

**Vishaka And Others Vs State Of Rajasthan And Others**

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**Abstract**

In 1985, Bhanwari Devi, a woman from Bhatari in Rajasthan, began working for the Women's Development Project (WDP) managed by the Rajasthan Government. She worked as a "Saathin," which in Hindi means "friend."

In 1987, as part of her job, Bhanwari investigated a case involving an attempted rape of a woman from a nearby village. She received unwavering support from her village for this act. Bhanwari tackled a different issue in 1992 based on the government's campaign against child marriage. Even though everyone in the village was aware that child marriage is against the law, this campaign was met with disapproval and ignorance from everyone.

In the interim, Ram Karan Gurjar's family had planned to wed his newborn daughter in this manner. In keeping with her duties, Bhanwari made numerous unsuccessful attempts to persuade the family to postpone the marriage. The family made the decision to continue the marriage.

The sub-divisional officer (SDO) and the deputy superintendent of police (DSP) stopped the marriage on May 5, 1992. However, the marriage was carried out the following day without any police intervention. The villagers eventually came to the conclusion that Bhanwari Devi's actions were the cause of the police visits. As a result, Bhanwari Devi and her family were boycotted. Bhanwari likewise lost her employment in the midst of this blacklist.

Ram Sukh Gujjar, Gyarsa Gujjar, Ram Karan Gujjar, Badri Gujjar, and Shравan Sharma, all members of the aforementioned Gurjar family, attacked Bhanwari Devi's husband on September 22, 1992, and then brutally gang-raped her.

The police had tried everything to avoid filing a complaint against the accused, which caused the investigation to be delayed. Bhanwari Devi was able to file a complaint despite receiving so much criticism because of her unwavering determination to get what she wants. There was a 52-hour delay in the medical exam. However, the examiner only mentioned the victim's age in the report rather than any alleged rape.

All of the accused were able to obtain an acquittal in the Trial Court despite the lack of sufficient evidence and the assistance of the local MLA, Dhanraj Meena. However, many women activists and organizations that supported Bhanwari reacted strongly to this acquittal. A Public Interest Litigation (PIL) was filed as a result of the collective efforts of these organizations to demand justice.

A group advocating for women's rights known as "Vishaka" filed the PIL. It emphasized the need to protect women from sexual harassment at work and emphasized the necessity of enforcing the fundamental rights of women at work as outlined in Articles 14, 15, 19, and 21 of the Indian Constitution.

### **Introduction**

I raise up my voice—not so that I can shout, but so that those without a voice can be heard. We cannot all succeed when half of us are held back.

-Malala Yousafzai

In the same way that Malala Yousafzai spoke out for a lot of women who weren't heard, a woman spoke out against sexual harassment in the workplace in the late 1990s. In the current situation, we all have the Sexual Harassment of Women at the Workplace, 2013 law to file a claim for sexual harassment or to protect and provide a safe workplace for women. But have you ever considered what the situation would have been in 1992, which is almost 15

years prior to 2013? One such instance of discrimination against women is depicted in the Vishaka v. State of Rajasthan case. The Supreme Court upheld the Vishaka guidelines in this case to protect women from workplace sexual harassment due to the need for separate legislation in this area.

### **Facts Of The Case**

To gain a better understanding, it is necessary to begin by outlining the case's details. First, the case of the alleged brutal gang rape of a woman in a village in the state of Rajasthan was the immediate catalyst for this fight for gender justice. Bhanwari Devi, a social worker, was raped by a gang for advocating against child marriage. Tragically, this criminal case according to the deficient proof demonstrating the wrongdoing was excused [1]. However, this incident gained momentum among a number of social activists and non-governmental organizations (NGOs), highlighting the need for gender equality-related legislation that specifically addresses sexual harassment of women in the workplace. Following that, a number of social activists and non-governmental organizations filed this writ petition under Article 32 on the grounds that the Constitution's Articles 14, 15, and 21 had been violated.

