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A Legal Study on Fatwa regarding Hilla Marriage in Bangladesh

Transnational State Responsibility for Violations of Human Rights

The Economic and Social Council and the Specialized Agencies

The Role of NGO'S in Protection and Promotion of Human Rights of Women in Bangladesh

Blasphemy and Criminality: An Islamic Perspective; Special Reference to Bangladesh

Sexual Harassment in Bangladesh: Law and Realities

Land Management in Islam: A Legal Study

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State of Minimum Wages in Bangladesh –Problems and Perspectives

বাংলাদেশের বিচার ব্যবস্থায় পদ্ধতিগত জটিলতা: শিশু-কিশোর প্রসঙ্গ

নারীদের উপর এসিড-নিষ্ক্ষেপ: গণমাধ্যমের ভূমিকা ও আইন

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Sexual Harassment in Bangladesh : Law and Realities

Md. Abdur Rahim Mia*

Introduction

Sexual harassment of women is common in many countries of the world. But Bangladesh presents some distinct, situational and dreadful realities. A Bangladesh experience reveals that one of the highest rates of sexual harassment on women takes place frequently here both at private and public sectors.² Declining social and moral norms based on patriarchal values contribute to increasing sexual harassment of women in Bangladesh. It is prevalent almost in all sections of the society. However, such incidents are less publicized among middle and upper income groups. It is a symptom of continual discrimination and exploitation of women rooted in unequal power relation. It is very difficult for women in Bangladesh to protest sexual harassment due to fear of social stigma and scandal sustained by the dominance of conservative patriarchal social system. Paradoxically, majority of the people tend to accuse the harassed women rather than the perpetrators. Therefore, sexual harassment has remained an unpunished hidden crime in Bangladesh. If the victims decide to protest, her close relatives, friends or neighbors force her to pull back; as they think it will destroy the reputation of the family as well as the girl. As a result, most of the women fail to recognize it as a crime and thus accept it as an inevitable phenomenon. They do not get any mental support to cope with the situation. Moreover, they are forced to learn to cope with and accept sexual harassment as a usual expression of men's sexual desire. As most women in Bangladesh keep quiet in such '*private trauma*' or '*personal injury*', the perpetrators, either family or in public places move at large without any punishment. On the other hand, social as well as legal protection against this vicious form of aggression against women is almost negligible. With the

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¹ Human Development Report, 2002

amendment of Women and Children Repression Prevention Act in 2003, fears are growing that incidents of sexual harassment may become rampant as the amendment version of the law excludes the phrase 'indecent physical gestures'. Most of the people want to give sexual harassment romantic contour here, but some recent unfortunate events have opened up our eyes to the grim reality of the impact of it. Bangladeshi law does not guarantee protection against some recurring forms of sexual harassment, it is more likely that fighting against the crime will become even harder. Now, there is an urgent need to raise collective voice with a view to influencing policy-makers to seriously consider the issue and device some workable solutions. In this regard, the concept of sexual harassment, grounds of sexual harassment in Bangladeshi socio-economic context and applicability of existing laws have been discussed in this article. Some suggestions have been suggested in the conclusion.

Concept of Sexual Harassment

Sexual harassment as an act of violence has been for the first time acknowledged in legal terms. Even though there were some laws relating to offences constituting harassment against females, the Repression Prevention Act of 2000 has for the first time used the term '*sexual harassment*' in the Bangladesh context. Section 10(2) of the law states:

'If any male, trying to illegally satisfy his carnal desires, abuses the modesty of any woman or makes any indecent gesture, his act shall be deemed to be sexual harassment and for this such male will be punished by rigorous imprisonment for a term of which may extend up to seven years but shall not be less than two years and shall additionally also be liable to fine.'

The term '*sexual harassment*' is rarely used, recognized or understood in Bangladesh. In a society which is essentially male dominated and patriarchal, sexual harassment may include any inappropriate behaviors with sexual connotations or overtones and which may include touching, groping, stalking, eve-teasing, making insinuating remarks, sending lewd text messages, showing

of obscene materials e.g pornographic magazine and so forth.³ The main component is that the women are made to feel uncomfortable, scared or intimidated. Sexual harassment, therefore need not even involve touch. It can be a look or a comment. In the west, sexual harassment at work includes sexual bullying, obscene language, name-calling, gestures, the display of pictures, jokes, teasing or treats.⁴ Usually, sexual harassment is an accumulation of little things each of which taken alone is ambiguous but their cumulative effect is to turn a woman into a sexual object.

