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#ME_TOO: SPEAK, THAT YOUR LIPS ARE FREE ^{1*}

ABSTRACT

Former First lady of the United States, Hillary Clinton, in her autobiography 'Living History' quoted the poem of an Indian student named Ansuiya, "Women in most countries speak only one language and that is language of the silence." After so many years, this deafening silence has transformed into a loud scream. Women of many countries unanimously uttered me too. The phrase me too was first coined by an African American activist Tarana Burke against the dire concern of the masses on the matter of sexual abuse and harassment. The movement started to gain recognition in October 2017 after Alyssa Milano asked the survivors of sexual assault to come out, accepting the bitter truth of the society and letting others know that they are not alone. In India, since 2015 between 500 and 600 cases have been filed each year Under the Sexual Harassment of Women Act Workplace (Prevention, Prohibition, And Redressal) Act, 2013. This emerges out of figures presented in Parliament reply by the Women and Child Development Ministry in July. While the nationwide number of the cases has remained in the same range each year, the 2018 count had already reached this range by July 27. The veracity of this data could be questioned as it is still toilsome for women to get their complaint against sexual harassment registered and redressed in societies which are patriarchal in nature. The, me too campaign has unraveled the disguised picture of the society. People (accused) who were in responsible position had to resign due to moral and legal pressure. This paper aims to establish a relation between the campaign and how grievances can be heard within legal framework and what are the hindrances and interruptions that come in the way of redressal of the grievances. The paper would also be inclusive of socio political legal aspect of me too campaign and the case study of victim and accused.

Key words: sexual harassment, women, empowerment, sexual violence, patriarchy, gender discrimination, dignity

Introduction: Thousands of years ago when men lived in jungle the gap between the two gender was never this wide. There was equality and women were not being discriminated upon and were not the subject of the sexual violence. With the advancement in society, this discrimination began

¹ Ms. Manvika Shivhare.

to grow. The women who were free and equal productive member of society were transformed into subordinate wives and wards. They attributed this transformation to the growth of the male owned property with the family as an institution that appropriates and perpetuates. This is not only the story of India but of the entire world.

Women of most of the countries speak only one language and that is the language of silence but this deafening silence is transforming in loud scream. The sexual harassment and violence is a tool that is used by the patriarchal societies against women to exert their dominance and masculinity upon her. In every country there are sanctions in the form of law to deal with problem of sexual harassment and violence and prohibition of any kind of behavior that is degrading to any gender and which is in contradictions to the basic human right to live with dignity. And yet countries are not able to get rid of this offence and women have not got freedom from sexual harassment.

Now, with the technological advancement there is a platform through which a person could express themselves freely through social media. This platform should be equally utilized by the women to express their feelings, emotions and resentments. In these social networking sites women took a U turn from their stereotypical gender role of acknowledgment of silence and seemed to be in unison against the sexual violence. The social networking sites worked as the protest site and turned in the battleground against the sexual violence and new kind of a movement began called ME TOO.

This paper aims to study through the case studies the legal angle of the me too movement and it would address to the problem of sexual harassment and what would be the hindrances that would come in between of the redressal of the problem.

Sexual harassment

“Gender equality includes protection from sexual harassment and right to work with dignity, which is universally, recognized basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore of great significance in the formulation of the guidelines to achieve this purpose.”²

One of the important reasons, inter alia, given for the acceptance and the commission of offences against women is economic independence. Now, as women try to fight economic disparity with men, a new form of crime emerges – **sexual harassment at workplace**. This offence is the most glaring example of human rights violation, gender inequality and injustice. Each incident of sexual harassment at the workplace also results in the violation of the fundamental rights under the Constitution, namely, **the right to gender inequality, right to life and liberty**. That sexual harassment of a female at the workplace is incompatible with the dignity and honor of women.

What constitutes sexual harassment?

1. Visakha v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932.

It is only recently that it has been recognized that violation of women's bodies may extend, beyond the brutal instances of rape, to other aspects of men's conduct towards women. It is also comparatively recently that such conduct has been hauled from its closet and has come to be viewed publically as generating legally redressable harms .

