

POSH

Prevention Of Sexual Harrasment

Live

A quarterly insight to the POSH Law!

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POSH LIVE brings to you updates and information relating to matters of sexual harassment irrespective of the gender and age. This is an effort to create awareness about laws relating to sexual harassment and any form of discrimination.

RIGHT TO RESIDENCE, With reference to Protection of Women from Domestic Violence Act, 2005

There are several women who are abused physically, emotionally and economically. Such abuse is a form of discrimination and is in violation of their fundamental rights to equality and to live with dignity. In an effort to provide for protection of their rights as guaranteed under the constitution, The Protection of Women from Domestic Violence Act, 2005 was formulated. As per this law, a married woman or a woman living in a relationship in the nature of a marriage can file a complaint against the male partner or his relatives. The Act also covers and protects any woman who is or has been in a domestic relationship with the perpetrators such as sisters, widows, mothers, daughters, sisters in law, women in relationships of cohabitation, single women who have been subjected to acts of domestic violence. Any such **woman has the right to protection from the perpetrator, the right to reside in the shared household, and the right to have a residence order issued against the abuser**. In this article we will have a look at right to residence in the shared household in the light landmark judgements.

To understand the right to residence, let us first understand the meaning of "Shared Household" As per Section 2(s) of the Act, "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household".

Women who are victims of domestic violence and who are left at their own mercy by denying their place of shelter by the 'in law's' or other family members where they share a domestic relationship; can claim their right to residence in "shared household".

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Disclaimer

This newsletter does not intend to advertise or solicit work and is for private circulation only. This newsletter is for the purpose of education and creating awareness on POSH law and its latest developments. It does not intend to be comprehensive nor intends to provide any legal advice. Though every effort is made to share accurate, reliable and current information, POSH LIVE is not responsible for any errors or omissions in information made available through this Newsletter. Sharing of this Newsletter does not intend to create attorney – client relationship between authors and reader.

GOOD TO KNOW!

Disclosure of POSH Compliance in Board Report of Companies

As per Indian Companies Act 2013, Companies (Accounts) Rules, 2014, Companies are required to incorporate a statement disclosing their compliance with provisions relating to constitution of Internal Complaints Committee under POSH Act, in the Board of Director's Report, to be prepared under section 134 of the Companies Act.

Failure to include disclosures mandated under section 134 of the Companies Act and rules framed thereunder in the Board of Director's report, is punishable with the fine not less than Rs. 50,000 which may extend to Rs. 2, 50, 000.

International Women's Day theme for 2022 - #BreakTheBias

International Women's Day is celebrated on 8th March to commemorate the cultural, political and socioeconomic achievements of women.

This year 2022, the campaign theme for International Women's Day is #BreakTheBias.

Whether deliberate or unconscious, bias makes it difficult for women to move ahead. Knowing bias exists is not enough. We all need to take certain steps to bring in the quality and curb bias of any kind whatsoever.

A relationship between two persons who live together or have lived together at any point in time, in a shared household, where they are related by consanguinity, marriage or through a relation of nature of marriage, adoption, or Family members living together as a joint family; is said to be the 'domestic relationship' as per this Act.

Every married woman has the right to residence protected by the Section 17 of the Domestic Violence Act 2005. It includes (1) the right to reside in "shared household", whether or not she has any right, title, or beneficial interest in the same. This section 17 (2) further states that, "The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

In Satish Chander Ahuja Vs. Sneha Ahuja, Appeal (civil) 2483 of 2020, the Supreme Court of India, passed a landmark judgement granting relief of right to residence, thus overruling the earlier judgement by Supreme Court of India in SR Batra Vs. Taruna Batra, Appeal (civil) 5837 of 2006, case.

The SR Batra Vs. Taruna Batra, Appeal (civil) 5837 of 2006 case, the Supreme Court had ruled that "a woman was only entitled to claim the right to residence in a "shared household". It stated that the term 'shared household' referred to a house belonging to or rented by the husband or the house owned by a joint family, of which husband is a member.

Stating this judgement as 'incorrect law', The Supreme Court in Satish Chander Ahuja Vs. Sneha Ahuja, Appeal (civil) 2483 of 2020, explained the interpretation of Section 17 of the Act and stated that, "every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same." It also recognized the right to residence of any other woman who is subject to domestic violence and staying in a domestic relationship. It states that, "The right to residence and creation of mechanism to enforce is a ground breaking measure, which Courts should be alive to. Restricting the scope of the remedies, including in respect of the right to reside in shared household, would undermine the purpose of this enactment. It is, therefore, contrary to the scheme and the objects of the Act, as also the unambiguous text of Section 2(s), to restrict the application of the 2005 Act to only such cases where the husband alone owns some property or has a share in it. Crucially, the mother-in-law (or a father-in-law, or for that matter, "a relative of the husband") can also be a Respondent in the proceedings under the 2005 Act and remedies available under the same Act would necessarily need to be enforced against them."

In a marital household, a woman may not always be in a position to return to her maternal home. In such instances, in order to prevent threat and social shame of homelessness, the Protection of Women from Domestic Violence Act, 2005 specifically provides the right to residence in the shared household.

We believe that the Act recognizes the rights of women and provides remedies to secure them.

An Overview – Emotional Abuse and Mental Cruelty

In the light of POSH Law and other interpretations of Courts

It is observed that not many women come forward and speak about the emotional abuse/mental agony/mental cruelty or even emotional manipulation they face in day to day lives. The reason being that they are conditioned to suffer in silence, to not speak up. For a long time, our society was under the taboo that girls who speak up for their rights are not good and that they are not suitable for the society.

