

# Laws against Sexual Harassment: Analyzing the legal framework of Bangladesh

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## 1. Introduction

“Sexual harassment is unwelcome sexual conduct”<sup>1</sup> that can extend from comments on what one is wearing to physical assaults such as rape. It is a category of gender-based violence (GBV) predominantly perpetrated against women throughout the world, especially girls, which prejudices their capacities and contribution in public life, especially in education and in work. Sexual harassment expresses and reinforces inequalities of power.<sup>2</sup> “Inequalities based on race, ethnicity, immigration status, age, disability and sexual orientation, among other factors, also contribute to structuring the hierarchy of power and therefore to the perpetration of sexual harassment and its redress.”<sup>3</sup>

As defined in the United Nations Secretary-General’s bulletin (2008):

“Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders.”<sup>4</sup>

In Bangladesh, sexual harassment has become one of the major challenges that women face. With more women working outside the domestic household and

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<sup>1</sup> UN Women, *Towards an end to sexual harassment: The urgency and nature of change in the era of #metoo* (November 2018) <<https://www.itstopsnow.org/sites/default/files/Towards-an-end-to-sexual-harassment-en.pdf>> accessed 7 January, 2022.

<sup>2</sup> United Nations, *UN Position Paper on Sexual Harassment Legislation in Bangladesh* (2019).

<sup>3</sup> UN Women (n 1).

<sup>4</sup> United Nations Secretariat, Secretary-General’s Bulletin (11 February 2008) <[https://unctad.org/en/Docs/ST\\_sgb2008d5\\_en.pdf](https://unctad.org/en/Docs/ST_sgb2008d5_en.pdf)> accessed 23 December, 2021.

availing educational and work opportunities, sexual harassment has become a subject of greater focus in recent decades. While not a new phenomenon, it is only in recent years that the term is being discussed publicly.<sup>5</sup>

There are few empirical qualitative data and little research on the extent of sexual harassment in Bangladesh.<sup>6</sup> A 2015 survey on Violence against Women conducted by the Bangladesh Bureau of Statistics (BBS) found that more than one-quarter (27.3%) of women had been subjected to sexual abuse by their partners. A UN Women study had shown that “more than three-quarters of female students of tertiary education institutes faced sexual harassment at least once”.<sup>7</sup> According to the Human Rights Monitoring report of Ain o Salish Kendra (ASK), from January to December 2021, 128 women experienced sexual harassment.<sup>8</sup> And according to a study by BRAC, 94 per cent of women commuting in public transport in Bangladesh have experienced sexual harassment in verbal, physical and other forms.<sup>9</sup>

## 2. Legislative Background

In the subcontinent, the term “eve-teasing”<sup>10</sup> had been used more popularly to refer to acts in the nature of sexual harassment. “The phrase ‘eve-teasing’ seems to have surfaced in the late 1950s when it first appeared in the Times of India, in a report about a ‘non-official bill’ before parliament that proposed rigorous punishment for those molesting women”.<sup>11</sup> The phrase became more popular since then and was

<sup>5</sup> Shahnaz Huda, ‘Sexual Harassment and Professional Women in Bangladesh’ 2(4) Asia-Pacific Journal on Human Rights and the Law, [52], [69].

<sup>6</sup> Dina M Siddiqi, *The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond*, (CPD and UNFPA, June 2003) [10] <[http://cpd.org.bd/pub\\_attach/unfpa26.pdf](http://cpd.org.bd/pub_attach/unfpa26.pdf)> accessed 23 December, 2021.

<sup>7</sup> Human Development Research Centre, *Situational Analysis of Sexual Harassment at Tertiary Level Educational Institutes in and around Dhaka*, (2013) <<https://www.hdrc-bd.com/situational-analysis-of-sexual-harassment-at-tertiary-level-education-institutes-in-and-around-dhaka-conducted-for-un-women-bangladesh-year-2013/>> accessed 23 December 2021.

<sup>8</sup> Ain O Salish Kendra (ASK), ‘Violence Against Women – Sexual Harassment : January-December 2021’ <<https://www.askbd.org/ask/2022/01/13/violence-against-women-sexual-harassment-jan-dec-2021/>> accessed 20 January 2021.

<sup>9</sup> BRAC, ‘94% women victims of sexual harassment in public transport’, *BRAC* (25 March 2018) <<https://www.brac.net/latest-news/item/1142-94-women-victims-of-sexual-harassment-in-public-transport>> accessed 23 December, 2021.

<sup>10</sup> The term colloquially refers to a range of practices that feminists in India have sought to rephrase as the sexual harassment of women in public. See Deepti Misri, “Eve-Teasing: South Asia”, 40(2) (2017) *Journal of South Asian Studies* [305].

