CHAPTER 1

INTRODUCTION

1.1 GENERAL

Women constitute half the humanity. Despite being endowed with certain peculiar features both physical and temperamental, men and women are complementary to each other. Their diverse physical and temperamental qualities together form a complete race. Hence, logically both should have equal status. The Indian concept of Ardhanarishwara very well depicts this view.

Ardhanarishwara divides himself / herself in the form of Adipurush (Male form) and Prakriti (Female form) for the task of creation. None of them can perform the task without the involvement of the other. The male and female are the equal partners in the creation, development and progress of the society. Both should be given equal importance and opportunities and should be treated equally. If this balance is lost, it will be detrimental to the whole society.

Unfortunately, this balance has not been maintained in human society. Woman everywhere in the world has been subjected to various injustices. In India, ruthless male domination over women has been continuing since pre-historic times. There has been unjustifiable discrimination between the male and female child, man and woman. Women are considered as chattels and objects of sense gratification. The history of women suppression in India is very long. Women have
suffered and are suffering with discrimination in silence. Everywhere women have been subjected to inequities, indignities, inequality and discrimination\(^1\).

Discrimination de-empowers because discrimination in any form masks the human capabilities. Any factor that negates the human capability has to be reckoned as a factor of de-empowerment. Discrimination in matters pertaining to personal status de-empowers an individual from leading a dignified life.

Even though women perform two-thirds of world’s work, they receive only one-tenth of the income and own less than one-hundredth of the property\(^2\). This speaks of the gender bias and deep rooted prejudice and discrimination against women in general. A significant percentage of world’s population is constantly subjected to crimes, such as torture, eve teasing, molestation, rape, sexual harassment, female foeticide, only because they are helpless women or female. These crimes amount to gross violation of the victim’s rights and shatters her self respect and rob her dignity of being a woman – a human.

The present day requirement compels women to take up responsibilities outside the home also. As the cost of living is shooting up, more and more women are working outside to supplement the family’s income. As the traditional Indian society is opening up, females are taking up more and more jobs in various sectors. Here, again the employers adopt a discriminating attitude towards women as regards providing safety, equal opportunities, promotions, equal wages and various

\(^2\) 1980 UN Report.
social benefits. At the place of work, women are also suffering from sexual harassment, eve teasing and molestation. The situation is worse where women come from the lower socio-economic group and are placed in the unorganised sector.

Equality of sex has been recognised as a basic human right in all civilised nations. The principles of gender equality are enshrined in the Indian Constitution in its preamble and fundamental rights under Arts. 14, 15 and 16. Art. 21 of the Constitution guarantees the dignity of women. The directive principles of the state policy contained in part IV of the Constitution under Arts.38 and 39 directs the state to provide equal right and equal status for men and women to adequate means of livelihood. Art. 42 of the Constitution states that, the state shall make provision for securing just and human conditions of work. Under Art. 51- A(e) it is the fundamental duty of every citizen to renounce practices derogatory to the dignity of women.

Apart from constitutional provisions, India also ratified various International Conventions and Human rights instruments to secure equal rights of women. Several commissions have been set up by the government to look into the matter of status of women in the Indian society. There are provisions under sections 509,294 and 354 of the Indian Penal Code dealing with obscenity, eve teasing and sexual harassment of women.
Sexual harassment at work place is a form of systematised violence against women. Most of the working women at sometime or the other face this kind of violence from their colleagues, bosses or employers. Women working in fields and mines are often sexually exploited by landlords and thekedars (contractors),

Women industrial workers also face sexual harassment from factory owners, supervisors and even from their male colleagues. Women employed in the service sector face sexual harassment from their office colleagues, bosses and clients. Women and girl students face sexual harassment from faculty and other students in educational institutions.

Though sexual harassment at work place is an age-old problem, women have been left to deal with it on their own or sometimes with the support of women’s organisations. Increasing participation of women in all fields of work, changes in social attitudes towards women have not shown much progress. There have been no effective legal measures to counter it. The problem received judicial recognition when on August 13, 1997 in *Visaka* a three judge bench of the Supreme Court headed by the Chief Justice delivered a significant judgment on sexual harassment at work place, ratifying guidelines drawn up by women’s groups.

