

METOO MOVEMENT AND TORT CLAIMS

Rimi Gautam*

ABSTRACT

Using tort law's treatment of claims for sexual harassment and assault as examples, this article explores the legal remedies available to survivors of sexual harassment and assault in the wake of the #MeToo movement. The article examines the use of tort claims, such as negligence, intentional infliction of emotional distress, and assault and battery, to hold perpetrators and employers accountable for their actions. The article analyses the viability of these claims and the challenges survivors face in pursuing them, including the high burden of proof and the statute of limitations, considering the impact of the #MeToo movement on the legal system, including the increased awareness of sexual harassment and assault and the potential for changes in the law. It is concluded that while tort claims may not be a perfect solution, they can provide a measure of justice and accountability for survivors of sexual harassment and assault in the era of the #MeToo movement.

Keywords: MeToo movement, sexual harassment, sexual assault, victims, assailant, tort claims.

INTRODUCTION

The #MeToo movement took off in October 2017 with actress Alyssa Milano's tweet, "If you've ever been sexually harassed or assaulted, write 'me too' as a reply to this tweet." She was not the first to use the slogan "me too" in the context of sexualized violence. Tarana Burke, an African American social activist, coined the phrase a decade earlier in connection with her efforts to provide empathy and support to young women and girls of color who had experienced sexual violence.

However, the revival of the phrase and its use as a hashtag on social media platforms altered the dynamics of the movement. In addition to providing survivors a platform to tell their stories, the #MeToo movement frequently brought with it detailed allegations of abuse perpetrated by specific prominent individuals, first in the entertainment industry (e. g., Harvey Weinstein), then spreading to politicians, celebrity chefs, judges, physicians, media executives,

*BA LLB, FIRST YEAR, DR. RAM MANOHAR LOHIYA NATIONAL LAW UNIVERSITY, LUCKNOW.

and many more. Many of the #MeToo campaign's targets were fired or forced to resign from their positions. Despite the fact that Harvey was charged with a crime, to date, the most significant impact of the #MeToo movement has been felt outside of criminal law, with those accused of transgressions penalized civilly through loss of positions and prestige. #MeToo, as a social movement, has no set boundaries or goals. Some of the stories that have sparked outrage have involved rape (Harvey Weinstein); others have included allegations of physical forms of sexual harassment, such as groping or inappropriate touching; and still, others have focused on non-physical forms of harassment and sexist behavior, such as pressuring subordinates to view pornography. In most cases, more than one woman or victim has come forward to provide an account of misconduct against a specific individual, giving the impression that many of those accused are serial abusers who have gotten away with their abusive behavior without consequences.

In less than a year, the #MeToo movement has provided compelling cultural evidence that rape and other forms of sexualized abuse are still prevalent in our culture and that our laws are ineffective as deterrents. Although many feminists and others who have long criticized the huge gap between levels of victimization and legal responses are not surprised by this realization, the social mobilization behind the #MeToo movement has certainly highlighted the gap. It has also created a new opportunity to re-examine doctrines, procedures, and any other conditions that discourage victims from accessing and obtaining legal relief.

For me, their question arises whether there will come a time when victims of gender-related and sexualized injuries such as domestic violence, rape, sexual assault, sexual harassment, and reproductive injuries will turn to tort law in numbers that reflect the pervasiveness and gravity of these harms.

To answer the above question, the #MeToo movement has brought to light the prevalence of sexual harassment and assault in various industries and has resulted in increased awareness and accountability for those who perpetrate such behavior. In addition to criminal charges, victims of sexual harassment and assault may also have the option to file a tort claim against their perpetrator. Tort claims involve seeking compensation for harm suffered due to the actions of another person. In the context of sexual harassment and assault, victims may be able to bring claims for various torts, such as intentional infliction of emotional distress, assault, battery, and defamation. To succeed in a tort claim, the victim must generally prove that the perpetrator's conduct caused them harm and that the perpetrator was at fault for that harm. This can be a

complex and challenging process, particularly when dealing with the trauma associated with sexual harassment and assault.

Although sexual harassment is tantamount to women #metoo movement is not restricted to women facing sexual harassment alone, it is also about those powerful women preying on their subordinate men or a homosexual preying on another man/woman in his/ her office or elsewhere under the shields of power.

TORT CLAIMS FOR SEXUAL HARASSMENT AND ASSAULT

In today's time, tort law professes to protect the sexual autonomy of each and every individual, including women. Sexual harassment is a serious issue in India, and individuals who have experienced it may be able to bring a tort claim against their harasser or assailant. In India, sexual harassment is primarily governed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (the "Act"). The Act defines sexual harassment broadly to include unwelcome physical contact, advances, requests for sexual favors, and other verbal or nonverbal behavior of a sexual nature. In addition to filing a complaint under the Act, an individual who has experienced sexual harassment may also bring a tort claim for damages against their harasser. The tort of sexual harassment is recognized by Indian courts and allows individuals to seek compensation for harm caused by the harassment.

