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CASE COMMENTARY ON VISHAKA V. STATE OF RAJASTHAN, (1997) AND ITS LEGISLATIVE LEGACY

- Swasti Jain

1. INTRODUCTION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act (POSH) 2013 marks an important turning point that has had a major impact on India's labour law and legal rights of women. Prior to this legislation, women's experience of being harassed at work was extremely high. Instances of workplace harassment were frequently dismissed as simply being personal issues or part of the general hazards associated with being at a workplace, rather than being regarded as a violation of bodily autonomy and dignity of a person.

Although POSH Act, 2013 is a modern day legislation regulating workplace rights in India, it is important to remember that all the laws surrounding it have been developed on the back of a landmark judicial precedent, namely, the Vishaka v. State of Rajasthan judgment in 1997. In order to understand the current legal machinery of workplace rights in India, it is therefore important to analyse the legal structure behind the Vishaka case. This commentary provides an analysis of Vishaka as the main force behind change, analysing not only the impact of the historical precedents established by this case but also the future institutional problems faced as a result.

2. HISTORICAL BACKGROUND AND ROUTE TO LEGISLATION

The POSH Act is inseparably bound to the landmark case of Vishaka v. State of Rajasthan (1997). The case arose from the brutal gang rape of Bhanwari Devi, a social worker who worked for the Rural Development Project under Government of Rajasthan. Her assault occurred as a direct result of her effort to prevent child marriage within her community. This

incident exposed the failure of the state in protecting its female employees while they were in their workplace.

As a result of this institutional failure, an organization advocating for women rights filed a public interest litigation at the Supreme Court of India. The Supreme Court recognized that although women were vulnerable and unable to work safely as employees, the legislature had failed to provide for their protection. The Court placed its authority under Article 141 of the Constitution of India and established what we now know as the "Vishaka Guidelines."

The Court placed these guidelines within the framework of the following constitutional guarantees:

- Article 14: Equality before the law
- Article 15: Prohibition of gender-based discrimination
- Article 19(1)(g): The right to practice any profession or carry on any occupation
- Article 21: The right to life and personal liberty, which includes the right to live with dignity

Additionally, the Court used its international obligations, specifically the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as a source of authority in integrating international human rights norms with domestic labour law. The Vishaka Guidelines became the official law of the land for around 16 years until Parliament codified these principles into law when it enacted the POSH Bill in 2013.

3. THE LEGACY OF VISHAKA GUIDELINES "WORKPLACE" REDEFINED

The principal characteristic of the POSH Act is that it defines 'workplace' in broad terms and this reflects the modernised understanding of how we currently work. Section 2(o) defines the term 'workplace' in a much greater way, such as

- Government body or private sector enterprise
- Hospital or Medical Institution
- Educational Institution or a Sports Complex
- Means of Transport being used while at work
- Unorganised Sector (Private Households, Hiring Staff).

The broad geographic reach of the Act guarantees protection of women from sexual harassment, whether they are working in formal, highly-regulated corporate boardrooms or within any informal work setting.

Section 2(n) adds to this by providing an illustrative definition of sexual harassment that is not exhaustive and includes physical contact and advances, requests or demands for sexual favours, sexually inappropriate remarks, non-consensual showing of pornography, and any other sexually related conduct of physical, verbal, or non-verbal nature that is unwelcome, establishing the definitions of "quid pro quo" harassment for employment benefits based upon sexual favors, and "hostile environment" with respect to intimidating or offensive behaviours present in the workplace being equally as damaging as harassment through use of psychological coercion or other forms of physical misconduct.

4. REDRESSAL MECHANISMS: THE ICC AND LCC FRAMEWORK

The statutory enforcement mechanism for the POSH Act relies upon a decentralized internal adjudication model. Under Section 4, every employer who employs ten or more worker is legally mandated to constitute an Internal Complaints Committee (ICC). This committee shall consist of:

- Presiding Officer: Must be a senior-level woman employee.
- Internal Members: At least two employees committed to the cause of women or possessing social or legal work experience.
- External Member: One independent individual from an organization or association familiar with issues relating to sexual harassment.

