

## **"#ME TOO" – A New Challenge in HR Practices**

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### **Abstract**

Recently, a tornado of "#Me Too" movement shook the conscience of civil society in India. Women, across the length and breadth of the country, broke their silence and revealed how they were subjected to sexual harassment at their workplaces by high and mighty. Many such perpetrators have since fallen from the grace in the eyes of the public at large. Arguably, it's only a tip of the iceberg. Notwithstanding, an innate mandate enshrined in the Constitution of India, viz. "It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women" - [Article 51-A(e)], the sanctity of our Constitution has been denigrated by the predators. The recent spate of allegations reported widely in the print, electronic and social media, have shown that the women employees, indeed, have been subjected to questionable conduct on the part of their male colleagues at the workplace.

Adverse social impact, loss of reputation, difficulty in procuring evidence, and fear of losing job were some of the reasons that precluded the women employees from going public against perpetrators. As a result, victims have lived for decades and decades with the mental trauma with no sight of justice in their life time. On the other hand, HR honchos have always vouched for non-existence of any preying eyes at workplaces. This paper attempts to analyze the shortcomings in the HR practices in making the workplace women-friendly and suggests ways to combat the menace.

### **Key Words**

Women's Dignity, Chief Women's Rights Officer, District Officer, Internal Complaint Committee, Predators

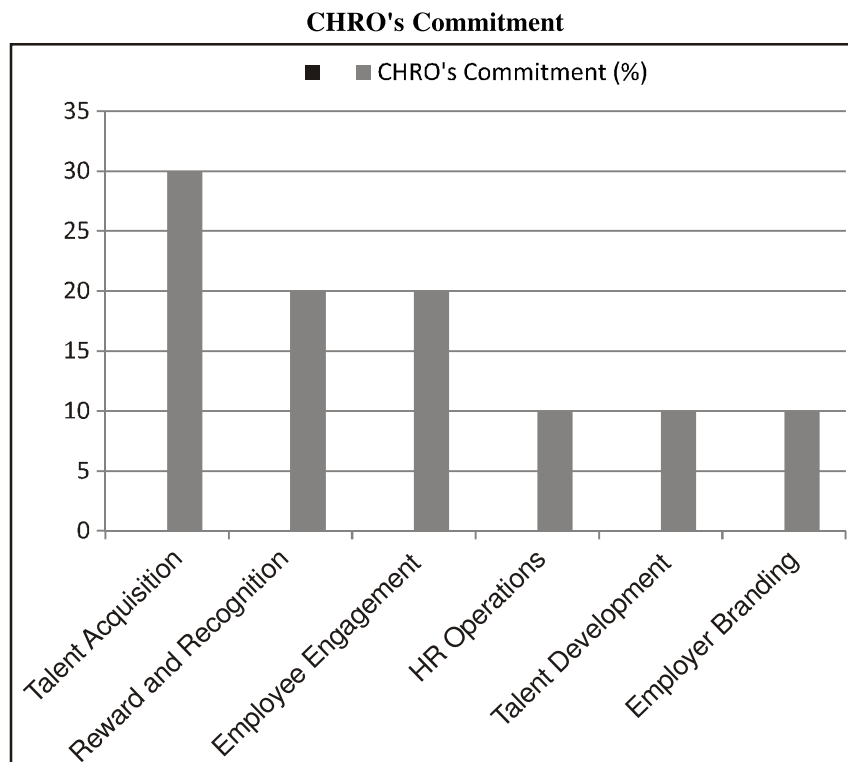
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## INTRODUCTION

Intrusion in the personal space of women employees, by no yardstick, can be allowed at workplaces. Constitution of India is emphatic about dignity of women. Responsibility to ensure a women-friendly workplace lies with HR fraternity. Obviously, HR has failed in developing the appropriate organizational culture that may provide harassment-free work environment to women employees. Scores of grievances of women employees from across industry-sectors have flooded the electronic, print and social media in the country under the #Me Too movement. Obviously, ethical governance in the corporate sector has somewhere been compromised leading to sexual harassment and psychological trauma against women employees.

## WHERE HAS HR FAILED?

The BTI data reveals, a CHRO's commitment as - Talent acquisition 30%, Reward and Recognition 20%, Employee Engagement 20%, HR Operations 10%, Talent Development for future needs 10%, Employer Branding 10%. The data, not surprisingly, reveals that the prevention of harassment and violence against women employees at workplaces, does not find any place in the CHRO's commitment.



