

# Role of Judiciary in Upholding Women's Workplace Rights

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**Abstract:** *The paper examines the role of the Indian judiciary in protecting women's workplace rights, with a focus on sexual harassment law. It analyses constitutional provisions, including Articles 14, 15, and 21, and evaluates judicial intervention in the absence of statutory frameworks. The study adopts a doctrinal method, focusing on the landmark case of Vishaka & Ors. v. State of Rajasthan (1997). The judgment is examined for its contribution in defining sexual harassment and establishing the Vishaka Guidelines. The paper finds that the judiciary played a critical role in bridging legislative gaps and shaping workplace protections for women. These judicial developments later influenced the enactment of the Sexual Harassment of Women at Workplace Act, 2013. The study concludes that judicial activism has been central in advancing gender equality and ensuring safe working conditions for women in India.*

**Keywords:** Sexual Harassment, Vishaka Guidelines, POSH Act 2013, Judicial Activism, Gender Equality, Constitutional Law, Workplace Rights, India

## 1. Introduction

Gender equality is an essential human right in all facets, and the Indian Constitution assures all citizens equal status and opportunity. Sexual harassment is deemed a violation of a woman's fundamental right to equality, as ensured by our Constitution. Sexual harassment in the workplace creates an environment so insecure that a woman cannot go to work, discourages women from working (women are not able to provide financial help to their families), and causes harm to their social and economic growth. Our Constitution also promises every citizen the right to participate in any occupation, trade, or business, as well as the right to a safe environment, which means free from all forms of harassment. Women are physically weak by nature; as a result, they have faced discrimination and crimes against women in their parental house, matrimonial house, and at the workplace. Gender equality in all aspects is a fundamental right, and the Constitution of India also provides safeguards to all citizens of equality of status and opportunity [1]. The Indian judiciary has appeared as a vital force in advocating for women's rights and upholding the values enshrined in the Constitution. The Indian Constitution, adopted in 1950, envisioned a nation where all citizens, regardless of gender, would enjoy equal rights and opportunities. It preserves fundamental rights such as the right to equality under *Article 14*, the right against discrimination on grounds of sex under *Article 15*, the right to life and personal liberty under *Article 21*, and various provisions added to empower women and abolish social inequalities. However, it is the judiciary, with its power of judicial review under *Articles 32 and 226*, that has breathed life into these constitutional promises, converting them into concrete advancements for women. The Supreme Court of India, along with various High Courts, has played a groundbreaking role in escalating women's rights through landmark judgments and progressive interpretations of the Constitution. These judgments have struck down discriminatory laws, challenged patriarchal norms, and upheld women's agency in various spheres of life. Landmark cases like *Vishaka v. State of Rajasthan*, which recognized sexual harassment at the workplace or *Shayara Bano v. Union*

of India, which abolished the practice of triple talaq, shows the judiciary's role as a catalytic agent for social change. Beyond these specific judgments, the Indian judiciary has consistently been involved in judicial activism to uphold women's constitutional rights. Sexual harassment faced by women and children is a new anti-social evil in society. Women and children, especially those who belong to the middle and lower classes, face unprecedented sexual discrimination and violence. Hence, there is a need for urgent attention to this specific class of society, that is, women and children, to abolish this kind of anti-social, inhumane happenings from society. [2]

## 2. Methodology

This study employs a doctrinal legal research methodology, which is the standard approach in legal scholarship for analysing established legal principles, rules, and doctrines without empirical fieldwork or primary data collection. Doctrinal research is analytical and qualitative, relying exclusively on primary legal sources (such as the Constitution of India, statutes, and reported judgments) and secondary sources (legal commentaries, journal articles, and government reports) to interpret and critique the law as it stands.

The methodology specifically involves:

- 1) **Doctrinal legal research-** Systematic examination of constitutional provisions (Articles 14, 15(3), 16, 19(1)(g), 21, 39(d), and 42) and related labour legislation including the Equal Remuneration Act, 1976, Maternity Benefit Act, 1961, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- 2) **Case law analysis-** Critical study of landmark Supreme Court and High Court judgments to trace the evolution of judicial reasoning, identify patterns of activism, and evaluate the impact of decisions on women's workplace rights.
- 3) **Constitutional interpretation-** Application of interpretive tools such as literal, purposive, and

harmonious construction to demonstrate how the judiciary has expansively interpreted fundamental rights to fill legislative gaps and enforce gender justice [3].

