

A module
on
**LAWS - PRINCIPALS SHOULD KNOW: A CRITICAL STUDY
OF IMPORTANT LEGAL PROVISIONS**



National Centre for School Leadership



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LAWS - PRINCIPALS SHOULD KNOW: A CRITICAL STUDY OF IMPORTANT LEGAL PROVISIONS

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ABSTRACT

In the modern-day era where the society is moving towards gender neutral approach and eliminating the bias created since times immemorial, it becomes a duty for all the stakeholders of the society to understand the very essence of equality embodied in the Indian Constitution. The golden triangle formed by the rights embodied under Article 14,19 and 21 lay the foundation stone for making the societal structure gender neutral by guarantying rights to all the citizens of the country irrespective of their caste, creed, colour, sex or place of birth etc. In order to eliminate gender bias and to promote equality, the legislature has enacted various laws for protection, upliftment and care of women. The paper primarily discusses laws that a principal should know for the protection of women and children but such laws shall remain just a piece of paper if they are not executed properly on time. Today women are working in school and colleges where they face discrimination and victimization at almost every step. Thus, it becomes the duty of principal, head of the department or head of the institution to put a check upon these practices. This can be made only when they are well versed with the legislations that provide for care and protection of women and children and the laws that punish the wrongdoers in order to create a deterrent in the society. The paper aims to briefly describe the laws for the protection of women and children by highlighting the objectives, features and penal provisions contained therein.

INTRODUCTION

The Indian constitution talks about equality for all irrespective of their sex. In fact, it goes a step further and allows the state to make special laws for the benefit and upliftment of woman. The Indian penal code and code of criminal procedure exhaustively deal with offences against women and the procedure to be followed in order to bring into effect the corresponding penalties by undergoing a trial before the court of law. There are some special laws which are effective for upholding the rights of women such as The Indecent Representation of Women Act, The Prevention of Children from Sexual Offences Act, Prevention of Sexual Harassment Act and Juvenile Justice act. Thus, we have a host of laws to protect women from discrimination, violence, exploitation, sexual harassment. Let us have a look at some of these enactments that Principal/Head of the Department/ Head of the Institution and even public at large should be aware of.

INDIAN PERNAL CODE: CRIMINAL TRESSPASS

- Generally, a person is said to commit "**criminal trespass**" when he or she enters or remains on another's property without the owner's consent. The property in question could be a house, apartment, office building, or sometimes even an automobile or aircraft.

- **DEFINITION: Section 441 IPC: Criminal trespass.**—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

- **Section 447. Punishment for criminal trespass**

Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

The offence of criminal trespass is a serious offence that affects the life and liberty of an individual. In case where such trespass is committed in any premises where the Principal/ Head of the Institution is in charge, the relevant provisions of penal code can come to rescue to victim and the accused can be tried accordingly.

THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

There has always been an outrage in media and women organizations, NGO's etc. regarding the manner in which women are represented in televisions, social media platforms and other print or electronic media. Advertisements promoting gender bias and representing women in an indecent and inappropriate manner has created an outrage in the society. The present act was brought in effect to restrict the indecent representation of women in any kind of advertisements, publications etc. which degrades the image of the women in the society or in public domain. The act defines the broad meaning of the “*indecent representation of women*”ⁱⁱ as the depiction of any body part of women, or any kind or figure or form that is indecent, derogatory and denigrating women or is likely to deprive the public morality or morals. Further, Act provides that no person shall produce any film having an indecent representation of women in any form wherein such respect the provisions of Part II of the Cinematograph Act, 1952 shall be applicable.ⁱⁱⁱ