Generally sexual harassment is a conduct that is unwelcome and unsolicited by the recipient.⁵ Sexual harassment comes in all forms, and in all spheres of a woman's life. It is the most torturous kind of violence against women. It is a threat to a woman's position, dignity and existence. Unwelcome sexual advance, request for sexual favor or other verbal or physical conducts having sexual connotation constitutes sexual harassment.⁶ So, would comments made by men to women on their physical appearance, their dress, their habits or other aspect of their demeanor, which have sexual undertones. The use of pornographic material in a workplace could also constitute sexual harassment.

In August 1997, the Indian Supreme Court in a landmark judgment defined sexual harassment to include:⁷

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;

³ Hasna Shams Ahmed, 'Violating a Secret Relationship' *The Daily Star Magazine*, 1. August 2008, P-6

⁴ The Daily Star, 3 January 1999, P-5

⁵ Dr. Siddiqi, 'Workplace Environment for Women: Issues of Harassment and Need for interventions' *Center for Policy Dialogue (CPD)*, Report no-5, Dhaka, Bangladesh, P-4

⁶ Shyamala gomez and Mario Gomez, 'From Rights and Shame to Remedies and Change' *Canadians International Development Agency*, Colombo, Srilanka (First Edition, December-1999) P-90

⁷ *Vishaka v State of Rajasthan* AIR 1997 SC 3011 at 3016

- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Sexual harassment on women in public places is becoming wide-spreading in Bangladesh in the forms of eve-teasing, repulsive touching, intentional pushing, unfair or suggestive comments, stalking, obscene materials etc. Dina Siddiqi gives a broad definition after pointing out that though there is no consensus at international level but the general agreement is that such conduct is unwelcome and unsolicited.⁸ Huda agrees with Siddiqi that any behaviour with sexual connotations that is unwelcome and unwanted is sexual harassment. She emphasizes on the difference between the willing consent and unwilling consent of such heterosexual interactions.⁹ From the above discussion a definition of sexual harassment is drawn which is as follows:

Sexual harassment means any repeated, unsolicited, unwanted, unwelcome behaviour of sexual nature like physical contact or advances; a demand for sexual favours; sexually coloured jokes and comments on appearances; suggestive looks, gestures, showing pornography, pornographic graffiti; and other unwelcome physical, verbal or non-verbal conduct of sexual nature like character assassination, spreading rumors that may threaten a woman's job security, and create an intimidating, stressful and hostile environment that is harmful to a woman's physical and psychological health hampering her potentials.

Sexual Harassment in Bangladesh

The criminals are being routed all across the country but a highly notorious type seems to be enjoying holidays. This type concerns the youths who roam about in the street, do no works but are always on the look-out to taunt, harass

⁸ Dina Siddiqi, 'Globalization, Sexual Harassment and Worker's Rights in Bangladesh' paper presented at Center for Policy Dialogue, Dhaka, 2003, P-4

⁹ Shahnaz Huda, 'Defining Sexual Harassment: Its Impact and Effect' in Hamida Akhter Begum et.al.(eds), *Violence Against Women and Children*(Dhaka: The British Council and DFID, 1999), P-112

and tease young girls on their way to schools, colleges or workplaces. Sometimes these monsters grow so desperate that they kidnap, rape, throw acid and kill the helpless victims when their proposals for marriage or sexual advances are rejected. Sometimes such criminals think they are out of focus and can commit crimes with impunity for corruption, money laundering, abuse of power and political aberration. This is why even the emergency rule could not leave much of an impact on this criminal trend. Only recently did a number of teen-age school-girls opt for taking their own lives rather than subjecting them to the regular humiliation on account of indecent proposals, words and gestures from sex perverts and wasters.¹⁰ Threatened with the ultimate humiliation of rape that can be heaped on a woman, or acid throwing, these young girls were haunted by the worst insecurity and were driven to end their lives prematurely. It is a shame that society could not guarantee their rights to life and living in peace. Therefore, effects of sexual harassment can be acid throwing, rape etc. On the other hand, rape is the fulfillment of sexual harassment. When a woman is trafficked, most of the cases she is sexually harassed. In relation with this some data are given below--

Number of cases of violence against women from January 2005 to December 2007 in Bangladesh¹¹

Year	Total number of violence against women	Acid throwing case	Abduction case	Rape case	Trafficking case
2007	14250	137	2736	3495	113
2006	10733	126	2172	2324	284
2005	11427	177	2069	2797	138

¹⁰ For more details, see--The Daily Ittefaq, 9 December 2003, P-1; The Daily Jugantor, 31 December 2003; The Daily Prothom Alo, 29 December 2004, P-5; The Daily Prothom Alo, 23 January 2008, P-4; The Daily Prothom Alo, 26 January 2008, P-5; The Daily Prothom Alo, 28 January 2008, Last Page; The Daily Prothom Alo, 18 June 2008;

¹¹ Source- Documentation Unit, Police Head Quarters. Dhaka, Bangladesh

According to ASK report on Acid attack against women for sexual harassment from January 2003 to June 2008¹²

