

A STUDY OF THE LAWS RELATING TO SEXUAL
HARASSMENT IN BANGLADESH: LESSONS FROM
MALAYSIA

BY

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degree of master of comparative laws

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ABSTRACT

Sexual harassment is a serious matter of legal concern in both Bangladesh and Malaysia. This thesis provides a comparative analysis between Bangladesh and Malaysia on their stance on sexual harassment and their legal measures to face this problem. Applying both doctrinal and empirical methodologies, it surveys various forms of sexual harassment in different places and among various age groups in Bangladesh. It aims to understand the prevalence and nature of sexual harassment in Bangladesh and Malaysia based on data collected by surveys on the female victims and interviews with police officers, lawyers and judges from both countries. This thesis analyses and compares the existing legal and policy frameworks in Bangladesh and Malaysia with a view to learn from the successes of the later. The study finds that cases and instances of sexual harassment are prevalent in Bangladesh compared to Malaysia. This it finds, is not unrelated with the legal and policy framework which is more purposeful and strictly enforced in Malaysia. It concludes that learning from the experiences and purposive measures taken in Malaysia to protect women from sexual harassment, Bangladesh should also follow suit by providing not only harsher punishments, but also purposive policy and social measures against sexual harassment of women.

مُلخَّصُ البَحْثِ

يُعَدُّ التحرش الجنسي مسألة خطيرة تثير قلقًا قانونيًا في كل من بنغلادش وماليزيا، وعليه؛ يتناول هذا البحث تحليلًا مقارنًا بين بنغلادش وماليزيا في موقف الدولتين من التحرش الجنسي والتدابير القانونية التي تتخذها لمواجهة، ويتوسَّل البحث المنهجيتين النظرية والتجريبية في آن معًا؛ لاستقصاء أشكال مختلفة من التحرش الجنسي في أماكن مختلفة وبين فئات عمرية متنوعة في بنغلادش وماليزيا، والهدف فهم مدى انتشار التحرش الجنسي وطبيعته في بنغلادش وماليزيا بناء على البيانات التي جُمعت من خلال الدراسات الاستقصائية عن الضحايا النساء، والمقابلات مع ضباط الشرطة والمحامين والقضاة في البلدين، ومن ثم؛ يُقارن هذا البحث بين الأطر القانونية وسياسات مكافحة التحرش الجنسي في بنغلادش وماليزيا؛ بهدف التعلم من النجاحات التي حققتها ماليزيا في هذا المجال، وقد أظهرت النتائج أن حالات التحرش الجنسي أكثر شيوعًا في بنغلادش مقارنة بماليزيا، وأن السبب وضوح القوانين وشموليتها والصرامة في تطبيقها في ماليزيا، على عكس بنغلادش، وأن من المهم التعلم من التجارب والتدابير الهادفة المتخذة في ماليزيا لحماية النساء من التحرش الجنسي، وينبغي لبنغلادش أن تحذو حذوها من خلال فرض عقوبات أشد، إضافة إلى اتخاذ سياسة هادفة وتدابير اجتماعية حكيمة لمكافحة التحرش الجنسي.

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Penal Code 1860 (Act No. XLV) (Bangladesh)
Penal Code 1997(Act No. 574) (Malaysia)
Sexual Offences Against Children Act 2017 (Act 792) (Malaysia)
The dowry Prohibition Act 1980 (Bangladesh)
The Government Servants (Discipline and Appeals) Rules 1985 (Bangladesh)
VII of the Civil Rights Act of 1964 (United States)

LIST OF ABBREVIATIONS

USA	:	United States of America
VOL	:	Volume
NO	:	Number
EEOC	:	Equal Employment Opportunity Commission
EU	:	European Union
ILO	:	International Labour Organization
MLJ	:	Malayan Law Journal
CLJ	:	Current Law Journal
PTSD	:	Post-Traumatic Stress and Disorder
ASP	:	Assistant Superintendent of Police
SP	:	Superintendent of Police
TK	:	Taka (Bangladesh Currency)
IPK	:	Ibu Pejabat Polis Kontinjen (Contingent Police Headquarters)
KL	:	Kuala Lumpur
CPC	:	Criminal Procedure Code
DSP	:	Deputy Superintendent of Police
NGO	:	Non-Governmental Organization
BNWLA	:	Bangladesh National Woman Lawyers Association
BLC	:	Bangladesh Law Chronicles
SSC	:	Supreme Court Cases (India)
BLD	:	Bangladesh Legal Decisions
HCD	:	The High Court Division (Bangladesh)
LNS	:	Legal Network Series
SMS	:	Short Message Service
MMS	:	Multimedia Messaging Service
CEDAW	:	Convention on the Elimination of All Forms of Discrimination against Women
UN	:	United Nation
DPP	:	Deputy Public Prosecutor

