

## **Sexual Harassment in Bangladesh: Our Cultural Backdrop and the Role of Law in Addressing the Occurrence**

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***Abstract:** This article is an attempt to focus on the cultural backdrops responsible for sexual harassment and the role of legislation in addressing the problem in Bangladesh. Different socio-cultural factors related to sexual harassment have been highlighted in this study. While participation of women in labor market has ensured the economic empowerment of women, sexual harassment is frustrating the overall situation. Women from almost every segment of the society have been experiencing the occurrence. In this article the existing provisions and their lacunas have been discussed. At the end of the study some ways and means have been suggested. The paper aims to explore the issues pertaining to processes that expose women to exploitation and sexual harassment in their workplaces and streets and to highlight our existing laws and their limitations.*

### **Introduction:**

Sexual harassment has just emerged as a vital issue in Bangladesh. The issue, involving aspects of power and sex in respect of violence against women, is gradually coming under public scrutiny. The growing impoverishment and lack of security of women has been a long-standing concern of the women's movement in Bangladesh, where women are categorized as dependents whose material entitlements are endorsed and controlled by the male members of the family. Though women are assigned to a subservient role in the patriarchal society in Bangladesh, socio-economic changes have compelled women to depart from sex-stereotyped roles and engage in income generating activities outside their homes.

While the participation of women in the labor market has ensured a degree of economic empowerment, and a renegotiation of gender relations, the situation has simultaneously frustrated by another phenomenon that is SEXUAL HARASSMENT. Sexual harassment is a hazard encountered in workplaces across the world that reduces the quality of working life; jeopardize the well being of women.

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Sexual harassment of women in streets and workplace is a common occurrence, which is experienced by women from almost every segment of the society. Recently another sector, the educational institutions has been experiencing the phenomenon, which is an obvious threat on our society. Due to the traditional backdrop in Bangladesh where chastity in a woman is of utmost importance, victims of sexual harassment suffer in silence rather than protest against it. Moreover, this has not been received considerable attention in its proper perspective. This paper aims to explore the issues that expose women to sexual harassment in their workplace, streets and to highlight our legal provisions.

#### Conceptualizing Sexual Harassment:

Definitions of sexual harassment that have emerged as part of western ideology have a number of components to them. Some of the important features that are construed as constituting sexual harassment are-behavior unwanted by the recipient; sexual dimension to the incidents; the power the harasser exerts, which may apart from being sexual in nature, exploit an economic or authority dimension existing between the parties; and the loss experienced by the victim.<sup>1</sup>

Sexual harassment has been defined varyingly by the experts. Russel, describes sexual harassment as "deliberate or repeated unsolicited verbal comments, gestures or physical contact of a sexual nature that is considered to be unwelcome by the recipient".<sup>2</sup> Farley adds, "staring at, commenting upon or touching a women's body, requests for acquiescence in sexual behavior, repeated non-reciprocal propositions for dates, demands for sexual intercourse and rape" as aspects of sexual harassment.<sup>3</sup> Sexual harassment has also been defined, in terms of employment conditions, as "any physical or verbal conduct of a sexual nature.....which is unsolicited, repeated and unwelcomed, or when submission to such conduct is implicitly or explicitly a term or condition for decisions which would affect promotion, salary or any other job condition; or when such behavior creates an intimidating, hostile or offensive work environment for one or more employees".<sup>4</sup> Offensive

<sup>1</sup> Houghton-James, H., *Sexual Harassment*, Cavendish Publishing Ltd., London, 1995, p.6.

<sup>2</sup> Russel, D., *Sexual Exploitation*, Sage Publications, Beverly Hills, 1984, pp. 269-70.

<sup>3</sup> Farley, A., *Sexual Shakedown*, McGraw-Hill Book Company, United States, 1978, p. 33.

<sup>4</sup> Hadjifotiou, N., *Women and Harassment at Work*, Pluto Press Ltd., London, 1983, p.8.

behavior may include both verbal and non-verbal conduct ranging from sexist jokes, graffiti and sexually explicit pictures of women, touching, fondling and other acts of sexual nature.

A variety of behavior has been designated as sexual harassment. From these range some of the most egregious behavior prohibited by the criminal law - rape, sexual assault - to conduct which can, in certain circumstances, be an innocuous part of day-to-day interaction - comments, jokes, physical contact. The kinds of conduct characterized as sexual harassment can be categorized as physical, verbal and non-verbal conduct. Each category encompasses a wide range of actions, some of which are illustrated below.

Examples of sexual harassment:

A. Physical conduct

- Physical violence
- Physical contact, e.g. touching, pinching
- The use of job-related threats or rewards to solicit sexual favors.

