
VISHAKA V. STATE OF RAJASTHAN (1997) 6 SCC 241

Parishi Chaudhary, B.B.A.LL. B. (Hons), Rashtriya Raksha University, Gandhinagar,
Gujarat

Introduction

Presented is a case initiated by some social activists and NGOs through Public Interest Litigation before the Supreme Court of India, under Article 32 of the Constitution. The petitioners requested enforcement of the constitutional rights of working women under Articles 14, 15, 19 and 21 of the Constitution, in light of the "*prevailing climate in which the violation of these rights is not uncommon*".

The instant trigger fact was the gruesome gang-rape of Bhanwari Devi, a women's development project social worker from Rajasthan, who attempted to stop a child marriage. This case brought out not just the brutality but also the degree to which women at work and public life may be open to grave sexual abuse and the lack of adequate legal or administrative protections.

In short, in the absence of any law dealing with sexual harassment in workplace, this case asked Supreme Court whether it could issue guidelines (to be read as law until legislature comes forward with its own) to protect dignity, equality and secure working conditions for women.

Facts

The Vishaka case resulted from a well-known 1992 case in Rajasthan. Bhanwari was a grassroot-level worker tasked with preventing child marriage and promoting issues important to women. She drew condemnation from a section of a Gujjar community in May 1992 by reporting a "bal vivaah" planned for a nine-month-old girl. As she and her husband were returning home on September 22, 1992, five men from a section of a family opposed to Bhanwari's activities stopped them. Bhanwari was gang-raped in front of her husband by those men as a way of retaliation. The rape and shame surrounding Bhanwari were aggravated by a cascade of monumental blunders by the law enforcement agencies. For instance, a delayed 52-hour filing of a First Information Report and a bizarre acquittal by a trial court in November 1995 on specious grounds "becoming almost improbable that an uncle and his nephews would

rape anyone together" and "it is not possible that rape occurred in presence and presence only of a husband."

The criminal cases in the lower courts did not yield a satisfactory redress: the accused were acquitted due to insufficient evidence. This pointed not only to societal hurdles but also legal and procedural gaps.

Women's organizations and NGOs subsequently filed petitions requesting that sexual harassment by employers or in workplaces be declared to be a breach of constitutional rights, and judicial guidelines be established until legislation is enacted.¹

Procedural History

This case came to the Supreme Court on Petition under Public Interest litigation under Article 32 of the Constitution of India. Petition under Public Interest litigation under Article 32 of the constitution by the Petitioners suo motu for working women across the country against the State of Rajasthan and the Union of India. Petitioning parties held the State of Rajasthan and the Union of India accountable by their allegations that the factual framework of the Bhanwari Devi case represented the complete lack of avenues for the respect of working women. The Supreme Court framed the three-judge constitution Bench consisting of the Hon'ble CJI Verma, and Hon'ble JJ. Manohar and Kirpal, who were provided legal assistance by senior counsel including the Solicitor General for the Union, Amicus Curiae Shri Fali Nariman.

Key Issues

1. **Violative of Fundamental Rights:** Whether sexual harassment of working women amounts to violation of Articles 14 (equality), 15 (non-discrimination on grounds of sex), 19(1)(g) (right to practice any profession, trade, occupation) and 21 (right to life & personal liberty, including right to live with dignity) of the Constitution.
2. **Legislative Vacuum:** No domestic law, no specific statutory provision addressing sexual harassment of women in workplace; can the Court fill this gap by judicial approach?²

¹ National Commission for Women

² National Commission for Women

3. **Application of International Norms/Conventions:** In the absence of domestic law, whether international conventions or treaties addressing discrimination and rights of women (e.g., CEDAW)³ can be incorporated into the Constitution, to interpret basic rights.
4. **Obligations of Employers / Workplace Mechanism:** What are the kinds of duties or responsibilities of employers, institutions, and government agencies to avoid and rectify sexual harassment? What procedural protections should be enacted?
5. **Nature of the Remedy:** Whether the Court has power to declare guidelines which are binding in the absence of legislation; can these guidelines be considered as the "*law declared*" by the Court under Article 141, till legislation?

Analysis

Arguments

- Petitioner Side- Sexual harassment is a sex-based discrimination which disfigures working women's dignity, safety, capacity to practice profession. Articles 14, 15, 19(1)(g), 21 rights are involved.

