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FROM SILENCE TO SAFEGUARD: THE LANDMARK JUDGEMENT THAT REDEFINED WOMEN'S RIGHT TO DIGNITY.

AUTHORED BY - SIMRAN BUNDELA & UTKARSH MISHRA

Case Comment: Vishaka and Ors. V. State of Rajasthan (1997)

Simran Bundela And Utkarsh Mishra

CITATION: AIR 1997 SC 3011

BENCH: Justice J.S. Verma, Justice Sujata V. Manohar, and Justice B.N. Kripal

JUDGEMENT: 10 January 2020

Introduction

India has around 30% of women's participation in the Labour Force. Women provide equal contributions at both the domestic and industrial levels. However, it is very well known that the environment provided to these women is not safe. The International Labour Organisation (ILO) held in their 2022 report that every 1 in 15 employees has experienced sexual violence or harassment at the workplace.

This issue was tackled by the '**Visakha Guidelines**' as result of the landmark judgement of **Visakha and Ors. v. State of Rajasthan**¹. The case of Bhanwari Devi, who worked for women's empowerment and safety, was brutally gangraped, and her husband was attacked as an act of vengeance for their efforts in trying to stop child marriage.

The guidelines initially lacked in certain aspects, and to reform such aspects, the Hon'ble Supreme Court issued a handbook in 2013 - "**The Handbook on Sexual Harassment of Women at Workplace Act**" published by the Ministry of Women and Child Development. The case also sheds light on the social evils existing in society and the ignorance of such evils by society.

¹ Visakha and Ors. v. State of Rajasthan, AIR 1997 SC 3011.

Background of the Case

Visakha and Ors. v. State of Rajasthan is a case of Bhanwari Devi who was brutally gangraped by five men Bhanwari Devi worked in the government's 'Women Development Project '(WDP), her work focused on women empowerment, which was praised and supported by her villagers. When Bhanwari defied child marriage, the villagers reacted badly. It was a tradition to have child marriage back in the day and child marriage was quite popular even though it wasn't legal; it was a so-called cultural tradition and opposing it was viewed by the villagers to be a disrespect.

When a family belonging to the community of Gurjars was getting their newborn child married, Bhanwari tried to stop the marriage accompanied by the police. The villagers boycotted her and her kin after this episode.

The Gurjar family wanted revenge because they were insulted. Four men from the family and another man beat up Bhanwari's husband and gangraped Bhanwari. Police insulted Bhanwari and demanded that someone bring her lehenga for investigations purposes, her medical test also got deferred. And when the case later went for a trial the Trial Court acquitted the five men. This appalled the women activists and the organizations. The organizations jointly filed a writ petition for justice.

Fact of the Case

She was employed as a saathin in the govt's 'Women Development Project' in the year 1985. She also joined the govt's campaign against child marriage in the year 1992. She tried to intervene when the family of Ram Karan Gurjar tried to marry their young child. On 5th May 1992, Bhanwari accompanied the Deputy Superintendent of Police (DSP) and the Sub-Divisional Officer (SDO) when they went to the family of the Gurjars while making efforts to stop the infant marriage.

The marriage went ahead the very next day in spite of the efforts by Bhanwari. On 22 September 1992 when Bhanwari and her husband were employed in a field. Five men of whom four were the same Gurjar family - Ram Sukh Gurjar, Gyarsa Gurjar, Ram Karan Gurjar, Badri Gurjar, and a man named Shravan Sharma assaulted the husband of Bhanwari and gangraped Bhanwari Devi forcibly.

Police delayed the investigation, trying to avoid filing the complaint. The Local health centre refused to examine Bhanwari. Medical examination was conducted in Jaipur, delayed by 52 hours, where the report excluded any mention of rape but the victim's age. With the help of local MLA 'Dhanraj Meena', the five accused were acquitted in the Trial court, the reason given being a lack of evidence. The acquittal caused backlash from women activists and organisations who stood in support of Bhanwari Devi.

These organisations came together and filed a Public Interest Litigation (PIL) in the Supreme Court. 'Visakha' a women's rights group, along with other NGOs and organisations, filed the petition for the enforcement of the Fundamental Rights of women at the workplace under Article 14,15,19 and 21² of the Constitution.