According to the campaign leaflet of the **South East Regions Women's Group** and **WASH (Women against Sexual Harassment)** , sexual harassment takes a multitude of forms and includes comments about appearance or body or clothes; leaning and staring at a person's body; abusive, degrading, patronizing or belittling remarks or behavior ; sexist remarks or jokes ; unwelcome sexual invitation or pressure; promise or threats concerning employment conditions in exchange for sexual favors; display of sexually explicit material; and touching, caressing , hugging, even indecent assault or rape.

Injuries also include anxiety , tension or anger; ill health, depression , insomnia , headaches , digestive problems; loss of confidence and motivation; inability to concentrate; decline in work performance; absenteeism; and breakdown of relationships.

The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act , 2013 defines "Sexual Harassment" in a broader sense under **Section 2(n)** of the Act. As per the Act the term sexual harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

- 1) Physical contact and advances; or
- 2) a demand or request for sexual favors; or
- 3) making sexually colored remarks; or
- 4) showing pornography; or
- 5) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The Women and Child Development Ministry has published *A Handbook on Sexual Harassment of Women at Workplace* with more detailed instances of behavior that constitutes sexual harassment at the workplace. These includes, broadly:

- 1) Sexually suggestive remarks or innuendos; serious or repeated offensive remarks; inappropriate questions or remarks about a person's sex life
- 2) Display of sexist or offensive pictures, posters, MMS, SMS, Whatsapp or emails
- 3) Intimidation, threats, blackmail around sexual favors; also threats, intimidation or retaliation against an employee who speaks up about these
- 4) Unwelcome sexual invitations with sexual overtones, commonly seen as flirting
- 5) Unwelcome sexual advances

The first successful claim against sexual harassment at the workplace is *Walker V. Northumberland County Council*³, where psychiatric damages were awarded by the English court arising out of occupational stress. Thus it becomes clear that injury might include stress. In such a case an action may be against an employer for negligence. The judgment in this case is of great importance as it opens yet another area that is of mental harassment as distinguished from the physical contact theory.

Thus, the problem of sexual harassment at the workplace exists, causing injury to women, and it is crucial that a legal response is articulated and rigorously pursued. It is not surprising that women are deterred by the prospect of complaining about harassment. Once the law is remade so as to embody a female structural understanding of what gives rise to sexual harassment; to approximate women's experience of the injury it imposes; and to foreshadow a radical alternative set of relations between the sexes, its traditional majesty could then be revoked in order to provide a revolutionary transformation.

International provisions

There are various provisions for gender equality and protection of women at the workplace in the International scene.

The Preamble to the Declaration on the Elimination of Violence against Women, 1993⁴ states:

... Violence against women constitutes a violation of the rights and fundamental freedoms of women.

The Declaration on the Elimination of Violence against Women, 1993 states:

Any act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.⁵

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) focuses on the protection of women at the workplace. The relevant provisions in this context are :

Article 11

³ 1995 ICR 702: 1995 IRLR 35.

⁴ General Assembly Resolution No. 48/104, 1993.

⁵ Article 1 Of Declaration On The Elimination Of Violence Against Women And The Platform For Action From The Fourth World Conference On Women

State parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of man and women, the same rights, in particular:

- a) The right to work as an inalienable right of all human being
- b) The right to protection of health and to safety in working conditions, including the safeguarding of the functions of reproduction.

The **general recommendations** of the CEDAW in the matter relating to sexual harassment at workplace in respect of Article 11 are:

Violence and equality in employment:

22. Equality in employment can be seriously when women are subjected to gender specific violence, such as sexual harassment in the workplace.

23. Sexual harassment includes contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct may be humiliating and may constitute a health and safety problem; it is discriminatory when a woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints, procedure and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace.⁶

The Fourth World Conference on Women in Beijing also raised the issue of sexual harassment of women at the workplace and recommended, inter alia, to formulate and operationalise a national policy on women, to set up a commission for women's right, and to institutionalize a national live mechanism to monitor the implementation thereof.