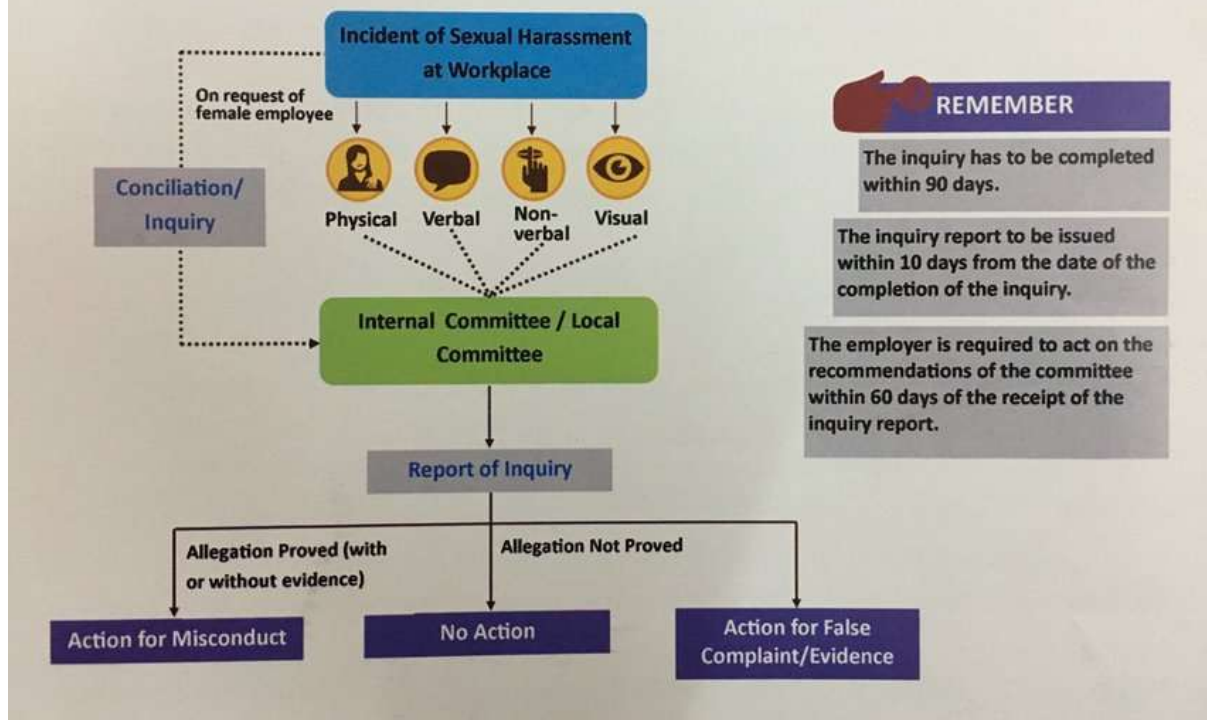
Test of Obscenity i.e., Hicklin Test

The Hicklin test is a colonial era or the British era test where the law was enacted keeping in view the broad principles of Christian morality where sex is considered as a sin and dirty. This test was first used by the Queen's bench in the case of *Regina vs Hickin*.^{iv}

HISTORY OF THE LEGISLATION

LAW AT A GLANCE

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



The bill was introduced in the Upper House of Parliament in the year 1986 as a result of various women's movements and outrage in the society. The present bill was introduced and took shape of law in October, 1987 by way of enactment. The legislation intends to regulate the depiction and representation in mainstream media, especially in print. It was implemented to ensure that women's representation in the media was not indecent through ads, magazines, publications, and illustrations.

OBJECTIVE OF THE ACT

The provisions under Indian law that covers and punishes obscenity are covered in the Indian Penal Code under Sections 292, 293, 294 and Section 354, 354A-D but despite of such provisions the obscenity against women especially the manner in which they were being represented in print media was growing at a rapid pace. There was a need to an act to be enacted to prevent the indeterminate representation of women effectively by means of advertisements, books, pamphlets etc.

Section 3 prohibits any such advertisement that contains any material or content that depicts women in an indecent manner and **Section 4** prohibits the publication and distribution of books, pamphlets etc that contains indecent representation of women.

Powers vested to officer and government under the Act

The Indecent Representation of Women Act punishes women's indecent depiction, which implies a woman's image in some way; her form or body and any aspect of the woman's body, so as to cause immorality, degradation, or to deprave, abuse, or harm to public morality or moral standards. It states that no person shall publish or release any advertisements involving an obscene portrayal of women or agree to participate in the publication or show.

Section 5 of the Indecent Representation of Women Act, 1986 gives power to the officer to enter and search any premises within the region. The power to enter and search, at any reasonable time, any place where he considers it necessary to believe that an offence under this Act has been committed or is being committed, with such assistance. The officer can seize any advertisement or book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure that it believes to contravene any of the provisions of this Law. The officer is also vested with the power to examine, and seize any record, register, document or other material object found in any of the places referred to in Clause(a) if it has reason to believe that it can provide evidence of an offence punishable under this Act. However, no entry under this article is allowed without a warrant into a private dwelling-house.

Furthermore, sub-section states the power to seize may be exercised in respect of any document, article or item containing such advertisement, including the contents, if any, of such document, article or item, where the advertisement cannot be separated by reason of its being embossed or otherwise from such document, article or item without affecting its integrity, use. The provisions of the Criminal Procedure Code of 1973, to the degree practicable, shall extend to any search or seizure conducted by any such officer under this Act in respect of any search or seizure carried out under the authority of a warrant issued under **Section 94** of the act. The present act provides that where an officer seizes something referred to in Clause (b) or Clause (c) of sub-section (1), he shall be dutybound to inform the nearest magistrate regarding the same for the purposes of its custody whatsoever.

PENALTIES

The act provides that where any person contravenes the provisions as mentioned under Section 3 and Section 4 of the act shall be punishable which imprisonment for up to two years and fine which can extend up to two thousand rupees and in event of second or subsequent conviction, imprisonment for not less than 6 months and which may extend to five years and fine of not less than ten thousand rupees which may extend to one lakh rupees as the case may be. Section 8 makes a provision that all the offences to be cognizable and bailable. The act also states that the Central Government, any government or other central government

officer or any other State government official shall not be liable against any action, prosecution or other legal proceedings for anything done or intended in good faith in accordance with this Act.^v

There is no question that the Act has established women's indecent representation a punishable offence, but that description is not exhaustive. It's left open to interpretation by the courts as to what constitutes an indecent representation. It is a successful law for maintaining women 's integrity and upholding their reputation, but their success depends its implementation. The powers conferred on any gazette officer under the act to search and seize indecent material resulted in extensive corruption making the very essence of the act ineffective. Moreover, the penal provisions are not strict in nature, the quantum of fine is way lesser as well as punishment for the repeated offenders. On the other hand, if Section 292 of the IPC is intended to limit and control obscenity and indecent representation of women, the expression of other general objects of concern must be removed from the derogations. Thus, there is a need for stringent provisions required to manage the indecent ads.

