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STUDY

Overview of laws, policies and practices on gender-based violence and harassment in the world of work in Bangladesh

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This study is a timely effort, coming in the wake of the adoption of the Violence and Harassment Convention, 2019 (No. 190) at the 108th (Centenary) session of the International Labour Conference.

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I am hopeful that this analysis will add value to the existing legal literature on violence and harassment. I especially hope that it will prove useful for the Government of Bangladesh, employers and workers' organizations, and other stakeholders, to engage in dialogue, strengthen the legal framework, and spearhead actions to prevent and address gender-based violence in the world of work.

Taslima Yasmin

Author

4 April 2020

Acronyms and abbreviations

BDT	Bangladeshi Taka
BEF	Bangladesh Employers' Federation
BGMEA	Bangladesh Garment Manufacturers and Exporters Association
BILS	Bangladesh Institute of Labour Studies
BKMEA	Bangladesh Knitwear Manufacturers and Exporters Association
BLAST	Bangladesh Legal Aid and Services Trust
BNWLA	Bangladesh National Women Lawyers' Association
BWB	Better Work Bangladesh
CPD	Centre for Policy Dialogue
CSO	Civil society organization
DIFE	Department of Inspection for Factories and Establishments
DVPPA	Domestic Violence (Prevention and Protection) Act
GBVH	Gender-based violence and harassment
HCD	High Court Division
IBC	IndustriALL Bangladesh Council
ILO	International Labour Organization
KIIs	Key informant interviews
LIMA	Labour Inspection Management Application
NGO	Non-governmental organization
NHRC	National Human Rights Commission of Bangladesh
OSH	Occupational safety and health
RMG	Ready-made garment
RMGP II	ILO Improving Working Conditions in the Ready-Made Garment Sector Programme, Phase II
SNV	Netherlands Development Organisation
SRHR	Sexual and reproductive health and rights
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNDP	United Nations Development Programme
WCRPA	Women and Children Repression Prevention Act

Executive summary

This study examines Bangladesh's legal and policy framework to address gender-based violence and harassment, which includes sexual harassment, in the world of work. While the country has made progress in addressing these issues through legislation and normative frameworks, they remain a significant concern for women in the private and public spheres, and particularly at work. They pose a barrier to gender equality and decent work.

As such, the International Labour Organization's (ILO) Office in Dhaka is working with the Government of Bangladesh, and employers' and workers' organizations to address gender-based violence and harassment through various interventions, especially sexual harassment in the world of work. Other key stakeholders, such as non-governmental organizations and other UN agencies, have also been active in addressing these issues.

The ILO commissioned this study to provide an overview of progress made, identify key gaps, and pinpoint areas where action is needed to strengthen Bangladesh's national framework for preventing and addressing gender-based violence and harassment. It reviews laws, policies and practices that are relevant to addressing gender-based violence and harassment.

The study's methodology is primarily based on documentary analysis, consisting of both primary and secondary documents. In addition, 20 key informant interviews were conducted with relevant stakeholders in Bangladesh, yielding rich first-hand insight.

The study begins with an overview of Bangladesh's socio-economic situation and labour market information. The second chapter outlines the general context and state of gender-based violence and harassment in Bangladesh, and the country's response in terms of strengthening its legislative framework to address these issues. The third chapter discusses international legal instruments relevant for gender-based violence and harassment, under which Bangladesh has pledged to effectively tackle the phenomenon, alongside relevant recommendations and comments addressed to the country by UN treaty monitoring bodies. The chapter also presents an overview of Bangladesh's legal and policy framework relevant for gender-based violence and harassment, encompassing a review of criminal laws, labour laws and policies, and other frameworks related to violence against women. It discusses the 2009 guidelines by the High Court Division of the Supreme Court, issued in response to public interest litigation on measures to prevent and protect against sexual harassment in educational institutions and workplaces. It further highlights key national policies and strategies formulated to specifically address gender-based violence and harassment at work, or to curb violence against women in general. The fourth chapter reviews the implementation of these laws, policies and practices on the ground, including information on initiatives by various organizations to eliminate gender-based violence and harassment in the world of work.

Based on this review, the fifth chapter highlights some of the key gaps in Bangladesh's existing legal and policy framework, institutional mechanisms and practices in addressing gender-based violence and harassment. It highlights the challenges posed by the lack of clear legal definitions of key terms – including 'sexual harassment' – limited legal provisions addressing sexual harassment, and the fact that various sexual offences have not been criminalized. Other major challenges include the absence of provisions explicitly addressing gender-based violence or harassment in Bangladesh's labour law; the lack of regulation of informal work; the absence of a law prohibiting discrimination; and limited understanding of what gender-based violence and harassment really mean. The limited implementation of the 2009 High Court Division's guidelines and criminal laws related to gender-based violence and harassment are also key barriers, as is the lack of internal organizational policies for addressing gender-based violence and harassment. Still more gaps are apparent in the fact that programmes and policies on occupational safety and health do not include gender-based violence and harassment, that labour inspection mechanisms require strengthening, and that non-compliance with labour laws is not uncommon.

The sixth and final chapter of the study proposes a number of recommendations to strengthen Bangladesh's legal and policy framework and measures on gender-based violence and harassment in the world of work. It recommends building awareness about sexual harassment and the High Court Division's guidelines, while strengthening the guidelines' monitoring and enforcement. The study further recommends ensuring that all establishments adopt an internal anti-sexual harassment policy, as well as reforming existing legislation – such as the Bangladesh Labour Act – to include a comprehensive definition of sexual harassment and a grievance mechanism to address instances of violence and harassment. Enacting independent legislation prohibiting sexual harassment in the world of work is equally essential, as is integrating violence and harassment – including gender-based violence and sexual harassment – within policies and practices related to occupational safety and health. It is especially important to strengthen labour inspection mechanisms, so that inspectors have the understanding and the power to effectively prevent and address gender-based violence and harassment.

In light of the recently adopted historic ILO Convention on Violence and Harassment, 2019 (No. 190), it is expected that this study will contribute substantially to understanding Bangladesh's legal and policy framework on gender-based violence and harassment at work. Its findings represent a useful guide for the Government of Bangladesh, workers' and employers' organizations, and other key entities in developing actions to realize a world of work free from violence and harassment, particularly gender-based violence and harassment in Bangladesh.

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1. Introduction

1.1 Background

Violence and harassment, including gender-based violence and harassment (which includes sexual harassment), can constitute a serious violation of human rights. In the world of work, various forms of violence and harassment cause insidious harm to individuals, workplaces and society at large. They hamper development severely, particularly by lowering the accumulation of ‘social and human capital’¹ and posing an immense barrier to women and men in accessing decent and productive work.

Worldwide, gender-based violence and harassment (GBVH) affects women and girls disproportionately and wreaks negative impacts on their effective participation in the workforce, education and public life – thereby reinforcing gender inequality. The effects of violence and harassment on workers run the gamut from social stigma to prompting workers to quit their jobs, psychological ill health, feelings of insecurity and a lack of support.² Global estimates by the World Health Organization (WHO) indicate that over one in three women (35 per cent) around the world have experienced either physical and/or sexual violence in their lifetime, either at the hands of an intimate partner or another perpetrator.³

Gender-based violence in the world of work is not confined to the physical workplace. Women face harassment and obstructions when commuting to and from work, at work-related social gatherings and public events, and even through technology.⁴ Recognizing the need to realize everyone’s right to a world of work free of violence and harassment, the Violence and Harassment Convention (No. 190) and its accompanying Recommendation (No. 206) were adopted at the International Labour Conference (ILC) in 2019. This is a significant milestone – representing the first comprehensive set of international standards that provide guidance on the elimination of violence and harassment in the world of work.

In Bangladesh, gender-based violence and harassment, especially sexual harassment, is not a new phenomenon for women.⁵ However, it has increasingly being discussed in public as a major challenge *both* in their private lives and in the public sphere. With more women stepping out of the home and taking up opportunities for education and work, gender-based violence and harassment loom ever larger.

¹ Sarah Bott, Andrew Morrison and Mary Ellsberg, “Preventing and Responding to Gender-based Violence in Middle and Low-Income Countries: A Global Review and Analysis”, World Bank Gender and Development Group Policy Research Working Paper 3618, 2005.

² Abul Barkat, Murtaza Majid, Rawshan Ara, Matiur Rahman, Abdulla-Al-Hussain and Manzuma Ahsan, “Baseline Survey to Know the Extent and Severity of Violence Against Women in Selected Sectors”, Human Development Research Center, 2011.

³ World Health Organization, “[Violence against women](#)”, 29 November 2017.

⁴ ILO, *Report of the Director-General – Fifth Supplementary Report: Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work*, 2016. Cited in UN Women and ILO, *Handbook on Violence and Harassment in the World of Work*, 2019.

⁵ Shahnaz Huda, “Sexual Harassment and Professional Women in Bangladesh”, *Asia-Pacific Journal on Human Rights and the Law*, No. 2 (2003), 52–69.

Despite progress on addressing gender-based violence and harassment in Bangladesh, it remains a significant concern for women across the country.

In this context, the ILO Decent Work Technical Team for South Asia (DWT SA) commissioned studies to review laws, policies and practices on addressing gender-based violence and harassment (GBVH) in selected countries in South Asia in 2019. This study on Bangladesh was commissioned in coordination with the Improving Working Conditions in the Ready-Made Garment Sector Programme, Phase II (RMGP II), led by the ILO Office in Dhaka, to support national efforts to eliminate GBVH in the world of work.

1.2 Objectives

This study's objectives are:

- to review the legal and policy framework for addressing gender-based violence and harassment (GBVH) in Bangladesh, and to identify key gaps;
- to review practices for addressing GBVH in Bangladesh and identify challenges to effectively addressing these abuses; and
- to propose recommendations that can equip stakeholders with the knowledge needed to better address GBVH, including changes in the legal framework.

1.3 Methodology

This study combines a number of primary and secondary data sources to conduct a primarily qualitative analysis. The following methods were used to complete the analysis:

- a. Primary and secondary document analysis:** The study analysed relevant laws and policies on GBVH, judgments of the Supreme Court of Bangladesh on sexual harassment and related issues, news reports, reports or studies conducted by national and international organizations, relevant scholarly articles and books on GBVH in the world of work.
- b. Key informant interviews (KIIs):** Using semi-structured questionnaire, the study team conducted 19 key informant interviews in Bangladesh's capital, Dhaka. Interviewees were largely selected from relevant sectors, in consultation with the ILO Bangladesh team and the Gender Specialist in Delhi. Key informants included representatives of civil society organizations that advocate for workers' rights, the Ministry of Labour and Employment, relevant UN agencies in Bangladesh, employers' and workers' organizations and unions, lawyers, academics and researchers with practical knowledge or expertise on workers' rights and gender issues. Most interviews were conducted in person, although some of were conducted over the telephone. A list of key informant interviews and questionnaire guidelines are provided in Annexes 1 and 2, respectively.

1.4 Limitations

The study extensively analysed relevant documentary sources on laws, policies and on-going projects and programmes on gender-based violence and harassment (GBVH) in the world of work. However, limited information is available online. As the study was primarily a desk review, it proved difficult to gather detailed factual information on the ground. Therefore, this study cannot be considered an analysis based on a comprehensive mapping of all laws, policies and initiatives by various stakeholders at multiple levels, and at different times in Bangladesh.

In terms of the key informant interviews (KIIs), some relevant agencies are missing from the final list, including the Ministry of Women and Children Affairs, as respondents were not available for interviews despite the best efforts of the study team.



2. Socio-economic overview and legislative history of gender-based violence and harassment in Bangladesh

2.1 Social context

Social structures in Bangladesh are largely patriarchal, patrilineal and patrilocal.⁶ Coupled with high rates of child marriage (59 per cent)⁷, this means that most women and girls have restricted access to the public sphere. Traditional gender roles pervade communities' private lives and work. Clear distinctions exist between women's and men's labour force participation, especially in rural areas.⁸ As a result, a culture of men's guardianship and women's dependency prevails, with women traditionally restricted to the private sphere.⁹ Such inequality and power imbalances between women and men are among the root causes of gender-based violence in Bangladesh.¹⁰

Violence is underpinned by persistent patriarchal attitudes towards women, as well as stereotypical views of their roles and responsibilities. Factors that play a crucial role in perpetuating violence against women, alongside patriarchal norms, include low literacy rates, women's lack of control over resources or household income, and limited economic opportunities.¹¹

Discriminatory religious or customary norms and practices also play a part, as the misinterpretation of religion is often used to discriminate against, and to justify acts of violence against, women and girls.¹² A multi-country UN study on violence against women found that *"while gender inequality, power and violent forms of masculinity may be understood as the root causes of violence against women"*, it is also linked to a *"complex array of individual, household, community and societal level factors"*.¹³

⁶ Sohela Nazneen, *"The Women's Movement in Bangladesh: A Short History and Current Debates"*, FES Bangladesh Country Study, 2017.

⁷ United Nations Population Fund, *State of World Population Report 2019*, 2019.

⁸ Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought* (London: Verso, 1994).

⁹ Sohela Nazneen, *"The Women's Movement in Bangladesh: A Short History and Current Debates"*, FES Bangladesh Country Study, 2017.

¹⁰ UN General Assembly Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo: Mission to Bangladesh (20–29 May 2013)*, A/HRC/26/38/Add.2 (2014).

¹¹ For details, see: Syed Masud Ahmed, "Intimate partner violence against women: Experiences from a woman focused development programme in Matlab, Bangladesh", *Journal of Health, Population and Nutrition*, No. 23 (2005), 95–101; Abdullahel Hadi, "Prevalence and correlates of the risk of marital sexual violence in Bangladesh", *Journal of Interpersonal Violence*, No. 15 (2000), 787–805; Kristin E. VanderEnde et al., "Community Economic Status and Intimate Partner Violence Against Women in Bangladesh: Compositional or Contextual Effects?", *Violence Against Women* 21, No. 6 (2015), 679–699; Kazi Nazrul Fattah and Suborna Camellia, "Gender Norms and Beliefs, and Men's Violence Against Women in Rural Bangladesh", *Journal of Interpersonal Violence* 35, No. 3–4 (2020), 771–793.

¹² Ibid.

¹³ Emma Fulu et al. Why do some men use violence and how can we prevent it? *Quantitative findings from the UN Multi-country Study on Men and Violence* (UNDP, UNFPA, UN Women and UNV, 2013), p. 13.

Gender-based violence and harassment (GBVH) in Bangladesh is manifested in multiple forms. These include domestic and intimate partner violence, dowry-related violence, acid attacks, rape, and stalking, among others.¹⁴ Violence against other socially excluded groups, including the transgender community, is also reported by various platforms. These groups have been traditionally excluded from laws and protection regimes to address violence against women.¹⁵

The Constitution of Bangladesh guarantees women's equal rights and participation.¹⁶ In tandem, various legislative provisions seek to eliminate violence against women, particularly rape and sexual harassment. Nevertheless, these provisions have historically done very little to address the plight of women in a culture that attaches stigma to the victims/survivors of GBVH.

2.2 Gender in the world of work

While a large gender labour force participation gap remains, women's labour force participation has increased persistently in recent years, emerging as one of the most noticeable changes in Bangladesh's labour market.¹⁷ According to Labour Force Surveys, the size of the female labour force increased from 8.6 million in 1999–2000, to 19.9 million in 2016–17. In comparison, the size of the male labour force grew less sharply. In fact, men's labour force participation rate declined from 84 per cent to just above 80 per cent over the same period.¹⁸ The boom in young women's participation in wage employment and self-employment outside the home appears to be prompted by a number of changes. These include rising levels of women's education, greater access to electricity and mobile phones, the emergence of the garment industry, and possibilities for migration.¹⁹

Despite these trends, women's contribution to Bangladesh's economy remains much lower than it could be. Women contribute significantly to non-market activities, such as household work and domestic care work by caring for children and the elderly. However, a critical factor in ensuring inclusive economic growth is increasing women's participation in market-based productive activities.²⁰ Pressure to adhere to cultural norms – such as the routine wearing of *purdah* or *hijab*, childcare and household responsibilities – are associated with the greater likelihood that women's work remains confined to the home. Other factors also hold women back from working outside the home, such as a lack of educational qualifications, limited work opportunities, and the fact that women's work in garment factories is often regarded as socially unacceptable.²¹

¹⁴ Kazi Tobarak Hossain and Md. Saidur Rashid Sumon, "Violence against Women: Nature, Causes and Dimensions in Contemporary Bangladesh", *Bangladesh e-Journal of Sociology* 10, No. 1 (2013), 79–91.

¹⁵ Taslima Yasmin, "Sexual Violence in Bangladesh: Addressing gaps in the Legal Framework", *Dhaka University Law Journal* 28 (2017), p. 109.

¹⁶ Constitution of the People's Republic of Bangladesh, Articles 19, 27, 28.

¹⁷ Selim Raihan and Sayema Haque Bidisha, *Female employment stagnation in Bangladesh: A research paper on Economic Dialogue on Inclusive Growth in Bangladesh* (Asia Foundation, 2018).

¹⁸ Ibid; Bangladesh Bureau of Statistics, *Quarterly Labour Force Survey Report 2016/17*, 2018.

¹⁹ James Heintz, Naila Kabeer and Simeen Mahmud, "Cultural norms, economic incentives and women's labour market behaviour: empirical insights from Bangladesh", *Oxford Development Studies* 46, No. 2 (2018), 266–289.

²⁰ Selim Raihan and Sayema Haque Bidisha, *Female employment stagnation in Bangladesh: A research paper on Economic Dialogue on Inclusive Growth in Bangladesh* (Asia Foundation, 2018).

²¹ James Heintz, Naila Kabeer and Simeen Mahmud, "Cultural norms, economic incentives and women's labour market behaviour: empirical insights from Bangladesh", *Oxford Development Studies* 46, No. 2 (2018), 266–289.

As a result, informal wage labour and paid domestic work remain the principal wage employment opportunities available to women, particularly those with little formal education.²² This concentrates women in low-paid and low-productivity activities. Over time, women's relative position on the occupational ladder has progressed very little. Moreover, a significant percentage of women are engaged in unpaid work on family farms. Although they are part of the labour force, they are not in a position to exercise financial agency.²³

In Bangladesh, 94.7 per cent of the workforce are engaged in informal employment.²⁴ Workers in informal employment include wage labourers, self-employed persons, unpaid family labourers, piece-rate workers, and other hired labourers.²⁵ This high incidence of informality continues to undermine prospects for reducing working poverty.²⁶

Among the female labour force, 96.6 per cent of women workers are in informal employment, of whom 38.7 per cent are in the informal sector, 12.3 per cent in the formal sector and 49.0 per cent in households. Among those women in informal employment, 30 per cent are contributing family workers and 40 per cent are own-account workers. As these categories of workers have either no or limited income, and no or limited access to social protection, they have been categorized as 'working hard but poor'.²⁷

This is concerning for several reasons. First, women in these situations remain vulnerable to poverty given their lack of, or limited, income despite the work they do. While the proportion of men in informal employment is also high in Bangladesh at 93.9 per cent, the proportion of men in the category of contributing family workers is much lower at 4 per cent. Moreover, even in the informal sector, men earn more than women. Research shows that the wage gap between informally employed men and women is 14.3 per cent,²⁸ significantly disadvantaging women.²⁹ This makes it difficult for women to gain economic independence and autonomy and makes them vulnerable to the risk of exploitation, abuse, violence and harassment. Second, there is a clear concern in terms of protecting women workers' rights in unregulated workplaces³⁰ as workers in the informal sector generally fall outside of the protection of labour laws and have no or limited access to formal mechanisms to complain and seek redress.

In workplaces, gender-based violence and harassment (GBVH) are common in both the formal and informal sector. Although there is relatively little empirical evidence on the prevalence of GBVH in workplaces, ample evidence exists of violence against women (VAW) in general.

²² Ibid.

²³ Selim Raihan and Sayema Haque Bidisha, *Female employment stagnation in Bangladesh: A research paper on Economic Dialogue on Inclusive Growth in Bangladesh* (Asia Foundation, 2018).

²⁴ ILO, "Overview of the informal economy in Bangladesh", 2020.

²⁵ Ibid.

²⁶ ILO, *World Employment and Social Outlook: Trends 2018*, 2018.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Olivier Bargain and Prudence Kwenda, "The informal sector wage gap: New evidence using quantile estimations on panel data", *Economic Development and Cultural Change* 63, No. 4 (2014).

³⁰ Guillermo E. Perry et al., *Informality: Exit and Exclusion* (World Bank, 2007).

The most recent official survey on violence against women in Bangladesh, undertaken in 2015, found that almost two-thirds (72.6 per cent) of women who are, or have ever been, married have experienced some form of violence by an intimate partner.³¹ It also found that over one-third (35.3 per cent) of women who have never been married faced non-partner physical or sexual violence, as did over one-quarter (28.3 per cent) of currently or formerly married women.³²

Bangladesh's Police Crime Statistics for 2018 provide a numerical breakdown of crimes filed at all police stations across the country, organized by category. These reveal that the 'repression of women and children' constitutes the second most common form of crime after narcotics-related offences, with 16,253 cases filed in 2018.³³

A study by the Shojag ('Awaken') Coalition³⁴ found that 22 per cent of women garment workers in Bangladesh have been exposed to physical, psychological and sexual harassment – either in the workplace, or on their way to and from work. Of these women, 67 per cent reported that they did not seek support from the VAW Prevention Committee in their workplace, due to a lack of trust in this authority.³⁵

The issue of safe public transport is particularly relevant for Bangladesh. A study by BRAC in 2017 found that 94 per cent of women have been sexually harassed on public transport.³⁶

In recent decades, several national and international non-governmental organizations (NGOs/INGOs) have conducted surveys on Bangladeshi women's workplace conditions. Most acknowledge the limitations of insights gathered on the sensitive issue of sexual harassment. For instance, a study in the ready-made garment sector by the ILO and UN Women uncovered "*confusion among workers about the concept of sexual harassment*".³⁷

Alongside a lack of awareness, many studies identified reluctance to respond to questions on harassment.³⁸ Nevertheless, some studies have identified significant evidence of gender-based discrimination and harassment in workplaces, particularly in the ready-made garment sector and other industrial settings. A survey by the Bangladesh Institute of Labour Studies (BILS) found that 12 women working in various sectors were raped, 12 were gang raped and 62 were murdered between April and June 2019.³⁹

³¹ Bangladesh Bureau of Statistics, *Report on Violence Against Women (VAW) Survey 2015*, 2016.

³² Ibid.

³³ Bangladesh Police, "*Crime Statistics 2018*", 2018.

³⁴ The Shojag Coalition consists of five organizations: Naripokkho, Christian Aid, BRAC, the Bangladesh Legal Aid and Services Trust (BLAST) and the Netherlands Development Organisation (SNV), who work together to reduce gender-based violence in the garment industry. They do so by raising awareness, strengthening the capacity of accountable private and public bodies, protecting the rights and legal entitlements of female workers and engaging factories towards promoting systemic changes across the garment sector. More information is available on SNV's website, <https://snv.org/project/shojag-ending-gender-based-violence-rmg-sector>

³⁵ SHOJAG Coalition, *Baseline Study: Situation of Gender Based Violence in the Garment Industry*, 2018. Also see, <http://www.newagebd.net/article/49240/22pc-female-rmg-workers-face-harassment-study>

³⁶ Rehan Kabir, "*Study: 94% women victims of sexual harassment in public transport*", in *Dhaka Tribune*, 7 March 2018.

³⁷ ILO and UN Women, *Understanding the Gender Composition and the Experience of the RMG Workers in Bangladesh*, 2018.

³⁸ Better Work Bangladesh, *Annual Report 2019*, 2019.

³⁹ Bangladesh Institute of Labour Studies, *Workplace Situation Report (April-June, 2019)*, 2019.

In 2017, the ILO conducted a baseline study under its Improving Working Conditions in the Ready-Made Garment Sector Programme (RGMP II) in Bangladesh.⁴⁰ This surveyed 2,184 workers, 111 supervisors and 111 managers in 111 workplaces in four major industrial areas: Dhaka, Gazipur, Narayanganj and Chattogram. Roughly 10.16 per cent of workers cited concerns about verbal abuse, 2.56 per cent about physical abuse, and 2.47 per cent about sexual harassment or sexual touching.

Men were more concerned about physical abuse, while women workers were more concerned about verbal or sexual harassment. The study also highlighted that social stigma attached to making complaints and the fear of losing one's job were strong disincentives to lodging complaints on harassment and violence.⁴¹

A 2019 study by Karmojibi Nari collected data from 1,002 garment workers in 113 factories. Among them, 63 per cent of women workers reported experiencing verbal harassment and 60.7 per cent reported psychological harassment.⁴² In addition, 23.6 per cent of workers reported physical harassment and 10.8 per cent reported suffering sexual harassment.⁴³ The study also found that 35.4 per cent of women workers were unaware of the law that requires their employer to obtain workers' written consent before asking them to work night shifts, while 61.8 per cent of women workers said that their employer had never obtained their written consent for night duty.⁴⁴ This is relevant for GBVH, as working night shifts in isolated atmospheres can possibly expose women to a higher risk of violence and harassment.⁴⁵

The grim reality is that violence, harassment and discrimination are a reality for women in workplaces⁴⁶ and that incidents are often under reported or unreported, as impoverished workers fear that complaints will jeopardize their job security.⁴⁷ While the situation is serious for women working in the formal sector, such as in ready-made garment factories, it is even worse for women in the informal sector who lack the protection afforded by formal workplaces.⁴⁸

In the absence of a comprehensive law, discrimination and violence against vulnerable groups persists, including religious minorities, indigenous people, the *dalit* community, *hijra* and transgender people, and people with disabilities.⁴⁹ The criminalization of consensual sexual acts between same-sex couples, which section 377 of the Penal Code terms 'unnatural offences', also pave the way for legitimizing discrimination and violence against the lesbian, gay, bisexual, transgender and queer (LGBTQ) community.⁵⁰

⁴⁰ ILO, *Improving Working Conditions in the Ready-Made Garment Sector: Bangladesh Baseline Study*, 2017.

⁴¹ Ibid, p. xxvii.

⁴² Karmojibi Nari, *Monitoring work and working condition of women employed in ready-made garment industries of Bangladesh*, 2019.

⁴³ Ibid.

⁴⁴ Government of Bangladesh, "Section 109", *Bangladesh Labour Act*, 2006.

⁴⁵ Pratiksha Baxi, "Sexual Harassment", n.d.

⁴⁶ Abul Barkat et al., *Baseline Survey to Know the Extent and Severity of Violence Against Women in Selected Sectors* (Human Development Research Centre, 2011).

⁴⁷ Flora Begum et al. "Harassment of Women Garment Workers in Bangladesh", *Journal of Bangladesh Agricultural University* 8, No. 2 (2010), 291-296.