Primary reason for failure of HR, thus, lies in its inherent nature of being reactive, if not inactive. Whereas, in today's intense competitive environment, organisations' HR practices need to be proactive. Had it been so, there won't have been any need for women employees to beg for dignity from the perpetrators.

### **ANCIENT INDIAN RELIGIOUS SCRIPTURES AND PLACE OF WOMEN**

Holy Indian scriptures have always been sensitive to the women's dignity. Women have been equated to the level of Goddess with the Manusmriti describing the places where women are worshiped, as the abode of God.

Unfortunately, over a period of time, our rich cultural heritage and value system has somewhere been lost, and the country has been driven to a state of - "women begging for dignity from predators".

### **ROLE OF INTERNATIONAL LABOUR ORGANIZATION (ILO)**

Considering the world-wide infringement on women's right of just-workplace that is devoid of fear, mental trauma, physical and emotional violence and gender insensitivity; the International Labour Organization (ILO) in its 107th annual conference held at Geneva between May 28 to June 08, 2018 demonstrated its will to bring about a new International Treaty to protect women workers from harassment and violence at workplace. The proposed treaty could be in the form of a convention or a recommendation. Certainly, a long-awaited respite for women workers across the globe, relentlessly striving for "Freedom at Work".

### **ROLE OF INDIAN STATE**

- (a) **Free Legal Aid to Victims** : State needs to enact legislations with deterrent provisions, as well as establish fast track courts to ensure prompt and exemplary punishment to the offenders. Provision of free legal aid to victims would go a long way in meeting the end of justice. The legal cost, so incurred, may well be recovered from the offender in addition to compensation on account of special, general, punitive or liquidated damages awarded, if any.
- (b) **"The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013"**3-Prima facie lacks teeth :
  - (i) **Need of Transparent Mechanism** : The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act,

2013 (hereinafter called the Act) provides for constitution of Internal Complaint Committee (ICC) by the employer to investigate the matters related to workplace harassment. Obviously, the lesser mortals, who are employer's nominees, cannot be expected to deliver justice to the aggrieved women employees by going against the diktat of the employer, whose brand image is set to be sullied and therefore will have a single point agenda that is – "to cover up at any cost". Fear of impending police case, adverse publicity in media and sharp decline in brand image make employers' vision myopic.

- (ii) **Ensuring Transparency in Composition of Members of Internal Complaint Committee (ICC) :** It would be prudent to nominate members from outside organization / establishment / institution / corporation / enterprise / industry located within the district by appropriate authority such as district magistrate, registrar of companies, vice chancellors, chief inspector of factories, directorate of industries, labor commissioners etc, depending upon the organization. This would ensure transparency and justice.
- (iii) **Standing Complaint Committee :** Alternately, the district authorities may be asked to constitute standing committees to investigate cases of sexual harassment at workplaces in their districts. Such committees are bound to get credence in the eyes of victim in particular, and public in general. Necessary amendment in the legislation, would, however, be needed.
- (iv) **Capitulation of Justice :** The Act instead of being seen as deterrent, advocates 'conciliation' between the victim and the perpetrators. It even provides for non-disclosure of the identity of the perpetrator, thereby defeating the very purpose of the Act. Naming and shaming should have been considered as an essential element. Even the employer, after having been found guilty of not being able to provide safe and secure workplace for women, has been let off very lightly with a penalty of meagre Rupees Fifty Thousand.
- (v) **Need to Display the Contact Details of District Officer (DO) :** A flagrant violation of fundamental principles of justice such as the need to display the contact details of District Officer (DO), who ought to be a women officer, at all prominent places in the premises, to enable the victim to approach the District Officer

(DO), in case of undue pressure for compromise, intimidation and distress; is noticeable.

