

VISHAKA V. STATE OF RAJASTHAN & ORS.

COURT: Judgement of the Supreme Court of India where Vishaka and other women's groups filed Public Interest Litigation (PIL) against the state of Rajasthan and the central government of India.

CITATION: (1997) 6 SCC 241

DELIVERED ON: 13th August 1997

BENCH: CJI J S Verma, Sujata V. Manohar, B. N. Kirpal

LAW APPLIED: The right to equality, the right to non-discrimination, the right to practice one's profession and Right to life.

The Constitution of India, 1950

1. Article 14 – *“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”*
2. Article 15 – *“(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
(a) access to shops, public restaurants, hotels and places of public entertainment; or
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
(3) Nothing in this article shall prevent the State from making any special provision for women and children.
(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]”*

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]”

3. Article 19(1) (g) – “to practice any profession, or to carry on any occupation, trade or business.”
4. Article 21 – “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

INTRODUCTION:

This case was a result of merciless gang rape of a social worker who belonged to a small town in Rajasthan while she was at work. Several NGOs and social leaders were the petitioners who put a 'class action' suit before the Supreme Court in the form of a PIL under Section 32¹ of the Indian Constitution. The petitioners were the same.

One of the reasons for the NGO and the social activists to file this PIL was to discover reasonable strategies to make the people aware of the true nature of ‘Gender Equality’ at workplace and how many women still face sexual harassment at workplaces mostly by their employer. The petitioners to the case wanted the court to address this issue, by applying judicial procedure, thus making the environment at workplace safer for the women of the country.

¹ Section 32- (1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

FACTS OF THE CASE:

“*The Vishaka v. State of Rajasthan & Ors*”², is the case that brought significant reforms for working women, this case specifically dealt with the issue of sexual harassment of women at workplace and also addressed the issue of ‘Gender Equality’. The PIL filed, in this case, as a result of brutal and merciless gang rape of a social worker named Bhanwari Devi. Bhanwari Devi, who closely worked with families in her village to stop the practice of child marriages, on a particular day while at work she was working with a family to stop marriage of an infant girl child.

As a result of this, she was brutally raped by 5 men who belonged to the upper class, she was raped in front of her husband. Bhanwari Devi and her husband turned to the police for help, but the police due to certain political pressure refused to file an FIR, and also refused to conduct any thorough investigation.

This was not the only hurdle that she faced in her path towards getting justice, when she went to the hospital for medical attention the doctors refused to mention ‘rape’ in her medical report and only mentioned her age in the report.

Even after all these hurdles, Bhanwari Devi and her husband did not lose hope and they approached the trial court in Rajasthan. The trial court acquitted all the 5 accused men in the cases, this decision was on the basis that there was no concrete evidence against the 5 accused, and it was hard for the court to believe that her husband was restrained while she was being raped, and he didn’t do anything.

Aggrieved by the decision of the court, Vishaka an NGO along with many other organizations approached the Supreme Court and filed a Public Interest Litigation under Article 32.

² (1997) 6 SCC 241

ISSUES RAISED:

1. Whether the decision of the trial court in the Bhanwari Devi's case violative of her fundamental rights guaranteed to her under article 14, 15, 19(1) (g) and 21 of the Constitution of India.
2. The other issue that the apex had to adjudicate was on the issue of gender equality, and the issue of sexual harassment that women face at the workplace.
3. Whether the employer has any role or responsibility in cases of sexual harassment cases.

RULE APPLIED:

1. Article 14 (the right to equality) - *“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”*³
2. Article 15 (The right to non-discrimination) - *“(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
(a) access to shops, public restaurants, hotels and places of public entertainment; or
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
(3) Nothing in this article shall prevent the State from making any special provision for women and children.
(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]
(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to*

³ Article 14 of The Constitution of India

educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.J”⁴

3. Article 19(1) (g) (The right to practice one’s profession) - *“to practice any profession, or to carry on any occupation, trade or business.”⁵*
4. Article 21 (Right to life) - *“No person shall be deprived of his life or personal liberty except according to procedure established by law.”⁶*

Before this case, the Indian Legislation lacked laws which would deal with the cases of sexual harassment of woman at workplace thus, the Supreme Court also referred to certain articles present in certain International Convention to which India is a signatory, one such convention was Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
- Article 11: *“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings⁷”.*
- Article 24: *“States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention⁸”.*

CASES PRESENTED BY BOTH THE PARTIES:

- The petitioners argued that Bhanwari Devi wasn’t the only woman upon whom such a horrific crime was inflicted, there were many women who didn’t come forward due to societal pressure and shame.

