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UNDERSTANDING SEXUAL HARASSMENT IN BANGLADESH : DYNAMICS OF MALE CONTROL AND FEMALE SUBORDINATION

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Introduction

Sexual harassment of women has only just begun to emerge as an 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 categorised as dependents whose material entitlements are endorsed and controlled by the male members of the family. As such, women experience poverty and insecurity more acutely than do men. While there is no doubt that women are assigned a subservient role in the patriarchal society of Bangladesh, socio-economic changes and the breakdown of the moral economy have compelled women to depart from sex-stereotyped roles and engage in income generating activities outside their homes. 'Push' factors such as landlessness, unemployment, natural disasters, river erosion, drought and so on together compel women of poor households to seek viable alternatives in the city. That poverty places a strain on patriarchal bonds is apparent in the growth of the number of women who have, in recent years, begun to move about in the 'male space' in search of waged employment.

While the participation of women in the labour market has ensured a degree of economic empowerment and a renegotiation of gender relations, the situation has simultaneously triggered off another phenomenon that considerably adds to the overall disempowerment experienced by women. Sexual harassment of women in the streets and workplace is a common occurrence,

which is experienced by women from almost every segment of the society. Given the traditional backdrop in Bangladesh where chastity in a women is of utmost importance, victims of sexual harassment suffer in silence rather than protest against such practice, which would only invite unwarranted attention that would be socially demeaning. Moreover, while issues of violence in respect of gender relations received considerable attention of relevant quarters including the media, academia and the legal profession, very little has been done to address gender-based sexual harassment in its proper perspective. The paper aims to explore the issues pertaining to processes that expose women to exploitation and sexual harassment in their workplaces and on the streets, in an attempt to highlight the ways in which the phenomenon violates women's basic right to work and move safely and with dignity.

Conceptualising Sexual Harassment

Definitions of sexual harassment that have emerged as part of the Western ideology have a number of components to them. Some of the important features that are construed as constituting sexual harassment are : behaviour 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.[1]

Given the above-mentioned facets, sexual harassment has been defined varyingly by experts. Russel, for example, 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'.[2] In her definition

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

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

Farley adds, "staring at, commenting upon or touching a woman's body, requests for acquiescence in sexual behaviour, repeated non-reciprocal propositions for dates, demands for sexual intercourse and rape" as aspects of sexual harassment.[3] Sexual harassment has also been defined, in terms of exployment conditions, as "any physical or verbal conduct of a sexual nature... [which is] unsolicited, repeated and unwelcome; 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 behaviour creates an intimidating, hostile or offensive work environment for one or more employees".[4] Offensive behaviour may include both verbal and non-verbal conduct-ranging from sexist jokes, graffiti and sexually explicit pictures of women, lewd gestures to actually touching, fondling, caressing and other acts of sexual nature. It is clear therefore, that the term covers a diverse range of behaviour in given contexts.

There are two main assertions that run through definitions of sexual harassment. First, sexual harassment involves acts or behaviour, which have sexual overtones and are 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.[5] This indicates that the perpetrator's behaviour enables him to place the victim in a subordinate position in relation to himself. While the subordination is generally on a gender level, there may also be an economic dimension to it

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

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

5. MacKinnon, C., *Sexual Harassment of Working Women,* Yale University Press, London, 1979, p.1.

if the victim's working conditions are affected. Therefore, it may be surmised that, while sexuality is integral to sexual harassment, abuse of power and authority by the male on the basis of the assumption that gender power lies with men is fundamental to the undermining of the safety and security of women.

The Cultural Backdrop to Sexual Harassment

In order to understand the occurrence of unwanted sexual behaviour in its proper context it is necessary to evaluate the construction of gender roles and their impact on behaviour 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 labour of women. Gender roles are learnt through socialisation, 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 for parents to instill traditional and sex-stereotyped ideologies into children's minds. Consequently, while a boy's gender development is generally based on identification with the male head, a girl is required to follow into the footsteps of the women of the family. Socialisation of girls in Bangladesh is in keeping with the lifelong role of subservience and self-effacement that women are expected to play. A girl learns to defer to her brother(s) and the male patriarch and perceive the fact that she is merely a transitory member of the family. Initiation 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.[6]

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6. Parts drawn from Chapter 2 of *Changing Responses to Child Labour : The Case of Female Children in the Bangladesh Garment Industry*, unpublished Ph.D thesis by Khair, Sumaiya, 1995, University of East London, U.K.

