CHAPTER 3

AN OVERVIEW OF LAW PROFESSION

3.1 LAW PROFESSION

India has the second largest number of lawyers in the world next only to USA. (Ramnuj 2013). The number of lawyers in India is estimated to be approximately one million, with the law schools of India graduating another 80,000 each year. The predominant service providers are individual lawyers, small or family based firms.

The conception of law services as a ‘noble profession’ rather than services resulted in formulation of stringent and restrictive regulatory machinery. These regulations have been justified on the grounds of public policy and ‘dignity of profession’. The judiciary has reinforced these principles: Law is not a trade, not merchandise, and so the heaven of commercial competition should not vulgarize the law profession. However, over the years courts have recognized ‘Law Service’ as a ‘service’ rendered to the consumers and have held that lawyers are accountable to the clients in the cases of deficiency of services. The law profession is an important limb of the machinery for administration of justice.

3.2 JUDICIAL SYSTEM IN INDIA: AN OVERVIEW

During the ancient times, in India, administration of justice was one of the main functions performed by the king. The king constituted the
highest appellate court. Village panchayats and guild courts were encouraged as they were based on the principle of self-government and reduced the burden of the central administration. At the bottom of the hierarchy of courts, was the family court in which an arbitrator within the family court decided the disputes.

During the medieval period immediately preceding the British rule, Muslim system of Government was established in several parts of the country. Four types of courts were established under the Moghuls, namely: Canon Law Courts, Revenue Courts, Civil Courts and Criminal Courts. The judicial system however was not well organized, jurisdiction and powers were not demarcated and hierarchy was not definite during this period.

India has one of the oldest law systems in the world. Its law and jurisprudence stretches back to centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. The history of the present judicial system may be traced back to the year 1726, when a Charter was issued by King George I for bringing about important changes in the judicial administration of the Presidency towns of Bombay, Calcutta and Madras. The system of appeals from India to the Privy Council in England was introduced by this Charter in 1726. During the British rule in India, the traditional Indian judicial system was re-organized by the British authorities on the basis of Anglo-Saxon jurisprudence. Royal Charter granted in 1726, during the reign of George I established Mayor’s courts in the Presidency towns of Madras, Bombay, and Calcutta.

In order to bring a better management of the affairs of the East India Company, the East India Company Regulating Act of 1773 was promulgated by the King. The Supreme Court of Judicature at Fort William was established by a letter patent issued on March 26, 1774. The Regulating
Act, 1773 established the Supreme Court at Calcutta in 1773. Indian judicial system during this period consisted of two systems of courts: Supreme Courts in the Presidency towns of Calcutta, Madras and Bombay and Sadar Courts in the Provinces. In 1861, three high courts were established. In tune with the changing times, law and judicial system developed into a well-organized modern system of law and administration of justice, which inherited on its becoming independent.

Provincial autonomy was established in India with the establishment of the Government of India Act, 1935, which introduced responsibility at the provincial level and sought the Union of British Indian Provinces with the rulers of Estate in a federation. As a federal system depends largely upon a just and competent administration of the law between governments themselves, the 1935 Act provided for the establishment of the Federal Court, forerunner of the Supreme Court of India. The Federal Court was the second highest Court in the judicial hierarchy in India.

3.3 CLASSIFICATION AND HIERARCHY OF COURTS

3.3.1 Classification of Courts

The court structure in India is pyramidal in nature. India has a monolithic system. The judiciary in all the states in India has practically the same structure with variations in designations. India has a quasi-federal structure with 29 States further sub divided into about 676 administrative Districts. The judicial system however has a unified structure. The Supreme Court, the High Courts and the lower Courts constitute a single judiciary. Broadly there is a three-tier division. Supreme Court is the apex court of the nation. The State judiciary consists of a High Court for each State and subordinate courts in each district. Each High Court consists of a Chief
Justice and a number of puisne judges (A puisne judge or puisne justice is a regular member of a court other than the court's chief judge or chief justice, or any ex officio member of the court).

Each district has a District Court and each State a High Court. The Supreme Court of India is the Apex Court. Each State has its own laws constituting courts subordinate to the District Courts. Besides, a number of judicial tribunals have been setup in specialized areas.

3.3.2 Supreme Court of India: The Apex Court

The Supreme Court of India is the apex court at the national level, which was established on 28th January 1950, under Article 124(1) of the Constitution of India. In addition to the judicial autonomy, the Supreme Court has freedom from administrative dependence and has power to punish for contempt.