To establish a tort claim for sexual harassment, the individual must prove that the harasser engaged in conduct that was sexual in nature and unwanted, and that the conduct caused harm to the individual. The harm may include defamation, emotional distress, breach of privacy, assault, battery, negligence, and vicarious liability.

DEFAMATION

In some cases, Defamation in the context of sexual harassment refers to the communication of false or derogatory statements about a person's sexual behavior, conduct, or character, which harms their reputation or causes them to be viewed in a negative light. This can occur through various forms of communication, such as verbal statements, written or printed materials, or online posts or messages.

In the context of sexual harassment, defamation can be a tactic used by harassers to intimidate or discredit their victims, or it can be a consequence of a victim speaking out about their experiences. Victims of sexual harassment who speak out about their experiences may face

false accusations or negative commentary from their harassers or others who wish to discredit them, leading to reputational harm and social isolation.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Sexual harassment can cause significant emotional harm to the victim. If the harasser's conduct is extreme and outrageous, the victim may be able to bring a claim for intentional infliction of emotional distress.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

If the perpetrator's behavior causes emotional distress to the victim, but the perpetrator did not intend to cause emotional distress, the victim can bring a claim of negligent infliction of emotional distress.

INVASION OF PRIVACY

If the perpetrator violates the victim's privacy by making unwelcome sexual advances or engaging in other inappropriate behavior, the victim can bring a claim for invasion of privacy.

BATTERY

Sexual harassment often involves physical contact, such as unwanted touching or groping, which can constitute battery. The victim may bring a claim for battery and seek compensation for any physical harm suffered.

ASSAULT

If the harasser threatens or attempts to harm the victim, the victim can bring a claim for assault. This can include not only physical threats but also verbal threats, such as threatening to retaliate if the victim does not comply with the harasser's demands.

VICARIOUS LIABILITY

One potent barrier to recovery in third-party suits remains the reluctance of most courts to impose vicarious liability in cases of sexual abuse, ¹the doctrine that holds an employer automatically liable for the torts of an employee, without proof of any additional fault on the part of the employer.

¹ Martha Chamallas, Vicarious Liability in Torts: The Sex Exception, 48 VAL.U. L. REV. 133,135 (2013).

However, in vicarious liability cases, courts have found that cases of rape and sexual assault committed by their employees are treated differently than cases of negligence or even non-sexual intentional torts. Only a few courts have allowed plaintiffs to proceed under a vicarious liability theory in cases of clergy sexual abuse. Furthermore, when an employee assaults a customer, client, or patient, courts frequently refuse to impose vicarious liability. In one infamous case, for example, a hospital was not held liable when a medical technician sexually molested a 19-year-old pregnant patient while performing an ultrasound examination on her.

This "sex exception" to vicarious liability stems from a long-held belief that sexual misconduct is distinct from other types of misconduct, with courts treating sexual abuse as exceptional behavior motivated by lust rather than by opportunity and abuse of power.

NEGLIGENCE

Rape and sexual assault victims have fared better when they frame their cases as negligence claims, rather than vicarious liability claims, and point to some fault on the part of the third-party defendant, usually a failure to take the necessary precautions to prevent the plaintiff's sexual assault. In lawsuits filed against Catholic dioceses, for example, plaintiffs claimed that church officials were negligent in hiring, supervising, and retaining priests with a history of sexual abuse and in failing to report the abuse to local authorities. The practice of simply transferring an offending priest to another parish without informing the new parish of any prior incidents or allegations drew criticism, forcing the church to rethink its protocols for dealing with cases of clergy sexual abuse.

The crux of plaintiffs' claims in all of these negligence cases is that the sexual assaults were foreseeable and could have been avoided if the institutional defendants had taken additional safety measures. Thus, women who were raped in their apartment building's common areas were able to sue landlords who failed to provide adequate lighting or security cameras. Women who were raped in hotels and shopping malls were able to sue the owners after proving that they did not hire security guards or take other precautions.

What is most intriguing about these cases is the emergence of a normative view that the standard of reasonable care in negligence cases should be set at a level that makes the defendant's physical premises, workplace, or other space equally safe for men and women. This may appear to be an obvious principle that should follow from the universal duty of due care that underpins tort law. In practice, however, businesses, employers, and other institutional

actors have frequently ignored or minimized the threat of rape and sexual assault, claiming that such occurrences are "unforeseeable" and are solely the responsibility of the police, not covered by their duty to act reasonably.

Therefore, the existence of civil rights claims for sexual harassment has thus not only lowered some of the barriers to recovery but has also provided litigants and courts with a new vocabulary to describe the injuries inflicted, crucially discarding some key baggage-laden concepts, such as consent, in favor of more plaintiff-friendly terms, such as unwelcomeness.

