

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Book Review on “Understanding Workplace Laws for Women in India”

ADV. APARNA SINGH SENGAR¹ AND ADV. PRASHANT MALIK²

ABSTRACT

The book discusses the law and precedents in each section. Surprisingly, the authors have combined state-specific workplace safety legislations and given a chart comparing the previous legislations with the new labor laws. Each chapter also includes regularly raised queries and regulatory checklists for quick reference by organizations. The book is intended for in-house lawyers, human resources experts, and practicing attorneys. This book provides a handbook for in-house attorneys and HR experts on how to apply women-specific workplace legislation in their organization. It also includes extensive sections on case law precedents for the POSH Act and maternity benefits that are up to date until 2020. While several books have previously addressed the POSH Act, 2013, there has been a lack of a single book that can completely cover regulations related to women at work.

Keywords: Labor law, maternity law, POSHA, working women.

Book Title: UNDERSTANDING WORKPLACE LAWS FOR WOMEN IN INDIA

Author: ESHA SHEKHAR AND NEHA KOSHY

Book Publisher: BLOOMSBURY PUBLICATIONS

ISBN 10: 9390358914; **ISBN 13:** 978-9390358915

Year of Publication: 31 January 2021

I. INTRODUCTION

This book, published by Bloomsbury Professional India, is a guide that provides an effective and simple understanding of the labor regulations that apply to women in Indian workplaces. The book seeks to give a ready-to-use grasp of the principles and processes of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, as well as the numerous laws pertaining to female employees and workers under the new 2020 Labour Laws. The purpose of this book is to demystify employment rules for women in India. The goal has been to push this issue into the public, rather than having it get lost in the shuffle of general labor legislation implementation. The authors addressed four areas of law: sexual

¹ LL.M (Criminal and Security Law), Symbiosis Law School, Pune, India.

² B.A LL.B (Hons.), USLLS, Guru Gobind Singh Indraprastha University, New Delhi, India

harassment prevention, maternity benefits, equal pay, and workplace safety in factories and institutions.

II. CRITICAL ANALYSIS

It is with respect to the labor codes, while to us it may seem that it was sudden and we may think that all lawmakers are just bringing about changes within three days. The Social Security Code accorded industrial relations support and wages as all were literally passed in three days but actually that's not the case. It's been around 20 years where there have been a lot of deliberations in lot of discussions around this. The authors think that let's simplify all the labor laws and bring it together. In fact, the 2003 National Commission on Labor actually suggested this in its report. However, it was only in 2019 that the Ministry of Labor introduced four bills to consolidate around 29 central labor laws. They were four major bills, which was the industrial relations, the code and wages and the Social Security code, the Occupational Safety Code. It's important to note that the Act was passed in 2019. But however, for the other courts are standing committee was appointed which submitted its report, and finally, in 2020 September 23rd, the four Labor codes were asked. So, this is basically how you know the legislations were introduced and then pass quickly. But we have to remember that there were multiple committees around two committees already working on it. There are lot of deliberations and then it was fast.

The maternity benefit provisions are now covered under the Code and Social Security 2020. This code also includes provisions on Provident Fund, State insurance employees, Compensation for workmen's accidents. It's like encompassing all provisions from all those separate acts earlier. They brought under one act and it's the code and Social Security. The provisions related to maternity benefit have now been covered under section 59 to section 72 of the code is not a separate act, just in one code, and they've literally just, you know, compressed all the provisions of the majority act and then put in the code mostly with respective maternity benefit. The provisions mirror the 1961 act, the act which was amended later and also brings in the 2017 amendments also. The maternity benefits the code on Social Security prescribes the provisions for maternity benefit have now to be provided. If your establishment has 10 or more employees but not specially women. So, if you're just one woman and someone is employed in establishment with 10 people, then you have to comply and provide maternity benefit. It's important to note that regarding ESI, earlier under the Maternity Benefit Act. If an employee was getting benefits through an employee fund, then they wouldn't be eligible to come and organizations majority benefit, but however now. They've clearly

specified in the quarter wages that the ESI see benefit will only apply if it is below the wage limit prescribed by the SIC. So, if an employee has a wage has draws wages higher than that limit then they will be eligible for maternity benefit. It is not mean that you know if an organization is covered by the SIC Fund, then that person won't get maternity benefit under the organization if clearly come up with that demarcation now. Definitions of employee however, added in within an employer now includes a contractor or a legal representative offered and deceased employer. Before maternity benefit was calculated, was the average of wages of three months before the date that the female employee was absent. That is, if you know female employee is not is taking majority for say 8 months. Then she would be eligible to maternity benefit, which is the average of the wages for the immediately three months before she started in the maternity leave, that has stayed the same. However, the definition of wages now there excluded some factors. Some components such as incentive bonuses, overtime earnings, fines, contributions to pension, Provident Fund. Now, this all were the definition of wages was all encompassing. But now they started making certain aspects we should not install word within maternity within the definition of wages for maternity benefit. This probably is the cause. The Code on Social Security has won recognition for wages which applies for Provident Fund which applies for, ESI. It applies for workplace accidents, workplace compensation or accidents. So that's why there is this confusion that why is the definition for maternity benefit also?

