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Vishaka and others v. State of Rajasthan

MELVINA MARTIN

Case Citation	(1997) 6 SCC 241
Date of Judgment	13.08.1997
Court	Supreme Court
Petitioners	Vishaka and others
Respondents	State of Rajasthan and others
Bench	Hon'ble Judges- J.S. Verma, C.J.I., S.V. Manohar and B.N. Kirpal, JJ.

INTRODUCTION

Vishaka and others v. State of Rajasthan is a very significant case for women's rights, as it established workplace rights for women's protection by first laying down Vishaka guidelines and then formulating the PoSH (Prevention, Prohibition and Redressal) Act, 2013. The writ petition was particularly filed for the enforcement of women's rights, especially working women, under Articles 14, 19, and 21 of the Indian Constitution.

FACTS OF THE CASE

¹Bhanwari Devi, a Dalit Activist working as a social worker who was employed by the Government of Rajasthan in WDP (Women Development Programme), was gang raped by five men brutally. Her role involved spreading awareness about women's rights and

¹ PoSH at Work, Revisiting Vishaka v. State of Rajasthan (2025)
<https://poshatwork.com/revisiting-vishaka-v-state-of-rajasthan/>

discouraging harmful social practices, including child marriage. In 1992, while carrying out her official responsibilities, she intervened to prevent the marriage of an infant girl in a village in Rajasthan. Her efforts were met with hostility from influential members of the local community, who viewed her actions as interference in their customs. On 22 September 1992, while she and her husband were working in their agricultural field, a group of five men attacked them. After assaulting her husband, the men gang-raped Bhanwari Devi as an act of retaliation for her attempt to stop the child marriage.

The case drew national attention to the absence of any legal mechanism to address sexual harassment faced by women in the course of their employment. In response, several women's organisations and a group of social activists, under the common name Vishaka, approached the Supreme Court by filing a Public Interest Litigation under Article 32 of the Constitution of India. Naina Kapur, who was heading the social organisation (Shakshi), filed the petition. The petition was not directed against the acquittal of the accused but sought judicial intervention to fill the legislative vacuum concerning workplace sexual harassment. The petitioners requested the Court to frame guidelines that would safeguard the fundamental rights of working women until Parliament enacted a comprehensive law on the particular issue.

LEGAL ISSUES

²The issues presented before the Supreme Court were:

- 1. Whether acts of sexual harassment in the workplace infringe the constitutional guarantees of equality, non-discrimination, freedom to pursue a profession, and the right to life and personal dignity under Articles 14, 15, 19(1)(g), and 21 of the Constitution of India.**
- 2. Whether the Supreme Court is empowered to issue binding directions and lay down legal norms to address workplace sexual harassment when no specific legislation exists on the subject.**
- 3. Whether the principles contained in international instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), may be applied by Indian courts to interpret and enforce**

² PoSH at Work, Revisiting Vishaka v. State of Rajasthan (2025)
<https://poshatwork.com/revisiting-vishaka-v-state-of-rajasthan/>

constitutional rights in the absence of inconsistent domestic law.

COURT'S DECISION

³The Supreme Court held that sexual harassment at the workplace violates the fundamental rights guaranteed to women under Articles 14, 15, 19(1)(g), and 21 of the Constitution. The Court observed that every woman has the right to work in an environment that is safe, secure, and respectful of her dignity. Failure to provide such an environment amounts to a denial of constitutional protections.

The Court noticed that there was no specific legislation in India dealing with workplace sexual harassment. Due to this legislative gap, it was considered necessary to frame guidelines to safeguard the rights of working women. Exercising its constitutional powers provided to the judiciary, the Court declared that these directions would be binding on all employers and institutions until Parliament enacted an appropriate law for the concerned issue.

The Supreme Court referred to the Convention on the Elimination of All Forms of Discrimination against Women CEDAW (Article 11 and 24) and other international instruments. It held that international conventions could be relied upon in interpreting fundamental rights where they were consistent with the Constitution and did not conflict with existing domestic law.

To ensure effective protection against workplace sexual harassment, the Court issued a set of directions that came to be known as the Vishaka Guidelines. These required employers to prohibit sexual harassment through clear workplace policies, establish an independent complaints committee headed by a woman with adequate female representation and the participation of an external member, provide an effective procedure for receiving and resolving complaints, protect complainants from retaliation, and conduct awareness programmes to inform employees about their rights and responsibilities.

The Court directed all public authorities, employers, and institutions to comply with these guidelines until suitable legislation was enacted. These directions remained in force until the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and

³ AIR 1997 SUPREME COURT 3011

Redressal) Act, 2013, which provided a statutory framework for addressing workplace sexual harassment and incorporated many of the principles laid down in the *Vishaka* judgment.

VISHAKA GUIDELINES

⁴Due to the absence of enacted law at that time for enforcement of fundamental rights for women at the workplace, the Supreme Court laid down certain norms and guidelines which have to be strictly followed by the workplaces or institutions. The norms and guidelines would be treated as a law which is declared by the Supreme Court. Certain norms and guidelines are:

- In the workplace or other institutions, it is the duty of the employer and responsible persons working in the institution to prevent any act of sexual harassment, and there should be necessary procedures for the resolution, settlement or prosecution when such acts of sexual harassment against women take place.

- Definition of Sexual Harassment is provided in the judgment as

⁵For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) physical contact and advances;

(b) a demand or request for sexual favours;

(c) sexually-coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

- The workplace or the institution has to create an appropriate complaint committee or mechanism for taking notice of the complaint made by the victim and taking appropriate actions in a time-bound manner based on the complaint made.
- The complaint committee should provide a special counsellor and other support services, and the committee should also maintain the confidentiality of the matter. The committee should be headed by a woman and half of the members should be women. A third party or any NGO should be involved in the committee who are aware of the issue of sexual harassment and also to prevent any undue pressure from seniors within the committee.

⁴ (1997) 6 SCC 241

⁵ (1997) 6 SCC 241

- During workers' meetings, the workers or the employees should be allowed to raise any issues regarding sexual harassment, and such issues should be discussed in the employer-employee meetings.

These guidelines were followed until the legislation occupied the field of sexual harassment of women in the workplace by enacting certain laws regarding it. On 9 December 2013, the Parliament enacted the PoSH Act (Prevention, Prohibition, and Redressal), which made the Vishaka guidelines legally binding.

CONCLUSION

⁶Vishaka and others v. State of Rajasthan is an important landmark case where the court recognized that women's right at the workplace is a fundamental right under Articles 14, 15, 21 and 19(1)(g) of the Indian Constitution and shows how the Supreme Court of India can fill the legislative gaps using binding guidelines and by referring to international human rights laws like CEDAW (Article 11 and 24). The case particularly shows how the legislative lacunae are covered by the judiciary by making guidelines and relying on international human rights laws that are consistent and in harmony with fundamental rights of the Indian Constitution.

⁶ PoSH at Work, Revisiting Vishaka v. State of Rajasthan (2025)
<https://poshatwork.com/revisiting-vishaka-v-state-of-rajasthan/>