

# Discrimination against women in workplaces: Present scenario of Bangladesh in comparison to Canada.

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## Abstract:

Discrimination against women and girls often extends beyond societal norms and practices and enshrined in policies and laws. True gender equality and lasting empowerment of women and girls will not be possible until women have full and equal protection under the law.<sup>1</sup>

However, Canada as a self-proclaimed “Feminist country” first launch “feminist international assistance policy in 2019” in the world. Carrying the legacy, later arranged “Women Deliver” conference on 5<sup>th</sup> May 2019. Once the poverty eradication movement was initiated by Bangladeshi Nobel Laureate Prof. Yunus involving women from grassroot level for their empowerment, reflected twice, in the aforesaid policy of Canada in 2019, when it spread its wings involving its development partners including Bangladesh.<sup>2</sup> . In this article, we have taken a small initiative to compare Canadian anti-discriminatory laws and social mechanism which might help Bangladesh, to get rid of gender-based discrimination. At the same time, this article would be an effort to cross check, whether the ‘law’ itself or the ‘social mechanism’ would be more effective to overcome this problem as the directives of the judges of Bangladesh apex court opined the same.

It is undeniable that still the women in Bangladesh are suffering from discrimination indoor to outdoor, from home to workplace, so it becomes essential to provide relief for them. Low paid female garment workers to upper level management workers are suffering from hidden or exposed discrimination. whereas providing strong support, Constitution of Bangladesh recognized female’s equal opportunity among genders. The relief giving process in Bangladesh, officially began with a Supreme Court writ petition 5916 of 2008, as no direct law was available defending the rights of women. Again, In the same writ petition, Court had given a description of “sexual harassment” and concurrently declared it as “discriminatory”, when a female object, because it hampers her work. Similarly, the Canadian Human rights commission declares the “harassment” is a ‘form of discrimination’<sup>3</sup>. According to them, all kinds of harassments regarding “sexual, behavioral or pay inequality” comes under the term of “discrimination”. However, In the aforesaid writ petition, Bangladesh supreme Court directed to find out an alternative mechanism to cater the need, in absence of legislative provision.<sup>4</sup> Bangladesh Supreme court deliver the judgment, based on some decisions of Canadian supreme court. Therefore, it is worthy to cross check the necessity of enactment “workplace anti-discriminatory” laws for Bangladesh in context of Canada.

**Key words:** *Women, Discrimination, Workplace, present scenario, Bangladesh, Canada, comparison.*

<sup>1</sup> Feminist international assistance policy, 2019, Canada.

<sup>2</sup> *ibid*

<sup>3</sup> The constitution of People’s republic of Bangladesh. 1972

<sup>4</sup> Public Interest litigation. [http://bdpil.org.bd/search/full\\_view/202](http://bdpil.org.bd/search/full_view/202) retrieve - 17/1/2019/2019

**Scope:**

We will discuss the stands of both the countries in international treaties accepted by them, will consider the Human commission's function, relevant laws and the other social systems that are better working for Canada addressing the issues. This article is secondary data based, information is collected from books and reliable websites mostly, to support the arguments as this topic is a most recent concern. We tried to figure out some scopes of common working areas for development in existing system; for enacting, amending laws, regulation and creating consciousness against workplace discrimination which would contribute uplifting the overall human rights situation in Bangladesh.

Our tentative common area for comparison would be supreme court precedents, human rights commission's function, relevant Criminal or penal code provisions, and labor law, labor ministry-based activities along with involvement of non-formal social initiatives from both the countries. We emphasis on "employers' liability" as well, as this issue related to workplaces.

