CHAPTER- I

INTRODUCTION

Men and women are two halves of the humanity. Neither can achieve its highest creative excellence without the cooperation of the other. Despite the fact that just like wheels of chariot, men and women together can run the society effectively, yet all the evils are practised against women. History bears testimony to the fact that man has subjected woman to his will, used her as a means to promote his self gratification, to minister to his sexual pleasures, to be instrumental in promoting his comfort; but never has he desired to elevate her to that rank she was created to fill. He has done all he could to debase and enslave her mind; now he looks triumphantly on the ruin he has wrought, and says, the being he has thus deeply injured, is his….. inferior\(^1\). Despite the fact that women occupy a unique position in the society and the country, the most horrendous cruelties have been inflicted upon her without any cause and fault on her part but just to enslave her physically, mentally, emotionally, psychologically, economically and politically. Consequent upon this, women have not only been left behind but at every step they have been psychologically disempowered and made conscious of the hopelessness of their situation and thus making them feel physically as well as intellectually dwarf. Thus women have emerged as an oppressed group in all the societies. Not only this, because of the male orientation in normative order, they also suffer subjugation to male dominated social institutions and value systems. As a result, they have not only become the object of discrimination and exploitation but are made bereft of any will to defend themselves or catch up with other half of the humanity i.e. men in the society. Thus the women constantly suffer at the hands of society.

The biological conditions of women make them easy prey particularly to physical domination. Thus women become victims of their own reproductive biology. The biological differences between men and women were considered as deficiencies of women and labeled as weak sex. Although because of reproductive functions, women should be considered as stronger than men on the basis of having the capacity to

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conceive and carry for a longer period of a nine months and nurturing along with performing other duties but this is used to practise and justify discrimination against them. The discrimination against women starts from birth and continues throughout their life be it the matrimonial home, workplace or in any public place.

Female sexuality always has been suspect. Some contend it’s just like a woman to tempt, tease, titillate, seduce or sleep her way into places of privilege or power. On the other hand, it has also seemed just like a woman to be cold, frigid, rejecting, sexually unsatisfied and unsatisfying. Thus these perceptions degrade the position of Women further in society. The deep rooted notion of female as the weaker sex and male as the stronger sex paves the way for deep-rooted gender inequalities through dominance, subjugation and control of women in society. Thus ‘control’ is the key word, through this mechanism men subjugate and regulate the sexuality of women and in the process women are subjected to violence. Be it the case of incest in the family, pre-natal female feticide, marital rape or circumcision in females or any other form of violence. As sexual inequality is gendered as men and women, gender inequality is sexualized as dominance and subordination. Thus women continue to live in endangered environment where there is continual fear of subordination and exploitation. They suffer social, economic and political exploitation on the one hand and physical, emotional, psychological and sexual exploitation on the other hand. The sex-role norms differentiate men from women. The social stereotypes based on gender construct adopt different perceptions and attitudes towards women and hence assign different roles and responsibilities to the women and expect certain norms and behaviors to be observed by them. Not only this they are also ostracized for the wrongs committed on them, be it the case of rape, sexual exploitation at the workplace or official harassment let loose by the male hegemony to demean or derecognize women’s worth at the workplace hitherto being monopolized by the men only.

Women also suffer economic exploitation. Their unpaid work at home is far from being payable is not recognized and they are undervalued in economic terms because they are not given equal wages for equal work with men and gender parity in

2 Dianne Hales, Just like a Woman, p 13, (1999 ), Random House (U.S.) and Virago Press (U.K.).
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wages has been a global concern for about a century now\textsuperscript{4}. Not only this, their employment choices are also restricted to a great extent.

They are also exploited politically because they are not given due representation in legislatures i.e. lack of access to political power and to equal justice, to express opinions freely and to participate in political process in true sense. Even if they represent politically, they are considered to be representative of males.

Women also face physical exploitation because they are expected and required to perform a number of duties and responsibilities without taking care of their physical well being or proper nutrition.

As women are considered to be embodiment of kindness, sympathy, tenderness and sacrifice, so they are emotionally exploited to control and subjugate them. Their self sacrificing spirit and perseverance has been exploited by idealizing her image.

They also suffer psychological exploitation because of their innocence and susceptibility to male treachery and cajolery being subjected to humiliation, harassment, coercion, torture, discrimination etc. The women are subjected to sexual exploitation also which is described as sexual terrorism by Carole J. Sheffield, “There is a different kind of terrorism, one that so pervades our culture that we have learned to live with it as though it were the natural order of things. Its targets are females- of all ages, races and classes. It is the common characteristic of rape, wife battery, incest, pornography, harassment and all forms of sexual violence. I call it sexual terrorism because it is a system by which males frighten and by frightening, control and dominate females.”\textsuperscript{5}

Thus because of female sexuality, women become targets of sexual violence or sexual terrorism. Because males spread this terror by denying women the right to have control over their own body. This is quite manifest in the abortion cases where even some high courts have gone to the extent of holding that aborting fetus without


husband’s consent amounts to cruelty. So, they are subject to the control of males in the society and women have to act according to their whims and caprices.

Thus male violence against women is normalized and legitimized in sexual practices through the assumption that when it comes to sex, men are by nature aggressive and dominant, whereas women are by nature passive and submissive. One way to feel an unambiguous ‘true male’ or ‘real man’ in many cultures is to dominate women to behave aggressively and to take risks. Significantly, sexual conquest and potency appear as repeated themes in many cultural dimensions of manhood placing women at increased risk of coercive sex. Thus when masculinity is determined by aggression and sexual conquest over females, discrimination on the basis of sex and sexual exploitation and harassment of females becomes a means of structuring power relations between men and women on the one hand and way of establishing power relations among men of one group vis-à-vis the other.

