- 5.6. Ensure that questions of what constitutes discrimination, harassment or violence will take into account difference of language, class, caste, and any other aspect of intersectionality while determining the gravity of the offending act, and the quantum of the punishment that may be determined.
- 5.7. Ensure that differences on the basis of gender identity, sexual orientation, caste, age, class, race, ethnicity, indigeneity, sex, gender, language, religion, political belief, nationality, national or social origin, economic and social situation, birth, disability, health (including HIV status), migration, marital, relationship or family status or any on the basis of opinions held cannot be a ground for discrimination, violence or harassment but the factum of such differences are relevant for determining a complaint in relation to discrimination, violence or harassment.
- 5.8. Ensure that any complaint that is being inquired into should give an opportunity of hearing - to both the victim and the perpetrator.
- 5.9. Consider that punishments may include suspension, mandatory social work, apologies to the victim, mandatory counselling of the perpetrator to deal with their abusive behavior in addition to the existing punishments of Internal Complaints Committees, Anti-Ragging Committees, and the relevant authority for discipline for students and misconduct for employees.

4. Notes

[1] Explanation 2 to Section 375 of the Indian Penal Code, 1860 [Act 45 of 1860]

[2] Proviso to Explanation 2 to Section 375 of the Indian Penal Code, 1860 [Act 45 of 1860]

[3] International Commission of Jurists (ICJ), The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, 10 November 2017, available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf [Last Accessed on 11.11.2019]

[4] See International Commission of Jurists (ICJ), Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007 (Definition page 6 ¶1) available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf [Last Accessed on 11.11.2019] as reiterated *National Legal Services Authority v Union of India (UOI) and Ors.* reported at (2014) 5 SCC 438¶19

[5] See sections 375, 354, 354A, 354B, 354C, 354D, 509 of the Indian Penal Code, 1860 [Act 45 of 1860]

[6] Sections 2 and 3 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [Act 14 of 2013] and the University Grants Commission (Prevention, Prohibition and Redressal of sexual harassment of women employees and students in higher educational institutions) Regulations 2015 (notified in the Official Gazette on 2.05.2016)

[7] See supra n.4 (Yogyakarta Principles) not aligned to the sex assigned to them at birth.

[8] See supra n.4 (*National Legal Services Authority v Union of India*) and *Navtej Singh Johar and Ors. v. Union of India* reported at 2018 10 SCC 1.

5. References

University of Toronto, 'Sexual violence and sexual harassment policy' (12 December 2019) <https://governingcouncil.utoronto.ca/secretariat/policies/sexual-violence-and-sexual-harassment-policy-december-12-2019> Accessed 12 June 2020