The International Covenant on Economic and Social Rights contains several provisions particularly important for women. **Article 7** recognizes her right to fair conditions of work and reflect that women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment.

NATIONAL SCENARIO

The Government of India ratified the CEDAW⁷ and officially committed itself to the Beijing Declaration.

There are various articles in the constitution of India which provides for equal treatment. **Article 14** dealing with equality, **Article 15** which prohibits discrimination on grounds

⁶ Vishakha v. State of Rajasthan, (1997) 6 SCC 241: 1997 SCC (Cri) 932.

⁷ On 25-06-1993

of religion, race , caste , sex or place of birth; **Article 42** which provides for just and humane conditions of work and maternity relief; and **Article 51-A(e)** of the Constitution which obliges every citizen, inter alia , to renounce practices derogatory to women, are relevant.

In **Visakha v. State of Rajasthan**⁸, for the enforcement of fundamental rights of working women under Article 14 , 19 and 21 of the Indian constitution . the present petition was brought as a class action by certain social activists and NGOs with the aim of

- 1) Focusing attention towards this social aberration, and assisting in finding a suitable method for the realization of the true concept of “gender equality”
- 2) Presenting sexual harassment of working women in all workplaces through the judicial process and
- 3) Filling the vacuum in the existing legislation

The judgment delivered by J.S. Verma C.J, Sujata Manohar and B.N. Kirpal JJ highlighted the fact:

*Each such incident of like nature results in violation of the fundamental rights of ‘Gender Equality’ and the ‘Right to Life and Liberty’. It is clear violation of the rights under Article 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim’s fundamental right under Article 19(1) (g) ‘to practice any profession or to carry out any occupation, trade or business. Such violations therefore attract the remedy under Article 32 for the enforcement of the fundamental rights of the women. This class action under Article 32 of the Constitution is for this reason a **writ of mandamus** in such a situation, if it is to be effective, needs to be accompanied by directions for preventions, as the violation of [this fundamental right] is a recurring phenomenon. The court realized that the fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working environment. Right to life means life with dignity. the primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of mechanism for its enforcement, is of the legislature and the executive .when, however , instances of sexual harassment resulting in violation of fundamental rights of women workers under article 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.*⁹

In, **Medha Kotwal Lele v. Union of India**¹⁰, it was highlighted that the guidelines in Vishakha are followed in breach. The women workers are subjected to harassment through legal and extra legal methods and they are made to suffer insult and indignity. It was pointed out that India is the largest democracy in the world and the existing laws, if

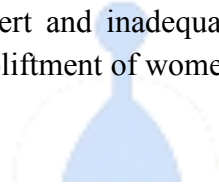
⁸ (1997) 6 SCC 241: 1997 SCC (Cri) 932.

⁹ Vishakha v. State of Rajasthan, (1997) 6 SCC 241: 1997 SCC (Cri) 932.

¹⁰ (2013) 1 SCC 297: (2013) 1 SCC (Cri) 459

necessary, be revised and appropriate new laws be enacted by parliament and state legislatures to protect women from any form of indecency, indignity and disrespect at all places, whether homes or outside and prevents all forms of violence. Also new initiatives are provided for education and advancement of women and girls in all spheres of life. Lip service, hollow statements, inert and inadequate laws with sloppy enforcement is not enough for true and genuine upliftment of women.

Me too campaign



Me Too' or #MeToo is a movement which was initiated in 2006 by a social activist Tarana Burke against the dire concern of the masses on the matter of sexual abuse and harassment in America.

The movement started to gain recognition in October 2017 after Alyssa Milano, an American actress posted a tweet asking the victims and survivors of sexual assault to come out, accepting the bitter truth of the society and letting others know that they are not alone. The idea of **“Empowerment through Empathy”** was behind the Me Too Movement.