### **Issues**

Let's take a look at the issues that were brought up before getting into the analysis:

1. Whether workplace sexual harassment constitutes a violation of the Constitution's Articles 14, 15, and 21?
2. Whether the International Convention can be used in situations where national laws are not appropriate?
3. Whether it is necessary to establish mandatory guidelines regarding sexual harassment in the workplace?

### **Key Contentions**

On behalf of the Petitioners, the Council argued that women's experiences with sexual harassment at work are in violation of Articles 14, 15, 19(1)(g), and 21 of the Constitution. In addition, the counsel emphasized the necessity

of the legislation by highlighting the absence of appropriate legal provisions for a safe workplace for women. The advice for the respondent, to be sure, stretched out impressive help expected to help the Court in managing the talked about friendly malevolence. Additionally, the Court was assisted by Ms. Meenakshi Arora and Ms. Naina Kapur. Further, Shri. The Court was also assisted by Fali S. Nariman's appointment as Amicus Curiae. As a result, it should come as no surprise that the provided judicial assistance demonstrates a willingness to collaborate in order to achieve a more favorable outcome that takes people's interests into account.<sup>2]</sup>

### **Judicial Reasoning**

Right off the bat, the court decided that such an episode is a completely clear infringement of Article 14, 15, 19(1)(g) of the Constitution. The Court also mentioned a few other relevant provisions, including Articles 42 (Provision for Just and Humane Conditions of Work and Maternity Relief) and 51A (Fundamental Duties of the Citizen). Thirdly, the Court dealt with the application of international agreements when domestic law was not available. The court emphasized that a relevant International Convention can be used to promote the Object of the Constitutional guarantee, as implied by Article 51 (c) and Article 253 (Power of the Parliament to enact laws for the implementation of International Conventions and Norms) read along with Entry 14 under the Union List in the 7th Schedule of the Indian Constitution. Both of these provisions are in harmony with the fundamental rights. The court also emphasized Article 73, which talks about the extent of the Union's executive power.

Thirdly, the court acknowledged the need for gender equality guidelines and emphasized the significance of the International Convention and Norms as the universal right to work in dignity and protection against sexual harassment.

The Beijing Statement of Principles for the Independence of the Judiciary in the LAWASIA Region [4] was envisioned by the court, and it outlines the minimum requirements that must be taken into account to guarantee the

independence and efficient operation of the judiciary. The Court cited Articles 11 and 24 of the Convention on the Elimination of All Forms of Discrimination Against Women [5] in order to proceed with the issue at hand. The Court then cited the Australian High Court's decisions in Minister for Immigration and Ethnic Affairs v. Teoh [6] and Nilabati Behera v. State of Orissa [7] to emphasize the importance of applying international conventions to a better understanding of the Constitution's fundamental rights in terms of gender equality.

### **Judgment**

The Court established the guidelines and standards that must be adhered to at all workplaces until legislation enacted in accordance with Article 32 for the enforcement of the Constitution's Fundamental Rights is enacted, taking into account the absence of domestic law regarding gender equality and workplace protection against sexual harassment. Adding on, the court proclaimed this as a regulation under the ambit of Article 141 of the Constitution. The rules endorsed are:

### **Duty Of The Employer**

- It is the employer's duty to prevent sexual harassment by explicitly prohibiting it, providing safe working conditions, and including such prohibitions in the conduct and discipline policies of any public or private organization.
- Suitable disciplinary move should be made by the business assuming there's wrongdoing in the work of this sort. In situations where such a case is an offense under IPC, then, at that point, the business will make a reasonable move. In addition, it should be made certain that the victims will not be subjected to discrimination as a result of this complaint, and they should be given the option to transfer to her or the offender.
- In cases where such acts were committed by a third party, the employer is obligated to take the necessary measures to assist the affected individual.