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Sexual harassment is the act of bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favours.¹ Sexual harassment can also come in the form of discrimination against employees, which is seen in many countries. Sexual harassment in the workplace may include psychological bullying with the intent of sexual harassment and/or taking advantage of the other sexual category.² Unwanted behaviour on the grounds of sex means that, when a woman or a man is being bullied exclusively because of the person's sexual orientation, be it at workplace, home, public places, or online.³ The behaviour does not have to be of a sexual nature for this kind of harassment.⁴ The conducts have to be accomplished with the cause of, or have the effect of, violating her/his dignity, or of making an intimidating, hostile, degrading, humiliating or offensive environment for the victim.⁵ Unwanted physical, verbal or non-verbal behaviour of a sexual nature is often unlawful in it and can be categorized as sexual harassment.⁶ The harassment may include comments regarding an individual's appearance which they find demeaning or indecent; it could be remarks or questions on their sex life, sexual

¹ Sandra Fielden Carrie Hunt, Marilyn Davidson, and Helge Hoel, *Sexual Harassment in the Workplace: A Literature Review*, (Manchester: University of Manchester, 2007).

² Ibid.

³ Cecilia NG and Jamilah Othman, and While, "Unwanted and Unwelcome: Sexual Harassment in the Malaysian Workplace," *Gender Technology And Development*, vol. 6, no. 3 (2002): 389–407.

⁴ Carrie Hunt, Marilyn Davidson, and Hoel, "Sexual harassment in the workplace: A literature review", *Equal Opportunities Commission*, vol. 59, (2007).

⁵ Ibid.

⁶ Ibid.

demands by a member of their own or the opposite sex. It could also involve incidents of touching and alternative physical threats.⁷

In recent years, sexual harassment has become a big issue in Bangladesh because most of the women are sexually harassed in workplace, public place, housing and in education institution.⁸ Additionally, many victims do not report about sexual harassment for the reasons of insecurity and lack of awareness, as well as the knowledge of slow trial procedures and excruciating processes of investigation and delays in the justice delivery system.⁹ Sexual harassment may be expressed in the form of physical conduct, touching, sounds, gestures, or written words by anyone to others which allude sexual behaviour.¹⁰ This conundrum is recognized by Houghton-Jones, but it is not the power of the workplace (for example) that is the most important type of power present in sexual harassment, but gender power or, in other words, the power that men have over women because they are men.¹¹

It is a fact backed by data and evidence that men sexually harass women by large margin compared to women harassing men.¹² This attitude is the essence of sex discrimination and should find no place in a serious work on the subject. Gender power is surely prevalent in all walks of life and tends to concentrate on the workplace over and above its role in everyday existence.¹³ To recognize that most cases of harassment are committed by men against women (in a statistical rather than a

⁷ Sandra Fielden Carrie Hunt, Marilyn Davidson, and Helge Hoel, *Sexual Harassment in the Workplace: A Literature Review, Equal Opportunities Commission*, (Manchester: University of Manchester, 2007).

⁸ Koss, Mary P, "Changed lives: The Psychological Impact of Sexual Harassment", *Ivory Power: Sexual harassment on campus*, (1990): 73-92.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Honeyball, Simon, "Book Review: Sexual Harassment", *London, England: Sage*, (1998), 144 - 145.

¹² Ibid.

¹³ Ibid.

definitional sense) may be a mere reflection that most harassment occurs at workplaces where men, for a variety of reasons, are more likely to be in positions of power.¹⁴ But that, of course, raises the further question of whether the workplace as the setting for most harassment is so for reasons of male power, power in general, or whether it is just a coincidence.¹⁵ Sexual harassment is indecency, bullying or prosecution of a carnal nature, or the undesired or undeserving accents of charm in interchange for passionate compassion. In every context, or circumstances, sexual harassment is illegal.¹⁶ It includes a range of behaviour from seemingly mild transgressions and annoyances to actual sexual abuse or sexual assault.¹⁷ Sexual harassment is a form of illegal employment discrimination in many countries because mainly women are harassed by their superiors or colleagues.¹⁸

Furthermore, sexual harassment and sex discrimination are correlated: men are willing to harass for the reason of different sex and it is a form of abuse and bullying. For many businesses, preventing sexual harassment and defending employees from sexual harassment charges have become key goals of legal decision-making.¹⁹ Sexual harassment remains a forgotten secret, with educators and administrators refusing to admit the problem that exists in their schools or recognize their solemn and moral obligations to deal with it. Both can subjugate sensual vexation, but women are predominantly attacked by it, basically women are deprived their basic rights in many

¹⁴ Honeyball, Simon, "Book Review: Sexual Harassment", *London, England: Sage*, (1998), 144 - 145.

