



A CASE COMMENTARY ON VISHAKHA GUIDELINES

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FACTS

Bhanwari Devi, who belonged to Rajasthan started working under the Women's Development Project (WDP) run by the Government of Rajasthan, in the year 1985. She was employed as a 'Saathin' by the project which means 'friend' in Hindi. She used to work with the Government so that she can eliminate all the social evils from society. In the year 1992, Bhanwari took up the issue very prevalent at that time, which was of child marriage based on the government's campaign against child marriage. Few people from her village supported her for this noble cause although knew it was an illegal activity. There was one family, of Ram Karan Gurjar or Thakurs from her village who were arranging for their infant daughter's marriage. After which, Bhanwari Devi tried her best to talk with them about the issue, but they refused all her pleas. Later, a SDO and a DSP were brought in and they stopped the marriage. However, the marriage still took place and no action was taken against them. When everyone came to know about, that the police came because of Bhanwari's actions. They all started boycotting her and her family and she also lost her job. In order to seek revenge, five men- Ram Sukh Gujjar, Gyarsa Gujjar, Ram Karan Gujjar, and Badri Gujjar along with one Shravan Sharma attacked Bhanwari Devi's husband and brutally gang-raped her.

The police tried all possible ways to avoid filing any complaint against the accused and they just neglected the situation, which resulted in a delayed investigation of the case. After so many criticism, Bhanwari Devi, with an aim to get justice, managed somehow to lodge a complaint. The medical examination was delayed for fifty-two hours and the examiner did not mention any commission of rape in the report but just mentioned the age of the victim. There was absence of sufficient evidence for that case and also with the help of the local MLA Dhanraj Meena, all the accused got an acquittal in the Trial Court. This kind of acquittal which took place resulted in a huge backlash from many female activists and organizations around the area who ever supported Bhanwari Devi. Several number of these kind of organizations came together and raised their voice so that they can get justice, which they all ended up in filing a Public Interest Litigation (PIL).

The PIL was filed by a women's rights group known as 'Vishakha' which was led by Naina Kapur. It laid its basic focus on the enforcement of the fundamental rights of women at the Workplace under the provisions of Articles 14, 15, 19, and 21 of the Constitution of India. Moreover, it also raised the issue of the need of protecting women from sexual harassment at Workplace.

ISSUES

- Whether sexual harassment at a Workplace amounts to a violation of Right of Gender Equality under Article 14 and Right to Life and Liberty under Article 21?
- Whether the court can apply International laws if there are no existing applicable laws



- Whether the employer can be held responsible if any sexual harassment has been by/to its employees?

LAWS

Prior to 1997, in India, there were not any formal guidelines which had the provisions of sexual harassment at the workplace. Any women who used to experience this, had to lodge a complaint under Section 354 of IPC¹ that deals with ‘criminal assault of women to outrage women’s modesty’ and Section 509 of IPC² that punishes an individual or individuals for using a word or act intended to insult the modesty of a woman. However, the interpretation of ‘outraging women’s modesty’ under these sections were left to the discretion of the police.

The Supreme Court acknowledged the lack of a law to prevent sexual harassment at the workplace and decided that the consideration of “International Conventions and norms” are significant for the purpose of interpretations of human dignity in Article 14, -15, 19(1)(g) and 21 of the Constitution. It majorly referred to the Beijing Statement of Principles on the independence of Judiciary in the LAWASIA region to function as a guardian of citizens’ rights and independently make laws in the absence of any legislative framework and then took reference from the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³.

This led to the formation of guidelines to prevent Sexual Harassment at Workplace

known as “Vishakha Guidelines”. They were to be treated as law declared under Article 141 of the Indian Constitution. These guidelines provided the basis for The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁴

The Vishakha Guidelines:

- The definition of sexual harassment was given as “disagreeable sexual determined behaviour direct or indirect as-
 - Physical contact and advances
 - A demand or request for sexual favours;
 - Sexually coloured remarks;
 - Showing pornography;
 - Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- Employer or any other accountable persons are bound to preclude such indecent incidents of molestation from happening. In case such an act takes place, then the organization should consist of a mechanism to provide prosecutorial and conciliatory remedies.
- Employers or persons in charge of the workplace must take preventive measures such as an express prohibition of sexual harassment in the form of notifications or circulars, penalties by the government against the offender, appropriate work conditions in respect of hygiene, health, and leisure.
- If the offenses committed are the ones that fall under the purview of the Indian Penal Code, 1860⁵, then the employer is bound to take prosecutorial action by complaining to the appropriate authority.

¹ Section 354 of the *Indian Penal Code*, 1860.

² Section 509 of the *Indian Penal Code*, 1860.

³ *Convention on the Elimination of All Forms of Discrimination against Women*, 1979.

⁴ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, 2013.

⁵ *The Indian Penal Code*, 1860.



- If there is an occurrence of the violation of service rules, appropriate disciplinary action must be taken.
- An organization must have a redressal mechanism to address the complaints. This must be regardless of the fact that whether the act comprises offenses under the Indian Penal Code 1860⁶, or in place of some other laws.
- Such a redressal mechanism or more precisely such a complaint committee must have women as more than half of its members and its head must be a woman. The committee must comprise of a counselling facility. It is also acceptable to collaborate with NGOs or any such organizations which are well aware of such issues. A report must be sent to the government annually on the development of the issues being dealt with by the committee.
- To raise sexual harassment issues, employer-employee meetings must be held. The employer should take an appropriate procedures to spread cognizance on the above mentioned issue.

Analysis

In this particular case, we saw how the Judiciary used its power and acted very smartly by taking inference from the international laws just to promote principles of justice and equality. Sexual Harassment at workplaces is such a common issue and undoubtedly numerous number of women faces the same at all levels and in all sectors. This was a great move by the Indian Judiciary to minimize this evil as much as possible and also encourage women who kept quiet all along to come forward and take an action. Although, they were merely guidelines and had not taken the shape of law. The guidelines established by the Court provided

a legal platform to all such women. However, it was unfortunate that it took so long for India to come up with any laws or guidelines to provide women an adequately safe environment when the cases of their harassment and humiliation were so evident and in large numbers. It is rather shameful that there are still so many such cases still happening with the majority of them is never reported.

Conclusion

By giving this Judgement and guidelines, The Hon'ble Court has inspired and asked from many women to raise their voice against sexual harassment. These guidelines further laid the foundation for the establishment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁷ which was much needed. This was a full-fledged Act that made the prevention of Sexual Harassment absolutely necessary and any commission should not be tolerated by any organization or company. The plight of Bhanwari Devi sparked a new change but it is shameful that she still awaits justice and her attackers remain free and free of any charges due to lack of evidence.

⁶ The *Indian Penal Code*, 1860.

⁷ The *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, 2013.