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POSH

Prevention Of Sexual Harrasment

Live

A quarterly insight to the POSH Law!

By Vaishali Bhagwat, Adv

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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.

Laws for Women in India – Shaping their future!

On 8th March 2023, we celebrated International Women's Day and the theme for celebrating this day this year was "Accelerating Equality & Empowerment"; "Embrace Equality". On this background, we thought, 'What could be the better opportunity to bring to you few important laws for Women in India!'

Our constitution has provided fundamental rights to every citizen of India and have also provided some exclusive rights to women. The Constitution not only grants equality but also directs states to adopt measures towards women empowerment in the society.

There are several laws for Women in India amongst which we will discuss briefly about –

1. Protection of Women from Domestic Violence Act, 2005
2. The Dowry Prohibition Act, 1961
3. The Maternity Benefit Act, 1961
4. The Indecent Representation of Women (Prohibition) Act, 1986
5. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

1. Protection of Women from Domestic Violence Act, 2005

The objective of this law is to provide effective protection to women who are victims of violence of any kind within family. It recognizes vulnerability of women in domestic relationships and provides them legal protection.

- **Definition of domestic violence:** The Act defines domestic violence as any act or behaviour that harms or injures a woman or causes her physical, sexual, verbal, emotional, or economic abuse. It includes physical assault, sexual abuse, and verbal or emotional abuse.

GOOD TO KNOW!

The Bharosa Cell

The Bharosa Cell under the umbrella of Pune city crime branch was formed with the purpose of providing aid and counselling to children, women and elderly in January 2019.

It comprises a helpline for women, children and elderly and offers medical facilities to these vulnerable groups.

Facilities such as the rehabilitation of juveniles, a special cell for providing mental health support to children, a temporary residential facility for women undergoing counselling, legal aid regarding domestic violence and attempts to provide immediate assistance to senior citizens in need – with the help of NGOs – are also a part of the initiative.

The 'Damini Squad' comprising women cops, referred to as 'Damini Marshals', also functions under the Bharosa Cell. 'Damini Marshals' keep a watch on crowded spots, schools, colleges and take action against any miscreants who cause distress to women in public places.

The Bharosa Cell helpline number for women is 1091 and the helpline for senior citizens is 1090.

- **Protection orders:** The Act provides for different types of protection orders that can be issued by the court to protect the woman from domestic violence, such as protection orders, residence orders, and monetary relief orders.
- **Definition of "aggrieved person":** The Act defines an "aggrieved person" as any woman who is, or has been, in a domestic relationship with the abuser and who has suffered from domestic violence.
- **Definition of "domestic relationship":** The Act defines "domestic relationship" as a relationship between two people who live together, are related by marriage, or have a child together.
- **Role of protection officers:** The Act provides for the appointment of protection officers who are responsible for assisting the aggrieved person in filing a complaint and obtaining a protection order.
- **Punishment for violation of protection orders:** The Act provides for punishment for the violation of protection orders, which can include imprisonment and/or a fine.

2. The Dowry Prohibition Act, 1961

Exchange of Dowry is prohibited under this law.

- It defines dowry as any property or valuable security given or agreed to be given in connection with the marriage.
- It makes the giving or taking of dowry an offense punishable with imprisonment and/or fine.
- It provides for the forfeiture of any property or valuable security given or received as dowry.

3. The Maternity Benefit Act, 1961

This law provides for maternity benefits to women who are employed in factories, mines, plantations, or shops or establishments with 10 or more employees. Some salient features of this act are:

- **Maternity leave:** The Act provides for a minimum of 12 weeks of maternity leave for women, which can be taken before or after the delivery of the child. In the case of miscarriage or medical termination of pregnancy, a woman is entitled to six weeks of maternity leave.
- **Payment during maternity leave:** The Act provides for payment of wages during the period of maternity leave, which is to be paid by the employer.
- **Prohibition of dismissal:** The Act prohibits the dismissal of a woman during pregnancy or during her maternity leave.
- **Protection of health:** The Act provides for the protection of the health of women during pregnancy and after childbirth. Employers are required to provide nursing breaks and ensure that the workplace is not hazardous to the health of the mother and child.
- **Notice of pregnancy:** The Act requires a woman to give notice to her employer of her pregnancy and the expected date of delivery.
- **Applicability:** The Act applies to every establishment employing 10 or more persons.

4. The Indecent Representation of Women (Prohibition) Act, 1986

The law prohibits the depiction of women in any form that is indecent, derogatory, or offensive to public morality.

- **Definition of "indecent representation":** The law defines "indecent representation" to include any visual representation of a woman that has the effect of being lascivious, appealing to prurient interests, or being disrespectful to women.
- **Punishment for violation:** Any person who violates the provisions of the law can be punished with imprisonment for a term of up to three years and a fine.