The phrase "Me too" was tweeted by Milano around noon on October 2017, and had been used more than 200,000 times by the end of the day, and tweeted more than 500,000 times within 24 hours. On Facebook, the hash tag was used by more than 4.7 million people in 12 million posts. According to Pew Research until September 30 this year, the #Me Too hash tag was already used more than 19 million times on Twitter in just English language, which comes to an average of 55,319 per day. The single-largest number of mention was on September 9, when Leslie Moonves, chairman and chief executive of CBS, resigned amid allegations of sexual misconduct.

The Pew Research concluded that mainly two kinds of #Me Too interactions existed. The first involved celebrities or the entertainment industry, and the second was personal stories. Put together, 29 per cent of all interactions on #Me Too were either about entertainment industry or personal sagas. About 71 per cent of #Me Too tweets were in English language. #MeToo campaign helped women from all around the world in throwing light on sexual abuse. Not only that, it also gave women the opportunity to support each other, to empower themselves and to have a chance to talk about a serious issue that usually remains in the dark.

India is one of those countries that for a very long time had a tradition-bound society where women were always considered less than men. Expectations regarding men and women and their roles have changed a lot over the years and campaigns like the #MeToo campaign have played an important part in that. In the past, women's roles in India were certainly quite varied. Even now, upper-class women have more opportunities with regards to receiving an education and having the ability to work. On the other hand, women in the lower classes have very different roles. They usually have to work very hard to support their families and they usually aren't treated the best.

Women from the lower classes are the ones that usually experience the most violence. In most, if not all, of these cases where women were subjected to violence or sexual harassment, the women themselves were held accountable. It was considered that they had brought this situation upon themselves. Victim-blaming has been a problem for many years and thankfully, there have been a lot of campaigns against it in recent years.

In India, Me Too campaign started picking up around 7 October when actor Tanushree Dutta made serious allegations against Nana Patekar recounting her experiences during the shoot of the film, Horn OK Pleasss, 10 years ago. Since then, the controversy has engulfed many famous and

important personalities, including Union minister MJ Akbar against whom 11 women have leveled allegations.

Case Study

- 1) MJ Akbar is being called Harvey Weinstein of India with India's #Me-too movement gaining momentum. What started out as a tweet ended with the resignation of India's Minister of State of External Affairs? Former *Mint Lounge* editor and journalist Priya Ramani, wrote in her article for *Vogue India* in October 2017, "*You are an expert on obscene phone calls, texts, inappropriate compliments and not taking no for an answer. You know how to pinch, pat, rub, grab and assault. Speaking up against you still carries a heavy price that many young women cannot afford to pay. Sometimes you are inconvenienced when the stories get out and you are asked to take a timeout. Often, you are quickly reinstated. Why would you need to evolve, right?*" Journalist Priya Ramani was the first to call Akbar out. She shared how he interviewed her in a hotel, offered her a drink (which she refused), asked her to sit next to him on the bed and even sang her romantic Hindi songs. Renowned journalist and author Ghazala Wahab wrote a horrific and brave account in *the wire.in* stating how Akbar sexually and mentally abused her for months at *Asian Age* office in 1997 when Ghazala was a young journalist working under him. "*Every time he called me in his cabin, I died a thousand times*", wrote Ghazala.¹¹ Apart from them 9 other women accused the minister of sexual harassment.

The demand for Akbar's resignation was raised from all fronts. Akbar, after constant defiance and denial, finally resigned as Minister of State for External Affairs. "Since I have decided to seek justice in a court of law in my personal capacity, I deem it appropriate to step down from office and challenge false accusations levied against me, also in a personal capacity" he said in a statement .

Defense given by MJ Akbar - M J Akbar has called all the allegations against him false and fabricated. He has further accused Priya Ramani of "willfully, deliberately, intentionally and maliciously" defaming him. Akbar has vehemently denied the allegations of rape leveled by Pallavi Gogoi and said that he was in a consensual relationship with her.

