

#METOO MOVEMENT: DECONSTRUCTING LAW AND ANALYSING NEW AGE FEMINISM IN INDIA

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ABSTRACT

“In light of the recent outbreak of the #MeToo Movement, various questions regarding the effectiveness of the applicable laws have also erupted. These questions are not just limited to the scope of the existing legal frameworks but, also question the extent to which they are being implemented despite being in force. How relevant is Sexual Harassment at Work Place Act, 2013 when it provides for a limitation period of 03 months only within which a woman can file a complaint? Or how effectively do the Internal Complaint Committees deal with such cases, when they absolutely must? The entire idea of the #MeToo Movement empowers others through empathy which forms a vital process in their own healing journeys. It derives its strength by standing in solidarity. One encourages many. After this motive, should it not be of legislative concern that the mental frame of every woman who has undergone such dreadful experiences cannot be made objectively similar thereby, limiting it to complaining about in a fixed span of time? Well, on the other hand, the fuss and the critics of this movement are plentiful. For a victim woman, while some seek a criminal remedy, depending on the degree of the transgression, or a civil remedy or compensation, or sometimes punitive measures against the harasser by his or her current employer. The paper shall cover the legal arenas which draws attention of the #MeToo Movement. The provisions in relation to The Indian Penal Code, The Code of Criminal Procedure, and Sexual Harassment at Work Place will be discussed in length highlighting both its merits and demerits. The paper will also highlight in brief the nuances of feminism affecting the movement.”

Keywords: #MeToo Movement, Sexual Harassment, feminism, compensation, Internal Complaint Committees

INTRODUCTION

The #MeToo movement, in the recent time, has caught the spotlight. The #MeToo movement has galvanised women worldwide with women speaking out as never before about sex-based mistreatment they have experienced on the job.¹ Common experiences are being brought onto the public domain and social media is playing a big role and shared accounts of harassment are finding resonance among all women who have faced sexual harassment over the years.² With all the media attention and many of the top leading women coming forward, it has pushed the ordinary woman to share their stories. As a result of the incident, many men have lost their jobs over allegations of sexual misconduct in the workplace.

Tarana Burke, a social activist and community organizer, began popularising the phrase "Me Too" in 2006, on the Myspace social network as a part of a grassroots campaign to push "empowerment through empathy" among women of color who have old regulatory offenses, significantly among disadvantaged communities. Burke, who is making a documentary titled *Me Too*, has mentioned she was galvanized to use the phrase once being unable to reply to a 13-year-old lady who confided to her that she had been sexually molested. Burke later revealed she had merely told the lady, "me too".³

With the social worker **Bhanwari Devi's** who was alleged to be raped for raising her voice against child marriage, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (referred to as POSH Act) was brought forward as a step to curtail any event related to sexual misconduct at workplaces. The landmark judgement *Vishaka v State of Rajasthan*⁴ discussing Sexual Harassment at the Workplace Law, was also a big step to

¹ Post Weinstein, *These are the Powerful Men Facing Sexual Harassment Allegations*, GLAMOUR, Feb 26, 2018, available on <https://www.glamour.com/gallery/post-weinstein-these-are-the-powerful-men-facing-sexual-harassment-allegations>, last accessed on 15th January 2019.

² Malvika Rajkumar and Rohit Ghosh, *#MeToo: How the law protects you against stalking*, Bar & Bench, Oct 28, 2018, available on <https://barandbench.com/me-too-law-protects-you-stalking/?fbclid=IwAR2dHKY-3njCAA0cYcsOyntn9D2jLo7CeKdA4oV1peAzReJgkFcxliW0SK8> last accessed on 15th January 2019.

³ Andrea Garcia Giribet, *Tarana Burke: The woman behind Me Too*, Amnesty International, Aug 21, 2018, available on <https://www.amnesty.org/en/latest/education/2018/08/tarana-burke-me-too/> last accessed on 15th January 2019.

⁴ (1997) 6 SCC 241.

recognize women being targets of sexual harassment in various forms. Another important judgment expanding the jurisprudence of the subject in service law was that of [Apparel Export Promotion Council v A.K. Chopra](#)⁵ which ruled that each act of sexual harassment resulted in violation of fundamental right to equality and right to life and personal liberty of women employees.

BUT, WHERE DOES THE LAW STAND?