Year		Refusal of love	Refusal of marriage proposal	Refusal of sexual relationship	Total
2003	<u>Number of attack</u>	09	20	07	36
	<u>Case filed</u>	04	09	03	16
2004	<u>Number of attack</u>	06	06	09	21
	<u>Case filed</u>	05	02	03	10
2005	<u>Number of attack</u>	07	08	04	19
	<u>Case filed</u>	01	02	03	06
2006	<u>Number of attack</u>	01	04	04	09
	<u>Case filed</u>	01	01	03	05
2007	<u>Number of attack</u>	00	02	05	07
	<u>Case filed</u>	00	00	01	01
2008	<u>Number of attack</u>	01	01	05	07
	<u>Case filed</u>	00	00	01	01
		<u>Total attack=99</u>		<u>Total case filed=39</u>	

According to ASK report on rape and attempted rape from January 2003 to June 2008¹³

Year		Attempted rape	Rape
2003	<u>Number of Incident</u>	199	1182
	<u>Case filed</u>	54	586
2004	<u>Number of Incident</u>	100	877
	<u>Case filed</u>	40	403
2005	<u>Number of Incident</u>	116	719
	<u>Case filed</u>	28	306
2006	<u>Number of Incident</u>	50	691
	<u>Case filed</u>	13	264
2007	<u>Number of Incident</u>	69	634
	<u>Case filed</u>	20	278
2008	<u>Number of Incident</u>	14	249
	<u>Case filed</u>	11	146

In case of attempted rape total incident =548 and Total case filed=166

In case of rape total incident =4397 and Total case filed=1983

¹² Source- Documentation Unit, Ain O Salish Kendra, Dhaka, Bangladesh

¹³ Source- Documentation Unit, Ain O Salish Kendra, Dhaka, Bangladesh

According to Odhikar report, 213 women and 246 children were raped and the number of acid throwing was 119 in Bangladesh in 2007.¹⁴ The number may be more than that, because there are many incidents of sexual harassment which remain unreported in Bangladesh due to intimidation, social stigma, police harassment, poverty, unawareness etc. Considering that sexual harassment against women remains one of the most underreported crimes in Bangladesh, it is implicit that the reported figures are a gross underestimate. Therefore, whilst statistical data is incomplete there is a consensus that the general trend overwhelmingly suggests that women in Bangladesh are at increasing risk of being victimized. Sexual harassment should be treated as a brutal form of violence. Realizing this constraint, for the sake of present discussion, sexual harassment has been discussed into two broad categories--in public and private lives.

Sexual harassment in public life

The picture of sexual harassment in the public sphere is quite upsetting. The fear of sexual harassment outside home systematically restricts women's mobility both in rural and urban areas. Women face different types of sexual harassment in every sphere of public life. The grim picture is given below-

a) Sexual harassment in the workplace

Though the Constitution of Bangladesh in Article 10, 19, 28 has guaranteed the right of women to work in all professions, our society has failed to ensure a congenial environment for working women in the workplace. They are facing many difficulties. According to the speech of Justice Najmun ara Sultana, sexual harassment of women is increasing day by day with the increase of the number of women in the workplace, though women now constitute nearly half of the total labour force of the country.¹⁵ It is an amazing truth that the harassment of Bangladeshi garments women at their places of work is so common. Sexual harassment is as hard to define as it is hard to take and there is

¹⁴ Human Rights Report 2007, *Odhikar*, Bangladesh, P-20, 21

¹⁵ Dina Siddiqi, *Op.cit*, P-18

virtually no woman who has not experienced it at one stage of her career or the other.¹⁶ Women regularly encounter sexual harassment by their male colleagues or supervisors. The highly sexualized vocabulary and body language that supervisors and others use to discipline female workers creates a hostile, intimidating and sexually charged environment.¹⁷ Workers also accuse supervisors, linemen, line chiefs and production managers of the following: pulling hair, slapping, hitting, stroking, touching the body and even kissing workers as the latter sit at their machines. Non-verbal forms of harassment include winking, staring, whistling, standing very close and pinching. In many Government and private offices, women workers become victims of sexual harassment, especially those who work in the position of private secretary, stenographer, telephone operator, receptionist, model girl etc. Sometimes adolescents patients are sexually abused by their doctors and nurses are sexually abused by both doctors and patients.¹⁸ Female NGO workers, especially in rural areas, often feel threatened by the possibility of sexual harassment when they move out for work. According to a report 80% women are sexually abused at work places in Bangladesh.¹⁹

b) Sexual harassment in the street

There are myriads of forms which sexual harassment and eve teasing take. The mild forms take the shape of ogling, whistling, passing comments, loud enough for the woman to hear, singing songs as a woman passes by, blowing kisses and making loud and often obscene sound at her. It is also there in the form of physical contact such as brushing, pinching, pushing and rubbing. In some places these forms of eve teasing have been replaced with brazen of dupatta