The roots of serious offence relating to sexual harassment originates from the concept of ‘Gender bias’. Though violence against women may take many forms ranging from mental torture to dowry deaths, eve teasing, assault and rape
are few to be listed. It is the social structure and legal framework of the society which make the women a target of such heinous crimes. To day, our major issues are human rights and justice for all. But can we achieve these goals without ascertaining rights to women and protecting them from various abuses?

Among the wonders of the omnipotent creator, women stand apart for her charm and attraction. But unfortunately, this apparent boon, has become a curse for her in various ways. History bears testimony to the fact that many bloody battles were fought for women resulting in the rise and fall of many civilizations. Numerous socio-political and legal reforms have failed to change women's position and her exploitation in one form or other is still rampant. Particularly the working class woman is greatly exposed to sexual abuse and criminal exploitations. The continuing phenomena of woman's torture in all walks of her life is a clarion call for humanity to wage an ultimate war against these atrocious acts. At this juncture, the new role of woman as working class, though a modern phenomenon, has increased the existing responsibility of woman to perform her dual role as housewife, good mother at house and a committed worker at her work place successfully. She has ventured to come out alone without her family protections to attend her place of working. Mostly, to fulfill the economic necessities of family, to raise their status, to maintain their independence, large number of women are entering into the workforce. They are being exposed to the outer world and it is obvious that there is chance for them to be affected by different crimes. The position of working women in family, in society, at their work place, conveyance and their protection outside the house has created complex
problems. The position of working women in the present day society is precarious though their presence in work force of the country is quite encouraging for development. Hence, there is an urgent need to prevent the crimes against the working class women to save them from criminal victimizations.

The aim of any civilized society should be to secure dignity to every individual. There can’t be dignity without equality of status and opportunity. The absence of equal opportunities to women in any walk of social life is a denial of equal status and equal participation in the affairs of the society and equal membership. The democratic foundations are missing, when equal opportunity to grow, govern and give one’s best to the society is denied to sizable section of the society.

1.2 SIGNIFICANCE OF THE PROBLEM

Today, the world is talking of human rights, but we have forgotten an entity – the woman. The irony lies in the fact that, it is the woman. Mere recognising the right of women is not sufficient, and no lip service is enough, what is needed is to promote the interest of women by providing them congenial environment and opportunity for self determination in all matters - and above all opportunity to assert their rights as a human - as woman.

3 Indra Sawheney v. Union of India, AIR 1993 SC 477 p. 638
Several, laws have been enacted to improve women's social status, economic independence, political participation and professional growth. The Constitution of India, International Covenants including the Universal Declaration of Human Rights provides, most of the rights for empowerment of women. The Indian Penal Code made suitable provisions to deal with various offences relating to women. Criminal Law also provides various provisions to protect women against cruelty. The proposed Women Reservation Bill, which is on the parliament table, is an important step in their direction. The Government has launched various welfare schemes to raise the status of women. Despite all these, atrocities on women are on rise.

Sexual harassment has become ubiquitous. It is not only on the increase, it is also assuming alarming proportions every day. Most working women experience sexual harassment at some stage of their career. The employers generally ignore sexual harassment. They declare that there is no sexual harassment in their organisations. But, the harsh reality is that there is virtually no working woman who has not experienced it in her career.

At present victims of sexual harassment do not lodge complaints, as they fear that such complaints deprive them of their promotions or may create hostile work environment. Civil and penal laws in India do not adequately provide for specific protection. The guidelines given by Supreme Court in Visaka v. Union of
India's law are not strictly followed by the organisations. There are no effective legal measures to combat sexual harassment.

Sexual harassment in any form is an unacceptable behavior and will not be tolerated. It is a demeaning, degrading and illegal act. It affects an individual self esteem and can have a negative impact on individual work or academic performance.

The dimensions of violence against women, especially at the work place has been concealed for so long that its seriousness had not attracted the attention of the legislator. Till today, in India the problem is not recognised by the legislature except the Supreme Court verdict in the Visaka case. There is a necessity for an exclusive study of sexual harassment at work place in India in view of diversified socio-economic, political and cultural spectrum where women are targets of vilification and victimisation. A review of the existing literature on sexual harassment at work place reveals that the studies from legal angle are few. Hence the researcher felt that, there is an immense need for the study of sexual harassment of women at work place in socio-legal context. For advancing the understanding of the problem there is a need for a thorough analysis of the rights of the women to work, need of the legislative policy and to moot suggestions to have educational and working environment free of sexual harassment.

\[4\text{ AIR 1997 SC, 241}\]
1.3 REVIEW OF THE LITERATURE

The existing literature on the problem is reviewed here under in order to find out the availability of the studies on the problem. Margaret. A. Croach in his book titled, “thinking about sexual harassment A Guide for the perplexed”, discussed clearly the historical evidence of sexually harassing behaviour and the conception of sexual harassment in the context of employment. It shows how competing conceptions of sexual harassment are evident in the judicial decisions and Equal Employment Opportunity Commission Regulations developed from the 1970s through the 1990s.