Thus women are surrounded by vicious circle of gender stereotypes and they are the object of furry and violence at the hands of society. Although the countries of the world have evolved to be the civilized societies but still the life of women is surrounded by violence, neglect, discrimination and exploitation which leads to their oppression and deterioration in the society. The physical and biological fragility of women effectuate discrimination, exploitation, harassment, violence and crimes against them in parental house, matrimonial house, society and at the workplace. The women are not considered worthy of dignity but only a thing of enjoyment and fulfillment of the allurement by the male counterparts of the society.

Violence against women manifests in a number of forms - few are direct manifestations of violence whereas others are indirect forms of sexual violence. The sexual violence being encountered by women include rape, trafficking, sexual slavery, domestic violence, eve-teasing, child marriages, spousal violence, marital rape, incest, sexual harassment at workplace etc. All these exploitative practices have been adopted

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against the fair sex by the male counterparts to keep them in suppressed and subjugated state. Thus they have become the suffering souls in every walk of life, be it the political, employment, education, decision making power at home etc\(^8\).

Despite constitutional and other legal provisions at national and international levels to ameliorate the condition of woman as well as to provide them dignified status in the society, still the horrors of apathy, discrimination and violence constantly haunt them. Women have been struggling up the hill to achieve their right to identity, equality and dignity. But contrary to this, they suffer harassment which is not only restricted to familial and social setup but has also followed them at the workplace. In order to escape from the tentacles of economic disparity and dependence and carve a place for themselves in the society, women have stepped out of the home to prove their potential by working with men and strengthen their armoury in this toil for dignity yet the octopus of violence and harassment is out to prey them thus exposing them to workplace harassment which involves conduct of a sexual nature or is premised on the sex of the victim. These kinds of behaviors were not given a name, however, until the 1970s when women in the United States demanded that sexual harassment be recognized as sex discrimination under the federal anti discrimination legislation i.e. Federal Civil Rights Act\(^9\). Thus it appears that the term sexual harassment came to be used in the public media only from the year 1975 onwards\(^10\), though it was confronted by the women even earlier to that. But it was not given any universally recognized name.

From 1975 onwards the problem of sexual harassment has gradually emerged to be a recognized phenomenon throughout the world in all cultural and occupational contexts. The sexual harassment is frequently encountered by women in all walks of life- on the streets, roads, farms, public transportations, in educational institutions and in the workplaces. The sexual harassment is not only suffered by women working in urban organized sectors but also by the women working in rural non-traditional sectors and is

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not confined to one country only but has defied all national frontiers cutting across the barriers of religion, race, caste, creed or colour extending worldwide from organized to unorganized sectors. The problem is faced by women irrespective of their status, personal characteristics and the types of their employment.

Thus the sexual harassment has been a fact of life since humans first inhabited the earth and it has been called many different names for example, in India the term ‘eve teasing’ has been used. In France the term ‘droit de cuissage’ (right to the thigh) was employed for generations to describe this conduct. In Japan, the term ‘sekue hara’ has been adopted. In Netherlands, sexual harassment is referred to as ‘unsolicited or undesigned intimacies’ while in Malay, words like ‘gatal’ or ‘miang’ literally means itchy are often used to describe it. Over the years many reports on women’s working conditions worldwide have referred regularly to ‘lay down or lay off’ practices in certain workplaces. But the term sexual harassment has acquired the largest acceptance as it more fully denoted the malady than the other terms.11

The sexual harassment may take diverse forms. It may be by physical contacts with the victim like unwanted touching or pinching, patting, kissing, hugging, physical assault, sexual assault and the like. The perpetrator sometimes use verbal expressions like sexual teasing, jokes, unwelcome remarks or remarks with sexual connotations or insinuations, condescending or paternalistic remarks, offensive calls and hence sexually harass the victim.

Non verbal gestures like lascivious looks, sexually suggestive gestures like leering, licking lips etc. may also constitute sexual harassment.

It may be committed by other non verbal conduct like showing pornography, indecent e-mails, indecent exposure of person etc.

Thus sexual harassment is committed by unwelcome sexual conduct whereby recipient feels offended, humiliated or threatened. In determining the cases of sexual harassment, following elements are considered:

(i) Whether conduct or behavior was unwanted or unwelcome?

Whether conduct or behavior was sexual in nature?

Whether it has the purpose or effect of violating the dignity of a person? and

Whether reasonable person would have anticipated that the person who was harassed would be offended, humiliated or intimidated?

Thus unwelcome approach accompanied with reasonable person approach is adopted in the determination of sexual harassment cases.

Though unwelcome is considered from the point of view of recipient but reasonable depends upon the attitude and perceptions of the adjudicating authorities. Because perceptions of males adjudicators may differ from female adjudicators and more so also depends upon the extent of prevalence and dominance of patriarchal principles in the society. Thus unbiased and cautious approach is required in the determination of sexual harassment cases.

