

VISHAKA VS. STATE OF RAJASTHAN : CRITICAL ANALYSIS

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Abstract

The Vishak and ors. V. State of Rajasthan was a landmark judgment of the Supreme Court in the year 1997. Vishaka is a NGO of women's group led by Naina kapur and her Organisation, filed PIL against the State of Rajasthan under writ of mandamus to enforce the fundamental rights of working women under article 14, 15, 19 and 21 of the Constitution of India. The petition was filed after Bhanwari devi, a social worker in Rajasthan under government social welfare scheme, was gang raped for performing her duty. The sub ordinate courts did not the grant any relief to bhanwari devi .The apex court take the cognizance into the matter while upholding the true spirit of judicial review laid down guidelines which came to be known as The Vishaka Guidelines.

Later on these guidelines led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and redressal) Act, 2013. This case plays crucial role in addressing the lack of legal provision for women's protection against sexual harassment at the workplace.

KEYWORDS: Writ, Mandamus, PIL, Act

Introduction

"I measure the progress of a community by the degree of progress which women have achieved"

- Dr. B.R. Ambedkar

Can the progress of women be ensured without making them feel safe? Surely Not, because safety and security of women will determine the well-being and strength of our nations.

Decades have been passed but women safety has been remain a concern for India. still the safety of women is Jeopardized at various places. In present day the women are subjected to sexual harassment at various places. Every day the incidence of rape, gender discrimination, domestic violence, stalking, Marital Rape, voyeurism, eve-teasing etc. are being reported repeatedly every here and there. According to NCRB report¹, there is an increase in cases of crime against women in India. According to Women, Peace and Security (WPS) Index 2025² India ranked 131st out of 181st countries pointing towards challenges in women's safety, political representation, and workforce participation. The sexual harassment of women is violation of their fundamental rights enshrined in part III of the constitution of India under article 14 and 21 i.e. Right to equality and right to life and personal liberty respectively.

In the year 1992, an incident of alleged barbaric gang rape of social worker named Bhanwari Devi took place because she opposed the illicit practice in the region. This incident shows the extent of danger a working women may exposed to and brutal sexual harassment. This atrocious incident made NGO named, Vishaka to knock the door apex court of the Country to ensure gender equality and women safety, This came to be known as case, **Vishaka and ors vs. State of Rajasthan and ors**³. So let's delve deep into the details of the case that shape the legal framework of women safety at workplace and marked significant steps towards women safety .

¹ गृह मंत्र ारय.सरकार.भारत/MHA1, <https://गृहमं. ारय.सरकार.भारत/MHA1/Par2017/pdfs/par2024pdfs/LS06022024/463.pdf> (last visited Feb.27,2026)

² Women Peace, and Security Index WPS Index 25/26
<https://georgetown.edu/wp-content/uploads/2025/10/WPS-Index-2025-Report.pdf> (last visited Feb. 27,2026) ³ AIR 1997 SC 3011.

Background of the case

Bhanwari devi , a social activist in the bhaateri, Rajasthan was promoting women empowerment and campaigning against child Marriage. In the year 1992, when she learned that a minor was being married off against the law, she opposed the marriage vehemently but her endeavor was left in vain. In retaliation the relatives of bride side married the girl and later, after few months of marriage , five of them brutally gang raped the activist. The trial court acquitted the accused on account of lack of evidence.

Details of case

Name: Vishaka and ors, Vs.State of Rajasthan and ors

Citation : AIR 1997 SC 3011

Petitioner's side: Vishaka and ors

Respondentside: State of Rajasthan

Hon'ble Bench: J.S. Verma, C.J.I., S.V. Manohar and B.N. Kirpa

Date of Judgment: 13/08/1997

Laws inquestion

The case mainly involves the interpretation and enforcement of fundamental Rights under the constitution of India:

1. Article 14: The Right of Equality

It provides that the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India. The expression Equality before the law is of English origin is a negative concept implying the absence of any special privilege in favour of individuals and the expression equal protection of law has been taken form

American constitution is a positive concept implying equality of treatment in equal circumstances.

2. Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. This article states that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth as well as it shall not deny access to shops, restaurants, hotels, wells, tanks, roads, place of entertainment etc. Sub-clause (3) provides exception for clause (1) and (2) of this article, which provide for special provision to women and children.

3. Article 19(1)(g): Right to practice any profession, or to carry on any occupation, trade or business. This right is subject to restriction provided in sub-clause (2) of this Article.

4. Article 21: Right to Life and personal Liberty

No person shall be deprived of this life or personal liberty except according to the procedure established by law. This article is subjected to widest possible interpretation as affirmed in *Maneka Gandhi v. Union of India*³

Convention on the elimination of all forms of discrimination Against Women, 1949

5. Article 11 of the CEDAW: mentions that the state shall take appropriate measures in order to eliminate discrimination against women and work towards their upliftment in every form in the field of employment.

Factual matrix

- 1) Bhanwari devi belonged to bhateri, Rajasthan where she worked as Saathin under a government social welfare scheme. Acting under the color of authority, In the year 1992 she took up an issue of child Marriage against the wish of the villagers influenced the archaic custom, knowing that such practice is illegal.
- 2) Bhanwari Devi tried hard to avoid to child marriage, meanwhile the family of Ram Charan Gurjar had made arrangement for marriage. Despite her futile effort, the marriage was solemnized.

