

Phone : 25367033, 25367035, 25367036
दूरभाष : 25367033, 25367035, 25367036
Telegrams : MEDCONCIND, New Delhi-75
तार : मेडकोसिंड नई दिल्ली
Fax : 0091-11-25367024
E-mail : mci@bol.net.in
Website : www.mciindia.org



पॉकेट - 14, सेक्टर - 8,
द्वारका फेज - 1
नई दिल्ली-110 077
Pocket- 14, Sector- 8,
Dwarka Phase - 1
New Delhi-110077

25

भारतीय आयुर्विज्ञान परिषद्
Board of Governors in Super-session of
MEDICAL COUNCIL OF INDIA

No. MCI-34(1)(Gen.)/2012-Med/153049.

Date: 11/01/2013.

CIRCULAR

To,

All the Dean/Principal
Medical Colleges

Sub: Formation of Sexual Harassment Committee in Medical Colleges in compliance of the Hon'ble Supreme Court Judgments

Madam/Sir,

The Hon'ble Supreme Court of India in Vishaka and others vs. State of Rajasthan and others [(1997) 6 SCC 241] has laid down certain guidelines in respect to sexual harassment at workplace. Further, the recent judgment of the Hon'ble Supreme Court in the matter of Medha Kotwal Lele and Ors vs. Union of India and Ors dated 19.10.2012 has inter alia, directed the Medical Council of India as under:-

"16.....

iv) The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant - victim is not forced to work with/under such harasser and where appropriate and possible the alleged harassers should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations,

1825
11 JAN 2013
AAA-6-10
22/1/2013
Please put up
22/1/2013
DA



भारतीय आयुर्विज्ञान परिषद्
Board of Governors in Super-session of
MEDICAL COUNCIL OF INDIA

bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the Vishaka guidelines and the guidelines in the present order."

In view of the above, copies of the Judgment of the Hon'ble Supreme Court in:-

(A) Vishaka and others vs. State of Rajasthan and others [(1997) 6 SCC 241]

(B) Medha Kotwal Lele and Ors vs. Union of India and Ors dated 19.10.2012

is being sent to all the Medical Colleges/Institutes for complying with the judgment of the Hon'ble Supreme Court expeditiously.

Yours faithfully,

(Prof. Sanjay Shrivastava)
Secretary

Copy to:

(i) Computer Section, Medical Council of India for permanently placing this circular on the MCI website

Encl:

A copy of the Hon'ble Supreme Court Judgement in

(i) Vishaka and others vs. State of Rajasthan and others; and

(ii) Medha Kotwal Lele and Ors vs. Union of India and Ors dated 19.10.2012

GOVERNMENT MEDICAL COLLEGE & HOSPITAL, CHANDIGARH

(Hospital Building), Sector 32-B, Chandigarh-160030 (Ph: 0172-2665253-59, Fax: 0172-2609360)

(ESTABLISHMENT BRANCH-IV)

05039344

Endst. No. GMCH-E-IV-EA-1(2/1)-2013/

Dated: 11 FEB 2013

A copy of above is forwarded to the Computer Programmer, GMCH-32, Chandigarh to e-mail the copy of the same to the following for information and necessary action:-

1. Prof. Suman Kochhar, Head, Deptt. of Radiodiagnosis-cum-Chairperson of the Committee for Redressal of Complaints by the Victims of Sexual Harassment at Work Place, GMCH-32, Chandigarh.
2. Assistant Registrar Academic, GMCH-32, Chandigarh.
3. All Office Superintendents, GMCH-32, Chandigarh.
4. The Nursing Superintendent, GMCH-32, Chandigarh.
5. Law Officer, GMCH-32, Chandigarh.
6. Spare copy for Master File.

Office Superintendent Est. IV
for Additional Director (Admn.)

REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL/APPELLATE JURISDICTION
WRIT PETITION (CRIMINAL) NOS. 173-177 OF 1999

Medha Kotwal Lele and Others Petitioners

Vs.

Union of India and Others Respondents

WITH

T.C. (C) NO. 21 OF 2001

CIVIL APPEAL NO. 5009 OF 2006

CIVIL APPEAL NO. 5010 OF 2006

JUDGMENT

R.M. LODHA, J.