Sexual harassment at workplace takes the more specific form as quid pro quo harassment or by creating hostile working environment. As the term quid pro quo itself denotes something in exchange, so this type of sexual harassment is directly related to job benefits like job, promotion, pay raise, continuing employment etc. and is made dependent on the employees submitting to unwelcome demands of sexual behavior. Thus the economic conditions of the persons are threatened by this type of sexual harassment because refusal to accede to the unwelcome sexual demands are meant with evil consequences like termination, suspension, demotion, transfer etc. It was the first kind of sexual harassment to be prohibited when it was recognized by the US District court for the District of Columbia in 1976\(^\text{12}\).

The quid pro quo sexual harassment is created by persons in authority i.e by employer, his agent or supervisor. This type of harassment is committed by exploitation of employees and is very poisonous for work place because it involves breach of trust and abuse of power.

The hostile working environment harassment is committed by creating an environment which is unwelcome and offensive to the victim. It encompasses the range

\(^{12}\text{Williams v Saxbe, 413 F. Supp.654 (DDC 1976).}\)
of sexually harassing behaviour like physical contacts and advances, sexually coloured jokes, messages, sexually suggestive or explicit material, indecent exposure of persons, leering etc. This type of harassment can be committed by colleagues, co-workers, service providers to the organization, customers, clients, contractors etc. This type of harassment is equally dangerous because it directly affects the efficiency and productivity of the persons and have more demoralizing effect on work environment. The target of harassment may be one person but it has dehumanizing and demeaning effect on other persons and compelling them to withdraw from the workplace to save themselves from physical, sexual and psychological torture thus having the under currents of exclusion of females by discouraging them to join such work places. This type of harassment was also initially named, legally recognized and prohibited, first in guidelines issued by the U S Equal Employment Opportunity Commission\(^\text{13}\) and subsequently by the courts\(^\text{14}\).

Thus sexual harassment has adverse impact on the individual, enterprise and the society.

1. DETERMINANTS OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE:

 Though any person can be subjected to sexual harassment at workplace but women are far more vulnerable to sexual harassment due to the following predictors:

(i) **Patriarchal Ideology and Patriarchal Social Structure**

Patriarchy in its widest sense means the manifestation and the institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general. It implies that men hold power in all the important institutions of society and the women are deprived of access to such power\(^\text{15}\). Economic dependence of women bears a direct nexus with the patriarchal nature of the ancient civilization. Patriarchy therefore stands for inequality of sexes and is averse to autonomy and liberty of women. It is undemocratic in its

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operation. The ideology of patriarchy has made its way through the family unit. It has transcended the boundaries of family and has pervaded the social, cultural, economic and political structure of the world. Patriarchy has not remained a national phenomenon but is universal\textsuperscript{16}. Thus patriarchy comprises of two elements: its structure and ideology. The structural aspect is manifested in the hierarchical organization of social institutions and social relation. It thus relegates power to certain individuals, groups or classes and some form of subservience to others. The maintenance of this hierarchical structure and authority needs acceptance by many. The patriarchal ideology serves to reinforce this acceptance\textsuperscript{17}. Thus patriarchy can be defined as set social relations between men, which have a material base, though hierarchical, establish or create inter-dependence and solidarity among men and enable them to dominate women. This material base rests in men’s control over women’s labour power, this control is constituted by restricting women’s access to important economic resources and by disallowing women any control over female sexuality and especially female reproductive capacities\textsuperscript{18}. Thus patriarchal ideology and patriarchal social structure exaggerates biological differences between men and women by politicizing gender and sexuality, which culminates into violence against women as a means of effective control mechanism to keep women subjugated, relegating them to the status of ‘subordinate’ to man or second class citizens. This subordination and subjugation leads to sexual harassment of women at workplace.

(ii) Unequal Power Relations in Society

The patriarchal social order leads to unequal power relations in society because men control the material resources of the society. For many years women were forced into unequal and oppressive community under the control first of their fathers and then of their husbands. Men force community upon women when they make sexual advances to co-workers and subordinates or pester women strangers with unwelcome

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\begin{itemize}
\item 17 Sushma Sood, Violence Against Women , pp.268-69(1990), Arihant Publishers Jaipur.
\item 18 Heidi Hartmann, “The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union” in Women and Revolution: A Discussion of the Unhappy Marriage of Marxism and Feminism, I at 10(1980), (ed. by) Lydia Sargent.
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conversations. A rapist may believe he is seeking community with his victim, especially if she is his wife or social friend\textsuperscript{19}. Men are not only physically more powerful than most women but it is men and not women who hold the balance of power in the political, economic and social institutions that govern the society\textsuperscript{20}. The woman victim suffers sexual harassment not just because she is individually vulnerable but because she is a woman- a member of a gender that suffers from institutionalized inferiority and relative powerlessness\textsuperscript{21}. Thus social inequalities and social, cultural, economic and political disparities between men and women establish unequal power relations in society which inturn is reflected in the sexual harassment of women at workplace.

(iii) Gender Stereotypes

The gender is social construct based upon the roles assigned to men and women. It has nothing to do with biological differences between two sexes. But society considers women to be home makers and men to be bread winners. So when women step outside to work, it is considered encroachment upon the field reserved for men. And sexual exploitation or sexual harassment at workplace encountered by women is considered to be the result of their own fault or due to hyper-sensitive attitude of women because passiveness and submissiveness is considered to be the norm for women and aggressiveness and dominance is considered to be the attribute of men. And sexual harassment at workplace is the reflection of sexual aggression on the part of men in the company of women. Because male domination is not only about the appropriation of a woman’s labour power, but also about the appropriation of her sexuality, her body\textsuperscript{22}. A sex stereotype is present in the male attitude expressed through sexual harassment, that women are sexual beings whose privacy and integrity can be invaded at will, ‘beings’ who exist for man’s stimulation and gratification\textsuperscript{23}. Thus males consider that they have inherent control over female’s body weather in the public or private sphere.

