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We are determined and excited to bring authentic, creative and individual ideas and socially-related problems into attention.

***LawPublicus*** calls for research papers, articles, short notes, book reviews & case commentaries, that are distinctive and unpublished.

With this thought, we hereby present to you

***LawPublicus*** The Legal Portal

***Vishaka and others V.***  
***State of Rajasthan***  
***and others.***

***(AIR 1997 SUPREME COURT***  
***3011)***

***J.S. Verma C.J.I., Mrs. Sujata V.***  
***Manohar and B.N. Kirpal. J.J.***

***A Case Commentary***

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## **Vishaka and others V. State of Rajasthan** **and others: A Case Commentary**

*By: Kritika Malik*

### INTRODUCTION

The women's rights movement can be traced back to English writer Mary Wollstonecraft's essay titled '*A Vindication of the Rights of Woman*', in which she argues that "women are not naturally inferior to men, but rather lack education." The essay affirms that women should have equal access to education. In 1911 the first International women's day was celebrated which encouraged rallies for various issues including the right to enter the workforce without discrimination. In 1915 the first International congress for women was established. In 1948, came the Universal Declaration of Human Rights, which stated "the dignity and worth of the human person and [the] equal rights of *men and women*." On December 18, 1979, the Convention on the Elimination of All Forms of Discrimination Against Women or more popularly known as International bill of rights for women was adopted by the United Nation's General Assembly(UNGA) which was ratified by India on July 9, 1993. In the USA women's right to vote was granted in 1920 whereas the movement began in the 1820s.

India too has a history of women's struggle for equality. In the Vedic period, sons were preferred. During the Muslim rule, the plight of women did not get any better. With the British rule we saw change in policies, sati<sup>1</sup> was abolished, measures were taken for Hindu widow's remarriage<sup>2</sup>, female infanticide<sup>3</sup> was discouraged and age of consent<sup>4</sup> was established. Post-independence one landmark win for gender equality was the sexual harassment in workplace guidelines laid down in the Vishaka case<sup>5</sup>

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<sup>1</sup> Bengal Sati Regulation, 1829.

<sup>2</sup> Hindu Widows' Remarriage Act, 1856.

<sup>3</sup> Female Infanticide Prevention Act, 1870.

<sup>4</sup> Age of Consent Act, 1891.

<sup>5</sup> Vishaka and others V. State of Rajasthan and others.(AIR 1997 SUPREME COURT 3011).

## Background and Facts

Bhanwari Devi was a social worker in Rajasthan. She worked for the Women's Development Project to stop the practice of child marriage which was quite prevalent. She had made efforts in order to stop the marriage of a 1-year old infant daughter of Ramakant Gujjar, in which she failed but the marriage caused widespread protests. In order to seek revenge Ramakant Gujjar along with 5 of his friends' gang raped Bhanwari Devi in front of her husband. She was denied medical attention and the police tried to discourage her from filing an FIR. The trial court held the accused as not guilty. This caused a PIL to be lodged in the supreme court by various NGOs under the name of Vishaka.

Prior to this case there existed no guidelines regarding sexual harassment in the workplace which is astonishing for the 1990s. The addition of section 354-A to Indian Penal Code was done in 2013

## Critical Analysis

This judgement was a revolutionary one, it filled the gap in existing legislations and helped take our country closer to achieving our fundamental rights under articles 14,19 & 21. Some might argue that it is not the judiciary's job description to enact legislations but to merely interpret them, but when such gross injustice occurs and the basic right of women to work with dignity is challenged it is well within the judiciary's power to protect its citizens from sexual harassment. It was the first law that equated sexual harassment as a violation of the equality guaranteed in the Indian constitution.

After the courts laid down these guidelines in 1997, the legislature took another 16 years to form it into an act with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It is saddening to see that the legislature took so long to enact this legislation which merely broadened the guidelines already in place. It may not have been in the job description of the judiciary to lay these guidelines but it was surely their duty

to ensure gender equality, preserve “right to life and liberty” and ensure a safe working environment for the increasing women in the workforce.