- (vi) **Justice Delivery Mechanism** : Five months' time, viz. three months to Internal Complaint Committee (ICC) to investigate, followed by two months for employer to act upon the recommendations of the ICC, shows gross insensitivity to the women's issue of dignity at work place, more so when the mandate for ICC is limited, i.e. either to recommend dismissal of the case, or suggest necessary action to be taken against respondent as per service rule, which may or may not exist in the organization. Records reveal that court cases have dragged for decades on account of witnesses not willing to come forward under pressure from employer, transfer of witnesses, transfer of judges. Needless to say, the justice delayed is justice denied.
- (vii) **Sexual Harassment – A Misconduct or Criminal Act** : The basic tenets of jurisprudence that have been glaringly missed out is that the cognizance of offence should be taken as criminal act instead of misconduct at workplace. The Act empowers the employer to view the perpetrator's act brazenly as misconduct alone, and invoke provisions of service rule. The criminality angle of the perpetrator's act which is punishable under Sec 354, Sec 354 A to D and Sec 509 of Indian Penal Code has been conveniently left out in cold. Suffice to say, the Act seems to be an attempt to sweep the issue of women's dignity at workplace, under the carpet.
- (viii) **Light at the End of the Tunnel - The Criminal Law (Amendment) Act, 2013** : The amendments to Indian Penal Code, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, making the offences against women at workplace as criminal act, came as much sought after relief. Provisions were also made to record the information given by women, by a women police officer or any women officer. Further, the provisions were made to video-graph the recording at victim's residence if she is mentally disabled and also the provision for recording the proceedings by a Judicial Magistrate. Insertion of Section 354 A to D as amendment to Section 354 of Indian Penal Code were need of the time. Enhancement of punishment under Sec 509 of the Indian Penal Code from one year imprisonment to three years imprisonment

added much needed teeth. Conduct of enquiry or trial on day to day basis until all witnesses examined was a very vital amendment to Sec 309 of Code of Criminal Procedure, 1973.

- (ix) **Limitation of Trial** : The Government also needs to remove bar on limitation of trial of cases related to sexual harassment of women employees at workplaces as victims need time to heal from mental trauma, threat of victimization and job losses.
- (x) **Steps to Prevent Women's Victimization at Workplace - Current Status (Oct 2018)** : Since, the matter is related to the prevention of victimization of women at workplace, the Government of India, in the wake of #Me Too revelations, has taken initiative by constituting a Group of Ministers (GOM) to address the issue. The GOM will be headed by the Home Minister and will submit its report in three months. The Defence Minister Mrs. Nirmala Sitaraman, Mrs. Maneka Gandhi, Minister of Women and Child Development and Mr. Nitin Gadkari, Union Road Transport and Highway Minister will be its members.

### **ROLE OF LAW ENFORCING MACHINERY**

Mere revelation of instances of sexual harassment at workplaces through media does not necessitate law enforcing agencies to take cognizance of offence and commence investigation. It would, thus, be prudent for victims to lodge formal complaint with the police. However, the number of cases filed, investigated, charge sheets filed and offenders convicted is abysmally low. Even the insensitivity displayed by cops during investigation while asking probing questions is no less than living another bout of dreadful moments. The situation, thus, discourages women employees to adopt legal course of action.

### **ROLE OF JUDICIARY**

As usual, judiciary's role comes into light only when a formal complaint has been lodged with the police and cognizance of offence has been taken after preliminary investigation. Suffice to say, the aggrieved party has to lodge complaint with the police, if the employer fails to redress the grievance to the satisfaction of the aggrieved women employee. A bitter truth that again discourages victims to approach police / judiciary is the snail's pace of justice delivery mechanism in India.

### **ROLE OF WOMEN COMMISSIONS**

Women Commissions at national and State level should assist women employees in seeking justice. However, sense of urgency, proactive approach, empathy, has rarely been noticed on the part of women commissions.

### **ROLE OF SOCIAL DYNAMICS**

Prolonged trials, financial hardship, non-cooperation from colleagues due to pressure from employer, sympathetic colleagues punished and transferred out by employer, constant fear of job loss, ostracized from society, gradually reducing matrimonial prospects for young women due to adverse publicity in society, or in case of married women the growing kids facing humiliation from the environment, fear of safety and security for self and kids; force women employees to abandon the option of lodging complaints against perpetrators.

### **ROLE OF SOCIAL MEDIA**

Presently, social media and blogging sites have become a great enabler for women employees who do not have to live with psychological trauma for decades and decades any more. Through social media, the aggrieved women employees can bring the details of haunting-episodes in public domain. This encourages other victims, too, to open up and ensures name and shame on perpetrators, to start with. The recent outcry in social media has drawn attention of law enforcement agencies leading to lodging of First Information Report against some perpetrators, in some cases; while in other, the employers have given marching orders to their executives as a mark of their commitment to uphold the dignity of women employees at workplace.