Thus, in the present scenario, where access to internet has been recognised as a fundamental right under Article 21 and the use of social media is at a all time high, it poses a potential risk to women's safety as it is also a breeding space for hackers and offenders. The post covid era has made the use of internet and electronic devices a necessity for both teachers and students. The electronic media, social media sites are used by the hackers to depict indecent pictures and videos of women which are accessible to all and spread widely. Therefore, if a Principal/ Head of the institution is well aware of such laws then it could prevent the dignity of female staff members and students.

PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The Protection of Children from Sexual Offences Act, 2012 is an act that aims to protect children from all types of sexual abuse. However, the Convention on the Rights of the Child was adopted by the United Nations in 1989, but the offences against children were not recognized and redressed by way of any statute in India till the year 2012. The act provides for deterrents for the commission of offences against children by imposing penalties ranging from a minimum of 20 years of imprisonment to the death penalty in case of aggravated penetrative sexual assault.

NEED OF THE LEGISLATION

The lack of a particular legislation that deals with the sexual offences against children, it was the need of the hour to tackle the growing issue of child sexual abuse. With the efforts of multifarious NGOs, activists and the Ministry of Women and Child Development, The POCSO Act, 2012 was enforced on 14th November 2012. The act was enacted when the cases of sexual abuse against children were on an all-time high. It contains provisions regarding the protection of children from sexual assault and pornography and lays down the procedure for the implementation of these laws. Incidents of sexual abuse against children occur at schools, religious places, parks, hostels, etc. With such emerging dangers, it was significant to introduce separate legislation or special law which could provide a reliable system for mitigating the number of such offences and punishing the perpetrators. The Act has been instrumental in providing a robust justice mechanism for the victims of sexual abuse and has highlighted the significance of child rights and safety. The reporting of cases of child sexual abuse has also surged as a consequence of awareness. The Act covers punishment for both non-penetrative sexual assault and aggravated penetrative sexual assault. The act contains 9 chapters dealing with the offences, punishments and procedure.

FEATURES OF THE ACT, 2012

Some of the salient features of the act are discussed as follows:

Confidentiality of the victim's identity: Section 23 of the POCSO Act provides for the procedure of media and imposes the duty to maintain the child victim's identity unless the Special Court has allowed the disclosure. Section 23(2) states, "*no reports in any media shall disclose the identity of a child including his name, address, photograph, family details, school, neighbourhood and any other particulars which may lead to the disclosure of the identity of the child*". In the landmark case of *Bijoy @ Guddu Das v. The State of West Bengal*^{vi}, the Calcutta High Court reiterated the law made under Section 23 and declared that any person including a police officer shall be prosecuted if he/ she commits such a breach.

Gender-neutral provisions: Another glaring feature of the POCSO Act is that it does not create any distinction between the victim or the perpetrators on the basis of their gender. This overcomes one of the biggest shortcomings of the Indian Penal Code's provisions. The definition of child includes anyone below 18 years of age and in several cases, the courts have even convicted women for engaging in child sexual abuse incidents.

Mandatory reporting of child abuse cases: Sexual abuse cases happen behind closed doors and the elders attempt to hide these incidents due to the stigma that is attached to these crimes. Consequently, for the proper implementation of the POCSO Act, reporting of these

incidents by the third parties who have the knowledge or apprehension of such offences, has been made mandatory under Sections 19 to 22 of the POCSO Act. These laws have been made on the basis of assumptions that children are vulnerable and helpless and society has the duty to protect the interests of the children.

The last seen theory: The theory of last seen is applied in the child sexual abuse trials. According to this theory, the person who is last seen with the victim is assumed to be the perpetrator of the offence when the time gap between the point when they were last seen alive is so minute that it is not possible that any other person could have committed the crime. In the case of *Shyamal Ghosh v. State of West Bengal*^{vii}, it was observed that when the time gap is large then it is not reasonable for the Courts to apply the last seen theory.

Child-friendly investigation and trial: Sections 24, 26 and 33 of the POCSO Act lay down the procedure of investigation and trial which has been formulated keeping in mind the needs of a child. The following points are taken into consideration while investigating any crime under POCSO Act:

The statement of the child is to be recorded at his/ her place of residence and generally by a woman police officer and that too the women officer shall not be in a uniform. It is the duty of such officer to ensure that the child does not come in contact with the accused during the course of examination. The act strictly mandates that a child is not to be detained at the police station at night and the identity of the child being examined is kept confidential. Further, the statement if a child shall be recorded in presence of any such person in whom the child inspires trust and confidence and the statement be recorded through audio visual means without any aggressive questioning.