Women in Bangladesh traditionally live in a dichotomised world, which indicates the culturally differential power and resources allocated to men and women in the society. This essentially imposes a strict division of labour, and fosters a systematic supremacy of the 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. Women's dependence has a cultural meaning because it is a matter of shame if the man of the house is unable to support his family in full. In the interests of good relationships in the households and social status in 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.[7]

The dichotomy between the public and the 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.[8] 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 as truly human.[9] 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... [W]omen...find it very difficult to establish that the unequal, hierarchical and

7. Khair, ibid.

8. Punalekar, S.P., Gender, Class and Culture . Situation of Girl Children in India' in Devasia, L. and Devasia, V V. (eds.), *Girl Child In India,* Ashish Publishing House, New Delhi, 1991, pp. 25-37, at p. 26.

9. Pandhe, S., *Women's Subordination. Its Origin,* Kanak Publications, New Delhi, 1989, pp.30-31.

> exploitative relationship between men and women is due to social... factors. One of our main problems is that not only the analysis as such, but the tools of the analysis, the basic concepts and definitions, are affected-rather infected-by biological determinism.[10]

The rather one-sided view of biological determinists, that sexual divisions have emerged by natural selection, as a result of different biological roles, is however, met with a justified retort :

> To claim that, of all human activity only female nurturance is unchanging and eternal is indeed to consign half that human race to a lower existence, to nature rather than to culture.[11]

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 spheres of activities-a scheme of functional division in accord with their respective natural dispositions and inherent physical and psychological qualities and characteristics... This is how the doors of a number of social and economic ills have been closed.[12]

The above contention presents 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.[13]

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10. Mies, M., 'Social Origins of the Sexual Division of Labour' in Mies, M. et al. (eds.), *Women : The Last Colony,* Zed Books Ltd., London et al., 1988, pp.67-95, at p. 68.

11. Lerner, G., *The Creation of Patriarchy,* Oxford University Press, New York, 1986, p.26.

12. Maududi, A.A., *Purdah and the Status of Woman in Islam,* Islamic Publications Ltd, Lahore, Pakistan, 1972,p.82.

13. Khair, op.cit.

It follows therefore, that although that public/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 disadvantage of women.

Just as gender roles are socially constructed, so is sexuality.[14] Men essentially gain power through ways in which culture constructs sexuality and male female relations. 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 (seclusion) 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 honour in Bangladesh are based on female modesty and the control of their sexuality. In a patarchal 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, they are seen as being susceptible to sexual assaults, requiring protection themselves. In other words, women are, at the same time, sexually aggressive and vulnerable. In the circumstances, purdah is deemed essential for the control of sexual desire and aggression and for the maintenance of moral standards specified by society.[15]

The distinction provided by purdah norms generates a 'double standard 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

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14. Caplan, P., *The Cultural Construction of Sexuality*, Tavistock Publications, London, 1987, p.10.

15. Khair, op.cit.

the family, 'legitimately' attracting male harassment and violence.[16] The practice of purdah demonstrates a double standard that helps rationalise prevalent male sexual attitudes and their control over women's behaviour. 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.[17]

This form of division of labour not only imposes on women in segregated societies a great responsibility in the moral sphere,[18] but the public/private dichotomy indicates the culturally differential power and resources allocated to men and women in the society and the consequent subordination of women therein. It is observed that,

> in the patriarchal, partilocal, patrilineal society of Bangladesh, socio-cultural values sanction segregation of the sexes, impose strict gender division of labour and foster a systematic bias of male supremacy.[19]

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 behaviour 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

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16. Lewis, D.J., et al., *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.

17. Jahan, R. *Women and Development. Challenges and Opportunites,* Ford Foundation Dhaka, 1988, p.214.

18. Papanek, H., 'Purdah : Separate Worlds and Symbolic Shelter' in Papanek, H. and Minault G., (eds.), *Separate Worlds. Studies of Purdah in South Asia,* Chanakya Publications, New Delhi, 1982, pp.3-52, at p.36.

19. Jahan, op.cit,1988.

such, strive to ensure that women are socialised into adopting a submissive and dependent role, which would deter them from asserting themselves against men when sexually harassed.

