

# Study of “Vishakha Case” and its impact on Society

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## INTRODUCTION

“A woman is like a tea bag. You can't tell how strong she is until you put her in hot water”

With more and more women coming out and voicing their allegations of sexual harassment meted out to them, India's own #MeToo movement is gaining momentum. Several influential men have been called out from diverse fields of work, including film industry, stand-up comedy, and media, and heads have started rolling. Among the big names that have come out are men who were senior colleagues or bosses when the alleged harassment took place. Indian laws clearly state what constitutes sexual harassment at workplace. For organisations employing 10 or more people, there are Vishaka guidelines that write down acts defined as sexual harassment and the action that's required to be taken.

## FACT OF THE VISHAKHA CASE

The guidelines date back to 1997 when the Supreme Court laid them down while passing judgment in a public interest litigation filed by Vishaka and other women's rights groups over the infamous Bhanwari Devi gangrape case. Bhanwari Devi, a social worker from Rajasthan had in 1992 prevented the marriage of a one-year-old girl, inviting wrath of the villagers. The gangrape was allegedly an act of revenge.

The facts of this case are given below:-

- Bhanwari Devi who was a social activist/worker in one of the Rajasthan's village.
- She worked under a social development program at rural level which was about to stop child marriage in a village and this social program was administered/ initiated by the Rajasthan's state government.
- Bhanwari Devi en-devoured to stop the marriage of the RamkaranGujars (thakurs)

daughter, who was merely less than one year old i.e. she was an infant only.

- As a part of her duty, Bhanwari Devi tried to terminate the marriage of her infant daughter.
  - Even of her vain-full efforts to stop the marriage, it happened, but Bhanwaridevi was not excused or pardoned for her's this fault.
  - She was exposed to or put forward to social punishment or boycott.
  - September 1992, she was been gang raped by RamkaranGujjar and his five friends in front of her husband.
  - The male doctor at normal primary health center declined to survey her and the doctor at Jaipur only made confirmation of her age without any recommendation of her being raped in her medical report.
  - At police station too she was been continually taunted by the women countable for the whole of themidnight.
  - In past midnight she was been asked by the policeman to leave her lehnga as the evidence of that incident and go back to her village.
  - After that, she was only left with the bloodstained dhoti of her husband to wrap her body, as a result of which they had to spend there whole night in that police station.
  - The Trail Court made the discharge of the accused people for not being guilty.
  - The High Court in his judgment propounded that –“it was a case of gang rape which was conducted out of revengeful situation.
  - All these statement and judgment, aroused women and NGO'S to file petition (PIL) in Supreme Court of India.
- Issue Raised In This Case
- Whether, the enactment of guidelines mandatory for the repudment of sexual harassment of womenat workplace.

## CONTENT OF THE COURT JUDGMENT

Hearing the PIL, the apex court took note of the fact that the civil and penal laws of the time did not adequately provide for specific protection of women from sexual harassment at workplaces, and made it legally binding for employers to observe some guidelines to ensure prevention of sexual harassment of women.

Vishaka&Ors. V/S State of Rajasthan (Air 1997 Sc 3011) - Sexual Harassment Landmark Case

Bench Of Judges: CJI, Sujata V. Manohar, B. N. Kirpal

Vishaka&ors. v/s state of Rajasthan[1]is a case which deals with the evil of Sexual Harassment of a women at her workplace. It is a landmark judgment case in the history of sexual harassment which as being decide by Supreme Court. Sexual Harassment means an uninvited/unwelcome sexual favor or sexual gestures from one gender towards the other gender. It makes the person feel humiliated, offended and insulted to whom it is been done. In many of the cases, it has been observed that homosexual labor harass an employee belonging to the same sex to which he belongs.

Sexual harassment is also termed as “Eve Teasing” in India, and it can be determined from the following acts like- passing of indicative or typical comments or jokes, uninvited touching, making appeals for sex, sexually blunt pictures or text messages or emails, discredit person because of sex. Accordingly, Sexual Harassment violates the fundamental right of the women of gender equality which is codified under Article 14 of Indian Constitution and also the fundamental right to life and to live a dignified life is violated/infringed under Article 21 of constitution of India. Even though there has been no provision for sexual harassment at workplace under Indian Constitution.

