

**REDRESSAL AGAINST SEXUAL HARASSMENT OF WOMEN AT WORK  
PLACE - STILL A DISTANT DREAM?**

Deepthi Arivunithi,  
I Additional District Judge, Madurai/  
Chairperson, GSICC, Madurai

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*You can't keep her in a cage,  
clip her wings, tell her lies,  
say that fragile birds,  
were never meant to fly.  
Watch her live behind  
a rusted door, latched tight,  
her spirits slipping away  
so you can keep her in sight.  
Beautiful creatures  
cannot be confined.  
Her wings will grow  
She'll find the sky.*

--- Christy Ann Martine

The recent times have seen a marked difference in the organizational setup of almost all institutions across the world. Women are getting more

empowered and are leading various institutions. The basic rights of a woman are enshrined in the Constitution of India and is also fortified by the international conventions. The Constitution of India guarantees right to equality under Article 14 and the right against discrimination under Article 15(1), right to equal opportunity under Article 16, equal pay for equal work Article 39(d) to women. In addition to the rights guaranteed, the State is also allowed to make special provisions for women and children under Article 15(3) and the fundamental duties as enshrined in Article 51A(e) specifically seeks to renounce practices derogatory to the dignity of women. Even while noting the positive factors, it was also felt that in certain sectors, the discrimination and harassment has come to stay as an order of the day and the women are still considered the weaker section of the society, who are constantly harassed and are subjected to humiliation and derogation.

Finding that the sexual harassment at workplace is a recurring menace that had to be curtailed, the Hon'ble Apex court put forth its iron hand to deal with the persisting problem. The brief backdrop leading to the formation of regulatory bodies can be broadly set out as follows. The order of the Hon'ble Apex Court, dated 17.07.2013 in W.P. (c) No. 162/2013 in Binu Tamta and another v. High Court of Delhi and others, led to the setting up of comprehensive regulations in the form of the Gender Sensitization and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013. A direction was also given to the High Courts to formulate their own regulations in the same manner and it was also directed to be ensured that the same is implemented at the District Level as well. Accordingly, the Gender Sensitization and Sexual Harassment of Women at the Subordinate Courts in the State of Tamil Nadu/Union Territory of Puducherry (Prevention, Prohibition and Redressal) Regulations, 2013 (hereinafter referred to as 'GSICC') was notified on 20.11.2013.

As a working Chairman of the GSICC in one of the districts of Tamil Nadu, I wish to express the salient features of the regulations and the probable difficulties in the workability of the rules and the effectiveness of the regulations.

Upon a glimpse of the preamble to the regulations, one cannot miss the stress given upon (1) the need to prevent gender discrimination; (2) to prevent the violation of the fundamental right of women as enshrined in the Constitution of India and (3) to protect the rights given to women under the international conventions. The path breaking, progressive and novel decisions of the Hon'ble Supreme Court in the cases of (1) Vishaka v. State of Rajasthan reported in (1997) 6 SCC 241; (2) Medha Kotwal Lele v. Union of India and others reported in (2013) 1 SCC 297; and (3) Binu Tamta and another v. High Court of Delhi and others dated 17.07.2013 in W.P. (c) No. 162/2013 serve as the guiding principles. As per the regulations a Gender Sensitization Internal Complaints Committee has been set up in each district in the State of Tamil Nadu.

Before getting into the provision, it is necessary to have in mind that the statute relating to sexual harassment at workplace is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act'). The said act came to be notified only on 09.12.2013. In the meanwhile, since there was a delay in the notification of the said act, the Hon'ble Apex Court thought it fit to frame regulations internally and as such the regulations were brought into effect in the Apex Court on 03.07.2013. The salient features of the regulations are set out as follows. The first provision that is to be of considerable importance is Section 2(k) of the Regulations. The said section provide the definition for the term sexual harassment. Section 2(k) of the regulation has included all possible types of harassments unlike the Act, which provides only for limited types of sexual harassment. In the Act only 5 types of harassment find place, while in the regulations, there are 14 types of

sexual harassment which are defined. The following are the additional definitions provided under the GSICC regulations.