The *Vishaka*¹ judgment came on 13.8.1997. Yet, 15 years after the guidelines were laid down by this Court for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Constitution of India until such time appropriate legislation was enacted by the Parliament, many women still struggle to have their most basic rights protected at workplaces. The statutory law is not in place. The Protection of Women Against Sexual Harassment at Work Place Bill, 2010 is still pending in Parliament though Lok Sabha is said to have passed that Bill in the first week of September, 2012. The belief of the Constitution

¹ *Vishaka and Others v. State of Rajasthan and Others*; [(1997) 6 SCC 241]

- 4 -

framers in fairness and justice for women is yet to be fully achieved at the workplaces in the country.

2. This group of four matters – in the nature of public interest litigation – raises principally the grievance that women continue to be victims of sexual harassment at workplaces. The guidelines in *Vishaka*¹ are followed in breach in substance and spirit by state functionaries and all other concerned. The women workers are subjected to harassment through legal and extra legal methods and they are made to suffer insult and indignity.

3. Beijing Declaration and Platform for Action, *inter alia*, states, "Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms..... In all societies, to a greater or lesser degree women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture".

4. *Vishaka* guidelines require the employers at workplaces as well as other responsible persons or institutions to observe them and ensure the prevention of sexual harassment to women. These guidelines read as under :

"1. Duty of the employer or other responsible persons in workplaces and other institutions:
It shall be the duty of the employer or other responsible persons in workplaces or other institutions 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.

-5-

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured 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 whereunder 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 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.

3. Preventive steps:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
- (b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

6.

4. 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.

5. Disciplinary action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. 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.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor 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 members 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.

8. Workers' initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness:

- 7 -

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.

10. Third-party harassment:

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.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993."

5. In these matters while highlighting few individual cases of sexual harassment at the workplaces, the main focus is on the lack of effective implementation of *Vishaka* guidelines. It is stated that the attitude of neglect in establishing effective and comprehensive mechanism in letter and spirit of the *Vishaka* guidelines by the States as well as the employers in private and public sector has defeated the very objective and purpose of the guidelines.

JUDGMENT

6. In one of these matters, Medha Kotwal Lele, this Court has passed certain orders from time to time. Notices were issued to all the State Governments. The States have filed their responses. On 26.4.2004, after hearing the learned Attorney General and learned counsel for the States, this Court directed as follows :

"Complaints Committee as envisaged by the Supreme Court in its judgment in *Vishaka's* case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to

-8-

be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules."

This Court further directed in the order dated 26.4.2004 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.

7. On 17.1.2006, this Court in couple of these matters passed the following order:

"These matters relate to the complaints of sexual harassment in working places. In Vishaka vs. State of Rajasthan, (1997) 6SCC 241, this Court issued certain directions as to how to deal with the problem. All the States were parties to that proceedings. Now, it appears that the directions issued in Vishaka case were not properly implemented by the various States/Departments/Institutions. In a rejoinder affidavit filed on behalf of the petitioners, the details have been furnished. The counsel appearing for the States submit that they would do the needful at the earliest. It is not known whether the Committees as suggested in Vishaka case have been constituted in all the Departments/Institutions having members of the staff 50 and above and in most of the District level offices in all the States members of the staff working in some offices would be more than 50. It is not known whether the Committees as envisaged in the Vishaka case have been constituted in all these offices. The number of complaints received and the steps taken in these complaints are also not available. We find it necessary to give some more directions in this regard. We find that in order to co-ordinate the steps taken in this regard, there should be a State level officer, i.e., either the Secretary of the Woman and Child Welfare Department or any other suitable officer who is in charge and concerned with the welfare of women and children in each State. The Chief Secretaries of each State shall see that an officer is appointed as a nodal agent to collect the details and to give suitable directions whenever necessary.

- 9 -

As regards factories, shops and commercial establishments are concerned, the directions are not fully complied with. The Labour Commissioner of each State shall take steps in that direction. They shall work as nodal agency as regards shops, factories, shops and commercial establishments are concerned. They shall also collect the details regarding the complaints and also see that the required Committee is established in such institutions.