Justice ArjitPasayat beholder from his beautiful thought that- “ while a murderer destroys the physical frame of the victim, on the other hand the rapist defiles the soul of a helpless female”. Sexual harassment is one of the social evil faced by the fragile portion of the society. Now at this point of time the high society people or the people who commits sexual harassment should become aware about the vital needs or rights of women or either when this tranquil volcano of anger will erupt will cause immense danger and shattering which would have equal consequences which is cause from the burst or eruption of an inactive volcano.

The judgment of Vishakha's case was

conveyed by Chief Justice J.S Verma as a representative of Justice SujataManihar and Justice B.N Kripal on account of writ petition which was file by Vishakha the victim of this case. The court observed that the fundamental rights under Article 14[2], 19[3](1)(g) and 21[4]of Constitution of India that, every profession, trade or occupation should provide safe working environment to the employees. It hampered the right to life and the right to live a dignified life. The basic requirement was that there should be the availability of safe working environment at workplace. The Supreme Court held that, women have fundamental right towards the freedom of sexual harassment at workplace. It also put forward various important guidelines for the employees to follow them and avoid sexual harassment of women at workplace. The court also suggested to have proper techniques for the implementation of cases where there is sexual harassment at workplace. The main aim/objective of the Supreme Court was to ensure gender equality among people and also to ensure that there should be no discrimination towards women at there workplace.

After this case, the Supreme Court made the term Sexual harassment well defined, accordingly any physical touch or conduct, showing of pornography, any unpleasant taunt or misbehavior, or any sexual desire towards women, sexual favor will come under the ambit of sexual harassment.

### Critical Analysis

In the case of Vishakha& others v/s the state of Rajasthan[5], the Supreme Court specifically underlined the definition of Sexual Harassment[6],which conveys any unwanted or uninvited physical touch or conduct or showing of pornography or any definable sexual comments or texts will come under the ambit of Sexual Harassment. According to me any such conduct done directly hampers the right of women to life and it also affects there dignity to live. It also hinders the mental and physical health of women. Sexual harassment shall be avoided and the equality between the genders shall be established at workplace.

The Supreme Court held out guidelines that, the person-in-charge of the particular institution, organisation or office whether be it private or public, will be responsible in taking effective steps to prevent sexual harassment. Penalties shall be charged from the accused people for conducting sexual harassment. It had became a very crucial topic to act upon for the prevention of sexual

harassment women at workplace. In case of private companies the strict rules regarding the punishment of sexual harassment shall be included. In case the sexual harassment is conducted by the outsiders, the person-in charge of that institution must take strict action for the conduct of such crime.

### The human story of 'Vishakha'

One forgets the human story of 'Vishakha', a Saathin, a friend, a grass root worker employed with the Women's Development Project (WDP) run by the Government of Rajasthan was gang raped by five upper caste men as an act of revenge for Saathin trying to stop child marriage. This was the year 1992, during the festival of AkhaTeej, a time considered auspicious for marriages. With children as young as one year old were married, WDP members were engaged with the community to stop child marriages. The angered family thought it was beneath them to be told by a lower caste woman to end a practice they fiercely thought otherwise. The marriage was prevented that day, but the family went ahead with the marriage at midnight. Saathin and her family witnessed social boycott. On September 22, 1992 while she and her husband were working in their field, five men attacked her husband. She went to her husband's rescue, when two men raped here, while the other three men kept her pinned down to the ground.

The double victimization followed with apathetic display of inaction by the police. Male doctors refused to medically examine her, as no female doctor was present. The Medical Jurist at Jaipur refused to conduct any tests without orders from the Magistrate. The Magistrate refused to give the orders until the next day, as it was way past his working hours. The vaginal swab was taken more than 48 hours after the alleged rape, even though Indian law requires this to be done within 24 hours of the act.

The court hearing was long drawn out, with five judges being changed, and the sixth Judge ruled the accused as "not guilty" stating that 'Saathin's husband couldn't have passively watched his wife being gang-raped', further adding that, "Since the offenders were upper-caste men and included a brahmin, the rape could not have taken place because she was from a lower caste."