Bedevelled by a puritan conscience, while legislators, progressive members of the executive as well as members of the legal fraternity of the country have made common cause with the victims of sexual assaults and harassment at the hands of their predators, there is a growing perception and fear that the Indian legal system, as it exists today, is extremely inadequate to meet the new challenge and unless immediate legal and social engineering is undertaken the movement may peter out like a sunset fabric seen for an hour in the evening and then fading into the night.⁶ Indian Democracy, with its emphasis on rule of law and open society, cannot afford such a luxury. There is therefore, an urgent and pressing need for a comprehensive social and legal engineering.⁷

The **Sexual Harassment at Workplace (Prevention, Protection and Rehabilitation) Act, 2013** broadens the definition of Sexual Harassment as any unwelcome act or behaviour that is expressed or implied. Suggestive comments with sexual undertones, persistent requests to go out, inappropriate advances on social networking sites, intrusive questions about another person's private life or body, and more are covered under the Act.⁸For remedy, the Act mandates constitution of an Internal Complaints Committee (ICC) within the organisation.⁹ However, The Act gives employers great leeway in choosing members of the internal complaints committee. The composition has to include peers of employees and not just HR and top management of the

⁵ AIR 1999 SC 625.

⁶ Sr. Adv. Jana Kalyan Das, *#MeToo Movement In India: Need for a Comprehensive Legal and Social Engineering*, available on <https://www.livelaw.in/metoo-movement-in-india-need-for-a-comprehensive-legal-and-social-engineering/> last accessed on 16th January 2019.

⁷*Id.*

⁸Reining in Sexual Harassment at the Workplace in India- a Survey by Fraud Investigation & Dispute Services, available at <https://www.ey.com/publication/vwluassets/ey-reining-in-sexual-harassment-at-the-workplace-fids-survey-2015/%24file/ey-reining-in-sexual-harassment-at-the-workplace-fids-survey-2015.pdf>.

⁹ Section 4, Sexual Harassment at Workplace (Prevention, Protection and Rehabilitation) Act, 2013.

establishment whose primary allegiance is towards the institution and not an employee who complains.¹⁰

In 2010, the High Court of Delhi in the case of **Dr.Punita K. Sodhi v. Union of India &Ors.**¹¹ endorsed the view that sexual harassment is a subjective experience and for that reason held

“A complete understanding of the complainant’s view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement.... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.”

The **remedies** for sexual misconduct are not just limited to the POSH Act but also finds place in the Indian Penal Code. The ICC mechanism could lead to termination, demotion and transferring the accused to another place; however, criminal prosecution under IPC is far stricter.

- **Section 354A** (assault or criminal force to outrage the modesty of a woman) could land the accused in jail up to three years and/or fine;
- **Section 354B** (Assault or use of criminal force to woman with intent to disrobe) a term upto seven years can be granted;
- **Section 354C** (Voyeurism) again a term extended for a term of seven years;
- **Section 354D** (Stalking) or **Section 509** (word, gesture or act intended to insult the modesty of a woman) could fetch up to three years in jail and/or fine; and
- **Section 376** (rape) can attract a jail term ranging from seven years to life imprisonment and/or fine.¹²

¹⁰ApurvaVishwanath, *India’s Metoo will succeed if our laws catch up with it*, THE PRINT, Oct 12, 2018, <https://theprint.in/opinion/off-court/indias-metoo-will-succeed-if-our-laws-catch-up-with-it/133386/> accessed on 17th January 2019.

¹¹ W.P. © 367/2009.

¹² India’s Law on Prevention of Sexual Harassment at the Workplace, Nishith Desai Associates, October 2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf.

However, the procedure is to be followed as given in the Code of Criminal Procedure. The limitation period within which a complaint can be file for criminal trials, is given under the Procedural Laws which differ for every offence. How the criminal proceedings can be advantageous in supporting the #MeToo Movement, it shall be covered in the next section.

CAN THE LIMITATION PERIOD LIMIT THE SPIRIT OF THE MOVEMENT?

Criticisms have flooded the #MeToo movement. It ranges from - why the victims make allegations or complaints years after the incident? What proof would they have? What would they achieve now, after so many years? How will they prove in Court?

Section 9 of the POSH Act, 2013 sets a limitation period within which an incident could be reported to the ICC.

Section 9- Complain of Sexual Harassment

1. 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 series of incidents, within a period of three months from the date of last incident:

Provided further that 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.”