Like before maternity benefit maternity leave, a female employee was entitled to 26 weeks under the code where eight weeks may be availed before and 12 weeks if the employee has two or more children. It's very important to know that it's two or more children. Not two or more pregnancies. So even if you had a miscarriage the second time, but you would you didn't have children, you will still be eligible for the 26 weeks of maternity leave. The most important aspect is that the Maternity Benefit Act and the score of Social Security. Now this is very crucial for all organizations to follow. The Maternity Benefit Act provided for a medical bonus of ₹33,500 and said that the maximum bonus that you can give their organization can give with ₹20,000. Maybe now that the code on Social Security did away with this ceiling of ₹20,000. Now again, there's now leave for women who are adopting and woman who are having two children through surrogacy. There is a 12-week leave, but however, it's very important to remember. Let under the Maternity Benefit Act adopting you will be only entitled to maternity benefit if your child is under three months age, which is very rare because it's actually difficult to adopt A child who's under three months of age because the process itself will take. So, this is probably something that we're expecting will change with the rules.

As earlier we had an Equal Remuneration Act which was actually 75 years old mean it's been there for a very long time and there were hardly any amendments to it. The code on wages which was passed in 2019 incidentally. It tried, it brought within its ambit. The entire gamut of laws regarding wages. So, it covered equal wages it covered minimum wages. It covered payment of bonus. However, it's important to note the rules, yet have not been notified. So, this is very contentious. And also, with respect to minimum wages, one needs to know that each state has separate, you know, notification regarding what would be the minimum wages. So, there is something that we are expecting now.

As the concept of "workplace" under law includes virtual workplaces, the POSH Act is prepared to cope with online workspaces. The difficulty has been a lack of communication inside businesses to educate team members on how to maintain a work atmosphere while functioning in an online setting. Cases of obscene discussions, improper clothing on zoom calls, and persistent and late-night calls in view of work have been documented in online settings. As a result, it is critical for companies to accomplish two things, firstly to communicate with their staff on a regular basis about upholding professional standards when working online and secondly, to assist their ICs in moving online and establishing channels for women to contact IC's and have their complaints resolved. According to the author, there is still a dearth of understanding regarding employment rules affecting women. It is critical that those who specialize in this area of law endeavor to raise awareness. The authors recommend focusing on small and medium-sized businesses and startups in the organized sector that lack advisers to help them comprehend how to apply such regulations at their workplace.

The Oxford English Dictionary describes patriarchy as a male-dominated society, institution, or state. Indian society is fundamentally a patriarchal society in which males are expected to behave in a specific predefined manner, and any divergence from this pattern results in mockery from society primarily other men. Some instances of how society deems an "ideal man" to act include the belief that a man cannot express his feelings and cannot weep in public, that he must always be tough. This causes gender inequity and this is why several individuals, even if they favor gender equality, feel ashamed to talk out about it. The patriarchal attitude of society hinders males from speaking out about sexual assaults against them. As a result, there's really no reliable evidence demonstrating the presence of males being subject to sexual violence. The necessity of the present era is for males to speak out something about similar occurrences on a scale comparable to the women's movement, in order to make legislation against sexual offences to be gender-neutral. It is essential to recognize that sexual harassment has nothing to do with sex or gender. It's mostly about authority. However, nowadays, with

more women gaining authority in the workplace, there seems to be no reason why women in power cannot be as violent as a man. As a consequence, it is critical to address the issue of growing occurrences of violence against men in society. The issue of not recognizing and acknowledging male sexual harassment may be due to men's refusal to accept that they, too, are sensitive. Men may find it extremely difficult to recognize sexual harassment because they believe that they have been gendered, since the Indian worldview holds that the feminine is the inferior gender. There are no precise data as to how many men are sexually harassed at work or how many of these individuals file sexual harassment complaints. Men may indeed be frightened of even being teased by colleagues, which is one of the potential explanations why they do not speak.

III. CONCLUSION

The POSH Act is currently in its early stages of implementation in India. When the worldwide #metoo movement arrived in India, the organized sector became aware of the immediate and indirect consequences of noncompliance with this legislation. Prior to 2018, larger businesses and MNCs had a greater rate of compliance. More MSMEs, particularly startups, are now investigating the law's application. Nevertheless, the law's execution in the informal sector has been almost non-existent. The operation in this case is based on the formation of Local Committees and the holding of district-level awareness workshops. The number of Indian states has yet to implement this. One of the biggest challenges in administering the POSH Act is the absence of repercussions for non-compliance. Despite the fact that the legislation outlines sanctions, the lack of an organized method to track violation, like with other labor compliance regulations, is a key impediment to more businesses establishing Internal Committees (hereinafter referred as "ICs") and complying with the POSH Act in general. Many businesses with more than ten employees also do not have ICs in place, and state governments have no system in place to track this. However, Telangana and districts such as Noida-Greater Noida have established online procedures for the recording of ICs and the filing of yearly reports by organizations. The central government has established the SHE Box to track non-compliance with the legislation, but the real shift will occur when state governments begin tracking the establishment of ICs in their districts to ensure that organizations remain genuine about complying with this rule.

It would be a suggestion to the writers to concentrate more on women's auxiliary laws. In addition, a discussion of the regulations of the labor code that were not disclosed prior to the publishing of the book would be beneficial. I hope that the writers, Esha Shekhar and Neha

Koshy, address these concerns in future editions of this important work.