B. Verbal conduct

- Comments on a worker's appearance, age, private life, etc.
- Sexual comments, stories and jokes
- Sexual advances
- Repeated social invitations
- Insults based on the sex of the worker
- Condescending or paternalistic remarks

C. Non-verbal conduct

- Display of sexually explicit or suggestive material
- Sexually-suggestive gestures
- Whistling<sup>5</sup>

It is therefore clear that the term covers a wide range of behavior in given contexts. Certain of these kinds of behavior are inherently offensive: those involving physical violence or verbal aggression are the most obvious examples. But others mentioned above could, depending on the circumstances, be entirely harmless. Physical contact, for example, may

<sup>5</sup> M. Rubenstein: "Dealing with sexual harassment at work: The experience of industrialised countries", in Conditions of Work Digest: Combating sexual harassment at work, Vol. 11, No. 1, 1992, p. 11.



be strongly objected to, tolerated or encouraged; jokes offensive to one person may be appreciated comment may be welcomed, tolerated, or considered offensive depending on the relationship between the individuals involved, the context in which it was made, or even the tone in which it was delivered. Additionally, the kinds of behavior considered sexually harassing appear to vary among different cultures.

There are two main assertions that run through definitions of sexual harassment. First, sexual harassment involves acts or behavior which has sexual overtones and is unwelcome and unreciprocated. Second, it demonstrates a dimension of unwanted sexual power, which is reflective of existing gender relations. In the circumstances, sexual harassment may be described as the imposition of unwanted sexual demands on another person in a relationship of unequal power.<sup>6</sup> This indicates that the perpetrator's behavior enable him to place the victim in a subordinate position in relation to himself. Though the subordination is generally on a gender level, there may also be an economic dimension on it, if the victim's working conditions are affected.<sup>7</sup> While sexuality is integral to sexual harassment, abuse of power and authority by male on the basis of the assumption that power lies with the men is fundamental to the undermining of the safety and security of women.

#### Legal definition of sexual harassment:

Most of the jurisdictions in which sexual harassment is directly prohibited include a definition in their legislation. In others, the legislation states that sexual harassment is prohibited, leaving the decision-making bodies to clarify the kinds of actions covered and the circumstances in which they will be prohibited. This approach threatens uncertainty while the parameters of the definition are established. In those legal systems in which definitions form part of the legislation, some are relatively succinct. In contrast, some statutory definitions are more detailed. The Israeli Prevention of Sexual Harassment Law, for example, sets out a list of six different kinds of behavior covered by the Act. In jurisdictions in which the prohibition of sexual harassment is a judicial innovation, contrasting approaches have been taken to defining it. In India, the Supreme Court has issued a set of detailed guidelines on

<sup>6</sup> Mackinnon, C., *Sexual Harassment of Working Women*, Yale University Press, London, 1979, p.1.

<sup>7</sup> Khair, Sumaiya, *Understanding Sexual Harassment in Bangladesh : Dynamics of Male Control and Female Subordination*, The Dhaka University Studies , Part-F, Vol.X(1) :87-110, June 1998, p.88.



measures which must be adopted by employers to prevent sexual harassment, which include an extensive definition.<sup>8</sup> In other jurisdictions, the courts have established the parameters of sexual harassment on a case-by-case basis.

Definition of sexual harassment: Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- Physical contact and advances;
- A demand or request for sexual favors;
- Sexually colored remarks;
- showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.<sup>9</sup>

After the discussion we can say that sexual harassment includes-

- ♦ Conduct of a sexual nature or other conduct based on sex, affecting the dignity of men and women -- at work or in any other public space -- which is unwelcome, unreasonable and offensive to the recipient.
- ♦ Where a person's rejection or submission to such conduct is used explicitly or implicitly as the basis for decisions affecting that person's employment status (quid pro quo harassment).
- ♦ Conduct that creates an intimidating, hostile or humiliating work or work-related environment for the recipient. Such conduct includes demeaning or inappropriate language (including body language), verbal threats or actual physical contact.

As described above, sexual harassment need not be limited to potential or actual conduct of a sexual nature, but can include conduct based on a person's social identity as a woman.

#### The Cultural Backdrop to Sexual Harassment:

In order to understand the occurrence of unwanted sexual behavior in its proper context it is necessary to evaluate the construction of gender roles

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<sup>8</sup> Supreme Court of India in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, Guideline.2.

<sup>9</sup> Supreme Court of India in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

and their impact on behavior patterns, sexuality and ultimately the relations between men and women. Existing socio-cultural norms in Bangladesh relegate women to an inferior position within the family and the wider community. This is possible mainly because patriarchy, as an ideology, apart from setting out basic standards for women to which they are expected to conform, also allows men to exercise full control over the property, person and labor of women. Gender roles are learnt through socialization, which takes place from birth. The process, shaped to a great extent by patriarchal norms, begins at home affecting male and female children in different ways. It is common to parents to instill traditional sex-stereotyped ideologies into children's minds. Socialization of girls in Bangladesh is in keeping with the lifelong of subservience and self-effacement that women are expected to play. Initial processes, ordained largely by social norms, begin by training the girl to perform the part of a docile daughter in preparation for her role as a compliant wife and dependent mother.<sup>10</sup>

Women in Bangladesh traditionally live in a dichotomized world, which indicates the culturally differential power and resources allocated to men and women in society. This essentially imposes a strict division of labor and fosters a systematic supremacy of male. By relegating women to the "private" sphere, they are denied liberty, visibility and independence- a situation often perpetuated by women themselves as it is important not to challenge the formal authority of men if good relationships within households are to be maintained.<sup>11</sup> In the interests of good relationships in the households and the community it is, thus, important that women remain passive and unassertive by subordinating their needs to those of the dominant male members of the family.

