



Volume 10, Issue 1, January 2022
**International Journal of
Advance Research in
Computer Science and
Management Studies**

Research Article / Survey Paper / Case Study
Available online at: www.ijarcsms.com



Special Issue: National Conference on "Self Reliant India (Atmanirbhar Bharat) Opportunities & Challenges"
Organised by: Department of Commerce in association with IQAC of Sheth T.J. Education Society's, Sheth N.K.T.T. College of Commerce and Sheth J.T.T. College of Arts, (Reaccredited by NAAC B+ (2.62), 3rd Cycle, ISO Certified: 9001:2015).
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Indian Outlook on the #MeToo moment

With reference to Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

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Abstract: Many careers have being ruined because the women used the sympathy card and filed a complaint against the superiors. Half the times the cases are based on some cooked stories, half-baked theories and outright lies. There has to be impartial and independent investigation in the matter. There has to be checks and balances against such arbitrary complaints and baseless accusations. Also, the law should not be draconian; biased or tilted towards assumption of guilt. The accused must not be treated as convict right from the beginning. Due process of evidentiary hearing should be followed. We have to make a safer environment for women; but not at the cost of disturbing the emotional stability of any superiors. It could be derived easily that rampant growth of social media was the incubation ground for the #MeToo exponential growth. The perfect ice - breaker for the introverts or timid victims to expose the culprits who were inflicting controlling power over subordinates. It created a platform, an infrastructure to post their complaints; create an awareness and prevent further occurrence of violence to any other person. It makes the society aware of the nature of the person they dwell with and unmask the naked face of the perpetrator. This paper will try to attract a rational bird's eye view to the concept of the POSH Act.

I. INTRODUCTION

Earlier it was said that the women who accused her superiors of sexual harassment charges was risking her career and jeopardizing any chances of survival in the organization. As per report in the New York Times; 83% of the women who come forward for the #MeToo moment should be given the benefit of doubt; as roughly more than 200 prominent men have lost their jobs & the suitable replacement in the view of the management were women. Hence, MeToo was a institutional restructuring and replacing moment. Company find it difficult to place person on the helm – as both genders have equal at – risk factors involved. Men could be the next sexual predators while women could be the victims or might resign in middle due to family & biological reasons. Even the Big Four companies are not immune from the discrimination. They spend almost Crores of rupees each year to waive off any legal trouble arising out of discrimination or harassment. The initial misconducts and lateral cleanup cause a lot of emotional setback to employees along all the ranks.

II. OBJECTIVES

1. To emphasize on the lacunae in the present POSH Act.
2. To facilitate SHA (Sexual Harassment Awareness) amongst stakeholders.
3. To examine the provisions of the Internal Complaint Committee (ICC)

III. OVERVIEW

Many organizations paid hefty price to either remove the predators from the organization or to buy the silence of the victims. The company can face legal troubles from any of the two components: the victim who is blaming the management for the discriminatory treatment & also from the alleged predator who is not satisfied with the way the company has asked him to prove his innocence. Since any allegation by women are draconian law, where the man has to prove his innocence – the undue advantage to the women if abused would cause a defamation of the innocent manager. Hence the Internal Complaint Committee has to strategize the complaints it wishes to ponder & those it wishes to reject. Either of the case which are being rejected without cause can lead to appeal to the court of law; where again the organization is under the scissor of under reach of justice as under their statutory provisions. It is never seen that the predator pays from his own pocket – it is always the company who suffers. Victims also never get the moral support which they deserve; mere financial compensation is not sufficient to make up for the mental trauma.

It is stated that many MNC who paid amount to the predators despite of the offence being proven, and later on rehiring the same person under some pseudo – designation. Sometimes they provide him initial capital to start own venture or acquire him as under consultant. Even blue collar jobs are not immune – McDonald's employees claim that they are victims of unwanted grouping. 45% of the females interviewed & 20% of the male employees were manhandled sometimes in their duties as waiters / servers. The institutional balance against such act was training the frontline employees to tackle any such advances; establish hotlines to register such instances; bouncers to ensure no one manhandles the employees etc.