Current status - The Editors Guild of India on Thursday, through an official statement, requested M J Akbar to withdraw his defamation case against journalist Priya Ramani. Akbar has also filed a defamation case in Delhi's Patiala House court against Priya Ramani. . Meanwhile, 20 women journalists have come out in support of their colleagues and urged the court to hear their testimonies against Akbar. Akbar resigned as minister of state for external affairs following the spate of sexual misconduct accusations leveled by several women against him.

¹¹ <https://feminisminindia.com/2018/10/24/timeline-mj-akbar-me-too/>

Comment - this is unique case in itself as he being the parliamentarian, who are said to be the lawmakers shaping the destiny of the country and holding the responsible position has been accused of the sexual harassment several times has to resign due to the moral and social pressure. The, me too campaign gave women the courage to come out and speak against this macabre crime. Had there been no such movement then, such criminal would go unnoticed. Although the cross case of defamation has been filed by the minister to prove that he is not guilty and no offence has been committed by him. There being a law that governs sexual harassment at workplace, the less case are filed under it. It is the weakness of the act as no internal complaint committee is created as mentioned in the Act and even if created complaints are not made under it as there is always the risk of losing job and other consequences.

- 1) Several Bollywood actresses have levelled allegations of harassment against Alok Nath after writer-producer Vinta Nanda claimed that she was sexually violated by the actor around 19 years ago. Well-known actors such as Sandhya Mridul and Amyra Dastur, singer Sona Mohapatra and Nath's co-star Navneet Nishan came out about their unsavory harassment experiences. The actor, best-known for his roles as *sanskaari bapuji* in several films and television shows, has also been Accused of Sexual Misconduct and Harassment by actresses Sandhya Mridul, Deepika Amin as well as other women. Alok Nath is just one of several film and TV personalities to be implicated in the #MeToo movement. The movement gained momentum in September, after actress Tanushree Dutta renewed a decade-old accusation of harassment against actor Nana Patekar. Filmmaker Sajid Khan, singer Kailash Kher, music composer Anu Malik and many others have been caught up in the #MeToo movement.¹²

Defense- Alok Nath has dismissed all the allegations levelled against him. He says it is useless to react to these allegations since "in today's world, whatever a woman says, only that will be considered.

Current status- Alok Nath has moved a civil suit against writer-director Vinta Nanda, seeking a public apology and Re 1 as damages. Nanda has lodged an official complaint against Nath at Oshawara Police Station in Mumbai. Actor Alok Nath has refused to respond to a notice issued to him by the Indian Film and Television Directors Association (IFTDA) over the harassment allegations. IFTDA has now decided to take strong action against the actor. The Cine and TV Artists Association (CINTAA) expelled Alok Nath following various allegations of sexual harassment and misconduct. A sessions court in Mumbai that granted actor Alok Nath anticipatory bail in a rape case on Saturday, observed that he could have been falsely implicated. Judge SS Oza claimed that writer-director Vinta Nanda may have delayed filing a complaint of rape for "her own benefit". In his order, the judge said Nanda "remembered the entire incident but she did not remember the date

¹² <https://www.ndtv.com/india-news/rape-case-filed-against-alok-nath-after-complaint-by-writer-vinta-nanda-1950880>

and month of incident”. The judge added that promptness in filing a first information report is an “assurance of the truth of informant’s version”. He said that without such prompt filing, it becomes possible that the complainant has described an exaggerated or “coloured” version of the incident, or just concocted her story. Oza added that in view of all these considerations, it cannot be ruled out that Nath has been falsely implicated in the case. Nath had applied for anticipatory bail. Judge SS Oza claimed that writer-director Vinta Nanda may have delayed filing a complaint of rape ‘for her own benefit’.