#METOO MOVEMENT IN INDIA

The #MeToo movement is a global movement that originated in the United States in 2017, and it aims to raise awareness about sexual harassment and assault. The movement gained momentum in India in 2018, where several women came forward with their stories of sexual harassment and assault.

Under Indian law, sexual harassment is defined as any unwelcome sexual gesture or behavior, whether verbal, non-verbal, or physical, that is offensive, humiliating, or intimidating. Sexual assault, on the other hand, includes any non-consensual sexual act, such as rape, molestation, or sexual exploitation.

The #MeToo movement is a global movement against sexual harassment and assault, and India has its own laws and regulations in place to address this issue. Victims of sexual harassment and assault can file tort claims in India. Tort claims are civil claims filed by victims seeking compensation for harm caused to them. In such cases, the victim must prove that they have suffered damages due to the actions of the defendant. The damages may include compensation for medical expenses, loss of income, emotional distress, and other related expenses.

In addition to the above law, sexual harassment, and assault can also be criminalized under certain acts and laws, **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**²: This law defines sexual harassment at the workplace provides a mechanism for women to file complaints and seek redressal for such harassment, **The Indian Penal Code (IPC), 1860**³: This law criminalizes various forms of sexual harassment and assault, including rape, molestation, and eve-teasing and **The Protection of**

² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

³ The Indian Penal Code (IPC), 1860.

Children from Sexual Offences (POCSO) Act, 2012: ⁴This law deals with sexual offenses against children and provides for stringent punishment for such offenses.

The Indian judiciary has played a crucial role in addressing these issues, and several important judgments have been delivered in cases related to the #MeToo movement and tort claims. In the case of **Vishakha v. State of Rajasthan**⁵: This landmark judgment was delivered by the Supreme Court of India in 1997, long before the #MeToo movement gained prominence. The case involved a social worker who was gang-raped in Rajasthan, and the judgment laid down guidelines to prevent sexual harassment in the workplace. These guidelines are often referred to as the Vishakha Guidelines and have been instrumental in shaping the legal framework for dealing with sexual harassment in the workplace in India.

In the case of **MJ Akbar v. Priya Ramani**⁶: In 2021, former Union Minister MJ Akbar filed a criminal defamation case against journalist Priya Ramani, who had accused him of sexual harassment during the #MeToo movement. However, in a significant judgment, the Delhi High Court acquitted Ramani of all charges and held that her allegations were true and made in good faith in the public interest.

In the case of **Chitra Ghosh v. Union of India**⁷: In 2020, the Supreme Court of India held that an employer can be held liable for acts of sexual harassment committed by its employees. The case involved a woman who was sexually harassed by a colleague at work, and the court held that the employer had a duty to prevent such behavior and could be held liable for its failure to do so.

Similarly, in the case of **Laxmi Dubey v. State of Rajasthan**⁸: In 2019, the Rajasthan High Court awarded compensation of Rs. 2 lacks to a woman who was sexually harassed by a police officer while in custody. The court held that the state was liable for the actions of its employee and that the victim was entitled to compensation for the violation of her fundamental rights.

Overall, the #MeToo movement has brought attention to the issue of sexual harassment and assault in India, and the judiciary has taken steps to provide justice to victims through tort claims judgments. While there is still a long way to go in terms of addressing the systemic

⁴ The Protection of Children from Sexual Offences (POCSO) Act, 2012.

⁵ Vishakha v. State of Rajasthan (1997) 6 SCC 241.

⁶ MJ Akbar v. Priya Ramani (2021) 5 SCC 267.

⁷ Chitra Ghosh v. Union of India (1970) AIR 35.

⁸ Laxmi Dubey v. State of Rajasthan (2019) AIR 23.

issues that contribute to sexual harassment and assault, these judgments are an important step in holding perpetrators accountable for their actions.

CONCLUSION

The #metoo movement has yet to gain traction. This movement, on the other hand, provides an opportunity for women to speak out and expose predators. Institutions/organizations may dismiss a single woman's complaint, but they are less likely to dismiss collective voices. While men are an important part of this movement, perhaps more men should be involved, and awareness programs about how men should interact with their female counterparts in various spatial contexts should be held. Currently, the movement is hegemonic and Anglo-American in nature. It is surprising to see that the movement has yet to reach Bollywood and other Asian entertainment industries. It is an open secret that sexual predators can be found in a variety of settings, including educational institutions, public /private organizations, and communities.

Although it is difficult to predict the precise impact of the #MeToo movement on tort claims brought by victims of sexualized abuse, it appears reasonable to argue that if institutions have a duty to terminate or discipline those who engage in sexual abuse or harassment, they should also have a duty to compensate victims when they fail to do so.