The Impact of Sexual Harassment: Emerging Power Relations and the Culture of Silence

Although male control and domination of females in the public space may take various forms, this control is usually premised on the aggressive occupation of the space in which women are tolerated only within very rigid limits of movement, dress and activity. Any transgression of the prescribed limits by women is met with swift and very often, harsh retribution by way of physical or sexual violence. Men who constantly make women aware of their sexuality through looks, gestures, laughter and ribaldry heighten the objectification of women as sexual entities. Women in the public space therefore suffer considerably by the control of their sexuality by way of sexual harassment.

Sexual harassment leaves a lasting impact on the victims. Women who are or 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. Sexual harassment is about exerting control over disadvantaged groups through threats to their integrity and safety. It is about putting women in their places in an attempt to undermine their authority and autonomy. It is about exploitation of the gender advantage and institutional power that results in the loss of dignity and self-esteem of the victim. It provides perpetrators with the sordid opportunity of seeking sexual gratification. Innuendo and suggestive behaviour involved in sexual harassment of women generate an anxiety and invoke a feeling that such behaviour could become more violent and intrusive. Consequently, women suffer from a perpetual sense of insecurity. Their movements become guarded and inhibited and their vulnerability increases manifold. Many are forced to come to terms with unwelcome encounters

either by retiring from public life or by neutralising what occurred, the latter being rather difficult given the enormity of the situation. As a result, women feel ashamed, embarrassed, cheap and angry at their own vulnerability.

There are occasions when victims feel personally responsible for the incidents. Where women imbue traditional attitudes about men, they are inclined to accept male authority and aggression. It is almost as though having ventured into the male space the women have asked for trouble. 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 behaviour, 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. As indicated earlier, culture defines behaviour as essentially male and female and indicates parameters that constitute sexual harassment, which is also considered to be the result of a typical male/female interactive behaviour. Since practices vary across cultures, so do ways in which women react to incidents of harassment. Where sexual harassment is considered culturally acceptable, women are more likely to feel embarrassed by the incidents rather than to protest against such conduct and seek redress. This attitude stems from the cultural conditioning that persuades women to believe that men do not really intend any harm and are simply demonstrating their macho personalities. Women may not necessarily approach events by how they feel about particular situations or modes of bahaviour, but in terms of the way they have been socialised to react.[20] In the circumstances, women are reluctant to report incidents to harassment of avoid public scrutiny, which means that unwanted sexual conduct is not highlighted much less perceived as an offence.

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20. Houghton-James, op.cit., p.52.

There are a number of factors that compel victims to conceal instances of harassment. Since the victims occupy a status subordinate to that of the harasser on account of gender, they are powerless to overcome most situations. Economic constraints also disable women from seeking redress and the possibility of recurring incidents, effectively deter women from pressing charges. Fear of backlash and reprisals involving physical assault also comple women to suppress instances of harassment. Moreover, where, as in Bangladesh, chastity is considered to be a women's best ornament, any allusion to being sexually harassed would seriously compromise a women's reputation in society. Therefore, talking about sexual harassment can disempower women. Women who make sexual offence allegations often have their lifestyles analysed to determine whether they qualify for protection or denigration. Ironically, individuals of both sexes scrutinise a victim's story in a manner whereby the victim's character becomes an issue and not that of the perpetrator. Women have been found to be harsh judges of each other's character as they are conditioned to judge women based on their perception of acceptable female behaviour as prescribed by societal norms. In many ways women are held accountable for their own misfortunes. Media coverage in the circumstances, accentuate women's vulnerability by producing material that obscures the real issue of the intent of the perpetrator. Moreover, the culture of silence is reinforced by the presumption that women are inclined to exaggerate, fantasise or even lie in order to draw attention to themselves. They are considered to be prone to hysterical outbursts and therefore, not to be taken seriously. Women's experiences are often thus ignored or dismissed. Hence, the suppression and social control of women occur at both institutional and individual levels.

While there are obvious dangers of exposing and talking about sexual harassment, keeping silent about the occurrence can be equally risky. Not talking about sexual harassment allows the phenomenon to continue unchallenged. In the circumstances, silence helps propagate this form of oppression giving rise to and

reinforcing other manifestations of oppression like rape, trafficking, causing bodily harm and so on. Disclosure of each case sheds light on the issue and assists other women to protect themselves from this unwelcome intrusion.