- 2) Bollywood actor Tanushree Dutta has accused Nana Patekar of sexual misconduct during the shooting of ‘Horn ‘OK’ Pleassss’ in 2008. Dutta, who said she was inspired by Christianity, Buddhism, yoga and the, me too movement in the United States, said last month that prominent Actor Nana Patekar had sexually harassed her on the set of a movie in 2008. Patekar has denied wrongdoing. Dutta said Patekar, 67, had demanded she do intimate dance steps with him in one song in the Hindi-language romantic comedy Horn OK Pleassss. When she refused, she said, members of a far right-wing Hindu group attacked her car while she was in it, including jumping on the roof and trying to smash the windscreen. Dutta, who walked out of the movie, went public with the allegations the same day, but was threatened with legal action by the Hindu group and felt so shamed by those questioning her story and by the way the Indian media treated her that she left Bollywood altogether and went to live in the United States. Other than a few bit parts, she hasn’t worked in a movie since.

“All of that disgusted me - it took my faith and confidence from the industry,” she said in an interview. “I didn’t want to work here. I still kept in touch and did some work which needed short-term commitments.”

Rajendra Shirodkar, Patekar’s lawyer, has sent Dutta a legal notice asking her to apologise to Patekar or face further legal action. He hasn’t specified what that action would be. The far-right group, Maharashtra Navnirman Sena (MNS), filed a complaint with the police against Dutta for comments she made about their chief. The police in turn filed a defamation case against Dutta, currently under investigation, based on the MNS complaint.

Current Status - Mumbai Police procures Tanushree Dutta's original complaint filed against Nana Patekar in 2008. Tanushree Dutta has filed an FIR with the police against Nana Patekar, choreographer Ganesh Acharya, director Rakesh Sarang and producer Samee Siddiqui. In response, Patekar has slapped Dutta with a legal notice and demanded a written apology from her. Meanwhile, he has pulled himself out of the movie “Housefull 4”, saying he does not want to cause inconvenience to the people involved with the project. In a reply to Cine And TV Artistes' Association (CINTAA), Nana Patekar has denied all allegations against him, calling them 'false and baseless'.

"We have registered a case against Mr Patekar and others under section 354 (Assault or criminal force to woman with intent to outrage her modesty) and 509 (Word, gesture or act intended to insult the modesty of a woman) of IPC," Additional Commissioner of Police, Manoj Kumar Sharma told news agency PTI "As of now no arrests have been made and we are investigating the case and inquiries are on."¹³

- 3) Documentary filmmaker Nishtha Jain Sunday levelled allegations of sexual harassment and misconduct against journalist Vinod Dua as the #me too movement continued to sweep across Indian media, film, and entertainment. In a post on facebook , Jain (53)alleged that Dua, in separate incidents, told a "lewd joke", was once "slobbering all over" her face and was "stalking" her. She told The Indian Express, "I spoke to my brother and friends about it. I didn't want to lodge a complaint because I didn't want to pursue it legally."¹⁴

Dua is a consulting editor at *The Wire*, and hosts a video show called "*Jan Gan Man ki Baat*," Later, the founding editors of *The Wire* said in a statement: "We have seen Nishtha Jain's Facebook post where she accuses Vinod Dua, a consulting editor of *The Wire*, of an incident of sexual harassment in 1989. Dua denies the charge. Though the incident pertains to 26 years before Mr Dua's association with *The Wire*, our ICC has taken note of Ms Jain's allegation. We await the outcome of their deliberations in the matter." In her Facebook post, Jain alleged, "One night as I came down to the parking, he was there...He wanted to talk to me and asked me to enter his car... Assuming that he wanted to apologise for his behaviour, I entered the car but before I could even settle down he began slobbering all over my face. I managed to get out and get into my office car and leave."

His defense - He is yet to respond to the allegations. However, his daughter Mallika Dua has said that she will stand by her father even though it is his battle to be fought. She added that if .. it all her father is guilty, then it is "unacceptable".

Current status -
Vinod Dua has issued a statement on the accusation against him saying "30 years ago some woman felt that I did something that troubled her. These allegations can be leveled against anyone. The person who has been accused has no option but to deny these allegations." Dua also said he was suspending his show '*Jan Gan Man Ki Baat*' for a week' to give *The Wire*, where Dua is a consulting editor, an opportunity to probe the sexual harassment allegation against him'.

