



104/SMU/REG/POSH/ *73* /2022

28 Apr 2022

To

Director, SMIT
Dean, SMIMS
Medical Superintendent, CRH
Officiating Principal, SMCON
Principal, SMCPT
Senior Finance Officer
Convenor, Dept of Humanities & Social Science
Head HR, SMU
Head GS, SMU
HR Depts - SMIT, SMIMS & CRH
Dy Registrar, SMUDDE

Prof & Head
Dept of Med Biotechnology
Chairpersons
Internal Complaint Committees

**SMU POLICY ON PREVENTION, PROHIBITION AND REDRESSAL
OF SEXUAL HARASSMENT AT WORKPLACE**

1. Please refer to this University Circular No. SMU/Reg/2016-47 dated 11 Feb 2016.
2. The SMU policy on prevention, prohibition and redressal of sexual harassment at work place has been revised.
3. A copy of the revised policy on the subject is enclosed for circulation and publicity for information of all faculty members, staff and students.
4. The revised policy will be effective from immediate effect.
5. This revised policy will supersede all previous policies, letters and circulars on the subject.
6. Please acknowledge receipt of this communication.

*Circulate Soft
copy if available
otherwise circulate
hard copy.*
*Done
29/04/22*



(Prof (Dr) K.S. Sherpa)
Registrar

Encls : Policy containing 13 (Thirteen) pages

28 April 2022

SIKKIM MANIPAL UNIVERSITY

POLICY ON PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL
HARASSMENT AT WORKPLACE

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1. Preamble

Sikkim Manipal University (SMU) is committed to creating a healthy working environment and study atmosphere that enables employees to work and students to study without any fear of prejudice, gender bias and sexual harassment. SMU also believes that all employees and students have the right to be treated with dignity. Sexual harassment at the workplace or other than workplace is a grave offence and is, therefore punishable.

Consequent to the Supreme Court Judgement of 1997 (Vishaka vs. State of Rajasthan) which had made it obligatory for every employer and other responsible persons to follow the guidelines laid down by the court, the Government of India has enacted a law known as "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act – 2013" (in short "POSH Act") and also framed the Rules thereunder which has come into force from 09th December 2013. This envisages a specific policy to combat to sexual harassment in the workplace. SMU is always committed to uphold the constitutional mandate ensuring the human rights of all those who fall within its jurisdiction. This Policy has to be read in addition to POSH Act & Rules and its amendment, and other statutory laws which SMU has to follow with respect to POSH such as University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 (in short "UGC Regulations").

2. Objectives of the policy

- A. To provide an environment free of gender-based discrimination.
- B. To evolve a permanent mechanism for the prevention and prohibition of sexual harassment cases and other acts of gender-based violence at the University.
- C. To ensure the implementation of the policy through proper reporting of the complaints and their follow-up procedures.
- D. To create awareness about sexual harassment in its various forms so that each one in the University community deters from being involved in acts of gender-based discrimination and harassment.



3. **Definitions** – In these regulations, unless the context otherwise requires: -

A. Act means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and its amendments (if any) ;

B. Rules means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 and its amendments (if any);

C. **Sexual Harassment** means and includes any of the following: -

- I. 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; or
 - b. demand or request for sexual favours; or
 - c. making sexually coloured remarks; or
 - d. physical contact and advances; or
 - e. showing pornography
- II. 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 in her employment as quid pro quo for sexual favours; or
 - b. implied or explicit threat of detrimental treatment in the conduct of work; or
 - c. implied or explicit threat about the present or future status of the person concerned; or
 - d. creating an intimidating offensive or hostile learning environment ; or
 - e. humiliating treatment likely to affect the health or safety, dignity or physical integrity of the person concerned.
- III. Eve teasing, taunts, physical confinement against one's will and likely to intrude upon one's privacy.
- IV. Uploading obscene pictures of the complainant in the social networking sites.
- V. Such act or conduct of the person is likely to create a hostile or intimidating environment to the employee / student belonging to the other sex.



- VI. Conduct of such an act at workplace / study area or outside in relation to an employee or student of Sikkim Manipal University, and
- VII. Any unwelcome gestures by an employee or student towards a fellow employee or student, having sexual overtones.

D. **Employee** – As defined under the POSH Act and UGC Regulations, it shall mean and include any person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name, interns, volunteers, teacher assistants, research assistants, whether employed or not including those involved in field studies, projects, short-visits, camps and including any person on the rolls of SMU including those on deputation, contract, temporary, part-time, or working as consultants.