Penetrative sexual assault: Section 3 of the POCSO Act defines penetrative sexual assault and Section 4 lays down the punishment which was made more stringent by the 2019 amendment. In the case of *Bandu v. The State of Maharashtra*^{viii}, a person was committed under Sections 4 and 6 of the POCSO Act along with some provisions under the Indian Penal Code, 1860 for having committed penetrative sexual assault on a physically and mentally challenged 10-year-old girl. In *Pranil Gupta v. State of Sikkim*^{ix}, the victim aged 15 years stayed with the accused and injuries were found in her genital area. The High Court relied on the statement of the accused that the accused opened her clothes and raped her 5 times in one night. The contention of the accused that he was not aware of the victim being a minor was not accepted and the accused was prosecuted under Section 3 of the Act.

Aggravated penetrative sexual assault: Section 5 of the Act lays down the cases in which penetrative sexual assault amounts to aggravated penetrative sexual assault. For example,

penetrative sexual assaults on a child by a police officer within the vicinity of a police station, by armed forces within the limits of their area, by a public servant, by the staff of jails, hospitals or educational institutions are considered aggravated penetrative sexual assault and are punishable under Section 6 of the Act.

Sexual assault: Section 7 of the Act defines sexual assault as, “*Whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault*”. In *Subhankar Sarkar v. State of West Bengal*^x, on medical examination of the victim, it was found that there was no evidence of penetrative sexual assault but scratch marks on the body of the victim were found which proved the use of force and thus, the accused was convicted under Section 8 and 12 of the Act.

Aggravated sexual assault: Section 9 and 10 of the Act contain provisions regarding aggravated sexual assault on a child. In the case of *Sofyan v. State (2017)*, the accused who was a plant operator in the swimming pool area was convicted by the Trial Court under Section 10 of the POCSO and Section 354 of the Indian Penal Code, 1860 for having sexually assaulted a girl of 8 years old. The facts of the case are that when the victim was wearing her swimming costume in the changing room area, the accused approached her and inserted his hand in her swimming costume and touched her with sexual intent. The Delhi High Court rejected the argument of the accused that he was implicated falsely and the conviction was upheld.

Sexual harassment: Section 11 of the Act defines sexual harassment. It includes six cases which constitute sexual harassment of a child.

First, if anyone utters any word or makes any sound or exhibits any object with sexual intent to a child. Second, if anyone makes a child exhibits his body so that it is seen by the offender or any other person. Third, if any person shows any child any form or media for pornographic purposes. Fourth, if anyone constantly watches or stalks a child directly or online. Fifth, if anyone threatens to use a real or fabricated depiction of any part of the body of the child or the involvement of the child in a sexual act through electronic, film or digital. Sixth, if anyone entices a child for pornographic purposes.

Pornography: Section 13 of the Act states that anyone who uses a child for pornographic purposes by either representing the sexual organs of the child or using a child in real or simulated sexual acts or representing a child indecently or obscenely in programmes or advertisements on television or on internet, commits the offence under this section and is

liable in accordance with Sections 14 and 15 of the Act. In the case of *Fatima A.S. v. State of Kerala*^{vi} in a video on social media, a mother was seen being painted her naked body above the navel by her two minor children and she alleged that the motive of the video was to teach sex education to them. The Supreme Court of India observed in this case that, “*in the initial years, what the child learns from their mother will always have a lasting impression on their mind. It is usually said that the mother will be the window of the children to the world*”. Hence the same was covered under Section 13.

Abetment of child sexual abuse: Section 16 of the Act defines the abetment of the offence. The following acts constitute abetment of offence under the Act: Instigating any person to commit that offence, engaging in any conspiracy with one or more persons to commit any offence when any illegal act or omission takes place in consequence of that conspiracy, aiding to commit that offence intentionally. The punishment for the abetment of offence is specified under Section 17 of the POCSO Act, 2012 according to which a person who abets the commission of an offence and the offence is executed is to be punished with the punishment that has been provided for that offence under the Act.

Attempt to child sexual abuse: Section 18 enunciates that attempt to commit any offence under the Act is also an offence inviting either of the two following punishments:

- Imprisonment provided for that offence for a term extending up to one-half of the imprisonment for life, with or without fine;
- Imprisonment provided for that offence for a term extending up to one-half of the longest term of imprisonment with or without fine.

The POCSO Act specifies the provisions regarding the trial of a reported offence under Sections 33 to 38. Following are some glaring features provided under the POCSO Act regarding the conduct of trial:

Deposition of the victim: Section 33 specifies that the Special Court can take cognizance of the offence without the accused being committed to the trial. Section 36 mentions that the child should not be exposed to the accused at the time of giving evidence but this provision was not followed in the case of *Vasudev v. The State of Karnataka (2018)*. The deposition sheet reflected that the victim was aggressively questioned and only when she had got emotional while narrating the incident, the accused was sent out. The Karnataka High Court dismissed the appeal of the accused who was convicted under Section 4 of the Act.

Furthermore, in the case of *Nar Bahadur Subba v. State of Sikkim (2017)*, in the appeal before the Sikkim High Court, the Court observed that in the trial court deposition, the teachers of the victim have stated, ‘It is true that I am not well acquainted with the character

of the victim'. To this, the Court noted that gauging the character of an 11-year-old girl is of no question and the cross-examination has violated provisions of Section 33 of the Act.