¹⁶ Shobha Sexena, 'Crimes Against Women and Protective Laws' *DEEP and DEEP PUBLICATION*, New Delhi, 1995, P-230

¹⁷ Dina Siddiqi, *Op.cit*, P-6

¹⁸ See- 'Action against cop demanded for threat to withdraw case' in the *Daily Star Web Edition* available at <http://www.the.dailystar.net/story.php?55155htm> accessed on 16/9/2008

¹⁹ The Daily Ittefaq, 9 December 2003.

snatching and back patting. Some sadists are even found to be carrying blades to cut the dress of girl. Eve teasing covers everything from hurling of completely unwanted abuses to outright violence. Eve teasers are unlikely simply to whistle as they are likely to utter sexual expletives, or pass obscene remarks about a girl's figure.

As with harassment in the workplace, the risks are different depending on the time of day as well as on the mode of commuting. During the day, offensive or suggestive comments and whistling from pedestrians, rickshaw pullers, storeowners as well as personal and passengers of the public buses are widespread. Physical assaults also include pedestrians kicking or tripping over women as well as groping, shoving and pinching them. While traveling by bus, train or launch, a woman invariably encounters intentional touching, pushing, vulgar comments or indecent gestures even if accompanied by the relatives or friends.²⁰ If a woman travels alone by a rickshaw or van, it is more provable that she is showered with lewd and suggestive comments. Women have to put up with indecent comments if they put on, to some extent, non-traditional or modern dress. Sometimes the member of law enforcing authority sexually harasses women.²¹ A large number of incidents are seen in the national dailies everyday that in most cases, the police in Bangladesh rapes adolescent girls.²²

c) Sexual harassment in the educational institutions

In Bangladesh, covert and overt sexual harassment exists even in many educational institutions. Female students have to cope with indecent behaviors from their male teachers²³, male co-students or senior male students²⁴. In recent

²⁰ The Daily Amar Desh, 10 August 2006, P-9

²¹ The Daily Prothom Alo, 17 January 2005, First Page; The Daily Sangbad, 24 December 2004

²² Steps, 'Yasmin's legacy and the women's movement' *Steps Towards Development*, Issue-5, 2006, P-11; The Daily Prothom Alo, 6 January 2005, Last Page; The Daily Prothom Alo, 29 December 2004, P-10; The Daily Prothom Alo, 20 December 2004, P-1; The Daily Prothom Alo, 21 December 2004, P-1; The Daily Prothom Alo, 22 December 2004, P-1

²³ Nasrin Pervin, 'Sexual Harassment by Teachers' in *the Daily Star Internet Edition* available at <http://www.thedailystar.net/pf-story.php?nid=54360> accessed on 16/09/2008

times, a number of incidents of sexual harassment in some renowned universities were made public by different national and international media.²⁵ Adolescent girls are frequently becoming victims of sexual harassment by their teachers in many schools²⁶ and madrasas²⁷ and such incidents get regularly reported in Bangladeshi dailies.

d) Sexual harassment by internet and mobile phone

Over the time, technology has developed a lot and with this, there have been new dimension to harassment of women. It is seen women are harassed in many ways in Bangladesh through Internet and mobile phone.²⁸ Mailing with obscene comments, using women's faces in pornographic pictures, sending narrow message, teasing at any time by mobile phone²⁹ are now a normal happening.³⁰ Earlier women were troubled by telephones, but with the development of technology, the harassment of women has been intensified. The effect of sexual harassment by mobile phone sometimes turns into suicide.³¹ Assistant Professor of National Institute of Mental Health, Dr. Nizam Uddin says, 'People always get attached to prohibited elements. Due to this attraction, some people harass women on the Internet. Besides, things like personality type, media influence

²⁴ The Daily Prothom Alo, 15 July 2008, P-5

²⁵ Hasna Shams Ahmed, Op.cit; 'Student confine DU VC after cops harass female student' in the *Daily Star Internet Edition* Vol-5 number 233 available at <http://www.thedailystar.net/2005/01/17/d5017011714htm> accessed on 16/09/2008; 'Jouno Assault' in the *Daily Star Internet Edition* Vol-5 number 408 available at <http://www.thedailystar.net/2005/07/20/d50720060669htm> accessed on 16/09/2008; See for more details--- The Daily Prothom Alo, 3 May 2006, P-5 ; The Daily Prothom Alo, 19 August 2008, P-5; The Daily Prothom Alo, 16 September 2008, P-11; The Daily Star, 3 January 1999, P-5