⁴⁸ Martha Alter Chen, "Women in the Informal Sector: A Global Picture, the Global Movement", *SAIS Review* 21 (2001), No. 1.

⁴⁹ Government of Bangladesh, Concluding Observations on the Initial Reports of Bangladesh to the Human Rights Committee, CCPR/C/BGD/CO/1 (2017), para. 11.

⁵⁰ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, *Concluding observations on the initial report of Bangladesh*. CAT/C/BGD/CO/1, 2019.

Since 2011, the Government of Bangladesh has provided an ‘other’ gender category for passport applications. Since 2013, it has granted ‘third gender’ status to the country’s approximately 10,000 *hijra* (transgender) community members.⁵¹

In 2019, the Government fully recognized *hijras*’ social status by creating a special ‘third gender’ category on Bangladesh’s national voters list.⁵² Despite the recognition of the *hijra* community, existing laws do not recognize people with diverse gender and sexual identities. Without legal protection, stigmatization, harassment and violence against transgender persons and persons with different sexual orientations continues, creating barriers to their well-being and their ability to secure decent employment.⁵³

2.3 Legislative history of addressing gender-based violence and harassment

The Penal Code of 1860 – Bangladesh’s key penal statute, inherited from the colonial period – contains provisions on protecting women from various forms of physical and sexual violence. However, the use of the term ‘sexual harassment’ is a relatively recent phenomenon, which started appearing in academic and policy discourses as discussed below.

While severe forms of sexual violence, involving physical assault, are recognized as offences in the country’s legal and policy framework⁵⁴, other forms of sexual harassment tend to be overlooked. This is especially true for harassment involving minimal or no physical contact. Across the subcontinent, practices such as catcalling, leering, stalking, and the exposure of sexual organs, are usually described as ‘eve-teasing’⁵⁵ rather than insidious forms of sexual harassment.

The term ‘eve-teasing’ seems to have surfaced in the late 1950s, when it first appeared in the Times of India in a report on a ‘non-official bill’ before India’s parliament that ‘proposed rigorous punishment for those molesting women’.⁵⁶ The term gained popularity in the decades that followed, used both by civil society and state authorities to describe sexual offences that fall short of rape or other severe forms physical violence. Although ‘eve-teasing’ tends to refer to street harassment or harassment in public places⁵⁷, throughout the 1950s and 1960s, it “*stuck most closely to the urban female college students and occasionally to the female office workers*”.⁵⁸

⁵¹ Lubna Jebin, “[The Rights of Hijra in Bangladesh: An Overview](#)”, 2015.

⁵² Joe Wallen, “[Transgender community in Bangladesh finally granted full voting rights](#)”, in *The Telegraph*, 29 April 2019.

⁵³ Government of Bangladesh, Concluding Observations on the Initial Reports of Bangladesh to the Human Rights Committee, CCPR/C/BGD/CO/1, 2017.

⁵⁴ The British colonial regime introduced the Penal Code of 1860 defining and penalizing rape, sexual assault and other similar offences.

⁵⁵ 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; Deepti Misri, “Eve-Teasing, South Asia”, *Journal of South Asian Studies* 40, No. 2 (2017), 305–307.

⁵⁶ Ibid.

⁵⁷ Golam Azam and Mamunur Rashid Sheikh, “Eve-teasing in Bangladesh: A General Overview”, *The Journal of Social Development* 24, No. 1 (2013), 1–14.

⁵⁸ Pratiksha Baxi, “[Sexual Harassment](#)”, n.d.

By the 1990s, the term came under serious scrutiny from rights groups in India as “a mechanism of normalizing violence against women”.⁵⁹ Laws and frameworks were heavily criticized for not adequately addressing sexual harassment, encompassing “paradigmatic act[s] of violence against women, necessary for sustaining [the] patriarchy”.⁶⁰ The brutal gang rape of social worker Bhanwari Devi for protesting against child marriage in her community in a village in Jaipur, India, brought the sexual harassment of working women into stark focus – not only in India, but across South Asia.

Concurrently, global attention was coalescing around the issue of sexual harassment in the workplace. In 1992, the Committee on the Elimination of All Forms of Discrimination Against Women issued its General Recommendation No. 19. It affirmed that sexual harassment is a form of gender-based violence and, therefore, a form of discrimination within the meaning of article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶¹

In line with this global focus on sexual harassment as a form of discrimination⁶², 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, *Vishaka*.⁶³ This sought to enforce the fundamental rights of working women and to “prevent sexual harassment of working women in all work places through judicial process”.⁶⁴ This landmark judgment marked the first time that the Supreme Court of India acknowledged the inadequacy of the legislative framework and recognized sexual harassment in the workplace as a human rights violation.⁶⁵ The *Vishaka* judgment laid down legally binding guidelines based on the right to equality and dignity accorded under the Indian Constitution, as well as by CEDAW.⁶⁶ The judgment made it mandatory for every employer to provide a mechanism to redress grievances on sexual harassment in the workplace.⁶⁷

The global focus on sexual harassment in the workplace, alongside the *Vishaka* judgment guidelines in India, positively influenced advocacy movements by rights groups in Bangladesh. In the 1990s, they argued that violence against women had increased so significantly that a separate, special law was required to tackle the phenomenon. As such, the Repression Against Women and Children (Special Provision) Act, 1995, was passed, prescribing the death penalty as the punishment for killing a woman or child by committing rape. Five years later, the Act was repealed and replaced with the Women and Children Repression Prevention Act, 2000 (WCRPA). This introduced strict punishments for rape, sexual assault, acid crimes and dowry-related violence. Other special laws have since been promulgated to address issues relevant for gender-based violence, with a specific focus on violence against women.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ CEDAW, adopted in 1979 by the United Nations General Assembly is regarded as the ‘international bill of rights for women’. More information is available on the UN’s website, <http://www.un.org/womenwatch/daw/cedaw>

⁶² As opposed to viewing sexual harassment as an “individual, intentional act of interpersonal violence”. For a detailed 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”, *Bangladesh Journal of Law* 12, No. 1 and 2 (2012), 137–170.

⁶³ Supreme Court of India, *Vishaka and others vs. State of Rajasthan and others*, 1997.

⁶⁴ Ibid.

⁶⁵ Nishith Desai Associates, *India’s Law on Prevention of Sexual Harassment at the Workplace*, 2019.

⁶⁶ Ministry of Women and Child Development, Government of India, *Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*, 2015, p. 4.

⁶⁷ Ibid.

As criticism of the term ‘eve-teasing’ soared, the term ‘sexual harassment’ began to be used in rights discourses in Bangladesh.⁶⁸ Since the dawn of the new millennium, the civil society movement against sexual harassment steadily gained ground.⁶⁹ In 2008, the Bangladesh National Women Lawyers’ Association (BNWLA) filed a writ petition in the Bangladesh Supreme Court (SC), highlighting legislative gaps and the lack of effective measures to address sexual harassment in workplaces and educational institutions. The petition specifically referred to individual cases reported in the news media on women experiencing harassment with no mechanism for recourse. In response, the judiciary addressed sexual harassment in the workplace in the ‘Bangladesh National Women Lawyers’ Association (BNWLA) v Government of Bangladesh’⁷⁰ case. Its decision in 2009 directed the Government to formulate appropriate laws to tackle harassment in both the world of work and the education sector. To date, however, such laws have yet to be formulated. Nevertheless, this landmark judgment was a turning point.⁷¹ In its judgment, the Supreme Court of Bangladesh provided detailed guidelines on combatting sexual harassment, in language aligned with that used by the Vishaka judgment of the Indian Supreme Court.

In 2010, the BNWLA filed another petition to address sexual harassment in public, taking to task the phenomenon popularly known as ‘eve-teasing’, particularly in the context of several suicides prompted by continual sexual harassment. The judgment on this case in 2011⁷² modified the 2009 guidelines to also address sexual harassment in public places. The Court emphatically condemned the use of the term ‘eve-teasing’. In recent years, Bangladesh’s judiciary and notable women’s rights organizations have taken a proactive role in strengthening the framework for gender justice. In a writ filed jointly by BLAST, Naripokkho and others, the High Court Division (HCD) declared it illegal to use ‘two-finger test’ in rape cases (see box 1).⁷³ Compensation has also been awarded by law in instances of negligence or misconduct by public officials in cases of rape and sexual offences.⁷⁴

⁶⁸ When the term ‘sexual harassment’ gained significance and began to replace ‘eve-teasing’ has not been documented. The process appears to have been a slow one, ‘eve-teasing’ is still in use to refer to street harassment. Nevertheless, the study found several references to ‘sexual harassment’ in the late 1990s and early 2000s with regard to the rights and safety of women workers in the industrial sector, particularly in the ready-made garment sector. See for example, Tabibul Islam, writing for IPS News in 1998, who noted that “*sexual harassment was a common issue in garment factories and women were threatened with dismissal if they speak out*”. The article also referred to a study conducted by ActionAid Bangladesh, which estimated that at least 20 per cent of women workers engaged in sex in the workplace. In 2003, a detailed research report was published by CPD and UNFPA, see: Dina M. Siddiqi, *The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond* (Centre for Policy Dialogue and UNFPA, 2003). A reference to sexual harassment in workplaces was also noted in a seminar entitled, “Dialogue on Sexual Harassment and Professional Women: Perspectives, Experiences and Responses”, organized by the Forum on Women in Security and International Affairs (FOWSIA) in August 2003, in Dhaka. For more information, see The Daily Star, <http://archive.thedailystar.net/magazine/2003/08/03/human.htm>

⁶⁹ On 7 July, 2008, a platform of 47 rights-based organizations – including the Bangladesh National Women Lawyers’ Association, Bangladesh Manila Parishad, AIN-O-Shalish Kendra, and Bangladesh Manila Samity – arranged a press conference on the issue, putting the severity of the problem in sharp focus. They highlighted how sexual harassment was taking place in different organizations and institutions. The committee at the press conference presented statistics on 333 incidents of the repression of women between January and June 2008. The committee also adopted seven resolutions, including guidelines to stop sexual harassment and implementation thereof in all educational institutions and universities; Supreme Court of Bangladesh, High Court Division, *Bangladesh National Women Lawyers’ Association (BNWLA) vs. Government Of Bangladesh And Others*, 29 BLD, 2009, p. 415.

⁷⁰ Supreme Court of Bangladesh, High Court Division, *Bangladesh National Women Lawyers’ Association (BNWLA) v. Government of Bangladesh and others*, 14 BLC 694, 2009; Supreme Court of Bangladesh, High Court Division, *British American Tobacco Bangladesh (BATB) Company Ltd v. Begum Shamsun Nahar*, 66 DLR (AD) 80, 2014.

⁷¹ *Ibid*, p. 415.

⁷² Supreme Court of Bangladesh, High Court Division, *Bangladesh National Women Lawyers’ Association (BNWLA) vs. Government of Bangladesh and Others*, 31 BLD, 2011, p. 324.

⁷³ Supreme Court of Bangladesh, High Court Division, *Bangladesh Legal Aid and Services Trust & Ors v. Secretary, Ministry of Health and Family Welfare & Ors*, 2018.

⁷⁴ Supreme Court of Bangladesh, High Court Division, *Naripokkho and others v. Bangladesh and others*, 2016; Supreme Court of Bangladesh, High Court Division, *The State v. Md. Moinul Hoque and Others*, 21 BLD (HCD) 485, 2011.

Box 1. The two-finger test judgment

Bangladesh Legal Aid and Services Trust & Ors v. Secretary, Ministry of Health and Family Welfare & Ors (2018)

The Court pronounced the following directions for examining rape victims:

1. The 'two-finger test' (TFT) is not scientific, reliable or valid, and is hereby prohibited in any examination of a rape victim.
2. Respondents shall make the healthcare protocol (Health Response to Gender-Based Violence Protocol for Healthcare Providers) available to forensic experts, physicians who conduct medical examinations of rape victims/survivors, police officers who conduct investigations of rape cases, public prosecutors appointed in the Nari O Shishu Nirjaton Tribunal, and other interested private lawyers.
3. Physicians/forensic experts shall issue medical certificates about the examination of rape victims. They shall not use the degrading word "*habituated to sexual intercourse*" and shall not ask any questions about a victim's previous sexual experience.
4. In case of a deep-seated intra-vaginal examination, the matter shall be referred to a gynaecologist for an expert opinion to identify an injury, or for medical reasons.
5. Per speculum examination is not a must in the case of children/young girls when there is no history of penetration and no visible injuries.
6. The bimanual test is not related to the two-finger test, being only related to obstetricians' gynaecological examinations, and it shall not be practiced on rape victims.
7. The Government shall appoint trained doctors and nurses for the medical examination of rape victims. Such examinations shall be conducted in the presence of, preferably, female police officers, female relative and preferably by female physicians. The concerned physicians and forensic experts shall strictly maintain the privacy of victims.
8. The Nari O Shishu Nirjaton Tribunal [Women and Children Repression Prevention Tribunal] shall ensure that no lawyer shall ask any degrading question to a rape victim which is not necessary to ascertain any information on rape.

Source: Bangladesh Legal Aid and Services Trust (BLAST) "[Press Release: High Court Bans the 'Two-finger Test' on Rape Survivors](#)", 18 April 2018.

Box 2. Judgment on ensuring justice and protection for rape victims

Naripokkho and others v. Bangladesh and others [6CLR(2018)1]

The High Court Division issued a set of directives, in the form of guidelines, to ensure justice and protection for women survivors of rape. The judgment was given in the public interest litigation (PIL) (Writ Petition No. 5541/2015), filed jointly by BLAST, Naripokkho, Bangladesh Mohila Parishad (BMP), Jatiyo Adivasi Parishad (JAP) and Ain-o-Shalish Kendra (ASK), on 25 May 2015. The litigation was brought in connection with the gang rape of a woman whose complaint was not lodged by police stations and whose medical examination was delayed.

The High Court Division's directions are as follows:

1. All information related to a cognizable offence, including rape, sexual assault or crimes of a similar nature, shall immediately be committed to writing by the officer in charge of a police station, irrespective of the place in which the offence occurred, without any discrimination whatsoever and without causing any delay.
2. A designated website should be opened, enabling the informant to register her/his complaint online.
3. The statute should contain specific provisions dealing with the refusal or failure to register such cases of the officer concerned, at the respective police station, without sufficient cause.
4. Every police station must have, round-the-clock, a woman police officer not below the rank of Constable. On receiving the information of the offence of rape or sexual assault, the duty officer recording the information shall call the woman police officer present at the police station and make the victim and their family members comfortable.
5. At all stages, the identity of the victim should be kept confidential.
6. A list of female social workers who may be of assistance should be kept at all police stations.
7. The statements of the victim should be recorded in the presence of a lawyer or friend nominated by the victim, or a social worker or protection officer.
8. Victims should be made aware of their right to protection from the State, and to be given any information they request on the matter.

9. The duty officer, immediately upon receipt of the information, shall inform the Victim Support Centre.

10. Interpretation services should be provided where necessary, especially for women or girls with disabilities who are victims of rape or sexual assault.

11. After committing the information to writing, the investigating officer along with the woman police official available, shall escort the victim for a medical examination without causing delay.

12. The Victim Support Centre should be discreet and should, at all times, have all the facilities required for the recovery of the victim.

13. In all rape cases or cases of sexual assault, chemical/DNA tests must be conducted on a mandatory basis.

14. DNA and other samples should be sent to the concerned Forensic Science Laboratory or DNA Profiling Centres within 48 hours of the alleged occurrence.

15. Any failure of duty on the part of the investigating agency in collecting the report or causing the victim to be taken to the nearest hospital for medical examination would be a punishable offence.

16. The investigating officer shall endeavour to complete the investigation as early as possible.

17. There should be wider dissemination of the national line number on violence against women, girls or children (10921) through visual, audio and the print media, including designated websites.

18. In addition to the above, an office should be established in every metropolitan city for the purpose of providing necessary security, medical, chemical and counselling assistance and secure protection for victims.

Box 3. Judgment amending the definition of rape and sexual harassment

The State v. Md. Moinul Hoque and Others [(2001) 21 BLD (HCD) 485]

The judgment confirmed death sentences in a rape and murder case committed by a gang of on-duty police officers while the victim was in their custody. Alongside the conviction, the court proposed the following key directives, among others:

1. In all cases of custodial rape, the burden of proof will be shifted to the person accused of the rape to prove that sexual intercourse was not against the will and without the consent of the victim.

2. In cases of rape in police custody, there shall be a presumption in law that the person or persons, in whose custody the victim is raped, are the rapists. The onus to prove otherwise will be on the person or persons in whose custody the victim was at the time of the rape.

3. The victim of rape should be compensated by receiving half of the property of the rapist/rapists as compensation in order to rehabilitate the victim in society.

4. In all police stations, a Women's and Children's Desk should be set up, staffed by women police officers, to address and investigate the cases of rape and other forms of violence against woman and children, including sexual harassment.

5. The definition of rape shall be amended to include any act of a sexual nature which is committed towards a person in circumstances which are coercive. Sexual violence shall not be limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.

6. The words "*outraging the modesty*" in sections 354 and 509 of the Penal Code will be replaced by the words "*sexual harassment*" and taken to include: (i) physical contact and advances, (ii) a demand or request for sexual favours, (iii) sexually-coloured remarks, (iv) showing pornography, and (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

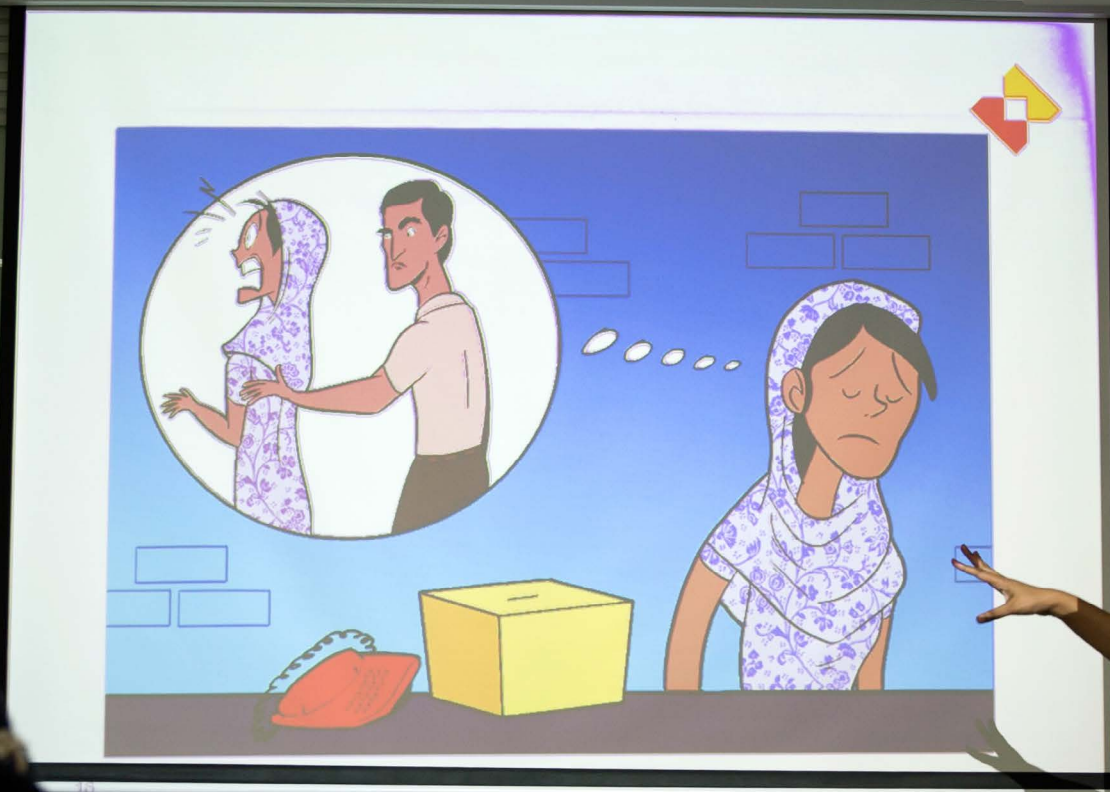
Like sexual harassment, the term 'gender-based violence' in Bangladesh is part of very recent discourse, in line with evolving international norms and standards. Thus far, the term 'gender-based violence' has not been used in any specific law. Until recently, legal and policy discourse in the country only emphasized violence against women (VAW), without focusing on the broader framework of gender-based violence and harassment (GBVH). Now however, especially after the shift in ILO standards and principles, the discourse on VAW has turned into one which focuses on GBVH as a whole, of which VAW forms a significant part.

In the last 20 years, special legislative measures have striven to address GBVH in Bangladesh.⁷⁵ Nevertheless, conviction rates under these special laws remain extremely low.⁷⁶ Law enforcement agents are often reluctant to take cases, and have been reported to be violent towards complainants.⁷⁷ Moreover, inconsistencies and gaps in existing laws, coupled with limited implementation, hampers efforts to prevent violence and ensure justice for victims/survivors of GBVH in Bangladesh. There is a clear need for a comprehensive and gender-responsive law on violence and harassment in the workplace.

⁷⁵ Government of Bangladesh, *Nari O Shishu Nirjatan Daman Ain (Women and Child Repression Prevention Act)*, 2000; Government of Bangladesh, *Domestic Violence (Prevention & Protection) Act*, 2010; Government of Bangladesh, *Acid Control Act*, 2002; Government of Bangladesh, *Pornography Control Act*, 2012.

⁷⁶ S.M. Atia Naznin and Tanjina Sharmin, *Reasons for the Low Rate of Conviction in the VAW Cases and Inconsistencies in the Legislative Frameworks* (Dhaka: BRAC University Press, 2015).

⁷⁷ Bangladesh Legal Aid and Services Trust (BLAST), *Conference Report of Rape Law Reform in Bangladesh*, 2018.



3. Laws, policies and the regulatory environment on gender-based violence and harassment in Bangladesh

3.1 International legal framework

Bangladesh participates in various international forums and has ratified the key international human rights treaties that focus on protecting women's rights. At the global level, Bangladesh has clearly demonstrated its commitment to ending gender-based violence and harassment (GBVH) in all spheres of life, as envisaged in its Constitution.

Under the broader human rights framework on gender equality, Bangladesh is mandated to ensure protection against GBVH. Equal rights and freedoms are guaranteed by the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷⁸, the International Covenant on Civil and Political Rights (ICCPR)⁷⁹ and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁸⁰ Key instruments for ending GBVH in the world of work are discussed below.

3.1.1 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

The Government of Bangladesh ratified the CEDAW on 6 November 1984. Article 11 commits Member States to eliminate discrimination against women in the field of employment, and to ensure the equality of women and men. As discussed above, the CEDAW Committee's General Recommendation No. 19 (1992), entitled "Violence against women", affirms that gender-based violence, including sexual harassment, is a form of discrimination.

Commenting on article 11 of CEDAW, which relates to discrimination against women in employment, the CEDAW Committee emphasized that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

⁷⁸ Bangladesh Ratified the ICESCR on 5 October 1998.

⁷⁹ Bangladesh Ratified the ICCPR on 6 September 2000.

⁸⁰ Bangladesh ratified the CAT on 5 October 1998.

The Committee described a number of behaviours or acts which can be categorized as sexual harassment, including both categories of *'quid pro quo'* and a *'hostile working environment'*.⁸¹ General Recommendation No. 35 of the CEDAW Committee recommends state parties to ensure that all forms of gender-based violence against women in all spheres – which amount to a violation of their physical, sexual, or psychological integrity – are criminalized. It urges them to introduce without delay, or strengthen, legal sanctions commensurate with the gravity of the offence, alongside civil remedies.⁸²

3.1.2 The UN Declaration on the Elimination of Violence Against Women, 1993

Article 1 of the declaration defines *'violence against women'* as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It also includes sexual harassment and intimidation at work, in educational institutions and elsewhere, as part of violence against women.⁸³

3.1.3 The Beijing Declaration and Platform for Action, 1995

The Beijing Platform for Action (PFA) calls on governments and all other concerned parties to develop programmes and procedures to eliminate all forms of violence against women, including sexual harassment, in all educational institutions, workplaces and elsewhere.⁸⁴

The Government of Bangladesh submitted a National Review Report on the Implementation of the Beijing Declaration and Platform for Action as part of the Beijing+25 review process in July 2019.⁸⁵ The report reflects on efforts by the Government and civil society partners to prevent and protect against sexual harassment. It refers to the revision and adoption of the National Plan of Action on Violence against Women, effective during 2018–2030, by the Ministry of Women and Children Affairs. It also highlights the introduction of the *'Joy'* application, designed to help women and children facing violence anywhere in the country. The report states that Sexual Harassment Prevention Committees were formed in all universities to guide interventions, and new mechanisms were established at the university level.

However, the report does not provide further details or data on these developments. Significantly, it indicates that a comprehensive law on sexual harassment is being drafted, as per the directives of Bangladesh's High Court Division and the CEDAW Committee's concluding observations in 2016.

⁸¹ General Recommendation No. 19 states that: *"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."*

⁸² Committee on the Elimination of Discrimination against Women, *"General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19"*, CEDAW/C/GC/35 (2017).

⁸³ UN, *"Declaration on the Elimination of Violence against Women"*, 20 December 1993.

⁸⁴ Adopted at the United Nations Fourth World Conference on Women, held in Beijing in 1995. For more information, see: <https://www.un.org/womenwatch/daw/beijing/platform/>

⁸⁵ Government of Bangladesh, Ministry of Women and Children Affairs, *Comprehensive National Review Report for Beijing + 25: Implementation of the Beijing Declaration and Platform for Action 1995*, 2019.

No further details are provided on the drafting process, the ministry or other body assigned to draft the law, or a planned timeline for presenting the draft to parliament.⁸⁶

3.1.4 Agreed conclusions of the Commission on the Status of Women on the elimination and prevention of all forms of violence against women and girls, 2013

The Commission on the Status of Women's (CSW) agreed conclusions⁸⁷ refer to the need to respond to, prevent and eliminate all forms of discrimination and violence, including sexual harassment in the workplace. In its agreed conclusions on "Women's economic empowerment in the changing world of work"⁸⁸, adopted in 2017, the Commission urged governments at all levels to enact, 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 the public and private spheres. It also urged states to provide a means of effective redress in cases of non-compliance.

The Commission's agreed conclusions in 2018 reiterated the call for government programmes and strategies for preventing and eliminating sexual harassment against all women and girls, including harassment in the workplace and in schools. These conclusions emphasized effective legal, preventive and protective measures for survivors/victims of sexual harassment or those who are at risk of sexual harassment.⁸⁹

3.1.5 ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

ILO Convention No. 111⁹⁰ addresses discrimination in employment on a number of grounds, including sex, race, colour, religion, political opinion, national extraction, and social origin. It requires that Member States declare and pursue a national policy designed to promote equality of opportunity and treatment, with a view to eliminating discrimination. The Government of Bangladesh ratified the Convention in 1972.

