

POSH LIVE by Vaishali Bhagwat

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A quarterly insight to the POSH Law!

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POSH Law - An Overview!

A good workplace is the one which displays harmony, respect and trust towards each other. Gender equality is one of the prime factors to build a cohesive workplace and the POSH law strives in building the same. It took us two brutal cases to form our legislation on sexual harassment of women at workplace; Bhanwari Devi incidence in 1992 stirred the formation of Vishakha Guidelines in 1997 and the 'Nirbhaya' incident which took place in 2012 led to nationwide outraged reactions which accelerated the long overdue process of legislation. India's first legislation for protection of women from sexual harassment at workplace came into force in December 2013 in the form of "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".

The law recognizes sexual harassment as a form of gender discrimination and prohibits it, thereby striving to protect the dignity of women at workplace. The essence of the Law lies in its importance to confidentiality, provision of redressal mechanism and an emphasis on prevention rather than punitive action. The compliance is mandatory in nature, providing serious consequences for employers on non-compliance. The practical difficulties faced while lodging a complaint at police station are avoided by providing an internal redressal mechanism which is easy to access and time bound. The Act defines sexual harassment and workplace elaborately. The differentiating characteristic is that it focuses on the impact of the action rather than the intent and that it considers sexual harassment as a subjective experience, keeping in mind the "normal behaviour" that may be offensive to a certain gender.

It also covers and addresses the two common forms of inappropriate behavior/sexually harassing behavior such as 'Quid Pro Quo' and 'Hostile work environment'. Further, while focusing on preventive measures, the law suggests employers to conduct awareness training sessions for its employees and ensure safe workplaces by framing zero tolerance policies towards sexual harassment.

It is this peculiar characteristic which gives a holistic view to the issue, more than just focusing on the redressal. Having said so, the redressal mechanism is also discussed elaborately and have laid down certain provisions for effective implementation.

One of such provision is constitution of Internal Complaints Committee where any aggrieved woman can report a complaint and the same will be addressed as per the procedure of the Act.

To put the conscience of this pathbreaking law in a nutshell, it has a foundation of four pillars –

- a) **Confidentiality** – Maintaining complete confidentiality about the complaint, complainant, respondent, and the inquiry conducted
- b) **Adversarial Jurisprudence** – Innocent unless proved guilty thereby putting the burden of proof on the Complainant
- c) **Principles of Natural Justice** - The inquiry to be conducted following the principles of natural justice
- d) **Non Retaliation** – No retaliation against the Complainant, witness, or anyone else who is part of the inquiry. Any retaliation shall invite disciplinary action

Currently, the application of this Law is limited to all workplaces, but with its evolution, it will have its impact in wellbeing of the society.

News Corner What is Shakti Bill?

Shakti Bill 2020, proposed by Government of Maharashtra, is a stringent bill patterned on the Disha Act of Andhra Pradesh. The bill seeks amendment to some important sections of IPC, CrPC, and POCSO Act. The Bill proposes stricter punishments including death penalty and increased imprisonments for crimes such as rape, acid attack, and sexual offences against children. The draft bill also proposes prison sentences for defaming or threatening women on social media.

Shakti Bill 2020 - death penalty and increased imprisonments for crimes against women



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POSH Law - Important Judgements Review 2020



We are sharing a few cases from 2020 and their judgements which will enlighten us towards better understanding of the legislation.

Case 1 - Sanjeev Mishra v. Bank of Baroda & Others, Rajasthan High Court

Background – The sexual harassment case was filed from a different workplace from that of the respondent. As per the service rules of Bank of Baroda, the complaint can be made when both (complainant and respondent) are working from same workplace. Basis this, the decision of ICC was challenged.

Judgement – The court discussed virtual workplace and sexual harassment at virtual workplace comes in the ambit of physical workplace. While confirming this, the court stated, “If a person may be posted in Jaipur and acts on a digital platform harassing another lady who may be posted in a different State, it would come within the ambit of being harassed in a common work place.”

Case 2 - Dr. Malabika Bhattacharjee v Internal Complaints Committee, Vivekananda College and others, Calcutta High Court

Background – In this case the decision of ICC to accept the complaint against woman was challenged.

Judgement – The Calcutta High Court reiterated that the aggrieved woman as under the Act can file a complaint against any gender, man or a woman. The High Court said, there was 'some substance' in the petitioner's argument that the definition of 'respondent' must be read in conjunction with the rest of the statute it said that "there is nothing in Section 9 of the 2013 Act to preclude a same-gender complaint under the Act".

Case 3 - Saikuttan ON vs Kerala State Electricity Board Ltd and Others, Kerala High Court

Background – The case is to challenge the decision of transfer order by ICC stating that the act is of vengeance. The plea stated that transfer order by ICC while the inquiry was still pending was unlawful.

Judgement – The Kerala High Court confirmed that transfer as interim relief is permissible under law. The Court also highlighted its need where there is animosity between the parties or chances of influencing witness.

Case 4 - Bhuwan Chandra Pandey vs. Union of India and Ors, High Court of Uttarakhand

Background – The point discussed was whether the sole testimony of the victim of sexual abuse is sufficient to hold the respondent guilty of misconduct in a departmental inquiry.