The outrage, public opinion and civil society upraise saw number of NGOs, women's rights activist and lawyers file a Public Interest

Litigation (PIL) in the Supreme Court of India under the collective platform called Vishakha, against the State of Rajasthan and the Union of India.

The court read out: "Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore, are of great significance in the formulation of the guidelines to achieve this purpose."

This definitive judgment was distinctive in as much as it acknowledged that the international Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), along with the Articles 14, 19 and 21 of the Indian Constitution was an enforcement of the fundamental rights of working women was binding on the State:

"In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions 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 and the safeguards against sexual harassment implicit therein..."

The onus for a safe working environment was on the employer. It was the duty of the employer or other responsible persons in work places to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

The Vishakhajudgement helped strengthen the Sexual Harassment of Women at Workplace, Act 2013, filling the gap until then for women who faced sexual harassment and violence at workplace (whether public or private).

### VISHAKA COMMISSION GUIDELINES

The Vishaka Guidelines were a set of procedural guidelines for use in India in cases of sexual harassment. They were promulgated by the Indian Supreme Court in 1997 and were superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

## Background

Pre-1997 the person facing sexual harassment at workplace had to lodge a complaint under Section 354 of the Indian Penal Code 1860 that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman.

During the 1990s, Rajasthan state government employee Bhanwari Devi who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme was raped by the landlords of the community. The feudal patriarchs who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and raped her repeatedly. The rape survivor did not get justice from Rajasthan High Court and the rapists were allowed to go free. This enraged a women's rights group called Vishaka that filed a public interest litigation in the Supreme Court of India.

This case brought to the attention of the Supreme Court of India, "the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places."

## Vishakha vs. State of Rajasthan

In 1997, the Supreme Court passed a landmark judgment in the same Vishaka case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. Vishaka Guidelines were stipulated by the Supreme Court of India, in Vishakha and others v State of Rajasthan case in 1997, regarding sexual harassment at workplace. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue.

The court decided that the consideration of "International Conventions 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 and the safeguards against sexual harassment implicit therein."

## What is sexual harassment

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favors;

- c) sexually colored remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where the victim 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 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 does not consent to the conduct in question or raises any objection thereto.

Thus, sexual harassment need not involve physical contact. Any act that creates a hostile work environment - be it by virtue of cracking lewd jokes, verbal abuse, circulating lewd rumors etc. counts as sexual harassment.

The creation of a hostile work environment through unwelcome physical verbal or non-verbal conduct of sexual nature may consist not of a single act but of a pattern of behavior comprising many such acts. Thus, it is important that the victim report such behavior as soon as possible and not wait for it to become worse. In some cases, the psychological stigma of reporting the conduct of a co-worker might require a great deal of courage on the part of the victim and they may report such acts after a long period of time. The guidelines suggest that the complaint mechanism should ensure time bound treatment of complaints, but they do not suggest that a report can only be made within a short period of time since the incident occurred.

Often, the police refuse to lodge FIRs for sexual harassment cases, especially where the harassment occurred sometime ago.

## Employer's obligations

Note that the Vishaka Guidelines are not sufficient for legal compliance for employers as the same has been replaced by a full-fledged statute of the Parliament. Although the statute mostly retains the framework provided in the Guidelines, there are significant differences and it is the statute that the employers must follow. For instance, the definition of sexual harassment has significantly changed.<sup>[6]</sup> From this perspective, the Vishaka Guidelines is of only historical and academic

importance now. It will also be relevant in cases that were brought up before 2013 enactment of the law.

### Recent Development

Recently the minister for Women's Welfare Maneka Gandhi has stated that government will take tough steps against any organizations, including NGOs that do not implement the new law. It is a good idea to use a checklist to make sure that your organization is compliant with the law. A sample checklist for sexual harassment compliance is available here.

**Internal Complaints Committee and Local Complaints Committee:** The Sexual Harassment Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch having more than 10 employees of any gender.

The government is in turn required to set up a 'Local Complaints Committees' ("LCC") at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.