²⁶ The Daily Prothom Alo, 11 June 2008, P-5

²⁷ The Daily Amar Desh, 21 July 2005, P-17

²⁸ The Daily Amar Desh, 18 September 2008, P-9

²⁹ The Daily Prothom Alo, 15 August 2008, P-4

³⁰ Yasmin Rimi, 'Women are harassed in many ways through internet' *Dhaka Courier*, 20 May 2005

³¹ News Letter, December-2007, *Banglades Mahila Ainjibi Samittee*, P-18; The Daily Prothom Alo, 27 January 2008, P-17

and dish culture act as catalysts. Apart from this, a male in a conservative social system is getting opportunity to do such things in a quiet environment.³²

Sexual harassment in private sphere

In Bangladesh, family is the major foreground of sexual harassment of women, especially the adolescents. Most of the abuses at home take place by those who either are members of or have easy access to the family. Worse still, even after such incidents, abusers continue to maintain links with the family because of conventional value attached to maintaining strong family relationship.³³ In many Bangladeshi households, female domestic workers are often sexually harassed by male employers³⁴ or other male members of the family. Female domestic workers are physically tortured or threatened to maintain secrecy of the assault occasionally done to them. They are forced to keep quiet about the harassment; otherwise, they are either expelled from the house or have to take the blame on their own shoulders. Therefore, sexual harassment occurs frequently in the 'secrecy' of home by close male family members, relatives or friends.³⁵ Adolescent girls in Bangladeshi families are increasingly becoming victims of sexual harassment and the picture is quite horrible.³⁶ Adolescent girls are usually the primary targets and most of the victims experience such harassment by their male cousins,³⁷ uncles³⁸ or other relatives. Sometimes, girls are sexually abused by private tutors named 'Hujur'³⁹ or 'Masters'⁴⁰. Parents

³² Yasmin Rimi, Op.cit

³³ The Daily Prothom Alo, 29 June 2008, P-10

³⁴ The Daily Prothom Alo, 5 September 2008, P-3

³⁵ Hasna Shams Ahmed, 'Too Young to Speak Out' *Star Weekend Magazine*, 2 March 2007, P-16

³⁶ The Daily Janakantho, 1 January 2004.

³⁷ News Letter, December-2007, *Banglades Mahila Ainjibi Samittee*, P-22

³⁸ Hasna Shams Ahmed, 'Too Young to Speak Out' *Star Weekend Magazine*, 2 March 2007, P-16

³⁹ Ibid

⁴⁰ The Daily Prothom Alo, 9 January 2005, Last Page; The Daily Jugantor, 31 December 2003

are sometimes over protective about whom their children meet outside the home, but ignore the signs of abuse taking place at home.⁴¹ A case study based on the report published by 'Breaking the Silence' Groups in 1997 revealed that out of more than 150 persons interviewed, half of them mentioned of experiences of some form of childhood sexual abuse in their family.⁴² According to the report of daily newspapers, two female children are sexually abused in the domestic sphere in Bangladesh per day in 2003. Now in 2008, it reaches into the number of five per day.⁴³

Sexual harassment and Bangladeshi Law

The Constitution of Bangladesh guarantees equal rights to women,⁴⁴ non discrimination of any kind on the ground of sex,⁴⁵ right to dignity⁴⁶ and equal shelter of law⁴⁷. But since sexual harassment is not legally recognized there are no specific laws in Bangladesh regarding this. However, sections 509,⁴⁸ 294⁴⁹ and 345⁵⁰ of Penal Code, 1860 make harassment of women a criminal offence. Both mention that it is a punishable offence if any willful acts like words,

⁴¹ Hasna Shams Ahmed, Op.cit

⁴² Report of Breaking the Silence, 1997

⁴³ The Daily Prothom Alo, 31 August 2008, P-20

⁴⁴ Article 28, The Constitution of Bangladesh

⁴⁵ Article 28, The Constitution of Bangladesh

⁴⁶ Article 32, The Constitution of Bangladesh

⁴⁷ Article 27, The Constitution of Bangladesh

⁴⁸ **Section-509:** Whoever intending to outrage the modesty of a 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.

⁴⁹ **Section-294** punishes anyone who, to the annoyance of others does any obscene act or sings, recites or utters obscene songs in a public place, with three months imprisonment or fine with both.

⁵⁰ **Section-354** punishes anyone who use assault or urges criminal force to women with an intend to outrage her modesty.

gestures, assault etc. outrage or insult the 'modesty of any women'.⁵¹ But 'insulting the modesty' of any women is clearly vague as the meaning of the word 'modesty' can be interpreted in multifarious ways. Does the modesty of a woman get insulted if repeated sexual jokes are made in her presence by her male colleagues or does it require actual physical assault? It is not made clear under which circumstances her modesty is insulted and she is able to get legal recourse. When it comes to physical assault or force what kind of physical assault is to outrage a woman is not clear.