### **ROLE OF ELECTRONIC AND PRINT MEDIA**

Electronic and print media play a significant role in providing both parties fair opportunity to bring out their side of story. However, risk of media trial remains. There are also possibilities of inadequate or no media coverage in high profile cases.

### **ROLE OF PROFESSIONAL ASSOCIATIONS**

Professional associations, too, can play a major role in sympathizing with the victim, terminating membership of the perpetrators and provide legal aid to victims to bring the perpetrator to justice.

## **ADVERSE IMPACT ON PRODUCTIVITY**

Unsafe workplaces de-motivate women employees to continue with their job prospects. The situation results in drop in the country's prosperity due to vast majority of workforce facing exclusion of their significant economic contribution in the development of the country.

## **ROLE OF CORPORATE**

Corporate may have to address the issue taking two-prong action, one, justice to women employees, two, protect enterprise against lawsuits, by adopting following approaches :

- (a) **Insurance Policy :** In view of the, "#Me Too" movement, corporate would do well to seek insurance cover to protect the company against allegations that it failed to provide harassment-free workplace to the victim. These claims may arise out of :-
  - (i) Sexual harassment at workplace
  - (ii) Gender discrimination
  - (iii) Unlawful termination
  - (iv) Breach of contract

An important provision related to policy would be the need to take into account liability arising out of belated claims by former employees on account of misconduct on the part of their former colleagues who, too, have since moved out. This aspect assumes significance as the cases related to sexual harassment at workplaces, often surface after relinquishing the employment by the victim, hence validity of the claim remains an issue, unless due care has been exercised to include the claims arising due to former employees and future employees.

Therefore, it may be more prudent to frame stringent policy and make senior and dedicated team of women executives responsible to investigate in the matters of violations of dignity of women at work places rather than looking for insurance-shield.

- (b) **Directors and Officers (D&O) Liability Insurance :** The protection under this insurance is not available to the executive if criminality is established in a court of law. An extended insurance to include Employment Practices Liability Insurance (EPLI) also, can be negotiated on payment of additional premium.



## **CORPORATE WORLD – A WAY AHEAD**

- (a) **Chief Women's Rights Officer (CWRO) :** It may well be sagacious for India Inc. to fathom the gravity of the workplace-hazard and redesign the organizational structure by creating the post of Chief Women's Rights Officer (CWRO) tenable by women, who may be drawn from the pool of retired women officers from armed forces/bureaucracy / journalism / legal professional / eminent personality / social activist / NGOs.

The CWRO could be given additional duty such as Welfare Officer, Safety Officer, Data Protection Officer (DPO), Diversity & Inclusion Officer (DIO), Business Intelligence Officer (BIO), depending upon the size and need of the organization as well as the suitability of the official.

The appointment and removal of such official should be on recommendation of District Officer (DO) followed by approval from District Magistrate (DM). Statutory provision to this effect needs to be made in the laws enacted by various ministries as part of Government's role and responsibility to provide safe and secure workplace for women.

- (b) **Strategic Shift in Recruitment Policy :** A large number of organisations have adopted conscious approach of enhancing diversity at workplace by recruiting more women, however, the primary objective of such recruitment has been to combat workplace harassment. They are doing exceedingly well. Gender diversity, too, gets well-addressed. For this, employers' mindset needs a change from a short-term gain to a long term strategy. Media and thinkers, too, have a role to play to take the movement forward.

## **CONCLUSION**

Majority of women employees across the globe are subjected to unwelcome behavior on the part of their erring male colleagues, at workplaces. It may well be prudent to quote a conversation here, between an Indian woman and a Russian woman, both friends and students at Russian Academy of Sciences. The conversation goes as under :-

Indian Woman : "Hi, women security is a global issue. How is Russia?"

Russian Woman (replied in Russian) : "Nu dargaaya, shto ti dymayesh, Zdesh zhivoot bogi?"

English translation (Well friend, what do you think, Gods! live here (in Russia)?")

Women's right to work with dignity at workplace needs to be protected at all costs, across the globe. It's a matter of protection of human rights of women employees. Decades and decades of quiet suffering needs to come to an end for the development of women, development of a country, and for transformation of uncivilized society into a civilized one.

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