



CASE COMMENT ON VISHAKA VS STATE OF RAJASTHAN

(Writ Petitions (Crl.) Nos. 666-70 of
1992), decided on August 13, 1997

Sexual Harassment of Women in Workplace

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Abstract

The dynamic essence of judiciary is an essential concomitant of any nation. In the case of Vishaka and Ors v. State of Rajasthan and Ors. the iniquitous practise of sexual harassment of women in workplace was given a deep insight by the Hon'ble Supreme Court of India. It was observed that when the existing laws are not sufficient for dealing with a specific problem, the judiciary relies upon international treaties, particularly the international bill of rights. Thus, it can be seen that Judicial Activism reached its pinnacle in the Vishaka case. If we take a deep insight on the issue, it can be observed that with the rapidly changing society and work environment we also need to review the laws in a retrospective way and make necessary amendments so as to deal with the changes. The Case's outcome has quite a narrow scope when compared to today's needs, as it only deals with the Sexual Harassment of "Women" at workplace, whereas the scope of "Men" and "Transgender" is not explicitly mentioned. A nation which is racing towards gender sensitization in

each aspect should view the Sexual Harassment at Workplace aspect in an egalitarian sense. Moreover, with the increase of online workspace, there is a need to review the ambit of workspace and expand it to the virtual working environment in order to protect Cyber Harassment on Online Working Platforms. Therefore, a holistic overview of the Vishaka Case and its subsequent acts need to be done, so as to deal with the changing needs according to the dynamic environment.

Introduction

The judiciary in its true sense did an applaudable job in the Vishaka case by setting guidelines for sexual harassment of women at workplace (public or private sector), which further acted as basis for the The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013. With the growth of online workspaces and information technologies, the ambit of the present guidelines has to be reviewed.

A comprehensive legislation is required to make the workplace truly gender-sensitized for catering to the broad needs of the citizens, and meeting the aspirations of a harassment-free work environment.

The Case

Vishaka & Ors. v. State of Rajasthan & Ors. [AIR 1997 SC 3011]

The case began after Bhanwari Devi was gang raped in 1992 while trying to stop a child marriage. A writ petition was filed



before the Supreme Court seeking justice for the heinous crime. The case proceeded in adherence to the various rights including equality before law, right to practise any profession, occupation, trade or business, right to life and liberty, etc. Further the judgment was viewed in the light of Article 14, 19, 21 and 15(1)&(3) of the Indian Constitution.

With no existing law dealing with sexual harassment of women in workplace at that very time, the court resorted to Article 51(c) of the constitution and sought international references. The judgment relied upon some international laws and conventions viz. Art. 10 of the Beijing Statement of Principle of the Independence of Judiciary in the LAWASIA region, Art. 11 & 24 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Since the enactment of a new legislation was a time taking process, the court formulated the Vishaka Guidelines for dealing with the issue, that further acted as a basis for The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013.

Comments and Analysis:

Legislative Inaction : Vishaka guidelines was intended to be an interim measure to be applied until the Parliament enacted laws . Since the judgment, the National Commission for Women has prepared a code of conduct for the workplace as well as drafted bills on the subject in 2000, 2003, 2004, 2006 and 2010. In December 2010, the

Protection of Women against Sexual Harassment at Workplace Bill, 2010 was tabled in the Parliament, which was formulated as “The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013”. It not only protected the employees but also clients, customers, daily wagers, students and hospital patients. The Act does not necessitate an employer-employee relationship. Initially it excluded the domestic workforce but later this was amended to fill the lacuna. It is only a pan-Indian law on this specific issue and with the growth of virtual workspace in the country, we need to develop our existing laws in order to cater to the needs of the time.

Section 66A of the IT Act that prohibits sending inflammatory or indecent messages on the internet can have a general as well as a narrow scope in the context of sexual harassment of women in virtual workspace like the official social media groups. Considering today’s working environment and the increasing number of cyber stalking and trolling case, it is not restricted to just physical existence but also virtual existence. The Supreme Court held that physical contact was not a prerequisite of sexual harassment and that the effects of mental harassment were equally damaging. The Court gave main importance to the dignity of women which could not be condoned. As per the Equal Employment Opportunity Commission, Sexual Harassment is defined as ‘unwelcome sexual advances, request for sexual favours, and other verbal or physical conduct of sexual nature that explicitly



affect an individual’s employment’. The said Act is still silent in case of men and transgender at workplace. However, the United States Supreme Court in its 1998 ruling held that men were protected from workplace sexual harassment under Title VII of the Civil Rights Act of 1964, but no such law is available in India. Gender neutral laws have been found in approximately 77 countries around the world including, the U.K., Denmark, Australia, the U.S. but not in India. Thus, men and transgenders should be included in the Sexual Harassment Act, 2013 and also in Indian Penal Code (IPC).

It has been around four years since the enforcement of the Sexual Harassment Act, 2013, but still sexual harassment of women continues to be one of the critical issues faced by private sector (Krasta, 2017; Jha 2017; TNN, 2017; Voices of Women, 2017).

We do come across Sexual Harassment and its punishment, under § 354D of IPC but there is no segment relating to sexual harassment in virtual workspace. Virtual

harassment at workplace includes inappropriate sexual messages/emails, virtual display of rapes that disrupts the victim’s work and daily life. California’s penal code defines stalking in § 646.9¹ and 646(h)² that protects all forms of harassment whether sexual, at the office home or elsewhere.

However, § 354-D(1)(ii) of the IPC relates stalking with the virtual world but fail to bring such a provision in the virtual work environment. It is required that the companies have a clear social media policy that clearly defines actions which create a hostile work environment and the penalty for failure to maintain a healthy workplace. It is important for employees to understand that this policy applies outside the workplace. It is important to take all reports of cyber stalking and other electronic harassment seriously. In this regard, companies should ensure fair and equitable application of censures on the social media policy and also ensure that the policy is reviewed periodically.

Conclusion

¹ Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

² (h) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.



The scope of the current Sexual Harassment Act 2013, has to be increased in order to accommodate the contemporary issues like harassment in virtual workspaces, harassment faced by men and transgenders so that the dignity of an individual at workplace becomes of utmost importance. In this regard the legislature and the judiciary can take the help of international laws and rulings as a comparative analysis to develop our existing laws.

