

VISHAKA AND ORS VS. STATE OF RAJASTHAN¹

Vishaka versus State of Rajasthan is a 1997 case, a major dogleg in Indian History, which changed the attitude of the Indian Judiciary as well as society towards gender issues. The case led to the setting up of the Vishaka guidelines to prevent sexual harassment at the workplace, which included Preventive Regulations, Criminal Proceedings, and Complaint Mechanism. The Vishaka guidelines were the foundation for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, popularly known as POSH Act.

The case has its roots in an incident which took place in 1992 in Rajasthan. [Bhanwari Devi](#) was a saathin (friend) in the state government's Women's Development Program, which aimed at women empowerment, eradication of gender inequality, female infanticide and child marriage. Bhanwari Devi, in her village, tried to stop one such child marriage of a 9-year-old girl, who belonged to an upper-caste, dominant family. However, the marriage took place despite Bhanwari's efforts to stop it. As a result of going against an established practice, her family had to face social ostracism. The matter, however, took a brutal turn when Bhanwari Devi was raped by the members of the family whose marriage she tried to stop. She filed a complaint; however, due to the widespread corruption and negligence of the law enforcement authorities, no significant action was taken.

It was after the news of Bhanwari Devi's plight spread through newspapers that protests took place, resulting in the CBI getting involved. It was in 1993, one year after the incident, the 5 accused were arrested, and a case was filed at the District Court. However, all these accused were acquitted by the court, resulting in widespread criticism of the judgment. Various NGOs and women's rights activists lodged a PIL in the Supreme Court led by an NGO named Vishaka. The petitioner argued that sexual assault in the workplace violates the Fundamental Rights enshrined in Article 14 (Equality before Law), Article 15 (prohibition of discrimination), Article 19 (right to carry on occupation) and Article 21 (Protection of Life and Personal Liberty).

Question of Law

The central question of law was regarding the sexual harassment at the workplace, resulting in a violation of their fundamental rights guaranteed by the Indian Constitution. It also raised the issue of the state's responsibility in providing a safe and secure environment for women at the workplace. The case also invoked the Convention on all forms of Discrimination Against Women, a United Nations Convention signed by India in 1979.

Judgment

¹ AIR 1997 SUPREME COURT 3011

The Court, in its Judgment, acknowledged the violation of Fundamental Rights enshrined in Articles 14,15,19 and 21 of the Indian Constitution as argued by the Petitioner. The court held that it is a responsibility of the State to prevent sexual harassment at the workplace and offer a safe environment. The court laid out guidelines which came to be known as the Vishaka Guidelines. The court held that it is the responsibility of the employer to ensure that no woman faces sexual harassment. Sexual harassment was defined as direct or indirect unwelcome sexual behaviour. For its prevention, a non-hostile safe environment should be created by the employer with a proper complaint mechanism. In case sexual harassment takes place, the employer should lodge an FIR, and criminal proceedings should be initiated with the authorities. Additionally, immediate disciplinary action should be taken.

Due to widespread criticism of the judgment of the District Court, the Rajasthan Government had filed a case in the Jaipur High Court challenging the judgment. However, the case is still in the High Court, awaiting judgment. Bhanwari Devi's brave efforts resulted in the safeguarding of women, ensuring gender justice and equality in the workplace.