In the 1996 Special Survey on Convention No. 111⁹¹, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) confirmed that it views sexual harassment as a form of discrimination based on sex in employment and occupation, which undermines equality, damages working relationships and impairs productivity. In its 2015 observation, the Committee of Experts requested the Government of Bangladesh to provide specific information on measures taken or envisaged to ensure the implementation of the High Court Division's guidelines on sexual harassment in the private and public sectors. It also requested information on progress made to enact legislation on sexual harassment, and to amend labour laws to incorporate similar provisions.

⁸⁶ Ibid.

⁸⁷ Commission on the Status of Women, *Agreed conclusions on the elimination and prevention of all forms of violence against women and girls*, E/2013/27 and E/CN.6/2013/11 (2013).

⁸⁸ Commission on the Status of Women, *Women's Economic Empowerment in the Changing World of Work: 2017 Commission on the Status of Women Agreed Conclusions*, 2017.

⁸⁹ Commission on the Status of Women, *Challenges and Opportunities in Achieving Gender Equality and the Empowerment of Rural Women and Girls: 2018 Commission on the Status of Women Agreed Conclusions*, 2018, p.11.

⁹⁰ ILO, *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*.

⁹¹ Ibid.

It urged the Government to raise the awareness of workers, employers and their organizations on rights, obligations and procedures related to sexual harassment in employment and occupation, and to provide specific information on progress made in this regard.⁹²

In response to these requests, the Government referred to several initiatives implemented by the Ministry of Women and Children Affairs to prevent any kind of gender-based violence. These include the implementation of the National Plan for the Prevention of Violence against Women and Children for 2013–25, the establishment of several committees under different ministries, and the creation of a National Centre on Violence against Women and Children.⁹³ The Government's reply stated that sexual harassment in employment and occupation is very rare and that workers, employers and their organizations are well aware of their rights, obligations and procedures.⁹⁴

In its 2019 observations on Convention No. 111, the Committee of Experts on the Application of Conventions and Recommendations welcomed these initiatives. However, it noted that information was not provided on any activity or programme specifically targeting sexual harassment in employment and occupation.⁹⁵ It referred to the 2018 report of the UN Special Rapporteur on violence against women, which observed that *"sexual harassment was commonplace in various working environments and was sometimes justified as being 'part of the culture' by state and non-state actors in Bangladesh."*⁹⁶ Bangladesh's reply to the 2019 observation on Convention No. 111 is pending.⁹⁷

3.1.6 Treaty Bodies' recommendations on gender-based violence and harassment

Bangladesh's second Universal Periodic Review (UPR)⁹⁸ cycle recommended criminalizing violence against women and girls, prosecuting perpetrators and adopting legislation on sexual harassment. It also called for measures to ensure that all forms of violence against women and girls, including domestic violence and all forms of sexual abuse, are criminalized.⁹⁹ In response to the recommendation, Bangladesh submitted a National Report in 2018. This did not address the issue of adopting legislation or criminalizing sexual harassment. However, it did refer to existing laws, including the Women and Children Repression Prevention Act and section 332 of the Bangladesh Labour Act. It also highlighted some of the measures taken to prevent sexual harassment, such as establishing a 24-hour toll-free national helpline (109) and creating a National Forensic DNA Profiling Laboratory to extend services across the country, among others.¹⁰⁰

⁹² Committee of Experts on the Application of Conventions and Recommendations, *Observation (CEACR): Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Bangladesh (Ratification: 1972)*, ILC. 105 (2016).

⁹³ Committee of Experts on the Application of Conventions and Recommendations, *Observation (CEACR): Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Bangladesh (Ratification: 1972)*, ILC. 109 (2020).

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Human Rights Council, Compilation on Bangladesh, A/HRC/WG.6/30/BGD/2 (2018), para. 54.

⁹⁷ Committee of Experts on the Application of Conventions and Recommendations, *Comments adopted by the CEACR: Bangladesh*, 2019.

⁹⁸ The Universal Periodic Review (UPR) is a unique process of reviewing the human rights records of all 193 UN Member States. For more information, see <https://www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx>

⁹⁹ Universal Periodic Review Info, "Database of Recommendations", n.d.

¹⁰⁰ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21**, A/HRC/WG.6/30/BGD/1, 2018.

The CEDAW Committee's 2016 concluding observations¹⁰¹, in response to the 8th Periodic Report submitted by Bangladesh in 2015,¹⁰² recommended that the Government of Bangladesh adopt, without delay, legislation criminalizing all forms of violence against women and girls. These include marital rape, irrespective of the age of the victim, domestic violence, and all forms of sexual abuse. It recommended ensuring that perpetrators are prosecuted and adequately punished, and that victims have access to immediate protection, rehabilitation and means of redress, including compensation. It further urged the Government to ensure the implementation of the existing legal and policy framework on gender-based violence by providing capacity building and awareness raising programmes, as well as by criminalizing sexual harassment in workplaces and schools. Bangladesh's actions to address these recommendations will be presented in its next Periodic Report, due in November 2020.¹⁰³

In its 2018 concluding observations on the Initial Report of Bangladesh, the Committee on Economic, Social and Cultural Rights recommended that the Government redouble efforts to combat all forms of sexual and gender-based violence. In particular, it recommended strengthening the enforcement of legislation on such violence, bringing perpetrators to justice, and punishing those responsible.¹⁰⁴ Bangladesh will submit its next report in March 2023.¹⁰⁵

3.2 National legal framework on gender-based violence and harassment in the world of work

3.2.1 Constitutional law

The basis of Bangladeshi laws against gender-based violence and harassment in workplaces stems from the Constitution itself. Article 28 enshrines the principle of equality and non-discrimination, with article 28(2) specifically stating that *"women shall have equal rights with men in all spheres of the State and of public life"*.

In so doing, the drafters of the Constitution were aware that a mere declaration of equality is not enough. Therefore, the Constitution clearly stipulates positive discrimination towards women. Article 28(4) states that: *"Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens"*. Article 19(3) also provides that: *"The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life"* as a fundamental principle of state policy.

¹⁰¹ Committee on the Elimination of Discrimination Against Women, [Concluding observations on the eighth periodic report of Bangladesh*](#), CEDAW/C/BGD/CO/8, 2016.

¹⁰² Government of Bangladesh, [The Eighth Periodic Report of Bangladesh](#), 2015.

¹⁰³ UN Treaty Body Database, ["Reporting status for Bangladesh"](#), 2020.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

3.2.2 Criminal laws

A number of criminal laws in Bangladesh address different types of violence against women. However, some inconsistencies and contradictions exist between legal provisions. For instance, the age of statutory rape differs between the Penal Code of 1860 and the Women and Children Repression Prevention Act, 2000. The state's approach has been to pass separate laws in response to specific forms of violence – such as acid violence, domestic violence, dowry violence, human trafficking and pornography – rather than developing an overarching framework on how these laws may be best implemented, or updating colonial laws of procedure (the Code of Criminal Procedure, 1898). In all these laws, there is more of a focus on harsher penalties and punitive measures for perpetrators, than on compensatory or redress mechanisms for victims/survivors.

Criminal laws, procedures, institutions and principles that evolved during the British colonial period (1757–1947) continue to govern the functioning of Bangladesh's criminal justice system, with nominal amendments.¹⁰⁶ The Penal Code of 1860 covers most crimes, including rape, hurt, murder, and extortion. The Code of Criminal Procedure, 1898 (CrPC) is the basic law of procedures for almost all criminal trials. It sets out procedures in detail – from a first report, through to the investigation and arrest of suspects, all stages of the trial, conviction, sentencing and appeal.¹⁰⁷ Although some laws have introduced special procedures – such as the Women and Children Repression Prevention Act, as discussed below – the Code of Criminal Procedure remains the country's basic procedure for trials.¹⁰⁸ Subordinate criminal courts – both the Courts of Sessions and the Courts of Magistrates¹⁰⁹ – are generally created by the Code of Criminal Procedure. Offences under the Penal Code are all tried by these courts, although a range of other special courts and tribunals have been created by other laws, such as the Special Powers Act, 1974, the Women and Children Repression Prevention Act, 2000, and the Anti-Corruption Act, 2004.¹¹⁰

As an inheritor of a common law system, Bangladesh follows an adversarial system. Therein, the state generally bears the onus of proving a case against an offender.¹¹¹ Simply put, an offender is presumed innocent unless proven guilty within the provisions of the law. Thus, the burden of proving a charge against the accused in a case related to violence against women lies with the prosecution, as it does in all criminal prosecutions more broadly. Charges must be proved substantially. Courts take a neutral and passive role in deciding the guilt of the accused in view of the evidence of prosecution witnesses.¹¹²

Bangladesh does not have a separate investigating agency for crimes. Investigating officers belong to the regular police force. There have been instances when these officers were alleged to discharge their duties in a 'casual manner', resulting in poor crime detection.¹¹³

¹⁰⁶ Hussain M. Fazlul Bari, "Evolution of the criminal justice system in Bangladesh: Colonial legacies, trends and issues", *Commonwealth Law Bulletin* 45, No. 1 (2019), 25–46.

¹⁰⁷ UNDP, *Criminal Justice in Bangladesh: A best practice handbook for members of the criminal justice system (Final Draft)*, 2015.

¹⁰⁸ *Ibid.*

¹⁰⁹ For details see, Part II of the Code of Criminal Procedure.

¹¹⁰ Section 25 of the Women and Children Repression Prevention Act.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ Hussain Mohammad Fazlul Bari, "An Appraisal of Criminal Investigation in Bangladesh: Procedure and Practice", *Journal of the Asiatic Society of Bangladesh, Humanities* 60 (2015), 139–140.

Two key criminal law statutes that address GBVH have particular relevance for the world of work. These are the Penal Code and the Women and Children Repression Prevention Act, as discussed below.

i. Penal Code, 1860

The definition of rape in section 375 of the Penal Code remains in force. It is defined as ‘sexual intercourse’ committed by a man with a woman against her will or without her consent. This definition authorizes the marital rape of a girl over the age of 13 under the ‘Exception’ clause. This states that *“sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape”*.

Under the Penal Code, the punishment for rape is either life imprisonment, or imprisonment for a term which may extend to 10 years, alongside a fine. In cases of marital rape of a girl not below 12 years old, punishment is reduced to a maximum of two years of imprisonment and a fine.¹¹⁴

Section 354 of the Penal Code provides that whoever assaults or uses criminal force against any woman, intending to *“outrage her modesty”* or knowing that this act will *“outrage her modesty”*, is punished with a maximum of two years of imprisonment and a fine. Section 509 criminalizes other sexual offences that do not involve physical contact. The section specifies imprisonment for up to one year, or a fine, or both, for anyone who intends to *“insult the modesty of any woman”*, utters any word or sound intended to be heard by a woman, exhibits any object intended to be seen by a woman, or intrudes upon a woman’s privacy. Although this provision does not adequately define or punish sexual harassment, it can be used to file a criminal complaint against alleged abusers. As such, this section applies to women who experience sexual harassment in workplaces. However, as explained below, the section’s lack of a clear definition of sexual harassment means that it is rarely used to denounce sexual harassment-related incidents.

The Penal Code also specifies punishments for offences related to kidnapping, abduction or compelling a woman into marriage¹¹⁵, slavery or forced labour (sections 359–374). However, these are seldom, if ever, invoked as they overlap with subsequent Acts that criminalize these offences.

ii. Nari O Shishu Nirjatan Daman Ain (Women and Children Repression Prevention Act), 2000

The Women and Children Repression Prevention Act (WCRPA) is the cardinal legislation that criminalizes and introduces harsh punishments for various forms of violence against women in Bangladesh. These include trafficking, kidnapping, rape, sexual assault and dowry violence. The Act creates special tribunals¹¹⁶ in each district to try these offences. It specifies that the provisions of the Code of Criminal Procedure will be followed regarding the submission of a complaint, investigation, trial and settlement.

¹¹⁴ Section 376 of the Penal Code 1860.

¹¹⁵ Section 366 of the Penal Code 1860.

¹¹⁶ Section 25 of the Women and Children Repression Prevention Act.

Tribunals are treated as a Court of Session, applying all the powers of such a court while trying any offence under the Act.¹¹⁷ The party aggrieved by the order, judgment or punishment imposed by the tribunal, can appeal to the High Court Division within 60 days.¹¹⁸ If a tribunal passes a death sentence, the proceeding is immediately sent to the High Court Division, whose confirmation is required for the sentence to be carried out.¹¹⁹

All offences under the WCRPA are ‘cognizable’ – that is, police officers can arrest alleged offenders without a warrant¹²⁰ – and are not subject to bail.¹²¹ Any victim/survivor, or anyone on their behalf, can file a complaint at the local police station on any offence under the Act. The police record the details of this offence in a First Information Report (FIR).¹²² Once this report has been lodged, the police initiate a formal investigation. During this process, the investigating officer may arrest an individual or individuals, without a warrant, if they are reasonably suspected of committing the offence.¹²³ A police investigation report is then submitted to the tribunal, recommending actions against the alleged offender(s). Based on this report, the case formally proceeds at the tribunal.¹²⁴ However, the Act also provides that if any person fails to file a complaint with the police, the tribunal may directly order a judicial inquiry into an alleged offence.¹²⁵

Section 2(e) of the WCRPA provides that, subject to section 9 – the provision penalizing rape – the word ‘rape’ will have the same meaning as in section 375 of the Penal Code. However, the minimum age of consent, that is the age below which sexual intercourse is considered statutory rape, was increased by the 2003 Amendment to the Act. This minimum age was raised to 16 years, from the previous standard of 14 years, the same age specified in the Penal Code.

The Women and Children Repression Prevention Act provides the following penalties for rape:

- Life imprisonment and a fine for anyone who rapes a woman or child. The Act defines ‘child’ as any person under 16 years of age.¹²⁶
- The death penalty or rigorous life imprisonment and a fine, not exceeding BDT 100,000 (one *lakh*), if a woman or child dies as a consequence of rape or any act following rape.¹²⁷
- The death penalty, or life imprisonment and a fine, for each member of a gang if they kill or injure a woman or child who has been gang raped.¹²⁸
- Life imprisonment and a fine for attempting to cause death or harm after committing rape.¹²⁹

¹¹⁷ Ibid.

¹¹⁸ Section 28 of the Women and Children Repression Prevention Act.

¹¹⁹ Section 29 of the Women and Children Repression Prevention Act.

¹²⁰ Section 4(f) of the Code of Criminal Procedure.

¹²¹ Section 19 of the Women and Children Repression Prevention Act.

¹²² Section 154 of the Code of Criminal Procedure; also see Section 25 of the Women and Children Repression Prevention Act.

¹²³ UNDP, *Criminal Justice in Bangladesh: A best practice Handbook for members of the criminal justice system*, 2015.

¹²⁴ Under section 18 of the Women and Children Repression Prevention Act. Detailed investigation and trial process are provided in sections 18–25 of the Act.

¹²⁵ Section 27 of the Women and Children Repression Prevention Act.

¹²⁶ Section 2(ta) of the Women and Children Repression Prevention Act.

¹²⁷ Section 9(2) of the Women and Children Repression Prevention Act.

¹²⁸ Section 9 (3) of the Women and Children Repression Prevention Act.

¹²⁹ Section 9(4) (a) of the Women and Children Repression Prevention Act.

- Imprisonment for up to 10 years, and no less than five years, for attempting to commit rape.¹³⁰
- Imprisonment for up to 10 years, and no less than five years, for custodial rape, for each person in whose custody a rape was committed, and those who were directly responsible for the safety of the woman in custody.¹³¹

In addition to these provisions, the WCRPA addresses other legal issues that affect rape victims/survivors. Section 13 specifies that, notwithstanding the provisions of any other law, a child born as a result of rape will be in the custody of their mother or maternal family. The child has the right to bear the identity of either parents, or of both parents. The child's maintenance is to be borne by the state. Section 14 provides for the protection of the identity of rape complainants. It specifies a punishment of a maximum of two years imprisonment, paired with a fine, for disclosing any information on the identity of a complainant in any case filed under the Act.

In terms of medical evidence, section 32 of the WCRPA provides for the medical examination of rape victims/survivors at a government hospital, or a hospital certified by the Government for this purpose. The doctor authorized to conduct a medical examination is under an obligation to issue a certificate, and inform the local police station. Any delays in conducting a medical examination due to the negligence of the doctor in charge makes them liable to disciplinary action, according to the applicable rules of services.

Section 10 of the WCRPA¹³² includes a provision specifying that sexual assault that involves physical contact – including touching a woman's sexual organs or other organs, with any body part or object – is liable to more severe punishment, of up to 10 years in prison.¹³³ However, this section does not overcome the ambiguity of existing provisions in the Penal Code, as an offence must be committed 'in furtherance of the sexual desire' of the offender. The vague concept of 'outraging the modesty' of a woman remains in place in the section, without a clear explanation of what 'modesty' means.

Under the Act, a tribunal may consider the fine imposed for offences under its sections as 'damages' for the victim/survivor. If a fine cannot be extracted from a convict or their existing property, it can be extracted from property that the offender will possess in the future. The claim of such a fine prevails over any other claim on that property.¹³⁴ When a fine is imposed, the tribunal directs the collector to make a list of the offenders' properties. The amount of the fine can be collected by 'attaching' the property and selling it through an auction, or selling it at an auction 'without attachment'. The collector then deposits the amount collected to the tribunal, which takes measures to give this amount to the victim/survivor.¹³⁵

¹³⁰ Section 9(4)(b) of the Women and Children Repression Prevention Act.

¹³¹ Section 9(5) of the Women and Children Repression Prevention Act.

¹³² Section 10 states: "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 his 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."

¹³³ Rigorous imprisonment that may extend up to 10 years and no less than three years, as well as liability to an additional fine.

¹³⁴ Section 15 of the Women and Children Repression Prevention Act.

¹³⁵ Section 16 of the Women and Children Repression Prevention Act.

Like the Penal Code, the WCRPA does not specifically address violence in the workplace. However, all of its provisions – particularly those on rape and sexual assault – are considered general criminal offences. Any woman or child under the age of 16¹³⁶ can file a complaint under the Act. As such, the Act’s provisions apply equally to violence and harassment in the world of work.

3.2.3 Domestic Violence (Prevention and Protection) Act, 2010

The Domestic Violence (Prevention and Protection) Act is the first law in Bangladesh to specifically address domestic violence. Before 2010, domestic violence offences only came within the purview of the Women and Children Repression Prevention Act if they were connected to dowry demands.¹³⁷ The 2010 Act defines domestic violence as “*any act of physical abuse, psychological abuse, sexual abuse or economic harm by a person against a woman or child with whom he has a family relationship*”.¹³⁸

The Act allows an ‘aggrieved person’¹³⁹ to file an ‘application’¹⁴⁰ to the Judicial Magistrate Court or to the Metropolitan Magistrate Court, as the case may be.¹⁴¹ The definition of ‘application’ is noteworthy as it includes applications filed by ‘any other person on her behalf’. This allows a survivor of violence to institute proceedings under the Act through a relation or acquaintance.¹⁴² The definition of ‘aggrieved person’ is gender-specific – it encompasses a woman or child who, due to a ‘family relationship’, is or has been at risk of domestic violence by any family member. While the word ‘child’ includes both girls and boys, the term ‘aggrieved person’ does not include men. The term ‘family relationship’ is defined as a relationship established through consanguinity, marriage, adoption or by being a member of a joint family.¹⁴³ Although the definition of aggrieved person is gender-specific, a ‘respondent’¹⁴⁴ is defined as any person against whom an application is filed under the Act.

As such, the Act provides an expansive definition of domestic violence and allows any ‘aggrieved person’ to file an application, even against members of their own natal family. However, a combined reading of all of these provisions reveals that divorced women are excluded from instituting proceedings against their former husband or his relatives under the Act. This is because both the terms ‘family relationship’ and ‘domestic violence’ only cover existing relationships, and do not include past relationships.¹⁴⁵

¹³⁶ Section 2 of the Women and Children Repression Prevention Act.

¹³⁷ Shahnaz Huda, *Five Years since Domestic Violence (Prevention and Protection) Act 2010: Is It Helping Survivors?* (Plan International, 2016), p. 32.

¹³⁸ Section 3 of the Domestic Violence (Prevention and Protection) Act.

¹³⁹ Section 2(6) of the Domestic Violence (Prevention and Protection) Act.

¹⁴⁰ Section 2(3) of the Domestic Violence (Prevention and Protection) Act.

¹⁴¹ Section 21 of the Domestic Violence (Prevention and Protection) Act; an appeal shall be presented to the Chief Judicial Magistrate u/s 28 of the Act.

¹⁴² This is an important addition, as women may be reluctant to file an application on their own, for instance due to social stigma associated with instituting a court proceeding.

¹⁴³ Section 2(11) of the Domestic Violence (Prevention and Protection) Act.

¹⁴⁴ Section 2(13) of the Domestic Violence (Prevention and Protection) Act.

¹⁴⁵ Taslima Yasmin, *Implementation of the domestic violence legislations in Bangladesh: A comparative perspective* (Bangladesh Legal Aid and Services Trust (BLAST), 2015) (unpublished).

The Act also introduces unique remedies designed to provide 'relief' to a victim/survivor of domestic violence. These include an interim protection order, a protection order, a residence order, a compensation order, and a custody order. Protection orders are principally issued to restrain the 'respondent' from committing further violence. Residence orders include wide-ranging remedies to ensure a victim's/survivor's right to reside in a shared household. Compensation orders can be given for any physical, psychological, financial or property-related harm committed, or with the possibility of being committed, against the 'aggrieved person'. This 'relief' can also be provided through a maintenance order, with an appropriate amount provided to the aggrieved woman and her children, according to their standard of living.

To enforce a compensation order, a special provision authorizes a court to direct the respondent's employer to deduct the amount from the respondent's salary, and to deposit this amount to the aggrieved person. Custody orders can also be granted, whereby the court grants temporary custody of the aggrieved person's child or children to the applicant. If appropriate, the order may also include provisions on the respondent's visitation of the child or children.

The Act has put in place a number of functionaries to support victims/survivors of domestic violence, both before and after filing a proceeding. The law created Enforcement Officers (EO)¹⁴⁶ for this purpose, who play a crucial role in the Act's overall functioning. By way of a government notification, District and Upazila Women Affairs Officers¹⁴⁷, under the Ministry of Women and Children Affairs, are also appointed as EOs to perform duties under the Act.

The EOs are assigned several responsibilities¹⁴⁸ with respect to a victim/survivor of domestic violence. These include recording information on domestic violence, informing victims/survivors of their rights and remedies under the Act, assisting the court in discharging functions under the Act, and submitting reports of domestic violence to the court. Their responsibilities also include communicating with the officer in charge of a police station on domestic violence-related matters, sending the victim/survivor to a shelter or medical facility where needed and, most importantly, making an application to the court on behalf of the victim/survivor, if she so desires.

Other functionaries created under the Act include law enforcement officers¹⁴⁹ and service providers.¹⁵⁰ The latter are certified organizations that principally work on children's and women's rights, providing legal, medical or other services. Police officers' role is limited to informing the victims/survivors of their rights under the Act and other relevant laws, as well as informing the Enforcement Officer of any information they have received on domestic violence. However, the Act assigns another significant role to the police: assisting Enforcement Officers in discharging their responsibilities under the Act, or according to the direction of a court.

¹⁴⁶ Section 5 of the Domestic Violence (Prevention and Protection) Act.

¹⁴⁷ The District and Upazila Women Affairs Officers are pre-existing administrative posts under the Department of Women Affairs of the Ministry of Women and Children Affairs. Details on these officers, designated in every district and *upazila* (administrative division) are available on the Government's website, <http://www.dwa.gov.bd>

¹⁴⁸ Section 6 of the Domestic Violence (Prevention and Protection) Act and Rule 4 of the Domestic Violence (Prevention and Protection) Rules, 2013 (hereinafter referred as the Rules of the DVPPA).

¹⁴⁹ Section 4 of the Domestic Violence (Prevention and Protection) Act, rule 7 of the Rules of the DVPPA.

¹⁵⁰ Section 7 of the Domestic Violence (Prevention and Protection) Act, rule 6 of the Rules of the DVPPA.

Alongside functionaries, the Act also makes provision for shelter homes¹⁵¹ and medical facilities¹⁵² at which victims/survivors of domestic violence can access services. Both private and government-run shelters and health facilities fall within the ambit of the Act.

3.2.4 The Overseas Employment and Migrants' Act, 2013

In 2011, Bangladesh ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990. Two years later, the country enacted the Overseas Employment and Migrants' Act, 2013 (OEMA). Its objectives, set out in its preamble, are to promote opportunities for overseas employment, to establish a safe and fair system of labour migration, and to ensure the rights and welfare of migrant workers and their families. Under this law, 'migrant worker' or 'worker' means any citizen of Bangladesh who, for wages, is: (i) planning to migrate for work, or is departing to any foreign country for work; (ii) is employed in a trade or profession in any foreign country; or (iii) has returned to Bangladesh from abroad after completing, or not having completed, their employment tenure in a trade or profession.¹⁵³ The law focuses on mechanisms for sending workers abroad; regulatory provisions for recruiting agents, their licensing and workers' registration; and employment contracts and migration clearance, among other issues.

Although the Act does not specifically address violence and harassment against migrant workers, it expressly endorses the principle of equality and non-discrimination. It states that no one can be discriminated against on one or more grounds, including gender, language, birth, colour, age, ethnicity, national origin, political views, religion, ideology, regional affiliation, and familial, marital or social identity, or any other reason.¹⁵⁴ Most importantly, the law provides a number of forums and mechanisms to safeguard migrant workers' rights.

The Act provides that the Government of Bangladesh may conclude a Memorandum of Understanding (MoU) or bilateral agreement with another country, with a view to ensuring migrant workers' welfare and rights.¹⁵⁵ Such an agreement must be concluded on the basis of, among others, the principle of protecting the rights, safety and human dignity of all migrant workers within the country, or while overseas, as well as their right to redress if their rights are violated in the concerned country.¹⁵⁶

The Act provides for the creation of a Labour Welfare Wing in Bangladesh's diplomatic missions in foreign countries. Their purpose is to expand labour market access and to protect migrant workers' rights.¹⁵⁷ Currently, 30 Labour Welfare Wings exist under the Ministry of Expatriates' Welfare and Overseas Employment.¹⁵⁸ Among their functions, Labour Wings resolve disputes between workers employed overseas and their employers.

¹⁵¹ Section 8 of the Domestic Violence (Prevention and Protection) Act.

¹⁵² Section 9 of the Domestic Violence (Prevention and Protection) Act.

¹⁵³ Section 2(3) of the Overseas Employment and Migrants' Act.

¹⁵⁴ Section 6 of the Overseas Employment and Migrants' Act.

¹⁵⁵ Section 25(1) of the Overseas Employment and Migrants' Act.