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

This law provides protection to women from sexual harassment at workplace. It broadly defines 'Sexual Harassment', 'Workplace' and also lays down responsibilities to the employer to ensure safety to its women employees. Every employer with 10 or more employees should constitute an "Internal Committee" which will redress the sexual harassment complaints at workplace

Briefly, its features are as follows –

- **Definitions –** It broadly defines sexual harassment, workplace, aggrieved woman, employee and employer and other definitions to bring clarity in applicability of this law
- It also mandates every employer with 10 or more employees to constitute an Internal committee as a redressal mechanism to redress the sexual harassment complaints received
- It focuses on creating awareness by making it mandatory for employers to conduct/organize POSH awareness trainings for its employees
- It also focuses on adherence to principles of natural justice while conducting an inquiry into the sexual harassment complaint
- The law emphasizes on maintaining confidentiality regarding the complaint received by the IC and also prohibits retaliation against the complainant.

Apart from these laws, it is imperative to discuss about **laws relating to inheritance of property by women** in India. These laws vary depending upon the religion of the individual. Presenting below some key laws –

- **Hindu Succession Act, 1956:** Under this law, Hindu women have equal inheritance rights as men. This means that daughters have equal rights in ancestral property, as well as in property acquired by their parents. The law applies to Hindus, Buddhists, Jains, and Sikhs.
- **Muslim Personal Law (Shariat) Application Act, 1937:** Under this law, Muslim women have inheritance rights but they are not equal to those of men. Muslim women can inherit from their parents, spouses, children, and other relatives, but their share is generally half that of men. However, there are some exceptions to this rule and the share can vary depending on the circumstances.
- **Indian Succession Act, 1925:** This law applies to Christians, Parsis, and Jews, and provides equal inheritance rights to women and men. Under this law, daughters have equal inheritance rights in their parents' property.
- **Special Marriage Act, 1954:** Under this law, couples of different religions who marry can choose to follow the inheritance laws of either partner's religion.

Talking about **rights of women under Senior Citizen's Act, 2007**; there are few important provisions such as -

- **Providing maintenance** of senior citizens, including women, by their children or relatives. If the children or relatives refuse to provide maintenance, the senior citizen can approach a maintenance tribunal for assistance.
- **Protection of life and property:** The law also provides for the protection of the life and property of senior citizens, including women. Any person who abuses, abandons, or neglects a senior citizen can be punished with imprisonment and/or a fine.
- The law provides for the **health care** of senior citizens, including women.
- **Prevention of abuse:** The law provides for the prevention of abuse of senior citizens, including women, through the establishment of a National Council for Senior Citizens, State Councils for Senior Citizens, and District Committees for Senior Citizens.

Another law that we should mention about is **Prohibition of Child Marriage Act, 2006** which aims to prevent the marriage of underage children, particularly girls who are vulnerable to negative consequences of child marriage. Some of the important provisions of this law are –

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- **Prohibition of child marriage:** The Act prohibits the marriage of a girl who is under 18 years of age and a boy who is under 21 years of age.
- **Punishment:** The Act provides for punishment for those who perform, promote, or participate in child marriages, including imprisonment and/or a fine.
- **Voidability of child marriage:** The Act states that a child marriage is voidable at the option of the girl, meaning that she can choose to have the marriage annulled if she wishes to do so.
- **Compulsory registration of marriage:** The Act makes it compulsory to register all marriages, including those of children.
- **Child marriage prohibition officers:** The Act provides for the appointment of child marriage prohibition officers who are responsible for preventing child marriages and providing assistance to those affected by child marriages.
- **Protection and rehabilitation of girls:** The Act provides for the protection and rehabilitation of girls who are affected by child marriages, including providing them with shelter, education, and other necessary support.

It is said that, **“Awareness is the greatest agent for change”**

With this article we intend to create awareness amongst our readers regarding some important laws for women in India so that they can be the torch bearers of “Women Empowerment” in the society tomorrow.

NEWS CORNER

Must Ensure Zero Tolerance For Inappropriate Behaviour Towards Women, Sexist Language & Unsavoury Jokes – CJI DY Chandrachud

CJI DY Chandrachud while speaking at an event organized by the Gender Sensitization and Internal Complaints Committee of Supreme Court for a Women’s Day celebration, mentioned that, there must be zero tolerance or sexual harassment and inappropriate behaviour towards women, inappropriate language targeting women, and even inappropriate jokes at the expense of women.

Pointing to the latest figures, he said that over fifty per cent, and in some states over sixty per cent of judicial officers are women. The chief justice then added, “This holds great promise for the future because these women who are entering into the workspace today are going to define the values, the traditions, and the aspirations for the present and the future”.

WCD of Kerala launches POSH Portal

The department of Women and Child Development, Kerala has launched a portal for implementing POSH (Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013) in the state. This portal is aimed to ensure that the organizations across state have constituted an Internal Committee and that these IC’s are fully functional.

The POSH Portal will make it mandatory for organizations to be registered on the website and include the details of their IC. It will send alerts to the organizations for filing returns and reconstituting IC’s.

ABOUT THE AUTHORS

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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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