E. **Student** – As defined under UGC Regulations, means a person duly admitted and pursuing a programme of study either through regular mode or distance mode, including short term training programmes in a Higher Educational Institution (in short “HEI”);

Provided that a student who is in the process of taking admission in HEI’s campus, although not yet admitted, shall be treated, for the purpose of these regulations, as a student of that HEI, where any incident of sexual harassment takes place against such students;

Provided that a student who is a participant in any of the activities in HEI other than the HEI where such student is enrolled shall be treated, for the purposes of these regulations, as a student of that HEI where any incident of sexual harassment takes place against such student.

Student shall also mean and include any person who has been admitted to any education / training / learning program conducted by Sikkim Manipal University directly or through its affiliates, constituents, collaborators, associates as the case may be.



- F. **Campus** – means the location or the land on which the Sikkim Manipal University and its related institutional facilities like libraries, laboratories, lecture halls, residence halls, toilets, student centres, hostels, dining halls, stadiums, parking areas, parks-like settings and other amenities like health centres, canteens, Bank counters etc., are situated and also includes extended campus including off campuses and covers within its scope places visited as a student of SMU including transportation provided for the purpose of commuting to and from the institution, the locations outside the institution on field trips, internships, study tours, excursions, short-term placements, places used for camps, cultural festivals, sports meets and such other activities where a person is participating in the capacity of and employee or a student of the Sikkim Manipal University and its constituents.
- G. **Complainant / Aggrieved woman** – means in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.
- H. **Respondent Employee** – refers to any employee against whom the complaint of sexual harassment has been lodged.
- I. **Executive Authority** – As defined in UGC Regulations, means the chief executive of the HEI, by whatever name called, in which the general administration of the HEI is vested.
- J. **Internal Committee** – means an Internal Committee constituted in accordance with the provisions of this Policy read with The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act – 2013 and Rules thereunder.
- K. **“Higher Educational Institution” (HEI)** – As defined in UGC Regulations, means a University within the meaning of clause (j) of section 2, a college within the meaning of clause (b) of sub-section (1) of section 12A and an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956).
- L. **Protected activity** – includes reasonable opposition to a practice believed to violate sexual harassment laws on behalf of oneself or others such as participation in sexual harassment proceedings, cooperating with an internal investigation or alleged sexual harassment practices or acting as a witness in an investigation by an outside agency or in litigation.



M. Disciplinary Authority – means authority specified by the SMU from time to time and notified for the information of the employees. SMU may appoint or specify different disciplinary authorities for employees at different levels or grades.

N. Appellate Authority: Appellate Authority means, authority specified by the SMU from time to time and notified for the information of the employees. The SMU may appoint or specify different Appellate Authority for employees at different levels or grades.

4. Scope of reference for Sikkim Manipal University

Sikkim Manipal University consists of a number of academic institutions, hospitals and administrative offices in Gangtok as well as campuses and hospitals outside Gangtok.

This policy extends to all employees and students working in SMU and its allied establishments and students studying in its various academic institutions at all locations in India and is deemed to be incorporated in the service and security conditions of the employees and students and comes into effect immediately.

The Policy for the Sikkim Manipal University is applicable to any location, not confining only to office / University premises and can also include place away from the University town where the respondent / complainant was on deputation.

Employee and the students who indulges in such behavior will be covered as per the policy including statutory laws as applicable from time to time.

5. Complaint of Sexual Harassment

A. An aggrieved woman is required to submit a written complaint to the Internal Committee within three months from the date of the incident and in case of a series of incidents within a period of three months from the date of the last incident.

B. Explanation: - For the purpose of the above and in accordance with the Rule (6) of the Rules read with Section 9(2) of the Act as follows:

1. Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filled by –
 - I. Her relative or a friend; or
 - II. Her co-worker; or
 - III. An officer of the National Commission for Women or State Women's Commission; or



- IV. Any person who has knowledge of the incident, with the written consent of the aggrieved woman;
2. Where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filled by –
 - I. Her relative or a friend; or
 - II. A special educator; or
 - III. A qualified psychiatrist or psychologist; or
 - IV. The guardian or authority under whose care she is receiving treatment or care; or
 - V. Any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;
 - VI. Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filled by any person who has knowledge of the incident, with her consent;
 - VII. Where the aggrieved woman is dead, a complaint may be filled by any person who has knowledge of the incident, with the written consent of her legal heir.