### **Definition Of Sexual Harassment**

It is defined as an unwelcome sexually determined behaviour either directly or indirectly which includes physical contact, demand/request for favours based on sexual nature, Showing pornography, any sexually coloured remarks or other unwelcome physical verbal/non-verbal conduct of sexual nature.

### **Complaint Mechanism And Committee**

It is necessary to establish a robust complaint procedure with time-bound resolutions. In addition, a complaint committee led by a woman and consisting of a special counsellor, a third party involved in this matter, and at least half women may be established. An annual report on the complaints and the actions taken in response is due from this committee and the employer to the relevant government department.

### **Worker's Initiative**

Employees should be encouraged to come forward to raise such issues at the appropriate forums.

### **Awareness**

Awareness should be created among the employees regarding the prescribed guidelines.

### **Government To Adopt Required Legislation**

The court puts a request to the Central or State government to enact appropriate legislation in the private sectors in this regard.

### **Critical Analysis**

First and foremost, the opinions offered by the Hon'ble Supreme Court are highly relevant. On a serious note, this case manages one of the most delicate and required issues for ladies and without a doubt, has revealed insight into the equivalent, somewhat. In addition, the judiciary's recognition of the provisions' flaws and the need to come up with a solution to the social problem reinforces democracy as a whole. In the absence of appropriate domestic legislation, the court's decision to incorporate the International Convention is without a doubt flawless. If we draw parallels between the situations of the past and the present, sexual harassment continues to be a

threat to women. One such episode in a ladies' life has got all the ability to have unfavorable repercussions on every one of the circles of her life. Despite the fact that the Sexual Harassment of Women at Workplace Act of 2013 has been in effect for eight years, a number of cases of sexual harassment continue to go unreported. For a bill that has been in limbo for more than 16 years, the Act has not lived up to expectations. Some essential features have gone unnoticed, and many sections are self-defeating and pointless. The provision of essential mechanism procedures like clinical counseling facilities, medical insurances related to the violence, employer compensation, and other similar options have not been made available. The Act, which was intended to be very accommodating to victims, presents the victim with numerous challenges. Laws ought to reflect changes in culture, especially in areas like sexual assault and exploitation. The degree of misunderstanding regarding extremely humiliating acts like sexual harassment is often revealed by the inability to correlate legal development with societal development. The Act should be thoroughly examined and addressed by the legislature. A determined and serious effort on the part of the legislature is required to address and eliminate this issue in a society that is severely affected like India. Socially, women's empowerment has come a long way since Independence, but there are still many obstacles to overcome. The society's mindset of gender stereotypes may be the root cause of this huge gap. The real shift in society's mindset toward gender equality is the ultimate solution. The feathers of Women Empowerment can then be proudly displayed.

## **Conclusion**

As more women enter the workforce, India is making significant progress toward its development objectives. Protecting women's human rights necessitates recognizing their right to protection from sexual harassment. All of this contributes to women's rights to dignity in the workplace,

independence, and equal access to opportunities. Sexual harassment in the workplace is a societal problem that needs to be addressed. The legal framework for preventing and treating sexual harassment, as well as the existence of various forms of sexual harassment at work, must be made more widely known to both employers and employees. Naturally, this case is one of the turning points in society's reform toward women's empowerment. It is appropriate to acknowledge the Court's efforts in this ruling to provide a precise solution to the issue at hand. Without a doubt, this decision sets a significant precedent for the future. The Sexual Harassment of Women at Work Act was eventually passed in 2013, shedding light on a number of essential provisions. Despite the existence of such legislation, the social issue of sexual harassment in the workplace persists. Then again, men are additionally badgering physically in different cases. Because of all of these factors, there is an urgent need for more appropriate legislation to cover all aspects of the problem. In order to develop best practices for dealing with sexual harassment in the workplace and to inform potential victims of sexual harassment so that they can avoid it, dissemination and awareness-raising activities should be carried out and reviewed on a regular basis. Women can fight sexual harassment by improving training classes and adhering to the guidelines for prevention.

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