<sup>11</sup> Taslima Yasmin, International Labour Organisation (ILO), *Overview of laws, policies and practices on gender-based violence and harassment in the world of work in Bangladesh*, (2020) <

frequently seen to be used by government and non-government actors and authorities to address offences in the nature of sexual harassment i.e. those less severe than rape or other forms of severe physical tortures. However, “by 1990s the term eve-teasing came under serious criticism from the rights groups in India as a mechanism of normalizing violence against women”<sup>12</sup>. The legal and policy framework in India was also facing serious criticisms for scanty protection against sexual harassment. “The brutal gang rape of a social worker Bhanwari Devi for protesting a child marriage in her community in a remote village in Jaipur then brought greater focus on sexual harassment of working women not only in India but also in the subcontinent.”<sup>13</sup>

Concurrently, sexual harassment of women at workplaces was being emphasized globally, and in 1992, the General Recommendation No.19 was issued by the UN “Committee on the Elimination of Discrimination against Women (CEDAW Committee)”<sup>14</sup>. Through this General Recommendation, the Committee declared sexual harassment as a form of GBV and thereby was considered a form of discrimination for the purpose of Article 1 of CEDAW<sup>15</sup>. Keeping in line with this global focus on sexual harassment as a form of sex discrimination<sup>16</sup> and in the context of the rape of Bhanwari Devi, a number of women’s groups and NGOs filed a petition in the Indian Supreme Court under the collective platform of Vishakha<sup>17</sup> to enforce fundamental rights of working women and to “prevent sexual harassment of working women in all workplaces through judicial process”<sup>18</sup>. Through this historic

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[https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_757149.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_757149.pdf)> accessed 08 January 2022.

<sup>12</sup> Pratiksha Baxi, “Sexual Harassment”

<<http://www.india-seminar.com/2001/505/505%20pratiksha%20baxi.htm> > accessed 23 December, 2021, quoted in Taslima Yasmin, International Labour Organisation (ILO), *Overview of laws, policies and practices on gender-based violence and harassment in the world of work in Bangladesh*, (2020) <[https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_757149.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_757149.pdf)> accessed 08 January 2022.

<sup>13</sup> Yasmin (n 11).

<sup>14</sup> Committee on the Elimination of Discrimination against Women <<https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>> accessed 08 January 2022.

<sup>15</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, (UNTS vol. 1249, p. 13, 18 December 1979) <<https://www.refworld.org/docid/3ae6b3970.html>> accessed 16 January 2022.

<sup>16</sup> As opposed to viewing sexual harassment as an ‘individual, intentional act of interpersonal violence’; For a detail discussion on conceptualizing sexual harassment as sex discrimination, see Nuara Choudhury, “The Immodest Truth: An Evaluation of the Measures Taken to Combat Sexual Harassment in Bangladesh”, (2012) 12 Bangladesh Journal of Law [137]-[170].

<sup>17</sup> *Vishakha and others vs. State of Rajasthan and others* (1997) AIR 1997 SC 3011 <<http://www.iimb.ac.in/sites/default/files/u198/VISHAKHA%20GUIDELINES1.pdf>> accessed 23 December 2021.

<sup>18</sup> *ibid.*

judgment, the Supreme Court of India, had recognized sexual harassment at workplaces, to be a violation of human rights.<sup>19</sup> A number of binding Directives were given in the judgment based on the Constitutional guarantees of equality and dignity and on the rights given in CEDAW.<sup>20</sup> The directives made it obligatory for all employers to provide a grievance mechanism to redress sexual harassment at workplaces.

The increased focus in the global context on workplace sexual harassment against women, especially the development in India post the *Vishakha* Guidelines, had also shaped the civil society movements in Bangladesh in favor of similar legal protection for women. The term eve-teasing began to be subjected to growing criticism and the word sexual harassment came to be in use in a wider scale in the rights discourse in Bangladesh.<sup>21</sup> The movement of the rights groups for protection against sexual harassment was gradually building up<sup>22</sup>, and in 2008 BNWLA - a women lawyers' association in Bangladesh,<sup>23</sup> filed a writ petition in the Supreme Court pointing out the lack of adequate laws and policies to prevent sexual harassment both at work and

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<sup>19</sup> Nishith Desai & Associates "India's Law on the Prevention of Sexual Harassment at Workplace" in *Prevention of Sexual Harassment at the Workplace (POSH) : Legal & HR Considerations* (December, 2020)

<[http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Prevention\\_of\\_Sexual\\_Harassment\\_at\\_Workplace.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf)> accessed 23 December 2021.

<sup>20</sup> Government of India Ministry of Women and Child Development, *Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013* (November 2015) [4] <<https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>> accessed 23 December 2021.