\textsuperscript{20} Rosemarie Tong, Women, Sex and the Law, p.77(1994) Rowman and Allanheld Publishers, USA.
\textsuperscript{21} Id. at 78.
\textsuperscript{23} Supra note 9,pp. 9-179 at 174.
(iv) **Cultural Ideology**

The cultural ideology is based upon the societal norms and values and particular construct of sexual identities i.e. masculinity and femininity. Some cultures consider that the real test of masculinity or true male is to control women by sexual conquest. Thus the cultural ideologies considering sexual aggression and sexual conquest over females as inherent attribute of masculinity and women as potential sex objects justify sexual harassment of women by men at workplace or consider it as a case of misunderstanding due to clash of cultural values. They resort to devaluation or undervaluation of characteristics associated with women and overvaluation of characteristics associated with men to retain, preserve and assert the male prerogatives or norms of the workplace. The workers may even engage in subtler form of harassment due to sex role spill over phenomenon i.e. when men in workplace see a female worker as a woman first and work role occupant later\(^24\). The same may even occur as much from organizational pressure as from individual male co-workers looking towards woman as being a woman than being a woman worker at the workplace\(^25\). Thus sexual harassment is considered as an attribute of masculinity for the purpose of establishment of dominance at workplace.

(v) **Psychological Conditioning**

Based upon the stereotypical roles assigned to males and females in the society i.e males to work in the field and females to work in the home, the stepping out of women for work along with men is not considered to be a welcome step. In order to control women and to make them realize that they are subordinate to men and sex objects for men at workplace, sexual harassment is used as a tool for the psychological disempowerment of women. And psychological disempowerment gradually destroys her own ability and capacity to stand and work shoulder to shoulder with man. Also when women work in the traditionally men’s job and prove their potentiality there which was otherwise considered to be the work of masculine power only, men view this

\(^{24}\) Barbara Gutek, Sex and Workplace, p.154 (1985) ,Centre for Women Studies, New York.

\(^{25}\) Rosabeth Moss Kenter, Men and Women of the Corporation, p. 9 (1977) , University Press Yale, USA.
as the invasion of male monopolization of economic and social fields. This psychological fear of men leads to their domineering sexual behavior and they use the weapon of sexual harassment at workplace to instill psychological fear in women to remind them of their supposed proper place i.e. within the home. The sexual harassment is used as a vector to carry the message across the society about the unsuitability of all women for employment in a particular job or environment. Though the harassment may be directed against a specific targeted woman but she is representative of her sex based group.

(vi) Poverty and Economic Inequalities

As women’s work at home is unrecognized and unremunerated, so they remain economically dependent on male counterparts. The gender disparities in economic power sharing leads to poverty of women. Women’s poverty is directly related to the absence of economic opportunities, lack of access to economic resources and autonomy, their minimal participation in decision making process etc. According to the Human Development Report, 1995, women’s participation in the labour force had risen only by four percent points in twenty years, from thirty six percent in 1970 to forty percent in 1990; women normally receive a much lower average wage than men; all religions record a higher rate of unemployment among women than men; women work longer hours than men in nearly every country; the deeply sharing of the burden of adversities between women and men are still persisting. In order to become economically independent they suffer economic inequalities in society i.e. getting less pay for work of equal value with men and sometimes succumb to sexual harassment at workplace to retain the job for the purpose of earning for livelihood or survival. Thus poverty can force them into situations in which they are vulnerable to sexual exploitation.

Thus the above mentioned determinants sometimes used to either justify or deny the existence of sexual harassment.

Besides these determinants, there are other factors like lack of education, lack of awareness regarding acts which amount to sexual harassment at workplace, lack of redressal mechanism and lack of awareness regarding the same where they exist, lack of evidence and witnesses, tedious and expensive legal battles, insensitive attitude of law enforcement and judicial machinery, fear of losing their income, lack of support from family, friends or colleagues, leads to under reporting of cases of sexual harassment of women at workplace and acquittal or inaction against harasser further aggravates the problem. The negative portrayal of image of women by media, indecent advertisements showing them as sex objects just like any other commodity, using them in pornographic forms by media, etc., rapid urbanization, industrialization, misuse of latest development in science and technology like MMS, e-mails, screen saver, etc. for black mailing or showing pornography, lack of religious control and degradation in moral and ethical values also make women vulnerable to sexual exploitation in general and sexual harassment at workplace in particular.

