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## CASE COMMENT: VISHAKA v. STATE OF RAJASTHAN (1997)

*Alokika Singh Kushwaha*

### INTRODUCTION

In the 1990s, when there were no such laws to address sexual workplace harassment, the horrific case of Bhanwari Devi exposed us to the failure of our judicial system and demanded urgent legal intervention. The case of *Vishaka vs. the State of Rajasthan* marked a significant turning point for women's rights, making the workplace environment safer for women nationwide. The case was a result of the brutal gang rape of a social worker who belonged to a small town in Rajasthan while she was at work. In response to this, a collective PIL was filed by social activists, and the Supreme Court stepped in as a constitutional guardian by interpreting Articles 14, 15, 19(1)(g), and 21 to frame binding guidelines. Which later laid down the *Vishakha Guidelines*, which serve as the basis of sexual harassment in the workplace, not only work on domestic laws, but also integrate them with international treaties like CEDAW, thereby laying the foundation of the POSH ACT 2013

### BACKGROUND AND THE FACTS OF THE CASE

The case highlighted deep gaps in the Indian legal and institutional response to gender-based violence. This all started in 1992 when Bhanwari Devi, a social worker employed in Bhatari, Rajasthan, the government's women development programme, was working to prevent the infant child marriage in her village. This act angered the local upper caste men. In response to her actions, she was gang raped by five men in front of her husband, who was also assaulted. This incident did not stop her; they fought for justice, but were followed by systematic failures. Firstly, the police didn't register an FIR under political pressure; the medical examination was mishandled; and the trial court acquitted all the accused due to a lack of evidence. The incident not only showed the lack of legal and institutional mechanisms for sexual harassment in

workplaces but also the lack of gender equality at the grassroots level, with an attempt to demand justice. Several women's rights groups and NGOs, including *Vishaka*, filed a **Public Interest Litigation (PIL)** under **Article 32** of the Constitution<sup>1</sup> before the Supreme Court.

### ISSUES RAISED

1. Whether the acquittal of the accused and not providing a safe environment for women in the workplace could create a character that violates the fundamental rights guaranteed under Articles 14, 15, 19(1), and 21?
2. Does the Supreme Court have the authority to frame binding guidelines in the absence of any specific laws to safeguard these rights?
3. Can the international conventions, especially as CEEDAW, be used to justify or interpret constitutional rights in domestic laws?
4. Lastly, whether the employer responsible for the sexual harassment that occurs in their place of employment?

### PETITIONER'S ARGUMENT

The petitioners were the women groups and NGOs, often called Vishaka demanded immediate judicial intervention on various grounds:

- As sexual harassment in the workplace creates a hostile environment for women, denying them to work effectively, which infringes their right to work with dignity and other rights like Articles **14** (equality), **15** (prohibition of sex discrimination), **19(1)(g)** (right to practise a profession), and **21** (right to life and dignity)<sup>2</sup>
- They demanded that both the state and the employer are constitutionally obliged to provide a suitable environment for the workplace and to prevent any violation of fundamental rights within their workplace; apart from that, they also argued that simply depending on criminal laws was inadequate.
- They relied on Article **32** and the Court's remedial powers to easily and in a limited time secure fundamental rights rather than waiting for parliamentary legislation, thus led the court to issue immediate binding guidelines

### RESPONDENT'S ARGUMENTS

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<sup>1</sup> Services, *Jus Scriptum* <https://www.juscriptumlaw.com/services-6>.

<sup>2</sup> INDIA CONST. Arts. 14, 15, 19(1)(g), 21.

The state and other employers from different government departments, in response to the petition, raised several counterarguments. They argued that existing criminal laws already addressed issues like rape and assault Indian Penal Code (*e.g.*, *Sections 354 and 509 IPC*), and making separate guidelines is unnecessary.

- There was a demand that, instead of courts intervening in administrative and legislative functioning for workplace conduct and issuing guidelines, parliament should legislate a comprehensive statutory law to govern a secure and safe workplace.
- Many respondents submitted that international treaties like CEDAW alone are unable to interpret without any enforceable domestic laws; they can only assist in influencing such interpretations.