⁴ Article 15 of the Constitution of India

⁵ Article 19 (1) (g) of the Constitution of India

⁶ Article 21 of the Constitution of India

⁷ Article 11, Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 18 December 1979.

⁸ Article 24, Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 18 December 1979.

- The other point was that, before the trial, the complainant presented that while women make an official complaint, no substantive redress is available to them, because India does not have any formal laws and/or regulations on offenses such as abuse of women at work.
- The petitioner urged the court to urge the government of India to refer articles of International Conventions and a frame certain guidelines that would govern issues like Gender Equality and harassment of women at workplace.
- The petitioners relied primarily on the case of “*Nilabati Behera v. State of Orissa*”, where the court had referred to a provision in the ICCPR to support its view “an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right”, as a public law remedy under Article 32, distinct from the private remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity⁹.
- The petitioner also relied on the case “*Minister for Immigration and Ethnic Affairs v. Teoh*”¹⁰, it was held in this case that in case where is a lacuna in the law or in case, there is an absence of certain law in regards to a legal issue, then the court can refer to international conventions, to the extent that they are not inconsistent with the fundamental rights of the people.

Decision of the Supreme Court:

This case was heard by a three-judge bench, headed by Justice J.S. Verma, the bench held that even though there is no provision or article that explicitly defines ‘Gender Equality’, it can be found under the scope of article 14, 19, 21.

Whenever a woman suffers any kind of sexual harassment at the workplace it violates the basic human rights, it especially violates the concept of ‘Gender Equality’, which in turn violates the above-mentioned fundamentals rights of the women that are guaranteed to them under the Indian Constitution. Such violations are also violative of their fundamental right guaranteed to them under Article 19 (1) (g), which states that citizens of India, have a right

⁹ (1993) 2 SCC 746.

¹⁰ 128 ALR 353.

to practice any profession of their choice, or to carry out any occupation, trade or business. This right in particular casts a legal obligation on the employer to provide the women employees with a safe environment and ensure that there is no discrimination between the male and the female employees. The court observed that Right to Life, as embodied under article 21 included the right to live with dignity.

The Supreme Court was in consensus with the petitioner and felt that the only way to curb the offenses against women that would occur while they are at work, was to lay down certain guidelines and norms. The court gave directions to the government of India, and the State of Rajasthan to ensure that the guidelines laid down by the court are practiced at all the workplaces in the strictest manner possible.

This case was heard by the Supreme Court in the year 1997, back then India lacked legislation that would govern issues pertaining relating to “Gender Equality” and also legislation which governs the offenses against women while they are work. In the absence of legislation, the Supreme Court, in this case, held that the guidelines and the norms formulated should be considered as law for the purpose while holding this the Court exercised its power under article 141¹¹ and article 32 of the Constitution of India. The Court further held these guidelines would be presumed as the law until appropriate legislation is enacted. For the purpose of the formulating the guidelines and norms the state could refer to the international conventions to the extent that they do not violate any provision under the domestic law while pronouncing this court, exercised its power conferred to it under Article 51 (c)¹² when read along with Article 253¹³ with respect to Entry 14 of the Union List of the Seventh Schedule of the Constitution.

The Supreme Court was of the opinion that by formulating these norms and guidelines not only would fulfill its duties towards the Indian Citizens but would also fulfill the international obligation that it owns. India is a signatory to the Beijing Statement of the Principles of the Independence of the Judiciary in the LAWASIA region. These statements

¹¹ Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India.