6. Composition of Internal Committee

1. Every Executive Authority shall constitute an Internal Committee as per Chapter II Section (4) of the Sexual Harassment of Women at Workplace Act, 2013 read with the rules and Regulation 4 of the UGC Regulations thereunder consisting of the following:-
 - A. A Presiding Officer who shall be a woman faculty member employed at a Senior level not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority;

Provided that in case a senior level women employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in subsection 2(o) of the UGC Regulations;

Provided further that in case the other offices or administrative units of the workplace do not have a senior level women employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;”

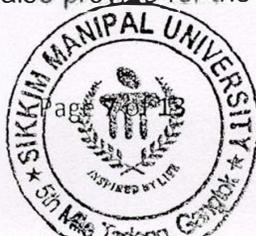


- B. Two faculty members and two non-teaching employees preferably committed to cause of the women or who had experience in social work or have a legal knowledge, nominated by the Executive Authority;
 - C. Three students, **if the matter involves students**, who shall be enrolled at the undergraduate, master's, and research scholar levels respectively, elected through transparent democratic procedure;
 - D. One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment nominated by the Executive Authority.
2. At least one-half of the total number of members so nominated shall be women.
 3. Persons in senior administrative positions in HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Head of the Departments etc, shall not be members of Internal Committee in order to ensure autonomy of their functioning.
 4. The term of the office of the members shall be for a period of three years. HEI may also employ a system whereby one-third of the members of the Internal Committee may change every year. Any vacancies arising during the said period will be filled up in accordance with the Provisions, Act and Rules read with the policy of the SMU.

7. Responsibilities of Internal Committee

The Internal Committee shall:

- A. provide assistance if an employer or a student chooses to file a complaint with the police.
- B. Provide mechanisms of dispute redressal and dialogue to anticipate and address issues through justice and fair conciliation without undermining complainant's rights, and minimize the need for purely punitive approaches that lead to further resentment, alienation or violence;
- C. Protect the safety of the complainant by not divulging the person's identity and provide the mandatory relief by way- of sanctioned leave or relaxation of attendance requirement or transfer to another department or supervisor as required during the pendency of the complaint or also provide for the transfer of the offender;



- D. Ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment, and
- E. Ensure prohibition of retaliation or adverse action against a covered individual because the employee or the student is engaged in protected activity.

8. Powers and Other Functions of the Internal Committee

- A. The Internal Committee shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:
 - I. summoning and enforcing the attendance of any person and examining him on oath;
 - II. requiring the discovery and production of documents; and
 - III. any other matter which may be prescribed.
- B. The Internal Committee shall meet periodically and review the measures taken for creating awareness among the employees on gender sensitivity and suggest further measures for enhancing the level of sensitivity on the subject among the employees.

9. The Committee and the process of dealing with the complaints

A Committee has been constituted by the Management to consider and redress complaints of sexual harassment. The Presiding Officer and the Members of the Committee are as per Annexure-A

10. Redressal & Inquiry Process

- A. The Committee shall maintain a register to endorse the complaint received and keep the contents confidential, if it is so desired, except to use the same for discreet investigation.
- B. However, before proceeding, the respondent shall be served with the copy of the complaint **within 7 working days** for his reply. The respondent shall file his reply to the complaint along with his list of documents and name and address of witness / witnesses if any within a period not exceeding 10 working days of receiving the copy of the complaint. Copy of the reply of the respondent along with the documents, if any and name of witness / witnesses, if any shall be furnished to the complainant.



- C. Before initiating an inquiry, the aggrieved woman may request the Internal Committee to take steps to settle the matter between her and the respondent through conciliation and in case a settlement is arrived the same shall be recorded and forwarded to the Management and copies of the said settlement shall be given to the complainant and the respondent.
- D. In case no settlement is done through conciliation as referred above, the Internal Committee shall proceed with the matter and conduct an enquiry as per the process detailed below.
- E. The internal Committee shall hold an enquiry into the complaint in accordance with the principles of natural justice and as per the process mentioned below: (The process mentioned is not exhaustive and only indicative)
- F. The Internal Committee shall summon both the complainant and the respondent and give opportunity to provide oral statement, if any or confirm the written statements.
- G. The complainant shall be given opportunity to bring any witness and adduce evidence oral and or documentary to support her complaint. The respondent shall be permitted to cross examine the complainant and the witness produces on behalf of the complainant.
- H. Similarly, the respondent may adduce evidence bringing his own witness / witnesses and also producing any supporting documents. The complainant shall be provided opportunity to cross examine the respondent and also the witness / witnesses deposing on behalf of the respondent.
- I. The Committee shall provide every reasonable opportunity to the complainant and respondent, for putting forward and defending their respective case. After the evidence of both parties is recorded, they are permitted to make oral / written submission (if any) and enquiry shall be conducted.
- J. The Committee shall complete the enquiry within reasonable period but not beyond three months and communicate its findings and its recommendations for action to the Registrar of SMU or to any higher authority as may be specified by the SMU from time to time and the SMU Management shall direct appropriate action to be taken in this matter.