³ AIR 1978 SC 597

- 3) The act of Bhanwari devi, enraged the guts of the feudal patriarchy out of vengeance, On 22nd September, 1992 Five men attacked her husband and later brutally gang-raped her.
- 4) When she tried to seek justice, faced countless obstacle, firstly the police avoid filing any complaint against the accused.
- 5) Bhanwari Devi's firm determination for justice managed to register F.I.R. there was delay in Medical examination and the examiner didn't state any commission of rape in the report. She didn't get any relief from trial court and Rajasthan H.C. and the rapist were free in the society.
- 6) This inspired NGOs known as Vishaka to file a petition before the apex court of this country.
- 7) This case brought to the attention of supreme court of India enforcement of fundamental rights of women enshrined under article 14, 15, 19(1)(g), 21, the absence of domestic law occupying the field, to formulate effective measure to check the evil of sexual harassment of working women at the work place

Issues raised

- I. Whether the lack of legal framework for combating with sexual harassment of women violate under article 14, 15 and 21 ?
- II. Whether the state is duty bound to prevent sexual harassment in the workplace?
- III. Whether any measure should be established to address this issue effectively?

Argument of petitioner

1. The petitioner argued that sexual harassment of women at workplace violate their fundamental rights under article 14, article 15, article 19(1)(g) and Article 21.
2. The petitioner contended that there was no specific legal framework for protection of women from sexual harassment at workplace that make it more difficult to live a meaningful life.

3. They emphasized on convention on the elimination on all forms of Discrimination against women, 1949 (CEDAW) which India is a signatory . they argued that it is the duty of government to implement laws that resonate with convention and ensure protection of women from workplace harassment against women.
4. The petitioner pleaded before the supreme court to lay down guideline and norms to prevent sexual harassment of women at workplace until the legislature could enact a law

Argument of respondent

The learned solicitor general appeared on behalf of the respondent added valuable assistance to help the court to find just solution to this social problem of paramount importance. The respondent argued before the court that the state shall take necessary measure to protect women from such acts and other kind of violence against women.

Judgment

- 1) The Supreme Court of India held that sexual harassment of women at workplace violates their fundamental Rights under article 14, article 15, and article 19(1)(g), Article 21.
- 2) The court held that the state had an obligation to prevent sexual harassment women being a signatory to international convention and ensure a safe working environment for women.
- 3) The Court established detailed guidelines in the absence of a specific law, to be strictly adhered to ensure safety of women at workplace which came to be known as Vishaka guidelines.
- 4) **The vishaka guidelines⁴** : The Supreme Court in this case took significant measure towards addressing the issue of workplace sexual harassment through constitutional lens and laid down guidelines until legislature draws any act for addressing the issue.

- **Definition :**

- Sexual harassment includes such unwelcome sexually determined behavior as:
- a) Physical contact and advances.
 - b) A demand or request for sexual favour;

⁴ AIR 1997 SC 3011

- c) Sexually coloured remarks;
- d) Showing pornography;
- e) Any other unwelcome physical verbal and non-verbal conduct of sexual nature.

- **Duty of Employer:**

It shall be duty of the employer in work places to prevent the commission of the sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all necessary steps.

- **Preventive Steps:**

All employers whether private or public shall take the following measures:

- a) Express prohibition of sexual harassment of women at work
- b) Provide for appropriate penalties in such rules against the offender..
- c) Appropriate work condition should be provided in respect of work, health and hygiene and no hostile environment towards women.

- **Criminal proceedings:** Where such conduct amounts to specific offence under Bharatiya Nyaya Sanhita (B.N.S.) under any law the employer shall initiate appropriate action.

- **Disciplinary Action:** Appropriate disciplinary action should be initiated by the employer if misconduct happens.

- **Complaint Mechanism:** An appropriate complaint mechanism should be created.

- **Complaint Committee:** A complaint committee should be created and should be headed by a woman and not less than half of its members should be women.

- **Worker's initiatives:** Employees should be allowed to raise issues of sexual harassment at worker meeting

- **Awareness :** Awareness of rights of female employees should be created.

Critical analysis

From veil of patriarchy to the horizon of equal opportunity, safety, autonomy and self-worth, women in our society faced multifaceted challenges for meaning life. The Verdict of Hon'ble Supreme court of India in Vishaka vs. State of Rajasthan is a commendable step towards women empowerment. The Vishaka guideline, provided a firm legal weapon to fight against sexual harassment boldly. The court adopted a proactive approach in the absence of specific legislation.

Like every coin has two sides, On one side, India has strengthened its legal framework to alleviate social evils of gender disparity and sexual harassment of women at workplace, though from societal point of view, it failed to impart an equally safe working environment, there are many incidents of sexual harassment at workplace which go unreported. Still there is a long way to go to ensure a safe working environment for women.

Conclusion

The case of Vishaka vs State of Rajasthan is a great Portray of Judicial Activism. It is a commendable step towards women safety. By laying down the Vishaka guidelines the apex court upheld the constitutional value of equality and liberty. This case ultimately led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁵. Bhanwari Devi who ignited the need for appropriate legislation to safeguard women is an inspiration to many women, true protagonist of truth over evil, No matter how big is injustice and whole world is against you one who stands with truth always wins. Although this case has been a landmark in dealing with workplace harassment of women but still the cases of workplace harassment are persistent and are of potent danger. This has made women courageous and made them believe that their voices ultimately would be heard. Despite this there is apprehension of fear in women about safety Because there is a difference between providing security and feeling secure, We can provide security to one but they might not feel secure.

⁵ Act No.14 OF 2013

Empowerment isn't just about stepping outside; it's about having the confidence to never feel caged again. Physical freedom is only the first step; true liberation requires healing the mind from the trauma of Restriction.

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