It is to be understood by going deeper into psychology of victim women. It's not always possible for her to come upfront at the very instant. With the taboo in our society and societal pressures, it becomes extremely difficult for women to come forward immediately. Most people (including women) bear a *patriarchal mind set* and misogyny is rooted deeply across cultures.¹³ It is not easy for a woman to speak against the sexual misconduct of the perpetrator, for reason such as sheer embarrassment of being labelled as ‘characterless’ or ‘bad woman’ (as shown in the

¹³ R. Bhattacharya, *Understanding the spatialities of sexual assault against Indian women in India*, *Gender, Place and Culture*, 22 (9), 1340–1356, <http://dx.doi.org/10.1080/0966369X.2014.969684>. (2015).

narratives of my introduction), accusations of lying,¹⁴ fear of ruining their career, the threat from the perpetrator(s), etc. All these sign that the practice of ‘victim blaming’ remains the key in most societies across the world as the onus of being harassed lies on the victim rather than the perpetrator. This helps them find a safe haven within the communities, organisations, etc.¹⁵ A major flaw that needs addressing in cases of workplace sexual harassment under the **1997 Vishakha guidelines** is its failure to apply to cases retrospectively. The incidents that took place in the past, need to be in some manner given remedial measures. The [internal complaints committee](#) (ICC) should be given the right to condone the delay in given circumstances. The committee should have the right to look into complaints that belonged to a different time period, and the delay, if just cause is given, should be condoned.¹⁶ However, cases under IPC can go on for years. The best bet to address this would be to harmonize the two legal options (under IPC and POSH Act) by having norms allowing courts and ICC to condone and take cognizance of cases beyond their respective limitation periods.¹⁷ Some experts, however, argue that provisions under IPC are strong enough to address the problem of limitation that arises under the POSH Act, since that period is longer and the criminality harsher under it. (*Limitation period under different provisions of IPC is two or three years while under POSH Act, it's three months*)¹⁸

SEXISM AND DISCRIMINATION – “DON’T YOU DARE”

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 Zela Perkins childing her that women were unfit for sensitive jobs and were made by god only

¹⁴ S, Rukmini, *The many shades of rape cases in Delhi*, The Hindu, Jun 15, 2016 available at, <http://www.thehindu.com/data/the-many-shades-of-rape-cases-in-delhi/article6261042.ec>, accessed on 20th January 2019.

¹⁵ Dr. R. Bhattacharya, *#Metoo Movement: An Awareness Campaign*, International Journal of Innovation, Creativity and Change, Vol. 3, Issue. 4 (March 2018).

¹⁶ India’s Law on Prevention of Sexual Harassment at the Workplace, Nishith Desai Associates, October 2018, available http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf.

¹⁷ Priyanka Mittal, *It’s time to rethink Vishaka to include past incidents*, Live Mint, Oct 22, 2018, available on <https://www.livemint.com/Politics/urJMXjCEdwOTIs7oLJoZYM/Its-time-to-rethink-Vishaka-to-include-past-incidents.html> last accessed on 22nd January 2019.

¹⁸ *Id.*

to bear children. Examples of such harassments are galore in India.¹⁹ In the 1800s, there was much hesitance among the women to talk and discuss the matter in open because it was a so called “*delicate*” issue. In addition, to have a discussion of sex crimes in the workplace requires that one have an understanding that all genders legitimately belong in the workplace, and that was just simply not the case in the 19th century. There was no sense of a right for women to have workplace treatment on a par with men.²⁰ Second-wave feminists concentrated on securing equal pay for equal work and on access to jobs typically reserved for men. “There was so much initial focus on making sure issues of access to work were resolved, it took a while before people started having the wherewithal to tear apart routine sexist practices within the workplace.”²¹

REVISITING FEMINISM IN INDIA

The new rise of feminism in India has given greater force to the #MeToo movement in the most unprecedented way. The **resignation of a Union Minister** in the wake of multiple charges of sexual harassment was a victory for the movement.²² There has been complete intolerance towards sexual violence, patriarchy and rape culture since the **Delhi Gang Rape in 2012**. However, the Indian feminism has till date been disputed in its understanding in achieving long due gender justice. These are the voices of middle class and metropolitan women, journalists, actors, and other professionals that constitute the ‘me’ in India’s #MeToo.²³ The movement brings strength to itself by way of empathy. It’s the travel from sympathy to empathy that brings #MeToo to light. More so, different women from different regions across the world are able to find solace with each other with their different experiences.