On October 17, 2018, i.e. three days after Ms Jain first made her allegation; *The Wire* announced the formation of an external complaint committee to look into her charges. We had been working on this initiative to obviate issues of the ICC's jurisdiction with regard to an incident that may

¹³ <https://www.ndtv.com/india-news/metoo-movement-tanushree-dutta-files-firs-against-nana-patekar-and-3-others-over-sexual-harassment-1930189>

¹⁴ <https://indianexpress.com/article/india/metoo-movement-filmmaker-nishtha-jain-accuses-tv-personality-vinod-dua-of-harassment-5401970/>

be seen as beyond its remit. We were also keen to ensure that the proceedings are conducted by persons of unimpeachable integrity and impartiality.

Legal aspects

- 1) A plea seeking registration of FIRs and investigations against alleged offenders under the me too campaign was filed in the Supreme Court. The plea, filed by advocate M.L. Sharma was mentioned before a bench comprising Chief Justice Ranjan Gogoi and Justice Sanjay Krishan Mail who refused urgent listing and said that the matter would be taken up in due course of time. His petition, Sharma has asked the court to take suo motu action In and record statements made by survivors of the #Me-too movement under Section 154 of the Code of Criminal Procedure, 1973 and register FIRs for the incidents. a flurry of accusations of sexual assault and harassment have been leveled by several women against politicians, journalists, members of the film industry under the #Me-too movement questioning the need for a safe and conducive working environment for women.
- 2) Across the world, women are raising their voices against sexual harassment. The #MeToo movement has hit India, too, with fingers being pointed at a host of men, many of them in the media and entertainment industry. But are these accusations — mostly expressed on the internet — legally viable? Ever since the the Information Technology Act, passed by Parliament in 2000, social media has also come under the realm of electronic evidence. Pavan Duggal, advocate and cyber law expert stresses that evidence found on social media sites is admissible in court. But it has to be attested by someone who is seeking to present it as evidence. “As long as a certificate is produced, along with such evidence that verifies its authenticity, it is admissible in court as evidence, and is at par with any other kind of physical evidence,” he says. Since matter can also be erased from these sites, “stakeholders” have to “capture it, either as a physical copy or a digital one, at the appropriate time,” he says.¹⁵
- 3) It is mandatory for companies to have an internal complaints committee (ICC) in place to deal with issues of sexual harassment at the workplace under the law. Decisions of the ICC, if unsatisfactory, can be challenged in court. For people working in the unorganised sector or freelancers, there are guilds and associations that are expected to fight on their behalf.
- 4) The existing laws in India relating to sexual harassment of women at workplace are to be found in ‘The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.’ The said law, which was heralded with much fanfare, has proved to be extremely inadequate to meet the new challenges as section 9 of the said Act prescribes a period of limitation for filing a complaint and the power of the committee to condone the delay is also limited. The said section of the Act is quoted herein below:-

“Section 9 - Complaint of sexual harassment

Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident: Provided further that

¹⁵ https://www.thehindubusinessline.com/blink/cover/law-in-the-time-of-metoo/article25251727.ece?fbclid=IwAR0IDzK2cXV8ekALCOLzKVIPuZJ2yp72ZbD_rslNmbjkAUZYIsduKeVDEqA

the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.”

Sadly, the act contemplates only an inquiry and the procedure to be adopted is as provided under the Code of Civil Procedure. **Section 13(3)** of the Act further provides that when the committee arrives at a conclusion that the allegation against the respondent has been proved, it shall recommend to the employer and the District Officer as the case may be.

“(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of **section 15**”.

The Act therefore, apart from being predominantly in the realm of service jurisprudence cannot be of any assistance to the victims on account of the provision of limitation contained therein. In so far as the Indian Penal Code is concerned, no doubt by way of the Criminal Law Amendment Act, 2013 Section 354A has been inserted to tackle the menace of sexual harassment and the said offence has been made punishable with imprisonment which may extend to three years. However, it is well known that in criminal matters the process is the punishment and since no time period has been prescribed for completion of investigation or trial of such offences, unlike child rape, there is likelihood that the complainant would be at the receiving end and is most likely to abandon the proceedings after some time.