¹⁵⁶ Section 25(2) of the Overseas Employment and Migrants' Act.

¹⁵⁷ Section 23 of the Overseas Employment and Migrants' Act.

¹⁵⁸ Government of Bangladesh, Ministry of Expatriates' Welfare and Overseas Employment, "Labour Wings", 2019.

According to the Ministry's Annual Report for 2018–2019, 99 per cent of all such disputes brought before Labour Wings have been resolved.¹⁵⁹ The annual report does not provide further information on the types of disputes. Therefore, it is unclear whether resolved disputes included cases of violence and harassment.

The Overseas Employment and Migrants' Act is especially significant as it enacts specific provisions on migrant workers' rights¹⁶⁰ for the first time in Bangladesh's history. These include their right to receive legal aid¹⁶¹ and the right to file civil suits. If a migrant worker is affected by a violation of any provision of the Act, or of their employment contract, they may file a civil suit for compensation. These rights do not affect the right to pursue criminal prosecution for any offence under the Act.¹⁶²

The Act provides penalties for various irregularities or breaches by recruitment agencies and other concerned persons.¹⁶³ For instance, if a person sends or assists the sending of a worker overseas for the purpose of employment, or enters into a contract on behalf of another person, in violation of provisions of the Act, the person or agency is liable to up to five years of imprisonment and a fine of no less than BDT 100,000 (one *lakh*).¹⁶⁴ The maximum penalty is up to 10 years in prison and a fine of BDT 500,000 (five *lakh*).¹⁶⁵ Offences under the Act are tried by a First Class Judicial Magistrate or, as the case may be, the Metropolitan Magistrate.¹⁶⁶ Alongside these subordinate criminal courts, the Act also allows Mobile Courts¹⁶⁷ to dispense justice under the law.¹⁶⁸

Under the Act, any 'aggrieved person' may file a complaint, including a complaint of fraud, demands for money related to costs at unapproved rates, or the breach of a contract. Complaints may be filed with a relevant government authority against any person, including a recruitment agent.¹⁶⁹ If the government authority's investigation finds the complaint to be true, it may be disposed of directly or through arbitration (*salish*) within three months of the investigation's completion.¹⁷⁰ The Act specifies that procedures for resolving complaints through arbitration are to be prescribed by Rules¹⁷¹, although these have not yet been adopted by the Government.¹⁷²

¹⁵⁹ Government of Bangladesh, Ministry of Expatriates' Welfare and Overseas Employment, *Annual Report 2018–2019*, 2019.

¹⁶⁰ Refugee and Migratory Movements Research Unit (RMRRU), "Ensuring Protection under the Overseas Employment and Migration Act 2013", Policy Brief 20, 2016.

¹⁶¹ Section 27 of the Overseas Employment and Migrants' Act.

¹⁶² Section 28 of the Overseas Employment and Migrants' Act.

¹⁶³ Chapter VIII of the Overseas Employment and Migrants' Act.

¹⁶⁴ Section 32 of the Overseas Employment and Migrants' Act.

¹⁶⁵ For instance, penalties apply for arranging departure through places other than the specified places of departure under section 34 of the Overseas Employment and Migrants' Act.

¹⁶⁶ Subordinate criminal courts; see section 38 of the Overseas Employment and Migrants' Act.

¹⁶⁷ Mobile Courts are established under the Mobile Courts Act, 2009, which gives executive and district magistrates the judicial authority to instantly take into 'cognizance' and try certain offences specified in the Schedule to the Act.

¹⁶⁸ Section 40 of the Overseas Employment and Migrants' Act.

¹⁶⁹ Section 41 of the Overseas Employment and Migrants' Act.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² Global Alliance Against Traffic in Women and Ovivashi Karmi Unnayan Program, "Bangladesh Civil Society Shadow Report: International Convention on the Protection of the Rights of All Migrant Workers' and their Families", March 2017. Considered during the 26th session in April, 2017.

The Bureau of Manpower Employment and Training (BMET), under the Ministry of Expatriates' Welfare and Overseas Employment, is the authority that currently receives and investigates these complaints. According to the ministry's Annual Report, during the 2018–2019 financial year, the Bureau disposed of 597 complaints.¹⁷³ Further information on the background of complainants, including their gender, is not available.

3.2.5 Bangladesh Labour Act, 2006

The Bangladesh Labour Act (BLA) does not address 'discrimination' or expressly include any provision that prohibits discrimination on any grounds. The Act contains a vaguely-worded provision that prohibits behaviour that is "*indecent or unmannerly or which is repugnant to the modesty or honour*" of any women under section 332.¹⁷⁴ This prohibition is enforced by the general penalty of imprisonment for up to three months, or fine of up to BDT 25,000.¹⁷⁵

The Department of Inspection for Factories and Establishments (DIFE), which is part of the Ministry of Labour and Employment, is authorized to ensure the implementation of the Bangladesh Labour Act and the Bangladesh Labour Rules in order to secure a better working environment for workers.¹⁷⁶ Monitoring any breaches of section 332 also falls within the department's responsibilities. However, it does not have executive authority to directly take any action on breaches. Its only remedy is to lodge a complaint with a labour court.¹⁷⁷ Labour inspectors, moreover, do not have the authority to issue an interim order sanctioning non-compliance.¹⁷⁸

All offences under the Bangladesh Labour Act are tried by the labour courts.¹⁷⁹ For the purpose of trying an offence, the labour courts have the same power as a First Class Magistrate under the Code of Criminal Procedure.¹⁸⁰ Any party aggrieved by an award, decision, sentence or judgment given or passed by a labour court may appeal to the Labour Appellate Tribunal¹⁸¹, constituted under section 218 of the Bangladesh Labour Act. Tribunal decisions on appeals are considered final.

3.2.6 High Court Division's directives on sexual harassment

In 2009, the High Court Division (HCD) of the Supreme Court of Bangladesh issued a landmark judgement¹⁸² acknowledging the need for a legal framework to address sexual harassment. This judgement offers detailed guidelines for all workplaces and educational institutions, and categorically specifies that these directives must be followed until adequate and effective legislation is passed.

¹⁷³ Government of Bangladesh, Ministry of Expatriates' Welfare and Overseas Employment, *Annual Report 2018–2019*, 2019.

¹⁷⁴ Section 332 of the Bangladesh Labour Act.

¹⁷⁵ Section 307 of the Bangladesh Labour Act.

¹⁷⁶ Government of Bangladesh, Ministry of Labour and Employment, Department of Inspection for Factories and Establishments, "*Vision & Mission*", 15 November 2016.

¹⁷⁷ Section 319 of the Bangladesh Labour Act.

¹⁷⁸ This was also highlighted in the Key Informant Interview with a representative of the Department of Inspection for Factories and Establishments.

¹⁷⁹ Section 214 of the Bangladesh Labour Act.

¹⁸⁰ Section 215 of the Bangladesh Labour Act.

¹⁸¹ Section 217 of the Bangladesh Labour Act.

¹⁸² Supreme Court of Bangladesh, High Court Division, *Bangladesh National Women Lawyers' Association (BNWLA) vs. Government of Bangladesh and Others*, 29 BLD 415, 2009.

Drawing on the validity of such directives as having the force of law, the Supreme Court further stated that: *“These directives are aimed at filling up the legislative vacuum in the nature of law declared by the HCD under the mandate and within the meaning of Article 111 of the Constitution.”*¹⁸³

In 2010, another petition was filed in the High Court Division on harassment in public places and stalking. As noted above, this came in the wake of several suicides prompted by such harassment. The judgment pronounced in 2011¹⁸⁴ supplemented the 2009 guidelines by addressing sexual harassment in public places, and condemning the use of the term ‘eve-teasing’ to refer to such abuse. The 2011 directive does not define its scope or who can be a ‘complainant’. However, in several instances the judgment refers to the sexual harassment of women. ‘Complainants’ in certain instances are referred to with the feminine pronoun ‘her’, implying that the court only had women in mind when it issued its directive.

Guidelines for workplaces and educational institutions, 2009

The Court issued guidelines for all workplaces and educational institutions in the public and private sectors in Bangladesh. The term ‘workplace’ or ‘educational institution’, however, is not defined in the judgment. The aims and objectives of the guidelines include: (i) *“to create awareness about sexual harassment”*, (ii) *“to create awareness about the consequences of sexual offences”*, and (iii) *“to create awareness that sexual harassments is [a] punishable offence”*. The guidelines make it the duty of employers and other responsible persons in workplaces, and the authorities of all educational institutions, to: (i) *“maintain an effective mechanism to prevent or deter the commission of offences of sexual abuse and harassments”*, and (ii) *“to provide effective measures for prosecution of the offences of sexual harassments resorting to all available legal and possible institutional steps”*.

Significantly, the guidelines offer a relatively comprehensive list of behaviours or acts amounting to sexual harassment, including both ‘quid pro quo’ acts and those that create a ‘hostile working environment’. The guidelines define sexual harassment as including:

- a) *unwelcome sexually determined behaviour (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.*
- 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;*

¹⁸³ Paragraph 49 of the judgment.

¹⁸⁴ Supreme Court of Bangladesh, High Court Division, *Bangladesh National Women Lawyers’ Association (BNWLA) vs. Government of Bangladesh And Others*, 31 BLD 324, 2011.

- 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; [and]*
- l) *attempt to establish sexual relation by intimidation, deception or false assurance.*

The definition further states:

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 guidelines include detailed provisions for raising awareness of sexual harassment among all persons in an institution, in order to ensure a safe working environment for all. It specifies a number of preventive measures to address sexual harassment in workplaces, such as providing regular training on gender equality issues and publishing booklets, among others.

Most importantly, the guidelines direct all institutions to establish a Complaint Committee to receive complaints related to sexual harassment, to conduct investigations and make recommendations. Details on the formation and function of these committees include the fact that:

- i. Each committee must have at least five members, most of whom should be women. If available, a woman should head the committee.
- ii. At least two committee members should not be from the concerned organization; they should preferably be from organizations that work on gender issues and sexual abuse.
- iii. Each committee will submit annual reports to the Government on compliance with the guidelines.

Regarding the investigation procedure, the guidelines specify that a complaint must normally be lodged with the Complaint Committee within 30 working days of the incident. To verify the complaint, the committee will:

- i. dispose of the complaint with the consent of the parties involved in cases of 'minor harassment', and report to the concerned authority of the educational institution or workplace in the public or private sector.
- ii. investigate the matter, in all other instances.
- iii. have the power to send a registered notice by mail to the parties and witnesses, conduct a hearing, gather evidence, and examine all relevant papers. In such a complaint, in addition to oral evidence, emphasis is placed on circumstantial evidence. To support the committee's work, the related office of the educational institution or workplace are bound to extend any cooperation requested of them.

- iv. keep the identities of complainants confidential. While recording their testimony any question or behaviour which is intentionally base, insulting or harassing should be avoided.
- v. record the testimony on camera. If a complainant wants to withdraw their complaint or stop the investigation, their reason must be investigated and mentioned in the report.
- vi. submit an investigation report with recommendations within 30 working days to the concerned authority¹⁸⁵ of the educational institution or workplace. This period may be extended to 60 days if necessary.

In terms of sanctions, the guidelines provide that the concerned authority may temporarily suspend the accused person on receiving the Complaint Committee's recommendation. If the accused is found guilty of sexual harassment, the authority will treat this as a case of misconduct and take proper action within 30 days, according to the disciplinary rules of the workplace or institution. Alternatively, or in addition, the authority will refer any offence under penal law to the appropriate court.

Guidelines, 2011

The guidelines issued in the 2011 judgment add an additional clause in the definition of 'sexual harassment', thereby including 'stalking' as an act of sexual harassment. Stalking is defined as: *"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 provides specific examples of stalking, such as loitering outside a woman's place of residence or business, keeping a woman under surveillance, or contacting a woman by telephone or email, etc.¹⁸⁶

As this petition was filed to specifically address sexual harassment in public places, the guidelines include directives addressing public authorities. For example, the directives require every police station to have a separate cell or team solely dedicated to dealing with complaints or instances of sexual harassment. These cells/teams report to the existing District Law and Order Committee¹⁸⁷ through their superior police authorities. In turn, the Committee is directed to organize regular 'Meet the People' sessions for the press and women's and child rights activists. These sessions must update them on the incidence of sexual harassment in the district, as well as steps taken to punish perpetrators and prevent recurrence.

The guidelines require the Government to immediately complete its efforts to insert a new section in the Women and Children Repression Prevention Act defining the offence of 'sexual harassment' in light of the High Court Division's definition.

¹⁸⁵ The 2009 guidelines define a 'concerned authority' as *"any authority of educational institution or workplace in both private and public sectors, which is authorized under the relevant disciplinary rules to take action against misconduct"*. It defines 'disciplinary rules' as *"rules prescribed by any Act or Ordinance or any other subordinate legislations and includes any Rules framed for maintenance of discipline in any public or private institutions and workplaces"*.

¹⁸⁶ A detailed definition of stalking is provided on page 335 of the judgment, available online, <https://www.blast.org.bd/content/judgement/BNWLA-VS-Bangladesh2.pdf>

¹⁸⁷ The monthly Law and Order Committee meeting of the district administration.

The High Court Division also requested the Government to take immediate steps to enact laws for the effective protection of victims/survivors and witnesses of sexual harassment cases. The guidelines further call for immediate steps to formulate a law, or amend the existing law, incorporating specific provisions that give evidential value to the audio visual recorded statements of victims/survivors or witnesses of sexual harassment.

3.2.7 The Rights and Protection of Persons with Disabilities Act, 2013

The Rights and Protection of Persons with Disabilities Act (RPPD)¹⁸⁸ affirms the rights of persons with disabilities. Section 16 of the Act enshrines their right to equal legal recognition and access to justice, as well as the right to be employed in public and private establishments. Significantly, the Act mentions their right to a safe, healthy environment, and protection from torture. It prohibits any form of discrimination by any individual, institution, authority or organization against any person with disabilities with regard their rights declared in the Act.¹⁸⁹ Section 35 specifies that there cannot be any discrimination or restraint against any person with disabilities in terms of employment for which they are eligible to apply.

The Act calls for five tiers of committees to be established to oversee its implementation. These are the National Coordination Committee, the National Executive Committee, District Committees, Sub-district Committees and City Committees. Section 36 specifies that an 'aggrieved person' can make a complaint against discrimination to the District Committee and seek compensation.¹⁹⁰

Within two years of the Act, the Government formulated the Rights and Protection of Persons with Disabilities Rules, 2015, published through an official gazette notification.¹⁹¹ These clarify the roles of the committees at different levels and outline details of the registration process for persons with disabilities. They also outline how District Committees should address complaints of discrimination, and how they should decide the quantum and standard of compensation.¹⁹²

¹⁸⁸ Government of Bangladesh, "Acts and Ordinances", 2019.

¹⁸⁹ Sections 16(2) and 36(1) of the Rights and Protection of Persons with Disabilities Act.

¹⁹⁰ Section 36 of the Rights and Protection of Persons with Disabilities Act.

¹⁹¹ Centre for Peace and Justice, BRAC University and BRAC, *Study on the Rights and Protection of the Persons with Disabilities Act 2013: Adaptation, Application and Recommendation*, 2018; Government of Bangladesh, *Rights and Protection of Persons with Disabilities Rules*, 2015.

¹⁹² Ibid.

3.3 Policies and programmes relevant to gender-based violence and harassment in the world of work

In addition to laws which are binding and enforceable, Bangladesh's regulatory framework on gender-based violence in the world of work includes policies formulated by the Government. Although policies are not legally binding, they are useful for assessing the legal environment. They set goals to implement, or goals to enact a particular law, and serve as guidelines for the Government. This section briefly discusses key policies and strategies that are relevant to GBVH, principally focusing on preventing violence against women.

3.3.1 7th Five Year Plan, 2016–2020

The Bangladesh Planning Commission drafted the country's 7th Five Year Plan, which forms part of the Government's ongoing efforts to implement *Vision 2021*. When describing the strategy for justice and the rule of law, the plan states that *"violence against women will become a key focus of local justice institutions, requiring greater investment in capacity building at the district and upazila level, as well as the effectiveness of One-Stop Crisis Centres (OCCs) where VAW victims are taken, and awareness of the domestic violence law (DVPPA) among both local officials and the public"*.¹⁹³

When discussing the Government's strategy for achieving gender equality, the 7th Five Year Plan stresses the need to promote ongoing initiatives under the Multi-Sectoral Programme on Violence Against Women (MSPVAW). It recognizes the need to emphasize the prevention of such violence, rather than solely focusing on the state's responses to violence against women.¹⁹⁴ The plan also specifies that *"steps would be taken to enact legislation to address sexual harassment"*.¹⁹⁵

3.3.2 National Women Development Policy, 2011

The National Women Development Policy¹⁹⁶ aims to address multifaceted aspects of development for women. It mandates the state to ensure equal wages for women and men, to increase women's participation in the labour market, to ensure equal opportunities in work, to guarantee security, and to end disparities in employment.¹⁹⁷ Eliminating all forms of discrimination against, and the abuse of, women and girls are among the policy's key objectives.¹⁹⁸

The policy has a separate provision on measures to prevent violence against women, and to ensure women's and girls' protection. It mandates the state to eliminate all forms of such violence, including physical and mental abuse, sexual harassment, rape, dowry-related violence, family abuse, and acid attacks – in the household, society and the workplace.¹⁹⁹

¹⁹³ Government of Bangladesh, Planning Commission, General Economics Division, *7th Five Year Plan (FY2016-FY2020)*, 2015, p. 158.

¹⁹⁴ *Ibid*, p. 657.

¹⁹⁵ *Ibid*, p. 659.

¹⁹⁶ Government of Bangladesh, Ministry of Women and Children Affairs, *National Women Development Policy*, 2011.

¹⁹⁷ Clause 23 of the National Women Development Policy.

¹⁹⁸ Clause 16 of the National Women Development Policy.

¹⁹⁹ Clause 19 of the National Women Development Policy.

The policy also includes a number of action points, such as to change existing gender-discriminatory laws²⁰⁰, amend laws and, if necessary, to develop new laws to make the prevention of violence against women more effective²⁰¹.

3.3.3 National Action Plan on Violence against Women, 2013–2025

This National Action Plan on Violence against Women was formulated as part of the Multi-Sectoral Programme on Violence against Women to “provide a blueprint for change” by coordinating, prioritizing and strategizing the most effective forms of action in the short, medium and long-term, while evaluating progress. The plan focuses on seven main areas: “(i) legal arrangements, (ii) social awareness and mental transformation, (iii) advancement of women’s socio-economic status, (iv) protective services, (v) curative and rehabilitation services, (vi) inter-sectoral cooperation and (vii) community involvement.”²⁰²

The plan envisions the establishment of more Women and Children Repression Prevention Tribunals.²⁰³ It also highlights the need to ensure that these tribunals are made disability-friendly.²⁰⁴ It mentions the long-term intention of establishing at least one Children’s Court in every district, alongside special legal support cells at the *upazila* (administrative division) level.²⁰⁵ It further envisages the preparation of a training manual on gender and disability sensitivity for lawyers in district bar councils, as well as the planned legal support cells.²⁰⁶

3.3.4 National Labour Policy, 2012

The National Labour Policy²⁰⁷ refers to the Government’s commitment to adhere to International Labour Standards and the ILO Conventions that Bangladesh has ratified. It emphasizes creating a decent, safe and healthy work environment for all workers, which is free from discrimination and suppression.²⁰⁸

It also specifically requires the Government to take necessary steps to ensure safe, healthy work environments for women and to prevent workplace discrimination. To this end, it commits the state to introducing amendments to laws, whenever necessary.²⁰⁹ The policy acknowledges the need to protect workers in the informal sector and includes a provision directing the Government to enact necessary laws to ensure informal workers’ rights and well-being.²¹⁰

²⁰⁰ Clause 17 of the National Women Development Policy.

²⁰¹ Ibid.

²⁰² Government of Bangladesh, Ministry of Women and Children Affairs, “Multi-Sectoral Programme on Violence Against Women: National Action Plan on VAW”.

²⁰³ Government of Bangladesh, Ministry of Women and Children Affairs, *National Action Plan on Violence Against Women (2013–2025)*, 2013, p. 31.

²⁰⁴ Ibid.

²⁰⁵ Ibid, p. 35.

²⁰⁶ Ibid.

²⁰⁷ Government of Bangladesh, *National Labour Policy*, 2012.

²⁰⁸ Clause 4 of the National Labour Policy.

²⁰⁹ Clause 19 of the National Labour Policy.

²¹⁰ Clause 21 of the National Labour Policy.

3.3.5 National Occupational Health and Safety Policy, 2013

The purpose of the National Occupational Health and Safety Policy²¹¹ is to improve occupational safety and health (OSH) measures for all persons employed in the formal or informal sectors, so that “*death, injury and occupational disease caused during employment can be gradually reduced*”. It sets out the responsibilities of all stakeholders to improve OSH in workplaces, including the Government, employers’ associations, workers’ organizations and trade unions.

However, the policy does not specifically mention issues related to violence and harassment, including gender-based violence. It does not identify these issues as occupational health risks. In line with the policy, the Government is ultimately responsible for ensuring the occupational safety and health of women workers, and paying special attention to the needs of pregnant employees. Employers are directed to identify risks to workers’ OSH, and to ensure periodic medical examinations. Management committees and employers are also directed to identify and ensure women workers’ OSH. The general understanding of OSH is predominantly confined to workers’ deaths, occupational injuries or occupational diseases.

3.3.6 National Policy on Disability, 1995

The objectives of the National Policy on Disability²¹² are to ensure the equal participation of all, and equal opportunity for all, in line with constitutional principles and the UN Convention on the Rights of People with Disabilities. In terms of work, the policy states that suitable workplaces are to be identified for people with disabilities, and that proper in-service and other training opportunities should be provided.²¹³ It specifies that, in line with the prescribed rules, 10 per cent of jobs should be reserved for persons with disabilities. It explicitly states that equal opportunity in employment, promotion and posting will be ensured for “*all classes of persons with disabilities*” in all private or government jobs.²¹⁴ The policy calls for proper steps to ensure the free movement and access to information and entertainment by people with disabilities.

3.3.7 Domestic Workers Protection and Welfare Policy, 2015

The Domestic Workers Protection and Welfare Policy²¹⁵ states that the legal age at which a person can be engaged as a domestic worker will be guided by the Bangladesh Labour Act. Thus, it prohibits the employment of children, defined as workers below 14 years of age.

The policy specifically addresses workplace violence and harassment in clause 7. This states that under no circumstances can a domestic worker be subjected to abusive treatment, physical harm or psychological abuse. The clause accords the Government responsibility for ensuring justice in cases of the abuse of domestic workers. The clause also states that cases of sexual harassment and violence against domestic workers must be promptly addressed by the police.

²¹¹ Government of Bangladesh, *National Occupational Health and Safety Policy*, 2013.

²¹² Government of Bangladesh, *National Disability Policy*, 1995.

²¹³ Clause 8 of the National Disability Policy.

²¹⁴ *Ibid.*

²¹⁵ Government of Bangladesh, *Domestic Workers Protection and Welfare Policy*, 2015.

The costs of any legal proceedings will be borne by the state. The policy includes a reference to the Supreme Court's guidelines on sexual harassment, and calls for the creation of a helpline for domestic workers.

3.3.8 National Child Labour Elimination Policy, 2010

The National Child Labour Elimination Policy²¹⁶ was issued with the aim to eliminate various forms of child labour by 2015. It identifies the special vulnerability of young girls who are trafficked and sold into prostitution or pornographic activities. Employers are directed to adhere to certain conditions. For example, they are instructed not to subject child workers to physical, mental and sexual persecution and abuse. This is especially relevant for underage girls who work as domestic helpers. Employers are also prohibited from compelling a child to be involved in anti-social activities, or in any work that hampers their dignity or reputation. This is especially applicable in cases where children are engaged in prostitution.

3.3.9 Migrant Welfare and Overseas Employment Policy, 2016

The Migrant Welfare and Overseas Employment Policy²¹⁷ replaced the 2006 policy on overseas employment, bringing it in line with the International Convention on the Protection of the Rights of all Migrant Workers and their Families, 1990 (ICRMW). The new policy recognizes the need for a gender-sensitive approach to labour migration, in light of increasing instances of women migrant workers being subjected to abusive treatment in workplaces. It specifically emphasizes a gender-sensitive approach in all the activities of organizations and agencies engaged in labour migration-related protection and assistance.²¹⁸ One of the policy's objectives is to ensure gender equality by ensuring safe and decent overseas employment for women migrant workers, in line with CEDAW and other international instruments. It acknowledges the challenges faced by Bangladesh's diplomatic missions abroad, including their Labour Wings, in terms of ensuring compensation, protection and redress for women migrant workers who are exposed to torture, harassment and violence through their employment.²¹⁹

3.3.10 National Health Policy, 2011

The objectives of the National Health Policy²²⁰ include reducing the maternal and infant mortality rate, improving maternal and child health, and ensuring gender equality in health services. The policy acknowledges that gender inequality adds another dimension to the challenges of food insecurity and malnutrition, alongside social and cultural obstacles that hinder women's access to healthcare. It calls for specific attention to be paid to addressing violence against women. This includes creating women-friendly infrastructure to promote reproductive health and awareness of sexually transmitted diseases, such as HIV/AIDS. The policy also stresses the importance of affordable, people-friendly access to reproductive healthcare that meets the needs of marginalized groups and people with disabilities.

²¹⁶ Government of Bangladesh, *National Child Labour Elimination Policy*, 2010.

²¹⁷ Government of Bangladesh, *Migrant Welfare and Overseas Employment Policy*, 2016.

²¹⁸ Clause 1.8.4 of the Migrant Welfare and Overseas Employment Policy.

²¹⁹ Ibid.

²²⁰ Government of Bangladesh, *National Health Policy*, 2011.

3.3.11 Multi-Sectoral Programme on Violence against Women (MSPVAW)

The Multi-Sectoral Programme on Violence against Women is being implemented jointly by the Government of Bangladesh and the Government of Denmark. Since its pilot phase in May 2000 and its first phase in 2004, the programme has been led by Bangladesh's Ministry of Women and Children Affairs in collaboration with ten other ministries.²²¹ The programme's current fourth face will run until June 2021.

One of its landmark achievements is the establishment of One-Stop Crisis Centres (OCCs) in major cities to provide rehabilitation services, legal support and psychosocial counselling to survivors of gender-based violence. It has also enabled National DNA Laboratories to facilitate medical-legal examinations, created a National Trauma Counselling Centre to provide mental health support, and set up a National Centre on Gender-based Violence and a 24 hour National Helpline Centre. Between June 2012 and October 2018, the helpline received 1,198,524 calls.²²² The programme is now developing a National Database on Violence against Women.

