

THE IMMODEST TRUTH: AN EVALUATION OF THE MEASURES TAKEN TO COMBAT SEXUAL HARASSMENT

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ABSTRACT

In recent years, the issue of sexual harassment has dominated the media and public consciousness in Bangladesh. This article evaluates the legislative and judicial measures taken to combat sexual harassment. Arguing that sexual harassment is best understood as a form of gender-based discrimination, this article finds the existing legislative provisions largely unsatisfactory. Constrained by an understanding of sexual harassment that perceives the issue as tied up with questions of womanly “modesty”, the existing provisions privilege the perspective of the perpetrator rather than the victim and focus upon the character of women rather than the violence done to them.

*This article also offers a critical analysis of the two landmark judgments passed down by the High Court Division of the Supreme Court of Bangladesh, enacting guidelines on sexual harassment; *Ms. Salma Ali (BNWLA) v Bangladesh & Ors.* 29 BLD (HCD) (2009) 415 and *BNWLA v Government of Bangladesh and Ors.* 31 BLD (HCD) (2011) 324. It argues that whilst the judgments have introduced the language of discrimination to sexual harassment discourse in Bangladesh, they have not been able to rid themselves of the myths of womanly modesty that pervade the existing legislative provisions. They do not demonstrate an adequate understanding of the discrimination frame they purport to support and there is a risk that the promises made within are likely to remain largely symbolic, rather than being translated into de facto rights for the women of Bangladesh.*

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INTRODUCTION

For many women in Bangladesh, their first experience of sexual harassment comes at a young age. Weaving through the crowded street markets of Dhaka, it is not uncommon for a young girl to fall victim to the leers, pinches and gropes of male strangers. Women in Bangladesh have been defined and constrained by the traditional sex roles and stereotypes that pervade its society. Male dominance and superiority have always been the order of the day, whilst most women are delegated to managing the household.¹ Those who venture into the workplace find that patterns of dominance and authority continue to pervade their experiences there. Sexual harassment is experienced by women across the social spectrum; from the low paid women who make up the majority of workers in the garment industry, to women working in academia and the media.²

This article seeks to evaluate in detail the measures taken to combat the issue of sexual harassment in Bangladesh, critically analysing the existing legal framework governing the issue, and the two landmark cases which set down guidelines in respect of dealing with cases of sexual harassment, *Ms. Salma Ali (BNWLA) v Bangladesh & Ors.* (2009) and *BNWLA v Government of Bangladesh and Ors.* (2011).³

Firstly, I shall explore the issue of how sexual harassment should be understood, discussing the treatment of the issue internationally, and considering how comparators could be useful in helping us understand the situation in Bangladesh. I shall argue that when combating sexual harassment, a framework which conceptualises sexual harassment as sex discrimination is necessary.

Secondly, I shall offer an overview of the legal framework governing Bangladesh, analysing the constitutional and legislative provisions that

¹ Committee on the Elimination of Discrimination against Women, at 6, 15, *Fifth periodic report of States parties: Bangladesh*, U.N. Doc. CEDAW/C/BGD/5, at <http://www.un.org/womenwatch/daw/cedaw/reports.htm> (last visited on June 1, 2013).

² *Ms. Salma Ali (BNWLA) v Bangladesh & Ors.* 29 BLD (HCD) (2009) 415, at 4-5. Narrates case studies of women's experience of sexual harassment in the workplace.

³ *BNWLA* (2009) Ibid; *BNWLA v Govt. Of Bangladesh & Ors.* 31 BLD (HCD) (2011) 324. The cases will be referred to as *BNWLA* (2009) and *BNWLA* (2011) respectively.

relate to gender equality and sexual harassment. I shall argue that the gender equality provisions in the Constitution are inadequate in their reach as they are too focused on the public sphere, neglecting the private, and are based on principles of formal equality which do little to challenge the inequality of power that exists between men and women. I shall argue that the existing penal code provisions are entrenched with stereotypical assumptions about womanly “modesty” and that the government have done little to improve on this; enacting legislation that is largely reactionary, failing to challenge these existing assumptions.

Thirdly, I shall evaluate two landmark cases in Bangladesh, *BNWLA* (2009) and *BNWLA* (2011) that set out guidelines on sexual harassment. I shall argue that whilst there are many commendable aspects of the judgments, particularly the guidelines themselves which frame sexual harassment as sex discrimination and the awareness that has been raised as a result of the litigation, there are also problematic elements to the decisions. Whilst the judgments did make use of a discrimination frame, I shall argue that some of the comments in *BNWLA* (2011) reveal that there still exist prejudicial and stereotypical views about women, suggesting that not all women would truly benefit under these guidelines. Furthermore, the judiciary’s claim to be able to judicially legislate is a highly questionable one, leaving the guidelines on a shaky foundation that could easily be upset. There is a risk that the guidelines will remain largely symbolic rather than being translated into actual rights for women.

Finally, I shall analyse the impact international law has had on these cases, exploring the use of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) within the decisions as well as the influence of case law from other jurisdictions. I shall argue that overall, CEDAW and international law has had a positive impact on the cases, but much more needs to be done domestically to change attitudes towards women.

HOW SHOULD SEXUAL HARASSMENT BE UNDERSTOOD?

In order to better evaluate whether Bangladesh has effectively combated sexual harassment, I shall first consider how the issue of sexual harassment itself should be understood. In order to effectively combat the issue, it is not enough to simply label behaviour that constitutes sexual harassment. It is necessary to go deeper and consider what factors cause and contribute to that behaviour. I shall argue that it is