<sup>21</sup> Although it is not documented since when the term sexual harassment gained significance and began to replace 'eve-teasing' (albeit slowly and the term is still in use to refer to street harassment), several references to sexual harassment in the late 1990s and early 2000s can be found with regard to rights and safety issues of the female workers in the industrial sector particularly in the RMG sector. For example, writing for IPS news in 1998, Tabibul Islam noted that 'sexual harassment was a common issue in garment factories and women were threatened with dismissal if they speak out'. A reference to workplace sexual harassment was also noted in a seminar titled "Dialogue on Sexual Harassment and Professional Women: Perspectives, Experiences and Responses", which was organized by FOWSIA ("Forum on Women in Security and International Affairs") on August 2003, in Dhaka; see: <<http://archive.thedailystar.net/magazine/2003/08/03/human.htm>> accessed 06 January 2022.

<sup>22</sup> On 7 July, 2008, a platform of 47 right based organizations including the BNWLA, Bangladesh Manila Parishad, Ain O Shalish Kendra, Bangladesh Manila Samity arranged a press conference on the issue and put in sharp focus the acuteness of the problem and highlighted how the sexual harassment was taking place in different organizations and institutions. The Committee at the press conference presented a statistics showing 333 incidents of repressions on women from January to June 2008. The Committee also adopted seven resolutions including framing of guidelines to stop sexual harassment and implementation thereof at all educational institutions and universities' see *Bangladesh National Women Lawyers Association (BNWLA) Vs. Government Of Bangladesh And Others*, 29 BLD (HCD) (2009) [415].

<sup>23</sup> Bangladesh National Women Lawyers Association.

in educational places. The landmark judgment came out in 2009<sup>24</sup> wherein the Supreme Court gave a detailed guideline on sexual harassment, the language of which was very much aligned to what the Indian Supreme Court had laid down in the Vishakha judgment. Later in 2010, another writ petition was filed by BNWLA addressing harassment at public places.<sup>25</sup> In the latter judgment, the Court emphatically condemned using the phrase ‘eve-teasing’ to refer to acts of sexual harassment.

### 3. Sexual Harassment as Recognized in the International Normative Framework

In its General Recommendation No.19, the CEDAW Committee declared that GBV is a form of discrimination. The Committee affirmed that “equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace”<sup>26</sup>. The Committee delineated a number of acts or behaviors that could be labeled as sexual harassment and included both “*quid pro quo*” and “hostile working environment” harassment.<sup>27</sup>

The “UN Declaration on Violence Against Women, 1993”<sup>28</sup> also described “sexual harassment and intimidation at work, in educational institutions and elsewhere” as a category of violence against women. The “Beijing Platform for Action”<sup>29</sup> requires governments “to develop programmes and procedures to eliminate sexual harassment and other forms of violence against women in all educational institutions, workplaces and elsewhere”.<sup>30</sup>

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<sup>24</sup> *ibid.*

<sup>25</sup> *BNWLA vs. Government of Bangladesh And Others* 31 31 BLD (HCD) 2011[3240].

<sup>26</sup> CEDAW, General Recommendation No.19

<<https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>> accessed 6 January 2022.

<sup>27</sup> ‘Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment’.

<sup>28</sup> UN General Assembly, *Declaration on the Elimination of Violence against Women* (Resolution adopted by the General Assembly 48/104 A/RES/48/104) <<http://un-documents.net/a48r104.htm>> accessed 6 January 2022.

<sup>29</sup> United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women* (27 October, 1995) <<https://www.refworld.org/docid/3dde04324.html>> accessed 16 January 2022.

<sup>30</sup> *ibid.*

The 2013 agreed conclusions of the “Commission on the Status of Women on the elimination and prevention of all forms of violence against women and girls”<sup>31</sup> refers to the “need to respond to, prevent and eliminate all forms of discrimination and violence, including sexual harassment at the workplace”.<sup>32</sup> The Commission, in its agreed conclusions on “Women’s economic empowerment in the changing world of work” adopted in 2017<sup>33</sup>, urged governments at all levels “to enact or strengthen and enforce laws and policies to eliminate all forms of violence and harassment against women of all ages in the world of work, in public and private spheres, and provide means of effective redress in cases of non-compliance”.<sup>34</sup> The agreed conclusions of the Commission of 2018 again urged the governments to –

“Pursue, by effective means, programmes and strategies for preventing and eliminating sexual harassment against all women and girls, including harassment in the workplace and in schools, and cyber-bullying and cyber-stalking, including in rural areas, with an emphasis on effective legal, preventive and protective measures for victims of sexual harassment or those who are at risk of sexual harassment”<sup>35</sup>

The ILO under the “Discrimination (Employment and Occupation) Convention of 1958”<sup>36</sup> addresses “discrimination in employment on a number of grounds, including sex, and requires that ILO member States declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating discrimination”.<sup>37</sup> However, the international instrument itself does not refer specifically to sexual harassment.

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<sup>31</sup> Commission on the Status of Women, *Agreed conclusions on the elimination and prevention of all forms of violence against women and girls* (Report on the fifty-seventh session, March 2013) <[http://www.un.org/womenwatch/daw/csw/csw57/CSW57\\_Agreed\\_Conclusions\\_\(CSW\\_report\\_excerpt\).pdf](http://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_(CSW_report_excerpt).pdf)> accessed 07 January 2022.