The time limit for disposal of cases: Section 35 of the POCSO Act stipulates the following timelines:

- **For recording the evidence of the child:** 30 days from the date of taking cognizance of the offence,
- **For completing the trial:** one year from the date of taking cognizance of the offence.

In the case of *Shubham Vilas Tayade v. The State of Maharashtra (2018)*^{xii}, the Special Court allowed the prosecution for recording evidence after 30 days of taking cognizance. This order was challenged by the accused, being violative of Section 35 of the POCSO Act. However, the high court agreed with the counterargument of the APP that as the accused did not challenge the application of the prosecution so he cannot challenge the order. Furthermore, it was observed that even otherwise, the Special Court can record evidence after 30 days and the only rider provided by Section 35 is that the reasons for the delay have to be recorded.

Thus, the present legislation provides a host of penal provisions and procedures to be followed in order to punish the accused while keeping the identity of victim intact. The sensitisation of such laws by the Principals/ Head of Institutions is of utmost important as it could result in creating a deterrent in minds of preparators and in event any such offence is committed the person in authority is aware of the immediate steps to be taken to ensure justice to the victim.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The sexual harassment of women in the workplace is a form of gender-based violence. Besides violating their self-esteem, dignity, and self-respect, it also violates their constitutional and human rights. The issue of sexual harassment in the workplace cannot be viewed as a recent phenomenon, but it has certainly been brought to light by fast-changing workplace equations. In India, the legislation regarding this is the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013. As a result of the Act, women are protected at work from sexual harassment. Furthermore, it provides for preventing and redressing complaints of sexual harassment. This article provides a comprehensive overview of this Act.

The practice of sexual harassment affects every individual woman, whether they are working in industries with factory owners, supervisors, or male co-workers, or working in the service sector with colleagues, clients, and senior employees, or when studying in colleges with faculty members, students, or male colleagues, or working in domestic affairs with male partners. Such practices, which have become ubiquitous, are being strongly ignored by employers. In addition to experiencing sexual harassment in person, the ladies also experience it virtually. Though the exact definition of this term has not been defined anywhere but was defined under the leading case of *Vishakha v. the State of Rajasthan (1997)*,^{xiii} it is defined as follows: “Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as a) physical contact and advances; b) a demand or request for sexual favours; c) sexually-coloured remarks; d) showing pornography; e) any other unwelcome physical, verbal or non-verbal conduct of sexual.”

In *Apparel Export v. A.K. Chopra (1999)*^{xiv}, the Supreme Court again reaffirmed the definition of sexual harassment by stating that it means any action or gesture intended to outrage the modesty of a female employee, directly or indirectly.

In terms of classification, there are no clear boundaries or fixed criteria for defining sexual harassment. In the book “Sexual Harassment of Working Women”, it is clear from Mackinnon’s presentation that there are various types of sexual harassment that occur in organizations. Based on the US Supreme Court’s judgment in *Meritor Saving Bank v. Vinson (1986)*^{xv}, she classified sexual harassment as *Quid pro quo* harassment and a hostile work environment.

Basically, *quid pro quo* harassment is sexual harassment that an individual conducts in exchange for an employment opportunity. Promotional offers, salary increases, and transfers are all examples of this kind of harassment. Hostile work environments often involve unwelcome sexual advances, sexual favour requests, and other sexually explicit conduct.

SEXUAL HARASSMENT AT WORKPLACE

Article 14 of the Indian Constitution guarantees the equality of every citizen under the law, as enshrined in the Preamble to the Constitution. Women are therefore legally entitled to a safe workplace. As a matter of fact, the Indian Constitution contains Articles 14, 15 and 21 that address equality and liberty. As a result of these articles, everyone is guaranteed equal treatment under the law, the right to be free from discrimination on any ground, and the right to live a free and independent life. Workplace sexual harassment is a serious form of sex discrimination in the workplace that causes serious harm. This violates a woman’s

fundamental rights under Article 19(1)(g) of the Constitution of India, as well as her dignity, physical and mental well-being. Consequently, productivity is low and lives and livelihoods are negatively impacted. The situation is further compounded by deep-rooted socio-cultural patterns, in which victims are placed under a gender hierarchy, which is likely to increase inequality at work and in society as a whole.

Even though sexual harassment has become a serious issue, women do not report such incidents to the appropriate authorities in most cases, for fear of losing their livelihood or personal and professional status. It is increasingly acknowledged that workplace sexual harassment violates the rights of women and is a form of violence against them. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed to create safe and supportive working environments that respect women's right to equality of opportunity and status at work. As a result of the Act's effective implementation, more women will be able to claim their equal rights to gender equality, life and liberty, and equal working conditions around the world. In order to achieve inclusive growth, women need to feel secure at work, which will enhance their participation in the workplace. The extent of the problem is unknown because it is difficult to document the experiences of those who have been harassed at work.

SCOPE AND ENACTMENT OF THE ACT

A Dalit woman named Bhanwari Devi, who was employed by the government of Rajasthan in the programme of rural development, was brutally gang-raped in 1992 for attempting to curb the practice of child marriage at that time. It was seen that women working in this industry were exposed to many hazards on a daily basis, thus, demonstrating the need for safeguards to be implemented.