### 3. Literature Review

#### 3.1. Role of Judiciary in Upholding Women's Workplace Rights

The judiciary had played an essential to upholding women's workplace rights. In the very beginning, the first case of sexual harassment of women at the workplace happened in the year 1997. In that case, the judiciary assumed a transformative role by delivering the landmark judgment in which the three-judge bench delivered justice and realized that we need the law to prevent sexual harassment of women in the workplace.

#### 3.2. Details of the case

- 1) **Name of the case** - *Vishaka & Ors. V. State of Rajasthan & Ors.*
- 2) **Citation of the case**-[1997] 6 SCC 241
- 3) **Name of the court where the case was filed**-Hon'ble Supreme Court of India
- 4) **Petitioners in the case**-Vishaka and Ors
- 5) **Respondents in the case**-The state of Rajasthan and Ors
- 6) **Hon'ble bench**-Chief Justice J.S. Verma, Justice Sujata V. Manohar, and Justice B.N. Kirpal
- 7) **Judgment passed on**-August 13, 1997 [4]

#### 3.3. Major Laws Discussed in this Case

The major laws discussed in the said case are as follows:

Constitution of India

##### 3.3.1. Article 14: Right to equality

It stipulates that the state shall not deny citizens 'equality before law and the equal protection of laws' within the territory of India. 'Equality before law' or the 'rule of law' is a British concept introduced by A.V. Dicey that indicates that no one is above the law. On the other hand, the equal protection of laws comes from the American Constitution, and this is a positive concept that indicates that the same law shall be applied to everyone who is in similarly situated [5].

##### 3.3.2. Article 15: Prohibition of discrimination

This article says that the state is under a responsibility not to discriminate among its citizens based on certain aspects that may include *religion, race, caste, sex, or place of birth*. It further states that no citizen shall be discriminated against on the *grounds of religion, race, caste, sex, or place of birth* with respect to access to shops, restaurants, hotels, wells, tanks, roads, bathing ghats, etc. This article gives an exception to clauses (1) and (2) in clause (3), which gives a special provision for the advancement of women and children [6].

##### 3.3.3. Article 19(1)(g) Right to practise any profession, or to carry on any occupation.

This article gives the right to take any profession, or to carry on any occupation, trade, or business. However, it is indeed stated that freedom comes with some restrictions; this right is

also not absolute, and there are certain suitable restrictions imposed upon this right in the interest of public morality and order [7].

##### 3.3.4. Article 21: Right to life and personal liberty

This article states that every person shall have the right to life and personal liberty. This article is deemed the heart of the Indian Constitution. This article has been widely translated by the Supreme Court and has added the right to education, the right to a healthy environment, the right to sleep, etc [8].

##### 3.3.5. Convention on the Elimination of All Forms of Discrimination Against Women, 1949 (CEDAW)

Article 11 of the CEDAW remarks that the state shall take suitable measures to abolish discrimination against women and provide them with upliftment in every form, and especially in the field of employment [9].

#### 3.4. Facts of the Case

Bhanwari Devi, a woman from Bhatari, Rajasthan, started working in the Women's Development Project (WDP) managed by the Government of Rajasthan in the year 1985. She was hired as a 'Saathi', which means 'friend' in Hindi.

In the year 1987, as a role or duty of her job, Bhanwari looked into an issue which was an attempted rape of a woman who hailed from a neighbouring village. For this act, she earned full support from the members of her village. In the year 1992, Bhanwari looked upon another issue based on the government's campaign against child marriage. This campaign was subjected to disapproval and ignored by all the members of the village, even though they were conscious of the fact that child marriage is prohibited.

In the meantime, the family of Ram Karan Gujjar had made plans to perform such a marriage for his infant daughter. Bhanwari, diligent with the work assigned to her, tried to encourage the family not to perform this marriage, but all her efforts were fruitless. The family decided to go forward with the marriage.

On 5th May 1992, the Sub-Divisional Officer (SDO), along with the Deputy Superintendent of Police (DSP), ended the said marriage. However, that marriage was accomplished the next day, and no legal action was taken against them. Later, it was found out by the villagers that the police visits were a result of Bhanwari Devi's conduct. This led to the refusal of Bhanwari Devi and her family. Bhanwari also lost her job during this refusal.