(vi) stalking or consistently following aggrieved woman in the Combined court complex precincts and outside;

(vii) voyeurism including overt or tacit observation by the Respondent by any means of the aggrieved woman in her private moments;

(viii) any conduct whereby the Respondent takes advantage of his position and subjects the aggrieved woman to any form of sexual harassment and seeks sexual favours specially while holding out career advancements whether explicitly or implicitly, as an incentive or a natural result of submitting to the insinuations/demands of the Respondent;

(ix) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(x) implied or explicit promise of preferential treatment in her legal career;

(xi) implied or explicit threat of detrimental treatment in her legal career;

(xii) implied or explicit threat about her present or future legal career;

(xiii) interferes with her work or creating an intimidating or offensive or hostile work environment for her; or

(xiv) any treatment having a sexual colour or content likely to affect her emotional and/or physical health or safety.

Thus, apart from the sexual harassment in the nature of physical contact or advances, demand of sexual favours, making sexually coloured remarks, undesirable oral or text message, in person or through electronic media and

showing pornographic material; the above clauses have been included by the Hon'ble Apex Court. The said definition therefore encompasses all forms of sexual harassment and thus is comprehensive in nature. It is also such that all or any form of sexual harassment could be included within the ambit of the said definition.

The next provision, which is of relevance is section 4, which provides for constitution of the Internal Complaints Committee. According to the said section, the committee is constituted. The committee has been constituted in such a manner that there is an adequate representation for all the stake holders. For instance, in the GSICC of the Subordinate courts, there is a Chairperson, who is a District Judge (preferably a woman), another member who is a District Judge, another judicial officer to be appointed by the Appropriate Authority (Principal District Judge); Senior members with atleast 20 years practice and 10 years practice from the Bar and another member from the Women Bar Association; one member from the clerk association; two members who are social workers from Social Welfare department or Non-government organization, one person to represent the judicial staff members. The section also specifies that the majority of the members have to be woman members.

Further, s. 3 is the provision, which provides for prevention of sexual harassment within the campus, which indicates that there is zero tolerance to the sexual harassment within the court premises. The GSICC is responsible for framing a policy against sexual harassment and to ensure compliance of the policy. It has to conduct awareness programmes and also appoint volunteers to assist the victims of harassment and provide crisis management and crisis mediation support. The regulations also provide for mediation and crisis management as start up tools to tackle any complaint preferred to GSICC. The GSICC could also take the assistance of the Police Officials in charge of security within the precincts to deal with a crisis. The functions of the Internal Complaints

Committee has been defined under s. 7 of the regulations. The other regulations, which may be of relevance would be s. 8 which provides for inquiry into complaints and other provisions in s.9 to s. 13 which deals with the order, representation, restraint order etc. The main highlight of the regulation is the confidentiality which is guaranteed under s.16 of the regulation. As such a comprehensive frame work of regulations have been put in place to effectively deal with the Sexual harassment of women at workplace.

The regulations were notified in the year 2013 and have been implemented since then. Upon implementation of the regulations, the following may be considered to be road blocks hindering the effective implementation of the regulations. The first and the foremost difficulty faced, is in relation to the confidentiality, which is guaranteed under the regulations. According to the provision under s. 16, the contents of the complaint, the identity and the addresses of the aggrieved women, respondent and witnesses, any information relating to the inquiry proceedings, recommendations of the GSICC and the action taken by the GSICC shall be confidential and shall not be published, communicated or made known to public, press and media in any manner except upon the aggrieved woman submitting a specific request to do so in writing upon the GSICC acceding to the said request.