This in return makes the women to define what harassment, violence and assault mean for each one of them. How have these lived experiences affected their own understandings of their bodies

¹⁹ Gonzalez, Sandra , Ashley Judd: *Aftermath of speaking out against Weinstein has been 'moving'*, CNN entertainment, Oct. 27 2017). available at <http://edition.cnn.com/2017/10/26/entertainment/weinstein-ashley-judd-interview-gma/index.html><https://www.theguardian.com/uk-news/2017/oct/16/me-too-social-media-trend-highlights-sexual-harassment-of-women>, accessed on 24th January 2019.

²⁰ Christina Pazzanese and Colleen Walsh, *The Women’s Revolt: Why now, and where to* , The Harvard Gazette, National and World Affairs, (Dec 21, 2017), <https://news.harvard.edu/gazette/story/2017/12/metoo-surge-could-change-society-in-pivotal-ways-harvard-analysts-say/>.

²¹ *Id.*

²² Srila Roy, *#MeToo is a Crucial Moment to Revisit the History of Indian Feminism*, available at <https://www.epw.in/engage/article/metoo-crucial-moment-revisit-history-indian-feminism> last accessed on 21st January 2019.

²³ David Jogn Frank, Tara Hardinge and KassiaWosick-Correa (2009) *The global dimensions of rape-law reform: A cross-national study of policy outcomes*, American Sociological Review, 74(2), pp. 272 - 290, Available at: <http://journals.sagepub.com/doi/full/10.1177/000312240907400206>, (Accessed: 21st January 2019).

or of their positions within the larger society?²⁴ #MeToo as a social movement makes certain assumptions that aren't compatible with the most mainstream feminisms that have preceded it.²⁵ By saying "me too", an individual woman makes herself a part of a broader group, and chooses to stand with others who have been harassed, assaulted or raped. In this light, the diversity and breadth of the #MeToo movement is not a weakness, but a strength. After all, if so many women, with so many different kinds of lives, have experienced the same sexist behaviour from men, then it becomes easier to believe that the problem goes beyond individuals and instead relates to wider cultural forces.²⁶

CONCLUSION

With #MeToo we are in a much more critical phase of the Revolution which is sweeping India. It is the revolution of women fighting for a measure of security and equality as they go about their working lives. But young Indian women who have working lives face routine sexual harassment at every sphere. They have been suffering sexual predation for decades.²⁷ Though several of the critics suggested that such public trials are devoid of procedural fairness and violate the basic sense of fair play, yet one of the advantage of such action is potential to change the prevalent culture of maintaining silence around the violence and to express anger, resentment and frustration in the public domain.²⁸ Let's come down to the suspicion on the women who share their stories. There have been cases of false allegations. A woman as any other person is bound to lie by human tendency. However, a recent investigation shows only 8 cases out 100 to be fake.²⁹ How to doubt the veracity of other 92 cases wherein women gather

²⁴ Joanna Regulska, *The #MeToo Movement as a Global Learning Moment*, available at <https://globalaffairs.ucdavis.edu/news/in-the-news/me-too-movement-global-learning-joanna-regulska> last accessed on 21st January 2019.

²⁵ Moira Donegan, *How #MeToo revealed the central rift within feminism today*, available at <https://www.theguardian.com/news/2018/may/11/how-metoo-revealed-the-central-rift-within-feminism-social-individualist> last accessed on 21st January 2019.