Addressing Sexual Harassment : An Inquiry into the Role of Law

Having established how prevalent sexual harassment is, and its pervasive nature, question arises as to the means of addressing the problem. In this regard 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.

Until recently, apart from provisions in The Penal Code of 1860, there was no specific legislation that acknowledged or addressed the issue of sexual harassment as an offence. Sections 354 and 355 of The Penal Code state 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. For example, in *State vs Hetram* the accused was booked under Section 354 for dragging a 15 year-old girl to a secluded spot as she was returning from her mother's home.[21] Again, in the case of *Muhammed Sharif vs State* 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 was tantamount to insulting their modesty.[22] In another case, *Tarak Das Gupta vs State,* the accused sent a letter with indecent contents to an English nurse with whom he was not acquainted. It was held to have been an insult to her modesty under Section 509

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21. 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.

22. 9 D.L.R. (1957) S.C., 127.

of the Indian Penal Code.[23]

Provisions of Section 294 of The Penal Code 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. Since there was clear evidence of the incidents not only from the complainant, but also from her colleagues, the accused headmaster was found guilty under Section 294 of the Indian Penal Code.[24]

The *Nari O Shishu Nirjaton Domon Ain 2000,* a modification of the Women and Children Repression (Special Provision) Act 1995, was enacted in view of escalating 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(2) of the Act provides that any man who outrages the modesty of a woman— in order to satisfy has carnal desires or makes indecent gestures will be guilty of sexual harassment and will be punishable with rigorous imprisonment of not more than 7 years and not less than 2 years. He will also be liable to tender compensation. Initiatives to enact a special law for protecting women and children by incorporating different dimensions of violence were undertaken more zealously following an unfortunate incident which occurred inside the Dhaka University campus on new year's eve on 31 December 1999 when a young woman was assaulted and disrobed by a group of young men as she joined the revelries on the campus. Only thirteen days later another woman met with a similar situation as she and her husband, both doctors, were going out in their car and were stopped by some young men on a pretext. As the couple protested,

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23. AIR (1926) Bom., 159.

24. *Chandra Kala vs Ram Krishna,* 1985 Cr LR (SC), 365 cited in Saxena, op.cit., pp.219-220.

the lady was disrobed and harassed.[25] Cases have been filed in both the above-mentioned instances under relevant provisions of The Penal Code.

Limits of the Law

Although law is considered to be neutral, it is important to see law for what it really is in actual operation, rather than what it appears to be. Since law aspires to treat men and women on equal terms, it is necessary for law to rise above existing social inequalities for the objective enforcement of legislation protecting women.

In order to appreciate the problems vulnerable people face in dealing with the law it is first essential to understand the nature of law itself. Law reflects and reproduces the dominant norms of society. As such, the unequal status of socially vulnerable and disadvantaged groups of people is not simply an accident. The powerlessness and subordination experienced by these people are created and engendered by prevalent social, political, economic, and legal forces. As Schuler points out :

> Societies regulate the acquisition and control of land, jobs, credit and other goods and other services through their legal systems... What happens in all societies is that law skews access to these resources to the benefit of some and detriment of others.[26]

Women are no different to any other disadvantaged group in that, they are discriminated against by the law. Although 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

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25. Facts compiled from newspaper clippings collected from Ain O Shalish Kendra (ASK).

26. Schuler, M. (ed.). *Legal Literacy. A Tool for Women's Empowerment,* UNIFEM, 1992, pp.24-25.

institutionalises 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. The legal subordination of women in Bangladesh is manifest in several key areas, particularly in the personal laws that govern rights and obligations in marriage, divorce, custody, guardianship and inheritance. This subordination is also evident from women's unequal access to employment opportunities, property rights and participation in public affairs.