Counsel appearing for each State shall furnish the details as to what steps have been taken in pursuance of this direction within a period of eight weeks. Details may be furnished as shown in the format furnished by the petitioners in the paperbooks. A copy of this format shall form part of the order. The above facts are required at the next date of hearing. A copy of this order be sent to the Chief Secretary and Chief Labour Commissioner of each State for taking suitable action."

8. From the affidavits filed by the State Governments the following position emerges in respect of each of these States:

GOA

The amendments in the Civil Services Conduct Rules and the Standing Orders have not been made so far.

GUJARAT

No amendments in the Civil Services Conduct Rules and the Standing Orders have been made so far. It is not stated that all Complaints Committees are headed by women. There is no information given whether in such committees NGO members have been associated.

NCT OF DELHI

The amendments in the Civil Services Conduct Rules have been made. The position about amendments in the Standing Orders has not been clarified. It has not been specified that all Complaints Committees are headed by women.

HIMACHAL PRADESH

There is nothing to indicate that the State of Himachal Pradesh has made amendments in the Civil Services Conduct Rules and the Standing Orders. No details of formation of Complaints Committees have been given.

HARYANA

The amendments in the Government Employees (Conduct) Rules, 1966 have been made. However, it is not specified that the amendments in Standing Orders have been made.

MAHARASHTRA

Necessary amendments in Maharashtra Civil Services (Conduct) Rules, 1974 have been made. The Labour Commissioner has taken steps for amending Mumbai Industrial Employment (Permanent Orders) Rules, 1959.

MIZORAM

The State of Mizoram has amended Civil Services Conduct Rules and also constituted Central Complaints Committee to look into complaints pertaining to cases of sexual harassment of working women at all workplaces for preservation and enforcement. A notification has been issued giving necessary directions to all private bodies.

SIKKIM

The amendments in the Civil Services Conduct Rules have been carried out and a notification has been issued for constitution of complaints committees by departments/institutions with 50 or above staff to look into sexual harassment of women at workplaces.

- 11 -

UTTARANCHAL

The State of Uttaranchal has carried out amendments in Civil Services Conduct Rules as well as the Standing Orders. The District Level and State Level Complaints Committees have been constituted.

WEST BENGAL

The amendments in the Rules relating to duties, rights and obligations of government employees have been made. The amendments in the Standing Orders have been carried out. Out of 56 departments of Government of West Bengal, Complaints Committees have been formed in 48 departments and out of 156 Directorates under the Government, Complaints Committees have been formed in 34 Directorates. Of 24 institutions under the Government, Complaints Committees have been formed in 6.

MADHYA PRADESH

Although State of Madhya Pradesh has made amendments in the Civil Services Conduct Rules but no amendments have been made in the Standing Orders. The Complaints Committees have been constituted in every office of every department right from the Head of the Department level to the District and Taluka level. The District Level Committees have been constituted under the chairmanship of the District Collector. The steps taken by the District Committees are monitored by the nodal departments.

PUNJAB

The State of Punjab has carried out amendments in the Civil Services Conduct Rules as well as the Standing Orders. 70 Complaints Committees have been constituted at the headquarters of different

-12-

Directorates and 58 Complaints Committees have been constituted in various Field Offices.

ORISSA

No amendments in the Civil Services Conduct Rules and the Standing Orders have been made.

ANDHRA PRADESH

Amendments in the Civil Services Conduct Rules and in the Standing Orders have been made.

KARNATAKA

The amendments in the Civil Services Conduct Rules have been made by the State of Karnataka but no amendments have been made in the Standing Orders. It is stated that in most of the committees, the number of women members is above 50%. The Chairpersons are women and in most of the committees, an outside member, i.e., an NGO has been associated.

RAJASTHAN

The State of Rajasthan has carried out amendments in the Civil Services Conduct Rules but no amendments have been carried out in the Standing Orders.

BIHAR

The State of Bihar has made amendments in the Civil Services Conduct Rules but there is nothing to show that amendments in Standing Orders have been made. However, only one Complaints Committee has been constituted for the entire State.

MEGHALAYA

-13-

The State of Meghalaya has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders.