3.3.3 High Courts

The highest court in a state is the High Court, constituted under Article 214 of the Constitution. There are, at present 21 high courts in the country, 5 having jurisdiction over more than one state/union territory (A union territory is a type of administrative division in the Republic of India. Unlike states, which have their own elected governments, union territories are ruled directly by the Union Government (Central Government), hence the name 'union territory').

In few states due to large population and geographical areas benches have been setup under the High Courts. No High Court is superior over the other. All the High Courts have the same status under the Constitution. Each High Court is a court of record, with power to determine
questions about its own jurisdiction and the power to punish for contempt of itself. The Figure 3.1 shows the hierarchy of courts in India.

Figure 3.1 Structure of Indian Judicial System
3.3.4 Subordinate Judiciary / The Judicial Services of the State

The subordinate courts represent the first-tier of the entire judicial structure. It is the focal point on which the goodwill of the entire judiciary rests. As a general rule, civil cases are dealt with by one set of hierarchy of courts known as civil courts and criminal cases by another known as criminal courts.

All the courts in the district are subordinate to the district court, which is the highest court in every district. Every state has enacted its own law for setting up courts subordinate to the district court. There is a three-tier system of subordinate courts existing in most of the states. In fact each state is divided into districts as units of administration and each district is further divided into taluks comprising certain villages closely situated.

The Supreme Court, since its inception, was empowered with jurisdiction far greater than that of any comparable court anywhere in the world. As a federal court, it has exclusive jurisdiction to determine disputes between the Union of India and any state and the states *inter-se*. The Supreme Court, with the present strength of 28 judges and the chief justice, is the repository of all judicial powers at the national level.

The laws practiced differ from country to country depending on the needs and regulations. In India, though many laws are practiced, the most commonly practiced fields of law are listed below:

1) Corporate Law
2) Criminal Law
3) Family Law
Though, the field of law, work setting and laws differ from country to country, gender issues are found to be almost common in all the countries. Studies show that, women are not given equal opportunity even in foreign countries. Thus, issues related to gender in the law profession is a global problem to be solved.

### 3.4 PRESENT SCENARIO

The last few years have witnessed rapid developments in the Indian corporate world as Indian companies have been making large overseas acquisitions. The same, inter-alia, has paved the way for growth of the Indian law service market which is presently worth about US$1.25 billion and is expected to rise every year hereafter.

The past decade has seen a mini-revolution in the law services sector in India, with significant impact felt in corporate law, project financing and infrastructure contracts, intellectual property protection, organized crime,
environmental protection, competition law, corporate taxation and investment law as law practise areas.

With the growth of India’s corporate community, white collar corporate crimes in India have become more significant and visible. It is now very common to read about some new corporate scam or the other in the media at any given time – scams that encompass the banking, housing finance, telecom and infrastructure industries. Such billion dollar scams have paved the way for a new law practice area - “White Collar Crime” (WCC) or the “Business Crime Practice”.

More and more Indian corporate entities and high-net worth individuals are seen to engage specialist WCC defence lawyers or firms and retain them for immediate relief or specialist advice, should any “economic crime” crises strike them or their corporate entities.

Earlier such assignments were handled by lawyers practicing criminal law as individuals who, by the weight and ability of their skill, coupled with their seniority and standing assisted the clients. However, with the increased complexities of such economic offences, the same assignments are being now handled by smaller boutique firms and individuals who have recourse to top criminal law counsels for court appearances.

3.5 LAW PROFESSION IN INDIA: AN OVERVIEW

The history of law profession in India is a history of struggle: for recognition, characterized by prestige, power and income. The professional standing of the advocates of India evolved and grew till it finally manifested itself in the Advocates Act of 1961.
The Advocates Act, enacted by the Parliament in 1961 regulates the law profession in India. Prior to this enactment, there was no uniformity in granting license to practise and with respect to the designations of law practitioners. The Advocates Act aimed at raising the prestige of the profession, to improve the morale of the profession besides inculcating the spirit of oneness and harmony in the profession. The Act paved way for the establishment of the Bar Council of India at the national level, empowering it to lay down the uniform qualifications for the enrolment of advocates. As a result of the Advocates Act, admission, practise, ethics, privileges, regulations, discipline and improvement of the profession as well as law reform are now significantly in the hands of the profession itself.