Legal Issue

1. Are there constitutional basic rights that guarantee working women protection from sexual harassment in the workplace? Can sexual harassment constitute a breach of Articles 14 (equality), 15 (non-discrimination), 19(1)(g) (right to practice one's vocation or follow any profession or engage in any occupation), and 21 (right to life, personal liberty, which includes dignity)?
2. Without a specific law, can the Supreme Court establish guidelines which are binding in character until a law is passed?
3. What definitions or types of acts should fall within "sexual harassment"?
4. What machinery of enforcement or institutional safeguards are required? What is the role of the employer/institution/State in preventing, investigating, punishing and giving redress for sexual harassment?
5. How can international norms/conventions be applied in interpreting constitutional obligations?

Petitioner's Argument

The petition was filed seeking for writ of mandamus, and a remedy for the violation of Rights under Article 14, 15,19 and 21³ of the Constitution. It was also pointed that the existing legislation provides no remedy for workplace harassment.

² The Constitution of India, arts. 14, 15, 19, 21.

³ The Constitution of India, arts. 14, 15, 19, 21.

Respondent's Argument

The respected Solicitor General of the Union of India appeared as the respondent and rendered valuable assistance to help find a solution to the problem. Shri S. Fali Nariman was an amicus curia in the case along with Ms. Meenakshi Arora and Ms. Naina Kapur.

Judgement

The Hon'ble Supreme Court addressed the issue and agreed that any form of workplace harassment is in fact violation of fundamental rights of "Right to Life and Liberty " and of "Right of Gender Equality" along with Article 19 (1) (g)⁴ of the Constitution. Article 19(1)(g)⁵ - " to practise any profession or to carry out any occupation, trade or business" The Court stated that Article 19⁶ depends on 'safe' environment and that any form of sexual harassment is a violation of Article 14, 19 and 21⁷ and remedy to the violation exists under Article 32⁸, which requires to lay down some guidelines and fill the legislation lacuna. It was held that Article 51(c), 253 and 73⁹ read along with 7th Schedule of Union List, Entry 14 permits the use of international conventions of applicable significance in absence of effective remedy under domestic legislature. The court to support usage of international norms referred to case "**Nilabati Behera v. State of Orissa**"¹⁰ and an Australian case "Minister of Immigration and Ethnic Affairs v. Teoh" where the High Court of Australia recognised the absence of legislative provision.

Furthermore, it was stated that the Court's obligation under Article 32¹¹ of the constitution along with the principles accepted by Chief Justice of Asia and Beijing in 1995 in the Beijing Statement of Principles of the Independence of the Judiciary¹² in the LAWASIA region, requires for new guidelines to be laid for protection of Women against workplace sexual harassment. The hon'ble Supreme Court referred to the provisions in the "Convention on the Elimination of All Forms of Discrimination Against Women" Article 11 (1) (a) and (f) and

⁴ The Constitution of India, art. 19 (1) (g).

⁵ The Constitution of India, art. 19 (1) (g).

⁶ The Constitution of India, art. 19.

⁷ The Constitution of India, arts. 14, 19, 21.

⁸ The Constitution of India, art. 32.

⁹ The Constitution of India, arts. 51 (c), 253, 73.

¹⁰ Nilabati Behera v. State of Orissa, AIR 1993 SC 1960.

¹¹ The Constitution of India, art. 32.

¹² "Beijing Statement.indd,."

Article 24¹³. The court exercising the powers under Article 32¹⁴ of the Constitution laid down the 'Visakha Guidelines ' and emphasised it to be treated as law declared by Court under Article 141¹⁵ of the Constitution.

The Visakha Guidelines

- I. Employer's responsibility:** It is the employer's or any other responsible person's duty to prevent commission of any act of sexual harassment and provide necessary procedure for resolution, settlement, or prosecution of act.
- II. Definition:** Sexual Harassment includes unwelcome sexual behaviour such as
 - A. Physical contact and advances,
 - B. Demand or request for sexual favours,
 - C. Sexually Coloured Remarks,
 - D. Showing Pornography,
 - E. Any other unwelcome physical, verbal or non- verbal sexual conduct.
- III. Preventive steps:** Necessary prevent steps must be taken by person in charge or employer. These include:
 - A. Expressed prohibition of sexual harassment to be notified, published.
 - B. Penalties
 - C. Appropriate work environment.
- IV. Criminal Proceedings:** If a conduct amounts to a specific offence under Penal Code, 1860 or anything other law, the employer must take required action.
- V. Disciplinary action.**
- VI. Complaint mechanism:** A complaint committee headed by a woman with women constituting half of its members, including a third party such as NGO or any other relevant body.
- VII. Workers' Initiative:** Employees must be able to raise issue of sexual harassment which should be discussed in meetings.
- VIII. Awareness:** Employees must be aware of their rights and should be notified of it. Third party harassment: where sexual harassment is result of act of omission by third party or outsider, employer or person in charge must take necessary steps to assist the affected person.