It has often been argued that legal subordination of women results from the fact that law is 'male', an ideology that emerges from the observation that most lawyers and lawmakers are male. Mackinnon, for example, points out that, ideals of objectivity and neutrality in law are values that are essentially masculine and they are universally accepted as such.[27] In the circumstances, if may be deduced that when a man and women appear before the law, it is not that law fails to apply objective criteria when faced with a feminine subject, but precisely that it does apply objective criteria that is inherently masculine.[28] It follows therefore, that ideals of equality, neutrality and objectivity are judged by values that are fundamentally masculine. In the context of Bangladesh this would mean that law enforces the power relations sanctioned by society by regulating people's lives in a certain manner on the one hand, and permitting people to conform to normative ideologies on the other. Thus, law plays a dual role, that of the 'regulator' as well as 'legitimiser'.[29] In other words, law regulates people's existence and legitimises the process by actually institutionalising

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27. MacKinnon, C., *Feminism Unmodified : Discourses on Life and Law,* Harvard University Press, Boston, MA, 1987 quoted in Smart, C., *Law, Crime and Sexuality. Essays in Feminism,* Sage Publications, London et al., 1995, p.189.

28. Smart, ibid.

29. Drawn from workshop proceedings on Acknowledging Sexual Harassment in Bangladesh organized by the British Council, 2-3 July 1998, p.9.

normative traditions within the body of law.

Hence, where sexual harassment is concerned, the popular assumption is that since women's place is in the home anything that happens to them if they venture into the public space is their fault. Asymmetrical power relations compel women to ignore the incidents. The cultural level of law has an invariable impact on the structural aspect of law. While there is no dearth of substantive laws in Bangladesh, their application is hardly consistent. Moreover, structural issues such as lack of enforcement are often the result of biased attitudes of law administrators and enforcers. Court proceedings beng expensive, cumbersome and legthy effectively discourage women from taking legal action and enforcing their rights in court. Moreover, the harassment and complexities involved compel women to conceal incidents of violence.

Lack of clarity and ambiguity of expressions 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. Consequently, acts outside the ambit of existing laws enacted to combat gender violence do not merit any remedy. For example, sexual harassment at work and on the streets like wife battering, child abuse, psychological torture and so on, have not, until the enactment of the *Nari O Shishu Nirjaton Domon Ain 2000,* been addressed in relevant laws. Archaic criminal law provisions against 'outraging the modesty of a woman'[30] or insulting the modesty of a woman' [31], as discussed above, was the closest

30. Section 354 of The Penal Code, 1860.

31. Section 509, ibid.

Bangladeshi law ever came to addressing the issue of sexual harassment. Apart from the fact that these provisions have strong moral overtones, they are often interpreted as nothing short of rape.[32] The other problem with penal laws is that they seek to punish an individual wrong rather than address the discriminatory behaviour which is characteristic of conducts like sexual harassment.

A prosecution for sexual harassment under Section 354 of The Penal Code depends on proof of two matters. One, that the accused used criminal force or assaulted the woman and two, that such assault was done with an intent and knowledge that it was likely to outrage the modesty of a woman. Therefore, it is not enough to prove that assault has actually taken place but that it was done with full intention and knowledge. While corroboration is desirable it is not mandatory for proving a charge of sexual harassment. This brings us to the problem of furnishing evidence in such cases.

Cases of violence require the application of the laws of evidence, which often involve queries of delicate and intimate nature, which most women in the socio-cultural context of Bangladesh find difficult to respond to. In the circumstances, the defense lawyers frequently indulge in unnecessary character analysis of the victim vitiating from the actual context. Victims, in the process, suppress real evidence. Moreover, the prevalent patriarchal system nearly always places the burden on the woman 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 the behaviour is such that it usually occurs when there are no potential

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32. Kapur, Naina, '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.

witnesses, and the victim may subsequently be too ashamed to speak to anyone about the incident.[33]

While victims of overt sexual violence like rape, may be in a position to substantiate their complaints by producing witnesses or necessary evidence, victims of sexual harassment frequently suffer from a lack of discernible indication. At this point it may be useful to think in terms of an example. Say, a woman is walking through a crowded shopping mall. Preoccupied with the list of things she needs to buy she hurries along without so much as glancing at anyone. At this juncture she hardly considers herself as belonging to a specific sex. A passing man brushes against her and touches her indecently. The incident happens so fast that she only has the time to look at the departing back of the man. The woman is deterred from protesting or retaliating, as, within the given social scenario, any attention by the public was more likely to cause her utter embarrassment. Apart from this, in certain cases, the people may end up blaming her for provoking the occurrence. This instance demonstrates how women are regarded only as sexualised bodies that are open to use and abuse without resistance. The form of abuse does not necessarily have to involve touch-it can simply be a look or a comment. Thus, it is not the actual physical harm that is an issue here, rather what the act invokes. Hence, it may be argued that whether the harasser intended to harass the victim should not be an issue, it is how the victim feels that is important.[34]

Alternative Remedies to Sexual Harassment

Where there is an absence of adequate criminal laws or a lack of their proper implementation regarding the issue of sexual harassment, recourse may be had to the law of torts for an alternative remedy. Certain acts of sexual harassment do fall

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33. Houghton-James, op.cit.,p.129.

