

## विशाखा दिशा-निर्देश

भारतीय सर्वोच्च न्यायालय ने अगस्त 1997 (विशाखा तथा अन्य बनाम राजस्थान सरकार तथा अन्य) में जारी एक ऐतिहासिक निर्णय में कहा कि यौन उत्पीड़न की हर घटना भारत के संविधान के अनुच्छेद 14, 15 तथा 21 के तहत "मौलिक अधिकारों" का उल्लंघन है तथा अनुच्छेद 19 (1) (जी) के अधीन "स्वतंत्रता का अधिकार" का उल्लंघन है।

विशाखा मामले में सर्वोच्च न्यायालय ने कार्यस्थल पर यौन उत्पीड़न की समस्या से निपटने के लिए व्यापक दिशा-निर्देश जारी किए।

पूर्व तथ्य : 50 वर्षीय एक सामाजिक कार्यकर्ता भंवरी देवी के साथ उच्च तथा प्रभावी वर्ग के व्यक्तियों ने सामूहिक बलात्कार किया, क्योंकि वह जयपुर के समीप अपने गाँव में बाल विवाह की प्रथा को रोकने का प्रयास कर रही थी। न्याय पाने के दृढ़ संकल्प के साथ भंवरी देवी ने अपराधियों के खिलाफ मुकदमा दायर करवाया। हालाँकि उस मामले में सभी आरोपियों को ट्रायल कोर्ट द्वारा बरी कर दिया गया, क्योंकि गाँव के अधिकारियों, डॉक्टर तथा पुलिस सभी ने उसकी स्थिति को खारिज कर दिया था।

न्यायालय के इस निर्णय ने विशाखा के सामूहिक मंच के तहत (विशाखा तथा अन्य बनाम राजस्थान सरकार तथा अन्य, 1997) कई महिला समूहों तथा गैर-सरकारी संगठनों को सर्वोच्च न्यायालय में एक याचिका दायर करने के लिए प्रेरित किया। अपनी याचिका में उन्होंने भंवरी देवी के लिए न्याय की माँग की और कार्यस्थल पर यौन उत्पीड़न के विरुद्ध कार्यवाही का अनुरोध किया।

सर्वोच्च न्यायालय ने यौन उत्पीड़न को किसी ऐसे अप्रिय हाव-भाव, व्यवहार, शब्द या पहलू के रूप में परिभाषित किया, जो यौन प्रकृति के हों। न्यायालय ने पहली बार एक अंतर्राष्ट्रीय मानवाधिकार विधि पत्र, दी कंवेन्शन ऑन दी एलिमिनेशन ऑफ ऑल फॉर्मर्स ऑफ डिस्क्रिमिनेशन अगेन्स्ट वूमन (सीईडीएडब्ल्यू) का संदर्भ लेते हुए दिशा-निर्देश संग्रह का निर्धारण किया, जिसे आम तौर पर विशाखा दिशा-निर्देश के नाम से जाना जाता है, जिसमें शामिल हैं :

- यह रोजगार प्रदाता का दायित्व है कि वह यौन उत्पीड़न से निवारण के लिए कंपनी की आचार संहिता में एक नियम शामिल करें।
- संगठनों को अनिवार्य रूप से शिकायत समितियों की स्थापना करनी चाहिए, जिसकी प्रमुख महिलाओं को बनाया जाना चाहिए।
- उल्लंघनकर्ताओं के खिलाफ अनुशासनात्मक कार्यवाही की जानी चाहिए तथा पीड़िता के हितों की रक्षा करनी चाहिए।
- महिला कर्मचारियों को उनके अधिकारों के बारे में जागरूक करवाया जाना चाहिए।

वर्ष 1997 से पूर्व, कार्यस्थल पर यौन उत्पीड़न का शिकार होने वाली महिलाएँ भारतीय दंड संहिता, 1860, एसएस.354 तथा 509 के तहत शिकायत दर्ज करवाती थीं।

