

**Vishaka and others v. State of Rajasthan and others (1997) 6 SCC 241, AIR 1997 SC 3011, (1998) BHRC 261, (1997) 3 LRC 361, (1997) 2 CHRLD 202**

### **1) Reference Details**

Jurisdiction: Supreme Court of India

Date of Decision: 13 August 1997

Link to full case: <http://www.elaw.org/resources/text.asp?id=1831>

### **2) Facts**

The litigation resulted from a brutal gang rape of a publicly employed social worker in a village in Rajasthan during the course of her employment. The petitioners bringing the action were various social activists and non-governmental organisations. The primary basis of bringing such an action to the Supreme Court in India was to find suitable methods for the realisation of the true concept of “gender equality” in the workplace for women. In turn, the prevention of sexual harassment of women would be addressed by applying the judicial process.

Under Article 32 of the Indian Constitution, an action was filed in order to establish the enforcement of the fundamental rights relating to the women in the workplace. In particular it sought to establish the enforcement of Articles 14, 15, 19(1)(g) and 21 of the Constitution of India and Articles 11 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women.

### **3) Law**

#### *Constitution of India*

- Article 14 (the right to equality)
- Article 15 (the right to non discrimination)
- Article 19(1)(g) (the right to practise one’s profession)
- Article 21 (the right to life)

#### *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*

- Article 11 ([State] takes all appropriate measures to eliminate discrimination against women in the field of employment)
- Article 24 ([State shall] undertake to adopt all necessary measures at the national level aimed at achieving the full realization)

### **4) Decision**

In disposing of the writ petition with directions, it was held that:

*“The fundamental right to carry on any occupation, trade or profession depends on the availability of a ‘safe’ working environment. The right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, belongs to the legislature and the executive. When, however, instances of sexual harassment resulting in violations of Arts 14, 19 and 21 are brought under Art 32, effective redress requires that some guidelines for the protection of these rights should be laid down to fill the legislative vacuum.”*

In light of these deliberations, the Court outlined guidelines which were to be observed in order to enforce the rights of gender equality and to prevent discrimination for women in the workplace.

These guidelines included the responsibility upon the employer to prevent or deter the commission of acts of sexual harassment and to apply the appropriate settlement and resolutions and a definition of sexual harassment which includes unwelcome sexually determined behaviour (whether directly or by implication) such 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 a sexual nature.

Furthermore the guidelines set out that persons in charge of a workplace in the public or private sector would be responsible for taking the appropriate steps to prevent sexual harassment by taking the appropriate steps, including:

- The prohibition of sexual harassment should be published in the appropriate ways and providing the appropriate penalties against the offender;
- For private employees, the guidelines should be included in the relevant employment guidelines;
- Appropriate working conditions in order to provide environments for women that are not hostile in order to establish reasonable grounds for discrimination;
- The employer should ensure the protection of potential petitioners against victimisation or discrimination during potential proceedings;
- An appropriate complaints mechanism should be established in the workplace with the appropriate redress mechanism;
- Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

Finally, the court stated that the guidelines are to be treated as a declaration of law in accordance with Article 141 of the Constitution until the enactment of appropriate legislation and that the guidelines do not prejudice any rights available under the Protection of Human Rights Act 1993.