34. Herbert, C., *Talking of Silence : The Sexual Harassment of Schoolgirls,* Falmer Press, Lewis, 1989, P.32.

within the purview of trespass to person, more specifically assault and battery.[35] Battery is a direct and intentional application of force to another person without his/her consent. Since battery does not necessitate actual bodily harm, any form of insult or interference ranging from spitting to unwanted touch will constitute the tort of battery. Assault is the causing of reasonable apprehension of imminent bodily harm by the defendant.[36] Thus, there may, arguably be a place for tort in redressing against interference with a person that causes offence to honour and dignity.

In case of trespass to person the lack of consent is a key component. As with other areas of law where consent is essential in establishing liability, the law of torts also excludes liability for conduct that has presumably been consented to by the plaintiff. In case of sexual harassment, in the absence complaint or protest by the victim, the law assumes that the victim has consented to the act by implication. Yet the fact that sexual harassment is frequently perpetrated by someone in the position of authority over the victim is often overlooked. Moreover, such acts, being culturally acceptable, may be perceived as behaviour that has to be tolerated. Again consent is interpreted in various ways. For example, the manner in which a victim is dressed is often considered an important indicator of whether the victim actually consented to such conduct. There is a prevalent notion that a woman incites or discourages sexual attention by what she wears. Thus, where a woman dresses provocatively, it heralds availability and is construed as an invitation to sexual attention. Whether a particular form of clothing is provocative or not is decided by men and the fact that the way the victim dresses is significant to consent to sexual conduct demonstrates how male stereotypes about women prevail even in

35. For assault and battery please see James, Philip S., *General Principles of the Law of Torts,* Buttersworth, London, 1978; Markesinis, B.S. and Deakin, S.F., *Torl Law,* Clarendon Press, Oxford, 1994.

36. The Penal Code 1860 also has provisions relating to assault as a threat to use criminal force under sections 351, 353-357.

value judgements within legal contexts.[37]

Tortious liabilities are rarely invoked in Bangladesh as compensation is of little value particularly when the defendant is unable to pay. Nevertheless, in a culture of evading the law and getting off scot-free, any compensation, however, nominal, would serve to redress unwanted sexual attention.

Apart from tortious remedies, specific guidelines may be useful in addressing sexual harassment and questioning state accountabilitiy for such acts. The judgement of the Indian Supreme Court in *Vishaka vs State of Rajasthan*[38] is a case in point whereby two social realities received recognition : one, sexual harassment and two, gender-based violence being discrimination in that it violates a women's basic human rights. It all began when a female social worker, engaged in a state run programme in Rajasthan, was gang raped by five upper caste men in 1992. The rape was an act of vengeance against the social worker for her advocacy against child marriage. The incident received scant attention of the police, medical personnel and the magistrate who were rather trying to prevent the woman from registering her case. Before the rape incident, the woman social worker complained to the local authorities about sexual harassment by the accused, which went unheeded. Consequently, she was left to fend for herself. The lack of any functional policy on sexual harassment of village development workers questioned state accountability and amongst other issues, this became the basis of a public interest litigation filed by women's organisations in the Supreme Court of India.

Invoking the international human rights principles contained in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) the Indian Supreme Court recognised the need to develop comprehensive guidelines in a human rights context, which would address the problem of sexual harassment

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37. Houghton-James, op.cit.,p.175.