<sup>32</sup> *ibid.*

<sup>33</sup> Commission on the Status of Women, *Agreed conclusions on Women’s economic empowerment in the changing world of work* (Report on the sixty-first session, March 2017) <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/61/CSW-Conclusions-61-WEB.pdf>> accessed 07 January, 2022.

<sup>34</sup> *ibid.*

<sup>35</sup> Commission on the Status of Women, *Agreed conclusions on Challenges and opportunities in achieving gender equality and the empowerment of rural women and girls* (Report on the sixty-second session, March 2018) <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/62/CSW-Conclusions-62-EN.PDF>> accessed 07 January, 2022.

<sup>36</sup> International Labour Organization, *Discrimination (Employment and Occupation) Convention, 1958* (Convention no. 111) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111)> accessed 07 January, 2022.

<sup>37</sup> *ibid.*

Furthermore, in 2019 ILO adopted the “Violence and Harassment Convention, 2019 (Convention No. 190)”<sup>38</sup>. The Convention calls on all ILO members to adopt “an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment”, taking a wide definition of “the world of work” applied to all sectors. The Convention speaks of the legal prohibition on violence and harassment and emphasizes that the “ratifying members should establish and strengthen enforcement and monitoring mechanisms, ensure access to remedies and support for victims, and provide for sanctions”.<sup>39</sup>

#### **4. Sexual Harassment as Recognized in Bangladesh’s National Legal Framework**

Having ratified the CEDAW and the other key human rights treaties<sup>40</sup>, Bangladesh is committed under international law to provide effective protection against sexual harassment to women. However, the existing legal framework in Bangladesh is relatively weak in ensuring protection against sexual harassment. In none of the laws addressing issues of violence against women the term “sexual harassment” appears. Also, the existing criminal provisions that narrowly address sexual harassment lack the key element of the act being ‘unwelcome’ or ‘offensive’ and rather focuses on the ‘modesty’ of a woman, without clarifying how perhaps ‘modesty’ can be determined. Relying heavily on a vague criterion like ‘modesty’, the provisions are clearly endorsing the stereotypical approach influenced by the patriarchal notions of focusing on the character of a woman when she complains of any sexual offence rather than focusing on the crime itself. Also, the provisions require proving intention to outrage the modesty, which in practice becomes almost impossible to prove for the prosecution. Further, due to the long delay in disposal of cases under the regular criminal courts, coupled with a low rate of conviction, offences such as these are hardly reported since they are generally considered to be ‘minor’ offences, often termed as mere ‘eve-teasing’.

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<sup>38</sup> International Labour Organization, *Violence and Harassment Convention*, 2019 (Convention No. 190) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190)> accessed 07 January 2022; Hereinafter referred as C190.

<sup>39</sup> *ibid.*

<sup>40</sup> UN General Assembly, *Convention on the Rights of the Child* (UNTS vol. 1577, p. 3, 20 November 1989) <<https://www.refworld.org/docid/3ae6b38f0.html>> accessed 16 January 2022; UN General Assembly, *International Covenant on Civil and Political Rights* (UNTS vol. 999, p. 171, 16 December 1966) <<https://www.refworld.org/docid/3ae6b3aa0.html>> accessed 16 January 2022; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (UNTS vol. 993, p. 3, 16 December 1966) <<https://www.refworld.org/docid/3ae6b36c0.html>> accessed 16 January 2022.

Other than the criminal laws, sexual harassment is also not comprehensively addressed in any other laws. Whereas in order to effectively prevent and protect women from sexual harassment it is also crucial that sexual harassment is addressed comprehensively covering other areas of laws such as employment, anti-discrimination and right to compensation, to mention a few.

#### **4.1 Penal Code 1860**

In section 354, dealing with the offence of ‘sexual assault’, the Penal Code provides that “whoever assaults or uses criminal force to any woman, with the knowledge or intention to outrage her modesty, shall be punished with a maximum of two years imprisonment and fine”. Section 509 of the Penal Code proscribes acts like “uttering any word, making any sound or gesture, or exhibiting any object, with the intention to insult the modesty of a woman”, with a punishment of up to one-year imprisonment.

However, as discussed before, a problematic feature of these provisions is that they are both built on the concept of “outraging or insulting the modesty of a woman” and further, such acts had to be ‘intentional’. The concept of “outraging modesty” is vague and leaves an opportunity for victim-blaming on the basis of the stereotypical notions surrounding the ‘modesty’ of a woman. Thus, “a woman who feels harassed or abused will find no redress under these provisions if the man did not “intend” to make her feel that way.”<sup>41</sup> This “intent” requirement creates particular problems in sexual harassment complaints, as such discriminatory behavior often occurs as a result of that behaviour becoming normalized and institutionalized. As a result, it is not always “intentional” in the strict legal sense.<sup>42</sup> Importantly, such a requirement is ignoring the key element of the definition of sexual harassment, *i.e.* ‘unwelcomed’ – as accepted globally, and as such the provision of sexual harassment in the existing laws are also clearly in contradiction to the international standards.