The dichotomy between public and private is often justified by referring to men and women's inherent physical and biological qualities. Theories on the subordination of women are based on the perspective of biological determinism.<sup>12</sup> It is observed that these theories reduce women to biological entities and their tasks are viewed as the work of 'nature' whereas men are elevated to the status of culture by regarding their tasks

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<sup>10</sup> Khair, op. cit, 1998.

<sup>11</sup> Punalekar, S. P., *Gender, Class and Culture : Situation of Girl Children in India*, Ashish Publishing House, New Delhi, 1991, p.26.

<sup>12</sup> Pulerker, *ibid*.

as truly human.<sup>13</sup> Thus, it is contended that -

*This covert or overt biological determinism, paraphrased in Freud's statement that anatomy is destiny, is perhaps the most deep-rooted obstacle for the analysis of the causes of women's oppression and exploitation.....women find it very difficult to establish that the unequal, hierarchical and exploitative relationship between men and women is due to social.....factors. One of our main problems is that not only the analyses as such, but the tools of the analysis, the basic concepts and definitions, are affected rather infected-by biological determinism.*<sup>14</sup>

Sanctified by fundamental religious interpretations, biological determinism succeeds in perpetuation patriarchal notions that project images of male strength and dominance and female weakness and dependence .It is argued that

*Islam clearly states that women and men have their own sphere of activities -a functional division in accord with their respective natural dispositions and physical and psychological qualities and inherent characteristics.....This is how the doors of a number of social and economic ills have been closed.*<sup>15</sup>

The above contentions present a double edge. While advocating women's activities in their own sphere, what it actually conveys is that enforced segregation between men and women has actually closed the doors of social and economic emancipation and independence for women.<sup>16</sup> It follows therefore, that although that public or private dichotomy is purportedly based on natural biological differences; such division is really socially constructed in a manner that works to the advantage of men and disadvantages of women.

Just as gender roles are socially constructed, so is sexuality. Men essentially gain power through ways in which culture constructs sexuality

<sup>13</sup> Pandhe, S., Women's Subordination: Its Origin, Kanak Publications, New Delhi, 1989, pp.30-31.

<sup>14</sup> Mies, M., et. al., (1988) Social Origins of the Sexual Division of Labour, Zed Books Ltd., London, p.68.

<sup>15</sup> Maududi, A.A., Purdah and the Status of Women in Islam, Islamic Publications Ltd, Lahore, Pakistan, p.81.

<sup>16</sup> Khair, op.cit, 1998.



and male female relations.<sup>17</sup> The segregation between men and women in the economic sphere is duplicated and reinforced at the ideological and religious levels in Bangladesh where observance of purdah acts as a powerful operator. Adherence to purdah norms helps to maintain the distinction between male and female spaces. Apart from isolating women from economic arenas, purdah is considered essential in order to protect the chastity of the female since sexual purity is traditionally an overriding consideration at marriage. The principal measures of securing family honor in Bangladesh are based on female modesty and the control of their sexuality. In a patriarchal backdrop sexuality of women is qualified in two ways: women, on the one hand, are regarded as sex objects who are required to be secluded in order to protect men from their charms, and on the other hand, they are seen as being susceptible to sexual assaults, requiring protection themselves. In the circumstances, purdah is deemed essential for the control of sexual desire and aggression and also the moral standards specified by society.<sup>18</sup>

The distinction provided by purdah norms generates a "double standards of sexuality". One of the overriding factors discouraging female participation in activities in the public or male space is the fear of sexual aggression against women. A female crossing over to male space is regarded as moving away from the protection of the family, "legitimately" attracting male harassment and violence.<sup>19</sup> The practice of purdah demonstrates a double standard that helps to rationalize the prevalent male sexual attitudes and their control over women's behavior. It is pointed out that:

*While it is obvious that female presence in public areas certainly makes access to them easier than if they were enclosed within their homes.....it assumes that a man is totally unable to control his sexual impulse and a women has no right over her body, nor any choice in sexual matters.<sup>20</sup>*

<sup>17</sup> Caplan, P., (1987), *The Cultural Construction of Sexuality*, Tavistock Publications, London, p.10.

<sup>18</sup> Khair, op. cit, 1998.

<sup>19</sup> Lewis, D. J., *et al.*, (1993), *Going it Alone : Female Headed Households, Rights and Resources in Rural Bangladesh*, Occasional Paper 01/93, March 1993, Centre for Development Studies, University Of Bath, U.K., p.20.