¹² Article 51 (c) of the Constitution of India, foster respect for international law and treaty obligations in the dealings of organized peoples with one another.

¹³ Article 253 of the Constitution of India, notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

cast an obligation upon the Judiciary of a country to work independently and maintain the minimum standards which would enable it to work efficiently and in an effective manner.

CRITICAL ANALYSIS OF THE CASE:

The case of Bhanwari Devi dates back to the year 1997, a time when women were not considered to be equal to the men, the main reasons for such a behavior was due to the patriarchal thinking that was prevalent in the society. This was also one of the reasons that there was no legislation to protect women from any kind of discrimination that they faced while at work. Apart from this, there was no legislation that would prevent men from sexually harassing women at their workplace. Due to the fear that they would be discriminated at the workplace, or there are chances that they would be sexually harassed by male colleagues many women chose not to go for work.

The court thus in the case of “*Vishaka v. State of Rajasthan & Ors*¹⁴.”, with the help of union and India and the State of Rajasthan formulated the famous “*Vishaka Guidelines*”, which would be implemented in all the workplaces to curb violence’s against women that they face at their respective workplace.

The following guidelines were formulated as a part of the “*Vishaka Guidelines*”.

1. To prevent these offenses, and create a women-friendly environment at the workplace, it would be the responsibility of the employer to formulate appropriate measures for action that might be taken.
2. Every place should have a special committee that would deal with these offenses.
3. The apex court was of the opinion that these committee has been made to deal with offenses against women. Thus, the committee should be headed by a woman, and also should have an NGO dealing with the issues as an advisor to the committee.
4. All the complaints in regards to sexual harassment faced by women at the workplace would be dealt with this committee, and after a detailed investigation, appropriate action can be initiated by the employer.

¹⁴ (1997) 6 SCC 241

5. “Section 2 of the Guidelines for the purpose of the guidelines defined “sexual harassments” as

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

a) Physical contact and advances;

b) A demand or request for sexual favors;

c) Sexually colored remarks;

d) Showing pornography;

e) Any other unwelcome physical verbal or non-verbal conduct of sexual nature¹⁵”.

6. These Guidelines were carefully formulated while referring to various international convention and international laws that have been already implemented in many countries, thus it is assuring that is in no manner *ultra-virus* to any legislature of the domestic law.

It is important to note that the case of “Vishaka” was the first of its kind and along with it being a case of gender inequality and sexual harassment of women at the workplace it was also a case that violated the basic human rights of women, thus these guidelines formulated are consonance with the Protection of Human Rights Act, 1993.

Conclusion and Recommendation:

Woman in India, for long, have been subjected to many offenses, sexual harassment at workplace being one of them, it is sad to know that India being a signatory to many international conventions that is against sexual harassment of woman, apart from that India, has also enacted laws that to curb the offense of sexual harassment of women, but a failure to implement it in an effective manner has only worsened the situation.

¹⁵ Ibid, at 5.

After formulating the Guidelines in the year 1997, it took the government seventeen years to pass a law that would criminalize any person that would sexually harass a woman at her workplace. With the assent of the President of India, The Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted in the year 2013. The main objective of this help prevents the cases of sexual harassment at the workplace and helps create an environment at the workplace wherein the women employees are comfortable working.

“The lack of effective implementation of Vishaka guidelines has been the reason for increment in sexual harassment cases in India. It is stated that the attitude of neglect in establishing effective and comprehensive mechanisms in letter and spirit of the Vishaka guidelines by the States as well as the employers in the private and public sector has defeated the very objective and purpose of the guidelines.”¹⁶

Creating awareness in the society is the need of the hour, rather than blaming the woman, assuming that the incident happened due to the carelessness of the woman. This awareness is much needed in the rural parts of India, where men still consider women their commodity. The government should work closely with NGO's around India, to start campaigns that would teach women self-defense. In the end, apart from the government every employer should promote gender equality and sure that a woman employee under his/her watch works with dignity in an environment that accepts her and gives her a sense of belonging.

¹⁶ AIR, 2012.



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