Constitution assures equality and dignity; right to life encompasses right to live with human dignity; safety from sexual harassment is therefore inherent.

Due to the lacuna in statutory law, international treaties ratified by India (e.g. CEDAW) need to be read into and applied for interpretation. Obligation of courts in enforcing fundamental rights under Art. 32.

- Respondent (State / Union) Side- Recognized gravity of issue, but stated that making of laws is a legislative function; judges must not make law in detail. They can resist judicial encroachment. (But in Vishaka, Union and State agreed to guidelines, according to the Solicitor General's help.)

Pointed out that there are certain legal provisions in IPC (such as outraging modesty, insult to modesty etc.), but they are insufficient and not particularly aimed at workplace

³ CEDAW (Convention on the Elimination of All Forms of Discrimination against Women)

harassment.

Judicial Reasoning & Implications

1. The Court ruled that sexual harassment at the workplace is a denial of women's basic rights under Articles 14, 15, 19(1)(g) and 21. It noted that Article 19(1)(g) incorporates the right to pursue any occupation, trade or profession, and that such right means that the workplace has to be a secure place.
2. Article 21's promise of "life and personal liberty" encompasses in itself the right to live with dignity, safe environment, health etc. The Court noted that the lack of protection against sexual harassment erodes women's dignity.
3. Because no law was enacted on the subject, Court held that international conventions and norms (which are not repugnant to basic rights) can be relied upon for interpreting constitutional protections. This would include CEDAW etc.
4. The Court stressed that employers and institutions have a responsibility to take preventive measures, establish complaint mechanisms, raise awareness, discipline, ensure non-victimization of complainants. The judgment set a set of guidelines (come to be referred to as Vishaka Guidelines) to be adhered to until legislation is enacted.
5. These guidelines (inter alia) contain delineation of sexual harassment; formation of Complaints Committees with majority women, presided over by a woman; procedural protection; employer's duties; employers to take appropriate action in case of misconduct; consciousness raising programmes etc.
6. The Court ruled that such guidelines would be considered as law declared under Article 141 and would be binding on all courts till such time they are substituted by valid legislation.

Implications

1. Instantly brought into existence a binding code of conduct for all workplaces (public and private) to prevent and rectify sexual harassment.

2. Increased awareness & gave legal remedy to women victims of harassment.
3. Placed responsibility on employers to be proactive, not just reactive.
4. Established precedent for use by courts of international norms in interpreting core rights.
5. Instilled expectation and pressure upon legislature to pass a statute on sexual harassment at workplace.

Court / Government Actions

- The judgment of the Supreme Court itself promulgated Vishaka Guidelines, to be adopted in all workplaces, until legislation is brought in.
- The Union of India and State of Rajasthan gave their in-principle approval to these guidelines.
- Later (after several years), Parliament passed The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (commonly referred to as the POSH Act), which legislated most of the guidelines enunciated in Vishaka.
- Following the judgment, awareness, administrative regulations, internal complaints committees etc. in most workplaces began to be established, at least under the Vishaka guidelines. Enforcement, however, has been inconsistent.

Commentary

This Vishaka judgment is seen as a major landmark in Indian constitutional law. Any discussion of the judgment's significance has to discuss its legal innovations; legally, this judgment has been seen as a major shift in the way sexual harassment is understood. No longer is this type of violation seen merely as a crime of harassment; sexual harassment is seen as a violation of human rights. This is a leap that has not been seen anywhere else in the world; certainly not before this judgment. Perhaps this is no accident. As has been so beautifully phrased, "there were no equals to guide us. There were no precedents to rely on. Only statutory vacuum and the lacuna of a recognized crime of 'harassment at the workplace.'" At this point

of utter failure, this judgment came in with bold action in the interpretation of Articles 32 and 141. This judgment has become a landmark on how rights must be protected.

Socially impacting the community at large, the judgment by the Court in the Vishaka case reformed the manner in which people viewed gender and work relations. It satisfied the sentiments of millions of working women who had suffered injustice over the years. Further, the judgment increased awareness within the community at large regarding what the term 'sexual harassment' actually means. In fact, the judgment holds great importance for granting legitimacy to the rise of feminism within the country. In reference to this particular judgment, the Court recognized the dignity of women in relation to the right to work by holding that harassment in any form whatsoever was totally unacceptable. Thus, the image of the 'Dalit Woman,' who had been marginalized within the social hierarchy of the community at large, took the stance of the 'woman struggle.' Specifically, the judgment recognized the relevance of the harassment being related to the 'health and safety.'

