

VISHAKHA AND ORS. V. STATE OF RAJASTHAN¹ AND ORS.

Abhed Shrivastava***(1997) 6 SCC 241****PETITIONER - VISHAKHA AND ORS.****RESPONDENT - STATE OF RAJASTHAN AND ORS.****BENCH - CJI J.S VERMA, SUJATA MANOHAR AND B.N KIRPAL****FACTS OF THE CASE:**

In this case “Bhanwari Devi”, victim in this case was a social activist/ worker used to for the social development program initiated by the Rajasthan government for the welfare and development of women. As a part of her job and government’s program she decided to campaign against the Child Marriages and tried to prevent the marriage of an infant girl merely one year old. She tried to pursue the family members (“Gujjar Family”) and infant’s father “Ramakant Gujjar” to stop this child marriage, but all her efforts went in vain. On 22nd September 1992 five men from Gujjar family attached “Bhanwari” Devi’s husband and then gangraped her in front of her husband. Later when she went to police station to file a complaint against the “5 accused”, the police filed the investigation after lot of delays and even tried to delay the investigation and even the medical examiner refused to examine her body. When the case went to the Trial court the 5 accused were acquitted due to lack of evidence and because of the support of some local MLAs. After their acquittal from the Trial court, “Bhanwari Devi” with the help and support of women activist and NGOs filed a “Public Interest Litigation (PIL)”, the PIL was filed by a group called “VISHAKHA” in the Supreme Court of India.

ISSUES:

Whether the Fundamental Rights of woman were being violated because of “Sexual Harassment at Workplace”. Fundamental rights are considered as the basic human rights enshrined in the Indian constitution in the Part 3 of Indian constitution. In this case fundamental rights were being violated, the police tried to delay the investigation, medical examiner refused to examine the rape survivor so here there was a clear violation of “Article 14” which talks

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about equality before law which means everyone is equal in the eye of law. “Article 15” which prohibits the discrimination on the basis on caste, sex, religion, place of birth in other words it also talks about “Gender equality” but in this case sexually harassing a woman during her work is a violation of “Article 15” of Indian constitution. “Article 19(g)” which says that all citizens can practice any profession, or trade or business etc. was also violated, “Bhanwari Devi” tried to stop the child marriage but all her efforts went in vain and even she was boycotted by the villagers and lost her job. “Article 21” which talks about right to life and personal liberty, this also means to live with respect and dignity but “Bhanwari Devi” lost all her dignity, respect and honor when she was gangraped by the five accused. Whether the International conventions can be used in case of absence of appropriate domestic laws. When there are no domestic laws in regard to particular issue, international conventions should be used. Relevant International conventions can be applied if they are not inconsistent with the fundamental rights and Constitutional spirit. This is also implied in the “Article 51(C)” of the Indian Constitution and power of parliament to enact laws for implementing the international conventions and norms by virtue of “Article 253” read with “Entry 14” of Union list in 7th schedule of Indian constitution. At the time of “VISHAKHA and others v. State of Rajasthan” there were no proper guidelines or rules or laws regarding women’s Safety at the workplace that’s why for this purpose international convention and norms became significant. Whether there is a need for mandatory guidelines to be laid down in the light of “Sexual Harassment at Workplace”.

Mandatory guidelines should be laid down in the light of “Sexual Harassment at Workplace” as this has become a serious issue now a days. But the government enacted “the Sexual Harassment of women at Workplace (prohibition, prevention and redressal) Act 2013” but when this heinous crime was being committed there were no rules or guidelines for prevention of sexual harassment of women at workplace. To ensure safety of women and enforce their basic human rights the Supreme Court laid down various guidelines that should be followed until the parliament enact any law and this power is granted to supreme court under “Article 32” of Indian constitution which talks about Constitutional remedies or enforcement of fundamental rights. These guidelines which were laid down in this case were called “VISHAKHA” guidelines.