#### **4.2 “Women and Children Repression Prevention Act of 2000”**

Similar to the Penal Code’s section 354, the “*Nari O Shishu Nirjaton Daman Ain, 2000*” (“Women and Children Repression Prevention Act of 2000”) (WCRPA)<sup>43</sup> makes a provision for sexual assault with a higher degree of punishment.<sup>44</sup> The

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<sup>41</sup> Yasmin (n 11).

<sup>42</sup> *ibid* 153.

<sup>43</sup> WCRPA is a Special Statute to define and punish offences particularly relating to violence against women and children. Special Tribunals have been established under this Act to try the offences.

<sup>44</sup> “Rigorous imprisonment which may extend up to ten years but shall not be less than three years and shall also be liable to additional fine.”



WCRPA in section 10 (titled as ‘sexual oppression’ etc.) provides that “if any person, in furtherance of his sexual desire, touches the sexual organ or other organs of a woman or a child with any of the organs of his body or with any substance, or he outrages the modesty of a woman, he will be said to have committed sexual assault”<sup>45</sup>. However, “despite of a harsher punishment, the provision does not cure the ambiguity of the existing provision on sexual assault, as the offence is still made contingent upon the vague concept of ‘outraging modesty’ of a woman”.<sup>46</sup>

Although apart from sexual assault, other forms of sexual harassment are not addressed in WCRPA; the Act originally contained another sub-section to section 10, *i.e.* section 10(2), penalizing acts of ‘sexual harassment’ similar to section 509 of the Penal Code.<sup>47</sup> By an amendment in 2003<sup>48</sup>, this subsection was omitted - apparently due to lack of clarification regarding the definition of certain terms used in the provision and the consequent risk of ‘abuse of law’.<sup>49</sup> However, although this was deleted in 2003, in 2010 in response to an interim order issued by the HCD in *BNWLA vs. Bangladesh* (“Writ Petition No. 8769 of 2010”), the concerned Ministry sent a report to the Court describing the steps taken to include a proposed amendment to the WCRPA, by incorporating a new section ‘10 Ka’ (10a). This proposed section suggested a clause defining “sexual harassment” as a separate offence with a maximum penalty of 7 years’ imprisonment and fine.<sup>50</sup> However, till date no such amendment has been made to the WCRPA to include sexual harassment. Moreover, the Court was also critical about such provision of sexual harassment as not being comprehensive enough “to tamp down the prevailing amorphous social-epidemic”<sup>51</sup>.

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<sup>45</sup> The English translation (unofficial) of the section is used in a 2015 Report of the “National Human Rights Commission Bangladesh”; see Lyal S. Sunga and Kawser Ahmed, *A Critical Appraisal of Laws Relating to Sexual Offences in Bangladesh: A Study Commissioned by the National Human Rights Commission Bangladesh* <<http://www.idlo.int/publications/critical-appraisal-laws-relating-sexual-offences-bangladesh>>accessed 07 January, 2022.

<sup>46</sup> Yasmin (n 11).

<sup>47</sup> Section 10(2) states “If any male, trying to illegally satisfy his sexual urges, abuses the modesty of any woman or makes indecent gesture, his act shall be deemed to be sexual harassment and for such act he shall be punishable with rigorous imprisonment which may extend up to seven years but shall not be less than two years and shall also be liable to additional fine.”

<sup>48</sup> Nari O Shishu Nirjaton Daman (Songshodhon) Ain, 2003 (Women and Children Repression Prevention [Amendment] Act, 2003)

<sup>49</sup> “It was proposed that the ‘indecent gesture’ term should be omitted from the list of acts constituting sexual harassment, as it is used to exploit and harass rivals” - The Daily Star, 16 June 2003; in n4.

<sup>50</sup> Reference to such amendment proposal is found in the judgment of *BNWLA vs. Bangladesh* (2011).

<sup>51</sup> *ibid* 13.

Another relevant section is section 9A of the WCRPA, which makes it an offence to cause a woman to commit suicide by “outraging her modesty”. This section does see the creation of a new offence, however, it is again constrained by the concepts of violating or ‘outraging modesty’.

### **4.3 *The Bangladesh Labour Act, 2006***

Section 332 of the “Bangladesh Labour Act, 2006” titled as “Conduct towards women” provides that- “Where any woman is employed in any work of any establishment, whatever her rank or status may be, no person of that establishment shall behave with her which may seem to be indecent or unmannerly or which is repugnant to the modesty or honour of that woman.” Although no penalty is mentioned in this section for contravening the provision, section 307 of the Act provides that if no other penalty is provided for violating any provision of the Act, for such contravention or failure, the person liable “shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to 25,000 taka, or with both”.