### JUDGEMENT OF THE CASE

The landmark case was led by a three-judge bench of then CJI J.S. Verma, Justice Sujata V. Manohar, and Justice B.N. Kirpal, who ruled that even if there is no legislation for sexual workplace harassment workplace it stated that in every instance it violated fundamental rights that are guaranteed Article 14, 15, 19(1) (g) and 21 while also goes against gender equality and right to life and liberty. The Supreme Court acknowledged that, in the absence of any law, practical legislation is required; the court exercised its power under Article 141<sup>3</sup> Article 32 of the Constitution of India further held that the guidelines would act as law until any legislation is formulated. The apex court also referred to several international conventions. The Beijing Statement of Principles on the independence of the Judiciary in the LAWASIA region was cited.<sup>4</sup> This describes how the judiciary can enact its own laws to protect individual rights when there is no legislation. While also referring to the CEDAW Convention on the Elimination of All Forms of Discrimination against Women, Article 11 (1) (a) & (f) and Article 24<sup>5</sup>. There were also chances that women reporting sexual harassment could affect their professional careers, and often forced them to work in a hostile environment; the court has ruled out that physical contact is not a requirement for sexual harassment. The ‘**Vishaka Guidelines**’ were then established by the Supreme Court, which prevent sexual harassment in the workplace. It also emphasised certain regulations.

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<sup>3</sup> *Constitution of India art. 141 (as amended 1950)*

<sup>4</sup> *LAWASIA, Independence of the Judiciary in the LAWASIA Region (1982).*

<sup>5</sup> *Convention on the Elimination of All Forms of Discrimination Against Women, Mar. 1, 1980, 1249 U.N.T.S. 13, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited Oct. 12, 2025).*

- Employers in all public and private places must take steps to prevent sexual harassment, including private employers in orders under the Industrial Employment (Standing Orders) Act, 1946. And providing appropriate conditions of work to prevent any hostile conditions for women
- It clearly defines the statement of sexual harassment as it includes unwelcome sexually determined behaviour, like showing pornography or making sexual demands, which can be humiliating and cause health and safety problems would rather be compensated or effective procedures be implemented.
- It also led to the setting up complaints committee for ensuring timely and effective resolution of complaints, regardless it is a legal or service rule violation, while also creating awareness for the same.
- If any third party is involved in sexual misconduct, the employer is the one responsible for providing support and proper preventive and effective measures to the affected person.

These regulations later led to the ***Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013*** <sup>6</sup>

### CRITICAL ANALYSIS

The case of *Vishaka vs the State of Rajasthan* served as a first major instrument for gender rights in India and acted as a reform in the public life of women. The decision of the Hon'ble Supreme Court not only spirited judicial activism but also provided women with legal combat to fight against sexual harassment, thus empowering them. It laid down the guidelines for prevention at a time in the 1990s when caste prevailed and women had no public life. While there was no legislation, the Supreme Court intervened in the matter and formulated the rules, which are often seen as controversial, as they violated the separation of powers. Even if the judiciary tried to implement the Vishaka guidelines to prevent what happened with Bhanwari Devi and many other women before, it still lacked somewhere; it lack of implementation, and complaints were not reported either by the employer or the employee, or even addressed due to social and cultural attributes, which further led to more gender inequality.

Since the Vishaka guidelines were laid down much before a decade ago, it was framed into a legislative act in 2013 describes that women were still fighting for their rights. This takes us to

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<sup>6</sup> <https://wcd.delhi.gov.in/wcd/sexual-harassment-women-workplaceprevention-prohibition-and-redressal-act-2013sh-act-2013>.

the harsh reality that women are looking for a “safe environment” rather than to punish the offender. Even today, many women are unable to work in the public sphere due to existing discrimination in the workforce.

## **CONCLUSION**

The decision of the case of *Vishaka vs the state of Rajasthan* not only showcased how the judiciary can intervene in legislative matters when any individual rights are infringed upon to fill legislative gaps, and the need for effective implementation. The Vishaka guidelines, which still serve as a first rulebook to address the case of workplace harassment in India, are considered historic. The case acts as a backbone for all women to safeguard their rights and to empower them with legal powers so that they can work in a free and fair environment and overcome all social and cultural factors of society.