The Indian Bar Councils Act, 1926 placed the vakils and the barristers on the same footing and both they were designated as advocates of the court. The Indian Bar Councils Act, 1926 was passed to unify the various grades of law practise and to provide self-government to the Bars attached to various Courts. The Act required that each High Court must constitute a Bar Council. The duties of the Bar Council were to decide all matters concerning law education, qualification for enrolment, discipline and control of the profession. It was favourable to the advocates as it gave them authority previously held by the judiciary to regulate the membership and discipline of their profession.

3.5.1 The Bar

The Bar Council of India is also an apex statutory body which lays down standards of professional conduct and etiquette for advocates, while promoting and supporting law reform. An advocate enrolled with any State Bar Council can practise and appear in any court of the law including the Supreme Court of India. However for doing any acting work in
Supreme Court a qualifying examination (called an ‘Advocate on Record’ exam) needs to be cleared. Foreign lawyers are not permitted to appear in Courts (unless qualified), though they can appear in arbitrations. There are 17 State Bar Councils functioning in various states in India.

Bar Council of India was established under the Advocates Act, 1961. The demand for uniformity in the designation and functioning of the advocates was finally granted, by formation of the Bar Council and State Bar Councils, which are competent to enrol advocates and try all the cases of professional misconduct.

Some of the important functions of the Bar Council of India are:

1. To lay down standards of professional conduct and etiquette for advocates.
2. To lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council.
3. To safeguard the rights, privileges and interests of advocates.
4. To promote and support law reforms.
5. To deal with any matter arising under this Act, this may be referred to it by a State Bar Council.
6. To exercise general supervision and control over state Bar Councils.
7. To promote law education and,
8. To lay down standards of such education in constitution with universities in India imparting such education and the state Bar Councils.

3.6 WOMEN IN LAW PROFESSION IN INDIA

The status of women in India has been subjected to many changes over the past few centuries. From equal status with men in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been eventful. While women are guaranteed equality under the constitution, law protection has little effect in the face of prevailing patriarchal traditions. A range of Government programs have been launched to increase economic opportunity for women, but still they are under-represented in terms of power and status.

The path of women in law profession can be very easily described as a process of continuing challenge around the world. Even in India, where women were given political rights such as right to vote and right to contest elections at the same time as men, hard battle had to be waged for women to be able to practise as law professionals.

Gender discrimination is not only inequitable, but also, hampers the development of the nation. Evidently no country can sustain its development if it underutilizes its women, who constitute almost half the population. Despite some basic changes in the status and role of women in the society, no society treats its women at par with its men. Consequently, women continue to suffer from diverse deprivations.

The gross under-representation of women and the attitudinal bias against women is strikingly reflected in several areas of employment like the
Police, the judiciary and the law, etc. The correction of this unhappy situation requires focused intervention targeting education, training, child care, health, nutrition, credit, employment, welfare services support and law safeguards.

Similarly, the insecurity outside the household is the greatest obstacle in the path of women. Fear of violence is a cause of women's lack of participation in activities beyond their home. Recent studies also show that, women face more barriers in the workplace than do men. Gender-related barriers involve sexual harassment, unfair hiring practices, career progression, and unequal pay where women are paid less than men for performing the same job. Such barriers make it difficult for women to advance in their workplace. Transforming the prevailing social discrimination and sexual harassment against women must become the top priority, and must happen concurrently with increased direct action to rapidly improve the social and economic status of women. In this way, a synergy of progress can be achieved.

Women working in law have made real progress and some perceived glass ceilings are being shattered, there are a number of areas which give cause for concern. Women tend to remain clustered at the lower levels of the law profession. Thus, this research aims at pooling the possible hindrances for the progress of women law professionals and comes out with suggestions through which women are given equal rights as men.

3.7 TAMIL NADU – AN OVERVIEW

Tamil Nadu is the eleventh largest state in India by area and the seventh most populous state in India. It is the second largest state in economy in India as of 2012. The state is ranked sixth among the states in India according to the Human Development Index as of 2011. The state has the
highest number (10.56 per cent) of business enterprises and stands second in total employment (9.97 per cent) in India, compared to the population share of about 6 per cent. In the 2013 Raghuram Rajan panel report, Tamil Nadu was ranked as the third most developed state in India based on a "Multidimensional Development Index". The administrative units of Tamil Nadu are classified into districts. There are 32 districts in Tamil Nadu and for administration purposes each district is divided into Taluks. The political map of Tamil Nadu is presented in Figure 3.2.