¹⁵ *Ibid.*

¹⁶ Weinberg, Jill D., and Laura Beth Nielsen, "What Is Sexual Harassment: An Empirical Study of Perceptions of Ordinary People and Judges", *Louis U. Pub. L. Rev.*, no. 36 (2017): 39.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Ahmed, and et al. (2014). Protibadi: A Platform for Fighting Sexual Harassment in Urban Bangladesh. In Proceedings of the SIGCHI Conference on Human Factors in Computing Systems, CHI.

societies.²⁰ The society needs to be spare tuned into sexual harassment and understand however this may frustrate one's communal entity can also cause functional and psychological disruption.²¹ Some of the women who had experienced frequent and unwanted touching are often willing to end their own life.

In Bangladesh, more than half of the population are women. The problem of sexual harassment in Bangladesh is constantly on the rise; women are harassed in various ways, at times by people who should protect them. Women are being harassed on an unprecedented level in public places, shopping centres, working place, public transports, in the streets, educational institutions, et cetera. There is hardly any place that can be considered safe for women, including their homes. Women are being harassed in most parts of Bangladesh; it is difficult to find a place where harassment is not taking place, it has become almost unavoidable.²² Sexual harassment is almost a communal inversion for Bangladesh, generally considered a social, rather than legal offence.

1.2 STATEMENT OF THE PROBLEM

Sexual harassment has become a main reason for concern in Bangladesh, with a terrible rise in reports of women and girls being harassed. The victims' complaints may not necessarily have been properly and adequately handled under the existing laws and practice in Bangladesh. Claims brought under the general provisions of the Penal Code are usually conducted according to the ordinary procedure and that is difficult to prove. Sections 354 and 509 of the Penal Code,²³ as well as Section 76 of

²⁰ Ahmed, et al. (2014). Protibadi: A Platform for Fighting Sexual Harassment in Urban Bangladesh. In Proceedings of the SIGCHI Conference on Human Factors in Computing Systems, CHI.

²¹ Ibid.

²² Ibid.

²³ Penal Code 1860 (Act XLV), s 354(509).

the Dhaka Metropolitan Police Ordinance, 1976²⁴ and Section 10 of the *Nari O Shishu Nirjatan Daman Ain*, 2000 (Women & Children Repression Prevention Act 2000) deal with the term 'Sexual Harassment'.²⁵ Many women irrespective of wherever they work encounter sexual harassment of one kind or the other. However perpetrators usually get pleasure from impunity as workplaces do not have the mechanisms necessary to protect victims who report sexual harassment, despite the existing Penal laws.

Additionally, many women do not report sexual harassment because of issues regarding job security and social stigma. The nature of sexual harassment is such that it affects the dignity, confidence, performance, and mental health of the victim. In Bangladesh, despite the existence of laws proscribing sexual harassment, women continue to experience gestures, behaviours, and physical contacts that amount to sexual harassment. Comparatively, women in Malaysia seem to go about their lives with a sense of safety and security.²⁶ Compared to Bangladesh, sexual harassment is less prevalent in Malaysia and the Malaysian laws seem to be more effective than Bangladesh. With this in mind, this study evaluates both the legal framework and the factual situations on sexual harassment in Bangladesh and Malaysia with a view to see how Bangladesh can learn from the Malaysian in dealing with sexual harassment and protecting women.

²⁴ Dhaka Metropolitan Police Ordinance 1976 (Ordinance III), s 76.

²⁵ Nari O Shishu Nirjatan Daman Ain 2000 (Women & Children Repression Prevention Act 2000), s 10.

²⁶ Full discussion see of this study in chapter 3, page no. 41.

1.3 RESEARCH OBJECTIVES

1. To find out the facts and manifestations of sexual harassment in Bangladesh and compare the findings with Malaysia;
2. To appraise the legal framework on sexual harassment in Bangladesh;
3. To evaluate the Malaysian legal and policy framework with a view of learning from its successes as a lesson for Bangladesh.

1.4 RESEARCH QUESTIONS

1. What are the nature and prevalence of sexual harassment in Bangladesh and understand the difference of those nature and prevalence compared to Malaysia?
2. What are the available legal and policy frameworks on sexual harassment in Bangladesh?
3. How can Bangladesh learn from Malaysia in curbing and combatting sexual harassment?