On 22nd September 1992, to pursue revenge, five men, including four from the aforesaid family- Ram Sukh Gujjar, Gyarsa Gujjar, Ram Karan Gujjar, and Badri Gujjar, along with one Shraavan Sharma, harassed Bhanwari Devi's husband and later on brutally gang-raped her.

The police had tried all workable ways to sidestep filing any complaint against the accused, which resulted in a late investigation. When Bhanwari Devi attempted to pursue justice, she was brutally criticized for her actions, faced various hurdles, and was pressured by the concerned authorities to drop her case. Even after facing so much

criticism, Bhanwari Devi, with her never-ending determination to get justice, managed to file a complaint. The medical examination was delayed by fifty-two hours. However, the examiner did not mention any commission of rape in the report, but rather mentioned the age of the victim. Bhanwari Devi and her husband moved toward the trial court in a district of Rajasthan, but due to the non-appearance of satisfactory evidence and with the help of the local MLA, Dhanraj Meena, all the accused managed to get an acquittal from the trial court. The trial court refused to believe the statement that Bhanwari Devi's husband was blocked while she was being raped by the said men, and he did not help her. But this acquittal led to a huge backlash from many female activists and organizations that stood for Bhanwari. These organizations came together and raised their voices to get justice, which was brought about in the filing of a PIL (Public Interest Litigation). A PIL was filed by a women's rights group acknowledged as 'Vishaka'. It placed its focus on the implementation of the fundamental rights of women at the workplace under the provisions of Articles 14, 15, 19, and 21 of the Constitution of India, and it also raised the issue of the requirement for the protection of women from sexual harassment at the workplace [10].

### 3.5. Issues Raised IN The Case

- 1) Whether the release of the suspects and the subsequent escape from the non-promising of a safe working environment for the women could be considered a violation of the fundamental rights assured under Articles 14, 15, 19(1), and 21?
- 2) Whether, in the non-existence of any statutory laws on the subject of sexual harassment in a work environment, the judiciary would have pitched itself to lay down guidelines which are now known as the Vishaka Guidelines, which are binding in nature to protect the rights of women?
- 3) Whether a boss had in-built responsibilities, at a very minimum, to provide and maintain a safe working environment and to obstruct sexual harassment so that a woman's right to work would be cherished and upheld?
- 4) Whether, in the non-appearance of local enactments, international treaties and norms, primarily on the subject of women's rights, such as the CEDAW, could assist as encouragement for the Court to interpret and enforce constitutional [11]?

### 3.6. Judicial Observations and Reasoning in Vishaka & Ors. v. State of Rajasthan

In delivering its judgement in Vishaka & Ors. v. State of Rajasthan, the Supreme Court made numerous critical observations:

- 1) **Constitutional Mandate for Safety:** The court observed under Articles 14, 19, and 21 that every workplace must offer a safe and secure environment. The non-existence of legal provisions exactly to sexual harassment was a Huge gap that threatened the safety and dignity of women.
- 2) **Definition of Sexual Harassment:** One of the ground-breaking contributions of this judgment was the clear definition provided for sexual harassment. According to the court's understanding, sexual harassment includes

any unwelcome sexual behaviour, verbal, non-verbal, or physical, that creates an inappropriate, hostile, or offensive working environment. This specific definition laid the foundation stone for future statutory measures.

- 3) **Responsibility of Employers:** The court calls attention to the fact that it is the duty of employers not only to stop such acts of harassment but also to take quick and effective steps when complaints arise. The enforcement of these guidelines confirms that employers are held accountable for any gaps in the safety mechanisms within their organizations.
- 4) **Role of Public Interest Litigation:** The rise of the case through PILs proved how collective civil society action can initiate judicial reform, particularly in areas where legislative inaction or delay leaves helpless sections exposed to systemic abuse.

The comprehensive observations in this judgment have served as a cornerstone for subsequent developments in the law regarding sexual harassment at the workplace in India [12].