<sup>20</sup> Jahan, R., (1988), *Women and Development. Challenges and Opportunities*, Ford Foundation Dhaka, p.214.

This form of division of labor not only imposes on women in segregated societies a great responsibility in the moral sphere, but the public and private dichotomy indicates the culturally differential power and resources allocated to men and women in the society and the consequent subordination of women therein.<sup>21</sup> It is observed that:

*In the patriarchal, patrilocal, patrilineal society of Bangladesh, socio-cultural values sanction segregation of the sexes, impose strict gender division of labor and foster a systematic bias of male supremacy.*<sup>22</sup>

Thus, men grow up seeing women objectified in specific contexts. Since women's identity is often tied to their bodies, women are subjected to control of men through sexual exploitation, the fact, that social construction of sexuality regards the behavior of men as socially and biologically acceptable, male assertiveness, gives them the option of not questioning their attitude towards women. Men do not want women to challenge their masculinity and as such, strive to ensure that women are socialized into adopting a submissive and dependent role, which would deter them from asserting themselves against men when sexually harassed.

The impact and Cost of sexual harassment on women:

Sexual harassment leaves a lasting impact on the victims. Women who have been sexually harassed experience multidimensional losses in respect of their status and power, which are more often than not, physically, emotionally, psychologically and economically debilitating. Victim of sexual harassment also committing suicide which has a tremendous adverse effect over our society. There are occasions when victims feel personally responsible for the incidents. Women feel that in some way, whether by dress or demeanor, they may have precipitated unwanted sexual advances by men. Since interacting with women in terms of their sexuality is condoned as acceptable male behavior, it is deemed natural for men to conduct themselves in this fashion.

A basic problem with sexual harassment is its acceptance, on account of its pervasiveness, as a common feature of relations between men and women in their daily existence. Women are more likely feel embarrassed

<sup>21</sup> Papanek, H., (1982), 'Purdah : Separate Worlds and Symbolic Shelter' in Papanek, Chanakya Publications, New Delhi, p.36.

<sup>22</sup> Jahan, op.cit., 1988.

by the incidents rather than to protest against such conduct and seek redress. Women may not necessarily approach events by how they feel about a particular situations or modes of behavior , but in terms of the way they have been socialized to react.<sup>23</sup> In the circumstances, women are reluctant to report the incidents of harassment to avoid public scrutiny, which means that unwanted sexual conduct is not highlighted much less perceived as an offence.

The experience of sexual harassment is an affront to a worker's dignity and prevents women from making a contribution commensurate with their abilities. The effects of sexual harassment on its victims are well documented. Studies routinely confirm that most are upset by it, and that many experience feelings ranging from irritation and nervousness to anger, powerlessness and humiliation. At its worst, sexual harassment can make their working lives miserable and even dangerous. Research has shown that victims can eventually become ill when subjected to sexual harassment on a regular basis; particularly where it is perpetrated by a supervisor, involves sexual coercion or takes place over a long period of time or in a male-dominated setting. 18 It has been found to trigger a wide range of ailments, including stress-related illnesses, high blood pressure and depression. Ultimately, victims of sexual harassment may miss out on career opportunities or leave their jobs.<sup>24</sup>

Sexual harassment also costs employers. When harassed workers lose concentration, when it interferes with their judgment, when they are difficult to motivate or tend to be late or absent, employers incur significant losses. In a recent Canadian survey, for example, nearly one-third of victims reported that their jobs had been affected by sexual harassment. In these circumstances, productivity may decrease, team work be jeopardized, and the risk of workplace accidents increase. Ultimately, employers may lose valuable workers, while others may be dissuaded from applying for vacancies. Employers who fail to prevent sexual harassment may also face the financial costs of sick pay for employees who become ill, and legal bills from court actions brought against them.<sup>25</sup>

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<sup>23</sup> Houghton-James ,op.cit.

<sup>24</sup> Crocker and Kalembara, op. cit., note 9; P.H. Loy and L.P. Steward: "The extent and effects of the sexual harassment of working women", in *Sociological Focus*, Vol. 17, 1984, p. 31

<sup>25</sup> Siddiqi . Dina.M.,*The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond* , CPD-UNFPA Publication Series ,June 2003.



In addition, where sexual harassment causes disproportionate numbers of women to feel unwelcome, uncomfortable or threatened in their places of work, or even forced to leave their jobs, it functions as a form of sex discrimination. Allowing it to continue risks many women being reluctant to take up traditionally male jobs or jobs in a largely male workforce. Women's equal opportunities are threatened and their position in the labor force undermined when they are dissuaded from applying for higher-status, well-paid, traditionally male jobs.<sup>26</sup> For these reasons, sexual harassment has been approached as a form of sex discrimination by emphasizing its discriminatory effects and prohibiting it in anti-discrimination laws and policies.

#### Role of law in addressing sexual harassment:

It is essential to examine the role of law as a source of redress and social changes in respect of conduct that is so fundamental to gender relations.