The Sexual Harassment Act, 2013 also sets out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.

### Interim Reliefs

The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, inter-alia,

Provide a safe working environment

Display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee

Organize workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee

Treat sexual harassment as misconduct under the

service rules and initiate action for misconduct.

The employer is also required to monitor the timely submission of reports by the ICC.

If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.

### Complaints Mechanism

All women who draw a regular salary, receive an honorarium, or work in a voluntary capacity in the government, private sector or un-organized sector come under the purview of these guidelines.

All workplaces should have an appropriate complaints mechanism with a complaints committee, special counselor or other support services.

A woman must head the complaints committee and no less than half its members should be women.

The committee should include an NGO/individual familiar with the issue of sexual harassment.

The complaints procedure must be time-bound.

Confidentiality must be maintained.

Complainants/witnesses should not experience victimization/discrimination during the process.

### Preventive steps

Sexual harassment should be affirmatively discussed at workers' meetings, employer-employee meetings, etc.

Guidelines should be prominently displayed to create awareness about the rights of female employees.

The employer should assist persons affected in cases of sexual harassment by outsiders.

Central and state governments must adopt measures, including legislation, to ensure that private employers also observe the guidelines.

Names and contact numbers of members of the complaints committee must be prominently displayed.

### From Guidelines to Act

The Sexual harassment at workplace Bill was passed by the Lok Sabha on the 2nd of September, 2012. It is now The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It defines sexual harassment as laid down by the Supreme Court in Vishakha and others v State of Rajasthan (1997) case.<sup>1</sup>

### Recommendations

National Commission for Women has asked the government to ensure constitution of Internal

Complaints Committee (ICC) in accordance with Supreme Court guidelines in its departments, institutions and autonomous bodies to address such cases. It has also recommended conducting gender sensitization workshops for top level management officials. NCW recommended publicizing committee using posters, etc. and explicitly mention the contact details of the members. The commission also highlighted the need for orientation programs for employees to sensitize them on sexual harassment. Another recommendation was to enhance communication strategies to combat violation against women. The rules for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 have come into force on 9th Dec. 2013.

### **Sexual Harassment at the Workplace: The Journey so far**

A case involving the alleged assault and manhandling of a woman lawyer by her male colleagues at the Tis Hazari Courts in the Delhi before the Supreme Court has brought the spotlight back to the issue of lack of implementation of measures for prevention of sexual harassment of women at the workplace.

In that case, the Supreme Court was apprised about the non-existence of the committee in terms of judgment in Vishaka's Case and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (the "Act") in Tis Hazari Courts and other district courts in Delhi.

Reiterating its commitment to ensuring complete compliance of these two mainstays for prevention of sexual harassment, the Supreme Court has directed all the High Courts and District Courts of the country to constitute the committee under the Act, if not already constituted, within a period of two months.

In order to understand the context of the Order, it is necessary to look at where it all begins.

In the year 1992, a Writ Petition was filed by a few social activists and NGOs led by a women rights group named Vishaka before the Supreme Court titled Vishaka v State of Rajasthan. Though the immediate objective of the Writ Petition was to bring to the Supreme Court's attention an incident relating to the alleged brutal gang rape of social worker in a village of Rajasthan, the Writ Petition was broad-based revealing the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate.

This case which came to be widely and commonly known as the Vishaka's Case was to

change the judicial landscape of the country forever by ushering in the age of courts stepping in to fill a legislative vacuum. Prior to this judgment, the Supreme Court had been reluctant to step into the domain of lawmaking and had deemed it more appropriate to leave it to the legislature to step in to do the needful.

In Vishaka's Case, the Supreme Court took serious note of the urgency for safeguards by an alternative mechanism in the absence of legislative measures governing sexual harassment at work-places. The Supreme Court by its judgment dated August 13, 1997, laid down the detailed framework in the form of 'Guidelines and Norms' for specific protection of women from sexual harassment in workplaces. The Guidelines and Norms were to be followed by employers in work places as well as other responsible persons or institutions to ensure the prevention of sexual harassment of women.