Figure 3.2 Tamil Nadu District Map (http://www.tn.gov.in/tamilnadustate)
3.8 WOMEN IN LAW PROFESSION IN TAMIL NADU

Women law professionals with their immense talent, enterprise and inherent sensitivity, it is not surprising that they had made their mark in the law profession and, as a corollary; they had made inroads in the Indian judiciary at all levels. Still, there are barriers that are to be broken down.

Women lawyers have a greater role to play in effective administration of justice and are vital for transformation of future society. There is an almost equivalent ratio of women and men in law schools and colleges, but when they move up in the ladder from students to lawyers, the number of females in the profession drastically reduces. The role of women lawyers have become more vital in matters such as those involving domestic violence, gender discrimination, child abuse and violence related to women and children, since women have greater empathy, understanding and acceptance among the victims.

Women lawyers face ingrained prejudice, ranging from a lack of adequate sanitation facilities, overcrowded women’s work rooms in courts, and in many cases lesser fees than their male colleagues. Moreover, clients often prefer male lawyers with less experience than women with more experience or skill. Women lawyers have to fight hard for their rightful fees, which their male counterparts often easily command. It has been found that, Indian clients often choose female lawyers with the intention of paying lower fees (India Survey: Women Battle Bias In Legal Profession, 2012).

Participation of women in law profession is very low. In Tamil Nadu there are about 7,691 women lawyers, where men are around 44,429 in number. Women lawyers account only to 14.76 among the total number of lawyers in Tamil Nadu. In certain districts like Theni, Namakkal, Nagapattinam, Virudunagar, Ramanathapuram and Madurai it is even worse
that, women lawyers are less than 10%. None of the districts in Tamil Nadu constitute 25% of women lawyers in their total population. The highest participation of women lawyers are found in Tiruppur and Coimbatore with 22% and Chennai with 20% of women lawyers. Thus, there is a transparent gap between the number of men and women in law profession. The number of men and women lawyers in various districts of Tamil Nadu is given in Table 3.1.

Table 3.1 District Wise List of Lawyers in Tamil Nadu

<table>
<thead>
<tr>
<th>S. No</th>
<th>Districts</th>
<th>Total No. of Lawyers</th>
<th>No. of Men Lawyers</th>
<th>% of Men Lawyers</th>
<th>No. of Women Lawyers</th>
<th>% of Women Lawyers</th>
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<td>653</td>
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<td>183</td>
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<td><strong>44429</strong></td>
<td><strong>85.24</strong></td>
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<td><strong>7691</strong></td>
<td><strong>14.76</strong></td>
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</table>

Source: Bar Council of Tamil Nadu, Chennai
Figure 3.3 Chart showing the Percentage of Men and Women Lawyers in Tamil Nadu (Source: Bar Council of Tamil Nadu, Chennai)

Though the number of women advocates has been increasing in recent years, they are still in the minority at the top levels of the law profession. Gender inequalities persist across law education, hiring, remuneration, promotions, and other professional opportunities in law. The position is similar at the national level with there being only a handful of designated senior lady advocates in the Supreme Court. Despite the fact that India had a woman Prime Minister and today at least four woman Chief Ministers at the helm of affairs, the country is yet to see a woman occupying the office of Attorney General, Solicitor General or Advocate General. Gender and Caste restrictions, religious prohibition, lack of leadership qualities and apathetic and callous attitude towards women are considered to be the root causes for the difficulties faced by them.
3.9 PROBLEMS AND PROSPECTS OF WOMEN LAW PROFESSIONALS

Today, more number of women is seen excelling in almost every sphere of life. Yet, there are issues to be addressed to foster a hassle free development process for the women folks. Women lawyers lag behind men in terms of power and status due to various barriers.

Researchers have found that, multiple hurdles still block the path of female practitioners. Some of the main barriers faced by women lawyers are gender discrimination in terms of authority and rank, unequal pay, sexual harassment, work life imbalance, stress, geographical mobility, maternity break, child rearing etc. Though women in all the profession undergo some of the above mentioned barriers, women in law profession suffer out of these issues in a more significant manner as law profession differs from other office jobs.