The term '*eve teasing*' itself is revealing in its indulgent overtones. It seeks to trivialize a very serious issue. We find women being insulted almost everyday, everywhere and every time.⁵² Eve-teasing is the root of all sexual harassment. It is almost a torture for a woman to walk alone on the road. The phrase '*eve teasing*' has a deceptively light hearted and innocent ring about it but the reality is crude, sordid and infinitely humiliating to women. Justice Khan of Allahabad High Court⁵³ has made an observation with regard to the ever-increasing offence of eve teasing by pointing out that

"Eve teasing by roadside Romeos is fast on the increase in cities. Unfortunately no offence is so easy to commit and so difficult to be booked. The victims of this offence are mostly modest and shy girls or young women of respectable families. While on the roads or passing in the by-lanes prowling desperadoes cut filthy jokes with them or pass indecent, sensuous or sarcastic remarks against them, the poor victims dare not protest in order to avoid creating a scene or attracting a crowd on the spot. Publicity of such incidents sometimes leads to injurious results against the victims themselves, in as much as it subsequently provides material for groundless scandal and unjustified gossip against their character from interested quarters, the victims are therefore compelled of necessity to suffer the disgrace silently and instinctively leave the

⁵¹ Shahnaz Huda, 'Sexual Harassment and Professional Women in Bangladesh' Paper presented at Dialogue organized by FOWSIA, Dhaka-2003, P-12

⁵² Shobha Saxena, Op.cit

⁵³ *Zafar Ahmed Khan v State of UP*, 2963 CR LJ 213

spot as quickly as they can, without disclosing their identity. The offenders are mostly riffraffs and desperate characters. Prudence dictates that even respectable passers-by, who happen to see or hear the unholy incident, much to their mental anguish, must pretend not to have heard or noticed it and to pass over the place quickly in their interest."

This is also a very negative attitude in our country. It encourages the offenders to indulge in the crime freely and with impunity without any fear of consequences to themselves. This way the offence can never be brought to the notice of the authorities nor can the culprits be punished. The women who are harassed will rather ignore such behaviour than fight a losing battle. There are provisions under sections 509, 294 and 354 of the Bangladesh Penal Code for dealing with eve teasing and its aggravated form, sexual harassment, but the way these provisions have been worded, the complexities of the procedural laws and the type of proof that is required, make it very difficult to get the culprit punished.

Theoretically any person who intrudes on the privacy of a woman or utters any word or makes any sound or gesture or exhibits any object with an intention that such word or sound shall be heard or such gesture or object shall be seen by the woman, can be booked for sexual harassment, but it is not easy to prove the intention which is an essential ingredient of the offence according to Bangladeshi law.

According to Dhaka,⁵⁴ Cittagong,⁵⁵ Khulna,⁵⁶ Rajshahi,⁵⁷ Barisal⁵⁸ and Sylhet⁵⁹ Metropolitan Police Ordinance, If any person shows his body indecently in the roads or public places, which shall be seen by a woman, or, if he intentionally,

⁵⁴ Section-76, Dhaka Metropolitan Police Ordinance, 1976

⁵⁵ Section-78, Cittagong Metropolitan Police Ordinance, 1978

⁵⁶ Section-79, Khulna Metropolitan Police Ordinance, 1985

⁵⁷ Section-79, Rajshahi Metropolitan Police Ordinance, 1992

⁵⁸ Barisal Metropolitan Police Ordinance, 2006

⁵⁹ Sylhet Metropolitan Police Ordinance, 2006

utters any vulgar speech or makes any sound or gesture or exhibits any object or harasses any woman or controls the moving of a woman in order to disturb her, he shall be punished with simple imprisonment for a term which may extend to one year, or with fine two thousand taka, or with both. Still law is present for harassment against the women, but there is no example according to these ordinances that any person has been arrested for this offence by the police, whereas sexual harassment is a common phenomenon in Bangladesh. So, the despicability of police is now a question of doubt. The punishment is unaspirated or few according to these ordinances and it is not clear in these ordinances that if the fine is not paid by the accused, then what step should be taken. The Government Servants (Conduct) Act, 1987 has included a clause relating conduct towards female governments servants that states-

'No Government servants shall use any language or behave with his female colleagues in any manner which is improper and goes against office decorum and dignity of female colleagues.'⁶⁰ But if such occurrence happen what remedy shall be applied, this aforesaid law is silent here.