In addition to ICCs, the Act contemplates the creation of Local Complaints Committees (LCCs) at the district level for unorganised and domestic workers, as well as for cases in which there are fewer than ten employees. Section 6 of the Act establishes that LCCs will be used to hear complaints against an employer that are directed against the employer.

Section 9 of the Act provides that a woman who has been aggrieved by an act of sexual harassment will present her formal complaint to the appropriate ICC or LCC body within three months of the incident. In cases where there is justifiable cause, the ICC or LCC can extend the three month period for filing a formal complaint. Section 10 of the Act allows for initial

attempts at reaching a resolution of a complaint through conciliation, provided that the resolution of the complaint does not involve any form of financial settlement.

5. ANALYSIS OF SHORTCOMINGS IN IMPLEMENTATION OF THE VISHAKA VISION

Implementing the POSH Act raises many systemic issues despite being developed with progressive conduct in mind. The Act's gender specific approach limits protections only to female employees who are subjected to sexual harassment, but does not provide similar protection to male or non-binary employees. Such restrictive definitions of who constitutes a potential victim of workplace sexual harassment create inconsistencies between the Act's intent and the evolution of constitutional principles of equality and inclusion in the workplace.

Reliance on Internal Complaints Committees (ICCs) to address complaints regarding sexual harassment raises significant concerns about the ability of ICC members to impartially conduct their investigations. ICC members are employees of the organisation itself, and in many cases, may not possess the judicial expertise required to conduct fair investigations and may be inclined to find ways to protect the reputation of the organisation when investigating a complaint.

The Act also struggles to effectively protect workers in the informal sector. The Local Complaints Committees (LCCs) were introduced for unorganized workplaces, many domestic workers, agricultural labourers, and daily-wage employees lack awareness, accessibility, and legal literacy, making these protections largely ineffective in practice.

Also, Section 14, which penalises maligned claims and false evidence of sexual harassment, creates a chilling effect on employees wishing to report an instance of sexual harassment to an LCC or ICC. While the Act provides for an inability to prove a complaint is not, in and of itself, proof of malice, many individuals fear the consequences of reporting an act of sexual harassment, as they fear being subject to counter allegations by their employer or co-workers.

6. INTERSECTION TO SUBSTANTIVE CRIMINAL LAW

Parallel to the civil remedies arising out of the Vishaka framework and subsequent legislation, the legal consequences of criminal acts remain distinct. If an incident rises to the level of being a criminal act, then in addition to using the civil process to obtain relief, you will also be able to hold that person's criminal liabilities through the normal criminal law process.

Following the enactment of India's new penal code, the Bharatiya Nyaya Sanhita 2023, there are specific provisions under the act that address the concept of violating a woman's body and modesty:

- Section 74: Assault or use of criminal force against female with purpose of outraging her modesty, and
- Section 75: Criminal penalties for sexual harassment,
- Section 77: Voyeurism,
- Section 78: Stalking.

Under Section 19 of the POSH Act, employers bear absolute obligation to assist the aggrieved woman if she chooses to initiate separate criminal proceedings under the BNS alongside the internal ICC inquiry.

7. CONCLUSION

The POSH Act, 2013 was a revolutionary act for Indian workplace laws that identified that the right to work cannot be separated from the right to dignity and safety. With the emphasis on the need to address the issue in institutions rather than individuals, the POSH Act defined workplace sexual harassment as a serious violation of constitutional equality. Nevertheless, there is still a considerable difference between what the legislation aims to achieve and what it has accomplished thus far. The mere existence of ICCs, inadequate enforcement in the informal sector, and the lingering threat of victim-blaming hinder the effectiveness of the legislation. The true impact of the POSH Act would be seen when workplaces are transformed into spaces protecting dignity, equality, and safety of its employees

8. REFERENCES

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