The judgement was the perfect amalgamation between rights and duties conferred in Indian constitution and guidelines and commitments of international treaties. They discussed prohibition of discrimination under article 15<sup>6</sup>, the bench focused on article 42<sup>7</sup> and its aim of providing humane working conditions as a Directive Principle. They utilized the powers in article 32<sup>8</sup>. Moreover, mentioned the fundamental duties under article 51A<sup>9</sup>. By utilizing the powers to make legislations under international treaties with the help of article 51 and 253<sup>10</sup>. They took inspiration from the general recommendations of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1981 on the international front and utilized article 11 of CEDAW which helps states take appropriate measures to eliminate workplace discrimination against women. Fundamental rights envisaged in our constitution are more often than not enforceable only against the state however the Vishaka guidelines brought under its ambit all non-state actors. The decision fits the box of ‘ the horizontal application of fundamental rights’ by making the employer and other parties involved in the workspace obligated to not only prevent sexual harassment but to set up a mechanism to resolve or prosecute such cases. The court moved towards a purposive understanding of fundamental rights and provided a safeguard for women in any kind of working environment.

The aim of this judgement was to define sexual harassment and provide a mechanism for redressal. The judgement achieved not only justice for Bhanwari Devi but it went over and above to do complete justice and provide its citizens equality and dignity with the guidelines. An evil practice which was prevalent in the workforce and as more women joined than ever before it was a need of the hour to have these systematic guidelines in place for both the public and private sectors. The guidelines provided for criminal proceedings, disciplinary action, a complaints mechanism as well as committee.

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<sup>6</sup> Article 15 of the Indian constitution.

<sup>7</sup> Article 42 of the Indian constitution.

<sup>8</sup> Article 32 of the Indian constitution.

<sup>9</sup> Article 51A of the Indian constitution.

<sup>10</sup> Article 253 of the Indian constitution.

Though the judgement focused on article 15(3)<sup>11</sup>, we believe it could have made a more gender-neutral guideline to include everyone as every gender can be a victim of sexual harassment and should be given a chance to be heard. Moreover, when we enact laws to only protect one section of society it may lead to misuse, making it a double-edged sword. The misuse in no way can undermine the justice for legitimate complaints and it was tackled by Section 14<sup>12</sup> of the Act which deals with punishment for false or malicious complaints and false evidence. One major drawback of the Act<sup>13</sup> is the 3-month time limit for lodging a complaint which can be detrimental for the victims who are scared, threatened or reluctant to file a complaint.

The massive change which was created after the Vishaka judgement can be seen by comparing the case of Rupam bajaj<sup>14</sup> and A.K. Chopra<sup>15</sup>. Ms Rupam was the first woman to take action against sexual harassment, the suit was filed under section 354 of the Indian Penal Code. Mr Gill slapped her on the posterior. With no laws on sexual harassment in the workplace she utilized the section which discussed outraging the modesty of women. In the A.K. Chopra case, even though he did not touch Ms X, but it came under the purview of sexual harassment in the workplace. He continually tried to sit close to Ms X and tried to touch her. Though in both cases the harassers were punished, the guidelines widened the scope of sexual harassment in the workplace thus protecting a lot of its victims.

## CONCLUSION

In a nutshell, the Vishaka guidelines given by the apex court were one of the most important judgements that changed the course of our country with regards to protecting women in the workplace. It was a step closer to ensuring gender equality and giving a remedy as well as a way for women to raise their voice. It provided for redressal measures on a widespread problem of sexual harassment in workplace. By utilizing both international laws and using Indian constitution the judiciary showed its true power, independence, and flexibility. In our opinion this does have some scope for improvement, by including instances where men or

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<sup>11</sup> Article 15(3) of the Indian constitution

<sup>12</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

<sup>13</sup> Ibid 6

<sup>14</sup> Mrs. Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr 1996 AIR 309, 1995 SCC (6) 194

<sup>15</sup> Apparel Export Promotion Council v. A.K. Chopra(AIR 1999 SUPREME COURT 625)

transgenders can also face sexual harassment in the workplace, we legitimize their concerns. Even though such cases may be lesser in number but that does not mean they should be denied justice on the basis of their gender. Apart from this minor drawback the judgement made India progressive, accepting of working women and the problems they may face and give them a platform. This is a small win for gender equality and we should not forget we have a long way to go.

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