Before the enactment of Nari O Shishu Nirjaton Domon Ain 2000, apart from the provisions of The Penal Code 1860, there was no specific legislation that acknowledged or addressed the issue of sexual harassment as an offence. Section 354 and 355 of The Penal Code states that aggravated assault includes the intent to outrage the modesty of a woman and the intent to dishonour a person respectively. Section 509 of The Penal Code further states that, the uttering of words, the making of any sound or gesture, or the exhibiting of any object intending to insult the modesty of a woman is punishable. In *State v. Hetram*<sup>27</sup>, the accused was booked under section 354 for dragging a 15 year-old girl to a secluded spot when she was returning home.<sup>9</sup> Again, in the case of *Muhammad Sharif v. State*<sup>28</sup>, it was held that a group of young men following a group of young girls and pestering them and using indecent gestures and words constituted an offence under section 509 of The Penal Code as it is tantamount to insulting their modesty.

Section 294 of The Penal Code 1860, prohibiting obscene acts or songs causing annoyance to others may also be used to redress sexual harassment. For instance, Saxena records a case where a school teacher was plagued by indecent jokes by the headmaster in the presence of other teachers. The accused headmaster was found guilty under section 294 of

<sup>26</sup> MacCann.Deirdre, Sexual Harassment at Work : National and International Responses, Conditions of Work and Employment Series No. 2.

<sup>27</sup> 1982 Cr.L.R.(Raj) 522 cited in Saxena, Shobha, Crimes Against Women and Protective Laws, Deep and Deep Publications, New Delhi, 1995, P.217.

<sup>28</sup> 9 D.L.R. (1957) S.C., 127.

### The Indian Penal Code 1860.<sup>29</sup>

The Nari O Shishu Nirjaton Domon Ain 2000 was enacted in view of preventing violence against women and children. The Act seeks to focus on issues that have not hitherto been addressed, such as child sexual abuse and sexual harassment. Section 10 of the Act provides that any man who outrages the modesty of a women, in order to satisfy his carnal desires or makes indecent gestures will be guilty of sexual harassment and will be punishable with rigorous imprisonment of not exceeding ten years and not less than three years and with or without fine.

May 13, 2009 is one of the noteworthy days in the legal history of Bangladesh since the High Court Division of the Supreme Court issued a set of guidelines defining sexual delinquency to prevent any kind of physical, mental or sexual harassment of women, girls and children at their workplaces, educational institutions and other public places including roads across the country. The HC directed the government to make a law on the basis of the guidelines, and ruled that the guidelines will be treated as a law until the law is made. The court directed the concerned authorities to form a five-member harassment complaint committee headed by a woman at every workplace and institution to investigate allegations of harassment of women. According to the HC rule, majority of the committee members must be women. Lawyers concerned said quoting the HC observations that the committee will examine complaints from girls or women if they are subjected to any mental, physical or sexual harassment, and recommend to the authorities to take action against the accused persons.

Disturbing women and children through letters, e-mails, SMS, posters, writings on walls, benches, chairs, tables, notice boards and threatening or pressing them to make sexual relations are sexual harassment and torture, the lawyers said quoting the judgment. They also said rape, sexual provocation, envious or intentional propaganda against women and children, and showing such films, digital images, paintings, cartoons, leaflets, posters and still photographs are also considered as indirect sexual harassment and torture.

According to the guidelines, nobody can touch or hurt with any bad intention any part of the body of a girl or woman. Any indecent word or comment cannot be used about them, and any unknown adult girl or any

<sup>29</sup> Chandra Kala v. Ram Krishna, 1985 Cr. L. R.(S.C.),365 cited in Saxena, op.cit., pp.219-220.

woman cannot be addressed as a beautiful one with any bad intention. Teasing women and children through e-mail or telephone will also be considered as offence, and ordered that any kind of provocation or character assassination will have to be stopped.

The HC prohibited the authorities concerned from disclosing the names and addresses of the complainants and accused persons until the allegations are proved. The HC asked the law secretary, women and children affairs secretary, education secretary, labour secretary, information secretary, University Grants Commission (UGC), university authorities, Bangladesh Garment Manufacturers and Exporters Association (BGMEA), Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), Bangladesh police and Bangladesh Bar Council to comply with the guidelines.<sup>30</sup>

This move by High Court must remain as a landmark in the history of judiciary for protecting women from sexual harassment.

Lacuna in existing legislation:

Though women's legal position is implied in various legal instruments in Bangladesh, women's rights embodied therein remain largely unenforced. The prevailing legal system in Bangladesh is paternalistic towards women to the extent where protection of women is tantamount to protection of a man's property. Consequently, the law institutionalizes male dominance over women in almost every sphere of life, which refers not only to the inadequacy of the law but also to the many discriminatory legal provisions that affect women adversely.