It is worthy to mention, definitions and explanations of 'discrimination' is given in Canadian Human Rights Act, "Policy on Harassment prevention" and "Occupational health and Safety Regulations of Canada" and Canadian Labor Code.<sup>5</sup>

**Introduction:**

In fact, Bangladesh secured 47<sup>th</sup> position among 144 countries in 2017, as per the global gender gap report. This position is much more progressive than other neighboring countries.<sup>6</sup> but no law explicitly protect the women in workplaces, neither any significant social support is directly active in this regard. It is necessary to see, despite of being signatories of many international treaties and conventions for women, why Bangladesh is not being able to enforce them directly in the courts. Secondly, despite of having repeated directions from apex Court, why Bangladesh yet not being able to enact any specific law or the formal complaining procedure for solving grievances and monitoring policies for workplace discrimination that includes harassments cases as well. Moreover, why there is an absence of "pay protection guarantee" for private sector workers instead of having labor ministry and labor code in Bangladesh like Canada. What are the barriers that are restricting Bangladesh Human Rights commission to act with the same compatibility as Canadian Human Rights Commission (CHRC), whereas the redresses are possible with a little bit modification of existing the law and system? Most importantly, extension employer's liability, how far could be an effective remedy in this regard.

Emphasizing on the issue of "female harassment in workplaces" through a comparative discussion, the main aim of this article would be to set out a connectivity and at the same time, invent a meaningful common mechanism between two countries. Furthermore, some relevant provisions of Canadian laws have been discussed in this Article, which provides equal employment opportunity guarantee particularly for four designated groups: women; Aboriginal peoples; persons with disabilities; and members of visible minorities<sup>7</sup>. Considering Canadian acceptable practices, effort would be made to figure out the ways for fulfilling constitutional promises of for equal opportunities of work (Art-19,20) and equal opportunities for women [Art-28(1)]<sup>8</sup> in Bangladesh.

<sup>5</sup> <https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution>. Retrieval- 14/02/2019

<sup>6</sup> [http://www3.weforum.org/docs/WEF\\_GGGR\\_2017.pdf](http://www3.weforum.org/docs/WEF_GGGR_2017.pdf) . Retrieval- 30/3/2019, page -45 Retrieval- 6/1/2019

<sup>7</sup> <https://www.chrc-ccdp.gc.ca/eng/content/what-harassment-1>. Retrieve- 6/1/2019

<sup>8</sup> The constitution of people's republic of Bangladesh. 1972

**Social Background of Bangladesh:**

In many countries' women are struggling with unbalanced work responsibilities, unequal parental duties at home and low payment in offices.<sup>9</sup> So as the Bangladesh. Especially the patriarchal dominion, religious superstitions, colonial suppression, poverty, illiteracy, stereotype thoughts and beliefs have been influencing a lot framing the destiny of Bangladeshi women. Reaching at the age of globalization, Bangladesh needs to avail the 'chance' to change, rather than going with the flow of the system that have been embedded with colonialism in a patriarchal society. However, the steady rise of women's participation in workplaces from all ages has been attributed to several developments.<sup>10</sup> At the same time created some problems, envy or antipathy from their counterparts, form competitors and from employers as well. Time has come to move forward particularly for ensuring discrimination and harassment free working environment that would make not only a strong economy but also a democratic humanitarian world.

**Canada's stand as a development partner of Bangladesh:**

As we said, Canada and Bangladesh are the two nations, common signatories of many international treaties and conventions. As a one of Bangladesh's biggest development partner, Canada significantly helped Bangladesh in legal reformation through CBA international initiative project<sup>11</sup> and Canadian International development agency (CIDA) has been working in Bangladesh from 2011 by providing \$688,881.<sup>12</sup> Moreover, Bangladesh and Canada belong to the same 'common law' stream, which positively influences Bangladesh in legal drafting from time to time. The year 2018 was a period when almost all the 'bills' in Canada, related to harassments and discriminations came as "Acts". That was the turning point for world jurists, social workers and for common people of the world, realizing and applying harassment preventive issues into actionable measures. Canadian Law "Equal pay for equal work" passed in parliament On 1<sup>st</sup> of April 2018. However, now the way Canada is maintaining human rights situation preventing workplace harassment, discrimination even extending to a foreigner and temporary resident, continuing its vigilance to prevent workplace atmosphere,<sup>13</sup> that already acquired appreciation in the world and that makes Canada an example to follow for discrimination-free workplace.