The Government of Bangladesh attempted to bring it under the purview of law through the enactment of Nari O Shishu Nirjaton Damon Ain, 2000, when the nomenclature 'sexual harassment was included, Sec-10 stated that--

'If any male, trying to illegally satisfy his sexual urges, abuses the modesty of any woman or makes indecent gesture, his act shall be deemed to be sexual harassment and for such act he shall be punished with rigorous imprisonment which may extend up to seven years.'⁶¹

Again, there is vagueness due to the lack of clear definition of the word 'modesty'. At least for the first time law admitted that indecent gesture of a man would be considered as sexual harassment. Since then, unfortunately, the court in Bangladesh upheld no sexual harassment case. The court as such,

⁶⁰ The Bangladesh Gazette (Extra), December-30, 2002

⁶¹ Shahnaz Huda, 'Sexual Harassment and Professional Women in Bangladesh' Paper presented at Dialogue organized by FOWSIA, Dhaka-2003, P-12

unlike the Supreme Court of India, which laid down the guidelines while dealing with famous Vishaka case⁶² for sexual harassment for all Government and non-government organizations by bringing it within the purview of human rights violation, has been unable to do so. On the contrary, the GOB amended the aforesaid law by deleting the word 'indecent gestures' and changing the words 'sexual harassment' to 'sexual oppression' on the ground that the law has been abused.

Section-10 of the Nari O Shishu Nirjaton Damon Ain, 2003 states that

'If any person in order to satisfy his sexual urges illegally touches any part of a woman's or child's body with any part of his body or object or outrage the modesty of any woman would be accused of sexual oppression and the act would be punishable with rigorous imprisonment of extending for ten but not less than three years, with additional fine.'⁶³

So, in effect the opportunities to legal recourse for sexual harassment as described in our definition has been made difficult on top of the fact that taking legal recourse by a woman in a country like Bangladesh is extremely difficult. For failing the proof of the case or fear of more harassment from police, doctors and advocates, most of the victims do not want to file a case. As most of the victims are dependent upon their families, they are deprived of getting proper economic and mental support from their families. Most of the guardians of the victims hide the incidents or do not want to file the case for the fear of culprit's pressure or for the honour of the family in the patriarchal society, or, to ensure the good marriage of the victims. Sometimes victims withdraw the case for the pressure and force of the culprit's. For these reasons with weaknesses of existing laws and negligence of police in Bangladesh, culprits are not punished. However, enacting progressive laws by itself will not suffice to change the situation. As we all know, it's critical to ensure that existing legislation are implemented and that those in charge of enforcement be held accountable for

⁶² *Vishaka v State of Rajsthan* AIR 1997 SC 3011 at 3016

⁶³ The Bangladesh Gazette (Extra), 2003

their actions. By the same token, the efficacy of laws will be constantly undermined if social attitudes, especially widespread class prejudices and cultural tendencies of 'blaming the victim' in cases of sexual harassment, are not transformed. This requires, among other things, serious gender sensitive training for those charged with protecting the rights of citizens. Women can not expect legal or police protection if the authorities already assume 'guilt' or 'moral laxity' on the part of women complainants. Offences like eve-teasing have not been included in the law on violence against women, which was amended in 2003. But in the last few years, a large number of tragic deaths such as Liza⁶⁴, Munmun⁶⁵, Trisha⁶⁶, Simi Banu⁶⁷, Rina Roy⁶⁸, Sawpna⁶⁹, Rumi⁷⁰, Kajli⁷¹ etc. have occurred as consequence of eve-teasing. As such amendment of Sec-10 of the aforesaid law have evoked strong reactions of the women leadership of the country. They feel that sexual harassment would increase and young women, in particular would become the victims of the touts and anti-social elements.

According to Advocate Salma Ali, 'amendment of Art-10 will result in widespread insecurity for women in all spheres, especially in garment sectors. The touts will be encouraged to bother women on the streets and eve teasing would increase in an alarming rate.⁷² Clearly not enough recourse is in place in Bangladesh to deal with sexual harassment issues. Sexual harassment

⁶⁴ The Daily Prothom Alo, 24 January 2008, Last Page.

⁶⁵ The Daily Prothom Alo, 27 January 2008, P-17

⁶⁶ B. L Das, 'Sakkho Ain', *Kamrul Book House, Dhaka-2008, P-298*,

⁶⁷ Kazi Latifur Reja, 'Eve teasing is a punishable crime', *The Daily Amar Desh*, 3 April 2006, P-7

⁶⁸ The Daily Manobjomin, 9 May 2006.