JUDGEMENT:

The judgement was delivered by “Justice Verma” on September 03 1997 in which the court said that Fundamental rights of the victim (“Bhanwari Devi”) under “Article 14, 15, 19(G) and

21” were being violated. This incident exposes the bitter reality of today’s world where women are becoming victim of Sexual Harassment in Workplace. And there is urgent need to safeguard and protect women’s right from this new social evil “Sexual harassment at workplace” and when there is no legislation for a particular issue there is urgent need for judiciary to fill the gap. Because there is no legislation regarding prevention of sexual harassment at workplace, international conventions and norms become important for the formulation of guidelines. The “Article 32” of Indian constitution which talks about enforcement of fundamental right must be viewed along with the “Beijing statement of Principle of independence of² Judiciary” in the LAWASIA region. These principles says that minimum standards should be there to maintain independence of judiciary for their effective functioning. The guidelines which were laid down by the Supreme Court in this case were called “VISHAKHA” guidelines and they are as follows:

1. Employers and other responsible persons should be duty bounded to deter the commission of sexual harassment in their institution and organization and should follow the procedure to prosecute the accused.
2. When such offence has been committed in the institution or any organization whether private or public, criminal proceedings should be initiated against the accused and the victim or witness should not be discriminated or victimized while dealing with the complaint of sexual harassment.
3. A disciplinary action should be initiated by the Employer when any conduct amounts to misconduct in employment as defined under the service rules
4. A Complaint Mechanism should be created and must be headed by women and not less than half of its members should be women and there should also be involvement of third party like NGOs and the mechanism should also provide a counsellor and other support services.
5. Through the notification of guidelines, awareness should be raised among the employees regarding the rights of women relating to this issue.

²VISHAKAHA AND ORS. V. STATE OF RAJASTHAN AND ORS., JUDGEMENT GIVEN BY CJI JUSTICE VERMA, JUSTICE SUJATA, JUSTICE V. MANOHAR AND JUSTICE KIRPAL, <https://indiankanoon.org/doc/1031794>

6. These guidelines should not be prejudicial or biased against any right available under “Protection of Human Rights Act 1993”.

After this judgement Supreme Court well defined the term Sexual harassment as “any physical touch or conduct, showing of pornography, any unpleasant taunt or misbehavior, or any sexual desire towards women, or any other unwelcome physical verbal or non-verbal conduct of sexual nature, sexual favor will come under the ambit of sexual harassment”.

CRITICAL ANALYSIS:

“VISHAKHA” Judgement is considered one of the best landmark Judgement dealing with the issue of “Sexual Harassment of Women at Workplace”. If we look at the facts of this case it is clear that Sexual Harassment of Women in Workplace is a serious issue and this social evil should be curbed immediately. The guidelines laid down by the Supreme Court in this case should be strictly followed by every organization whether public or private sector.

The employer and the employees of the organization should be aware of these guidelines. The judgement is also a best example of “Judicial Activism”. In this case the honorable judge allowed their own personal opinion to guide their decisions and they not only convicted the five accused but also laid down guidelines to deal with this issue in the absence of legislation. In my opinion sexual harassment of Women at workplace not only violates the human or fundamental guaranteed by the Constitution of India but also hampers their socio- economic development. Not only Fundamental rights regarding Gender Equality and equality before law were being violated but also fundamental right which deals right to carry on one’s profession, trade, business and occupation and the most important safe environment at workplace stated in the form of directive principle in the Constitution of India which the government aims to fulfil but this crime exposes the reality that even government failed to ensure this principle. Sexual harassment at workplace also hinders the Physical or Mental growth of the victim as in this case the victim went through lot of struggles to finally get the justice.

CONCLUSION:

The main motive behind writing this article was to raise awareness among people regarding sexual harassment at workplace and to give a detail analysis of this case and to discuss the guidelines laid down in this case so that people should be familiar with these guidelines. Women in India are facing many challenges against them like discrimination, violence, harassment and sexual harassment at workplace is one of them which should be curbed

immediately. After this landmark judgement Parliament passed an act “The Sexual Harassment of Women at Workplace” (prevention, prohibition, redressal) Act, 2013. Though the law has been made and the guidelines have been laid down but still many complaints of sexual harassment at workplace goes unnoticed and in such cases victims should be supported and encouraged to come forward and demand justice just like in this case victim “Bhanwari Devi” was being supported by the NGOs and women activist and last but not the least the people not just employer and employees working in the organization but even the normal citizen should be educated and must be aware of this crime and they should know about these guidelines and laws so that if they notice or observe any such type of crime around them they should report it immediately.³



³ Ibid.