Laura.L.O.Toole looked into the scope and consequences of sexual harassment in his book titled “Gender Violence”. Research based information to understand how organisations become sexualised is provided in this book.

“Sexual harassment in the work place” written by Margaret.S.Stockdale stresses the need of the importance of integrative research on sexual harassment. It also covers types of sexual harassment and theoretical explanations to give clarity to a heated issue that is shrouded in controversy and ambiguity.

Gutek.B.A. in his book titled “sex and the work place”, (1985) discussed the multiple consequences of sexual harassment in the work place and how it affects the well being of employees and the productivity of organisations.
“Violence Against Women”, edited by Pauline B Bart and Eileen Geil Moran, highlights pervasiveness or parameters of the work place, sexual assault and formulates the means by which women can curtail or eliminate such behaviour in their places of employment or education.

Rehana Sikri in his book titled “Women and Sexual Exploitation: Harassment at work” explains attitudes to sexual interaction and sociology and work place. It has been argued that the sex ratio at work often leads to sex role spill over, which in turn often results in sexual harassment.

“Crime Against Working Women” written by Dr. Prabhat Chandra Tripathy highlights the crimes of Eve-Teasing and Molestation. It also covers Judicial trend in obscenity, and outraging the modesty of women. Emphasis is made on the point that crimes against working class women are showing an increasing trend and need to spot out criminal tendencies and to curb their growth by preventive steps.

Dr. Swarn Lata Sharma in her book titled “Gender Discrimination and Human Rights” examines the factors responsible for gender bias and gender-based violence which are both the cause and consequence of gender-based discrimination. It stresses the necessity of equal enjoyment of all human rights, as the equality forms the core of human rights.
Law Relating to sexual harassment at the workplace edited by Indira Jaising throws light on the various areas of the law that can be used to deal with sexual harassment of women at workplace to a certain extent.

A Report on sexual harassment in Delhi University by Gender Study Group (1996) illustrated the fact that all most all women face sexual harassment on campuses. The survey report also revealed that the act of sexual harassment has psychological, emotional and educational negative consequences on women and stressed the need of University authorities to take action.

A Saheli Report (1998) on “Sexual Harassment and the Working Women; Another Occupational Hazard”, reveals that the guidelines of Supreme Court are inadequate and not much useful to unorganised sector.


“Women and Law” written by Dr. S.R.Myneni, provides an idea of Law relating to women and protection against discrimination.

Law relating to protection of Human Rights written by Dr. S.K.Awasthi and R.P.Kataria deals with the Human Rights of Women to uphold her dignity and
honour and various international instruments in favour of women to protect against any kind of discrimination and harassment.

News papers, Journals, periodicals and Websites reviewed indicated that the problem of sexual harassment is on the increase and Supreme Court guidelines, framed in the absence of specific legislative law, are not fully effective to all classes of working women.

With these issues unfolding in the review of literature, the present study seeks to examine the under mentioned objectives.

1.4 OBJECTIVES OF THE STUDY

The specific objectives of the present study are:

To trace the historical evolution of the problem.

To examine the factors responsible for sexual harassment.

To critically evaluate the Constitutional, Legal and International instruments on sexual harassment at work place.

To enlighten the contribution of voluntary organisations and commissions in curbing sexual harassment.

To examine some of the cases to highlight the intensity of the problem and to analyse the role played by judiciary in lime lighting the problem.
To examine the possibility of enacting a comprehensive legislation to combat the sexual harassment.

To suggest remedial measures for socio-legal deficiencies to curb workplace sexual harassment.

1.5 **HYPOTHESES**

The following are the plausible hypotheses formulated to conduct the study.

