Sexual Harassment at Workplace - #MeToo movement

What is the issue?

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- The #MeToo movement is gathering pace in India in recent days, with women calling out influential men for alleged sexual harassment.
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- It is imperative, in this backdrop, to understand the legal recourses in place to sexual harassment at the workplace.
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What were the earlier Vishaka guidelines?

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- The Vishaka guidelines were laid down by the Supreme Court in ***Vishakha and others v State of Rajasthan*** judgment in 1997.
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- It imposes three key obligations on employing institutions - prohibition, prevention, and redress.
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- The institutions are mandated to establish a Complaints Committee.
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- This was to look into matters of sexual harassment of women at the workplace.
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- These guidelines are legally binding.
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What are the key provisions in the present Act?

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- **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act** was passed in **2013**.

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- It broadens the Vishaka guidelines, which were already in place.
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- **Definition** - An aggrieved victim is a woman “of any age whether employed or not”, who “alleges to have been subjected to any act of sexual harassment”.
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- The Act thus covers the rights of all women working or visiting any workplace, in any capacity.
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- Sexual harassment is any one or more of “unwelcome acts or behaviour”, committed directly or by implication.
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- They include:
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i. Physical contact & advances
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ii. A demand or request for sexual favours
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iii. Sexually coloured remarks
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iv. Showing pornography
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v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature
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- Additionally, the Act mentions five circumstances that amount to sexual harassment:
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1. implied or explicit promise of preferential treatment in her employment
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2. implied or explicit threat of detrimental treatment
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3. implied or explicit threat about her present or future employment status
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4. interference with her work or creating an offensive or hostile work

environment
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5. humiliating treatment likely to affect her health or safety
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- **ICC** - Every employer must constitute an Internal Complaints Committee (ICC) at each office or branch with 10 or more employees.
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- For the ICC to act, it is not compulsory that the victim must write a complaint.
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- If the woman is unable to make a complaint on account of her “physical or mental incapacity or death or otherwise”, her legal heir may do so.
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- The identity of the woman, respondent, witness, any information on the inquiry, recommendation and action taken should not be made public.
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- **Time-frame** - The complaint has to be made “within 3 months from the date of the incident”.
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- For a series of incidents, it has to be made within three months from the date of the last incident.
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- However, this time-frame is not rigid as the ICC can “extend the time limit”, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint in that period.
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- **IPC** - The ICC may forward the complaint to the police under Indian Penal Code Section 509.
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- The Section relates to word, gesture or act intended to insult the modesty of a woman, which would lead to maximum punishment of 1 year in jail with fine.
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- **ICC Inquiry** - Otherwise, the ICC can start an inquiry that has to be completed within 90 days.
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- The ICC has similar powers to those of a civil court in respect of the following matters:
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i. summoning and examining any person on oath
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ii. requiring the discovery and production of documents
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- When the inquiry is completed, the ICC is to provide a report of its findings to the employer within 10 days.
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- While the inquiry is on, the woman can make a written request to the ICC regarding work.
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- The ICC, “may”, then recommend her transfer, leave for 3 months, or any other relief as may be prescribed.
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- **Actions** - If the allegations are proved, the ICC recommends that the employer take action for sexual harassment.
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- This would be in accordance with the provisions of the service rules, which vary from company to company.
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- It also recommends that the company deduct from the salary of the person found guilty, “as it may consider appropriate”.
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- Compensation is determined based on five aspects:
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i. suffering and emotional distress caused to the woman
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ii. loss in career opportunity
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iii. her medical expenses
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iv. income and financial status of the respondent
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v. the feasibility of such payment

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- **Appeal** - After the recommendations, the aggrieved woman or the respondent can appeal in court within 90 days.
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- **False complaint** - In a case of false/malicious complaint and false evidence, ICC “may recommend” the employer to take action against the woman who has made the complaint.
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- However, it cannot be taken for “mere inability” to “substantiate the complaint or provide adequate proof”.
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- **Conciliation** - The ICC “may”, before inquiry, take steps to settle the matter between the victim and respondent though conciliation.
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- This is only “at the request of the aggrieved woman,” and provided that no monetary settlement is made as a basis of conciliation.
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What does the MWCD Handbook specify?

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- The Ministry of Women & Child Development (MWCD) has published a Handbook in this regard.
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- It gives more detailed instances of behaviour that constitutes sexual harassment at the workplace:
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i. Sexually suggestive remarks, offensive remarks, inappropriate questions or remarks about a person’s sex life
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ii. Display of sexist/offensive pictures, posters, MMS, SMS etc
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iii. Intimidation, threats, blackmail around sexual favours; also, any kind of threats against an employee who speaks up
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iv. Unwelcome social invitations with sexual overtones, commonly seen as

flirting/Unwelcome sexual advances
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- It says “unwelcome behaviour” is experienced when the victim feels bad or powerless, causing anger/sadness or negative self-esteem.
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- It adds that unwelcome behaviour is one which is “illegal, demeaning, invading, one-sided and power based”.
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Source: The Indian Express

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Quick Fact

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- The ‘MeToo’ movement was founded in 2006 by Tarana Burke.
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- It was to help survivors of sexual violence, by creating a community of survivors who move forward together.
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- The #MeToo spread virally as a hashtag used on social media in an attempt to demonstrate the widespread prevalence of sexual harassmentin the workplace.
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- It started gaining national attention in October 2017 in the U.S, after allegations of sexual assault by Hollywood producer Harvey Weinstein surfaced.
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- It has gained momentum in India in the recent weeks.
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- As women increasingly speak up on harassment experiences, the general criticism is about the delay in the reporting.
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- But it is to be understood that the dominant status of men in workplaces i.e power and privilege, the very lack of understanding on what constitutes

sexual harassment, the social stigma associated with the instances, the lack of trust on people to share this, the lack of awareness on the legal recourses available and above all the emotional trauma out of the incident, significantly, silence women from opening out.
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