2. COMMONLY HELD BELIEFS OR MYTHS AND REALITIES ABOUT SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

(i) Sexual Harassment is Workplace Fun

As human beings are social beings, so they interact with each other at workplace also. During such interaction, they share professional, personal and social information. In addition to this, they also crack jokes, form friends, compliment each other, pass remarks, comments, etc and sometimes also develop physical contacts with each other. They consider this as a flirting, teasing or a bit of workplace fun to change the atmosphere in the workplace. So it is not considered as sexual harassment. But the key element of unwelcome, unsolicited and unreciprocated behaviour differentiates sexual harassment from workplace fun or flirting. Although men may perceive or believe it as a tool to brighten the atmosphere but women consider it as a form of violence perpetrated against them because of their female sexuality.
(ii) **Sexual Harassment is Trivial**

Sexual harassment is often considered as a small issue because patriarchal social order perceives it as normal male behaviour. More often even the women do not complain about it on the apprehension that they may be laughed at or cursed at for exaggerating the so called trivial issue. Sometimes it may be considered as normal workplace culture and so offending or humiliation of women is because of their hypersensitive attitude towards female sexuality and hence not considered as important matter to be addressed to. But sexual harassment at workplace is not trivial because it leads to psychological disempowerment of women. It shatters the self confidence and self-worth of the women and inculcates the feelings that importance of their work is secondary to their sexuality. And their survival at workplace depends not on their ability for the work but on the satisfying male sexual desires. Thus it may lead to resignation, dismissal or continual suffering of the women. So by no stretch of imagination, sexual harassment can be viewed as a trivial issue.

(iii) **Women Themselves are Responsible as They Provoke It**

When women are sexually harassed, it is often perceived as provocation on the part of women because of their dress or attitude. It is often viewed that the provocative attire of the women incite the sexual desire of men as a natural biological phenomenon. And the nature of women to openly interact and mingle with men leads to sexual invitation on their part. Thus women are blamed for sexual harassment and stigmatised for the rest of the life if it leads to sexual assault or rape. This perception is not correct because even the women who are considered ‘suitably covered’ by community norms and standards are also targeted. Moreover, it does not clarify why some men harass and other do not. This blame shifting from harasser to harassed discourage complaining of sexual harassment from the victim on the one hand and encourage harasser to perpetrated the evil designs at the workplace on the other hand.

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28 Supra note 11 at p. 13.
(iv) Women Make False Allegations

It is also perceived that women make false allegations of sexual harassment at workplace. They interact, intermingle and become friendly with male counterparts then suddenly make allegations of sexual harassment against them. More so tolerance and avoidance of such type of behaviour by the women for a long time imputes doubt regarding the allegation and hence credibility of the complaint is threatened. It is often viewed that when job related benefits are not given or are withdrawn or there is break up of friendly relationship, women make false allegations of sexual harassment to teach them a lesson or to seek reprisal. But it is not true, because the allegation is thoroughly investigated and if proved with the help of evidences and witnesses then only the charge is established. The victim is also in fear of losing job and job related benefits and other penalties, fear of stigmatization, etc. so women do not gain anything by making false allegations.

(v) Women have to Handle It

As it is considered that women themselves are responsible for it, so it is often believed that it is the women who have to handle it. When they consider any conduct on the part of men as offensive, they have to immediately react by rejecting it so that harasser may not be encouraged by the passive attitude on the part of victim. However this is not true because even if victim condemn it, the harasser sometimes is not dissuaded from the unlawful conduct, contrary to it, the women may be confronted with adverse consequences. As Working Women United (WWU) survey pointed out that in 75% of cases, the women initially ignored the behaviour but it either continued or got worse and in 25% of cases, the victims who ignored the sexual advances reported unwarranted reprimands, sabotage of their work and other forms of retaliation²⁹.

Thus ignoring of conduct or responding by firmly and categorically saying no does not change the situation but may worsen it. So women alone can’t handle it but it

requires collective effort on the part of organization, society and state to handle it properly.

Thus these perceptions, beliefs and myths do not hold correct but only camouflage the real problem and confuses the issue in the mind of the society which is reflected in the trial and adjudication of the cases of sexual harassment. As the act of sexual harassment first seriously wounds her dignity, curbs her individual freedom, destroys her sense of security and may often ruin her physically, the subsequent trial has no less potent of mischief- it not only forces her to relieve her traumatic experience but also does so in the full glare of the public in a totally alien atmosphere: where the whole apparatus and paraphernalia of the criminal justice system is focussed on her.  

Sexual harassment of women at workplace is all about gender stereotypes and power relations and the abuse of power at workplace. It is perpetrated by one person or persons collectively on another to gain control. It is committed mostly by men against women though it may be caused by men against men or women against women and even lesbians and gays are not spared. Thus majority of the victims of sexual harassment at workplace are women and this form of sexual violence cuts across all social, culture, economic, political and religious backgrounds.

The sexual harassment of women at workplace is different from other forms of violence because it is not only an assault on the body of the women but it is the example of violation of human rights of women, gender inequality, gender injustice and incompatible with dignity and honour of women. In order to eliminate gender inequality and recognizing that women’s rights are human rights, various provisions are incorporated in the international instruments and regional and national enactments adopted world over and a range of initiatives have been devised. The United Nations Charter reaffirms faith in fundamental human rights, in the dignity and worth of human person and in the equal rights of men and women. The Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and they have the right to life, liberty and security of person and cannot be subjected to inhuman or degrading treatment and they have the right to privacy as well as honour.

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and reputation, right to equality, right to marriage, right to take part in the government as well as equal access to public service, right to social security, right to work, to free choice of employment and to just and favourable conditions of work, right to standard of living adequate for the health and well-being. Similar recognition of the rights is found in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

Considering that discrimination against women violates the principles of equality of rights and respect for human dignity and obstructs the participation of women equally with men in the political, social, economic and cultural life of their countries and hampers the growth and prosperity of the society and the family and make more difficult the full development of the potentialities of women in the service of their countries and of humanity, the Convention on the Elimination of All Forms of Discrimination Against Women also recognizes the similar rights. In particular recognizes the right to work as an inalienable right of all human beings, right to same employment opportunities, free choice of profession and employment and the right to protection of health and safety in working conditions.

