



**CONSTRUCTION OF STATUTE;
WITH REFERENCE TO CASE OF
VISHAKA & ORS. VS. STATE OF
RAJASTHAN (1997) 6 SCC 241**

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Introduction

Construction of statute is a process by which the meaning of an ambiguous provision of a statute, any written document or any oral agreement is determined. A judge usually makes a construction of an unclear term in a document at issue in a case that involves a dispute as to its legal significance.

The judge also examines the circumstances surrounding the provisions, laws, and other writings dealing with the same subject matter, and the probable purpose of the unclear phrase in order to conduct the proper meaning of such word. Once the judge has done so, the court will enforce the words as construed. However, for language that is plain and clear, there cannot be a construction.

When ambiguous language is given its exact and technical meaning, and no other equitable considerations or reasonable implication are made, there has been a strict or literal construction of the unclear term. A liberal or equitable construction permits a term to be reasonably and fairly evaluated so as to implement the object and purpose for which the document is designed. This does

not mean that the words will be strained beyond their natural or customary meanings.¹

Statement of the problem

In my research paper the statement of problem that I found is that before the case of Vishaka & Ors. v State of Rajasthan 1997 there was no separate law to safeguard a woman from sexual harassment at work place and there was no proper definition of sexual harassment and rape was given in the existing laws.

Scope of research

My scope of research is limited to the construction of statute done by the Supreme Court in this case. As what all changes were brought and what was construed by the Supreme Court in this particular case.

Objectives of Study

Through this paper I seek to how construction of a statute takes place. Basically before this case there were provisions only for Sexual Harassment of women and there were no laws or provisions against Sexual Harassment of Women at Work Place. As there were some lacunae which needed to be fixed. Main objective of the research is to see what all things which were observed in this case and construed by the Supreme Court.

Research Methodology used

-Doctrinal Methodology

Facts of the case :

In the year 1992 there was a lady named **Bhanwari Devi** who was a social activist and was appointed a duty in a particular village in

¹ <https://legal-dictionary.thefreedictionary.com/construction#:~:text=A%20regular%20pattern%20of%20decisions,be%20applied%20in%20similar%20cases>

%20agreement%20is%20determined.&text=A%20regular%20pattern%20of%20decisions,be%20applied%20in%20similar%20cases



Rajasthan to stop the **Child Marriage** in that place.

One day she came to know that there a child marriage is taking place of girl child who was just 1 year old. So she tried to stop that marriage but failed to stop the marriage. To take the revenge from her and to teach a lesson to her 5 men of that family belonging to Gujjar Community brutally raped her because she was interfering in the marriage. Also she was boycotted by that village on the remark that she is from a lower caste.

Then she filed the case in the Session Court but due to **lack of evidence** all the five convicted people were acquitted by the Session Court in 1995.

Because of which a group of five NGOs was formed, which was named **Vishaka** who together filled a **PIL** (Public Interest Litigation) in Supreme Court against the state of Rajasthan and Central Government of India to enforce the Fundamental Rights of working women under **Articles 14, 19, and 21** of Constitution of India, so that Shanwari Devi can get the justice.

Lacunae in the Laws related to Vishaka Case

1. **Before 1997** if a woman facing Sexual Harassment at the work place had to lodge a complaint under **Section 354 of IPC** (Indian Penal Code), which deals with the criminal assault of women to Outrage Women's Modesty and **Section 504 of IPC** that punishes an Individual for using a word, gesture or an act intended to insult the modesty of a women. As there was no such special or specific law provided against the Sexual Harassment of Women at Work Place.

2. As the main domain of Parliament is to make laws and there was no such law in the Vishaka Case to safeguard a woman from Sexual Harassment at Work Place, due to which a **Vacuum** created.

3. Definition of Sexual Harassment and Rape was not properly codified and doesn't include many things and acts in it.

Considerations of Supreme Court

In the Vishaka case Supreme Court referred all the laws and provisions which were present at that time related to Sexual Harassment of Women.