⁶⁹ *The Daily Amar Desh*, 27 July 2006, P-9

⁷⁰ The Daily Prothom Alo, 29 December 2004

⁷¹ The Daily Ittefaq, 9 December 2003, P-1

⁷² The Daily Prothom Alo, 18 May 2003.

undermines women's rights to the pursuit of a secure and safe livelihood.⁷³ The different forms of sexual harassment violate women's rights to dignity, damage their attitudes toward work and decrease productivity considerably. Sexual harassment is the brutal form of violence against women. It should be stopped and prevented. But legal protection against this vicious form of aggression against women is almost negligible. Bangladeshi law does not guarantee protection against sexual harassment for its ambiguous nature. For this, sexual harassment in Bangladesh is increasing day by day and becoming a major threat to mainstreaming women development.⁷⁴

Suggestions for combating sexual harassment

1. There should be a national law about sexual harassment with a clear definition and its enforcement procedure. The situation of sexual harassment in our country can be improved if proper national laws are formulated and their implementation are in place as well as massive advocacy is undertaken by all stakeholders and different stakeholders monitor the implementation of the law. Offences like eve-teasing have not been included in the law on violence against women, which was amended in 2003. But in the last few years, a large number of tragic deaths have occurred as consequence of eve-teasing. So, special law should be made to control eve-teasing.
2. In order to promote women-friendly working atmosphere at workplaces, some gender sensitive service rules, codes of conduct have to be introduced at different Government and non-government offices.
3. Most formal and non-formal education curriculum especially in the primary and secondary grades, do not include anything explicit on gender, justice and human rights issues as such. If such topics can be included in the contents of curriculum and methods of teaching, future citizens may learn to hate sexual harassment and to respect women as equal to men. This will

⁷³ Dina Siddiqi, Op.cit

⁷⁴ The Daily Ajker Kagoj, 17 January 2005; The Daily Janakantho, 1 January 2005; The Daily Ittefaq, 9 March 2003; The Daily Amar Desh, 27 July 2006, P-9

contribute to the lessening of such misconducts in educational institutions as well as in other spheres of the society.

4. More research should be carried out to find out the behavioral pattern, language and thought process of individuals at different levels in the gender context. This will help to find out the areas of interventions to combat sexual harassment of women.
5. The laws and policies should be translated into actions. If necessary, the laws and policies should be reviewed, revised and measures should be taken to increase public knowledge about the existing laws to foster equal access. Special training for judiciary and police personnel is strongly recommended. Training or counseling of adolescents can help to build up positive outlook of the males.
6. Policy has to be made about the participation of Civil Society and NGOs to follow up and monitor the performances of law enforcing agencies in dealing with the case of sexual harassment of women. Civil Society and NGOs should carry out more social mobilization and advocacy programs on this issue. They need to build a collective platform to monitor and regularly follow up the progress of the cases of sexual harassment, especially those reported in the media.
7. Media can publish or broadcast different items with a view to changing attitudes of the people. Political leaders, lawyers, MPs and religious leaders have to be actively involved in different awareness building programs against violence against women.

Conclusion

In Bangladesh, a victimized woman usually tries to avoid the legal process as she becomes more stigmatized by the society. She dare not file complaints; fearing negligence and harassment in police station, courts and society. The member of the police in most of the cases look down upon the oppressed women and will not take her complaint, unless they are compelled to do so by pressure from a higher authority. However, the offender may 'manage' the police, or witness to say that the offence did not happen and the case is not pursued further. The existing legal process is elaborate, time consuming.

expensive and often discourages women from taking legal action and enforcing their rights in the courts. As a result of the harassment and complexities of the court procedure, survivors are often compelled to accept out of court settlements. The Government and law enforcing authority should be strict to eradicate sexual violence by punitive measures. A sexually harassed woman is held responsible for her predicament in our society. Fear of social stigma inhibits women from speaking out about their experiences. Women are not safe at any workplace from the parliament to the household. Women need to be united to protect effectively but in most cases, women do not reveal their experiences to each other. If women are organized, men will at least have some fear in harassing a woman. Sexual harassment is a silent crime in our country. Different types of discrimination, human rights abuses and sexual harassment of women in Bangladesh face continue because the society is mainly patriarchal and subordination of women is the theme and essence. Passing newer and newer laws can never change this idea and view of socially sanctioned patriarchal domination. In order to deal with the problem, enacting law is not enough, our mentality need to be changed.⁷⁵ All sorts of assault or harassment on women are an attack against humanity. Respect towards women has to come from all. But existing social norms and values in Bangladesh do not usually allow people to think this way. However, there is no overnight solution to this problem. Unless and until the broader sections of people are aware of the basic principles of equality, mutual respect and respect for human rights; violence against women, be it sexual or physical, is unlikely to end. Laws and policies are not enough. A strong social movement mingled with real education is what we require to prevent sexual harassment on women. Such movement needs political will and support. A patient long-term strategy has to be taken to remove the evils of society. Students, teachers, political leaders, social elites, religious leaders, social activists, NGOs and the Government- all have to take a stake into that effort.

⁷⁵ Yasmin Rimi, Op.cit