¹³ The Constitution of India, arts. 11 (1) (a) (f), 24.

¹⁴ The Constitution of India, art. 32.

¹⁵ The Constitution of India, art. 141.

Legacy, Impact & Challenges Ahead

4.1 Legal Status and Further Legislation

Until a specific piece of legislation was passed, namely The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹⁶, the Vishaka Guidelines provided the legal status to employers and institutions.

The 2013 Act effectively codified most of the guidelines and created statutory machinery for the establishment of Internal Complaints Committees (ICCs), defined employer responsibilities, and required preventive measures and remedial action. Thus, the Vishaka Guidelines were the foundation.

4.2 Practical Impact and Implementation

Many workplaces (government institutions, educational institutions, large private companies) established internal policies and complaint mechanisms in compliance with the Vishaka Guidelines and subsequent, the 2013 Act. There is an increasing awareness of the concept of “sexual harassment at workplace”.

The concept of safe working environment has become integrated into human resources, corporate policy and institutions' cultural expectations. Training, sensitization programmes and the formation of women's rights clubs, etc., have become commonplace.

Judicial rulings in cases that have followed has relied on the various provisions of the Vishaka guidelines and the 2013 Act, to uphold women's rights, award damages and order employers to comply.

4.3 Continuing Gaps & Challenges

Informal Sector and Rural Settings

Many women are in informal employment, agricultural, home-based, etc., contexts that are vague in employer-employee relationships where there is no formal employer, or institutional mechanism is lacking entirely. Other women employed in these contexts are particularly vulnerable.

¹⁶ “Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (SH Act, 2013) | Department of Women and Child Development,” *available at*: <https://wcd.delhi.gov.in/wcd/sexual-harassment-women-workplaceprevention-prohibition-and-redressal-act-2013sh-act-2013> (last visited October 16, 2025).

Critical Analysis

The Visakha guidelines remained in force for over 16 years then later it was codified and expanded under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹⁷.

The judgement helped in providing a safe and secure environment for women in the workplace and recognising harassment as a violation of fundamental rights. It established workplace dignity and gender equality as intrinsic parts of Fundamental Rights guaranteed by the Constitution. It broadened the scope of 'Right to Life' under Article 21¹⁸ by including the right to live with dignity at the workplace. The case paves a huge stepping stone for women empowerment by ensuring safety at the workplace.

The case shows judicial activism at its best by filling the legislative gaps and incorporating international laws, and setting judicial precedents for using the International Convention (CEDAW)¹⁹ in constitutional interpretation. Although there are a few limitations, as the Vishaka Guidelines experienced inadequate implementation, particularly in the informal sector, and depended largely on the employer's follow-up actions, relying on the absence of any external enforcement agency. It took the Parliament sixteen years to pass an appropriate law. In addition, these guidelines and the law passed later focused mostly on women, ultimately failing to recognize other genders faced with harassment.

Conclusion

The case addressed the issue of workplace sexual harassment, which was, although not unheard of, lacked any form of punishment under the law. The Visakha Guidelines were a major step in safeguarding working women. To ensure empowerment and independence of women, it is essential to provide a safe workplace environment and Visakha Guidelines ensure this.

The honourable Supreme Court acknowledged the lack of applicable law and made necessary provisions to ensure the rights of women. And to make the guidelines more effective, the Supreme Court issued in 2013, "The handbook on Sexual Harassment of Women at Workplace

¹⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹⁸ The Constitution of India, art. 21.

¹⁹ "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 | OHCHR," available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited October 16, 2025).

Act" published by the Ministry of Women and Child Development.

Although, the landmark judgement provided a relief for women's safety, it is of extreme unfortune that the woman behind all of it did not receive justice for herself. Bhanwari Devi, who herself campaigned for women's empowerment, was a victim and suffered just because she wanted women to be independent and empowered.

It is important to realise the corruption that caused the failure of Bhanwari to get justice. The corruption is still prevalent in the system as of today; it is a problem which needs to be eradicated.