Despite these categorical Guidelines, several cases of sexual harassment from different parts of the country started landing up at the Supreme Court's doorstep highlighting the lack of effective implementation of the Guidelines issued in the Vishaka's Case.

The most significant one was that of MedhaKotwalLele's Case. Several Orders came to be passed by the Supreme Court after issuing notices to all States Governments. During the hearings, the Supreme Court took note of the steps taken by the State Governments for implementation of the Guidelines and setting up the required regulatory framework which is reflected in the final judgment of this case dated October 19, 2012.

While disposing of the petition through this judgment, the Supreme Court took the view that the existing laws, if necessary, should be revised and appropriate new laws ought to be enacted by Parliament and the State Legislatures. The Supreme Court proceeded to issue detailed directions (supplementing the Guidelines in Vishaka's case) to be operative until legislative enactment on the subject was put into place. Thereafter, the Supreme Court handed over the baton for looking into cases of non-compliance or non-adherence to the Guidelines in the hands of the respective High Courts.

Around the same time, i.e., on September 3, 2012, and February 26, 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Bill was passed by the Lok Sabha and Rajya Sabha respectively. After receiving the Presidential assent, the Act came into force on December 9, 2013.

Since its enactment, the Act has been in force for almost five years now. The Act provides for a detailed framework to deal with complaints of sexual harassment at workplace in the form of complaint committee, the procedure for dealing with complaints and the determination of compensation. The Act also stipulates duties of an employer and the penalties for non-compliance with the provisions of the Act.

Despite the elaborate scheme, the complaints of sexual harassment continue to grow. The problem does not lie with the Act. It lies in its implementation. Several organizations who employ more than the minimum required 10 or more employees do not have the internal committees in place to deal with the complaints. Wherever the committees have been set up, there is no proper functioning or awareness. This extends to the local committees which are to be set up under the Act. The Order of the Supreme Court discussed above is the tell-tale indication.

The allegations of sexual harassment have far-reaching consequences; both for the accused employee and the employer organization. In case, the accused employee belongs to the higher echelons of the organization, the complainant employee finds the situation even more daunting. One of the major challenges faced by a complainant employee is that the committee sometimes acts like a judge in its own cause. This happens because of two key reasons. Firstly, the members know the accused employee personally and closely. Secondly, the fear of backlash both within and outside the organization.

In the event that a complaint ends up being considered, the approach of the committee sometimes poses a great obstacle. The primary reason is that in most organizations, the Human Resource department is entrusted with the responsibility of formation and functioning of the committee.

The expertise to handle such complaints is found lacking – both in terms dealing with the high stakes involved in a complaint of this nature and the ability to function as a fact-finding body. In most organizations, the committee is viewed as necessary evil – a classic case of compulsion over commitment to the cause. More often than not, an employee is left with no alternative but to switch organizations rather than go through the ordeal of seeing a complaint to its logical conclusion.

One of the ways to overcome these challenges is to overhaul the complaint redressal mechanism by substituting the internal and local committees with a more empowered authority in the form of a Commission or a Special Court. Such

a forum will be more committed, responsive and sensitive to the cause. In addition, the complaint redressal should be made time bound (as in the case of other offences against women) in order to instil confidence in the system. These measures will go a long way in carrying out the mandate of the judgment in Vishaka's Case in its true letter and spirit.

### **Case Analysis: Vishaka & Ors v. State of Rajasthan & Ors**

Historically, the concept of “women empowerment is deep rooted in the social action developed within the grass-roots movements in the United States of America in the 1960's & 70's within the context of civil rights and also the rights of women. Therefore, in a country like India too women were given the position of Goddess who were worshipped as Goddess- Laxmi, Durga & Parvati but today the situation is not the same. Thus, today women being self-dependent and though holding good positions face harassment, inequality, and biasness at workplace. Not only this, the problem of Sexual Harassment at the workplace has always been one of the pivotal subject of the women's movement since a long time. It is a well-known fact that women's emancipation and her safety & security is most essential for the entire country but this entire scenario completely shattered after the dark incident which took place in the year 1992 and popularly known as- Vishaka Case. After which the Supreme Court gave Vishaka guidelines to curb Sexual Harassment of women at workplace.