Considering that childhood needs special care, assistance and protection, the Convention on the Rights of the Child also recognizes their human rights in particular to protect the children including female children from all forms of sexual exploitation and sexual abuse, specifically prevent use of children in pornographic performances and materials.

Considering that migrant workers including female workers are more vulnerable to exploitation, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families also recognizes the similar rights as in Universal Declaration of Human Rights.

The Declaration on the Elimination of Violence Against Women also recognizes similar rights and considers that violence against women encompasses inter alia the physical, sexual and psychological violence occurring within the general
community including rape, sexual assault, sexual harassment and intimidation at work, in educational institutions and elsewhere.

The Convention on the Rights of the Persons with Disabilities recognizes the similar rights of the persons with disabilities particularly women and girls with disabilities considering their more vulnerability to abuse and exploitation.

The International Labour Organization (ILO) with its major concern as social Justice also adopted various Conventions and Recommendations from time to time like the Discrimination (Employment and Occupation) Convention, the Discrimination (Employment and Occupation) Recommendation, the Indigenous and Tribal People Convention, the Declaration of Fundamental Principles and Rights at Work, to eliminate discrimination in respect of employment and occupation and recognizes equality of opportunity and treatment in respect of the same.

Thus all the above mentioned provisions at international level implicitly prohibit gender inequality, gender injustice and gender abuse in particularly sexual harassment of women at workplace because right to equality and right to work with dignity encompasses to prohibit this. But the Indigenous and Tribal People Convention explicitly prohibits sexual harassment of women at workplace.

In addition to these, various regional enactments like the European Social Charter (revised), the Fundamental Rights of the European Union, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter- American Convention on the Prevention, Punishment and Eradication of Violence Against Women, the African Charter on Human and Peoples’ Rights, the Cairo Declaration on Human Rights, the Arab Charter on Human Rights also recognizes the similar rights. Thus these provisions also recognize gender equality and implicitly prohibit sexual harassment of women at workplace except the European Social Charter which expressly prohibit the same. Because the right to equality and the right to work with dignity and in safe working conditions encompasses gender equality and gender justice and prohibition of sexual harassment of women at workplace.
Further various efforts are also made at the world level like First World Conference on Women, Second World Conference on Women, Third World Conference on Women, Fourth World Conference on Women and Beijing Declaration and Platform for Action and the World Conference on Human Rights to achieve full gender equality in all spheres including employment, elimination of gender discrimination and protection and promotion of human rights of women and girl child and elimination of violence against women. Thus these efforts also call for prohibition of sexual harassment of women at workplace.

At the national level, the Constitution of India also recognizes right to equality and prohibition of discrimination on the ground of sex, right to practice any profession or to carry on any occupation, trade or business, right to life and personal liberty, right against exploitation, right to equal means of livelihood, equal pay for equal work, the right to work, providing just and humane conditions of work and also imposes duty to renounce practices derogatory to the dignity of women. Thus the Constitution of India aims to achieve gender equality, gender justice and recognizes right to work with dignity in safe working environment and hence implicitly prohibits sexual harassment of women at workplace. The National Commission for Women established under the National Commission for Women Act and the National and State Human Rights Commissions established under the Protection of Human Rights Act, act as watchdog agencies for the implementation of these provisions and recommend measures for the effective redressal of the complaints regarding the same and the effective implementation of the provisions.

Considering that sexual harassment of women at workplace is a grave and real problem for various working women, the legislative provisions on sexual harassment have been enacted and the existing provisions interpreted to combat harassment in various countries of the world. These inter alia includes the Sexual Offences Act, 2003, the Sex Discrimination Act, 1975 and the Employment Equality (Sexual Orientation) Regulations 2003 in UK; The Federal Criminal Code, 1986, Title VII of the Civil Rights Act 1964, the Civil Rights Act, 1991, Title IX of the Education Amendments of 1972, the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 1985 in US; the Fair Employment and Housing Act,

From the analysis of above provisions, one can draw the inference that the protection to the victim of sexual harassment can be provided under non-discrimination and equal opportunity laws, civil laws like Labour Law and Tort Laws and Criminals Laws.

3. LEGAL APPROACHES TO SEXUAL HARASSMENT

(i) Non-Discrimination and Equal Opportunity Laws

The right to equality and prohibition of discrimination on the ground of sex guaranteed by the Constitution of a number of countries of the world provide protection against sexual harassment of women at workplace because it amounts to sex-based discrimination and negation of right to equality of women to work equally with men. The complainant can claim compensation from the employer for the violation of her fundamental rights. However as it is not explicitly prohibited, so it depends upon judicial interpretation depending upon the facts and circumstances of the case and perceptions and beliefs of the adjudicators regarding the sex based discrimination. Moreover the employer is considered to be responsible for the act committed by the harasser whether or not the employer knew or should have known or authorized or prohibited such acts. Thus rather than shifting the responsibility on the harasser, the employer is considered to be liable to pay compensatory damages to the victim.
(ii) Civil Laws

The sexual harassment of women at workplace also amount to violation of civil laws. The victim can claim protection under the following:

(a) Labour Laws

Labour Laws broadly relate to employment related acts like occupational safety and health, industrial relations, contractual rights and duties of employers and employees, protection of workers against unfair labour practices, unfair labour dismissal, providing safe working environment to women free from dangerous and hazardous conditions and compensation to the workers. Thus safe working conditions include providing environment to women free from sexual harassment. And the employer is considered liable to pay compensation for the harm caused to the workers. But for the determination of the liability of the employer, the complainant concerned must be a worker and it must take place at workplace. So the students, trainees probationers, customers, clients, visitors etc. cannot seek redressal under these laws and harassment outside the workplace and in some cases workers of informal sectors are also not protected.