²²¹ Government of Bangladesh, Ministry of Women and Children Affairs, "[Multi-Sectoral Programme on Violence against Women](#)".

²²² Government of Bangladesh, Ministry of Women and Children Affairs, "[Multi-Sectoral Programme on Violence against Women: National Helpline Centre for Violence Against Women and Children \(NHCVAWC\)](#)".



4. Implementation of laws, policies and practices to prevent and address gender-based violence and harassment in the world of work

After the Tazreen fire in 2012 and the Rana Plaza collapse in 2013, there has been an overwhelming emphasis on improving safety measures and regulations for workers in Bangladesh. To date, most of these initiatives have centred on the ready-made garment (RMG) sector. A focus on gender-based violence and harassment (GBVH) in workplaces emerged relatively recently. As discussed in previous chapters, research has uncovered a high incidence of GBVH including sexual harassment in the country's workplaces. Governmental and non-governmental actors have made some efforts to tackle GBVH, especially sexual harassment, against women at work.

Now, however, the issue is coming to the fore. Especially in the context of the ILO Violence and Harassment Convention, 2019 (No. 190), the discourse on violence and harassment in the world of work is drawing the much-needed attention of the Government, employers' and workers' organizations, civil society organizations (CSOs), and development partners.

In this context, this chapter provides information on the implementation of laws, policies and practices by stakeholders to prevent and respond to GBVH in Bangladesh. The information below was gathered through a desk review and key informant interviews (KIIs).

4.1 Implementation of laws and policies

4.1.1 Laws and policies related to gender-based violence

There is substantial room for improvement in Bangladesh's legislative framework on GBVH, as well as in the implementation of these laws. The conviction rate for rape and sexual offences is extremely low compared to rates of acquittal for cases brought before the Women and Children Repression Prevention Act Tribunals.²²³ The effective implementation of GBVH-related laws is hampered by delays in the investigation and disposal of cases, limited capacity or corruption among enforcing agencies, a lack of legal awareness and gender-sensitivity among duty bearers, and a lack of political will.²²⁴

²²³ Taslima Yasmin, "Sexual Violence in Bangladesh: Addressing gaps in the Legal Framework", *Dhaka University Law Journal*, 28 (2017), p. 109.

²²⁴ Taslima Yasmin, *Analysis of the discriminatory laws in Bangladesh from a gender perspective* (UN Women, 2020) (unpublished).

A lack of focus on GBVH in trainings by government agencies assigned to implement GBVH-related laws is also a crucial lacuna. For instance, the Ministry of Expatriates' Welfare and Overseas Employment, and bodies working under the ministry, are mandated to train migrant workers. However, a general overview of training conducted by these bodies and recruiting agencies²²⁵ indicates that they largely do not focus on skills to address GBVH at work, especially for women workers. Instead, they focus on other issues, such as language skills and technical capacities.²²⁶

A focus on safeguarding workers against GBVH also seems to be lacking in contracts between recruiting agencies and employers in foreign countries, as well as in bilateral agreements with destination countries for migrant workers.²²⁷ No separate rules of procedure exist for settling migrant workers' arbitration disputes.²²⁸ As a result, cases brought to the attention of the Bureau of Manpower, Employment and Training are handled at the discretion of individual officers.²²⁹ In many cases, migrant workers are not treated uniformly by arbitration cells. Many are forced to accept smaller sums in compensation, while some have become the targets of biased investigation.²³⁰

The implementation of the Domestic Violence (Prevention and Protection) Act has also been limited. A key reason for this is the lack of awareness of the law and the remedies it provides.²³¹ Moreover, as remedies are not penal in nature, litigants often find the forum ineffective in redressing their grievances.²³²

Some key informants interviewed for this study, who were directly involved in drafting the Act²³³, feel that giving jurisdiction to ordinary criminal courts for 'relief', which is mostly civil in nature, was a misstep. They pointed to Family Courts²³⁴ as a more appropriate forum in this regard. There is no available data on how many cases have been filed thus far under the Act. The records of individual non-governmental organizations (NGOs) that appoint paralegals to assist victims/survivors of domestic violence to file cases under the Act indicate that the number of cases filed is far lower than reported incidents of domestic violence.²³⁵

Each law in Bangladesh related to GBVH has different judicial forums, procedures and enforcement mechanisms. As such, there is a need to conduct separate, in-depth research on each specific law to assess their implementation status and reasons for weak implementation.

²²⁵ Overview of the information available on the official webpage.

²²⁶ Refugee and Migratory Movements Research Unit (RMRRU), "Ensuring Protection under the Overseas Employment and Migration Act 2013", Policy Brief 20, 2016.

²²⁷ KII with the representative of the University of Dhaka.

²²⁸ Shahiduzzaman Khan, "Woman migrant workers need protection", in *The Financial Express*, 9 November 2019.

²²⁹ Ovibashi Karmi Unnayan Program (OKUP) and CARAM Asia, *A Critical Review: Legal Redress and Health Services for Bangladeshi Migrant Workers*, 2013.

²³⁰ Ibid.

²³¹ Section 5 of the Domestic Violence (Prevention and Protection) Act.

²³² KII with the representative of BLAST.

²³³ KII with the representatives of BNWLA and Naripokkho.

²³⁴ Family Courts, constituted under the Family Courts Ordinance, 1985, are all Assistant Judges Courts that receive applications under the Ordinance.

²³⁵ KII with the representatives of Naripokkho, BNWLA and BLAST.

4.1.2 Labour laws

Not adhering to labour laws or regulations in workplaces is a key driver of violence and harassment in the world of work.²³⁶ A number of studies have identified violations of the Bangladesh Labour Act, particularly provisions related to workers' rights and welfare. The most common instances of non-compliance include the absence of a letter of appointment²³⁷, the lack of mandatory health services²³⁸, the lack of maternity benefits²³⁹, and mandatory night duty for women workers without their consent.²⁴⁰ Poor working conditions that result from non-compliance reduce workers' bargaining power and increase the risk of violence and harassment. Non-compliance more often prejudices women workers, exposing them to sexual harassment at work.²⁴¹ As discussed above, section 332 of the Bangladesh Labour Act prohibits behaviour that is "*indecent or unmannerly or which is repugnant to the modesty or honour*" of workers. While this prohibition specifies a penalty²⁴², its wording is not considered clear and the provision is rarely invoked by victims/survivors of sexual harassment.²⁴³

Labour inspections by the Department of Inspection for Factories and Establishments employ a checklist that covers questions on violence and harassment. The Labour Inspection Checklist²⁴⁴ includes three questions relevant to section 332 of the Bangladesh Labour Act. It asks whether there is any effective complaint mechanism available against physical, psychological or sexual harassment in the establishment; whether women workers are aware of the complaint and investigation procedure; and whether they face any restraints when filing complaints. Labour inspectors are required to accord a score – from 2 to 0 – for against each question, denoting 'full compliance', 'partial compliance' or 'nominal or no compliance'.

4.1.3 High Court Division guidelines, 2009

The High Court Division's 2009 guidelines made it mandatory for all public and private institutions to implement its directives as law. In practice, however, most institutions have not complied with the guidelines.²⁴⁵ Some 54.9 per cent of workers surveyed by Karmojibi Nari – totalling 1,002 workers in 113 ready-made garment factories – were not aware of the existence of an Anti-harassment Committee in their workplaces. Moreover, 33 per cent reported that their factories did not have any such committee.²⁴⁶

²³⁶ Andrew Gibbs et al. "[Workplace Violence in Bangladesh's Garment Industry](#)", *Social Science and Medicine* (2019), p.2.

²³⁷ Karmojibi Nari, [Monitoring work and working condition of women employed in ready-made garment industries of Bangladesh](#), 2019.

²³⁸ ILO, [Improving Working Conditions in the Ready-Made Garment Sector: Bangladesh Baseline Study](#), 2017.

²³⁹ Ibid.

²⁴⁰ Karmojibi Nari, [Monitoring work and working condition of women employed in ready-made garment industries of Bangladesh](#), 2019.

²⁴¹ This was also commonly cited by the majority of key informants interviewed for this study.

²⁴² Section 332 of the Bangladesh Labour Act.

²⁴³ Taslima Yasmin, [Gender Based Violence at Workplace Is Real: Happening Everyday at Every Workplace](#) (ActionAid Bangladesh, 2019).

²⁴⁴ Government of Bangladesh, Ministry of Labour and Employment, Department of Inspection for Factories and Establishments, "[Inspection Checklist](#)", 2019.

²⁴⁵ Pratiksha Baxi, "[Sexual Harassment](#)", n.d.

²⁴⁶ Ibid.

A Fair Wear Foundation (FWF) report reveals a general lack of understanding of the guidelines, among both workers and factory management, as well as limited understandings of how the guidelines affect their rights and responsibilities.²⁴⁷ According to the foundation's 2015 Bangladesh country study, only 50 per cent of audited factories had an Anti-harassment Committee. 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 the committee's activities.²⁴⁸

A study by ActionAid Bangladesh in 2018 found an absolute lack of awareness about the 2009 guidelines among senior management and workplace owners in various sectors.²⁴⁹ A 2017 Human Rights Watch report on sexual harassment in the garment industry also found that workers interviewed were not aware of the guidelines, or of any cases of harassers being held accountable.²⁵⁰ Most of informants interviewed for this present study also emphasized that awareness of the 2009 guidelines remains extremely limited, leading to a lack of implementation across economic sectors.

Another reason that the High Court Division's guidelines are not well-implemented is that there are no mechanisms designed to enforce or monitor their 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 guidelines' enforcement and monitoring. The guidelines do not propose how ministries or government agencies should coordinate to formulate a strategy on their implementation, or which entities should monitor implementation in different sectors or institutions. Key informant interviews with relevant government agencies reveal a lack of concerted efforts to introduce a comprehensive strategy or plan of action to ensure the guidelines' enforcement and monitoring. Nevertheless, these interviews reveal that some government departments have set up internal Complaint Committees to investigate allegations of sexual harassment among their own staff.²⁵¹ There is no officially available data on how many such committees exist, or how many complaints they have received. Similarly, there is no data available on how many private organizations, factories, establishments or educational institutions have formed committees as per the 2009 guidelines.

In May 2019, six rights organizations – including the Bangladesh National Women Lawyers' Association – again submitted a petition to the High Court Division. 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 guidelines.²⁵²

²⁴⁷ Fair Wear Foundation, "[Violence and Harassment against Women and Men in the Global Garment Supply Chain](#)", Contribution to the standard setting discussions at the 107th International Labour Conference, 2018.

²⁴⁸ Fair Wear Foundation, [Bangladesh Country Study 2018](#), 2018.

²⁴⁹ Taslima Yasmin, *Sexual Harassment at Educational Institutions and Workplaces: A study on the Implementation Status of the 2009 Supreme Court Guidelines* (ActionAid Bangladesh, 2018).

²⁵⁰ Human Rights Watch, "[Tackling Sexual Harassment in the Garment Industry](#)", 11 December 2017.

²⁵¹ KII with the representatives of the Ministry of Labour and Employment and the Department of Inspection for Factories and Establishments.

²⁵² The Daily Star, "[Not forming body to prevent sexual harassment disappointing: HC](#)", 6 May 2019.

The High Court Division's response stated that: *"Bangladesh is much ahead than many other countries in empowering women but its negligence in forming the committee[s] to prevent sexual harassment at educational institutions and workplaces is disappointing"*.²⁵³ 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.²⁵⁴ The case is now pending further hearings.²⁵⁵

Alongside a lack of enforcement mechanisms, limited awareness is a key challenge. Key informant interviews with civil society representatives indicated the need to raise awareness of the judgment among employers, employees and others, across different sectors. Beyond some attempts by advocacy groups, large-scale awareness raising on the judgement has not taken place. This study's interview with a representative of the Department of Inspection for Factories and Establishments also highlighted the need for awareness raising. Especially in terms of factory inspections, there is a lack of training of labour inspectors, workers and employers on the 2009 guidelines and the obligations it imposes on government agencies and the owners of establishments.

Another challenge is the fact that the 2009 guidelines do not clarify a number of issues or provide a definition of sexual harassment. The guidelines specify a list of examples of behaviours and acts that may amount to sexual harassment, but they do not legally define the term. Gaps also exist within the guidelines in terms of provisions for the formation of committees, sanctions, and investigations. For instance, the guidelines do not discuss quorum, termination or expiry of Complaint Committees' membership, or protection for complainants against retaliation from employers. Some organizations that have tried to implement the guidelines found them confusing and, at times, conflicting with existing human resource policies.²⁵⁶

Key informant interviews with representatives of workers' and employers' associations indicated limited awareness of the 2009 guidelines among workers in the ready-made garment sector. Representatives of employers' organizations – the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA) – agreed on the need for an effective mechanism to prevent sexual harassment in workplaces. However, they noted that employers consider the guidelines' requirement on Complaint Committees' membership – that is, that each committee should include members from outside an organization – a major challenge to maintaining the confidentiality of internal proceedings. Employers are concerned about finding external members who are not biased and cautious of their companies' reputation. Key informant interviews with employers revealed their fear of losing buyers' trust if harassment is reported, and potential additional compliance costs being imposed by buyers.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ KII with from the representative of the Bangladesh National Women Lawyers' Association.

²⁵⁶ Taslima Yasmin, *Sexual Harassment at Educational Institutions and Workplaces: A study on the Implementation Status of the 2009 Supreme Court Guidelines* (ActionAid Bangladesh, 2018).

Employers' general unwillingness to provide an internal forum on sexual harassment was reflected upon by several interviewees.²⁵⁷ One key informant²⁵⁸ indicated that employers tend to deny the existence of sexual harassment or violence in their workplaces, and are often opposed to the formation of internal Complaint Committees. Employers fear that such a forum would open the floodgates, that employees may 'misuse' the opportunity to complain, and that complaints would negatively impact the establishment's reputation. Despite this fear of misuse, opposition to third party interference and denial of harassment, key informants from employers' associations also voiced their willingness to assist the Government and development partners in ensuring violence and harassment-free workplaces. The general impression offered by key informants was that, although the 2009 regime may not be completely agreeable to employers, employers' associations and leaders would be willing to cooperate if all concerned parties decide to jointly work towards the greater welfare of workers and workplaces.

4.2 Practices and initiatives

4.2.1 Government

The Government of Bangladesh has implemented several initiatives to address violence against women. These include initiatives by the Ministry of Labour and Employment in the world of work, implemented with the financial and technical support of international organizations. Between January 2010 and December 2012, the ministry's project, 'Promoting Gender Equality and Preventing Violence against Women at the Workplace', was undertaken with the ILO's support. It provided awareness raising training on all forms of harassment, including sexual harassment at work. The project also aimed to secure decent working environments for women workers and reduce violence against them.²⁵⁹

The 'Changing Gender Norms of Garments Employees' (2014–2017) project provided trainings and prepared training modules to raise awareness of gender issues.²⁶⁰ It has trained 21,950 workers, supervisors and mid-level managers.²⁶¹ Since 2017, the ministry has been implementing the 'Gender Equality and Women's Empowerment at Work Place' project with the support of the United Nations Population Fund (UNFPA). The project, which will run until 2020, focuses on the ready-made garment sector, the footwear sector and tea gardens. Its activities include formulating strategies that specifically address gender-based violence at work, as well as training labour inspectors and police officers to address gender-based violence in the workplace and provide information on sexual and reproductive health. According to the ministry's Annual Report for 2018–2019, 138 seminars and workshops were conducted to train inspectors of the Department of Inspection for Factories and Establishments on issues related to gender-based violence.²⁶²

²⁵⁷ KIIs with workers' organizations, CSOs, government departments and independent researchers.

²⁵⁸ Representing a CSO.

²⁵⁹ Government of Bangladesh, Ministry of Finance, Finance Division, "Chapter 12: Ministry of Labour and Employment", *Annual Report 2018–2019*, 2019.

²⁶⁰ Government of Bangladesh, Ministry of Labour and Employment, *Nine Years Success (2009–2018)*, n.d.

²⁶¹ Ibid.

²⁶² Ibid.

The project also encompasses training for officials of the Department of Labour and industrial relations institutes, as well as incorporating gender-based violence in existing ‘pre-service’ and ‘in-service’ trainings of institutions under the Ministry of Labour and Employment. Other activities strive to increase civil society organizations’ participation and facilitate access to information and redress mechanisms to prevent violence.²⁶³ The ministry’s report notes that the project trained 4,000 workers in 80 factories on gender-based violence, empowerment and reproductive health rights.²⁶⁴

In 2018, the Department of Inspection for Factories and Establishments developed and launched the web-based Labour Inspection Management Application (LIMA). Created with the support of the ILO’s Improving Working Conditions in the Bangladesh Ready-Made Garment Sector Programme²⁶⁵, the application is accessible through smartphones and computers. Using the LIMA, workers can submit complaints and check on their progress.²⁶⁶ By digitizing the labour inspection process, the application aims to increase the department’s transparency and efficacy. As of August 2019, 1,028 factories were inspected through the LIMA.²⁶⁷ The application may provide an avenue for workers to report workplace violence, although awareness raising and training are needed to help workers use the application to its full potential.

4.2.2 Employers’ organizations

Employers’ organizations, such as the Bangladesh Employers’ Federation (BEF)²⁶⁸, and sectoral business associations, such as the Bangladesh Garment Manufacturers Exporters Association (BGMEA)²⁶⁹ and the Bangladesh Knitwear Manufacturers Exporters Association (BKMEA)²⁷⁰, are proactive in partnering with the ILO and the Ministry of Labour and Employment to promote employers’ rights, workplace safety and labour relations.

A Centre of Excellence for the Bangladesh Apparel Industry’ was created with the support of the BGMEA and the ILO. Here, garments workers, especially women, can access different types of training.²⁷¹ Employers’ associations regularly conduct training for employers on labour issues, such as labour laws, safety and compliance.²⁷² The BKMEA project, ‘A New Business-driven Approach to Women’s Empowerment in the Ready-made Garment Industry’, aims to mainstream a gender-focused human resource management system and business performance processes in the sector.²⁷³ However, based on key informant interviews and an overview of activities published on these organizations’ websites, limited priority appears to be given to non-discrimination, gender-based violence and harassment in workplaces.

²⁶³ Government of the People’s Republic of Bangladesh, Ministry of Labour and Employment, *Annual Report 2018–2019*, 2019.

²⁶⁴ Ibid.

²⁶⁵ The application is available online, <http://lima.dife.gov.bd>

²⁶⁶ Government of Bangladesh, Ministry of Labour and Employment, Department of Inspections for Factories and Establishments, *Labour Inspection Management Application (LIMA)*, 2018.

²⁶⁷ Government of Bangladesh, Ministry of Labour and Employment, *Annual Report 2018–2019*, 2019.

²⁶⁸ See the federation’s website, <http://bef.org.bd>

²⁶⁹ See the association’s website, <https://www.bgmea.com.bd>

²⁷⁰ See the association’s website, <https://bkmea.com>

²⁷¹ Government of Bangladesh, Ministry of Women and Children Affairs, *Comprehensive National Review Report for Beijing + 25: Implementation of the Beijing Declaration and Platform for Action 1995*, 2019.

²⁷² Bangladesh Employers’ Federation, “Training Unit”, 2020.

²⁷³ Bangladesh Knitwear Manufacturers and Exporters Association, “BKMEA: We Women”, 2019.

4.2.3 Workers' organizations

Workers' organizations, including the Federation of Trade Unions, are active in promoting workers' labour rights. To date, however, their activities have focused only loosely on violence and harassment in workplaces.²⁷⁴ In April 2018, Bangladesh's two principal workers' organizations – the National Coordination Committee for Workers Education (NCCWE)²⁷⁵ and the IndustriALL Bangladesh Council (IBC)²⁷⁶ – jointly formed the Workers Resource Centre (WRC). This platform aims to build the capacity of trade unions in the ready-made garment sector, helping them operate more effectively and offer better services to their members.²⁷⁷ The initiative is supported by the ILO's Social Dialogue and Harmonious Industrial Relations project.²⁷⁸ The centre is designed to provide advocacy services, awareness raising, and training on a range of issues. These include workers' rights, dispute resolution, grievance handling, negotiation, collective bargaining, and occupational safety and health.²⁷⁹ A team of paralegals is being put in place to provide legal advice to trade unions and federations to address labour grievances and disputes.²⁸⁰

In February 2020, the IndustriALL Bangladesh Council launched a Youth Committee.²⁸¹ Its key priorities are addressing workers' concerns on precarious work and stopping sexual harassment in workplaces.²⁸² The National Garment Workers Federation (NGWF), another trade union federation in the garment industry, also conducts training for women workers. Implementing gender equality in workplaces is among the activities listed on its official website.²⁸³

4.2.4 Other organizations

A number of international and national organizations work on preventing and addressing GBVH, including sexual harassment, in the world of work in Bangladesh, especially in the ready-made garment sector.

The ILO Country Office for Bangladesh supports the Government, employers' and workers' organizations in promoting decent and productive employment opportunities for women and men. Its Improving Working Conditions in the Ready-Made Garment Sector Programme (Phases I and II) supports the Department of Inspection for Factories and Establishments to advance gender equality by addressing key issues, including discrimination and sexual harassment (see box 4).

²⁷⁴ KII response from several CSOs and UN Representatives.

²⁷⁵ The National Coordination Committee for Workers' Education is a united platform of 13 major national trade union federations in Bangladesh. It is affiliated with International Trade Union Confederation (ITUC) and the World Federation of Trade Unions (WFTU); Fair Wear Foundation, *Bangladesh Country Study 2018*, 2018.

²⁷⁶ IndustriALL Bangladesh Council has a strong presence in the ready-made garment sector and is affiliated with the IndustriALL Global Union; Fair Wear Foundation, *Bangladesh Country Study 2018*, 2018.

²⁷⁷ ILO, *Workers Resource Centre (WRC)*, n.d.

²⁷⁸ Ibid.

²⁷⁹ The Financial Express, "WRC to help build capacity of trade unions in garment sector", 12 April 2018.

²⁸⁰ Ibid.

²⁸¹ IndustriALL, "IndustriALL Bangladesh Council launches youth committee", 18 February 2020.

²⁸² Ibid.

²⁸³ National Garment Workers Federation, "Implementation & Achievement of NGWF", 2019.

Box 4. Improving Working Conditions in the Ready-Made Garment Sector Programme (RGMP), Phases I and II, October 2013–June 2023

Under the Improving Working Conditions in the Ready-Made Garment Sector Programme, the ILO provides technical support to the Department of Inspection for Factories and Establishments, strengthening its capacity to advance gender equality. Programme interventions include the development of Labour Inspection Checklists that incorporate specific gender issues, such as sexual harassment and violence against women.

They also include the provision of scooters and motorcycles for labour inspectors, to improve the mobility and effectiveness of both men and women inspectors. A Gender Roadmap 2020–2030 is also being developed for the department, based on inputs and consultations with staff and officials. One of its key priorities is reducing all forms of violence against women, including sexual harassment.

Sources: ILO, *Towards safer working conditions in the Bangladesh ready-made garment sector: The activities and results of the first phase of ILO's Improving Working Conditions in the Ready-Made Garment Sector Programme (2013-2017)*, 2017; ILO, "Improving Working Conditions in the Ready-Made Garment Sector in Bangladesh (RMGP Programme)", 2020.

Better Work Bangladesh focuses on improving working conditions and opportunities for women, advancing their productivity and career progression, and promoting their health and safety (see box 5). The Fair Wear Foundation has also been active in eliminating violence and harassment, especially gender-based violence, in garment supply chains (see box 6).

Box 5. Better Work Bangladesh

The ILO's Better Work Programme, in collaboration with the International Finance Corporation (IFC), brings together all levels of the garment industry to improve working conditions, promote respect for workers' labour rights, and boost businesses' competitiveness. The programme is active in 1,700 factories that employ more than 2.4 million workers in seven countries.

For example, the programme's Gender Equality and Returns (GEAR) initiative trained 144 women workers in its pilot phase. Now, 58 of these trainees are in supervisory roles, with a 39 per cent increase in their salaries. GEAR is being scaled up to train 700 women operators and their managers in 70 factories. With the United Nations Children's Fund (UNICEF), Better Work Bangladesh (BWB) is promoting breastfeeding and maternity rights for working mothers in 80 garment factories.

BWB provides in-factory and classroom training on sexual harassment to managers, supervisors and workers. It is helping garment factories to address sexual harassment by putting into place adequate systems to manage and address complaints, providing training, promoting women supervisors, and facilitating meaningful worker-management dialogue with fairly-elected representatives. As of 2018, it had offered sexual harassment prevention (SHP) training to over 400 factory workers and supervisors.

On 10 October 2019, BWB, in collaboration with H&M, conducted a seminar on the High Court Division's judgment on preventing sexual harassment, in light of the ILO's recently adopted Violence and Harassment Convention (No. 190). This drew together 40 participants from 23 garment factories, including 33 mid-level workers. The seminar was designed to improve participants' understanding of different forms of sexual harassment and prevention mechanisms, in line with the High Court Division's judgment.

Sources: Better Work, "[The Programme](#)", 2020; Better Work, "[Better Work Bangladesh](#)", 2020.

Box 6. Fair Wear Foundation

The Fair Wear Foundation (FWF) is an international, multi-stakeholder, non-profit organization that works with clothing companies and their supply chains to improve working conditions in garment factories. By becoming a member of the foundation, a company commits to implementing its Code of Labour Practices throughout its supply chain. Currently, more than 80 textile and apparel companies have joined the foundation. Gender equality and violence prevention is one of its key focus areas. The foundation works with its brand members and their suppliers to prevent violence and harassment in factories, while ensuring that supply chain practices reduce the risks of violence and harassment for garment workers.

In 2012, the Fair Wear Foundation's Violence and Harassment Prevention Programme was established in India and Bangladesh, as part of its overarching Workplace Education Programme (WEP). Member brands that decide to participate in the Violence and Harassment Prevention Programme request the participation of their supplying garment factories. Their workers, supervisors and management receive training, which concludes with the establishment of a functional Internal Complaints Committee in India, or an Anti-harassment Committee in Bangladesh. More than 20 of the foundation's members have already enrolled their suppliers in the programme.

By piloting new workplace procedures, the programme aims to prevent and respond to different forms of workplace violence, including verbal and physical abuse, sexual harassment, forced labour and sexual assault. This occurs through the creation of workplace harassment systems in garment factories. An effective workplace harassment system includes a company policy, a grievance procedure, the support of top management, the involvement of workers, and the development of a workplace Anti-harassment Committee.

Sources: Fair Wear Foundation, "[Violence and Harassment against Women and Men in the Global Garment Supply Chain](#)", Contribution to the standard setting discussions at the 107th International Labour Conference, 2018; Fair Wear Foundation (2018), [Breaking the Silence: The FWF Violence and Harassment Prevention Programme](#), 2018; Fair Wear Foundation, "[Bangladesh](#)", 2020.