From the above mentioned issues faced by women law professionals, selected issues are taken for this research. Thus, this study would incorporate the following variables:

1) Gender discrimination
2) Sexual harassment
3) Work / family conflict
4) Stress, stress – related illness, and
5) Job Dissatisfaction

The above mentioned issues are discussed in the following section:
3.9.1 Discrimination

Earlier studies highlighted that, women lawyers are discriminated on basis of their gender. There perpetuates large disparities between the career trajectories of male and female lawyers. The denial of high paid jobs and powerful positions diminish the number of women in law profession. Discrimination includes women being allocated unchallenging work, being forced to contend with lesser professional fee than their male counterparts and denial of benefits and promotions.

Though the number of women advocates is ever increasing, they are still in the minority at the top levels of the law profession, and although blatant forms of discrimination have been virtually eliminated by the use of legislation as well as a shift in cultural norms, subtle forms of discrimination remain. This bias in the law profession makes women lawyers lag behind male lawyers in terms of high esteemed positions, status and power.

3.9.2 Harassment

Studies show that, women law professionals undergo various types of sexual harassment. The reason for women quitting the law firms is due to the male dominated work environment and inflexible workplace culture that is prevailing in the law firms. Women experience various forms of harassments like sexual gesturing, offensive e-mail or voice messages, forcible physical touch or molestation, demand or request for sexual favours, name calling, displaying pornographic pictures, sexist teasing, verbal or emotional abuse, demeaning, humiliating or undermining remarks or statements. Sexual harassment is one of the main reasons for high attrition rate of women in the law profession.
3.9.3 Work Life Balance

The biggest challenge for women lawyers across countries and types of law practice is undoubtedly balancing their domestic duties with their professional demands. While it can be said that balancing their homes and work is a challenge for women in all professions, given that the burden of domestic duties invariably falls on woman, what makes it especially challenging is the fact that the law system is engineered from the point of view of men.

Work life imbalance has been found as the main reason for women to quit the profession. Many lawyers experience high level of imbalance between their work and personal life, due to which many women lawyers opt to quit the corporate practices and prefer to go to public – sector or smaller firms which doesn’t demand much of their time.

Unlike other professions, law opportunities are defined by informal social networks, private clubs and Bar association activities that order status and power. Thus, absence of women in informal socializing due to family and child care responsibilities makes them less committed to work.

3.9.4 Stress

The women law professionals undergo high level of stress and it has been found as the main cause for job dissatisfaction. Women in the law profession are found to be more stressed than their male colleagues. Though people working in all the fields undergo stress, what makes it more stressful for law professionals is that pressure of competition, horrible professional interactions and never ending deadlines.
As law profession highly involves public participation, lawyers getting into their cases get emotional as they have to survive with that case for a long period of time. This results in stress of lawyers. Specifically, women lawyers are found to get more depressed, dissatisfied or mentally detrimental compared with other professionals. Lawyers must be given counselling in order to reduce the level of stress they undergo.

3.9.5 Job Satisfaction

Job satisfaction is the collection of feeling and beliefs that people have about their current job. Level of degree of job satisfaction of people can range from extreme satisfaction to extreme dissatisfaction. Job satisfaction plays a vital role in an individual’s career as many choose exit strategy when they aren’t satisfied with their job.

Women don’t find it easier to survive and move upwards in this profession. The law profession is found to be unfriendly to women law professionals. Thus, various issues faced by women law professionals in their work environment are found to have a negative impact on the job satisfaction of women lawyers. Women lawyers are less satisfied with their jobs compared to their male counterparts. All the issues undergone by women lawyers affect their job satisfaction, where they either opt to change their profession or leave the profession.

Women are to be taught about their rights and should be made aware of the situation during their law school education. Though lots of rules are already in existence to protect women against discrimination and harassment, those rules are not enacted in practical. Thus, women lawyers have to strive hard to secure full and equal participation of women in the law profession.
This study will be one such attempt to explore and widen the opportunity for women law practitioners to move on the fast track and overcome the hurdles in their career choices. Therefore, issues against women can only be eliminated by fundamentally changing the attitudes created by the division of labour. This process requires the efforts of all of society, not just women. Full participation is appropriate for both sexes because society as a whole will benefit from allowing women and men to abandon their gender-conscious selves and pursue their own interests free of unjust societal expectations.