- K. The Internal Committee shall have the right to terminate the inquiry proceedings or to give an expert decision on the complaint, if the complaint or respondent fails, without sufficient cause to present herself or himself for three consecutive hearings convened by the Presiding Officer as the case may be: provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.
- L. The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Internal Committee.
- M. In conducting the inquiry, a minimum of three members of the Internal Committee including the Presiding Officer as the case may be, shall be present.
- N. In case the complaint is found to be false / malicious, the complainant shall be liable to be punished as per the provisions of Regulations 10 of the UGC Regulations or Service Rules of SMU as may be applicable.
- O. In the event of complaint of Sexual Harassment is made against any member of the Internal Committee, that member shall, till the said complaint is disposed off by the Internal Committee, cease to be a member of the Internal Committee and if found guilty, shall automatically and with immediate effect be removed from the Internal Committee and be proceed with the enquiry.

11. Appeal

The Complainant or the Respondent if they are aggrieved by the Recommendations or the Orders of the Disciplinary Authority may prefer an Appeal before Appellate Authority, who is specified as the Appellate Authority by the Management, within 90 days of the submission of the findings by the Internal Committee. The appeal shall be made by the aggrieved person in writing with three copies. The Appellate Authority shall dispose of the appeal within 60 days.

12. Confidentiality and Non-Disclosure

The identity and address of the aggrieved woman, respondent and witnesses, any information relating to conciliation and enquiry proceedings, recommendations of the internal committee, the action taken by the employer shall be treated as confidential and shall not be disclosed to anyone who is not authorized to receive the said information.



13. Penalty & Punishments

A. Punishment for false evidence or producing forged or misleading documents:

Where the Internal Committee arrives at a conclusion that during the inquiry any witness (including the Complainant and the Respondent) has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness to take action against such person.

B. Penalty for publication or making known contents of complaint and inquiry proceedings

Where any person, entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action, publishes, or makes known the contents of complaint or inquiry proceedings, he/she shall be liable for penalty in accordance with any breach of confidentiality the person concerned shall be liable for penalty in accordance with the provisions of service rules applicable to the said person or with penalty of Rs. 5000/- which may be recovered from the salary.

C. Punishment

1. As defined under regulations 10 (1) of UGC regulations, anyone found guilty of sexual harassment shall be punished in accordance with the service rules of the HEI, if the offender is an employee.
2. Where the respondent is a student, depending on the severity of the offence, the HEI may: -
 - (a) Withhold the privileges of the student such as access to the library, auditoria, halls of residence, transportation, scholarships, allowances and identity card;
 - (b) Suspend or restrict entry not the campus for a specific period;
 - (c) Expel and strike off name from the rolls of the institution, including denial of readmission, if the office so warrants;
 - (d) Award reformative punishments like mandatory counselling and or performance of community services.

In addition to above, any of the following penalties as may be imposed by concerned authority for good and sufficient reasons on an employee / student, if found guilty upon enquiry by the Committee.



For Employees

- I. Written warning or Caution
- II. Censure
- III. Suspension
- IV. Withholding / stoppage of increment with or without cumulative effect
- V. Fines not exceeding an amount equivalent to 7 days salary
- VI. Demotion
- VII. Transfer or charge of place of employment
- VIII. Discharge / Removal / Dismissal

For Students

- I. Written warning or Caution
- II. Censure
- III. Stringent action against the delinquent student
- IV. Suspension
- V. Rustication / Expulsion of delinquent student from the College

14. Miscellaneous

- A. The Management shall provide all necessary assistance for the purpose of ensuring full, effective and speedy implementation of the policy.
- B. Where Sexual Harassment occurs as a result of an act or omission by any third party or outsider, the Management shall take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.
- C. The Committee shall analyse and put up report on all complaints of this nature at the end of the year for submission to the office of the Registrar.
- D. This policy is subject to the Provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the rules framed thereunder and any amendments / alterations / notifications that may be issued and also any judicial pronouncement that may be pronounced by the competent courts.



15. Duties of Employer

SMU shall:

- A. provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;
- B. organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- C. provide necessary facilities to the Internal Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- D. assist in securing the attendance of respondent and witnesses before the Internal Committee, as the case may be;
- E. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- F. monitor the timely submission of reports by the Internal Committee.