Other organizations also work to advance gender equality in Bangladesh. The Netherlands Development Organisation (SNV) implements the Working with Women Project, Phase II (2017–2021). This aims to improve the health and well-being of garment workers in Bangladesh through inclusive business practices across the ready-made garment value chain.²⁸⁴ Its key activities include supporting the implementation of workplace policies on sexual and reproductive health and rights (SRHR) in garment factories by identifying knowledge gaps and providing capacity building support to incorporate SRHR-related issues.²⁸⁵

BRAC's Gender Justice and Diversity Division focuses on preventing gender-based violence and sexual harassment in workplaces and public spaces. BRAC is also actively involved in national and international policy advocacy through different human rights organizations, networks and alliances of government organizations, NGOs and CSOs.

The Bangladesh Legal Aid and Services Trust (BLAST) actively campaigns for the implementation of the High Court Division's 2009 guidelines in various workplaces and educational institutions, in partnership with other organizations like UN Women and BRAC.²⁸⁶ It regularly advises other institutions in formulating anti-sexual harassment policies and implementing the 2009 guidelines.

The Awaj Foundation is another entity working for harassment-free workplaces for women workers in the ready-made garment sector. In partnership with the Fair Wear Foundation and Karmojibi Nari, it seeks to set up Anti-harassment Committees in ready-made garment factories. Thus far, it has contributed to the creation of 13 such committees.²⁸⁷

The Manusher Jonno Foundation is active in advocating for a harassment-free work environment. As a part of its project, 'Strengthen Civil Society and Public Institutions to Combat Gender-based Violence and Build Community Resilience to Adapt Climate Change', it works with the Awaj Foundation and Karmojibi Nari to ensure that ready-made garment workers are safe from violence.²⁸⁸ The project raises awareness among men and women workers on gender-based violence-related issues and responses. It helps to establish institutional mechanisms in factories, such as Anti-harassment Committees and policies on sexual harassment. It also provides training to factory management on GBV and anti-harassment procedures.²⁸⁹

The Bangladesh Institute of Labour Studies (BILS) contributes to enhancing knowledge and awareness on preventing gender-based violence in workplaces by organizing campaigns, holding seminars and conducting research.²⁹⁰ Twelve major National Trade Union Federations are associated with the institute.²⁹¹ Its main objective is protecting workers' rights. To this end, it strives to promote just, worker-friendly policies and laws nationwide. It also acts as a catalyst, bringing together trade unions, civil society and the Government on labour market issues.²⁹²

²⁸⁴ SNV, "[Working with Women-II](#)", 2020.

²⁸⁵ Ibid.

²⁸⁶ As per the KII with the representative of BLAST.

²⁸⁷ Awaj Foundation, "[Harassment-free workplaces](#)", 2020.

²⁸⁸ Manusher Jonno Foundation, "[Brochures on MJF](#)", 2018.

²⁸⁹ Awaj Foundation, "[Strengthening civil society and public institutions to address gender-based violence](#)", 2020.

²⁹⁰ Bangladesh Institute of Labour Studies, *Bulletin July-August 2019*, 2019.

²⁹¹ Bangladesh Institute of Labour Studies, "[BILS](#)", 2020.

²⁹² Ibid.

Several notable initiatives by INGOs in Bangladesh focus on gender-based violence and harassment in workplaces. For instance, CARE Bangladesh works for women's economic empowerment by promoting their rights in the workplace, alongside their inclusion in equitable, gender-friendly value chains and social enterprises.²⁹³ ActionAid Bangladesh enhances knowledge of gender-based violence in workplaces by conducting independent research and awareness raising campaigns.²⁹⁴ Some of the organizations mentioned above work together in the Shojag Coalition to reduce gender-based violence in the garment industry (see box 7).

Box 7. Shojag Coalition

The Shojag Coalition is a joint initiative of five organizations: Naripokkho, Christian Aid, BRAC, the Bangladesh Legal Aid and Services Trust (BLAST) and the Netherlands Development Organisation (SNV). It is running a 2.5-year project (September 2017–February 2020) financed by the Global Fund for Women to reduce gender-based violence in the garment industry in the city of Gazipur, and the areas of Savar, Ashulia and Tongi. Its direct beneficiaries are women garment workers, while factories stand to benefit indirectly from increased productivity in a violence-free working environment.

The project's activities span different stages – from prevention to protection from gender-based violence, and its prosecution. At the prevention stage, the coalition trains a cohort of garment workers, called the *Shojag Sathis* ('alert companions') who share their learning and experiences with a larger group of women factory workers. The project also aims to train mid-level management employees in factories to create awareness on how to address incidents of sexual harassment. Its holistic approach will further address domestic violence, sexual harassment and violence against women commuting to and from work.

The Shojag Coalition – which includes organizations that work on analysing laws and policies – also aims to examine Bangladesh's existing laws, policies and redress mechanisms to offer recommendations for improvement. Protective psychosocial and legal support is provided to victims/survivors of workplace violence. Other coalition initiatives include mobile legal awareness campaigns, fact-finding, and awareness raising within trade bodies and the private sector.

Sources: SNV, "[SHOJAG: Ending gender-based violence in RMG sector](#)", 2019; Brochure of the SHOJAG Coalition, collected during the KII with the representative of Naripokkho.

²⁹³ CARE Bangladesh, "[What We Do](#)", 2020.

²⁹⁴ ActionAid Bangladesh, "[Women's Rights & Gender Equity](#)", 2020.



5. Key gaps in preventing and addressing gender-based violence and harassment

Although several initiatives address gender-based violence and sexual harassment in Bangladesh's workplaces, they are fewer in number than those addressing other key concerns – such as fire safety, building construction, employment benefits, and freedom of association, among others. The design and implementation of policies and programmes have not always recognized gender-based discrimination and violence as cross-cutting issues for the world of work.

Most initiatives that address GBVH at work have been short-term projects, usually operating in isolation, without creating inter-linkages with other relevant initiatives.²⁹⁵ As such, these efforts cannot be regarded as part of a concerted advocacy movement against GBVH in the world of work. Moreover, the ready-made garment sector has been the key focus of existing efforts. This is understandable, as the sector is Bangladesh's single biggest export earner, accounting for 83 per cent of total export earnings.²⁹⁶

This chapter highlights gaps and challenges in laws, policies and practices which need to be focused on to more effectively prevent and address gender-based violence and harassment. The discussion is largely informed by key informant interviews conducted during the study, alongside a desk review.

5.1 Inadequate definitions and provisions in laws on gender-based violence and harassment in the world of work

Bangladesh's overall legal framework is not sufficiently strong in terms of addressing various forms of gender-based violence and harassment in the world of work, including its most common form: sexual harassment. The High Court Division's 2009 guidelines provide a relatively comprehensive list of behaviours and acts which amount to sexual harassment, including both a 'quid pro quo' type and acts that create a 'hostile working environment', without defining the offence of sexual harassment itself. Other existing laws, including criminal laws, do not mention or define the term 'sexual harassment'. Civil society groups are engaged in ongoing advocacy, calling on policy-makers to adopt a draft law against sexual harassment. Thus far, however, their efforts have not yielded tangible results.

²⁹⁵ KII with the representative of the Fair Wear Foundation.

²⁹⁶ Bangladesh Garment Manufacturers and Exporters Association, "About Garment Industry of Bangladesh", 1 May 2019.

The Bangladesh Labour Act does not include provisions on preventing or protecting workers from gender-based violence, including sexual harassment, in the world of work. While section 332 prohibits “*indecent behaviour which is repugnant to the modesty or honour of any women*”, the term ‘indecent behaviour’ is not defined. Moreover, it is situated within language replete with gender stereotypes by alluding to women’s ‘modesty and honour’.

Gaps also exist with respect to GBVH more broadly. The definition of ‘rape’ in the Penal Code is problematic in many respects. ‘Penetration’ is not defined; therefore, the traditional meaning of ‘sexual intercourse’ is generally used to define rape, that is, ‘peno-vaginal penetration’. Such a general understanding of the term leaves out several other forms of sexual penetration, which are considered to constitute rape in many jurisdictions outside Bangladesh.²⁹⁷

The Penal Code’s definition of rape also does not define ‘consent’. As a result, courts have tended to require evidence of ‘force’ to demonstrate a lack of consent, leading to interpretations of rape framed by gender stereotypes.²⁹⁸

One of the most challenging gaps in the existing definition of rape is that forcible intercourse with a girl who is not below 13 years old is not criminalized as rape when the girl is married to her abuser. Although the Women and Children Repression Prevention Act specifies the age of 16 as the cut off point for statutory rape, this has been “*severely weakened by the Penal Code’s position*”.²⁹⁹ Beyond the fact that the Act does not address the marital rape of child brides, it also reinforces the Penal Code’s definition of rape. Section 9 states that the 16 year age limit, below which sexual intercourse is considered rape, does not apply to cases where the perpetrator is married to the victim/survivor. This is particularly challenging as it tacitly allows child marriage, leaving no avenue for legal redress for potential child victims/survivors of rape. This contradicts Bangladesh’s international commitment to protect girls from sexual exploitation, particularly its obligations to ensure the best interest of children under Convention on the Rights of the Child.³⁰⁰

Furthermore, sections 354 and 509 of the Penal Code are grounded on the concept of outraging or insulting the ‘modesty’ of a woman through ‘intentional’ acts.³⁰¹ ‘Outraging a woman’s modesty’ remains an ambiguous concept in these sections, opening up opportunities for victim-blaming based on stereotypical notions women’s ‘modesty’.³⁰² A woman who feels harassed or abused will find no redress under these provisions if a man claims he did not ‘intend’ to make her feel this way.

²⁹⁷ For example, section 375 of the Indian Penal Code, 1860 (amended by the Criminal Amendment Act of 2013).

²⁹⁸ Asmita Basu, *Use of Medical Evidence in Rape Cases in Bangladesh* (Bangladesh Legal Aid and Services Trust (BLAST), 2012).

²⁹⁹ Lyal S. Sunga and Kawser Ahmed, *A Critical Appraisal of Laws Relating to Sexual Offences in Bangladesh* (National Human Rights Commission of Bangladesh, 2015), pp. 19–20.

³⁰⁰ Taslima Yasmin, “Sexual Violence in Bangladesh: Addressing gaps in the Legal Framework”, *Dhaka University Law Journal*, 28 (2017), p. 109.

³⁰¹ Section 354 states: “Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.” Section 509 states: “Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

³⁰² For a detailed discussion of this issue see Nuara Choudhury, ‘The Immodest Truth: An Evaluation of the Measures Taken to Combat Sexual Harassment in Bangladesh’, *Bangladesh Journal of Law* 12, No. 1&2 (2012), 137–170.

In a similar vein to section 354 of the Penal Code, section 10 of the Women and Children Repression Prevention Act specifies harsher punishment for sexual assault.³⁰³ Nevertheless, this provision does not address the ambiguity of Bangladesh's existing provision on sexual assault, as the offence still requires the accuser to prove the vague concept of 'outraging a woman's modesty'.

5.2 Limited scope for protection

The High Court Division's guidelines of 2009 apply to all workplaces and educational institutions, both public and private, in Bangladesh. As the terms 'workplace' and 'educational institution' are not defined, it appears that the guidelines may only refer to the traditional understanding of a workplace – that is, an establishment's physical premises.

The guidelines do not define who a 'complainant' is, or the scope of complaints. However, several parts of the guidelines refer to the sexual harassment of women, and its text occasionally refers to a 'complainant' with the feminine pronoun, 'her'. This implies that the court only had women in mind when issuing its guidelines, indicating its intention to solely prevent and address sexual harassment against women.

As the formal procedural and substantive provisions of Bangladesh's labour laws do not apply to the informal economy, women in the informal sector are particularly vulnerable to violence and discrimination.³⁰⁴ Domestic workers, employed in or for households, are among the most vulnerable in the informal economy to violence, prolonged working hours and a lack of regulatory protection.³⁰⁵ This makes a focus on domestic workers extremely important. According to the Domestic Worker Protection and Welfare Policy, the High Court Division's 2009 guidelines apply to cases of the sexual harassment and assault of domestic workers.

5.3 Absence of an anti-discrimination law

Bangladesh's existing laws and policies stipulate principles of equality and non-discrimination. However, issues related to GBVH in the world of work are not adequately addressed. Moreover, the application of certain provisions is not completely inclusive of the principles of equality and non-discrimination.

The National Labour Policy 2012 speaks of ending discrimination between men and women at work without specifying the vulnerability of women workers to work-related GBVH. It also states that the Government will take effective steps to reduce the risk of occupational hazards, while strengthening the occupational safety and health system. However, violence, harassment and psychosocial hazards are not specifically addressed.

³⁰³ 'Rigorous imprisonment' which may extend up to 10 years and no less than three years, alongside a fine.

³⁰⁴ Taslima Yasmin, *Gender Based Violence at Workplace Is Real: Happening Everyday at Every Workplace* (ActionAid Bangladesh, 2019).

³⁰⁵ Unnayan Onneshon, *Domestic Workers: Devaluation and Discrimination*, 2014.

At present, there is no law in force in Bangladesh to prohibit or ensure protection against discrimination based on gender, sexual orientation, caste, religion, or other identity markers. A draft Anti-discrimination Bill was formulated by the National Human Rights Commission in 2013, which outlaws discrimination against any individual or community on various grounds – including religion, faith, caste, custom, culture, occupation, sex (man, woman, third gender), sexual orientation, age, disability, pregnancy, marital status, and place of birth, among others. To date, the draft has not secured strong support for its enactment and awaits legislative review.

Neither the Women and Children Repression Prevention Act nor the Penal Code contemplate a ‘male’ or a *hijra* (transgender) person as the victim/survivor of rape or sexual offences. At the same time, perpetrators are always – and exclusively – considered to be men. As such, the legal framework for sexual offences remains silent about rape or sexual assault against a transgender persons or non-consensual sexual intercourse between members of the same sex. Section 377 of the Penal Code broadly criminalizes ‘unnatural offences’ without defining what the term refers to. Voluntary sexual intercourse between persons of the same sex comes within its ambit, enshrining discrimination against the LGBTQ community in law.

5.4 Absence of social dialogue and limited coordination among relevant stakeholders

A plethora of civil society organizations are active in Bangladesh, many of which are implementing initiatives to enforce complaint mechanisms and mechanisms to prevent sexual harassment in the world of work. Nevertheless, their efforts tend to be small in scale and there is lack of coordination between and among initiatives. This limits their potential to effectively influence policy-makers, union leaders or employers’ organizations to bring about positive change and, thereby, end GBVH at work.

An important example of a lack of consensus is evident in efforts to draft sexual harassment legislation. A 2018 UN Women study³⁰⁶ found that there were five different drafts of the law prepared and supported by different civil society groups since the 2009 High Court Division’s guidelines were issued. It also revealed contrary positions among these groups regarding the content and scope of the law. Some advocacy groups were in favour of a law that would only address sexual harassment in workplaces³⁰⁷, while another group supported legislation addressing sexual harassment in general, including in public places.³⁰⁸ Different groups favoured different courts for trying offences³⁰⁹, as well as different sanctions or remedies. These diverse positions were highlighted by key informants interviewed for the present study. A representative of the Bangladesh National Women Lawyers’ Association indicated that their draft – prepared on behalf of a coalition of six workers’ rights NGOs, named the ‘Gender Platform’ – was handed over to the Minister for Law in 2018, who promised to send the draft to a review committee.

³⁰⁶ KII with the representative of UN Women.

³⁰⁷ For instance, the draft proposed by the Bangladesh National Women Lawyers’ Association (BNWLA).

³⁰⁸ For instance, the draft proposed by the National Girl Child Advocacy Forum.

³⁰⁹ Some prefer the WCRPA Tribunal, others the general criminal courts. Proposals also suggested the creation of special tribunal for resolving disputes and trying offences under this law.

A draft prepared by the National Girl Child Advocacy Forum (NGCAF) was handed over to the Parliamentary Caucus on Child Rights in 2019. At the handover, the Chair of the Caucus noted that the draft would go through an in-depth review process, before being sent to the Ministry of Women and Children Affairs to submit to Parliament as a bill.³¹⁰ In addition, Bangladesh Mahila Parishad and the Law Commission of Bangladesh independently drafted a law on sexual harassment.

While individual advocacy groups were pursuing their drafts through various concerned forums, the National Human Rights Commission of Bangladesh (NHRC) formed a Working Group in 2019, with the support of UN agencies, to consolidate all of these drafts into a single agreed draft endorsed by the commission. The Working Group includes representatives of all the advocacy groups that have proposed or are pursuing draft legislation on sexual harassment, alongside development partners, academics and other CSOs. This UN-supported effort by the NHRC is ongoing and disagreements persist between advocacy groups over the content and scope of the draft.³¹¹ This study's key informant interview with an official from the NHRC revealed that Working Group members disagree about the possible scope of a combined piece of legislation.

The NHRC representative indicated that the commission plans to draft a law that considers all existing drafts, and to publish it on the NHRC's official website to gather public opinion. However, other interviewees³¹² believe that the NHRC may not be the right forum for proposing such a law, and that it would be more appropriate for such a law to be drafted or proposed by the Ministry of Women and Children Affairs or the Ministry of Law, Justice and Parliamentary Affairs. As such, the finalization of a draft law to place before Parliament remains uncertain.

5.5 Absence of workplace policies on gender-based violence and harassment

A number of key informants highlighted that most organizations lack a specific human resource policy to address sexual harassment. With regard to the ready-made garment sector, the Fair Wear Foundation points out that:

Existing human resources policies and procedures often do not deal with sexual harassment, and many suppliers lack functioning human resource systems (including grievance and complaints procedures) that are appropriate for sexual harassment complaints. For many suppliers, this is a relatively new issue.³¹³

The absence of a specific sexual harassment policy means that a workplace does not have a formal internal complaint mechanism or other policy safeguards against harassment.

³¹⁰ More information is available on the Girl Child Forum's website, <https://girlchildforum.org/blog>; see also Fahim Reza Shovon, "Separate court proposed for dealing with sexual harassment of children", in *Dhaka Tribune*, 10 September 2019.

³¹¹ KII with the representative of the National Human Rights Commission of Bangladesh.

³¹² Representing CSOs and independent academics.

³¹³ Fair Wear Foundation, "Violence and Harassment against Women and Men in the Global Garment Supply Chain", Contribution to the standard setting discussions at the 107th International Labour Conference, 2018.

In the absence of trusted complaint procedures, the reporting of incidents will remain low and employees will fear retaliation if they complain about supervisors or managers.³¹⁴

The experiences of organizations that have implemented the 2009 High Court Division's guidelines suggest that a separate sexual harassment policy must be adopted to enable Complaint Committees to function effectively, detailing its formation, investigation and sanction procedures.³¹⁵ Key informants concurred³¹⁶, although the need for a separate policy in implementing establishments is not mentioned in the guidelines. Interviews reveal that some government departments and private organizations that have attempted to comply with the guidelines have formed Complaint Committees by directly adopting the court's directives, without formulating a separate policy.³¹⁷ There is no data on how many departments or institutions have established Complaint Committees or how many complaints are being addressed. As such, it is unclear what practical difficulties such committees face without a policy on sexual harassment in place. The fact that many crucial details about complaint and investigation mechanisms are absent in the 2009 guidelines makes it likely that gaps exist in committees' investigation processes.

Initiatives on OSH by various stakeholders generally focus on ill health, fire safety, safe building construction, workplace deaths and injuries. Gender-based violence and harassment are largely addressed separately, as issues of labour rights and discrimination. This was emphasized by a number of key informants interviewed for this study. The representative of CARE Bangladesh highlighted that stakeholders lack clarity about occupational hazards associated with GBVH including sexual harassment.

5.6 Lack of effective protection in the domestic violence law

The Women and Children Repression Prevention Act, specifically enacted to prevent violence against women, does not criminalize domestic violence – one of the most common forms of gender-based violence. The Act only applies to cases of domestic violence that are related to dowry demands.³¹⁸ This leaves women who are subjected to other forms of domestic violence – including emotional and verbal abuse – without access to criminal remedies, except under the general criminal law that punishes physical violence, such as hurt or grievous hurt under the Penal Code.

The remedies envisaged in the Domestic Violence (Prevention and Protection) Act are mostly civil in nature. Only the breach of a protection order is made a punishable offence.³¹⁹

³¹⁴ Global Labour Justice and Asia Floor Wage Alliance, *End Gender Based Violence and Harassment, Gender Justice on Garment Global Supply Chains: An Agenda to Transform Supply Chains*, 2019.

³¹⁵ For instance, organizations like BRAC, TIB Bangladesh, ActionAid Bangladesh and others have formulated independent anti-sexual harassment policies with detail provisions required to implement the 2009 judgment in a practical manner. This was reflected in the responses by key informants representing national and international NGOs interviewed for this study.

³¹⁶ KII with the representatives of the Fair Wear Foundation and UN Women.

³¹⁷ KII with the representative of Dhaka University.

³¹⁸ Section 11 of the Women and Children Repression Prevention Act.

³¹⁹ Section 30 of the Domestic Violence (Prevention and Protection) Act.

As the Act does not provide penal sanctions, courts cannot prescribe punishment even in aggravated cases of physical, psychological or sexual abuse, which would otherwise be punishable under other special or ordinary criminal statutes. In such cases, civil remedies are too lenient.³²⁰ In addition, the exclusion of divorced women from the scope of the Act represents a major gap.³²¹

Due to its definition of the terms ‘family relationship’ and ‘domestic violence’, a great swathe of women facing domestic violence are excluded from the ambit of the Act.³²² Domestic workers and workers in the informal sector also remain outside the scope of legal protections against gender-based violence.³²³ Although Bangladesh has a Domestic Worker Protection and Welfare Policy, the policy has no legal effect and has not been implemented.

Moreover, legislation on domestic violence does not include provisions that stipulate employers’ obligations to mitigate the negative impacts of domestic violence in the world of work.

5.7 Weak inspection mechanism

Compliance with laws and regulations is crucial for ensuring workplaces free from violence and harassment. An efficient inspection mechanism is vital for securing compliance. Transparent and effective inspections support the effective implementation of laws. In this respect, this study identifies several key gaps.

First, key informant interviews indicate that inspections by the Department of Inspection for Factories and Establishments tend to be infrequent or incomplete.³²⁴ Key informants from the department and the Ministry of Labour and Employment noted plans to substantially increase the number of labour inspectors with the upcoming creation of a huge number of new posts.³²⁵ To date, however, the department has been under-staffed compared to the immense scale of factories and establishments in Bangladesh. The department’s representative explained that the regular inspection of all of the country’s factories and establishments would require a huge increase in the inspection team and extensive resources, while posing significant challenges given the department’s present structure.

Second, officials of the Department of Inspection for Factories and Establishments are not specifically trained to address GBVH in workplaces. Section 332 of the Bangladesh Labour Act, as discussed above, does not mention or define ‘harassment’.

³²⁰ Shahnaz Huda, *Five Years since Domestic Violence (Prevention and Protection) Act 2010: Is It Helping Survivors?* (Plan International, 2016), p. 32.

³²¹ Taslima Yasmin, *Implementation of the domestic violence legislations in Bangladesh: A comparative perspective* (Bangladesh Legal Aid and Services Trust (BLAST), 2015) (unpublished).

³²² Ibid; Section 5 of the Domestic Violence (Prevention and Protection) Act.

³²³ Taslima Yasmin, *Gender Based Violence at Workplace Is Real: Happening Everyday at Every Workplace* (ActionAid Bangladesh, 2019).

³²⁴ This was also found by a 2018 study by the Bangladesh Institute of Labour Studies (BILS) on the ready-made garment industry, available online, <http://bilsbd.org/wp-content/uploads/2018/01/Workers-Rights-Gender-Based-Violence-in-the-RMG-and-TU-Capacity-to-Deal-with-These-Final-Draft.pdf>

³²⁵ Both the KII participants mentioned that more than 900 new posts for inspectors have already been created and are awaiting final appointment. This information is based on KIIs only and could not be verified using official documentation.

Moreover, there is no inspection manual that defines sexual harassment. While officials use a Labour Inspection Checklist which includes questions related to sexual harassment, the key informant interview with a departmental official reveals a lack of clarity among inspectors about what acts or behaviours constitute sexual harassment within the checklist's answers.

Third, interviews suggest that having a checklist is not enough. Effective reporting on sexual harassment must go beyond ticking boxes or giving scores for compliance, especially considering the sensitivity of the issue. The key informant interview with the Department of Inspection for Factories and Establishments did not discuss factories' compliance with this criteria, or whether there is any mechanism to compare or understand factory responses overall. The informant did note that workers rarely complain about sexual harassment, ostensibly because of a lack of understanding of the concept. Issues like sexual harassment are so sensitive that both inspectors and workers require knowledge and specific training on sexual harassment. Without such grounding, it remains difficult to gather unbiased information through a checklist, especially one that includes questions on many other criteria.

Finally, key informants indicate the need to improve existing systems. As discussed, the Labour Inspection Management Application (LIMA) enables workers or employers to submit an online complaint form to the Department of Inspection for Factories and Establishments on workplace issues, including sexual harassment.³²⁶ This can be done either through the LIMA website or a smartphone application. However, the mechanism does not allow for anonymous complaints.³²⁷ To file a complaint, a worker must enter their name and employee identification number. While a complainant can opt for an 'anonymous' option that keeps names 'secret', the name and identity of the complainant must be provided in the complaint form.

The form asks complainants to tick a box indicating the focus of their complaint, offering several options – such as 'abuse', 'sexual harassment', 'violence at workplaces', 'occupational health', etc. As these options are provided without any explanation of their meaning, they may be confusing for workers. It is unclear how these complaints are monitored and addressed, making it difficult to assess how effective the LIMA is in providing effective redress to the victims/survivors of workplace violence and harassment.

5.8 Lack of comprehensive data

Some of key informants interviewed for this study who represent academic and research institutions expressed their concern about the lack of reliable statistical data and comprehensive research on the social and legal dimensions of sexual harassment and GBV in workplaces. Although some quantitative studies have collected data on workplace violence and harassment, their sample sizes were small and they used 'convenience sampling'.³²⁸

³²⁶ The Labour Inspection Management Application is available online, <http://lima.dife.gov.bd/complaint>

³²⁷ Worker Rights Consortium et al., *Bangladesh Government's Safety Inspection Agencies Not Ready to Take Over Accord's Work*, 2019.

³²⁸ Andrew Gibbs et al. "Workplace Violence in Bangladesh's Garment Industry", *Social Science and Medicine* (2019), p.2.

Without systematically-collected statistical data on violence and harassment in the world of work, it is difficult to identify risk factors and design preventive tools.³²⁹ The interviewees also pointed out to the difficulty of collecting data from workers in factories and establishments, as they are reluctant to share information on incidents of violence and harassment for fear of losing their jobs.