**Necessity for preliminary development within legal framework:**

Negative traits and attitudes inside human being are inherent, often uncontrolled, which requires to be subjugated. Therefore, for society, where law is pre-cursor (indicator) then the enforcement is a bridle or deterrent. In addition, 'social mechanism' is a moderate way to move forward. From the time immemorial, oppression, harassments upon the weak by the strong is a questionable reality. Therefore, in the precedents of writ petition 5916/2008 and 8769/2010 honorable Supreme court (S.C) of Bangladesh (B.D) suggested for making laws that would be "deterrent and retributive" rather than "punitive". Bangladesh needs to develop remaining in legal framework, as most of the women in Bangladesh still are in vulnerable position. In fact, National laws are one of the tools of government, that has been protecting women's equal rights from all forms of discrimination and harassment. Discrimination, that is usually seen in the event of recruitment among genders, terms of condition regarding

<sup>9</sup> <http://www.unwomen.org/en/digital-library/multimedia/2017/2/photo-world-of-work> .Retrieval- 7/1/2019

<sup>9</sup> <https://www.thedailystar.net/supplements/womens-participation-the-job-market-1545181> . Retrieval- 9/1/2019

<sup>10</sup> The Canadian Bar Association, CA. <https://www.cba.org/CBA-International-Initiatives/Our-Projects/Past-Projects/Bangladesh>. Retrieval-12/1/2019

<sup>11</sup> <https://reliefweb.int/report/bangladesh/cida-fund-cwrc-programs-women-children>. Retrieval- 14/1/2019.

<sup>12</sup> <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/harassment-conflict-resolution/harassment-tool-employees.html> .Retrieval- 14/1/2019

employment, training, promotion, retrenchment, dismissal, disciplinary action, often proliferates the way in form of extensive harassments. Therefore the “gender equity” and “pay equality” needs legal protection extending “employer’s liability” and strong vigilance in each step of the system.

### Understanding discrimination in workplace:

Whether the women from different nationalities experience the similar harassment or not, this question was reviewed by a set of researchers around the decade of 80’s. And as per them-- , “there may be same severity, same experience and same emotional impact women suffers who undergo harassments”<sup>14</sup> However, the S.C of Bangladesh opined in W.P 8769/2010 that, the eve teasing might be enjoyable for girls in western countries but bring a disgrace for Bangladeshi girl. Not only eve-teasing, type of sexual harassment and racial discrimination are prevalent in developed countries which are available in different form in developing countries. On the other hand, abuse based of “religion and patriarchal dominance”, prominent among developing countries, but are uncommon for the developed countries.

However, we consider the ‘workplace discrimination’ against women is an imperative and common issue that is equally hampering the productivity of women throughout the world. That is why, the world’s community is trying to uproot this malpractice as quick as possible. Recently, the Canadian government took some rigorous steps like ‘zero tolerance’ in order to prevent discrimination and harassment, which makes the entire system better working<sup>15</sup> and government declared budget in 2018, where workplace discrimination prevention had a huge allocation.<sup>16</sup>

### Types of discrimination and harassment in workplaces:

The term ‘workplace harassment’ comprehends any discrimination against legal rights of an employee. Workplace harassment prevention is a concern related to human rights as it causes stigma and deprivation of fundamental rights. After promulgation of Universal declaration of Human rights in 1950, the world community through United Nations organization, trying to develop different aspects and areas of human rights. In fact, last three decades had been a period when people raised their voice against mainly “workplace sexual harassments” and we see a considerable improvement in this field. The recent development trends are being focused on all kinds of ‘equal opportunities’ among genders in workplaces, as a means of preventing not only harassments and discrimination, rather maximize the GDP by effective participation of all females participation in workforce.

Workplace discrimination at a glance, includes any action that is contrary to ‘employment equity policy’ of any government or a specific violation of ‘equal opportunity laws’ of any state. Any Offence, threat, intimidation, which might be physical, verbal or psychological towards an employee is “discrimination or harassment”. Purpose behind harassment can be personal malice, racial prejudice or gaining unlawful benefits. Most of the definition described harassment as a ‘continued offensive conduct’. According to Canadian common people’s survey review, ‘harassment is an ongoing process’. That reflects the state’s concern to see the harassment as another form of discrimination towards woman.<sup>17</sup> In general, we understand enduring an offensive conduct in continued employment when becomes a condition, that institutes a harassment and discrimination. <sup>18</sup>

<sup>14</sup> S. Stockdale Margaret ‘*Sexual Harassment in the workplace: perspectives, frontiers and Respond*’, Sage Publication: 1997 volume – 5:152,