The Court decided that the consideration of **“International Convention** and Norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in **Articles 14,15,19(1)(g) and 21** of the Constitution of India and the safeguards against sexual Harassment implicit therein.”²

Court observed that there are some lacunae in the definition of sexual Harassment and rape as there is no such proper definition of the following and there is need of a law to be made for safeguard of women from the sexual harassment at work place, because of these loop holes the accused are taking the defenses and gets acquitted by the courts and which was causing a huge injustice to the aggrieved person.

Construction Done by Supreme Court

Supreme Court came further to fill up the vacuum which was existing in the society and causing injustice to the aggrieved once.

There were certain aspects on which the court construed, as we know that the definition of Sexual Harassment and Rape was scattered.

² <https://indiankanoon.org/doc/1031794/>



So in this case Supreme Court for the very first time gave a proper and complete definition of sexual harassment and what all acts and conducts are included in the definition:

1. Physical contact and advances.
2. Sexual colored remarks.
3. Showing pornography;
4. And any other unwelcome physical verbal or non-verbal conduct of sexual nature will be covered in the definition of sexual harassment.

Supreme Court after concluding all the aspects of this case gave some guidelines to safeguard a woman from sexual harassment at work place which were named as **Vishaka Guidelines**. They were considered as **Equal to law under Article 141 of Constitution of India**.

Supreme Court said that the Vishka Guidelines will be followed until the Parliament don't make full-fledged law against the sexual harassment at work place. Court also incorporated **Section 354A in IPC** (Indian Penal Code) in the year 2013 which states the punishment for sexual harassment at work place. **Section 354 A Sexual Harassment and Punishment for Sexual Harassment:-** (1) A man committing any of the following acts—

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favors; or
- (iii) showing pornography against the will of a woman; or;
- (iv) making sexually colored remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii)

Of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.³

Supreme Court also made the definition of Rape with

Vishaka Guidelines given by Supreme Court

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 person in work place or other institutions to prevent or deter the commission of acts of sexual harassment or prosecution of acts, of sexual harassment by talking all steps required.

Where any of the above mentioned acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman

³ Section 354A of Indian Penal Code, 1860 (Bare Act)



has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim doesn't consent to the conduct in question or raises any objection thereto.

Criminal Proceedings

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure 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.

Complaint Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

Complaints Committee

The complaint mechanism, referred to above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor 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

member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

Worker's Initiative & Awareness

Employee should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

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) in a suitable manner.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The Bill got the assent of the President on 23 April



2013. The Act came into force from 9 December 2013. This statute superseded the Vishaka Guidelines for Prevention of Sexual Harassment (POSH) introduced by the Supreme Court (SC) of India.⁴ It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013. The government has threatened to take stern action against employers who fail to comply with this law.

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment; AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on

the 25th June, 1993 by the Government of India; AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Conclusion

In the end, it would not be wrong to say that Judicial Activism has reached its apex in the landmark case of *Vishaka vs. State of Rajasthan*. Whenever there is a lacuna in the law, they need to be rewritten to plug those gaps and this is one such classic case where the Supreme Court acted as Legislature and construed the definition of sexual harassment for the very first time and laid down the *Vishaka Guidelines* to safeguard a woman from sexual harassment at work place. But till 1997 even after India's independence of 50 years there was hardly any law to safeguard sexual harassment of working women. It is a very harsh reality that women across India face exploitation but very few have the ability to raise their voices against it because of lack of family support, lack of education, social stigma and low literacy level. Our basic motto should be to instill a culture in which every woman shall have a right to be free from sexual harassment and also to the right to work in a sexual harassment free zone which is very important right of every person to live with respect and dignity free from mental physical torture. This case gave guidelines in the year 1997 but sadly it took more than 20 years for the Parliament to come with a proper Act against sexual harassment of women at work place. At the end, it is very important for the people to analyze the statement said by **Justice Arijit Pasayat** which is- **"While a murder destroys the physical frame of the victim, a**

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<https://www.iitk.ac.in/wc/data/Handbook%20on%20>

Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf



rapist degrades and defies the soul of a helpless women”.⁵

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⁵ <https://www.latestlaws.com/articles/supreme-court-case-analysis-vishaka-and-ors-v-state-of-rajasthan-and-ors-by-kavisha-gupta/>