Under the banner of Vishakha, numerous women's rights activists and lawyers had filed a Public Interest Litigation (PIL) before the Supreme Court of India. The **Vishakha Guidelines** were created as a result of a petition filed by Vishakha and four other women's organizations in Rajasthan against the State of Rajasthan and the Union of India. In August 1997, the Supreme Court in *Vishakha v. the State of Rajasthan (1997)* issued a judgment providing guidelines for dealing with sexual harassment at work. It was seen as a significant legal victory for women's groups in India. Therefore, the issue of sexual harassment found recognition in India in 1997, and the action was the result of a combined effort between non-governmental organizations, feminists, and lawyers. Essentially, the Supreme Court brought to the public's attention the issue of sexual harassment in the workplace. The Apex Court noted the following in acknowledging the issue: "*the incident reveals the hazards to which a*

working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures...”

By establishing the Vishakha Guidelines, the Supreme Court established that workplaces, institutions, and people in a position of responsibility must uphold the fundamental right to equality and dignity that working women enjoy. Institutions were required to meet three key obligations:

- Prohibition
- Prevention
- Redress

The Act was then notified by the government in 2013. Through compliance with the above-mentioned three elements, the Act seeks to ensure women’s equal access to the workplace, free from sexual harassment, as stipulated in the Vishakha judgment. Furthermore, the Act provides women with a civil remedy in addition to other laws currently in effect. As a result, a woman who reports instances of sexual harassment at work has the right to pursue civil as well as criminal remedies.

KEY DEFINITIONS UNDER THE ACT

Sexual Harassment

Similar to what was stated in the Vishakha Judgment of the Supreme Court, the POSH Act defines sexual harassment under Section 2(n) of the Act. The POSH Act states that ‘sexual harassment’ is any unwelcome sexual behaviour, whether directly expressed or implied, and includes the cases of physical contact and advances, or a sexual favour demanded or requested, or making remarks with sexual overtones, or showing pornography or other offensive material, or acting in an unwelcome sexual manner through physical, verbal, or non-verbal means. There are a number of circumstances that may constitute sexual harassment, including those listed below if they occur or are present during an act or behaviour of sexual harassment:

- A promise of preferential treatment at work;
- A threat of adverse treatment in the workplace that is implied or explicit;
- An implied or explicit threat regarding a person’s employment status, present or future;
- Interference with work or creating an intimidating or offensive or hostile work environment; or
- Humiliating treatment likely to affect the lady employee’s health or safety.

The Act defines sexual harassment as either direct or implied conduct, regardless of whether it is physical, verbal, or written. The distinctive feature of this type of behaviour is that it is undesirable and unwelcome. Among the forms of sexual harassment is *quid pro quo* sexual harassment, which is a form of sexual blackmail. A typical scenario of quid pro quo harassment involves a person in power pressuring an employee for sexual favors in exchange for advancement or the threat of adverse employment action.

In addition to creating an intimidating working environment, the definition also refers to creating a *hostile working environment*. For example, a work environment in which a woman employee feels embarrassed because she gets unwelcome comments about her body type. The burden of determining whether the harassment suffered by the victim amounts to a hostile work environment rest on the internal committee because there is no fine line test specified under the Act. Additionally, what constitutes sexual harassment varies from case to case depending on the facts and the context.

Employee

The Act, under Section 2(f), defines employees broadly to include regular, temporary, and ad hoc employees. In accordance with the section, an employee is an individual who is engaged in a daily wage position, either directly or through an agent, a co-worker, a probationer, a trainee, and an apprentice, whether remunerated or not, whether on a voluntary basis or otherwise, and whether or not the terms of employment are express or implied.

Workplace

Although the Vishakha Guidelines only applied to traditional office settings, the Act introduces the concept of an extended workplace, recognizing that harassment may not necessarily occur in the workplace itself. In accordance with Section 2(o) of the Act, a 'workplace' refers to any place visited by an employee as part of his or her employment, including any transportation provided by the employer for traveling to and from work.

In *Saurabh Kumar Mallick v. Comptroller & Auditor General of India (2008)*, the respondent who had been facing departmental inquiries for allegedly harassing a senior woman officer contended that he could not be accused of sexual harassment at work since the misconduct reportedly occurred not at work but in an official mess in which she resided. A further argument made was that the complainant was in a senior position to the respondent, so he could not extract any favour from her and, therefore, the act did not constitute sexual harassment. This was deemed as clearly misconceived by the Delhi Court in its consideration of the case. According to the Delhi High Court, the official mess, where the employee

reported being sexually harassed, fell under the definition of a workplace under the POSH Act.

Thus, a hostile workplace not only is a cause of concern for women but for the society at large as it hampers the broad aspect of equality which is even the basic feature of constitution. Harassment of women at workplace is also against the spirit of women empowerment. Any welfare society does not accept any sort of harassment against the women be it mental, physical or sexual. The entire scheme of this legislation and the goals that are aimed to achieve through this act cannot be attained if the Principals/ Head of the Institutions are not aware of such gender specific laws and guidelines. It is the duty of the stakeholders to spread awareness about such laws in their organisation and effortlessly work to create an environment where women feel secure and empowered.