(b) Tort Laws

Torts Laws also provide protection to victims of sexual harassment. A tort is a legal wrong, other than a breach of contract, for which a court can grant a remedy, most commonly in the form of monetary damages and interests. Tort Law encompasses both negligent acts resulting from carelessness or inattention, and intentional acts that cause harm. Sexual harassment is by its nature an intentional act and would justify as an intentional tort. The occurrence of sexual harassment at workplace amounts to negligent act on the part of the employer. The victim can also seek recourse to torts of assault, battery, defamation, emotional distress, invasion to privacy. The Tort Law in India allows suing for assault, emotional distress and failure of the employer to provide

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a safe system to work. The harasser and the employer can be held jointly liable. The former directly and the latter vicariously, in the event of a commission of a tort of assault. In addition, the employer can be held liable for failing to provide a safe work environment.\textsuperscript{32}

Thus Tort Law implicitly covers sexual harassment of women at workplace and depends upon judicial interpretation and does not act as deterrent enough to prevent sexual harassment of women at workplace.

(iii) Criminal Laws

Criminal Laws also seek to protect women from sexual harassment at workplace. The more specific criminal offences related to women which cover the severe physical abuse are rape and attempt to commit rape and lesser than these are covered under eve-teasing and outraging the modesty of women. Newer legislations, however, usually provide that a person who, by assault or use of criminal force, words or actions, causes sexual harassment or annoyance is guilty of offence of sexual harassment. In some contexts, the words ‘unwelcome sexual advances’ are also used. The penalty for sexual harassment varies from no minimum sentence to approximately five years imprisonment. Compensation to the victim is mostly left to the Judge’s discretion\textsuperscript{33}.

In India, the provisions like outraging the modesty of women and eve-teasing\textsuperscript{34} are used to deal with sexual harassment of women at workplace. However, these are outdated provisions because these are not sufficient to cover sexual harassment of women and it is difficult to interpret the term modesty to provide relief to the victim. Thus criminal provisions alone cannot help to change sexist behaviour or empower women. The activists feel that the limitations of viewing sexual harassment on the basis of criminal law are many. Few of those limitations are:

\textsuperscript{32} Supra note 11 at p. 56.
\textsuperscript{34} The Indian Penal Code, 1860, Secs. 354 and 509.
(a) Sexual harassment is viewed as an individual injury, not as an issue of widespread discriminatory behaviour.

(b) Viewing sexual harassment as outraging/insulting the modesty of a woman stereotypes the problem in moral terms, not as a violation of rights.

(c) Procedures of criminal law in Court are humiliating and embarrassing for a woman and further harass her.

(d) There is over emphasis on proof beyond reasonable doubt.

(e) The net result of a Criminal Complaint is to punish the offender, which is rare and ineffective in changing the larger issue of discrimination against women\(^\text{35}\).

Moreover, in case the harasser is influential person who is in a position to manipulate witnesses and evidences, the case cannot be proved beyond reasonable doubt in the court. Further, the lengthy criminal procedures and trial; expensive legal battles, threat of dire consequences from the harasser also dissuade the complainant from making complaint in the police station.

From the above discussion, it is clear that a number of legal approaches or frameworks can be applied to cases of sexual harassment of women at workplace but no single branch effectively tackles the problem of sexual harassment. Thus, a comprehensive legislation concerning the prevention and redressal mechanism is required to efficiently handle the problem of sexual harassment of women at workplace because complaint redressal makes all the difference between satisfaction and disappointment.

4. OPERATIONALISATION OF THE CONCEPT, OBJECTIVES, HYPOTHESIS AND RATIONALE

In this perspective, the present research work aims to analyze the concept of sexual harassment of women at workplace, its causes and consequences and feminist jurisprudential and human rights perspectives. The research examines the inter-linkages between sexuality, male perceptions and biases and harassment perpetrated against women in the patriarchal set up of Indian society. It analyses the concept of sexual harassment in Indian context and relates to various legal provisions and to the fundamental rights and human rights of women as enshrined in the Indian Constitution, international instruments, conceived and accepted by the global community. The research also analyses the judicial decisions to throw light on the positive and negative interpretations of the judiciary.

The underlying assumption of the present research work is that gender biases against women operate at all levels be it the conceptualization of law, implementation of law by the enforcement agencies, adjudication of law by the judiciary and perception of the problem of sexual harassment of women at workplace at the level of society. The gender biases of the patriarchal society and related unequal power relations between the two sexes are well conceived and perceived by all institutions dealing with sexual harassment which negates the human rights of the victims.