### **FACTS OF THE CASE:-**

- It goes back since the year 1985 when a woman named as Bhanwari Devi, who was employed as a village-level social worker also known as-Saathin under the Women's Development Project (WDP) run by the Government of Rajasthan was badly raped in the year 1992.
- As it was the part of Devi's job, she used to directly work with the families to prevent the marriages and also report cases to the police to when urgency took place.
- With all this, in one particular case it happened that Devi reported a family which had belonged to the Gurjar Community to the police because of the arranged marriage of one year old infant.

- Therefore, to get revenge for the same act done by Devi, the family had rebelled against her but to also ostracise her from the community, around five men of the Gujjar community while she was at her workplace.
- Despite preferential and the derogatory behavior shown by the police and also the doctors, she was insistent on to fight for Justice so she lodged a complaint against the accused. However, in the absence of sufficient evidence the court had acquitted the accused in the Trail Court.
- Various social organizations and women activists also raised their voices for Devi's fight for Justice. Therefore, a Public Interest Litigation was filled by the women's right activists for the need to protect women from sexual harassment at the workplace.

#### ISSUE OF THE CASE:-

The Supreme Court had inspected the case which highlighted the problem of Gender Inequality, outraging the modesty of women, sexual harassment at the workplace and rape as societal issues of substantial intensity. Thus, violence against women.

#### DECISION OF THE COURT:-

"Each such incident ends up in violation of the basic rights of 'Gender Equality' and therefore the 'Right of Life and Liberty'... A legal document of writ in such a scenario, if it's to be effective, must be in the midst of directions for prevention; because the violation of basic rights of this sort could be a revenant development. the basic right to hold on any occupation, trade or profession depends on the supply of a secure operating surroundings. Right to life suggests that life with dignity. the first responsibility for guaranteeing such "safety" and dignity through appropriate legislation, and therefore the creation of a mechanism for its social control, is of the general assembly and therefore the executive..."

Through its analysis, the Supreme Court concluded that sexual harassment in the workplace is a violation of women's human rights, specifically:

#### Constitution of India

- Article 14: Equality before the law
- Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- Article 19 (1)(g): Right to practice one's profession, or to carry on any occupation, trade or business

- Article 21: Right to life and personal liberty  
In particular, the Court referred to India's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has prohibits discrimination in the workplace and outlines specific state obligations to end it:
- Article 11(1)(a, f): The right to work and the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction
- Article 24: States parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention
- General Recommendation No. 19: On the elimination of violence against women.

Without domestic legislation to adequately address sexual harassment in the workplace, the Court undertook measures to enforce gender equality and non-discrimination in accordance with universal human rights norms and standards.

#### Vishaka Guidelines, 1997:-

In its judgment, the Court provided a set of guidelines for employers as well as other responsible persons or institutions – to immediately ensure the prevention of sexual harassment. In accordance with Article 141 of Constitution, these guidelines were to be considered law until appropriate legislation was created:-

- Sexual Harassment consists of unwelcomed sexually determined behavior as physical sexual contact, sexual favor, sexual remarks, pornographic content and also verbal. Non-verbal conduct of sexual nature
- Sexual Harassment at workplace should be always –informed, produced & circulated
- Whenever a sexual harassment takes place which amounts to a specific offence under law, the employer should take action by complaining about the same to the appropriate authority.
- An appropriate mechanism of prevention should be created for redressal of the complaint.

#### SEXUAL HARASSMENT AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL ) ACT, 2013

It took the government seventeen years to pass the law against harassment within the geographical point earlier this year, within the wake of the Delhi gang rape last Dec, once the



Supreme Court had in 1997 set down the Vishaka Guidelines on the matter.

The Act includes several provisions of the Vishakha Guidelines, that 1st required the formulation of “a code of conduct for work place”. Building on the Vishakha Guidelines, the Act imply the formation of an interior complaints committee and an area complaints committee at the district level.

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 seeks to guard women from harassment at their place of work in an exceedingly abundant wider sense.

