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CASE COMMENTARY ON *VISHAKHA & Others. v. STATE OF RAJASTHAN and Others. (1997) 6 SCC 241*

~ Sakshi Mishra

The landmark judgment of Vishakha and others vs. State of Rajasthan is one of the most significant decisions that was delivered by the Honourable Supreme Court for the protection of women's safety and to protect them from sexual harassment at the workplace. Women's safety is always a crucial question in our society. Although there are many laws that already deal with women's safety and protect their rights after this landmark judgment, a new legislation has been passed.

The Indian constitution guarantees that every person has the right to work in an environment free from fear humiliations and discrimination but there is no such law which deals with the women safety at workplace which ultimately hampers the right of women and after such heinous case it is the duty of the guardian of the constitution to uphold the idea of constitution maker and therefore they give some guidelines to protect a women from sexual harassment at workplace which acts as a law of the land for all other sexual harassment at workplace cases until the legislature prevention has passed the new legislation, prohibition and Redressal Act 2013

The case also shows judicial activism where the Indian judiciary came to the forefront and took responsibility of those problems for which no laws exist even after the enactment of the law; precedents influence the judgement of the cases.

Background

The case revolves around a deeply rooted rivalry between Bhanwari Devi and the villagers. Bhanwari Devi is a social worker who works under the women's development programme in Rajasthan. She is authorised to spread awareness in the society and work for the women's development project, for which she is initially appreciated.

As part of her official duty one day, she tried to stop a child marriage of a nine-month-old girl in her village instead of the support from the villagers, she faced many social boycotts, isolation and many insensitive treatments.

On 1992 Bhandari Devi was brutally gang raped by Ramkant Gujar and five other members for taking revenge on her. When she approached the judicial system, she faced serious failure because the trial court acquitted all the accused because of lack of evidence and other procedural shortcomings.

This judgment spread an outrage in the society for the violation of right of the women and after that many non-working organisations and social activist along with the Bhanwari came forward and filed a public interest litigation in the name of Vishakha and others vs state of Rajasthan and others under the article 32 of the Indian constitution.

This writ was not filed only with the purpose to seek justice and a remedy to her, but it is an appeal in front of our honourable Supreme Court to prioritise women's safety and protect them from sexual harassment at the workplace.

This case doesn't only belong to the personal grievance, but it is a question mark on our constitution where we talk about the women rights and safety, but in reality, women are facing such heinous offence against her it is a question on the women safety equality, dignity and for their safe working environment which is guaranteed by our supreme law of the land.

FACTS OF THE CASE

Banwari devi is a social worker who works under the women's development programme in Rajasthan. She is authorised to spread awareness in the society and work for the women development project

Once as a part of her official duty she tried to stop a child marriage in her village Bhaateri on Aakha teej she found a Gujar family was performing a child marriage of a nine months old girl she tried to stop that marriage and seek the help of the police and delayed the marriage for a temporary time period but the next morning the wedding is performed.

But after this the rivalry is started between the Gujar family and bhawanri devi family. Instead of support from the villagers and the administration she faced social boycott isolation and many insensitive treatments because at the time the child marriage is very prominent and people use to celebrate it with full zeal.

On 22 sep 1922 when Bhanwari devi was working on her field with her husband the Ramkant Gujar came along with five other members from which one was his nephew.

They beat her husband with brick till he fainted and after that they all gang raped her and leave both of them at field in fainted condition.

Around 12 at night they come to senses and went to the police station for filling a F.I.R. against the accused but the police refused to register the F.I.R. because the Gujjars belong to the upper and rich class of the village and Bhanwari devi belongs to the lower cast the police asked her to be naked so the condition. can check whether she is raped or not which shows the evidence of insensitive treatment and the gender and caste discrimination faced by her.

Next day one of her friends who is also a social worker with her suggested her for the medical examination and take her to the hospital but there was a male doctor who refused her for the medical examination and refer her to SMS Jaipur hospital. When she reached there again the delay is caused by a hospital because they ask her for a magistrate order because it is a rape case.

When she reached to the magistrate for seeking an order the magistrate again caused the delay because of the influence of the Gujjars.

Ultimately it takes 52 hours delay as per the law of the land the medical examination must be done within 24 hours so that it will not temper any evidence but in her case the medical examination is not done neither the FIR is registered by the police.

This act outrage many non working organisation and social activist and they come forward and directly approach the judicial magistrate for seeking the justice.

The case Is started in the court of session and after all the proceedings the court acquitted all the five members because of lack of evidence and not only this but the court also mentioned that why any upper caste people raped a lower caste woman which is a shameful option given in the judgement of the case of Bhanwari devi.

Then they appeal to the High court but she didn't get any remedy over there too.

But after that media came as a blessing and in the Rajasthan Patrika an article is published and created a pressure on the judicial system and many non working organisation and social activist came forward and filled a public interest litigation under the article 32 of the Indian constitution.

In the petition there is main 04

Articles were highlighted and discussed which is article 14 equal protection of law and equality before law because the constitution guarantees that every person is equal in the eyes of law but Bhanwari devi faced many procedural shortcomings and inequality from the very initial stage of the offence and she faced gender inequality not only she but all women were continuously sexually exploited in the nation.

Secondly the article 15 of the Indian Constitution that prohibits discrimination against citizens on grounds of religion, race, caste, sex, or place of birth. They argued that the women are not equally treated in a society they were treated inferior to men when it comes to employment and they are

not equally pay as a man they face many genders discrimination on the basis of their biological appearance.