- 5) Unfortunately, in India we do not have a system of Grand Jury or a Petite Jury to return an indictment at the threshold stage, pending trial, for offences committed 10 to 14 years back as has been done in the case of Bill Cosby and Harvey Weinstein. The Indian law therefore, needs to provide, as in a case of child rape, a time frame for completion of investigation and prosecution of these offences so that the offenders are brought to book at the very earliest. Procedural law, as well as substantive law, needs to be amended.
- 6) The burden of proof lies on the accused and not on the victim in the cases of the sexual harassment but the Indian society is such that it not only asks for the proof from the victim but also does the victim blaming.

Conclusion

The, me too campaign allows women to talk about their stories without shame or fear or guilt. Women’s rights are being emphasized and this campaign can truly help Indian women – whose basic human rights are oftentimes not taken into consideration – find their own voice.

While feminism in India in the past used to focus on topics like child-marriage, abortions, and dowry-related violence, this new campaign is helping feminism evolve and see sexual harassment

in a different and more serious way. This phrase defines a new way of protesting against the lack of basic human rights of many women in India. While many still don't have access to social media and continue living in situations where they are degraded and manipulated, there are women who have had the privilege of getting an education. Today, they are in a better place in life and they are fighting hard to spread the message of their mistreatment through the written word.

Social media is giving women a freedom of speech they didn't have before. Social media is allowing them to share publicly exactly what is going on and the situation they live in.

The power of social media is quite strong finally; as a result, women's stories are not being distorted. Online campaigns, like #Me-too, reach out to both young and old people from all around the world. It helps them learn more about all the issues that lie underneath all the sexual harassment stories in India like the continuous gender inequality and daily occurrences of sexual violence.

It has been argued that those speaking out as a part of the MeToo movement are ignoring legal frameworks already in place to redress such complaints. Last year, when some academics were accused of sexual misbehavior on social media sites, a group of women — activists, lawyers and teachers — had ruled that the movement on the Internet was bypassing the law. With the development of social media, it is difficult to censor anyone who chooses to use it to get justice. What the movement has done is build a sense of solidarity, encouraging more women to share their stories and seek justice. It has also started a dialogue on sexual harassment. In that sense, there are many positives to the movement.

A holistic analysis of the '#Me too movement' also reveals that there are broader patterns of 'sexism' and 'discrimination' which needs to be addressed also. These acts are not confined almost exclusively to sexualized forms of harassments, verbal and/or physical. Few reports have covered the non- sexual but still utterly sexist form of abuses indulged into by bosses at the workplace. For instance, it is reported that Harvey Weinstein use to heap abuses upon his agent Zelda Perkins chiding her that women were unfit for sensitive jobs and were made by god only to bear children. Examples of such harassments are galore in India.

Disappointingly also, we in India are yet to pass any legislation making sexual harassments of members of LGBTQ an offence even though as far back as 1998 the Supreme Court of United States of America in the case of **Oncale V. Sundowner** Offshore Services, Inc. has unanimously held that 'same sex' harassment is also actionable as it violates article VII of the Civil Rights Act, 1964. It needs no mentioning that we as a society must be more willing to acknowledge sexual abuse and talk about it honestly and directly, just as we do in other forms of abuse, like rape, without a sense of denial, shame, or discomfort. Organizations should hold harassers accountable for sexual misconduct/indiscretion just as they do in other forms of mistreatment and discrimination, without excusing it as a personal predilection or a perk/privilege of the powerful. Victims of sexual harassment should always take heart from the example of Susan Anthony of USA who braved prosecution and trial to support her contention that women have legal right as citizens to vote. She finally won. Our Nation has to think about the greater good of humanity, of womanhood for whom the bell tolls also. No ad hocism, cosmetic changes, or half measures will suffice. Our constitutional morality teaches us that delay should not defeat justice.



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