TRIPURA

The State of Tripura has carried out the amendments in the Civil Services Conduct Rules. There are no Standing Orders applicable in the State. 97 Complaints Committees have been constituted in most of the state government departments and organisations.

ASSAM

Amendments in the Civil Services Conduct Rules have been made but no amendments have been carried out in the Standing Orders.

MANIPUR

The State of Manipur has carried out amendments in the Civil Services Conduct Rules, but no definite information has been given regarding amendments in the Standing Orders. Only one Complaints Committee has been formed for the entire State.

UTTAR PRADESH

Amendments both in the Civil Services Conduct Rules and the Standing Orders have been carried out.

JAMMU AND KASHMIR

The State of Jammu and Kashmir has carried out amendments in the Civil Services Conduct Rules. It is stated that steps are being taken for amendments in the Standing Orders.

NAGALAND

-14-

The amendments have been carried out in the Civil Services Conduct Rules by the State of Nagaland but no amendments have been carried out in the Standing Orders.

ARUNACHAL PRADESH

The State of Arunachal Pradesh has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders. There is only one State Level Committee for the entire State of Arunachal Pradesh.

KERALA

Amendments in the Civil Services Conduct Rules and in the Standing Orders have been carried out. There are 52 Complaints Committees in the State. All such committees are headed by women and 50% members of these committees are women and there is representation of NGO members in these committees.

TAMILNADU

The State of Tamil Nadu has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

JHARKHAND

The State of Jharkhand has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

- 15 -

9. From the affidavits filed by the State Governments, it transpires that the States of Orissa, Meghalaya, Himachal Pradesh, Goa, Arunachal Pradesh and West Bengal have amended the Rules relating to duties, public rights and obligations of the government employees but have not made amendments in Civil Services Conduct Rules. Similarly, the States of Sikkim, Madhya Pradesh, Gujarat, Mizoram, Orissa, Bihar, Jammu & Kashmir, Manipur, Karnataka, Rajasthan, Meghalaya, Haryana, Himachal Pradesh, Assam, NCT of Delhi, Goa, Nagaland, Arunachal Pradesh, Jharkhand and Tamil Nadu have not carried out amendments in the Standing Orders. These States appear to have not implemented the order passed by this Court on 26.4.2004 quoted above. The States which have carried out amendments in the Civil Services Conduct Rules and the Standing Orders have not provided that the report of the Complaints Committee shall be treated as a report in the disciplinary proceedings by an Inquiry Officer. What has been provided by these States is that the inquiry, findings and recommendations of the Complaints Committee shall be treated as a mere preliminary investigation leading to a disciplinary action against the delinquent.

10. The States like Rajasthan, Meghalaya, Himachal Pradesh, Assam and Jammu and Kashmir seem to have not formed Complaints Committees as envisaged in the *Vishaka* guidelines. Some States have constituted only one Complaints Committee for the entire State.

✓ - 16 -

11. The Union Territories of Andaman and Nicobar Islands, Daman and Diu, Lakshadweep, Dadra and Nagar Haveli and Puducherry have not made amendments in the Standing Orders. The Union Territory of Chandigarh does not seem to have carried out amendments in the Civil Services Conduct Rules. Some of the Union Territories like Dadra and Nagar Haveli and Chandigarh are reported to have not yet formed Complaints Committees. Daman and Diu have formed one Complaints Committee for the Union Territory.

12. While we have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11 per cent of the total seats. India ranks 129 out of 147 countries in United Nations Gender Equality Index. This is lower than all South-Asian Countries except Afghanistan. Our Constitution framers believed in fairness and justice for women. They provided in the Constitution the States' commitment of gender parity and gender equality and guarantee against sexual harassment to women.

13. The implementation of the guidelines in *Vishaka* has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar

-17- ✓

Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth.

14. In *Seema Lepcha*² this Court gave the following directions:

(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance of the guidelines framed by this Court in Vishaka's case and the directions given in Medha Kotwal's case by getting the same published in the newspapers having maximum circulation in the State after every two months.

(ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka's case and the directions given in Medha Kotwal's case.

(iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the Government departments of the State and its agencies/instrumentalities but also for the private companies."