The Bill was 1st introduced by Women and Child Development Minister Krishna Tirath in 2007 and approved by the Cabinet Union in Jan 2010. it had been tabled within the Lok Sabha in Dec 2010 and observed the Parliamentary commission on Human Resources Development. The committee’s report was printed in November 2011.

In 2012, the Cabinet Union approved change to incorporate domestic employees. The amended Bill finally elapsed the Lok Sabha in September 2012. Bill elapsed in Rajya Sabha in February 2013. It received the assent of the President of India on April 2013 and finally came into force in December 2013.

#### **IMPORTANT PROVISIONS OF THE ACT:-**

- 1-The Act defines harassment at the work place and provides a mechanism for redressal of complaints and also safeguards against the false charges.
2. The definition of “aggrieved woman”, WHO can get protection beneath the Act is extraordinarily wide to hide all girls, no matter her age or employment standing, whether or not within the organized or unorganized sectors, public or personal and covers purchasers, customers and domestic employees similarly.
3. whereas the “workplace” within the Vishaka tips is confined to the normal workplace set-up wherever there's a transparent employer-employee relationship, the Act goes abundant additional to incorporate organisations, department, office, branch unit etc. within the public and personal sector, organized and unorganized, hospitals, nursing homes, academic establishments, sports institutes, stadiums, sports advanced and anyplace visited by the worker throughout the course of employment as well as the transportation.
4. Each leader is needed to represent an interior Complaints Committee at every workplace or

branch with ten or a lot of staff. The District Officer is needed to represent a neighborhood Complaints Committee at every district, and if needed at the block level.

5. The Committee is needed to complete the inquiry inside a fundamental quantity of ninety days. On completion of the inquiry, the report are sent to the leader or the District Officer, because the case could also be, they're mandated to require action on the report inside sixty days.
6. The Complaints Committees have the powers of civil courts for gathering proof.
7. The Complaints Committees square measure needed to supply for conciliation before initiating Associate in nursing inquiry, if requested by the litigant.
8. Penalties are prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to fifty thousand.

#### **CRITICAL ANALYSIS OF THE ACT:**

The molestation Act was a way hoped-for piece of legislation as a result of before this act, there was no law to manipulate this matter and so it looked as if it would be a major step towards making certain ladies a secure and healthy work atmosphere. However, the Act still suffers from some flaws.

Firstly, it fails to hide those ladies operating within the agricultural employees and defense force, that area unit mostly men – dominated sectors.

Secondly, the act seems to be gender biased since it solely protects ladies.

Thirdly, the act has wide scope for false allegations. There area unit high possibilities of those laws obtaining put-upon at the hands of girls for his or her personal advantages.

Fourthly, the availability relating to the fixing of the financial compensation per the economic potential of the person makes it discriminatory since the person with high rank and standing are going to be created to pay quite the person with status, which out of nothing appears to serve any purpose although being discriminatory in nature.

It is to not be denied that the Act marks a very important step in recognizing a priority that affects most girls but heaps remains required to be done since for a much better safety and protection of girls, one thing quite the regulation of sexual conduct is required as a result of creating regulation to guide the conduct of alternative person or ethical police investigation of women’s lives solely strengthen the sexual stereotypes and

sexual orthodoxy.

Therefore, an additional demanding law is required to deal with the problem of molestation with the support of and not at the price of women's basic rights.

### CONCLUSION

In the end, it would not be wrong to say that Judicial Activism has reached its apex in the landmark case of *Vishaka v. State of Rajasthan*. Therefore, in a democratic country like India it is extremely important that the rights of both the genders i.e. the male & the female are equally protected. *Vishaka* case of sexual harassment at workplace is a case of landmark judgment by Supreme Court of India. Not as a result of it had been an attack on operating women's elementary right to figure without concern and prejudice. Not because it's an adventure story of vast torture of a naïve operating girl. Not as a result of a lady showing exemplary bravery to fight against the male ego of our immoral society. 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 a very important right of every person to live with respect and dignity free from mental and physical torture. This case gave guidelines in the year 1997 but has sadly failed for its final implementation of Prevention of Women from Sexual Harassment at Workplace Bill.

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 rapist degrades and defies the soul of a helpless woman".