This provision again fails to adequately define or address sexual harassment at workplaces. Also there has been hardly any recorded instance of a case being lodged under this section in the Labour Courts.

### **4.4 *Metropolitan Police Ordinances***

The Metropolitan Police Ordinances for each of the six units of the Metropolitan Police<sup>52</sup> also include a specific provision similar to section 509 of the Penal Code. All the sexual harassment related sections in all of these six Ordinances are identical in language, other than the area of their operations. For instance, The “*Dhaka Metropolitan Police Ordinance 1976*” in section 76 lays down, “Whoever willfully and indecently exposes his person in any street or public place within sight of, and in such manner, as may be seen by, any woman, whether from within any house or building or not, or willfully presses or obstructs any woman in a street or public place or insults or annoys any woman by using indecent language or making indecent sounds, gestures, or remarks in any street or public place, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand takas, or with both.”

However, there is hardly any recorded evidence on the application of this provision; neither is there any available empirical study as to how many cases have been dealt with under this provision by the Metropolitan Police.

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<sup>52</sup> <[https://www.police.gov.bd/bn/metropolitan\\_police](https://www.police.gov.bd/bn/metropolitan_police) > accessed 07 January, 2022.

## 5. Directives of the High Court Division

In the 2009 and 2011 Guidelines on protection against sexual harassment in educational and workplaces and in public places, the Court categorically referred that “these directives are to be followed till adequate and effective legislation is made in this field.” Drawing on the validity of such directives as having the force of ‘law’, the Court further stated that “These directives are aimed at filling up the legislative vacuum in the nature of law declared by the High Court Division under the mandate and within the meaning of Article 111 of the Constitution”<sup>53</sup>.

### 5.1 The 2009 Guideline

This Guideline was meant for all work and educational sectors, whether public or private, within Bangladesh. The objectives of the Guideline included- “(a) to create awareness about sexual harassments; (b) to create awareness about the consequences of sexual offences and (c) to create awareness that sexual harassment is a punishable offence.” The Guidelines enforced obligations on the employers and responsible authorities in workplaces and in educational institutions a) “to maintain an effective mechanism to prevent or deter the commission of offences of sexual abuse and harassments, and b) to provide effective measures for the prosecution of the offences of sexual harassments resorting to all available legal and possible institutional steps”.

The Guideline then importantly gives a relatively comprehensive definition of what should be constituted as sexual harassment. The definition comprises sexual harassment of both categories- “quid pro quo” and “hostile working environment”. The definition thus provides the following:

“Sexual harassment includes-

- (a) Unwelcome sexually determined behavior (whether directly or by implication) as physical contact and advances;
- (b) Attempts or efforts to establish physical relation having sexual implication by abuse of administrative, authoritative or professional powers;
- (c) Sexually coloured verbal representation;
- (d) Demand or request for sexual favours;
- (e) Showing pornography;
- (f) Sexually coloured remark or gesture;
- (g) Indecent gesture, teasing through abusive language, stalking, joking having sexual implication.

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<sup>53</sup> Yasmin (n 42) 19.

- (h) Insult through letters, telephone calls, cell phone calls, SMS, pottering, notice, cartoon, writing on bench, chair, table, notice boards, walls of office, factory, classroom, washroom having sexual implication.
- (i) Taking still or video photographs for the purpose of blackmailing and character assassination;
- (j) Preventing participation in sports, cultural, organizational and academic activities on the ground of sex and/or for the purpose of sexual harassments;
- (k) Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;
- (l) Attempt to establish sexual relation by intimidation, deception or false assurance.”

The definition further provides, “such conduct mentioned in clauses (a) to (l) can be humiliating and may constitute a health and safety problem at workplaces or educational institutions; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her education or employment in various ways or when it creates a hostile environment at workplaces or educational institutions”.

The Guideline lays down provisions “for creating awareness among all persons in the institution about sexual harassment in order to ensure a safe work environment for all”. It also specifies several preventive measures against workplace sexual harassment, *e.g.* arranging regular training on gender-equality, publishing booklets, etc.

Importantly, the Guidelines made it obligatory upon all institutions to form Complaint Committees for receiving and investigating complaints of sexual harassment. The Guidelines also gave detail provisions on the formation and other procedures to be followed by the Committee which includes having at least two external members, preferably from “organizations working on gender issues and sexual abuse”.

## **5.2 The 2011 Guideline**

The 2011 Guidelines had an added clause of ‘stalking’ in the definition of ‘sexual harassment’. It illustrates that “A male individual stalks a female if the male engages in a course of conduct with the intention of causing sexual harassment or of arousing apprehension of sexual harassment in the female.” The definition also gives specific instances of ‘stalking’.