Thirdly article 19(1)(g) which guarantees the right to trade is also violated due to inequality and the gender discrimination faced by a woman at the workplace because they didn't get the same wages, respect and working condition as per men and there is no such law which deals with the women safety at workplace.

Forth and the most important article which is right to life and personal liberty guaranteed to every person in the territory of India the case doesn't only revolve around rape, but it also addresses inequality, gender discrimination, women's safety at the workplace and many more crucial topics related to women's rights which ultimately affect the right to life and personal liberty.

Issue before the honourable court

Whether sexual harassment at the workplace violates the fundamental rights guaranteed under the Constitution.

Whether the Supreme Court can issue binding guidelines for women's safety at the workplace in the absence of legislation.

Whether international conventions can be relied upon while interpreting constitutional rights.

Judgement of the court: -

After an endless efforts of the Bhanwari devi the supreme court give its verdict on 13th of August 1977 that sexual harassment at the workplace is a clear violation of the article 14,15, 19 (1)(g) and article 21 of the Indian constitution guarantee to the every Indian citizen of the Indian as a fundamental right as women is an equal part of the society so they had a right to enjoy equality non discrimination and work with same dignity and safety as men but if the women were facing such heinous offences then it is not just a clear violation of the fundamental right but also a clear violation human rights too.

The hounarble supreme court is known as the Guardian of the constitution so it is the duty of the court to protect the rights of the every person enshrined into the constitution as there is no such legislation which deals with the sexual harassment at the workplace place the court will beneficially interpretate the idea of the constitution and gave the guidelines for the protection of women at workplace until the parliament enact a new legislation for it and the guideline of the

Vishakha acts as a binding order and works as the precedent for the upcoming cases related to sexual harassment at the workplace.

India is a signatory to the CEDAW, which is the Convention on the Elimination of All Forms of Discrimination against Women.

The court emphasised that women's safety, equality and gender discrimination are not only domestic needs but international necessities, so that we can strengthen the human rights even more strongly and with this perspective, they were relying on an international convention to interpret the Indian Constitution

And given even more impactful judgment for women's rights and safety.

The judgment demonstrated judicial activism in its positive form by protecting constitutional rights where legislative action was absent.

GUIDELINE OF THE VISHAKA CASE: -

Employer should provide human and safe working conditions for women.

Every employer, company or organisation must have an internal complaint committee where a woman can complain against any kind of harassment or discrimination she is facing, which is also known as the Redressal committee, local committee or internal committee

The Hon'ble Code also defines the term sexual harassment as any of physical touch, directly or indirectly touching the female's private part or asking for any sexual favour for doing any work or showing them any kind of pornography and any obscene photos is included under the term of sexual harassment.

The Redressal Committee also conducts awareness programs where the employer guides both men and women regarding this guideline

And if any such complaint is registered by any woman then the committee will do an internal investigation and based on the investigation, the company or the employer himself may register a complaint against such an offence.

The Honourable Supreme Court also imposed the duty on the Government of India to enact a law for women's safety at the workplace with reference to these guidelines.

IMPACT OF THE VISHAKHA CASE: -

In 2013 application was filed on the name of Medhat Kotwal versus Union of India the Supreme Court again imposed a duty on the Government of India that it is a high time to enact a law with the reference of the guidelines and consolidate all other features of this guideline regarding the

women rights for the better implementation of the women's safety at the workplace and after the 17 year of the Vishakha case the legislature has passed a new law in 2013 named Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

First time in the history of India the court included an international law in their judgement.

The case is also a milestone because after this a nationwide awareness program was started; many POSH programs were conducted into the Institutions and organisations for the awareness of women's safety and also to make people aware of the guidelines of the Vishaka case.

CRITICAL ANALYSIS

The journey started from a very small village for a rape case and became a milestone in the history of India, challenging inequality, gender discrimination, right to work and right to life and personal liberty guaranteed under Part III of the Indian Constitution as a fundamental right. In this case, the Court beneficially interpreted the articles and enhanced the jurisdiction of every article for the upliftment of women and safety.

The court not only deals with fundamental rights, but it also mentioned many directives principle of the state policies that is equal pay for equal work, good working conditions, Maternity benefits and many more things for women's safety, and it also included international law in India.

Overall, the decision represents a careful balance between constitutional interpretation, judicial responsibility, and protection of fundamental rights.

CONCLUSION: -

The Vishakha case has an special place in the Indian constitutional jurisprudence shows the very diligent roll of Judiciary in India where the court merely does not stick to the words of the constitution but interpret it in such manner that it fulfil the purpose of the constitution makers and give an example of a living document that whenever there is a threaten to the human dignity the court will take the responsibility of it and protect them as they are The Guardian of Supreme law of the land. It is one of the most significant cases where we can see judicial activism, where the court fills the vacuum of the legislature and gives guidelines related to sexual harassment in the workplace until the legislature enacts a new law.

The judgment also demonstrates the constitutional values and the respect for fundamental rights and human rights while establishing a stronger position of a woman in a society

Although the new Act was enacted in 2013, the case acts as a precedent to other cases related to sexual harassment at the workplace.

The judgment remains a reminder that a truly democratic society must ensure that every individual can work with dignity, respect, and freedom from fear.

REFERENCE: -

- Vishakha v. State of Rajasthan, (1997) 6 S.C.C. 241.
- The Constitution of India.
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.