5.9 Limited awareness

A lack of awareness poses another key challenge to action against gender-based violence at work. Key informants pointed to limited awareness about the High Court Division's 2009 guidelines, their legal implications, and the absence of any enforcement or monitoring mechanism.

There is also a lack of awareness about what behaviours and acts are unacceptable or amount to harassment, as noted above.³³⁰ Too often, sexual harassment and gender-based violence are taken as synonyms for rape or extreme sexual abuse.³³¹ In a workplace where there is physical hitting, shouting and foul name calling of (predominantly women) workers by supervisors or managers (predominantly men), it is often argued that sexual harassment has not occurred because there is no 'sexual interaction or motive'.³³² When workers face such behaviour on a regular basis, many begin to believe that it is the norm.³³³ This, in turn, leads to very low levels of workers reporting sexual harassment.³³⁴

Workers are not alone in lacking an understanding of what constitutes sexual harassment or gender-based violence; this is also true for managerial staff, owners and higher authorities at workplaces.³³⁵ Key informant interviews with employers, workers and CSOs indicate a general lack of clarity about what constitutes sexual harassment. As a result, forms of harassment other than physical violence tend to go unnoticed by employers.³³⁶

Some key informants reported that workers' unions and organizations tend to prioritize labour issues with a direct impact on workers' financial status rather than sexual harassment. These issues include the non-payment of wages, unlawful dismissal, irregular working hours, and the absence of employment benefits. The key informant from the Department of Inspection for Factories and Establishments noted that the department rarely receives complaints of sexual harassment from workers. In the informant's view, this is partly because workers consider incidents of sexual harassment normal or trivial, unworthy of formal complaint. Thus, training and awareness raising are required to ensure that workers can raise their voices against harassment, and that employers recognize incidents of gender-based violence, including sexual harassment.³³⁷

³²⁹ KII with the representative of the Centre for Policy Dialogue.

³³⁰ KII with the representatives of CARE Bangladesh and the Bangladesh National Women Lawyers' Association.

³³¹ Fair Wear Foundation, "[Violence and Harassment against Women and Men in the Global Garment Supply Chain](#)", Contribution to the standard setting discussions at the 107th International Labour Conference, 2018, p. 20.

³³² Ibid.

³³³ ILO, *Improving Working Conditions in the Ready-Made Garment Sector: Bangladesh Baseline Study*, 2017.

³³⁴ Ibid.

³³⁵ KII with the representative of the Fair Wear Foundation.

³³⁶ KII with the representative of the Centre for Policy Dialogue.

³³⁷ KII with the representative of the IndustriALL Bangladesh Council.



6. Recommendations

Decisive action is required to eliminate gender-based violence and harassment, including sexual harassment, in the world of work in Bangladesh. Based on its review of national laws, policies and practices, this study proposes seven key recommendations to address GBVH in the world of work, guided by the Violence and Harassment Convention, 2019 (No. 190).



RECOMMENDATION 1: Build awareness about sexual harassment and the High Court Division's guidelines

It is vital to raise awareness of sexual harassment, the 2009 High Court Division's guidelines and laws related to GBVH in Bangladesh. This requires a coordinated effort by all relevant stakeholders, including the Government, employers' organizations, workers' organizations, and other relevant entities. Civil society can contribute significantly by strengthening their awareness raising and advocacy efforts. In tandem, the Ministry of Labour and Employment should develop information kits, or formulate model policy guidelines, to increase awareness of GBVH, particularly sexual harassment, in the world of work.



RECOMMENDATION 2: Strengthen the enforcement and monitoring of the 2009 guidelines in workplaces

In the absence of specific legislation to address sexual harassment, it is important to effectively enforce the guidelines in the world of work, and to monitor their enforcement. To do so, an enforcement and monitoring mechanism should be set up. The absence of such a mechanism is a major reason that the guidelines are not currently well-implemented.

The Ministry of Labour and Employment can play an essential role in developing an enforcement and monitoring mechanism for workplaces by forming a National Monitoring Committee or Cell, in consultation and coordination with other government entities, employers' and workers' organizations, CSOs, the ILO, and other relevant stakeholders.

Monitoring should include regular reporting by workplaces to the committee, as well as regular audits of workplaces. The authority responsible for monitoring may also consider forming a separate Complaint and Conciliation Cell within the Ministry of Labour and Employment. Workers could directly address complaints to this cell, based on which the cell could conciliate between the parties involved.

This would provide an external alternative dispute resolution option, that parties could use before taking their dispute to a formal internal complaint mechanism. The composition of an internal Complaint Committee or complaint mechanism may be revisited and discussed to address the concerns expressed by key informants – such as employers’ resistance to including external representatives in an internal committee.



RECOMMENDATION 3: Strengthen national legal and policy frameworks on violence and harassment in the world of work

Reform the Bangladesh Labour Act and the Bangladesh Labour Rules

The Bangladesh Labour Act does not address GBVH comprehensively; only one provision (section 332) is relevant in this respect. This section should be replaced with a provision that clearly prohibits violence and harassment, including GBVH in the world of work. The amended provision should include a clear definition of the terms ‘gender-based violence’ and ‘sexual harassment’, in accordance with ILO standards and definitions by other UN entities. The key informant from the Department of Inspection for Factories and Establishments suggested that a list of ‘indecent behaviours’ should be attached in the rules of the Bangladesh Labour Act, to provide guidance for labour inspectors.

The amended provision should also introduce a grievance procedure similar to that of the 2009 guidelines, as well as sanctions for acts of GBVH. The Bangladesh Labour Rules can be further amended to include detail procedures for such a complaint mechanism.

With regard to the Bangladesh Export Processing Zone (EPZ) Labour Act, 2019³³⁸ – wherein section 189 is similar to section 332 of the Bangladesh Labour Act – similar reforms are required to define gender-based violence and sexual harassment, as well as to provide a mechanism for complaints and sanctions.³³⁹

Reform criminal laws on gender-based violence and harassment

It is essential that Bangladesh’s laws related to rape, sexual assault, domestic violence and other gender-based violence are updated to reflect global developments and effectively protect workers from GBVH, within and outside the world of work. As the country’s existing criminal provisions on GBVH are not comprehensive, criminal laws related to GBVH should include sexual harassment as a separate offence, as should labour laws. Both should provide a clear definition of the term, aligned with the definitions of the ILO and other UN entities.

³³⁸ More information is available on the Government of Bangladesh’s website on national laws, <http://bdlaws.minlaw.gov.bd/act-1285/section-48832.html>

³³⁹ ILO, “ILO Commission of Inquiry issues report on complaint against the Bolivarian Republic of Venezuela”, 3 October 2019.

Adopt independent legislation prohibiting violence and harassment, particularly sexual harassment in the world of work

Addressing sexual harassment solely in criminal laws is not sufficient to prevent it, especially in workplaces. Laws addressing violence and harassment – including GBVH – should also include adequate preventive measures, a transparent and effective investigation procedure for complaints, and effective provisions for legal redress by applying a gender-responsive approach. In addition to penalizing the perpetrator, it is also essential to compensate victims/survivors for physical, psychological and financial losses. This dual focus has been incorporated globally in legal reforms on sexual violence and abuse.

Such legislation should also protect workers who complain from retaliation by their employers. A comprehensive, separate anti-sexual harassment law needs to be promulgated to effectively address all these components of prevention and protection against sexual harassment in workplaces. The 2009 guidelines contemplated the enactment of such a law, making its directives legally binding for the interim period until such legislation comes into effect. In this spirit – and acknowledging the absence of an effective workplace regulation to address sexual harassment – relevant stakeholders must proactively take action to promulgate a separate law against sexual harassment in workplaces, guided by the Violence and Harassment Convention (No. 190) and the Violence and Harassment Recommendation (No. 206).

An inter-ministerial task force should lead the process of drafting this law, in consultation with employers' and workers' organizations and other key stakeholders. In doing so, the task force should take into due consideration the existing drafts prepared by NGOs and advocacy groups. The Government may also consider conducting a more detailed analysis of laws and policies related to the Violence and Harassment Convention – as this study focuses exclusively on GBVH – as it addresses priority issues for achieving gender equality in the world of work. In drafting a new law or reforming existing legislation, it is critical to form alliances with workers' and employers' organizations, CSOs and development partners, to assist and guide the task force. Any effort to legislate on workplace harassment should be inclusive and considerate of the challenges highlighted by different interest groups.

Include informal workers

Workers in the informal sector are often more vulnerable to GBVH due to the precarious conditions of their employment.³⁴⁰ Efforts to prevent workplace GBVH through legal reforms and advocacy must design ways to ensure that informal workers are covered by institutional protection and can seek redress. This is crucial when proposing a special law prohibiting sexual harassment in workplaces. If the new law innovates on any complaint mechanism for workplace harassment, it should keep options open for informal workers to access this mechanism.

³⁴⁰ Ibid.

Enact an anti-discrimination law

Intersectional grounds for discrimination – such as race, disability and ethnicity, among others – are risk factors for workplace GBVH.³⁴¹ As such, GBVH in the workplace should also be defined and prohibited in Bangladesh’s anti-discrimination law, to ensure appropriate safeguards. The draft Anti-discrimination Bill proposed by the National Human Rights Commission should be reviewed to ensure the inclusion of these dimensions. At the same time, advocacy efforts should be consolidated and strengthened to create a robust lobbying group able to influence law-makers for the enactment of this law.

Include gender-based violence and harassment within occupational safety and health policies and practices

Including violence and harassment as a hazard in all occupational safety and health codes is essential for addressing these issues effectively.³⁴² The National Occupational Health and Safety Policy should include GBVH in workplaces, in terms similar to those defined by the ILO’s Violence and Harassment Convention. Current efforts to formulate a national action plan for occupational safety and health should consider including GBVH as an occupational hazard, and should require employers to mitigate psychosocial risks associated with workplace violence and harassment.



RECOMMENDATION 4: Promote the adoption of an internal anti-sexual harassment policy

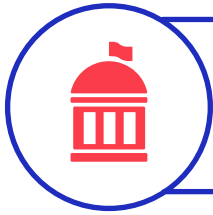
Recognizing that very few organizations have specific sexual harassment prevention policies, all organizations in Bangladesh should adopt an internal policy on violence and harassment, including GBVH, in line with the High Court Division’s 2009 guidelines. A model policy may be made available online or in other formats easily accessible to all organizations.

Since the 2009 guidelines do not provide details on certain procedural aspects, only an organization-specific policy can address the detailed procedures required for the successful and practical implementation of the 2009 guidelines.³⁴³ The Ministry of Labour and Employment is well-placed to issue a circular to all concerned establishments to mandatorily formulate an anti-sexual harassment policy to implement the 2009 guidelines. Learning from other jurisdictions, the ministry can also develop guidelines for formulating such a policy, to be attached with the proposed circular. Development partners, such as the ILO, can also consider developing a model policy on behalf of the ministry to assist organizations willing to adopt the 2009 guidelines.

³⁴¹ Global Labor Justice and Asia Floor Wage Alliance, *End Gender Based Violence and Harassment – Pillar 1 Gender Justice on Garment Global Supply Chains: An Agenda to Transform Fast-Fashion*, 2019.

³⁴² Fair Wear Foundation (2018), *Breaking the Silence: The FWF Violence and Harassment Prevention Programme*, 2018.

³⁴³ Ibid.



RECOMMENDATION 5: Strengthen the capacity and legal authority of the Department of Inspection for Factories and Establishments to address gender-based violence and harassment

It is vital to strengthen the capacity and authority of labour inspectors of the Department of Inspection for Factories and Establishments, in order to support employers to comply with labour regulations on ensuring preventive measures and complaint mechanisms to guard against gender-based violence and harassment in workplaces. The Ministry of Labour and Employment should consider developing a national training module³⁴⁴ for inspection on harassment and other forms of violence at work. As reflected in the 2018 ILO report³⁴⁵, inspectors in a growing number of countries benefit from special task forces, training, guidelines or special powers to address workplace violence and harassment.

With the ILO's support, the Ministry of Labour and Employment should consider whether a special unit of inspectors could be formed in the Department of Inspection for Factories and Establishments, replete with specialized skills training to address GBVH, including sexual harassment, in workplaces during inspections.

The legal authority of labour inspectors under the Bangladesh Labour Act needs to be reviewed. Amendments to the Act may be considered to expand inspectors' power to issue interim orders to employers where there is a risk of workplace violence and harassment.



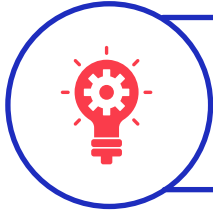
RECOMMENDATION 6: Train relevant stakeholders on gender-based violence and harassment

Labour inspectors, judges and other stakeholders need to be provided with training on identifying risks of violence and harassment, understanding laws related to violence and harassment, and effectively responding to cases of violence and harassment. This is particularly relevant for GBVH, as gaps exist in the knowledge, expertise and sensitivity of those entrusted with enforcing protection measures.³⁴⁶ The ILO should consider designing training programmes for these stakeholders, in consultation or partnership with the Directorate of Labour under the Ministry of Labour and Employment.

³⁴⁴ The Ministry of Labour and Social Security of El Salvador developed a national training module for labour inspectors on discrimination and sexual and other forms of harassment at work; ILO, *Ending violence and harassment against women and men in the world of work*, ILC. 107 (2018).

³⁴⁵ ILO, *Ending violence and harassment against women and men in the world of work*, ILC. 107 (2018).

³⁴⁶ Ibid.



RECOMMENDATION 7: Collect data on violence and harassment in the world of work

It is important to collect national level data on violence and harassment in the world of work in order to better understand how these issues manifest. Such data should be the basis to inform relevant legal reforms, design preventive measures and advocacy initiatives, and develop risk assessment tools for workplace violence and OSH management. Workers' and employers' organizations in other jurisdictions are increasingly collecting data on the incidence of violence in the world of work.³⁴⁷

As such, Bangladesh's Ministry of Labour and Employment should prioritize conducting a national survey on workplace violence and harassment, in partnership with relevant ministries, government agencies, workers' and employers' organizations, the ILO, and other development partners. Such data is crucial for supporting any future action to effectively prevent and address violence and harassment in the world of work.

³⁴⁷ Ibid.

7. Conclusions

With the adoption of the historic Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206), the global community has shown tremendous solidarity and taken a collective stand against workplace violence and harassment. It is in Bangladesh's interest to comply with the Convention, as a leading exporter of global apparel, a country which engages a significant proportion of women in its ready-made garment sector, and as its national economy is growing rapidly. The Convention urges Member States to review their laws and policies to respect, promote and realize everyone's right to a world of work free from violence and harassment. This makes it particularly timely for Bangladesh to comprehensively assess all of its laws, policies, actions, strategies, and practices to identify gaps and challenges that need to be overcome.

This review of laws, policies and practices reveals that Bangladesh recognizes the challenges at hand, and has taken steps to ensure protection against gender-based violence and harassment (GBVH) in all spheres of life. Legislation exists to address a number of forms of GBVH, including rape and domestic violence. However, this study finds that there are important gaps in national legislation regarding protection against GBVH. Bangladesh's legal and policy framework does not address GBVH in the world of work comprehensively enough to eliminate its existence. While the High Court Division's 2009 guidelines address sexual harassment in the absence of specific legislation, the study reveals that the guidelines have not been effectively enforced. Despite continued advocacy efforts by civil society groups to improve the national framework for addressing GBVH, awareness of GBVH remains limited among key stakeholders and the general public. GBVH is often omitted in discussions on improving working conditions. The institutional capacity of key labour institutions and stakeholders to effectively respond to GBVH in the world of work is also limited.

In the context of Violence and Harassment Convention, it is essential that the ILO, as a catalyst of labour rights and sustainable enterprises in Bangladesh, reviews all of its programmes and interventions. This is needed to support national efforts, alongside initiatives by the Government and non-government partners, and identify areas where efforts on GBVH should be strengthened.

It is worth noting that the enforcement of laws and access to redress mechanisms can be difficult where freedom of association is suppressed and enforcement mechanisms lack efficiency and transparency.³⁴⁸ Through its unique tripartite forum for negotiation, the ILO can play a crucial role in facilitating the establishment of a shared platform for the Government, workers and employers across Bangladesh with a shared goal: ensuring a world of work free from violence and harassment.

³⁴⁸ ILO, *Ending violence and harassment against women and men in the world of work*, ILC. 107 (2018).



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Annexes

Annex 1. List of key informant interviews

	Organization	Name and designation	Date of interview	Interview medium
1.	Ministry of Labour and Employment (MoLE)	Begum Jahanara Begum, Joint Secretary	30 October 2019	In person
2.	Department of Inspection for Factories and Establishments (DIFE)	Matiur Rahman	24 October 2019	In person
3.	National Human Rights Commission of Bangladesh (NHRC)	Susmita Paik, Deputy Director	6 November 2019	In person
4.	IndustriALL Bangladesh Council (IBC)	Z.M. Kamrul Anam, Secretary-General	3 November 2019	Telephone
5.	Bangladesh Garment Manufacturers and Exporters Association (BGMEA)	Professor Momen	30 November 2019	In person
6.	Bangladesh Employers' Federation (BEF)	Farooq Ahmed, Secretary-General	27 October 2019	Skype
7.	BRAC	Asif Saleh	6 October 2019	In person
8.	Plan International	Kashfia Feoz	6 October 2019	In person
9.	CARE Bangladesh	Humaira Aziz	29 October 2020	In person
10.	Fair Wear Foundation	Bablur Rahman	31 October 2019	Telephone
11.	United Nations Development Programme (UNDP)	Bithika Hasan	10 October 2019	Telephone
12.	United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)	Guilia Pelosi	3 October 2019	In person
13.	International Labour Organization (ILO)	Shammin Sultana, Improving Working Conditions in the Ready-Made Garment Sector Programme, Phase II	6 February 2020	In person
14.	University of Dhaka	Prof. Shahnaz Huda	30 October 2019	Telephone
15.	Centre for Policy Dialogue (CPD)	Dr Moazzem Hossain	29 October 2019	In person
16.	Naripokkho	Kamrun Nahar	29 September 2019	In person
17.	BRAC	Jenefa Jabbar	30 October 2019	In person
18.	Bangladesh National Women Lawyers' Association (BNWLA)	Tawheeda Khondker	29 October 2019	Telephone
19.	Supreme Court of Bangladesh	Jafrul Hasan Sharif, Advocate	3 November 2019	In person

Annex 2. Guiding questions for key informant interviews

The interviews conducted for this study used a semi-structured method with an open-ended questionnaire. The guiding questions varied, depending on the particular organization which the interviewee represented. However, the following standard questions were commonly asked:

1. How does your organization engage in taking action against gender-based violence and harassment in workplaces?
2. How far do you think laws are adequate in ensuring protection against or the prevention of gender-based violence and harassment?
3. How does your organization comply with the 2009 guidelines of the Supreme Court on sexual harassment?
4. How far do you think the guidelines are self-sufficient in addressing sexual harassment at work, and what is the broad picture of its implementation?
5. What are the practical challenges in taking measures to prevent gender-based violence and harassment at work?
6. What can be done to ensure a stronger legal framework for addressing gender-based violence and harassment at work?

Annex 3. The 2009 Judgment formulating the Guidelines on Sexual Harassment at Workplaces

IN THE SUPREME COURT OF BANGLADESH

(HIGH COURT DIVISION)³⁴⁹

Writ Petition No. 5916 of 2008

Decided On: 14.05.2009

**Appellants: BANGLADESH NATIONAL WOMEN LAWYERS ASSOCIATION (BNWLA)
REPRESENTED BY ITS EXECUTIVE DIRECTOR, MS. SALMA ALI**

Vs.

Respondent: GOVERNMENT OF BANGLADESH AND OTHERS

Hon'ble Judges:

Syed Mahmud Hossain and Quamrul Islam Siddiqui, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Frawzia Karim Firoze with Seema Zahur, Rebeka Sultana and Sathi Shahjahan

For Respondents/Defendant: Razik Al-Jail, DAG, for respondent No. 3, Dr. Rafiqur Rahman, for respondent No. 7, Mahmudul Islam, Amicus Curiae, Sara Hossain and Probir Neogi, Intervenors

Case Note:

The responsibility of this Court under article 102 of the Constitution for the enforcement of the fundamental rights enumerated in chapter III of the Constitution in the absence of legislation must be viewed along with the role of judiciary envisaged in the "Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region [1995] CCJA Press (19 August 1995)".

The suffering of the women at their workplaces and educational institutions knew no bounds owing to the absence of any law in this field.

There are many laws in the country for protecting the women including Nari-O-Shisu Nirjatan Daman Ain and as such, no new guidelines are necessary in this regard.

It is the constitutional obligation of the Government to enact law to protect the women at their workplaces and educational institutions in order to preserve their fundamental rights enshrined in the Constitution.

³⁴⁹ LEX/BDHC/0057/2009 Bangladesh National Women Lawyers' Association (BNWLA) vs. Government of Bangladesh and Others (14.05.2009 - BDHC) : LEX/BDHC/0057/2009.

Constitutional Court is competent to give directives in the form of guidelines under article 111 of the Constitution till legislation is made by the Parliament in this regard.

The fundamental rights guaranteed in chapter III of the Constitution of Bangladesh are sufficient to embrace all the elements of gender equality including prevention of sexual harassment or abuse. Independence of judiciary is an integral part of our constitutional scheme. The international conventions and norms are to be read into the fundamental rights in the absence of any domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction to interpret municipal law in conformity with international law and conventions when there is no inconsistency between them or there is a void in the domestic law.

Protection from sexual harassment and right to education and work with dignity is universally recognised as basic human rights. The common minimum requirement of these rights has received global acceptance. Therefore, the International Conventions and norms are of great significance in the formulation of the guidelines to achieve this purpose

JUDGMENT

Syed Mahmud Hossain, J.

1. In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule, Nisi was Issues calling upon the respondents to show cause as to why the respondents failed to adopt guidelines, or policy or enact proper legislations to address the issue of, abuse of sexual harassment for protecting and safeguarding the rights of the women and girl children at work place, educational institutions/ universities and other places wherever necessary which has been regularly reported in the media, public and other places. The facts leading to the issuance of the Rule in brief, are: Bangladesh National Women Lawyers Association (BNWLA) was formed in 1979 by a group of women lawyers with an aim and objective to empower the women and children of their rights.

2. At present there are no legislative provisions to address sexual harassment of women and girl children and in the absence of the legislative provisions the need to find put an effective and/or alternative mechanism to cater the need is an urgent social imperative. On 7 July, 2008,

"সাময়িক প্রতিরোধ বন্ধি,"

(Social Resistance Committee), a platform of 47 right based organizations such as the petitioner, 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.

On-1,8-2008. The Duly Star' brought out in its weekly magazine, a front page story regarding campus violence on sexual harassment. The Article stated that in the absence of any formal structure of complaint hearing many Bangladesh students keep incidents of sexual harassment to themselves out of the necessity to avoid social stigma.

3. A lady officer of the National University finding no other way to redress her grievance of sexual harassment by the then Vice-Chancellor of the University filed a case in Nari-O-Shishu Nirjaton Daman Adalat. Later, when the existing social condition pushed her back to the wall, she protested in vain and lost her job. Such type of stories is every day incident where women suffered in silence and despaired for not having any place to seek relief of their pains from sexual harassment at work place/educational institutions.

4. A few of the many incidents are stated hereinafter:

On 15.8.2008, The Daily Star' in its weekly magazine stated that in the absence of any formal structure of complaint hearing, many Bangladeshi students keep incidents of sexual harassment to themselves. Students fear having their identities exposed to social stigma and in the case of a teacher-student relationship the student is usually too aware of the power advantage the teacher has over her. The magazine continued, in 1998, sexual harassment on campus finally exploded as a public issue at Jahangirnagar University (J.U). Since then, a Section of progressive teachers have been campaigning for a formal policy on sexual harassment and to date there has been no step in the right direction towards approving such a policy.

In May 2006, the students of the Botany Department of Rajshahi University called a strike on the campus demanding removal of Prof Nurul Aman for alleged sexual harassment of a female student of the department. (The Daily Star, May 8, 2006). Students of Sociology Department of Rajshahi University led demonstration in the campus demanding punishment for, and dismissal of, a teacher of the department for alleged sexual harassment of a female student of the department (The New Age, May 10, 2006).

On 16.11.2006, allegations were brought against a teacher of the Bangla Department

of Jahangirnagar University by a first year female student of that department. A fact-finding committee, formed to conduct primary investigation of the allegation against the teacher found her allegations to be true (The Daily Star, December 24, 2006). Transcripts of the text messages sent to the student were obtained and records of how many calls were made to her and at what time were gathered from the phone company. The teacher, Assistant Professor Golam Mostafa, was eventually dismissed from his duties. Just before this, a teacher of the BBA department resigned over allegations of sexual harassment. Authorities of Psychology Department at Dhaka University (DU) temporarily relieved a teacher of all kinds of academic activities in the department for his alleged involvement in sexually harassing a female student of the same department. The student along with her father submitted a memorandum to the Vice-Chancellor of Dhaka University accusing the teacher of sexual harassment. (The Daily Star May 22, 2008).

An eminent woman Professor Dilara Chowdhury of Jahangirnagar-University made a study and published a book on “Sexual harassment of Bangladeshi Women at Work Place”. In the book she states that there being no Law on sexual harassment in Bangladesh to date Bangladesh women are exposed to sexual harassment randomly. Eve-teasing can be as cruel and as violent as physical assaults. Young women like Simi Banu of Narayangonj, Farjana Afrin Rumi of Khulna, Rumi of Fatikchari and Trisha of Gaibandha had taken their lives to escape the relentless sexual harassment by young loitering hoodlums. Her study reveals the acuteness and seriousness of the problem.

We would like to refer to a few case studies made by Professor Dilara Chowdhury in her book, “Sexual harassment of Bangladesh Women at Workplace” (Annexure-F to the Writ Petition) as under.

The International Labour Organization (ILO) report of 2001 indicated that “certain groups of women-Workers tend to be at greater risk of being subjected to sexual harassment notably girls and young women in male-dominated occupation or training institutions, and more generally in situations where large numbers of women are supervised by a small number of men who are in position of authority.

This could not be more applicable to any other sector than the Ready-Made Garment (RMG) industries of Bangladesh. There are in all 3700 RMG industries in the country. Most are located in the capital city of Dhaka. About twenty lac workers, of which 80% are female are involved in this sector. The organizational structure, culture, job situation, and the power relationship are such that women workers remain more or less at the mercy of the management, which is almost 100% male. The females are at the lowest rung of the hierarchy with high job insecurity.

Case Study from Garments Sector:

Golapi is 18 years old. She is unmarried and has been working in a garment factory

for three years. She became the victim of sexual harassment by the manager and one of the supervisors of the factory. The supervisor would touch her shoulder and back while passing by her station. At times, he would bend over her and put his hand on her shoulder and try to reach her bosom. Golapi had nowhere to go as the manager himself was also the tormentor who would make comments about her figure and appearance. He often commented in her presence that he would like to have her.

