

Case Analysis:

Vishaka & Ors v. State of Rajasthan & Ors¹

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INTRODUCTION:-

“A women is like a tea bag. You can’t tell how strong she is until you put her in hot water”

Eleanor Roosevelt

Historically, the concept of “women empowerment is deep rooted in the social action developed within the grass-roots movements in the United States of America in the 1960’s & 70”s within the context of civil rights and also the rights of women. Therefore, in a country like India too women were given the position of Goddess who were worshipped as Goddess- Laxmi, Durga & Parvati but today the situation is not the same. Thus, today women being self- dependent and though holding good positions face harassment, inequality, and biasness at workplace.

Not only this, the problem of Sexual Harassment at the workplace has always been one of the pivotal subject of the women’s movement since a long time. It is a well-known fact that women’s emancipation and her safety & security is most essential for the entire country but this entire scenario completely shattered after the dark incident which took place in the year 1992 and popularly known as- Vishaka Case. After which the Supreme Court gave Vishaka guidelines to curb Sexual Harassment of women at workplace.

FACTS OF THE CASE:-

- It goes back since the year 1985 when a women named as Bhanwari Devi, who was employed as a village-level social worker also known as-Saathin under the Women’s Development Project (WDP) run by the Government of Rajasthan was badly raped in the year 1992.

¹ (1997) 6 SCC 241

- As it was the part of Devi's job, she used to directly work with the families to prevent the marriages and also report cases to the police to when urgency took place.
- With all this, in one particular case it happened that Devi reported a family which had belonged to the Gurjar Community to the police because of the arranged marriage of one year old infant.
- Therefore, to get revenge for the same act done by Devi, the family had rebelled against her but to also ostracise her from the community, around five men of the Gujjar community while she was at her workplace.
- Despite preferential and the derogatory behavior shown by the police and also the doctors, she was insistent on to fight for Justice so she lodged a complaint against the accused. However, in the absence of sufficient evidence the court had acquitted the accused in the Trial Court.
- Various social organizations and women activists also raised their voices for Devi's fight for Justice. Therefore, a Public Interest Litigation was filled by the women's right activists for the need to protect women from sexual harassment at the workplace.

ISSUE OF THE CASE-:

The Supreme Court had inspected the case which highlighted the problem of Gender Inequality, outraging the modesty of women, sexual harassment at the workplace and rape as societal issues of substantial intensity. Thus, violence against women.

DECISION OF THE COURT-:

“Each such incident ends up in violation of the basic rights of ‘Gender Equality’ and therefore the ‘Right of Life and Liberty’... A legal document of writ in such a scenario, if it's to be effective, must be in the midst of directions for prevention; because the violation of basic rights of this sort could be a revenant development. the basic right to hold on any occupation, trade or profession depends on the supply of a secure operating surroundings. Right to life suggests that life with dignity. the first responsibility for guaranteeing such “safety” and dignity through appropriate legislation, and therefore the creation of a mechanism for its social control, is of the general assembly and therefore the executive...”

Through its analysis, the Supreme Court concluded that sexual harassment in the workplace is a violation of women's human rights, specifically:

- **Constitution of India**
 - Article 14: Equality before the law
 - Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
 - Article 19 (1)(g): Right to practice one's profession, or to carry on any occupation, trade or business
 - Article 21: Right to life and personal liberty

In particular, the Court referred to India's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has prohibits discrimination in the workplace and outlines specific state obligations to end it:

- Article 11(1)(a, f): The right to work and the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction
- 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 Convention
- General Recommendation No. 19: On the elimination of violence against women.

Without domestic legislation to adequately address sexual harassment in the workplace, the Court undertook measures to enforce gender equality and non-discrimination in accordance with universal human rights norms and standards.

Vishaka Guidelines, 1997-:

In its judgment, the Court provided a set of guidelines for employers as well as other responsible persons or institutions – to immediately ensure the prevention of sexual harassment. In accordance with Article 141 of Constitution, these guidelines were to be considered law until appropriate legislation was created:-

- Sexual Harassment consists of unwelcomed sexually determined behavior as physical sexual contact, sexual favor, sexual remarks, pornographic content and also verbal. Non-verbal conduct of sexual nature
- Sexual Harassment at workplace should be always –informed, produced & circulated
- Whenever a sexual harassment takes place which amounts to a specific offence under law, the employer should take action by complaining about the same to the appropriate authority.
- An appropriate mechanism of prevention should be created for redressal of the complaint.

SEXUAL HARASSMENT AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

It took the government seventeen years to pass the law against harassment within the geographical point earlier this year, within the wake of the Delhi gang rape last Dec, once the Supreme Court had in 1997 set down the Vishaka Guidelines on the matter.

The Act includes several provisions of the Vishakha Guidelines, that 1st required the formulation of “a code of conduct for work place”. Building on the Vishakha Guidelines, the Act imply the formation of an interior complaints committee and an area complaints committee at the district level.