Lack of clarity and due to ambiguity of expression in legal texts, result in protracted legal controversies, which deprive women of protection. Since existing laws do not cover many dimensions of violence against women, the focus of the prosecution also tends to be narrow. Thus, while protective legislation specifies only certain forms of aggression such as causing death, grievous hurt, rape and so on, and imposes stiff penalties accordingly, it is confined in its dimension and fail to identify other diverse forms of violence that affect women.<sup>31</sup> Consequently, acts outside the ambit of existing laws enacted to combat gender violence do not merit

<sup>30</sup> <http://www.clcbd.org/index.php/201003023536/Chancery-Law-Chronicles-Cases/Constitutional-Law/Fifth-Amendment-to-the-Constitution-of-Bangladesh-Judgment-2005-34-CLC-HCD>

<sup>31</sup> Kapur, Naina,(1998) Respecting Difference: Sexual Harassment in India, paper presented at the Workshop on Acknowledging Sexual Harassment in Bangladesh, organised by the British Council, 2-3 July, 1998.



any remedy.

A prosecution of sexual harassment under section 354 of The Penal Code depends on the proof of two matters. One that the accused used criminal force or assaulted the women and two, that such assault was done with an intent and knowledge that it was likely to outrage the modesty of the women. Therefore, it is not enough that to prove the assault that actually taken place but that it was done with full intention and knowledge. This brings the problem of furnishing evidence.

Cases of violence require the application of the laws of evidence, which often involves queries of delicate and intimate nature, which most women in socio-economic context of Bangladesh find difficult to respond. Moreover, the defense lawyers frequently indulge in unnecessary character analysis of the victim vitiating from the actual context. Victims, in that process, suppress real evidence. Moreover, the prevalent patriarchal system nearly always places the burden on the women to prove that she did not actually consent to the offending act. Where a person is subjected to violence law presumes there will be some perceptible signs. Being a more elusive form of intimidation, sexual harassment hardly leaves visible evidence of injuries. Proof of sexual harassment may not be easy to obtain as the nature of behavior is such that it usually occurs when there are no potential witnesses and the victim may subsequently be too ashamed to speak to anyone about the incident.<sup>32</sup>

The Nari O Shishu Nirjaton Domon Ain 2000, for the first time made sexual harassment a criminal offence punishable by law in Bangladesh. Section 10 of the Act states:

Any man who, in order to satisfy his lust in an improper manner, outrages the modesty of a woman, or makes obscene gestures, will have engaged in sexual harassment, and for this, the above mentioned male will be sentenced to rigorous imprisonment of not more than ten years and not less than three years and beyond this will be subjected to monetary fines as well (my translation, emphasis added).

The Bangladeshi law deals only with the expression of inappropriate sexual desire and conduct, without specifying geographical jurisdiction. Unfortunately, the law is problematic both in language and overall conception. The current law does not mention workplace harassment since the definition of sexual harassment is limited to acts or intentions of

<sup>32</sup> Houghton-James, op. cit., p.129.

a sexual nature, regardless of place. Further, the law does not accommodate actions that are not directly connected to the "satisfaction of lust." It also assumes that what is ultimately at stake is a woman's modesty, where the parameters of modesty are taken for granted. In practice, modesty is a highly contentious and unstable term. The patriarchal assumptions embedded in dominant ideologies of female modesty are hardly conducive to the protection of women who do not conform to accepted social codes. Here it should be noted that the lines between sexual harassment and physical violence against women (such as rape) tend to get blurred conceptually, if we are not careful.<sup>33</sup> It is important to draw the line between physical harassment and rape, which is a criminal offense of a different order.

#### Recommendations:

1. The current sexual harassment law in Bangladesh provides a point of departure, although its language, which refers to harassment as an outrage to a woman's modesty, is antiquated and limiting. Just what constitutes a woman's modesty is open to interpretation and as we have seen, many people do not consider industrial workers to possess modesty to begin with. There are no written codes for behavior on the street and in any case 'moral codes of decency' are applied selectively. This is a social reality that must be addressed in the law. Moreover, sexual harassment laws need to accommodate forms of gender harassment that are not explicitly sexual. Assuming that laws that refer to female modesty are inherently limiting, it is advisable to take a cue from the Indian Supreme Court judgment of 1997<sup>34</sup>, and stress the violation of a woman's right to equality, and freedom from all forms of discrimination. In the case of *Vishaka v. State of Rajasthan*, the focus was shifted from a criminal wrong to a systemic discrimination, which required elimination. On the basis of the postulations the Court ruled that :

*.....Each such incident results in violation of fundamental rights of Gender Equality and the Right to Life and Liberty.*<sup>35</sup>

These are rights that are enshrined in the Constitution of Bangladesh. To fill the lacuna in existing legislation, reference to international legal documents, including those of the International Labor Organization and

<sup>33</sup> Siddiqi. Dina. M., (2003) The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond, CPD-UNFPA Publication Series, June.

<sup>34</sup> *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

<sup>35</sup> Ibid.

CEDAW, to which Bangladesh is a signatory, can be made.