Judgement – The Court commented on 2 important points viz., i) Circumstantial evidence ii) Sole testimony

- i) **Circumstantial evidence** – The Court held that ICC did not find reason to disbelieve the statement of complainant and that even the circumstantial evidence or hearsay is permissible in departmental inquiries.
- ii) **Sole testimony** – The Court held that sole testimony of a woman victim to sexual assault is valid. The Indian Evidence Act does not state that her evidence cannot be accepted unless it is corroborated in material particulars. She is a competent witness under section 118 thereof. Further the Court stated that such testimony can be accepted if there is no justifiable reason to not to accept. The Court highlighted that standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. In a departmental inquiry, guilt need not be established beyond reasonable doubt. Proof of misconduct is sufficient.

Why should one read the judgements?

The judgements help understand the law better. The perspective is explained by the Courts which throws more light on the Law and the necessity to adhere to the provisions.

Good to know! She – Box!

This is an initiative by Government of India to provide a single window access to all women. One can register the sexual harassment complaint on this portal and the same will be directed to the concerned authorities having jurisdiction to take action. The ministry of Women and Child Development has put this alternate grievance redressal mechanism in place.

How to register a complaint on She Box?

1. Go to website – shebox.nic.in
2. Click on Register your complaint
3. Furnish information about nature of office (private/government)
4. Fill the necessary details on the complaint registration form that will be displayed and click on “Submit”
5. A confirmation email will be sent to your email id along with SHE box account details. Generate the password of She Box account to view the status of your complaint.

The idea is to enable women to report their grievances fearlessly. With this alternate grievance mechanism in place, women can now submit their sexual harassment complaint. For workplaces where there are less than 10 employees and where Internal Complaints Committee is not constituted, women have a “go to” place to seek redressal.



Understanding Gender Equality Reference to Landmark cases

Equal access to resources and opportunities regardless of gender, including economic participation and decision-making; and valuing different behaviours, aspirations and needs equally is Gender equality. Gender equality, besides being a fundamental human right, is essential to achieve peaceful societies, with full human potential and sustainable development.

Women represent half of the world's population and, therefore, also half of its potential. Women in India are an integral part of national development. Yet, there is still a long way to go to achieve equality of rights and opportunities between men and women.

Let us have an overview of fundamental rights, different laws relating to gender equality and look at the list of crimes recognized against women under IPC. Later with the help of few landmark cases, let us look at the history of how far we have come in terms of gender equality.

Constitutional provisions on gender equality –

Article 14 - Equality before law. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Equal treatment for all persons before the court. That is, the law will be blind; it will not see who is standing in the dock; male or female.

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth. No citizen shall, on grounds only of religion, race, caste, sex, and place of birth or any of them.

Article 16 - Equality of opportunity in matters of public employment.

Laws for gender equality -

- Maternity Benefit Act, 1961
- Dowry Prohibition Act, 1961
- Immoral Traffic (Prevention) Act, 1956
- Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994
- Indecent Representation of Women (Prohibition) Act, 1986
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Hindu Succession Act, 1956
- Equal Remuneration Act, 1976
- The Protection of Women from Domestic Violence Act, 2005

Now below is the list of crimes –

Crimes against Women under IPC

- Acid Attack (Sections 326A and 326B)
- Rape (Sections 375, 376, 376A, 376B, 376C, 376D and 376E)
- Attempt to commit rape (Section 376/511)
- Outraging the modesty of women (Section 354)
- Sexual harassment (Section 354A)
- Assault on women with intent to disrobe a woman (Section 354B)

- Voyeurism (Section 354C)
- Stalking (Section 354D)
- Importation of girls up to 21 years of age (Section 366B)
- Word, gesture, or act intended to insult the modesty of a woman (Section 509)



Some Landmark Judgements on Gender Equality

Vishakha v. State of Rajasthan

The PIL sought guidelines for the elimination of sexual abuse at the workplace. It is clear violation of the rights under Articles 14, 15, 19(1)(g), 21 of Constitution. Relying on CEDAW, an international instrument to which India is a signatory, the court laid down the historic Vishakha Guidelines. These guidelines were later converted verbatim into The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013.

Air India v. Nargesh Meerza

An inclusive reading of Article 14 was done, and it was decided that employment cannot be denied to any person on the grounds of sex. Air India by a service regulation, mandated the air hostesses to retire if they reach the age of 35, conceiving a child or on marriage, whichever occurs earlier. Such conditions were derogating the natural course of a woman's life.

Khurana and Others v. Union of India and Others

Cine Costume Make-up Artists and Hairdressers Association of Mumbai prohibited qualified women make-up artists from becoming members of the Association based solely on their sex. Charu Khurana challenged this prohibition on the grounds that it violated her rights to equality, to employment and to a livelihood.

Work from home & Virtual Harassment

The year 2020 has brought a lot of changes in everyone's pattern of day to day lives. From being completely locked down at home, India witnessed the highest number of people working from home. The changed work atmosphere made it difficult for women to draw the line between personal and professional, which created an ambiguity in identifying an incidence of sexual harassment and action to be taken over it. With diminished working hours, *virtual meeting requests at odd hours, offensive body language and taking screenshots during virtual meetings, stalking on social media, asking personal questions*, are some of the issues raised during this period. Many organizations are now adopting to a long-term work from home policy and it is thus imperative to set up clear guidelines on how work from home should function.

On this background, the organizations should update their anti-harassment policies with definition of workplace harassment, what is considered as workplace, definition of virtual harassment, virtual workplace and jurisdiction to deal with such cases.

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.

She has been working for women and child cause relentlessly through various ways like pleading, legal training and awareness sessions through the platform of various NGO's. Enriched with varied experience in dealing over more than 500 POSH cases, she is exceptional in training and capacity building of ICC members. She has trained over 6000 persons approximate on prevention on sexual harassment at workplace and still counting. The perspective she brings in is to last forever and worthwhile.



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