### 3.7. Vishaka Guidelines

The main features of the Vishaka Guidelines are

- 1) **Duty of the Employer or other responsible persons in work places and other institutions:** It shall be the duty of the employer or other responsible persons in work places or other institutions to stop or discourage the conduct of acts of sexual harassment and to provide the actions for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
- 2) **Definition:** For this purpose, sexual harassment includes such unwanted sexually determined behaviour (whether directly or by implication) as:
  - a) Physical contact and advances;
  - b) A demand or request for sexual favours;
  - c) Sexually coloured remarks;
  - d) Showing pornography;
  - e) Any other unwanted physical, verbal, or non-verbal conduct of a sexual nature.

Where any of these acts is devoted in circumstances where the victim of such behaviour has a reasonable apprehension that, in relation to the victim's employment or work, whether she is drawing a salary, honorarium, or voluntary, whether in government, public, or private enterprise, such behaviour can be humiliating and may create a health and safety problem. It is discriminatory, for example, when the woman has rational grounds to have faith that her objection would draw her down in connection with her occupation or work, including employment or advancement, or when it creates an unfriendly work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

- 3) **Defensive Steps:** All bosses or persons in charge of the workplace, whether in the public or private sector, should take suitable steps to stop sexual harassment. Without bias to the generality of this obligation, they should take the following steps:

- a) Express prevention of sexual harassment as defined above at the workplace should be notified, published, and circulated in appropriate ways
  - b) The Rules/Regulations of Government and Public Sector bodies relating to behaviour and discipline should include rules/regulations for the elimination of sexual harassment and offer suitable consequences.
  - c) As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
  - d) Suitable work conditions should be given in respect of work, leisure, health, and hygiene to further safeguard that there is no antagonistic environment towards women at workplaces and no female employee should have reasonable grounds to believe that she is underprivileged in connection with her employment.
- 4) Criminal Proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate suitable action in accordance with law by making a complaint to the suitable authority. In particular, it should guarantee that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
  - 5) Disciplinary Action: Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be begun by the employer in accordance with those rules.
  - 6) Complaint Mechanism: Whether or not such conduct founds an offence under law or a breach of the service rules, a suitable complaint mechanism should be created in the employer's organization for the resolution of the complaint made by the victim. Such a complaint mechanism should ensure time-bound treatment of complaints.
  - 7) Complaints Committee: The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman, and not less than half of its members should be women. Further, to prevent the possibility of any pressure or influence from senior levels, such a Complaints Committee should involve a third party, either an NGO or other body that is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the government department concerned about the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines, including the reports of the Complaints Committee to the Government department.
  - 8) Workers' Initiative: Employees should be allowed to raise issues of sexual harassment at workers' meetings and in other appropriate forums, and it should be affirmatively discussed in Employer-Employee Meetings.
  - 9) Awareness: Awareness of the rights of female employees in this regard should be created, in particular, by prominently notifying the guidelines and appropriate

legislation when enacted on the subject suitably. These guidelines have been replaced by the PSOH Act 2013[13]

### 3.8. Critical Analysis of Vishaka Case

In the case of Vishaka & Ors. V. State of Rajasthan & Ors., the Supreme Court specifically highlighted the definition of Sexual Harassment, which says that any undesirable or unwelcome physical touch or conduct or showing of pornography or any definable sexual comments or texts will come under the sphere of Sexual Harassment. In my opinion, any such conduct done directly hampers the right of women to life, and it also affects their dignity to live. It also encumbers the mental and physical health of women. Sexual harassment shall be sidestepped, and equality between the genders shall be recognized in the workplace.

The Supreme Court laid out guidelines that the person-in-charge of the specific institution, organization, or office, whether it be private or public, will be answerable for taking effective steps to avoid sexual harassment. Penalties shall be charged for the accused for conducting sexual harassment. It had become a very crucial topic to act upon for the stoppage of sexual harassment of women at the workplace. In the case of private companies, the strict rules concerning the punishment of sexual harassment shall be contained within. In case the sexual harassment is conducted by outsiders, the person in charge of that institution must take strict action for the conduct of such a crime [14].

## 4. Conclusion

This study shows that the Indian judiciary has played a central role in protecting women's workplace rights through constitutional interpretation and judicial innovation. The Vishaka judgment established a legal framework in the absence of legislation and defined standards for workplace safety. These guidelines later influenced statutory development through the POSH Act, 2013. The judiciary continues to act as a key institution in ensuring gender equality and safe working environments. Strengthening implementation and awareness remains essential for achieving effective protection

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