The 2011 Guidelines included directives for public authorities to prevent sexual harassment at public places. For instance, it mandated that “every Police Station will have separate cell or team, designated only for the purpose of dealing with

complaints/instances of sexual harassments and such cells/teams under every Police Station will report to the existing District Law and Order Committee<sup>54</sup> of each district through their respective superior Police authorities”. The District Law and Order Committee, in turn, is directed, “to organize regular ‘Meet the People’ sessions to be attended by the press and women and children rights activists and to update them about the incidences of sexual harassment in the concerned district and about the steps taken to punish the perpetrators and to prevent recurrence.”

Importantly, the Guidelines required the Government, “to immediately complete its initiative to insert a new section in the WCRPA defining the offence of ‘Sexual Harassment’ in light of the definition given by the HCD Guidelines”. The HCD had also asked the Government to “take immediate steps to enact laws for effective protection of victims and witnesses of sexual harassment cases”. Also, the Guideline had required the Government “to take immediate steps to formulate law or amend the existing law for incorporating specific provisions giving evidential value to the audio/video recorded statements of victims or witnesses of sexual harassment”.

Although “the 2009 Guideline made it binding for all public and private institutions to implement its directives as law, in practice, most institutions have not complied with the guideline”.<sup>55</sup> “Some 54.9 per cent of workers surveyed by Karmojibi Nari (in total 1,002 workers in 113 ready-made garment factories) were not aware of the existence of an anti-harassment committee in their workplace”.<sup>56</sup> Moreover, “33 per cent reported their factories did not have any such committee.”<sup>57</sup> A report by Fair Wear Foundation (FWF) also reveals “a general lack of understanding of the guideline, among both workers and factory management, or how the guideline affects their rights and responsibilities”.<sup>58</sup> According to FWF’s “2015 Bangladesh Country Study”, “only 50 per cent of audited factories had an anti-harassment committee”.<sup>59</sup> Moreover, very few workers were aware of these committees’ existence and activities or even knew the committee members. In some cases, committee members themselves were unaware of their committee’s activities.<sup>60</sup>

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<sup>54</sup> The monthly law and order committee meeting of the district administration.

<sup>55</sup> Yasmin (n 11).

<sup>56</sup> Karmojibi Nari, *Monitoring work and working condition of women employed in ready-made garment industries of Bangladesh* (2019) <<https://www.karmojibinari.org/wp-content/uploads/2019/02/RMG-FactSheet2019.pdf>> accessed 3 December 2021.

<sup>57</sup> *ibid.*

<sup>58</sup> Fair Wear Foundation, *Bangladesh Country Study 2018* (2018.) <<https://api.fairwear.org/wp-content/uploads/2019/03/Fair-Wear-country-study-Bangladesh-2018-new.pdf>> accessed 07 January, 2022.

<sup>59</sup> *ibid.*

<sup>60</sup> Action Aid Bangladesh, *Women’s Rights & Gender Equity* (2020).

A 2018 report by Action Aid Bangladesh had shown a serious lack of knowledge about the 2009 Guideline “among senior management and workplace owners in various sectors”.<sup>61</sup> A 2017 report by Human Rights Watch also found out “that workers interviewed were not aware of the Guideline, or of any cases of harassers being held accountable”.<sup>62</sup>

Not having any mechanism to monitor or enforce the implementation status of the Guidelines is another crucial reason for its weak implementation. “Although relevant ministries were made respondents to the writ petition, after the judgment, they were not proactive in formulating policies or strategies for the guideline’s enforcement and monitoring.”<sup>63</sup> “The Guidelines did not propose how ministries or government agencies should coordinate to formulate a strategy on its implementation, or which entities should monitor implementation in different sectors or institutions.”<sup>64</sup> Also, there is an absence of information on the actual number of organizations or institutions that have constituted complaint committees in compliance with the Guideline.

In May 2019, a number of civil society organizations – including the BNWLA – had again filed a writ petition in the Supreme Court. They sought a directive “instructing the Government to submit a report on whether committees for preventing sexual harassment had been formed in all educational institutions and workplaces nationwide, in line with the 2009 guideline”.<sup>65</sup> During the hearing, the Court responded that “*Bangladesh is much ahead than many other countries in empowering women but its negligence in forming the committee to prevent sexual harassment at educational institutions and workplaces is disappointing*”.<sup>66</sup> In their petition, “the rights organizations implored the High Court Division to order the submission of a list of committees formed to prevent harassment through the Registrar General of the Supreme Court”.<sup>67</sup> The case is currently pending for further hearings.<sup>68</sup>

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<sup>61</sup> Taslima Yasmin, *Sexual Harassment at Educational Institutions and Workplaces: A study on the Implementation Status of the 2009 Supreme Court Guideline* (ActionAid Bangladesh, 2018).