2. However, enacting progressive laws by itself will not suffice to change the situation. The government in collaboration with women's and labor rights groups should draw up a code of conduct appropriate for the industrial sector. ILO research indicates that workplace harassment policies should include four main components: 1) a clearly defined policy statement 2) a complaints procedure that maintains confidentiality 3) progressive disciplinary rules and 4) a training and communication strategy. In addition, any complaint procedure must ensure that the victim is protected from retaliation. The ILO framework provides a useful model with which to proceed. In terms of concrete actions, the first step should be for the government in collaboration with women's and labor rights to draw up a code of conduct that would be applicable and appropriate for the industrial sector. Subsequently, all factories should put in place a clear and simple complaints procedure. The disciplinary body overseeing such cases should be constituted of persons who will be able to maintain their neutrality during proceedings. The majority of members should be female. Workers must be assured of full confidentiality throughout the process. No procedure will work unless workers are assured of protection from retaliation. In this respect, the system of hiring and firing workers informally needs to be replaced. Workers should be provided with the appropriate documentation upon hiring.<sup>36</sup> This does not require any new legislation but simply compliance with existing labor laws. Factory owners must be convinced that it is in their own interests to mete out fair treatment to their employees. This requires highlighting the relationship between low productivity, coercive management practices and sexual harassment. Criminalization or legal prohibition of sexual harassment is inadequate in assisting victims of violence. If there is no institutional support for reporting incidents of harassment, and if her job status is insecure, it would not be in the victim's interest to break her silence.

3. As we all know, it is critical to ensure that existing legislation is implemented and that those in charge of enforcement be held accountable for their actions. By the same token, the efficacy of laws will be constantly undermined if social attitudes, especially widespread cultural tendencies of 'blaming the victim' in cases of sexual harassment, are not

<sup>36</sup> Siddiqi . Dina.M., *The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond* , CPD-UNFPA Publication Series ,June 2003.



transformed. This requires, among other things, serious gender-sensitive training for those charged with protecting the rights of citizens, especially police personnel and judges. Women cannot expect legal or police protection if the authorities already assume "guilt" or "moral laxity" on the part of women complainants.

4. However, legal solutions that set out to punish perpetrators do not necessarily help those who have experienced sexual harassment. Psychological scars do not necessarily disappear once the offender has been brought to book. Employers should take a proactive stand and provide all women employees with training and counseling services that will prepare them to face potential situations of harassment. Women need to have the self-confidence to be able to distinguish - and report without fear -- between casual, friendly comments and sexual intimidation and blackmail. Counseling services for those who have been subjected to harassment should also be made available.

5. Some practical solutions for combating harassment are -- the provision of women-only buses and company buses as well improved street lighting and patrolling by police who have undergone special training. All personnel in positions of authority should have mandatory gender sensitivity training, especially on the topic of sexual harassment in the workplace. Gender sensitivity training for police personnel is essential.

6. The language of the law against sexual harassment must be amended to reflect a less patriarchal orientation toward women.

7. However, the root causes of harassment cannot be eliminated without a basic transformation in social attitudes toward women, especially toward poor working women. Women's right to inhabit public places, whatever the time or place, should be non-negotiable -- without their having to risk their reputations or their physical safety. In this respect, the mass media arguably has the most important role to play. The media must be sensitized to the relationship between sexual harassment and dominant representations of women workers so that they do not contribute to the problem with sensationalized coverage.

8. Finally, gaining a clearer understanding of the root causes of sexual harassment in contemporary society calls for further research in two areas. The first is the culture of the workplace - of managerial norms and practices of labor discipline -- as they differ across industries and in the larger cultural discourse. Equally important is a consideration of

masculinities and male attitudes toward working women. The relationship between shifting or threatened forms of masculinity, and rising violence against women, has not been analyzed adequately in the context of globalization and increasing inequality. Given the extent of harassment on the streets and other non-work public places, an interrogation of male attitudes appears to be urgent.

Harassment must be located and understood in context -- without sensationalizing the facts. The objective of this paper is not to depict working class factory women as passive and sexually exploited victims, thereby reinforcing dominant stereotypes about class and gender. Nor should recognition of harassment be used as an argument to deny women access to the labor market. Speaking out on harassment is not an endorsement of withdrawing women from wage work. In the same way, it does not follow that women should be banned from doing night work because the risks of sexual assaults are higher for those working the night shift. This kind of logic relies on a discourse of protection that is ultimately quite disabling for women. The purpose of the present study is to understand the factors that make women more vulnerable to sexual harassment in specific situations, and to find effective measures to combat them, so as to create safer, more enabling conditions for all working women.

#### Concluding Remarks:

The fact that societies do not necessarily possess the same cultural norms regarding appropriate gender behavior indicates that the roles of men and women are not 'natural', but constructed by existing culture. The respective roles that men and women in Bangladesh adopt, are a product of socio-cultural and religious conditioning which stress on certain human traits as particularly masculine and feminine. Stereotypical gender behaviour is inculcated so that being feminine, or masculine, produces conformity which in turn reinforces the stereotype.<sup>9</sup> Thus, where cultural definitions portray women as inferior and weak, sexism is bound to develop and be perpetuated. Although sexual harassment as a controlling process may not be overtly visible, victims do suffer from health and psychological problems as a result of harassment. Fear of repetition of incidents, often compel women to modify their lifestyles altogether.