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 seeks to guard women from harassment at their place of work in an exceedingly abundant wider sense.

The Bill was 1st introduced by Women and Child Development Minister Krishna Tirath in 2007 and approved by the Cabinet Union in Jan 2010. it had been tabled within the Lok Sabha in Dec 2010 and observed the Parliamentary commission on Human Resources Development. The committee’s report was printed in November 2011.

In 2012, the Cabinet Union approved change to incorporate domestic employees. The amended Bill finally elapsed the Lok Sabha in September 2012. Bill elapsed in Rajya Sabha in February 2013. It received the assent of the President of India on April 2013 and finally came into force in December 2013.

IMPORTANT PROVISIONS OF THE ACT:-

1-The Act defines harassment at the work place and provides a mechanism for redressal of complaints and also safeguards against the false charges.

2. The definition of “aggrieved woman”, WHO can get protection beneath the Act is extraordinarily wide to hide all girls, no matter her age or employment standing, whether or not within the organized or unorganized sectors, public or personal and covers purchasers, customers and domestic employees similarly.

3. whereas the “workplace” within the Vishaka tips is confined to the normal workplace set-up wherever there's a transparent employer-employee relationship, the Act goes abundant additional to incorporate organisations, department, office, branch unit etc. within the public and personal sector, organized and unorganized, hospitals, nursing homes, academic establishments, sports institutes, stadiums, sports advanced and anyplace visited by the worker throughout the course of employment as well as the transportation.

4. Each leader is needed to represent an interior Complaints Committee at every workplace or branch with ten or a lot of staff. The District Officer is needed to represent a neighborhood Complaints Committee at every district, and if needed at the block level.

5. The Committee is needed to complete the inquiry inside a fundamental quantity of ninety days.

On completion of the inquiry, the report are sent to the leader or the District Officer, because the case could also be, they're mandated to require action on the report inside sixty days.

6. The Complaints Committees have the powers of civil courts for gathering proof.

7. The Complaints Committees square measure needed to supply for conciliation before initiating Associate in Nursing inquiry, if requested by the litigant.

8. Penalties are prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to fifty thousand.

CRITICAL ANALYSIS OF THE ACT:

The molestation Act was a way hoped-for piece of legislation as a result of before this act, there was no law to manipulate this matter and so it looked as if it would be a major step towards making certain ladies a secure and healthy work atmosphere. However, the Act still suffers from some flaws.

Firstly, it fails to hide those ladies operating within the agricultural employees and defense force, that area unit mostly men – dominated sectors.

Secondly, the act seems to be gender biased since it solely protects ladies.

Thirdly, the act has wide scope for false allegations. There area unit high possibilities of those laws obtaining put-upon at the hands of girls for his or her personal advantages.

Fourthly, the availability relating to the fixing of the financial compensation per the economic potential of the person, makes it discriminatory since the person with high rank and standing are going to be created to pay quite the person with status, that out of nothing appears to serve any purpose although being discriminatory in nature.

It is to not be denied that the Act marks a very important step in recognizing a priority that affects most girls but heaps remains required to be done since for a much better safety and protection of girls, one thing quite the regulation of sexual conduct is required as a result of creating regulation

to guide the conduct of alternative person or ethical police investigation of women's lives solely strengthen the sexual stereotypes and sexual orthodoxy.

Therefore, a additional demanding law is required to deal with the problem of molestation with the support of and not at the price of women's basic rights.

CONCLUSION-:

In the end, it would not be wrong to say that Judicial Activism has reached its apex in the landmark case of Vishaka v. State of Rajasthan. Therefore, in a democratic country like India it is extremely important that the rights of both the genders i.e. the male & the female are equally protected. Vishaka case of sexual harassment at workplace is a case of landmark judgment by Supreme Court of India. Not as a result of it had been attack on operating women's elementary right to figure without concern and prejudice. Not because it's a adventure story of vast torture of a naïve operating girl. Not as a result of a lady showed exemplary bravery to fight against the male ego our immoral society.

Till 1997 even after India's independence of 50 years there was hardly any law to safeguard sexual harassment of working women. It is a very harsh reality that women across India face exploitation but very few have the ability to raise their voices against it because of lack of family support, lack of education, social stigma and low literacy level. Our basic motto should be to instill a culture in which every women shall have a right to be free from sexual harassment and also to the right to work in a sexual harassment free zone which is very important right of every person to live with respect and dignity free from mental and physical torture. This case gave guidelines in the year 1997 but has sadly failed for its final implementation of Prevention of women from Sexual Harassment at workplace Bill.

At the end, it is very important for the people to analyze the statement said by Justice Arijit Pasayat which is- "While a murder destroys the physical frame of the victim , a rapist degrades and defies the soul of a helpless women"