Though the powers of the Internal Complaints Committee is provided under the regulations, the regulations appear to be silent on the aspect of the manner in which the inquiry has to be conducted. In the regulations since the term inquiry is used, the internal sub-committee often acts only as a fact finding committee. It is only natural that in the cases pertaining to sexual harassment that the witnesses who appear before the internal sub-committee want to preserve their anonymity. Most often, the statement of witnesses are recorded and their identity is kept confidential. However, based upon the report of the fact finding committee, if the respondent is found to have committed the harassment

as defined in the regulations, the committee has the powers to recommend initiation of disciplinary action against the respondent. Unlike the GSICC regulations, Disciplinary proceedings is not a confidential proceeding. Therefore, upon a recommendation when the charges are framed, the respondent is entitled to the copies of the statement of witnesses and other documents and therefore, the same is issued to him. Once, the same is given, the confidentiality is lost and the witnesses are confronted by the respondent and thereafter any other person called upon as a witness is not willing to depose in other cases. The confidentiality of the complainant is also lost. Therefore, other victims/witnesses hesitate to approach the committee with a complaint.

In the regulations, a time frame has been fixed for making recommendations to the Appropriate Authority as per s.11. However, there is no provision providing for a time limit within which the Appropriate Authority should act upon the recommendations. The person aggrieved is entitled to file a representation before the Appropriate Authority within a period of 90 days of communication of the order or recommendation. However, there is no provision with regard to how the complainant could proceed if the recommendations are not acted upon. There is also no provision in the act to ensure that the complainant is retained in a status quo position once her complaint is taken on file. This results on the complainant being subject to arbitrary administrative actions and transfers (in rare cases). The same leads to an opinion as though the persons who come forward to submit complaints are further victimized or being targeted. This also reduces the confidence of the victim in obtaining redressal for the harassment faced by her.

The punishments provided in the regulation include admonition, admonition with publication and prohibition order. However, when the admonition is given, the same has no effect on the respondent since, the proceedings are kept confidential. There is also no provision to make an entry of the said

punishment into the service records of the respondent who is found guilty. In order to give publication, the consent of the complainant is mandatory and in most cases, the complainant is not forthcoming to give her consent for publication. Therefore, the said punishment cannot be put to use at all. The next order is prohibiting the respondent from harassing the victim in any manner. Even if such an order is passed it has no effect, in as much as there is no provision in the regulations relating to enforcement of orders of the GSICC.

Apart from the punishments, the GSICC is entitled to make recommendations to the Appropriate Authority (Principal District Judge/District Judge) (1) to debar the entry of the respondent within the premises for a maximum period of one year and (2) to file a criminal complaint or initiate disciplinary action. In cases wherein the court staff/judicial officers are the respondents, this debarment from entry cannot be recommended at all since, prohibiting entry would mean that the respondent concerned would be permitted to abstain from their work. So, there could be an explanation to the provision clarifying that in cases of judicial staff/officers, recommending transfer of the individual could be made by way of debarring entry. Further, there is no provision to take action if the orders of the Committee are flouted by the respondent. Thus, in effect the Internal Complaints Committee is rendered a toothless committee which passes paper orders, which may or may not be effective to meet the ends of justice.

The Hon'ble Supreme Court has given unto itself a procedure to be followed by the internal sub-committee with respect to the inquiry proceedings. However, the same has not been adopted by the District Courts and therefore, there is no uniform procedure adopted in the inquiry proceedings. Further due to lack of funds there is no infrastructure available to conduct the awareness programmes to achieve the objective of the regulation. Presently, the GSICC is conducting awareness programmes in collaboration with the Legal Services

Authority as permitted by the regulations. The para legal volunteers are also unable to be recruited due to the paucity of funds and since trainers are not available. The social workers are also unable to be given the remuneration prescribed due to the lack of funds. Having pointed out the tiny road blocks, I am also bound to mention that the regulations have to a larger extent brought about sensitization among co-workers and beneficiaries under it. The regulation has also served as an effective tool in curbing sexual harassment at work place.

To conclude, I wish to state that a positive approach is the key to successful implementation of any act/regulation which is taking its baby steps in our society. Each baby step is bound to be reckoned as a giant leap towards formation of a sensitized and harmonious society. I only hope that the baby grows abler and stronger to face hurdles and achieve the purpose of its birth. Once that is achieved, then redressal against sexual harassment of women at workplace will no longer be a distant dream.