VICTIM COMPENSATION SCHEME IN HARYANA

The government of Haryana has tirelessly worked for the betterment and upliftment of women in the society. The women and child development department in Haryana has launched various schemes for both women and children. Some noteworthy schemes include beti Bachao beti padhao, Aapki, beti Hamari Beti, Kishori Shakti Yojana, compensation scheme for women victims, survivors of sexual assault and other crimes, 2018 scheme for relief and rehabilitation of women acid victims.

As per the directions of national legal service authority, the government of Haryana and Haryana State legal service authority has created a women victim compensation fund to compensate the women victims. As regards the scheme for relief and rehabilitation of women acid victims, the Haryana government has implemented a scheme for relief and rehabilitation of such victims under which the assistance is provided to the victims of acid attack who were residents of Haryana and have become victims of acid attack in Haryana. Assam of Rs.1,00,00 is paid to the acid attack victim within 15 days of such occurrence as an ad hoc relief.^{xvi}

The Haryana government has recently increased the compensation given to rape survivors and this has been done in compliance with Supreme Court directions to implement national legal service. Authority is compensation scheme for women victims, survivors of sexual assault, other crimes 2008, according to the scheme for a gang rape survivor. Minimum limit of compensation is Rs.5,00,000 And upper limit is 10,00,000.

JUVINILE JUSTICE (CARE AND PROTECTION) ACT, 2015

RYAN INTERNATIONAL SCHOOL CASE

The famous Ryan international school case in which a class two student of 16 years was allegedly murdered in the school. The school student was found with his throat slit inside the school washroom. The post-mortem report revealed that injuries on the boy's neck were inflicted by a sharp-edged weapon, which resulted in his death. The case against the accused was filed and were booked under relevant sections of Indian penal code arms act, juvenile Justice act and prevention of children from sexual offences act. The government of Haryana recommended the Central bureau of investigation to probe into the matter. Following the outrage in the society and public at large. Such incidents raise a question upon the safety and security of children at schools. The stakeholders be it the principal, teachers and other staff stand collectively responsible for any such incident taking place inside the premises. Various procedural measures can be adopted such as installation of CCTV cameras etc. by which the offenders of the wrongdoers can be caught. Such measures also create a deterrent in the minds of the wrongdoer and ultimately suffice, the purpose of creating a safe and hospitable environment for children and teachers.

With the increase in the number of crimes being committed by juveniles, there was a need to establish a comprehensive law that deals with such children of child in conflict with law. A legislation that focuses upon reformatory theory was required to deal with such offenders so that they can be reformed and sent back to the society as responsible citizens. Thus, the Juvenile Justice Act was enacted for the care, protection, treatment, development and rehabilitation of children.

The act defines "Child in need of care and protection" as any child who is caught working in any labour establishment in violation in labour law or any child in imminent risk of marriage before attaining the legal age as provided by various statutes or any child who is hurt, neglected or is in violation of any law where his/ her parents are unable to take proper care of the child. The act signifies a "child who is in conflict with the law"^{xvii} and asserted or found to have committed an offence and not finished the 18 years of age on the date of the delegation of such an offence and "Juvenile"^{xviii} as any child under the age of 18 years.

The basic principles to be followed for the care and protection of children have been enunciated in the act. In case where any decision in respect of any child is to be taken by the child welfare committee or any other committee formed by this act the principle of best interest of the child, principle of presumption of innocence, principle of privacy and to maintaining confidentiality, principle of equality and non-discrimination is to be followed.

CLASSIFICATION OF CHILDREN PROTECTED BY LAW

Child in conflict with law vs Child in need of care and protection

The juvenile Justice act has redefined minor in conflict with the law into a child in conflict with law. The offences in the act are classified as small/ serious/ obnoxious. In case where crime is committed the children between the age of 16 and 18 can be tried as adults after a preliminary assessment or enquiry by the juvenile Justice commission. During the investigation of such cases, the child in conflict of law is temporarily sent to an observation house and depending upon the age, physical and mental state of the child and the nature of offence committed the child will be isolated in a child shall be put into an observational home or a special home if convicted for an offence.

The act establishes a child protection committee where within 24 hours, a child in need of care and protection must be brought. As per the act, a child in need of care and protection is a child who is homeless, abandoned, street child and abused, tortured and exploited or a special child, a child incapacitated by parents and abused, tortured or exploited for the purpose of sexual abuse or any illegal act or a victim of natural or man-made calamity. The child in need of care and protection is firstly sent to the appropriate child protection institution as directed by the committee. The child protection committees conducts its meetings and the district magistrate conducts a quarterly review of the functioning of the child protection committee for the care, education, treatment, training development and rehabilitation. The child protection committee is vested with the powers to recognise an institution as being capable of assuming a child's custody.