From the jurisprudence point of view, the judgment has had a lasting impact on the interpretation of the Constitution. By expanding the scope of Articles 14 and 21 to the domain of workplace dignity, the judgment set the stage for future judgments that were to be passed in the domain of labor rights. By opting to use international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Beijing Platform for CEDAW Entry Point, the judgment set the pace for future judgments to refer to these conventions to lay down their interpretations. By also emphasizing the right to work through the contours of Article 21's "right to life," the judgment indeed added to the enrichment of Article 21.

Vishaka has held in Constitutional Law that the "right to work with dignity" is justiciable, and has been cited for observing that workplaces free from danger are included in the mandate of equality promulgated in the Constitution. It was cited, for example, to hold the Supreme Court propounded opinion in *Medha Kotwal Lele v Union of India* (2013), where Vishaka was cited as binding relevant authority under Art 141 and noted that "Many women still struggle" to find safe workplaces 15 years after Vishaka was decided. Vishaka legitimized PIL as an advocacy mechanism to expand social rights beyond the normal boundaries defined for public rights as social action and reinforced the relevance of Fundamental Duties (Art 51) and Directive Principles (e.g., 42 on humane work conditions) to indirectly encourage rights creation and

enforcement.

Developments following judgments: Vishaka has faced several challenges in terms of its legacy and how it has affected society. First, some positive changes resulted from it and some rules under the Act. For instance, there has generally been a growing trend in registered complaints. Moreover, there has emerged a culture of recognition that harassment in society cannot be tolerated. Nevertheless, there has been a "tick-box" culture around some organizations. Several investigations indicate that although there has been a clear enhancement in recorded complaints under the POSH Act in large firms, there has generally not been a corresponding enhancement in redressing issues. Furthermore, there has continued to exist a large number of complaints that are not cleared within 90 days. Additionally, some researchers argue that there has emerged a culture where a witnessing employee in a small or a middle-sized company has not been effectively handled following Vishaka and its creation of internal committees. The implication of all this from a legal context has resulted in a strong legislation based on Vishaka. However, socio-cultural challenges continue to negatively influence a large number of female workers.

Currently, the Vishaka judgment is being invoked as a primary precedent in all cases of harassment at the workplace or any issues pertaining to gender equality. Indeed, the "Vishaka Guidelines" have become a part of the fabric of jurisprudence. But there is no doubt about the far-reaching impact of this judgment, which has been reaffirmed by a direction of the Supreme Court of India that "sexual harassment is a violation of basic rights, which has international implications." This judgment has been relied on for other progressive rulings. Globally, this judgment is regarded as a trend-setter in which a nation's own judiciary has established standards on harassing behavior. Even the Bangladeshi judiciary has relied on this.

Conclusion

Findings-

- The Supreme Court in Vishaka was right in holding that sexual harassment of working women is a violation of several constitutional fundamental rights (Articles 14, 15, 19(1)(g), and 21).
- The judgment rightly filled a legal vacuum in the absence of legislation.
- The borrowing of international conventions for construction of constitutional

guarantees was a useful tool, in the light of India's ratification and obligations.

- The employer and institution obligations to avert harassment, to establish complaint procedures and to guarantee safe atmosphere are key tangible actions.

Recommendations-

- **Strengthening Implementation:** Even post-POSH Act 2013, effective implementation (internal complaints committees, sensitization, periodic training) needs to be assured across all workplaces, particularly in small and rural areas.
- **Monitoring & Accountability:** There must be mechanisms at state or central level to monitor compliance, with clear accountability for employers who do not keep a safe work environment.
- **Awareness & Education:** Sensitization programmes for all workers (women & men), particularly at grassroots, to decrease stigma and promote reporting.
- **Legal Reform:** Review and streamline POSH Act provisions for meeting gaps (delays, harassment victim-protection, third-party harassment etc.), keeping in view the way the guidelines in Vishaka were worded.
- **Policy & Administrative Support:** Government must issue more explicit notifications or regulations under its institutions, have every work-place (including non-formal sectors) have complaint committees and preventive policies.