

## **Justice Jagdishkumar Sharan Verma and Judicial Activism**

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Former chief Justice of India, among the most active and respected Indian Jurists Jagdish Sharan Verma died at a Gurgaon hospital on Monday 8th April 2013. He was 80.

The face of judicial activism in the 1990's, Justice Verma, who as the 27th CJI and served from March 25, 1997 until his retirement on 18, January was associated with many verdicts, campaigns and events.

The Judiciary has played a very important role for the implementation for the laws of the protection of women such as- Maintenance: As we are all aware about the case of Shah Bano, which has brought tremendous change for the maintenance in the Muslim women's right to maintenance. As a judge he pushed for judicial independence and individual rights. He was quick in understanding the facts of case, had a sharp intellect and also a sharp tongue. The same thinking is reflected in his landmark judgment in Vishakha V. State of Rajasthan. There was a persistent and rampant sexual harassment of women at the workplace and there was total absence of legislation to cope with this societal evil. Justice Verma as the presiding Chief Justice, issued certain orders and direction defining sexual harassment, enacting machinery to cope with it and penalties to be imposed on the perpetrators of sexual harassment, though laudable in intent, was tantamount to ad hoc judicial legislation. Justice Verma made it explicit that the directions it issued "would be binding and enforceable in law until suitable legislation is enacted to occupy the field. The beneficial effects of this judgment have been substantial. The judgment was delivered in August 1997 and no law has yet been enacted on the subject.

### **Brief History of Vishakha**

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

#### 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 organizations. The primary basis of bringing such an action to the Supreme Court in India was to find suitable methods for the realization 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 practice one's profession)
- Article 21 (the right to life)

*Variorum Multi-Disciplinary e-Research Journal*  
*Vol.,-04, Issue-I, August 2013*

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-colored 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 petitioner’s against victimization 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.

The 2013 Verma committee report avoided comforting cliché’s to tackle the culture of violence against women. In 630 magisterial pages, the committee moved beyond the Victorian Presumptions embodied in our laws to the sexual assault and harassment that women actually face --on the street, in the

*Variorum Multi-Disciplinary e-Research Journal*  
*Vol.,-04, Issue-I, August 2013*

bedrooms. The report also focused on violence against women in conflict zones such as Kashmir and the North East, shone a light on how the justice system further humiliated the victim and suggested a host of judicial and police reforms. All of these reflected the enduring constitutional vision of rights dignity that Verma championed

“Sir Verma was probably the greatest Judge of modern times. He combined a ‘Love of Liberty’ with a passion for justice. His life and works will always provide inspiration to the coming generation”.

**Reference:-**

- 1 Link to full case: <http://www.elaw.org/resources/text.asp?id=1831>
- 2 Indian express Newspaper -Author Vinay Sitapati, Phd candidate at Princeton University and visiting scholar at centre for policy Research. New Delhi.
- 3 Indian express Newspaper Express News Service New Delhi- April 2012
- 4 <http://www.c-s-p.org>