1. Patriarchial conditions, socio-cultural attitudes, economic dependence of women and obscene projection of women in media are the main reasons for sexual harassment of women at workplace.

2. Persistent inequality between men and women constrains society’s productivity and slows its rate of economic growth.

3. Discrimination against women violates the principles of equality of rights and respect for human dignity, which results in sexual harassment of women at workplace.

4. Sexual harassment is a hurdle for women's right to work.

5. The right against sexual harassment at workplace recognised by Supreme Court without stringent legislative policy doesn’t provide redressel for working women in all sectors.
6. Laws by themselves are important to a certain degree, social attitudes and the environment are important to prevent sexual harassment.

1.6 METHODOLOGY

The problem is selected with a great interest keeping in mind the significance and impelling need to explain the status of women, as it is invisible under the pernicious influence of the society, state, religion and traditions and dehumanising act of sexual harassment had become a hurdle for the progress of women.

In the legal research the most suitable method is the hypothetic deductive method, since the study is purely doctrinal, the researcher analysed the existing legal provisions and cases by applying the reasoning power. However doctrinaire method is used, the problem at hand deals with the socio-legal dimensions of sexual harassment of women at workplace only.

The relevant material is collected only from the secondary sources. Material and information is collected from both legal and non-legal sources. Original and secondary legal sources like acts of legislature, case laws decided by Supreme Court and High Courts, National Human Rights Commission, Reports of National Women Commission, Law Commission, reports of Social Organisations, Reports of some Universities, Law books, Journals and Newspapers. Other required information and data collected from Reports, Books and Periodicals on
economics, Sociology and other related social sciences. Analysis has been carried out on the basis of collected data in the light of hypothesis.

1.7 SCOPE AND LIMITATIONS OF THE STUDY

Since the scope of sexual harassment of women is wide, the researcher has confined the study only to work place sexual harassment of women with reference to India.

As the problem in hand deals with human behavior, which is too elusive, subtle and complex. Human behavior is influenced by so many factors physical, social, temperamental and psychological. Hence the researcher limited the scope of the study only to socio-legal dimensions.

1.8 SCHEME OF THE STUDY

The present study is divided into seven chapters dealing with different dimensions of the problem. Chapter 1 covers the introductory part consisting of significance of the problem, literature reviewed, objectives of the study, hypotheses formulated, methodology followed and plan of the study.

Chapter - 2 traces the historical background of status of women and evolution of sexual harassment. It presents the development of the concept of sexual harassment in India, recognition of the problem and different kinds of
sexual harassment. An attempt is made to inquire into causes that are responsible for sexual harassment at workplace. The causative factors are analysed from social, cultural, religious to advancement of modern technology and include reasons for non-report of sexual harassment. The consequences of sexual harassment are covered from both angles, individual as well as organisational and its impact on economy of the country.

Discrimination against women violates the principles of equality of rights and respect for human dignity. Hence Chapter-3 examines sexual harassment vis-à-vis gender discrimination. An attempt is made in this Chapter to explain sexual harassment as a gender-specific problem rather than a personal problem with the help of Constitutional and Human Rights Provisions.

Chapter-4 contains a discussion on framework of law available on sexual harassment. An attempt is made to show sexual harassment at the workplace violates fundamental rights under Constitutional Law and the remedies available under it. The provisions of IPC that may be invoked in case of sexual harassment at workplace are discussed. In the same way Torts Law, Labour Law, Civil Law and Cyber Laws are also being covered. An emphasis is made on the point that sexual harassment at workplace violates human rights of women.

Chapter-5 deals with the judicial response / crisis to the problem of sexual harassment at workplace. In this chapter an attempt is made to show the response of judiciary before the Vishaka case and after the Vishaka case. The guidelines
prescribed by Supreme Court in *Vishaka* case are tested in detailed. Response of the judiciary is discussed through the detailed analysis of the case laws.

Chapter-6 critically examines the role of NGOs and Statutory Commissions in curbing sexual harassment. The efforts of various women’s organisations and NGO’s, to enlighten the women about sexual harassment, legal measures and research are highlighted. It also covers the assistance extended by NCW, NHRC and Law Commission of India to the Government as well as the victims.

Chapter-7 evaluates the entire study and draws the conclusions and gives the suggestions to prevent sexual harassment at work place which in turn paves the way for achieving the goal of safe work place where women can work with dignity and without fear.