Nonetheless, times are changing, our society is changing and we have laws recognizing emotional abuse and mental cruelty as a wrong act. With this article, we are making an effort to bring to you the gist of these laws.

Understanding Emotional Abuse

Emotional abuse involves non-physical behaviour that belittles another person and can include insults, put down, verbal threats, or other tactics that make the victim feel threatened, inferior, ashamed, degraded. The series of incidences which lead to disturbed emotional psyche of a person where the person has to go through mental trauma can also be termed as emotional abuse.

People in such situations often feel helpless, as there is no physical evidence to prove.

Emotional abuse can occur at any age and with anyone. The impact can differ from person to person and such incidence cannot be analysed aloof from environment the person lives in. It should be looked in solidarity with all other circumstances the victim faces. Emotional abuse can be a result of discrimination, biases, limited beliefs, egoism, racism, sexual harassment, and manipulation.

Some of the acts that cause emotional abuse or mental trauma to the victim, as mentioned in the **Handbook on Sexual Harassment of Women at Workplace** (Prevention, Prohibition, Redressal) Act, 2013 are listed as below –

1. Criticizing, insulting, blaming, reprimanding or condemning an employee in public
2. Exclusion from group activities or assignments without a valid reason
3. Statements damaging a person's reputation or career
4. Removing areas of responsibility, unjustifiably
5. Inappropriately giving too little or too much work
6. Constantly overruling authority without just cause
7. Unjustifiably monitoring everything that is done
8. Blaming an individual constantly for errors without just cause
9. Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties
10. Insults or humiliations, repeated attempts to exclude or isolate a person
11. Systematically interfering with normal work conditions, sabotaging places or instruments of work
12. Humiliating a person in front of colleagues, engaging in smear campaigns
13. Controlling the person by withholding resources (time, budget, autonomy, and training) necessary to succeed

The PoSH law also suggests the Internal Committee to consider the mental trauma, pain, suffering and emotional distress caused while deciding the amount of compensation to be paid to the victim.

Identifying emotional abuse as mental cruelty

Mental cruelty can be described as psychological aggression resulting in verbal, dominant or jealous behaviour that causes trauma to the victim. According to **the Hindu Marriage Act, 1955, section 13**, "Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or **mental**, or as to give rise to a reasonable apprehension of such a danger." Mental cruelty has been broadly defined as conduct that inflicts such mental pain that the sufferer cannot live any more with the perpetrator.

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The **Protection of Women From Domestic Violence Act 2005**, section 3 (iii), defines mental cruelty as ""verbal and emotional abuse" which includes — a) insults, ridicule, humiliation and name-calling, especially on inability to bear a child and b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested"

Interpretation of courts on "Mental Cruelty"

1. Recognizing Mental cruelty as ground for divorce

With the landmark judgement by Supreme Court of India, in *Narayan Ganesh Dastane vs. Sucheta Narayan Dastane*, 1975 SCR (3) 967; and the amendment of Hindu Marriage Act in 1976; gave the right to get divorced on grounds of mental or physical cruelty.

The Supreme Court of India, in *A. Jayachandra vs Aneel Kaur*, Appeal (civil) 7736-7764 of 2004, honourable judge stated that, "*Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.*"

2. Mental cruelty cannot be looked at in isolation

In *Ramchander vs Ananta*, Appeal (civil) 3483 of 2011, the Supreme Court has again held that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of other spouse has to be culled out.

The honourable judge in *Praveen Mehta vs Inderjit Mehta*, Appeal (civil) 3930 of 2002, Supreme Court of India, stated that, "In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

3. Proving mental cruelty in courts

In *A. Jayachandra vs Aneel Kaur*, Appeal (civil) 7736-7764 of 2004, The Supreme Court stated that, "Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes."

Ascertaining emotional abuse/mental cruelty is challenging. One should speak up before it is too late. We as a society tend to prioritise physical health over mental well-being. But the fact is that both are inseparably linked. The scars of emotional abuse are as real as that of physical abuse. Courts have also started recognizing this. Hence, it is imperative that we as a society start condemning the acts of mental/emotional abuse and raise the issues with the help of relevant laws.

NEWS CORNER – Film industry must also implement POSH Act, says Kerala High Court

The Kerala High Court, asked organisations associated with the film industry to take steps to constitute a committee to deal with cases of sexual harassment of women, in line with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013. The court said that formation of such a committee would definitely render sufficient confidence to women actor artists and other employees and workers employed by a production unit which in turn would protect their dignity, and make the right to life and personal liberty of women in film industry more meaningful and fruitful.

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Advocate Vaishali Bhagwat, is amongst the first technology lawyers in the country with prior qualification and working experience in the field of Computer Science, Cyber Defense and Information Assurance.

Her work also focuses on women and children's rights and has worked extensively on cases relating to violence against women and children including sexual violence. Vaishali is an external member on various ICC committees and has conducted several complex inquiries relating to sexual harassment at workplace. POSH awareness and capacity building workshops conducted by her are rich in content as she discusses various cases and draws on her experience dealing with inquiries and POSH related court litigation including criminal cases.

Vaishali has advised several organizations across varied sectors on POSH compliance, safety in virtual workplaces, cyber safety and is also regularly invited as an expert speaker/ panelist on this subject by various organizations providing POSH services

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