<sup>62</sup> Aruna Kashyap, Human Rights Watch, ‘Tackling Sexual Harassment in the Garment Industry’ (Human Rights Watch, 11 December 2017) < <https://www.hrw.org/news/2017/12/11/tackling-sexual-harassment-garment-industry> > accessed 07 January, 2022.

<sup>63</sup> Yasmin (n11).

<sup>64</sup> *ibid.*

<sup>65</sup> Star Online Report, ‘Not forming body to prevent sexual harassment disappointing: HC’ *The Daily Star* (6 May 2019) < <https://www.thedailystar.net/country/news/not-forming-body-prevent-sexual-harassment-disappointing-hc-1739572> > accessed 07 January, 2022.

<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*

<sup>68</sup> Yasmin (n 11).

Another challenge in the successful enforcement of the Guideline is the fact that there are still a number of issues in the Guidelines that remain unanswered. For example, it does not provide any indication as to the provision for a quorum, termination of membership or the process for collecting evidence or hearing witnesses. Moreover, the Guideline lacks a comprehensive definition of the act of ‘sexual harassment’ itself and instead it only sets out a non-exhaustive list of acts that may fall within the ambit of ‘sexual harassment’. In fact, it appeared that when organizations tried to apply the Guideline, they rather “found it confusing and, at times, conflicting with exiting human resource policies”.<sup>69</sup>

There is a significant knowledge gap about the existing laws on sexual offences, including sexual harassment. In particular, there is less awareness about the Guideline also among the key stakeholders who are to be implementing it<sup>70</sup>, e.g. employers, principals and members of governing bodies of schools/colleges, senior administrative personnel of universities, law enforcement agencies. At the advocacy level, there have been some efforts to create awareness about the implementation of the Guidelines. However, the overall advocacy for creating awareness to implement the Guideline has been relatively inadequate as they were mostly done on an individual level without coordination with other organizations and were mostly short-term project-based campaigns.

There had been also an ongoing advocacy on behalf of the civil society groups to enact a separate law for sexual harassment, and very recently, the “National Human Rights Commission of Bangladesh” had also proposed a draft anti-sexual harassment law.<sup>71</sup> However, until now, there has not been any official initiation, by the Government, of a process to legislate a law on the subject.

## 6 Conclusion

It is essential that a concerted effort be taken by all pertinent stakeholders to raise awareness about the Guidelines and the existing laws that address sexual harassment. Very few organizations, both public and private, have actually adopted a specific sexual harassment prevention policy<sup>72</sup>. Nevertheless, in order that the issue of sexual harassment gets due attention, adopting a specific policy in line with the 2009 HCD

<sup>69</sup> *ibid*; See also, Taslima Yasmin, *Study on the ILO Convention No. 190 and the Legal Framework of Bangladesh on Gender Based Violence and Harassment at the World of Work* (Unpublished research paper based on a study commissioned by CARE Bangladesh) (2020).

<sup>70</sup> Taslima Yasmin, ActionAid Bangladesh, *Sexual Harassment at Educational Institutions and Workplaces: A Study on the Implementation Status of the 2009 Supreme Court Guideline* (2019).

<sup>71</sup> Tribune Report, ‘Human rights: Bangladesh still has a long way to go, says Law Minister’ *Dhaka Tribune* (December 21, 2021)

<<https://www.dhakatribune.com/dhaka/2021/12/21/human-rights-bangladesh-still-has-a-long-way-to-go-says-law-minister>> accessed 07 January, 2022.

<sup>72</sup> *ibid*.

guideline (for workplace and education) is crucial. As the 2009 Guideline kept a number of technical issues unanswered, organizations' own internal policies can set out the detailed provisions needed for effectively complying with the Guidelines.

At the same time, it is crucial that pertinent Government authorities take up initiatives to ensure sector-wise monitoring mechanisms to oversee the implementation status of the Guideline. Similarly in educational institutions, there is an absence of effective monitoring, especially in case of schools and colleges, as to the implementation of the HCD Guidelines. The relevant Ministry and other responsible authorities should prioritize designing a thorough action plan to monitor the implementation of the guidelines in educational institutions at all levels.

Most importantly, in the present context of the sexual harassment scenario in Bangladesh, it is essential that the existing sexual offence related laws also incorporate sexual harassment as a distinct offence with a clear outline of what the term comprises. However, only making it punishable is not adequate in preventing sexual harassment. "Law addressing sexual harassment must also include adequate preventive measures, a transparent and effective investigation procedure for complaints and effective provisions of legal redress."<sup>73</sup> In addition to penalizing the offender, the need of compensating the victim for the physical, mental, and financial losses is also essential and has been found in sexual offence related laws in other jurisdictions. "A comprehensive and separate anti-sexual harassment law as such needs to be promulgated to effectively address all these separate components of prevention and protection against sexual harassment."<sup>74</sup> In the absence of such specific legislation, effective enforcement of the HCD directives would remain a challenge.

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<sup>73</sup> Yasmin (n 11).

<sup>74</sup> *ibid.*