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# CASE COMMENTARY ON VISHAKA V. STATE OF RAJASTHAN

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*Abstract -The case study that follows in the result of author's research. Sexual harassment at the workplace is a blotch on any society and all sections must come forward to curb this menace. Sexual harassment in the workplace is a serious issue that can have profound effects on individuals and the work environment. Supreme Court in the year 1997 instituted Vishaka Guidelines which were a set of guidelines that were intended to protect women at the workplace. These are procedural in nature and state the method that is to be followed while dealing with cases related to the sexual harassment of women. The author has done their best to provide a briefing of the case during hearing the same, and in the end also expressed opinion on the subject.*

*Keywords: Vishaka guidelines, sexual harassment at workplace, gender inequality*

## **FACTS OF THE CASE**

The petition was filed in order to enforce the fundamental right under rights of women at the workplace under the provisions of Articles 14, 15, 19, and 21 of the Constitution of India and the need to protect their sexual harassment at the workplace.

Bhanwari Devi, a lady from Bhatari, Rajasthan, started working under the Women's Development Project (WDP), run by the Government of Rajasthan, in 1985. As a part of her job Bhanwari took up an issue based on the government's campaign against child marriage of which the villagers were ignorant. The villagers supported child marriages despite knowing the fact that it was illegal. In the meantime, the family of Ram Karan Gurjar had made arrangements to perform such a marriage, of his infant daughter. Bhanwari, abiding by the work assigned to her, tried to persuade the family to not perform the marriage but all her attempts resulted in being futile. The family decided to go ahead with the marriage. Despite the fact that she married, she was not forgiven and her efforts to prevent marriage. On September 1992, she

was been gang any recommendation of her being raped in her medical report. In past midnight at police station she was been asked by the policeman to leave her lehnga as the evidence of that incident and go back to her village. After that, she was only left with the bloodstained dhoti of her husband to wrap her body.

In the absence of sufficient evidence and with the help of the local MLA Dhanraj Meena, all the accused managed to get an acquittal in the Trial Court. But this acquittal resulted in a huge backlash from many women activists and organizations which supported Bhanwari.

These organizations came together and raised their voice to attain justice, which resulted in the filing of a Public Interest Litigation (PIL) by a women's rights group known as '*Vishaka*' which thoroughly examined the issues.<sup>1</sup>

## ISSUES

In this case, there are a number of issues that has been raised, such as:

- Whether sexual harassment at the Workplace amounts to a violation of Rights of Gender Inequality and Right to Life and Liberty?
- Whether the employer has any responsibility when sexual harassment is done to/by its employees?

## JUDGEMENT

The judgment of Vishakha's case was conveyed by Chief Justice J.S Verma as a representative of Justice Sujata Manihar and Justice B.N Kripal on account of writ petition which was file by Vishakha the victim of this case. The court observed that the fundamental rights under Article 14[2]<sup>2</sup>, 19[3](1)(g)<sup>3</sup> and 21[4]<sup>4</sup>of Constitution of India that, every profession, trade or occupation should provide safe working environment to the employees. It hampered the right to life and the right to live a dignified life. The basic requirement was that there should be the availability of safe working environment at workplace.

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<sup>1</sup> Vishaka v State of Rajasthan [ 1997 ] 6 SCC 241

<sup>2</sup> Article 14, Constitution Of India , (Right to Equality)

<sup>3</sup> Article 19(1)(G) Constitution of India , (Right to Practice Ones Profession)

<sup>4</sup> The Constitution of India,1950

Secondly, the Court dealt with the application of international conventions in the absence of required Domestic Law. The court highlighted that a relevant International Convention which is consistent with the fundamental rights as well in harmony within its scope can be applied for the promotion of the Object of the Constitutional guarantee as implied under the Article 51 (c) and Article 253 read along with the Entry 14 under the Union List in the 7th Schedule of the Indian Constitution. In addition to this, the court also emphasized Article 73.

The Hon'ble Supreme Court framed the guidelines to prevent sexual harassment at the Workplace, known as *Vishaka Guidelines*, that were to be treated as law declared under Article 141 of the Indian Constitution. These guidelines were the foundation for The Sexual Harassment of Women at Workplace Act.<sup>5</sup> The court also suggested to have proper techniques for the implementation of cases where there is sexual harassment at workplace. The main aim/objective of the Supreme Court was to ensure gender equality among people and also to ensure that there should be no discrimination towards women at their workplace.

After this case, the Supreme Court made the term Sexual harassment well defined, accordingly any physical contact and advances, a demand or request for sexual favours; sexually coloured remarks; showing pornography; any other unwelcome physical, verbal or non-verbal conduct of sexual nature will come under the ambit of sexual harassment.

### **CHARACTERISTICS OF VISHAKA GUIDELINES <sup>6</sup>**

The court, for the first time, relied on an international human rights law instrument, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>7</sup>, to establish guidelines known as the Vishaka Guidelines. It essentially gave twelve guidelines to be followed in various areas and fields of law, even when a new law is to be enacted.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- making the duty of the employer or other responsible persons in workplaces or other institutions to prevent sexual harassment and to provide for the resolution and settlement mechanism.

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<sup>5</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

<sup>6</sup> Ibid

<sup>7</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

### CRITICAL ANALYSIS

The Hon'ble Supreme Court of India took a great step towards the empowerment of women by issuing guidelines to curb sexual harassment at Workplace. On a serious note, this case deals with one of the most sensitive and needed issues for women and indeed, has shed light on the same, to a certain extent. If I draw parallels between the situations back then and now, Sexual harassment still prevails to be a menace to women. Even after eight years of the enactment of the Sexual Harassment of Women at Workplace Act.<sup>8</sup> there are several incidents of sexual harassment being reported, moreover, many go unreported.

The Act, which was supposed to be very victim-friendly, causes complications for the victim at every turn. Many sections are self-defeating and nullifying, and certain essential features have gone unnoticed. Essential mechanism procedures such as the provision of legal expertise, clinical counselling facilities, medical insurances related to the violence, compensation from the employer, and so on have not been made available. According to me any such conduct done directly or indirectly under the definition of Sexual Harassment hampers not only the the right of women to life but also affects there dignity to live. It hinders there mental and physical health. Sexual harassment shall be avoided and the equality between the genders shall be established at workplace.

In a severely affected society like India, a firm and serious effort on the part of the legislature is necessary to address and remove this problem. The legislature should thoroughly review the Act and address the flaws that it contains. The ultimate solution is the real change in the mindset of society to establish gender equality. This huge gap can be enrooted to the gender stereotyping

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<sup>8</sup> Ibid

mindset of the society. Only then, the feathers of Women Empowerment can be flaunted with pride.

## CONCLUSION

The constitutional principles of equality and liberty have been upheld by the Hon'ble Supreme Court of India in the *Vishaka* Judgement. Government should make strict laws regarding the aversion of sexual harassment at workplace, because it should realize that, women also constitute the working population of our country. Hence, it is legal as well as a moral duty to provide a safer work environment for women to prosper.

It is the most significant landmark case in the history of cases involving sexual harassment of women. The Vishaka guidelines (now been superseded by the Sexual Harassment<sup>9</sup> of women at the workplace (prevention, prohibition and redressal) Act, 2013). are a set of guidelines that were instituted by the Supreme Court of India to ensure the safety of women at workplaces and lays down the guidelines for dealing with the cases that are related to sexual harassment at the workplace.

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<sup>9</sup> Supra