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FROM VISHAKA TO POSH TO BNS: HAS SEXUAL HARASSMENT LAW REALLY CHANGED?

K.Manasa

When we talk about sexual harassment law in India, we are not just talking about sections changing on paper. We are talking about what happens when a woman walks into her workplace. Is she safe? If something happens, who will she go to? Will anyone actually listen?

The law has come a long way — from the Supreme Court creating guidelines in 1997, to Parliament making a full law in 2013, to a new criminal code in 2023. But the real question is not how many laws we have. The question is whether anything has changed on the office floor.

1. VISHAKA ERA (1997–2013): WHEN JUDGES HAD TO MAKE THE LAW

Before 1997, there was no separate law for sexual harassment at the workplace in India. There were only general IPC provisions like Section 354 and Section 509 — outraging modesty, insulting modesty. They were not made for workplace situations. You had to go to the police, file a criminal case, and that itself was a huge barrier.

Everything changed because of Bhanwari Devi. She was a social worker in Rajasthan, who tried to stop a child marriage. As revenge, she was gang-raped. The system failed her everywhere — police, medical, trial court. It shook women's groups across the country and they filed a PIL in the Supreme Court.

That PIL became *Vishaka v. State of Rajasthan*.[1] Since there was no law made by Parliament, the Supreme Court said — we will make the law under Article 32.[2] The Court took help from CEDAW, the UN Convention on Elimination of All Forms of Discrimination Against Women, and said sexual harassment violates Articles 14, 15, 19(1)(g), and 21 of the Constitution.[3]

For the first time in India, sexual harassment was defined clearly — physical contact and advances, demand for sexual favours, sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.[3]

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And then it gave the Vishaka Guidelines — every employer must prevent harassment, must create a Complaints Committee headed by a woman, with at least 50% women members and one external member from an NGO who knows the issue, must do time-bound inquiry and protect the victim from retaliation.[4]

It was a landmark. It was judicial activism at its best. But if we are honest, it had limits. It was only guidelines. There was no punishment if you didn't make a committee. No one was checking the unorganized sector. Many companies just put it on paper and forgot. The Court itself had to keep repeating it — in *Apparel Export Promotion Council v. A.K. Chopra* it said Vishaka was being violated,[5] and again in *Medha Kotwal Lele v. Union of India* it had to direct implementation.[6]

2. POSH ACT ERA (2013–2023): FINALLY A PROPER LAW

After the Nirbhaya incident in December 2012, the whole country was asking for change. Justice J.S. Verma Committee was set up, and it strongly recommended a separate law on workplace harassment.[7] That recommendation became The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.[8]

This was a real shift from guidelines to a binding statute. Three things changed:

- Wider Coverage: POSH does not apply only to big offices. It applies to government, private, NGOs, hospitals, stadiums, even a private house where a domestic worker works, and to the unorganized sector through Local Committee.[9] The aggrieved woman can be of any age, any role — employee, intern, client, apprentice, visitor.[9]
- Compulsory Structure: Under Section 4, every establishment with 10 or more employees must have an Internal Committee (IC) with a senior woman as Presiding Officer, two members committed to the cause of women, and one external member.[10] Section 6 provides Local Committee (LC) at the district level headed by an eminent woman social worker.[11] And Section 26 is important — if you don't constitute an IC, you can be fined Rs. 50,000 and for a repeat offence, your licence can be cancelled.[12]
- Clearer Process: Section 2(n) keeps the Vishaka definition but Section 3 adds new forms — implied or explicit promise or threat about employment, hostile work environment, humiliating treatment.[13] Workplace under Section 2(o) is very wide — it even includes transport provided by employer and any place visited during work.[14]

Then time limits — Section 9 says 3 months to file, extendable to 6;[15] Section 11 says inquiry to be completed in 90 days;[16] Section 16 says confidentiality has to be maintained, otherwise Section 17 punishes with Rs. 5000 fine.[17]

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So POSH moved focus from only punishment to prevention and internal redressal.

But here is the ground reality. A recent study said 36% of companies are still not fully compliant. Ask any law intern in a chamber with 5 people — there is no IC. Ask about LC in the district — most people don't even know where it is. In *Aureliano Fernandes v. State of Goa*, the Supreme Court itself got frustrated and said ICs are being constituted improperly and inquiries are done casually, as a formality.[18]

3. BNS ERA (2023 ONWARDS): NEW NUMBERS, SAME LAW?

On 1st July 2024, IPC was replaced by Bharatiya Nyaya Sanhita, 2023.[19] The government said it is decolonizing criminal law.

For sexual harassment, what actually changed?

- Section 354A IPC is now Section 75 BNS[20] — same acts: physical contact with unwelcome explicit overtures, demand for favours, showing pornography, sexually coloured remarks. Punishment still up to 3 years for the first three, 1 year for the last one.
- Section 354B IPC is now Section 76 BNS[21] — assault to disrobe.
- Section 354C IPC is now Section 77 BNS[22] — voyeurism.
- Section 354D IPC is now Section 78 BNS[23] — stalking.

The only real update is that voyeurism and stalking now explicitly mention electronic means — watching, capturing, monitoring through electronic communication.[24] That matters because harassment on WhatsApp, Instagram DMs, Zoom calls increased after COVID.

Otherwise? No increase in punishment. No graded harassment. No provision linking POSH inquiry with BNS FIR. A woman still has to run two parallel tracks — internal inquiry which is civil in nature, and police case which is criminal.

SO HAS THE LAW REALLY CHANGED?

Legally, yes. We went from no law to judge-made law to statutory law to new code. We have ICs, LCs, annual reports.

Practically, three gaps remain. First, implementation gap — ICs exist on paper. Second, monitoring gap — under Sections 21-22, every employer must file an annual report to the District Officer, but there is no central audit and no one checks.[25] Third, access to justice gap

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— IC has no real power to summon witnesses like a civil court, and BNS trial takes 3 to 5 years. For a woman intern who is worried about her career and future reference, complaining still feels like risking everything.

CONCLUSION

Vishaka gave us a voice when there was nothing. POSH gave us a structure. BNS gave us new section numbers. But real change is not when 354A becomes 75. Real change will be when every office — from an IT company in Bangalore to a small law chamber in Madanapalle — actually has an independent external member, actually does training that is not just a tick-box video, and when a woman can complain without fear of being labelled as a troublemaker.

Until then, the law has changed in books. On the office floor, we are still waiting.

FOOTNOTES (BLUEBOOK 21ST ED.)

1. *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).
2. *Id.* at 247.
3. *Id.* at 251.
4. *Id.* at 253–54.
5. *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 S.C.C. 759 (India).
6. *Medha Kotwal Lele v. Union of India*, (2013) 1 S.C.C. 297 (India).
7. Justice J.S. Verma et al., Report of the Committee on Amendments to Criminal Law (2013).
8. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, India Code (2013).
9. *Id.* § 2(a), 2(o).
10. *Id.* § 4.
11. *Id.* § 6.
12. *Id.* § 26.
13. *Id.* § 2(n), § 3.
14. *Id.* § 2(o).
15. *Id.* § 9.
16. *Id.* § 11.
17. *Id.* §§ 16–17.
18. *Aureliano Fernandes v. State of Goa*, (2024) 1 S.C.C. 632 (India).
19. The Bharatiya Nyaya Sanhita, No. 45 of 2023, India Code (2023).
20. *Id.* § 75.
21. *Id.* § 76.

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22. *Id.* § 77.
23. *Id.* § 78.
24. *Id.* § 78(1)(ii).
25. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, §§ 21–22, India Code (2013).