Sexual harassment manifests itself in a number of forms – few are direct manifestations at its maximum brutality like rape, attempt to rape, sexual slavery etc. whereas few other are indirect form of sexual harassment e.g. molestation, eve teasing, indecent exposure of person, showing pornography etc. Due to vastness of sexual harassment, it is not possible to deal with all forms of sexual harassment exhaustively in a single thesis. Hence, sexual harassment of women at workplace has been selected for detailed analysis. Though sexual harassment is encountered both by men and women but the sexual harassment against women perpetrated by men constitutes the major chunk of sexual harassment at workplace. That is why this thesis focuses on and is confined to the sexual harassment committed by male perpetrators against female victims.
The selection of the topic, “Indian Women and Sexual Harassment at Workplace – Need For Comprehensive Legislation and Pragmatic Planning” is based on the following factors: First Indian women i.e. women of Indian origin and living in India are more vulnerable to sexual harassment because there is correlation between dominance of men over women in India and the rampant problem of sexual harassment and male subjects place more blame on a sexual harassment victim i.e. woman. Hence, tendency to exercise coercive power in sexual situations may be much greater on the part of men. Second the chasm between the values of new social order proclaimed by the Constitution and the realities of contemporary Indian society as far as women’s rights are concerned remains as great as at the time of independence. Third the sexual stereotypes exist in the Indian society to such an extent that the inhibition to speak regarding sexual harassment looms large over the female fraternity on account of psychological fears of stigma, adverse publicity and serious repercussions. Fourth the sexual harassment is not confined to one class only but women of all castes, communities and religions may be the potential victims. Fifth there is no specific legislation to deal effectively with the problem of sexual harassment and provide redressal to the victims.

5. OUTLINE OF THE CONTENTS OF THE CHAPTERS

The study has been spread over seven chapters:

Chapter-I is introductory in nature which discusses the concept of sexual harassment and its determinants. It also discusses inter-linkages between sex, gender, sexuality, patriarchy, unequal power relations, gender stereotypes, political ideologies, cultural ideologies, economic inequalities and sexual harassment. The Chapter discusses the commonly held perceptions, belief, myths and realities associated with the concept of sexual harassment of women at workplace.

Chapter II titled “Contours of Sexual Harassment –Dimensions, Diverse forms and its Effects”, explores the dimensions of conceptual analysis of sexual harassment as well as factors related for determination of sexual harassment of women at workplace.
This chapter elaborates diverse forms of sexual harassment occurring at workplace. The Chapter discusses the different approaches for determination of sexual harassment cases. The Chapter elaborates the different overt and subtle manifestations of sexual harassment at the workplace in its quid pro quo form and creation of hostile work environment for the victims. The Chapter also elaborates the effects of sexual harassment on the victims, on the organization and on the society.

Chapter III titled “Sexual Harassment and Existing Legal Provisions in India – Critical Analysis of Various Issues Relating to the Concept and the Implementation of Law” deals with the Constitutional and other Statutory provisions related to sexual harassment of women at workplace. The Constitution of India encompasses all facets of gender equality including prevention of sexual harassment and abuse at the workplace. Because right to equality and right to work with human dignity and safeguards against sexual harassment are implicit in Articles 14, 15, 19(1)(g), 21, 42, 51-A(e) of the Constitution of India. The Chapter also discusses the existing provisions of the Criminal Law of the land i.e. Section.354 and Section509 of the Indian Penal Code dealing with the sexual harassment. The Chapter elaborates various issues relating to sexual harassment e.g. what constitutes modesty, how it is outraged and inherent ambiguity in the concept of modesty which sometimes obscures the difference between attempt to rape and molestation. The Chapter also discusses the recommendations of the National Law Commission and Bills drafted by the National Commission For Women to deal with the sexual harassment of women at workplace.

Chapter IV titled “Sexual Harassment : International Efforts and Legislations– An Overview” highlights the concern shown by international community regarding sexual harassment of women at workplace. The Chapter discusses in detail the key steps taken at the international level for the protection of women against sexual harassment, in particular the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 and the UN Declaration on Elimination of Violence Against Women, 1993. The Chapter also explores the existing provisions under different legal systems of the world dealing with the problem of sexual harassment of women at work place.

Chapter V titled “Working Environment and Sexual Harassment : Human Rights Perspective” discusses the importance of human resource management for an
organization and underlines the need of providing safe working environment for optimal tapping of the potential of workforce. The Chapter discusses in detail the importance of protection and promotion of human rights at workplace. The Chapter discusses the efforts made at the national and international level for the protection and promotion of human rights of all persons including workers and highlights that the occurrence of sexual harassment of women at workplace is negation of the human right of women to work with human dignity in a safe working environment.

**Chapter VI** titled “Sexual Harassment : Judicial Exposition- Critical Analysis of Judicial Decisions in Sexual Harassment Cases” focusses on the criteria adopted by the higher judiciary while dealing with the cases of sexual harassment. The Chapter examines how gender biases have affected the judicial mind as well as endeavours to examine the positive interpretation/contributions of the higher judiciary respecting the rights of women. The Chapter discusses the pro active role played by the Indian Supreme Court to fill up the lacuna in the existing law by issuing set of guidelines and norms for protecting women from sexual harassment at workplace. The Indian Judiciary sought the help of international laws and principles to reinforce and strengthen the concept of gender equality in India.

**Chapter VII** presents the summation of the work and describes how sexual harassment of women at workplace constitutes very grave and stark violations and negations of human rights of women because the protection available under the existing legal framework is not adequate and a large number of women remain excluded from the redressal of their grievances. Important suggestions have also been incorporated in this chapter to re-conceptualize the existing legal concept of sexual harassment and to equip the legal framework for efficacious delivery of justice to the victims. And these suggestions, if taken in the right earnest, may be helpful to usher an era of protection of women from sexual harassment at workplace and promotion of their human rights in India. In fact the gender justice which is a call of the day, is not only to be done but also seen to be done.