²⁶ *Id.*

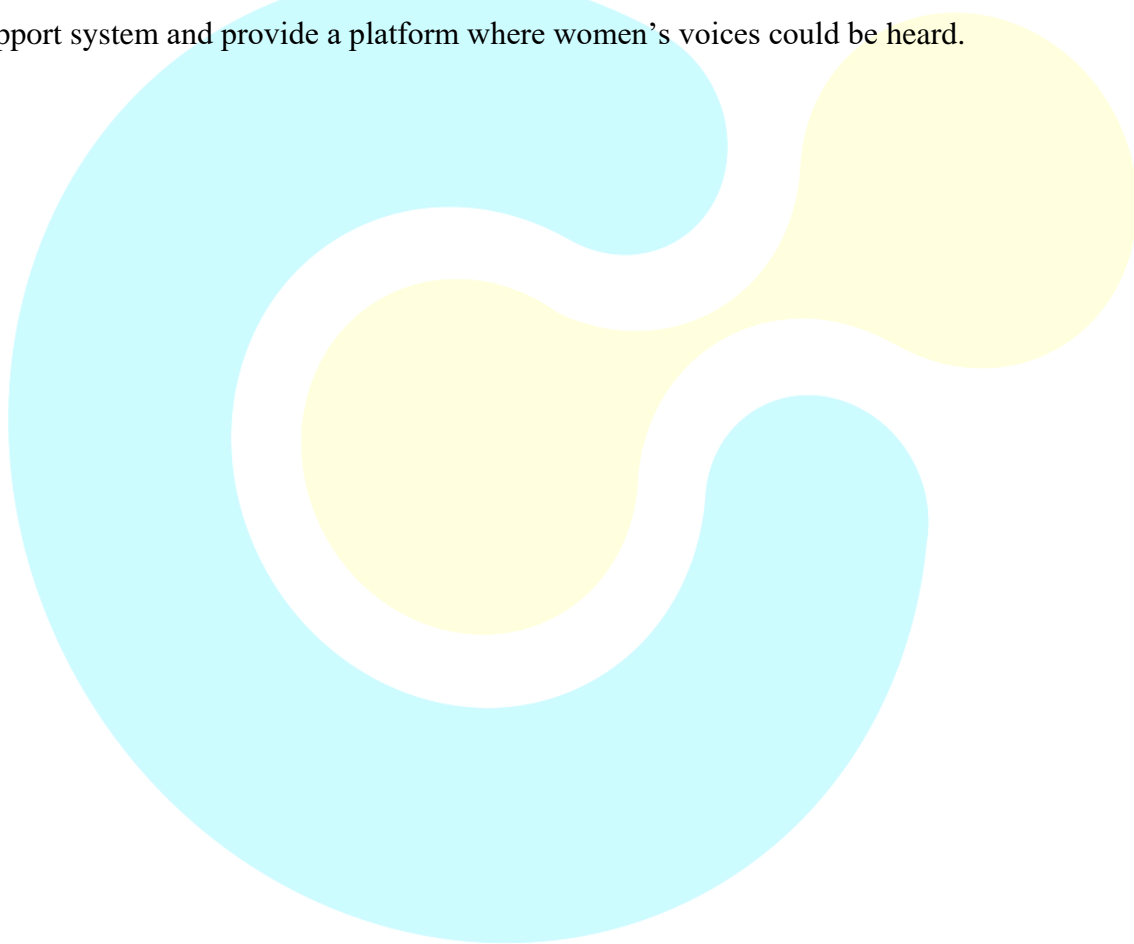
²⁷ Meghnad Desai, *The MeToo Revolution*, The Indian Express, available at <https://indianexpress.com/article/opinion/columns/metoo-revolution-movement-sexual-harassment-nirbhaya-rape-rss-5410888/>, last accessed on 22nd January 2019.

²⁸ Adv Dr Shalu Nigam, *#Metoo In India Is Just A Tip Of An Iceberg And It Has Shaken The Patriarchy To Its Core*, available at <https://countercurrents.org/2018/10/23/metoo-in-india-is-just-a-tip-of-an-iceberg-and-it-has-shaken-the-patriarchy-to-its-core/> last accessed on 22nd January 2019.

²⁹ Katty Kay, 'The truth about false assault accusations by women', BBC News, 18th September 2018 available at <https://www.bbc.com/news/world-us-canada-45565684>, last accessed on 20th December 2018.

so much strength to speak up and come out in open? To a surprise it comes, but the doubting element comes irrespective of being a man or a woman.

The advances made towards gender justice seem to have taken a back step with the **Kathua, Unnao and Mandsaur rape case**. The constant fight between the progressive liberals and regressive patriarchy can be seen affecting the rights of the women in the **Sabrimala Temple Case** where despite of the Supreme Court verdict³⁰, women of all ages are not permitted to enter the place of worship. In the current regressive environment it is significant that women's agency and choices find space and the movement such as #MeToo facilitate such informal support system and provide a platform where women's voices could be heard.



³⁰Indian Young Lawyers Association & Ors v State of Kerala & Ors, Writ Petition (Civil) No.373 Of 2006.