

ISSN: 2582-2942



LEXFORTI

Legal Journal

Vol-II Issue- I

October, 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



EDITORIAL BOARD

Editor in Chief

Rohit Pradhan
Advocate Prime Dispute
rohit@lexforti.com

Editor in Chief

Sridhruti Chitrapu
Member | CiArb
sridhruti@lexforti.com

Editor

Nageshwar Rao
Professor (Banking Law)
47+ years of scholarly experience

Editor

Dr Rajanikanth M
Assistant Professor | Management
Symbiosis International University

Editor

Foram Thakar
Assistant Professor | LJ School of Law



EDITORIAL BOARD

Editor

Nandita Reddy
Advocate Prime Dispute

Editor

Romi Kumari
Student Editor

Editor

Shubhangi Nangunoori
Student Editor



ABOUT US

LexForti Legal News and Journal offer access to a wide array of legal knowledge through the Daily Legal News segment of our Website. It provides the readers with latest case laws in layman terms. Our Legal Journal contains a vast assortment of resources that helps in understanding contemporary legal issues. LexForti Legal News and Journal also offers Certificate courses. Whoever register for the course is provided the access to the state of the art E-portal. On completion of all the module and Test, candidate will be given Certificate of Accomplishment of Course. Be sure to make the most of it. LexForti Legal News and Journal is also proud to announce that we have made India's first Legal News android application which contains Daily Legal News, Legal Journal and Certificate Courses, everything in 4 MB.



Development of Law on Sexual Harassment in India- The Vishaka Judgement

Vishal Rishi Srivastava and Sheetal Yadav

VISHAKA VS. STATE OF RAJASTHAN, AIR 1997 SC 3011

COURT – BEFORE THE HONABLE SUPREME COURT OF INDIA

DATE OF JUDGEMNT – 13TH AUGUST 1997

BENCH- J.S VERMA, SUJATA V.MANOHOR, B.N KIRPAL

“The constitution of India is not a simple law book or testament for do’s and don’ts , but a well finished path for socio-economic and political progress of India as a nation and a federal society of its citizens with adequate freedom to all the stakeholder to protect and promote their healthy traditional values.

In our day to day life as well as while discharging our official duties we must commit ourselves for the core constitutional values those acquired shape during our freedom struggle and put in words by the drafting committee under leadership of’

-B.R Ambedkar

FACTS –

- The case takes back in the year of 1985, where Bhanwari Devi was in employment as a village-level social worker, Run by the Government of Rajasthan under the scheme of the Women’s Development Project (WDP).
- Wherein she used to work with the families to prevent and restrain the evil practice of child marriage in the village and also report the case for immediate action by the local police department.
- In one such particular case wherein Devi reported the offence to the Police belonging to the Gujar community of Ramadan Gujar because they were trying to organize the wedlock of a one-year-old infant girl. However, the Wedlock happened successfully even though widespread protest happed.
- She was put forward to social punishment and being boycott from society. In the year 1992, to get the retribution for the same act done by Devi, around five men with Ramadan Gujar raped her while she was at her workplace.

- The Police tried to discourage them from filling the case against the person the belittling behavior showed by doctors at the primary stage. Despite all this, she was adamant to hit back to the accused, she lodged a First Information Report against the accused. Due to a lack of evidence, the Trial Court had acquitted the accused in the trial.
- Justice for Devi's voice has raised by various social organizations and women activists in different parts of the nation. Public Interest Litigation was filed in Supreme Court to frame guidelines for the prevention of sexual harassment against women at the workplace

ISSUE

Whether an enactment of any guidelines is mandatory to prevent sexual harassment against women at the workplace?

JUDGMENT

The ruling of the said case gave by the division bench consisting of Chief Justice J.S Verma as a representative of Justice Sujata Manohar and Justice B.N Kripal on account of a writ petition filed by social activists and NGOs towards community eccentricity faced by Vishakha.

The Supreme Court concluded in this case that sexual harassment at place of work is a contravention of women's rights, in defined under Articles 14, 15, 19(1) (g) and 21 of the Constitution of India. It also lay down out various essential guidelines for employees to ahead and to shun sexual harassment of women at work. The Supreme Court also recommended appropriate techniques for the achievement of sexual harassment-free workstations for women. The Supreme Court intended to ensure gender equality among the nation and also to ensure that there was no discrimination faced by the women at their workplace. The Supreme Court defines the expression "sexual harassment." Hence, as any physical touch or behavior that shows pornography, disagreeable taunt or misbehavior, or any desire for sexual behavior towards women is sexual harassment.

The Supreme Court of India crystal-clear sexual behavior in a vast sense by taking into account any act which is body touch, call for sexual favor or remark, showing pornography, and verbal or physical behavior of sexual character with women. The apex court referred to the CEDAW¹ International

¹ "CEDAW"- Convention on the elimination of all forms of discrimination against women

treaty. India Signed this International Treaty in 1980. CEDAW prohibits discrimination in the workplace against women and sets out particular State obligations to put an ending to it.