1.5 RESEARCH METHODOLOGY

This research investigates the prevalence of structural sexual harassment in Bangladesh and the adequacy of existing laws in curbing of this problem. The study also compared Bangladeshi legal position to that of the Malaysian legal position. The research utilizes both doctrinal and non-doctrinal methodologies because of the needs in terms of the objectives. The doctrinal methodology relies on library research for collecting the primary sources of the information and data including legislations, treaties and historical records; it also includes the laws and policies of Bangladesh and Malaysia on sexual harassment. The secondary sources of the information and data include journal articles, textbooks, chapter of a book, academic theses, law reports,

conference papers and workshop papers. The non-doctrinal aspect of the research utilises both qualitative and quantitative methods that include interviews and questionnaires. The combination of these two methods is necessary because of the objectives of the research which aims to examine both the facts and the law. The questionnaire aims to elicit response from the public on the prevalence and nature of sexual harassment experienced as well as most common trends and places. In this study, there are 100 questionnaires send out to the respondents in both Bangladesh and Malaysia, with specific target people chosen from the capitals of both countries. The data gathered from the questionnaires therefore helps in giving a clear picture of what really transpires. The questionnaires also help in contrasting the situation of sexual harassment in Malaysia with what applies in Bangladesh. The respondents to the questionnaires are specifically selected with the primary aim of getting as wide coverage as possible in terms of both territory and population living in the capitals so that the results may somewhat be reflective of the general population.

The interviews, on the other hand, aim to elicit response from people with in-depth knowledge of the law, such as lawyers and practitioners. The essence is to establish a clearer position as to the nature of the law on sexual harassment, the strengths and weaknesses of the laws, and any possible need for improvement of the existing laws. It also aims to identify areas where the lawmakers of Bangladesh may learn from the Malaysian experience and combat sexual harassment more effectively.

The study utilizes survey questionnaire for both general people and for the people of position. The study also uses previous research, studies, books, legal cases and so on. The interviews are necessary for the purpose to know the reported cases ratio, legal proceeding and implementation of laws. The questionnaires were

distributed to police, lawyer and judge because they have the information to answer the questions.

1.6 SCOPE AND LIMITATIONS OF THE STUDY

This study covers incidents and issues of sexual harassment in Bangladesh including the legal and policy framework to address the problem. Additionally, it discusses the Malaysia's legal framework and position on sexual harassment as a guide to improve the situation in Bangladesh. The study aims to create awareness regarding the problem and also to appraise the legal framework in order to ascertain the causes of sexual harassment of women everywhere in Bangladesh. In as much as both sexes may be sexually harassed, this study focuses on sexual harassment against women only as the overwhelming majority of the victims are almost exclusively females. The scope of this study is limited to cases of sexual harassment in Bangladesh and Malaysia, though the Malaysian situation is more focused on the legal and policy framework to serve as a benchmark for Bangladesh.

1.7 LITERATURE REVIEW

The meaning of sexual harassment can be complicated and debatable. It may be determined by an individual's interpretation and understanding of what sexual harassment is, thus it is open to misunderstanding.²⁷ As a result of the flexibility of the term, a lot of the literatures on sexual harassment have evaluated the trend with special focus on victimization of the females by the males to find the prevalence of such practices at work places and public facilities.²⁸ The previous studies surveyed the trend of sexual harassment in several countries around the globe, giving an

²⁷ Full discussion see of this study in chapter 3. Page no, 41.

²⁸ Watts, Charlotte, & Cathy Zimmerman, "Violence against women: global scope and magnitude", *The lancet*, vol. 359, no. 9313 (2002): 1232-1237.

international and comprehensive view of the menace. Sexual harassment is a problem that is generally faced by females all over the world.²⁹

Women are mainly the victims, because many of them are unable to handle 'normal' or 'harmless' sexual attention.³⁰ The harmless expression of an individual is basically the sexual appeals expressed in a decent manner to the person he/she is interested in. But this harmless and decent sexual attraction and appeal may be misunderstood and misconceived by others who may find the behaviours to be offensive and they may consider those behaviours to be sexual harassment. Some women are pleased by sexual attention and would flirt back, whereas others notice similar attention offensive and intimidating.³¹ Additionally men clarify sexual harassment as a 'kind of behaviour that is expected of them as an illustration of their masculinity and they can identify themselves in a macho way-with alternative heterosexual men. Moreover girls really enjoyed being the objects of their attention.³² Sexual harassment thus is an act of conformity to masculine identities, instead of sexual deviance. Malaysian government officially launches the Code of Practice on the Prevention and Eradication of Sexual Harassment in 1999 for the purpose of reducing sexual harassment.³³

²⁹ Mohd Nazari Ismail, Lee Kum Chee, and Chan Foong Bee, "Factors Influencing Sexual Harassment in the Malaysian Workplace", *Asian Academy of Management Journal of Accounting and Finance*, vol. 12, no. 2 (2007): 15–31.

³⁰ Cecilia Ng and Jamilah Othman, & While, "Unwanted and Unwelcome: Sexual Harassment in the Malaysian Workplace", *Gender Technology And Development*, vol. 6, no. 3 (2002): 389–407.

³¹ Ibid.

³² Ibid.

³³ Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace 1999, Ministry of Human Resources Malaysia, Kuala Lumpur.