



CASE COMMENT: VISHAKA V. STATE OF RAJASTHAN (1997): WHEN THE CONSTITUTION SPOKE FOR WORKING WOMEN

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INTRODUCTION

The judgment of the Supreme Court in *Vishaka v. State of Rajasthan* (1997)¹ plays a crucial role in Indian constitutional history. At a time when sexual harassment at the workplace was dismissed as a social inconvenience rather than a legal wrong, the Court recognised that it is a violation of fundamental rights. In doing so, the judiciary filled a dangerous legislative vacuum and gave constitutional voice to millions of working women across the country.

The significance of *Vishaka* lies not merely in the guidelines it laid down, but in the message it conveyed that dignity, equality, and safety at the workplace are not privileges granted by employers, but rights guaranteed by the Constitution. By reading gender justice into Articles 14, 15, 19(1)(g), and 21, and by drawing strength from international human rights law, the Supreme Court redefined the scope of constitutional protection for women in India.

HISTORICAL BACKGROUND OF THE CASE

Background of the Case: The case was brought before the Supreme Court through a public interest litigation under Article 32, filed by *Vishaka*, a non-governmental organisation, along with several women's rights groups. The petition seeks justice for the legal safeguards against sexual harassment in the workplace.

Facts of the Case: Bhanwari Devi, a social worker employed under the Rajasthan government's Women's Development Programme. In 1992, while performing her official duty of preventing a child marriage, Bhanwari Devi was gang raped by male members from the

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¹ *Vishaka & Ors v. State of Rajasthan*, (1997)6 SCC 241

family of the child whose marriage she tried to prevent. The local police refused to file her complaint that she had been raped.

Issues:

1. Whether sexual harassment at the workplace amounts to a violation of fundamental rights.
2. Whether the judiciary has the power to frame enforceable guidelines in the absence of legislation.
3. Whether international conventions can be relied upon in constitutional interpretation.
4. What obligations do employers have in ensuring a safe working environment for women?

LEGISLATIVE IMPACT

Judicial Law-Making in the Absence of Statute: Acknowledging the absence of any specific domestic law addressing workplace sexual harassment, the Supreme Court adopted an innovative approach. Exercising its authority under Articles 32² and 141³ the Court framed binding guidelines that would operate as law until Parliament enacted suitable legislation.

This was not judicial overreach, but judicial responsibility. The Court made it clear that fundamental rights cannot remain theoretical merely because the legislature has not acted.

The Vishaka Guidelines: The Honourable Supreme Court provided a comprehensive definition of sexual harassment, covering both physical and non-physical conduct of a sexual nature, including unwelcome advances, sexually coloured remarks, and any behaviour that creates a hostile work environment. The guidelines included:

- A clear duty on employers to prevent sexual harassment
- Establishment of complaints committees headed by women
- Inclusion of external members to ensure impartiality
- Disciplinary action against offenders.
- Awareness and preventive measures at workplaces

² Article 31 of Indian Constitution

³ Article 141 of Indian Constitution

Over fifteen years later, the Vishaka Guidelines functioned as the primary legal framework governing workplace harassment. Their principles were eventually codified as Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, by the Parliament of India, which stands as a direct legislative of the judgment.

CRITICAL ANALYSIS OF THE CASE

One of the most debated aspects of Vishaka is the Court's decision to frame guidelines, a function traditionally reserved for the legislature. Critics argue that this blurred the separation of powers. However, such criticism overlooks the constitutional context in which the judgment was delivered. The Court had previously held in *Bandhua Mukti Morcha v. Union of India* (1984)⁴ that where fundamental rights are violated, the judiciary cannot remain a silent spectator. Vishaka follows this line of reasoning by prioritising rights over rigid institutional boundaries.

Reinforcing Dignity Under Article 21: The judgment firmly establishes that sexual harassment is not a minor workplace grievance but a direct assault on human dignity and a violation of Article 14, 15, 19 (1)(g), 21 in the Indian Constitution. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981)⁵ the Court had held that the right to life includes the right to live with dignity. Vishaka builds upon this principle by recognising dignity as inseparable from employment and professional life.

CONCLUSION

The judgment in *Vishaka v. The state of Rajasthan* stands as a powerful reminder that the Constitution is not a static document but a living instrument capable of responding to social injustice. By recognising sexual harassment as a constitutional violation, the Supreme Court shifted the conversation from morality to legality and accountability. Vishaka is not merely remembered for the guidelines it introduced, but for the constitutional courage it displayed. It reaffirmed that where dignity is threatened, and silence prevails, the judiciary must step in to uphold constitutional promises. Even today, Vishaka continues to shape gender justice jurisprudence and remains a cornerstone in the struggle for safe and equal workplaces in India.

⁴ *Bandhua Mukti Morcha v. Union of India* (1984)3SCC 161

⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981)1 SCC 608.