Subsequently, Golapi was given night shift duty. As usual just like the previous five days she was on night shift duty when she was called by the supervisor into a room where the manager was also present-Both the supervisor and the manager tried to rape her. While the supervisor grabbed her from behind and gagged her, the manager tried to tear her clothes off. At one stage she started screaming and cried for help. When she tried to break free and screamed the manager attempted to choke her with the help of a shirt She started bleeding in the mouth because of choking. She was taken to the hospital in almost unconscious condition. Salaries of both manager and supervisor of that particular month had been withheld by the owner as a punishment indeed.

Media

Parveen is a thirty years old unmarried young woman who has been working as reporter for a vernacular daily. The environment of the organization, according to Parveen is prone to sexual harassment. She herself has become victim of sexual harassment in her organization and mostly it was done by her male colleagues. On many occasions, she faced unwanted touch from her male colleague but she tolerated such male advance mainly for a number of reasons: lack of sexual harassment policy and sexual grievance procedure, existing gender ideology, patriarchal socialization and the fact that the incidents were made to look like accidental one. Sexist comments like "You are beautiful and you have enormous sex appeal" have been common. Although she found these male behaviours demeaning, her male colleagues seem to be quite oblivious about the impact of such language and physical gestures. What was particularly bothersome was when she became the victim of persistent sexual harassment by one of her colleagues. He would leer at her and touch her in subtle way. On one occasion, he told her that he found her very appealing and would like to have a special relationship with her. She got angry and rebuked him and also told him to get lost. Next day, during lunch she was looking for her purse in her handbag and while fumbling she found a strip of birth control pills. She was shocked and as she lifted her face she found her tormentor sitting right across the room who was looking at her with a sinister smile on his face. Parveen fought back her tears and simply walked out of the room. She felt absolutely helpless.

Non Government Organization (NGO)

Sima has been working for twenty years. She reported that male/female ratio is

lopsided and the competition is uneven because of social condition and the way a girl child is treated from her birth. She has been a member of the Gender Committee for seven years and finds that crude harassment is much less than before, but it still occurs. She narrated two rape incidents that occurred at the Field Office. In one case, Selina who was base line worker in the Field Office used to get harassed by her supervisor. The supervisor, on various occasions, used to touch her and brush his body against her. One day she got held up because of rain and had to wait in supervisor's office room. The supervisor raped her. In another case a rape incident took place in Comilla Field Office where a trainee was raped by the supervisor. Both incidents took place in mid-1990s before the adoption of the sexual harassment policy but upon complaints both supervisors lost their jobs. However, it is to be noted that even after the adoption of the policy between 1997 and 2002 as many as five rape cases have been reported to the Gender Unit of Human Rights.

Academia

The female Professor Mahjabin is also a victim of character assassination propaganda through leaflet distribution. The professor is young, outspoken and has an excellent academic background. In traditional Bangladesh society someone like her is not usually looked upon kindly. In 1998, she committed the 'mistake' by attending a meeting that was arranged to discuss the matter of the male faculty member who was facing an allegation of rape of a female student by him. The leaflet made comment about Professor Mahjabin's personal life and carried on her character assassination alleging that she had an extramarital affair with one of the male member of the faculty. It is to be noted that in Bangladesh culture character assassination of woman to put her in her proper place' is very common. In a society where great emphasis is given on woman's chastity and where her standing within the family and society depends on it, character assassination affects her in multifarious ways. She loses her dignity, her reputation and value as a woman not only within her immediate family like her husband and children but also within her extended family and in-laws family. She is put to shame to an extent that she gets psychologically shattered. In case of Professor Mahjabin, the perpetrators tried to do exactly the same. They did not stop at leaflet distribution. They also made phone calls to her thirteen years old son and emails to her husband. The harassment continued for a long time. She was harassed to a point that her professional life got affected [..].

5. There are as many as nineteen (19) respondents on whom notices were served by a special messenger of the Court.

6. Respondent No. 3, Ministry of Women and Children represented by its Secretary entered appearance by filing power but did not file any affidavit-in-opposition. Mr. Rajik Al-Jalil, learned Deputy Attorney General appeared on behalf of respondent No. 3. Respondent No. 7, the Vice-Chancellor of Dhaka University filed affidavit-in-opposition. The case of this respondent is that the University of Dhaka has not been

made party and that only impleading the Vice-Chancellor as respondent No. 7 is not enough and as such the present Writ Petition is not maintainable and that respondent No. 4, the Ministry of Education represented by its Secretary can take effective steps in this regard. Subsequently, the University of Dhaka was added as respondent No. 9 along with others and a supplementary Rule Nisi was issued on 27.10.2006. But none of the added respondents entered appearance. At the hearing, even the learned Advocate for respondent No. 7 was not present.

7. Mrs. Faujia Karira, learned Advocate for the petitioners, submits that the suffering of the women at their workplaces and educational institutions knew no bounds owing to the absence of any Law in this field.

8. Mr. Rajik Al-Jalil, learned Deputy Attorney General, submits that there are many laws in the country for protecting the women including Nari-O-Shisu Nirjatan Daman AIN and as such, no new guidelines are necessary in this regard.

9. Mr. Mahmudul Islam, the learned amicus curiae, submits that it is the constitutional obligation of the Government to enact Law to protect the women at their workplaces and educational institutions in Order to preserve their fundamental rights enshrined in the Constitution.

10. He further submits that this constitutional Court is competent to give directives in the form of guidelines under Article 111 of the Constitution till legislation is made by the Parliament in this regard.

11. Ms. Sara Hossain and Mr. Probir Neogi learned Advocate appearing as an interveners, submit that without any further delay directives in the form of guidelines should be-formulated, to protect the women at their workplaces and educational institutions.

12. We have considered the Writ-Petition, the supplementary affidavits and the annexures thereto.

13. We have already discussed some of the harrowing tales of repression and sexual abuse on women at their workplaces, educational institutions and other Government and Non-Government Organizations.

14. Sub-Article (1) of Article 19 of the Constitution provides that the State shall endeavour to ensure equality of opportunity to all citizens.

15. Article 10 of the Constitution provides that steps shall be taken to ensure participation of women in all spheres of national life which is not possible unless we can put a stop to sexual harassment. Such participation-cannot be ensured unless they are protected from this flagrant and pervasive vice.

16. Article 26 occurring in the chapter of fundamental rights states that all citizens are equal before the Law and are entitled to equal protection of Law.

17. Article 29 occurring in the same chapter states, amongst others, that there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic and that no citizen shall, on the grounds only of religion, race, caste, "sex or place of birth, be ineligible for, or discriminated against, in respect of any employment or office in the service of the Republic. Sub-Article (2) of Article 28 specifically provides that women should have equal rights with men in all, spheres of the State and of public life. Sub-Article (4) of Article 28 provides that nothing in this Article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward Section of citizens.

18. Article 31 provides, amongst others, that to enjoy the protection of the Law, and to be treated in accordance with Law, and only in accordance with Law, is the inalienable right of every citizen and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with Law.

19. Article 32 provides that no person shall be deprived of life or personal liberty save in accordance with Law.

20. The fundamental rights guaranteed in chapter III of the Constitution of Bangladesh are sufficient to embrace all the elements of gender equality including prevention of sexual harassment or abuse. Independence of judiciary is an integral part of our constitutional scheme. The international conventions and norms are to be read into the fundamental rights in the absence of any domestic Law occupying the field when there is no inconsistency between them. It is now an accepted Rule of judicial construction to interpret municipal Law in conformity with international Law and conventions when there is no inconsistency between them or there is a void in the domestic Law.

21. Protection from sexual harassment and right to education and work with dignity is universally recognised as basic human rights. The common minimum requirement of these rights has received global acceptance. Therefore, the International Conventions and norms are of great significance in the formulation of the guidelines to achieve this purpose.

22. The responsibility of this Court under Article 102 of the Constitution for the enforcement of The fundamental rights enumerated in chapter III of the Constitution in the absence of legislation must be viewed along with the role of judiciary envisaged in the "Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region [1995] CCJA PRes (19 August 1995)". Those principles were accepted by the Chief Justices of the Asia and the Pacific including the then Hon'ble Chief Justice of Bangladesh Mr. Justice A.T.M Afzal. at Beijing in 1995. Those principles

represent the minimum standards necessary to be observed in Order to maintain the independence and effective functioning of the judiciary. 'The Objectives of the Judiciary' mentioned in the Beijing Statement of Principles (as amended at Manila, 28 August 1997) are:

"10. The objectives and functions of the judiciary include the following:

- (a) To ensure that all persons are able to live securely under the Rule of Law;
- (b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) To administer the Law impartially among persons and between persons and the state."

On 18.8.2008, we passed in interim Order in the present Rule Nisi as under:

In this matter Ride was issued on 7.8.2008. On that date instead of passing any interim Order, we directed the petitioner to serve notices upon the respondents by a special messenger of this Court at its own cost. Accordingly, notices were duly served upon the respondents. Today, Mr. Mansoor Habib, learned Additional Attorney General, appears on behalf of the respondents and submits that instead of passing any interim Order the matter should be disposed of on an urgent basis after the vacation. This Court will go on vacation in two weeks' time and reopen on 12.10.2008, and thereafter the matter may be taken up for hearing. However, considering the general implication of the issues involved in the Rule from the social perspective, we strongly feel that irrespective of the fate of the Rule some immediate initiatives may be taken by the respondents to address the social menace of sexual harassment of women at their workplace, educational institutions, and elsewhere. These initiatives may include building up of awareness, consultation with women groups, various stakeholders and others. These processes should result in making effective Law and proper implementation thereof. This office is directed to communicate the Order to the respondents by a special messenger of this Court".

23. The interim Order referred to above was communicated to the respondents but no effective measures were taken to address the social menace. Meanwhile, eight months have elapsed. In this connection, it is important to mention that the University Grant Commission formulated draft guidelines, namely, "the Guidelines for Elimination of sexual harassment and Repression at Higher Educational Institutes, 2008" but ultimately could not adopt those guidelines for various reasons.

24. In February, 2008, the Government of Bangladesh in the Ministry of Women and Children Affairs adopted "RvZxq bvix Dbaeqb bxwZ" ("National Women Development Policy" in short, the Policy). In the first chapter of the Policy, the Government stated about its confirmation and commitment to abide by different International Conventions and other International Instruments to safeguard and uphold the rights of the women in Bangladesh. At the Millennium Summit, 2000, Bangladesh was

among the 10 States to have signed the Optional Protocol of CEDAW. In chapter III of the Policy, the Government stated that strong measures were taken to remove discrimination against women and girl children. Clause 3.3 of that chapter states as under:

"নারীর মানবাধিকার নিশ্চিত করার লক্ষ্যে বিদ্যমান আইন সংশোধন ও প্রয়োজনীয় নতুন আইন প্রণয়ন করা
"।

Clause 3.7 is as under:

গুনগত শিক্ষার সকল পর্যায়ে, চাকরিতে, কারিগরী প্রশিক্ষণে, সব পরিতোষিকের ক্ষেত্রে কর্মরত অবস্থায় স্বাস্থ্য ও নিরাপত্তায়, সামাজিক নিরাপত্তা এবং স্বাস্থ্য পরিচর্যায় নারীর সমান অধিকার নিশ্চিত করা।

25. Even after adoption of the Policy in 2008, the Government is yet to enact any Law to protect the women at their workplaces and educational institutes.

26. On December 18, 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (in short, CEDAW) was opened for signature. The treaty came into force and closed for signature on September 3, 1981 with the ratification of 20 states. Since then, states that did not sign the treaty can now only accede to it. The instrument of ratification, accession, or succession is deposited with the Secretary-General of the United Nations. Bangladesh acceded to the CEDAW on 6.11.1984.

27. Article 11 of the Convention runs as under:

"State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in Order to ensure, on a basis of equality of men and women, the same rights, in particular: Clauses (a) and (f) of Article 11 are as follows:-

(a) The right to work as an inalienable right of all human beings;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

28. Article 24 of CEDAW necessary for disposal of this case is as under.

State parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

29. The General Recommendation No. 19 (11th Session, 1992) of CEDAW in this context in respect of Article 11 are:

"Violence and equality in employment:

(17) Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace.

(18) sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, 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 recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies including compensation should be provided.

30. Specific recommendation.

(24) (f) States parties should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace.

31. Bangladesh is also a signatory to the "Declaration on the Elimination of Violence against Women (Resolution No. 48/104 of 20 December 1993)" which in its Article 1 states as under:

For the purposes of the Declaration, the term "violence against women" means any Act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercions or arbitrary deprivation of liberty, whether occurring in public or in private life.

32. The framers of the Constitution were particularly impressed by the formulation of the basic rights in the Universal Declaration of Human Rights. If we make a comparison of Part III of the Constitution with the Universal Declaration of Human Rights (UDHR) we shall find that most of the rights enumerated in the Declaration have found place in some form or other in Part III and some have been recognised in Part II of the Constitution. The Declaration was followed by two Covenants-Covenant on Civil and Political Rights (ICCPR) and Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations General Assembly in December, 1966 making the rights contained in the UDHR binding on all states that have signed the treaty, creating human rights Law. Article 7 of UDHR states that all are equal before the Law and are entitled without any discrimination to equal protection of the Law and that all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

33. Our courts will not enforce those Covenants as treaties and conventions, even if ratified by the State, are not part of the corpus juris of the State unless those are incorporated in the municipal legislation. However, the court can look into these conventions and covenants as an aid to interpretation of the provisions of Part III, particularly to determine the rights implicit in the rights like the right to life and the right to liberty, but not enumerated in the Constitution.

In the case of H.M. Ershad V. Bangladesh, 2001 BLD (AD) 69, it is held: "The national

courts should not.....straightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments.” In the case of Apparel Export Promotion Council V. Chopra,; AIR 1999 SC 625 it is held, “In cases involving violation of human rights, the courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic Law occupying the field.”

34. Article 25 occurring in Part II (Fundamental Principles of State Policy) of the Constitution states, amongst others, that the State shall base its international relations on the principles of respect for international Law and the principles enunciated in the United Nations Charter.

35. As stated earlier equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment at the workplace and educational institutions.

36. sexual abuse is a global problem as evidenced by the discussions made below: In *Micari V. Mann*, 481 N.Y S.2d967 (Sup, Ct. 1984) a reported case on sexual harassment in U.S.A, states that sexual harassment is an abuse of trust at education institutes being in loco parentis.

37. Reliance may be made on the case of *Janzen and Govereau Vs. Platy Enterprise Ltd.* (Supreme Court of Canada) reported in the International Women’s Rights Cases at page 451.

38. In the above case, Dainna Janzeen made a complaint to the Human Rights Commission of Manitoba against Platy Enterprise Ltd, its owners agents and servants, Pharos Restaurant. She was employed as a waitress at the Pharos Restaurant, located at 9 St. Mary’s Road, from August to October, 1982. During her period of employment at the restaurant, she was continuously sexually harassed by Tommy, the cook. On many occasions Tommy grabbed her legs and touched her knee, bum and crotch area. When she resisted his sexual advances, he told her to shut up or he would fire her. He began to yell at her in front of staff and criticize her work. Five days later on 29 January 1983, Tracy Govereau made a complaint of a similar nature against same parties alleging sexual harassment by ‘Tommy, the cook’.

39. The case went upto the Supreme Court of Canada. Chief Justice Dickson who delivered the judgment of the Court held that sexual harassment in the workplace might broadly be defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job related consequences for the victims of the harassment. When sexual harassment occurred in the workplace, it was an abuse of both economic and sexual power. By requiring an employee to contend

with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacked the dignity and self-respect of the victim both as an employee and as a human being.

“Law Relating to sexual harassment At Work” 1st Edition-2007 by Mr. Alok Bhasin included a foreword by Mr. Justice J.S. Verma, Former Chief Justice of India and Former Chairman, National Human Rights Commission.

40. Mr. Alok Bhasin referred to a definition of sexual harassment at page Nos. 9 and 10, which was mentioned in the decision in the Canadian case of Canadian Pacific Ltd. and B.M.W.E. (Parker) as under:

While physical touching and the making of sexual demands may be the crudest form of sexual harassment, giving rise to the earliest complaints and court or tribunal decisions. experience has shown that the concept of sexual harassment can be much broader. Innuendo by words or gestures, unwelcome staring, sexually-abusive jokes or other language, the unwelcome displaying of pornography and the writing of graffiti on workplace walls which singles out or demeans individual employees are all now generally recognised as forms of sexual harassment, even though they may not involve an abuse of power or the making of sexual demands by the member of one sex upon a member of the other sex.

41. The above quotation was extracted by Malone, J. in David Dotchin V. Saskatchewan Worker’s Compensation Board). Queen’s Bench, Judicial Centre of Regina, Canada, 2002 SKQB 279.

42. That book at page 12 also adverted to a Canadian case, David Dotchin V. Saskatchewan (Workers’ Compensation Board), Queen’s Bench, Judicial Centre of Regina, Canada, 2002 SKQB 279 in which Malone, J. held that the plaintiff’s conduct, which involved “leering, looking at the bodies of female employees in an inappropriate manner and making sexually suggestive comments” amounted to “sexual harassment’.

43. In its landmark judgment, the Supreme Court of India in the case of Vishaka and Others Vs. State of Rajasthan, [MANU/SC/0786/1997](#) : AIR 1997 SC 3011, formulated guidelines to protect women at their workplaces by defining sexual harassment and prescribing procedures for redress. The concluding portion of the judgment runs as under:

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in Law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

44. In the above case the learned Solicitor General for the Union of India helped the Court in formulation of the guidelines.

45. In the backdrop of the pronouncement of the above judgment, the National Commission For Women which is a statutory and autonomous body constituted in 1990 by the Government of India formulated the Code of Conduct for workplaces putting down the Supreme Court Guidelines in 1998. The Commission circulated the Code widely amongst all the Central Ministries and Government Departments. The Commission also circulated it to all State Commissioners for women, NGOs and apex bodies of the Corporate Sector and to the Media. (Annexure-H to the Writ Petition)

46. While analyzing the definition of sexual harassment in the case of Vishaka and Others Vs. State of Rajasthan and Others, the Supreme Court of India in the case of Apparel Export Promotion Council Vs. A.K. Chopra, [MANU/SC/0014/1999](#) : AIR 1999 SC 625 has held that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.

47. In the light of the judgments pronounced by the Supreme Court of India in the cases of Vishaka and Others Vs. State of Rajasthan and Others and Apparel Export Promotion Council Vs. A.K. Chopra, Jawharlal Nehru University adopted “Rules and Procedures of the Gender Sensitization Committee against sexual harassment (GSCASH) (Annexure-M to the supplementary affidavit dated 19.4.2009).

48. In the case of Hira Nath Misra Vs. Principal Rajendra Medical College, [MANU/SC/0044/1973](#) : AIR 1973 SC 1260, thirty-six female students of a medical college filed a complaint with the principal regarding the misbehaviour of certain boys of the college in the girls’ hostel. The Enquiry Committee, constituted by the principal, recorded the statement of the girls in the absence of the boys, and found them guilty. They were subsequently served expulsion orders. This was challenged by the boys on the ground that evidence was taken in their absence, and that they were not allowed to cross-examine the girls. Even the names of girls were not disclosed to the considering the safety of the girls. The expulsion was upheld upto the Supreme Court.

49. Directives in the form of Guidelines:

In the backdrop of our discussion and observations made above, and in view of the inadequacy of safeguards against sexual abuse and harassment of women at work places and educational institutions whereby noble pledges of our Constitution made in so many articles to build up a society free from gender discrimination and

characterized by gender equality are being undermined every day in every sphere of life, we are inclined to issue certain directives in the form of guidelines as detailed below to be followed and observed at all work places and educational institutions till adequate and effective legislation is made in this field. 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.

1. Extent. These guidelines shall apply to all work places and educational institutions in both public and private sectors within the territory of Bangladesh.

2. Aims and objectives.

50. The aims and objectives of these guidelines include-

- (a) to create awareness about sexual harassments;
- (b) to create awareness about the consequences of sexual offences.
- (c) to create awareness that sexual harassment is punishable offence.

3. Duties of employers and authorities.

51. Since it is the duty of all citizens and public servants to observe the Constitution and the laws, and since the Constitution of the Republic in several articles ensures gender equality and the State's firm and consistent stand against all sorts of discrimination on the ground of sex. and since the Constitution ensures equal rights of women with men in all spheres of the State and public life and contemplates equality before Law and right to equal protection of Law, it shall be the duty of the employers and other responsible persons in work places, and the authorities of all educational institutions to maintain an effective mechanism to prevent or deter the commission of offences of sexual abuse and harassment, and to provide effective measures for prosecution of the offences of sexual harassment resorting to all available legal and possible institutional steps.

4. Definition.

i) sexual harassment includes-

- a. Unwelcome sexually determined behaviour (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.

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 harassment;

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. Such conduct mentioned in clauses (a) to (1) 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.

ii) Concerned Authority means an authority of any educational institution or work place in both public and private sectors, which is authorised under the relevant disciplinary Rules to take action in case of misconduct.

iii) Disciplinary Rules mean Rules prescribed by any Act or Ordinance or any other subordinate legislations and include any Rules framed for maintenance of discipline in any public or private institutions, organisations and work places.

5. Creating awareness and public opinion.

a. In Order to deter and eliminate sexual harassment and torture, and to create a safe environment for work and education, the employers/management of all workplaces and authorities of all educational institutions will attach prime importance to the publicity and publication against sexual harassment and gender discrimination. There must be sufficient orientation before the formal classes start for a new session in educational institutions, and monthly, half yearly orientation in all workplaces and institutions;

b. There must be arrangement for proper counseling for the concerned persons, if necessary;

c. Awareness of the rights of female students and employees guaranteed and conferred by the Constitution and the statutes should be created by notifying in simple words the relevant provisions of the Constitution and the statutes;

d. The educational institutions and the employers will maintain regular communication and effective consultation with the administrative authorities to create awareness among the personnel in Law enforcing agencies in this regard;

e. To prepare and publish booklets containing these guidelines and provisions of the Constitution and statutes regarding gender equality' and sexual offences;

f. To create awareness regarding fundamental rights guaranteed in the Constitution:

6. Preventive steps.

All employers and persons in charge of work places and authorities of all educational institutions shall take effective measures for prevention of sexual harassment. To discharge these obligations, they shall take, amongst others. the following steps:

a. Prohibition of sexual harassment and sexual torture as defined in clause 4 above should be notified, published and circulated widely and in an effective manner.

b. Constitutional and statutory provisions against gender discriminations and sexual harassment and punishment for the offences of sexual harassment and torture should be widely circulated:

c. To ensure that there is no hostile environment towards women at workplaces and educational institutions, and to engender confidence and trust in women workers and students that they are not placed in a disadvantaged position in comparison to their male colleagues and fellow students.

7. Disciplinary Action:

Appropriate disciplinary action must be initiated in case of any falling within the definition of sexual harassment and torture in clause 4 of these guidelines.

8. Complaints:

Where such acts do not constitute misconduct under the disciplinary Rules, an appropriate and effective mechanism must be evolved at the workplaces, and educational institutions, in both public and private sectors for record and redress of the complaint made by the victim. The following measures must be included in the complaint mechanism.

(a) It must be ensured that the identity of the complainant and also that of the accused will not be disclosed until the allegation is proved;

(b) Security of complainant will be ensured by the Concerned Authority;

(c) Complaint can be lodged by the victim or through her relatives, friends or lawyers, and it can be sent by mail also;

(d) A complainant can file the complaint with a female member of the Complaint Committee separately;

(e) The complaint will be lodged with the Complaint Committee to be constituted as provided in clause 9 below.

9. Complaint Committee.

(a) In all work places and educational institutions in both public and private sectors, the Concerned Authority will constitute a Complaint Committee in Order to receive complaints, and to conduct investigation and make recommendations.

(b) The Complaint Committee will have minimum five members and majority of the members will be women. The head of the Complaint Committee should be a woman, if available.

(c) The Complaint Committee should have at least two members from outside the organization concerned, preferably from organizations working on gender issues and sexual abuse.

(d) The Complaint Committees will submit annual reports to the Government on the compliance of these guidelines.

10. Procedure of the Complaint Committee. Normally the complaint has to be lodged with the Complaint Committee within 30 working days of the occurrence. To verify the complaint the Complaint Committee will:

i). In case of minor harassment, if it is possible, the Complaint Committee shall dispose of the complaint with the consent of the parties involved and shall report to the Concerned Authority of the educational institution or work place in public or private sector, as the case may be.

ii) In all other cases the Complaint Committee shall investigate the matter.

iii) The Complaint Committee will have the power to send registered notice by mail to the parties and the witnesses, conduct hearing, gather evidence, and examine all relevant papers. In this type of complaint, apart from oral evidence emphasis should be placed on circumstantial evidence. To conduct the work of the Complaint Committee effectively the related office of the educational institutions and workplaces in both public and private sectors will be bound to extend any cooperation which is requested from them. The Complaint Committee will keep the identities of the complainant/s confidential. While recording the testimony of the complainant/s any question or behaviour which is intentionally base, insulting or harassing should be avoided.

The testimony must be recorded in camera. If the complainant wants to withdraw the complaint or stop the investigation then the reason behind this has to be investigated and mentioned in the report.

The Complaint Committee shall submit the investigation report with recommendation within 30 working days to the Concerned Authority of the educational institution or work place, as the case may be. The period of 30 days may be extended up to 60 days where it is found necessary.

If it is proved that a false complaint has been filed intentionally then a report will be submitted to the Concerned Authority recommending appropriate action for the complainants. The Complaint Committee will take decisions on the basis of the view expressed by the majority of its members.

11. Punishment:

The Concerned Authority may suspend temporarily the accused person (other than students) and in case of students, may prevent them from attending their classes on the receipt of the recommendation of the Complaint Committee. If the accused is found guilty of sexual harassment, the Concerned Authority shall treat it as misconduct and take proper action according to the disciplinary Rules of all work places and the educational institutions in both public and private sectors within 30 (thirty) days and/or shall refer the matter to the appropriate Court or tribunal if the Act complained of constitutes an offence under any penal Law.

52. We direct that the above guidelines will be strictly followed and observed in all educational institutions and work places in both public and private sectors until adequate and appropriate legislation is made in this field.

53. In this judgment the expression. "woman" has been used to include a female of any age as defined in the Nari-O-Shisu Nirja-ton Daman AIN, 2000.

54. In the result, the Rule and the supplementary Rule are made absolute with the directives in the form of guidelines described hereinbefore. We would like to record our note of appreciation to Mr. Mahmudul Islam who assisted the Court as amicus curiae by rendering valuable assistance in the performance of the difficult task in public interest.

There is no Order as to costs.

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