15. As a largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence – domestic violence, sexual assault, sexual harassment at the workplace, etc; — and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert

² *Seema Lepcha v. State of Sikkim & Ors.* [Petition for Special Leave to Appeal (Civil) No. 34153/2010 decided on 3.2.2012]

-18-

and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women.

16. In what we have discussed above, we are of the considered view that guidelines in *Vishaka* should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place.

(i) The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

(ii) The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

-19-

(iii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

(iv) The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the *Vishaka* guidelines and further provide that if the alleged harasser is found guilty, the complainant – victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the *Vishaka* guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons

registered/affiliated with them follow the guidelines laid down by *Vishaka*. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the *Vishaka* guidelines and the guidelines in the present order.

17. We are of the view that if there is any non-compliance or non-adherence to the *Vishaka* guidelines, orders of this Court following *Vishaka* and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.

18. Writ petitions (including T.C.) and appeals are disposed of as above with no orders as to costs.

..... J.
(R.M. Lodha)

..... J.
(Anil R. Dave)

..... J.
(Ranjan Gogoi)

NEW DELHI.

- 21 -

OCTOBER 19, 2012.



JUDGMENT

PETITIONER:
VISHAKA & ORS.

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 13/08/1997

BENCH:
CJI, SUJATA V. MANOHAR, B. N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Verma, CJI:

This Writ Petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.

Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of

-23-

mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention, as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. 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, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers, under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a Law Officer to help us find a proper solution to this social problem of considerable magnitude. In addition to Ms. Meenakshi Arora and Ms. Naina Kapur who assisted the Court with full commitment, Shri Fali S. Nariman appeared as Amicus Curiae and rendered great assistance. We place on record our great appreciation for every counsel who appeared in the case and rendered the needed assistance to the Court which has enabled us to deal with this unusual matter in the manner considered appropriate for a cause of this nature.

Apart from Article 32 of the Constitution of India, we may refer to some other provision which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14, 19(1)(g) and 21, which have relevance are:

Article 15:

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on only of religion, race, caste, sex, place of birth or any of them.

(2) xxx xxxxx
xxxx

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) xxxxx xxxxx
xxxx"

Article 42:

"42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief."

Article 51A:

"51A. Fundamental duties. - It shall be the duty of every citizen of India, -

(a) to abide by the Constitution and respect its ideals and institutions, ...

xxxx xxxxx

XXXX

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

xxx

xxxx

XXXX"

Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51 :

"51. Promotion of international peace and security - The State shall endeavour to -

xxxx

xxxx

xxxx

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another;

and

xxx

xxx

xxx"

Article 253 :

"253. Legislation for giving effect to international agreements - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Seventh Schedule :

"List I - Union List:

xxxx

xxxx

xxxx

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

xxx

xxx

xxx"

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. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament, to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides

that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the parliament enacts to expressly provide measures needed to curb the evil.

Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirements as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that these should be the guidelines and norms declared by this Court to govern the behaviour of the employers and all others at the work places to curb this social evil.

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, of great significance in the formulation of the guidelines to achieve this purpose.

The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

- (a) to ensure that all persons are able to live securely under the Rule of Law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) to administer the law impartially among persons and between persons and the State."

Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are:

Article 11:

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on basis of equality of men and women, the same rights, in

http://JUDIS.NIC.IN

particular:

(a) The right to work as an inalienable right of all human beings;

xxxx

xxxxxx

xxxx

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

xxx

xxxxxx

xxxxxx

Article 24 :

"States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention."

The general recommendations of CEDAW in this context in respect of Article 11 are :

"Violence and equality in employment:

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place."

The Government of India has ratified the above Resolution on June 25, 1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made a official commitment, inter alia, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's Rights to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform for Action. We have, therefore, no hesitation in placing reliance on the above

for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in Minister for Immigration and Ethnic Affairs vs. Tech. 128 ALR 535, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

In Nilabati Behera vs. State of Orissa 1993(2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right, as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993,

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. 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 persons in work places or other institutions 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.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured 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 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 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.

3. Preventive Steps:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector

29-

bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. 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.

5. Disciplinary Action:

Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. 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.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor 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 under 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.

8. Workers' Initiative:
Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.
9. Awareness:
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 suitable manner.
10. 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.
11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines

laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

JUDIS