CRITICAL ANALYSIS

The Supreme Court said that it is a violation of Article 14²,19(1)(g)³ and 21⁴ of the Constitution of India in this case. The nation has seen a gradual increase in gender equality in terms of employment. The raise resultant in various problems such as sexual harassment at the workplace and may more. In an earlier time of such a raise, there was no legislation to prevent and protect women from such hardship faced, which results in the unreported matter and no punishment to committer of offence. It was a crucial drawback of the Indian criminal justice system due to which there existed violations of rights and not gross remedy. The molestation Act came into force became a hope piece of legislation, as earlier there was no piece of legislation existed it was considered as a crucial step to protect women, also to facilitate a healthy working environment. However, the act had some limitations such as-

- ✓ To begin with, it was unsuccessful to veil women working in a within the agricultural sector and defense force

- ✓ Secondly, the piece of legislation appears to be gender-biased as ever since it solely protects ladies.

- ✓ Thirdly, the act provided a vast ambiguity for the false allegation, which serves as an undue advantage for women.

² Article 14 of constitution of India says The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

³ Article 19(1)(g) of Constitution of India says that to practice any profession, or to carry on any occupation, trade or business.

⁴ Article 21 of Constitution of India says that No person shall be deprived of his life or personal liberty except according to procedure established by law.

- ✓ Fourthly, fixing of the financial compensation was a bigger problem and prejudiced the individual with high status and eminence are going to be created to pay relatively the person with standing that out of nothing appears to serve any rationale although being biased in character.

The act being the crucial step to protect women, but heaps remain essential to bring for much better safety, and a secure working environment.

When action suits were brought by women who involved a similar nature of the act committed and the country as a whole was failing to provide a healthy environment, the legislature finally gave up its silence in this case and without hesitation broke the wall of the constitution to interpret the law and to formulate guidelines that would give the victim justice to such incidents. The guiltiness had the effect to protect female autonomy in the employment environment and to provide an equality setting environment, it says violation of gender equality is an infringement of the Right to life and liberty which is given under Article 21 of the Constitution of India, there also existed gross violation of Article 14 and 15.

However, before this case, there were no specific laws or rights in place to protect women from sexual harassment pre-1991, as we know that any crime against any person is a violation of human rights and therefore it violates Articles 14, 15, 19, and 21 of Constitution of India In this judgment, they referred to the basic definition of human rights set out in Section 2(d) of the Human Rights Act, 1993⁵. There have been laws dealing with this type of issue, but not particularly with harassment at the workplace.

In 1980, India signed the CEDAW⁶ Treaty. The main objective is to control the crime against women in the workplace. However, the legislation never assumed or felt necessary to bring the statue to protect women from sexual harassment at the workplace, and hence it was never implemented. The

⁵ Section 2(d) of Human Rights Act, 1993 says that human rights mean the rights which have life, liberty, equality and dignity which is guaranteed by the Constitution in the International Covenants and enforceable in India.

⁶ CEDAW was formed in 1979 by the UN General Assembly and it was brought to protect women's right

Indian Constitution empowers the legislature under Article 253⁷ as well as entry 14 of the 7th Seventh Schedule⁸ of the Constitution of India to implement and respect the international treaty. The court can ask the legislature to protect the fundamental rights of women as given in the International CEDAW treaty. Parliament should have implemented it earlier pre 1991, As per Article 51(c)⁹ of the Constitution of India.

It proves that, when the law was implemented, women were not equal to men. Although India signed the treaty on 30 July 1980, it was not established or implemented in the country as it had never foreseen that women might need special legislation to prevent crime against them. One good thing about our Indian constitution is that the law evolves according to the needs of society.

The Government of India took the initiative to set up a national commission at all levels and in all sectors to remove the taboo, as well as to bring justice and protect women from sexual harassment at the workplace after the 4th World Conference, which took place from 4 September 1995 to 15 September 1995 in Beijing, China.

⁷ Article 253 of Constitution of India says that Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

⁸ 7th Schedule with entry 14 of Constitution of India says that “Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.”

⁹ Article 51(c) of Constitution of India ssays that The State shall endeavor to promote respect for international law and treaty obligations in the dealings of organized peoples with one another

CONCLUSION

In conclusion, it would not be wrong to say that Vishaka was one of the historic judgments ratified by the court, and in a self-governing nation like India that the rights of both sexual characteristics are needed to be equally protected. Since independence, there was hardly any law to protect the sexual harassment of working women, but women are taking benefit from getting priority in the Justice system. The main objective was to stabilize and promote equality between women and men in the workplace without discrimination between the workers of the organization.

The government of India should make Strict laws related to sexual harassment in the workplace because both Sexes need to realize that together they form a working population in our country. Government of India are trying to prevent such practices by establishing new institution and ordering the organization to set up their separate or have strict rules to deal with such type of crime.