तत्पश्चात् विशाखा मामले के उल्लिखित निर्णय के अनुसार शिकायत समिति के पास वास्तविक प्राधिकार और कानूनी दर्जा है ।

विशाखा फैसले के अनुरूप सेंट्रल सिविल सर्विसेज़ (आचरण) नियम 1964 में, आर.3सी को शामिल करने के लिए वर्ष 1998 में सुधार किया गया जो कार्यरत महिलाओं के यौन उत्पीड़न पर रोक लगाता है ।

सेंट्रल सिविल सर्विसेज़ (आचरण) का नियम 1964, आर.3सी कहता है :

- (1) कोई भी सरकारी कर्मचारी अपने कार्यस्थल पर किसी महिला के साथ किसी प्रकार के यौन उत्पीड़न के आचरण में लिप्त नहीं होगा ।
- (2) प्रत्येक सरकारी कर्मचारी जो कार्यस्थल का प्रभारी होता है, ऐसे कार्यस्थल पर किसी महिला के साथ होने वाले यौन-उत्पीड़न को रोकने के लिए समुचित उपाय करेगा ।

हालाँकि यह स्पष्ट रूप से वर्णित नहीं है, पर यह नियम सभी महिलाओं पर लागू होगा, भले ही वे सरकारी प्रतिष्ठान में कार्यरत हों या सरकारी कार्यालय/अधिकारियों के संपर्क में हों ।

इसके अलावा 'मेधा कोटवाल लेले तथा अन्य बनाम भारतीय संघ तथा अन्य' के मामले में दिए अपने फैसले में सेंट्रल सिविल सर्विसेज़ (आचरण) नियम, 1964 के लिए एक जाँच अधिकारी के निर्धारण का निर्देश दिया गया तथा शिकायत समिति की रिपोर्ट को उन नियमों के अधीन एक जाँच रिपोर्ट के रूप में माना गया ।

इस निर्देश के अनुरूप केंद्र सरकार (कार्मिक तथा प्रशिक्षण विभाग) ने सेंट्रल सिविल सर्विसेज़ (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1965 आर.14, उप-आर.(2) में संशोधन कर आवश्यक प्रावधान को शामिल किया ।

विशाखा मामले के फैसले के बाद कई प्रारूपों के पश्चात् 4 नवंबर 2010 को संसद द्वारा 2010 को 'कार्यस्थल पर यौन-उत्पीड़न के विरुद्ध महिला सुरक्षा विधेयक' का जन्म हुआ । गौरतलब है कि यह विधेयक न केवल महिला कर्मचारियों को सुरक्षा प्रदान करता है, बल्कि कार्यस्थल पर क्लाइंट, ग्राहक, अप्रेंटिस, दिहाड़ी मजदूरी श्रमिक या तदर्थ क्षमता के रूप में प्रवेश करने वाली किसी भी महिला को सुरक्षा प्रदान करता है । कॉलेज/विश्वविद्यालयों में छात्राएँ, शोध विद्वान एवं अस्पताल में रोगी भी शामिल किए गए । इस विधेयक का लंबित क्रियान्वयन, विशाखा दिशा-निर्देश अभी भी इन समस्याओं के समाधान हेतु एक कार्य-प्रणाली के रूप में कार्य कर रहे हैं ।

# **VISHAKA 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**

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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**

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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**

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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 rumours 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**

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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.

Recently the minister for Women's Welfare Maneka Gandhi has stated that government will take tough steps against any organisations, including NGOs that do not implement the new law. It is a good idea to use a checklist to make sure that your organisation 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
- organise 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 a 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**

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

- All workplaces should have an appropriate complaints mechanism with a complaints committee, special counsellor 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**

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- 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**

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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**

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**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 sensitisation 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, 13'. <http://www.lawyerscollective.org/wp-content/uploads/2013/12/Sexual-Harassment-at-Workplace-Rules.pdf>