Transparency and Accountability are the two major components in any sexual harassment retraction strategy that could be instrumental in maintaining the dignity of the organization after such slipup or goofs. Almost as many as 50 senior level partners have lost their careers due to the #MeToo. It not only threatens to tarnish the image, goodwill and social reputation of the organization; it also causes a troubled social paradigm change in the structure and functioning. Many institute have set a 'Sexual Misconduct Risk Management Committee' to evaluate the performance of female employees from an independent standing and compare it with the manager's performance appraisal. In case of any major discrepancy amongst both the reviews could be prima facie evidence of discrimination.

Caught the attention of the media and the courts to take it on themselves to deliver justice to those who were shadowed by fear till now. The Suo Moto appeal of the courts the open the floodgates of the victims who started coming forward. The momentum of the #MeToo was so powerful the world social media was taken off-guard by the daily rising Tweets. The age old technique of the corporates which was to keep silent or pay of the victims to buy their silence was changed overnight. The corporates started to take the allegations more seriously. The Internal Complaint Committee as established by the Vishakha Guidelines was suddenly in demand once again. With regular meetings and panel deliberations, the committee started to put forth recommendations and verdicts against the accused. The moment was instrumental in seeking apology from the Director of National Institute of Health to a member of STEM (Science, Technology & Mathematics) Department. The story however heartbreaking and touching only centers to the physical pain endured by the woman but not the opportunity and career loss,

financial hardship and systematic system failures which the nation had to face as a consequence of the action of the guilty Boss; tell you another story.

IV. HISTORY

It was seen that a certain President of the United States of America never used to share a meal alone with any lady with a fear of some accusations that might emerge later. He never gave a chance to awkward situation being created by cause. The only women he would be alone with was his wife. He never shared a meal, car ride or the presidential plane with another women alone. Separate arrangements would be made for such female to travel or work with him. Such was the precautionary measures taken by the President; most powerful man on the planet.

The bravery of the victims coming forward with their stories, was to be seen in the 2020 twitter enragement which allowed the floodgates to pour open and the victims to come forward. There happened to be two distinct trials - Media Trial v. Judicial Trial. The media trial believed in presumption of guilt, without any due cause or notice. Opportunity of the accused to present his defense was absent. No Validation of the allegations caused the instant unconstitutional form of vigilante justice to make the court aware of the rising hence the courts have started to make Suo moto application of mind and taking the Cognizance of the cases via social media platform. This has led to a swift deliberations and delivery of justice – *justice delayed is justice denied*.

V. SUGGESTIONS

It could be derived easily that rampant growth of social media was the incubation ground for the #MeToo exponential growth. The perfect ice - breaker for the introverts or timid victims to expose the culprits who were inflicting controlling power over subordinates. It created a platform, an infrastructure to post their complaints; create an awareness and prevent further occurrence of violence to any other person. It makes the society aware of the nature of the person they dwell with and unmask the naked face of the perpetrator.

The act was also instrumental in creating an open mind related to the sexual offences faced by women in professional domain. It took 30 odd years to finally accept the fact that women are indeed being harassed not only mentally, but also sexually in place of work.

VI. CONCLUSION

The topic of MeToo is a bipolar topic which can fill light to the long ongoing harassment of women at place of work; the depression which is being faced by the working class women due to bad boss; discrimination which is being faced on their fate due to social stereotypes and finally creation of a safe working environment for the women. All these can be attributed to the MeToo moment.

The court has started to take the cognizance of such Tweets, Open Letters or confessions of the victims on any random social media platform. The barriers to get a formal notice or complaint are removed and women can express her troubles in any manner she feels like to without being victimized. But the other side has to be seen too...

Many careers have being ruined because the women used the sympathy card and filed a complaint against the superiors. Half the times the cases are based on some cooked stories, half-baked theories and outright lies. There has to be impartial and independent investigation in the matter. There has to be checks and balances against such arbitrary complaints and baseless accusations. Also, the law should not be draconian; biased or titled towards assumption of guilt. The accused must not be treated as convict right from the beginning. Due process of evidentiary hearing should be followed. We have to make a safer environment for women; but not at the cost of disturbing the emotional stability of any superiors. Hence as per Martin Luther

King Jr. 'injustice anywhere is a threat to justice everywhere' be it the victim or the accused the injustice should not be proclaimed by the honorable judiciary.

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