38. (1997) 6 SCC 241.

in the work place and other institutions. The process of developing the guidelines involved extensive liasing between lawyers, NGOs and grass roots women workers from which several salient points emerged for the Court to consider. It was postulated that failure by the state to recognise the vulnerability of all working women, particularly those working as agents of change, to harassment and abuse, encourage women, who were already having to endure social ostracism, to remain silent about their suffering. This essentially violated their freedom of movement and denied their rights to equality and to live with dignity. Moreover, repeated instances of sexual harassment of working women and the failure of the state to recognise the same as occupational hazard, results in inequitable treatment of women. In the present case, given the emotional, physical and psychological torture and humiliation experienced by the victim at the hands of dominant powers, she was entitled to compensation. Thus, the focus of the case shifted from a criminal wrong to a systemic discrimination, which required elimination.[39] On the basis of these postulations the Court ruled that :

> The immediate cause for the filing of this writ petition is an incident of alleged brutal gang-rape of a social worker... The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measure. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need. Each such incident results in violation of fundamental rights of Gender Equality and the Right to Life and Liberty.[40]

The alternative mechanism was interpreted thus :

> In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of International Conventions and norms are significant for

39. Kapur, op.cit.

40. *Vishaka vs State of Rajasthan (1997) 6 SSC 241.*

> the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (10) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the Constitution...[41]

Thus, in the absence of specific legal enactment on sexual harassment, some sort of a guideline or code of practice may be applied to ensure the prevention of such conduct. Green points out, for example, that in 1991 the European Commission issued a Recommendation on Sexual Harassment accompanied by a Code of Practice on how to combat sexual harassment at work. Although such Recommendations do not have express legal force they clearly treat sexual harassment as sexual discrimination which violates the European Union's Directive on equal treatment for women and men as regards access to employment, vocational training, promotion and working conditions, Following the Recommendation legal cases on sexual harassment were taken across the European Union.[42]

It is common for women to prefer informal methods of settling problems of sexual harassment, as they may feel intimidated, embarrassed and reluctant to draw attention to themselves. As such, they may shy away from the prospect of airing their grievances in a formal setting. In many cases women simply want the harassment to stop rather then subject the perpetrator to discipline. This may perhaps be best achieved through informal procedures, which would restrain offensive behaviour towards women and create an enabling environment for them to participate in activities outside their homes.

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41. Ibid.

42. Green, Kate, 'Living Dangerously : Women Talking About Sexual Harassment', paper presented at the Workshop on Acknowledging Sexual Harassment in Bangladesh, organised by the British Council, Dhaka-2-3 July 1998.

Conclusion

The fact that societies do not necessarily possess the same cultural norms regarding appropriate gender behaviour, 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.[43] Thus, where cultural definitions protray women as inferior and weak, sexism is bound to develop and be perpetuated. In the circumstances, controlling women through sexual harassment amounts to control at a cultural level. Although sexual hearassment 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.

Harassment is one way of ensuring that women remain in their place and remember their role as sexual objects. The behaviour that men on the streets and in the workplace randomly accord to passing women, serves to classify them as imperious members of the society to whom the streets belong. In the circumstances, women are inevitably assigned a passive part. Consequently, sexual harassment has been slow to surface and capture the requisite attention and recognition. Although sexual harassment has traditionally been considered as harmless, it is really a part and parcel of the more massive forms of violence against women. It is contended that by its seeming harmlessness and triviality, sexual harassment actually impedes women's right to personal integrity and encourages men to transgress against women's rights 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

43. Herbert, op.cit., pp.23-24.

and physical traits. There is thus a critical need to place gender-biased sexual harassment within the context of women's structural inequality, as a means of breaking down the distinction between the private and the public life, that often excludes sexual harassment of women from the human rights agenda. 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. It is necessary to adopt an all encompassing legislation that would override the ad hocism and ennui, which traditionally pervade legal actions against perpetrators of violence. Such 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. This is unlikely to occur unless sexual harassment is recognised as unacceptable behaviour and awareness of the issue is raised. It has been said that sexual harassment is an issue of power rather than of right or wrong.[44] It illustrates women's oppression within society based on sex that accentuates the cultural and structural inequalities experienced by women. In Bangladesh where law is frequently seen to benefit only the rich and the powerful, women, by virture of their subordinate position, are often precluded from its protection. For example, since domestic violence or sexual harassment is seen as a natural corollary to womanhood, such issues hardly receive legal attention or acknowledgement. In the circumstances, an ethos of collective care, vigilance and responsible conduct by all members of the civil society, including educationists, lawyers, judges, police, towards females in general, is central to effective and vigilant law enforcement.

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44. MacKinnon, op.cit., 1979, p.173.