Juvenile Justice Board: It is a judicial body before which a child who is detained is brought or accused of a crime is brought. The board acts as a separate court for the juveniles as the juveniles are not taken to the regular courts for their trial. The board comprises of a judicial magistrate and two social workers of whom shall be a woman. The board is meant to be a child friendly place and not intimidating to the child.

Child Welfare Committee: The State Governments set up these committees in districts in accordance with the provisions of the Act. The Committees have the power to dispose of cases for the care, protection, treatment, development and rehabilitation of the children in need of care and protection, as well as to provide for their basic needs and protection. It is the responsibility of the child welfare committee to take cognizance of and receiving the children produced before it. The Chairperson of the committee shall draw up a monthly roster and circulate it to the chief judicial magistrate, district magistrate and child care institutions. It is

the responsibility of the child welfare committee to keep a check as no person and connected with the case shall be present when the session is in process. The child welfare committee is vested with the power to declare a person as fit or any child in need of a foster care. It is the duty of the child welfare committee to conduct at least two inspection visits per month in the child care institutions and the residential facilities. The child welfare committee has to coordinate with the local police labour department and other agencies and with the CPU or the state government so that appropriate legal services to the children are guaranteed. The act provides for an efficient mechanism and an organised system for the adoption of a child or an orphan who is surrendered or abandoned. It makes the registration of all the child care institutions compulsory. An important provision has been made in the act that provides for treating minors in the age group of 16 to 18 as adults in case any Heinous crime is committed by them.

COMMITTEES TO BE CONSTITUTED AT SCHOOL LEVEL

- Anti-Sexual Harassment Committee
- Disciplinary Committee
- Anti-Ragging Committee
- Anti-Ragging Squad

PRINCIPLES OF NATURAL JUSTICE

- **Audi Altem Partem-Hear the Other party**

As the head of an institution/ principal, the rules of natural justice are required to be followed in order to redress any sort of grievance that arise in an institution. The first rule is Audi Altem Partem i.e., *let the other side be heard as well*. Before disposing any matter or arriving at a decision, it is mandatory that the opposite party or the accused be given a fair and reasonable opportunity of being heard and to present evidence for defense. Unless both the sides are heard one cannot arrive at a fair and reasoned decision. Thus, the rule is required to be followed to meet the ends of justice.

- **Nemo Judex in Casua Sua- No one shall be judge in his own case, Rule against Bias**

The next rule of natural justice is the rule against Bias. This is also required to be known to the principals and the head of institutions before disposing any matter. The principal/ head of the department chairs various grievance redressal committees, sexual harassment

committees etc., where this rule is required to be followed. The basic rule of administration of justice is that *Justice should not only be done but it should be seen to have been done*. The adjudicating authority or the deciding power must be neutral and impartial while examining any case. Justice can be served only when the rules of natural justice are followed. In any proceeding where any member of a committee is directly or indirectly interested in the matter being adjudicated upon, the ends of justice could not be achieved.

- **Reasoned Decisions: Every decision has a reason.**

An adjudicating authority or decision-making body can only arrive at a reasoned conclusion where the outcome/ final decision is based on logic and reasons. The factual matrix along with ratio decidendi forms the body of a judgement. Thus, principals/ head of institutions must keep in mind the broad principles of natural justice hereinabove mentioned so that the final decision/ judgement is not subject to technical defects and shortcomings.

CONCLUSION

There are many legal enactments that aim at protecting the rights of women and children. A person who knows the law does not need any weapon. Law itself acts as a weapon as it provides for remedy for every wrong that is committed. It is only about the awareness and legal literacy which is required to enforce such laws. Only if a person is aware of his rights act and fight against any injustice meted out at home, workplace society or any other place. For a nation to be a global power, it is necessary that discrimination at any level is eliminated. For the proper enforcement of laws, it is necessary that the stakeholders of the society especially women know their rights and the laws enacted for their care and protection. As a principal, head of the department, head of an institution, the above discussed laws are necessary to be known and it is the utmost duty to spread awareness about these laws in the institution so that we can make our school/colleges and universities more hospitable for women and children so they can perform their roles and responsibilities without any fear or inequality.

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ⁱⁱSection 2(c)

ⁱⁱⁱSection 4(c)

^{iv}L.R. 3 Q.B. 360 (1868). Court of the Queen's Bench, 1868

^vSection 9

^{vi}(2017) 2 Cal LJ 224

^{vii}CRIMINAL APPEAL NO.507 OF 2007 (Supreme Court of India)

^{viii} Criminal Appeal No. 1820/2017 (Supreme Court of India)

^{ix} Criminal Appeal No. 32 of 2014 (High Court of Sikkim)

^x Laws (CAL)-2015-4-11

^{xi}Bail Application no. 3861 of 2020, High Court of Kerala

^{xii}MANU/MH/0178/2018 [Bombay High Court, Single Judge]

^{xiii} (1997) 6 SCC 241

^{xiv} AIR 1999 SC 625

^{xv}https://en.wikipedia.org/wiki/Meritor_Savings_Bank_v._Vinson ACCESSED ON 13.01.2023

^{xvi}<https://wcdhry.gov.in/schemes-for-women/compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes-2018/> accessed on 14.01.2023

^{xvii} Section 2 (13)

^{xviii} Section 2 (35)