Although sexual harassment has traditionally been considered as harmless, it is really a part and parcel of the more massive form of violence against women. It is contended that by its seemingly

harmlessness and triviality, sexual harassment actually impedes women's right to personal integrity and encourages men to transgress against women's right to move, interact and participate freely.

Women have a right to say no, to protest and expose male invasion of their bodies and privacy. They have a right to be evaluated on the basis of their intellect, merit and skills and not on their sexual and physical traits. Since women experience a general lack of power there is a great need to recharacterise civil and political rights in order to ensure that women are not denied access to justice and economic resources. Legislation, in order to be effective, would have to spell out clear guidelines on sentencing and enforcement. It would have to provide protective and rehabilitative services accompanied by provisions for victim compensation and counseling in order to ensure a progressive and determined societal action.

It is equally important to acknowledge the limits of the law. Legislation alone cannot eradicate the problem. While law may benefit women in many ways, incidents would have to be reported before law can be used to deal with them. In Bangladesh where law is frequently seen to benefit only the rich and the powerful, women, by virtue of their subordinate position, are often precluded from its protection. For example, since domestic violence and sexual harassment is seen as a natural corollary to womanhood, such issues hardly receive legal attention. In the circumstances, an ethos of collective care, vigilance and responsible conduct by all members of civil society, including educationists, lawyers, judges, police, towards females in general, is central to effective and vigilant law enforcement.



## Bibliography:

- Caplan, P., (1987), *The Cultural Construction of Sexuality*, Tavistock Publications, London;
- Crocker and Kalembra, op. cit., note 9; P.H. Loy and L.P. Steward: (1984) "The extent and effects of the sexual harassment of working women", in *Sociological Focus*, Vol. 17 1984;
- Farley, A., *Sexual Shakedown*, McGraw-Hill Book Company, United States, 1978;
- Hadjifotiou, N., (1983), *Women and Harassment at Work*, Pluto Press Ltd., London;
- Herbert, C., (1989) *Talking of Silence : The Sexual Harassment of Schoolgirls*, Falmer Press, Lewis;
- Houghton-James, H., (1995) *Sexual Harassment*, Cavendish Publishing Ltd., London, p.6;
- Jahan, R., (1988) *Women and Development. Challenges and Opportunities*, Ford Foundation Dhaka;
- Kapur, Naina, (1998) *Respecting Difference: Sexual Harassment in India*, paper presented at the Workshop on Acknowledging Sexual Harassment in Bangladesh ,organised by the British Council, 2-3 July;
- Khair, Sumaiya, (1998) *Understanding Sexual Harassment in Bangladesh : Dynamics of Male Control and Female Subordination*, *The Dhaka University Studies* , Part-F, Vol.X(1) :87-110, June 1998;
- Lerner, G., (1986) *The Creation of Patriarchy*, Oxford University Press, New York;
- Lewis, D. J., et al., (1993) *Going it Alone : Female Headed Households, Rights and Resources in Rural Bangladesh*, Occasional Paper 01/93, March 1993, Centre for Development Studies, University of Bath, U.K.;
- MacCann Deirdre, *Sexual Harassment at Work : National and International Responses, Conditions of Work and Employment Series No. 2.*

- Mackinnon, C., (1987) *Feminism Uncodified : Discourses on life and law*, Harvard University Press, Boston, MA;
- Mackinnon, C., (1979) *Sexual Harassment of Working Women*, Yale University Press, London;
- Maududi, A.A., (1972) *Purdah and the Status of Women in Islam*, Islamic Publications Ltd, Lahore, Pakistan;
- Mies, M., (1988) *Social Origins of the Sexual Division of Labour*, Zed Books Ltd., London et al.;
- Pandhe, S., (1989) *Women's Subordination: Its Origin*, Kanak Publications, New Delhi;
- Papanek, H., (1982) 'Purdah : Separate Worlds and Symbolic Shelter' in Papanek, Chanakya Publications, New Delhi;
- Punalekar, S. P., (1991) *Gender, Class and Culture: Situation of Girl Children in India*, Ashish Publishing House, New Delhi;
- Rubenstein. M., (1992) *Dealing with Sexual Harassment at Work : Experience of industrialised countries*", in *Conditions of Work Digest: Combating sexual harassment at work*, Vol. 11, No. 1;
- Russel, D., (1984) *Sexual Exploitation*, Sage Publications, Beverly Hills.
- Saxena, Shobha, (1995) *Crimes Against Women and Protective Laws*, Deep and Deep Publications, New Delhi;
- Siddiqi. Dina. M., (2003) *The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond*, CPD-UNFPA Publication Series, June 2003.