<sup>15</sup> Employment and social development of Canada, HSV\_Report \_2017\_EN Pdf “Harassment of sexual violence of workplace- what we heard”:3. Retrieval- 27/1/2019

<sup>16</sup> Canadian Budget for 2018. <https://www.budget.gc.ca/2018/home-accueil-en.html> . Retrieval-5/02/2019

<sup>17</sup> HSV\_Report \_2017-EN.pdf [Employment and social development of Canada]. Date of retrieval- 12/1/2019

<sup>18</sup> Becton Bret, Gilstrap Brus, Forsyth Mourice, ‘Preventing and correcting workplace harassment: Guidelines for employers.

A well reputed daily in Bangladesh has depicted the harassment of workplace in as such a way that-- "Workplace harassment covers a wide range of actions ranging from subtle intimidation to more aggressive tactics that are anticipated in many forms. It does not essentially mean unsolicited conduct; it is the most common form of discriminatory behavior not necessarily from the opposite sex, but also from the same sex."<sup>19</sup>

#### Nature of Discrimination:

As we said "Discrimination" is broad term which includes harassment. Harassment defined by CHRC (Canadian human rights commission) as a 'series of events' and its effect on victim. It is generally the synergy and repetitive characteristic of behavior. However, only one incident can cause harassment, if that has much intensity and effect on individual.<sup>20</sup> when we speak about harassment,<sup>21</sup> four basic ingredients like, Repetition, intent, perceived intent, and consequence are the general points for determination, established by the authors.<sup>22</sup>In fact, it might be a result of interplaying different factors. Whether the bullying like – negative behavior and persistent experiences of such behavior, experience of harm, or target bullying for less powered are harassments or not, were the points of controversy.<sup>23</sup> To assure these issues, Canadian law, gradually and carefully made descriptions and definitions for all kinds of discrimination and workplace harassments. However, necessarily all sexual harassments are harassments or discrimination, but all the harassments are not sexual. And for 'moral bullying' or psychological harassment,<sup>24</sup> Canadian prevention policy explicitly explain the situation as:

1. If the respondent shows offensive conduct in workplace. (Conducts mentioned under CHRC Act) and that directed to the complainant.
2. If the complainant harmed, demeaned, belittle, hurt, personally humiliated, embraced, intimidated and threatened.
3. The respondents know or ought to have known that behavior cause harm.
4. A series of aforesaid events or one severe event is enough for making a harassment case.

#### Understanding international treaty status:

As we mentioned before, Bangladesh and Canada both are the common parties of many international treaties. However, Canada signed, ratified and accessed<sup>25</sup> into CEDAW (Convention of elimination of all forms of discrimination against women) completely. Therefore, after approval by the parliament, also incorporated the treaty provisions in their state laws. Bangladesh directly went for accession on CEDAW on 6<sup>th</sup> November 1984, keeping with reservation of Article 2 and Article 16(1) (c) of the convention. Surprisingly, even after the thirty years, Bangladesh did not take any initiatives to withdraw its reservation neither made any laws to give effect of the treaty provisions. The observation of United Nations committee for eight concluding report of 2017 reveals,

<sup>19</sup> <https://www.dhakatribune.com/opinion/2018/10/08/what-constitutes-workplace-harassment> ; retrieval-12/1/2019

<sup>20</sup> <https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution-harassment/harassment-tool-employees.html#c2>  
Retrieval- 19/1/2019

<sup>21</sup> Clayborn Marvin, spinner Barry, Malcom Kathryn, "workplace harassment: A test of definitional criteria derived from an analysis of research definitions and Canadian social definitions", Department of psychology, "University of New Brunswick"/ St. Thomas University, Fredericton, New Brunswick:2014

<sup>22</sup> <https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution-harassment/harassment-tool-employees.html#c2>  
.Retrieval- 13/1/2019

<sup>23</sup> *ibid*

<sup>24</sup> 'Workplace moral harassment and it's consequence: A case study in a higher educational institute'. [http://www.scielo.br/scielo.php?pid=S0080-21072016000200151&script=sci\\_abstract](http://www.scielo.br/scielo.php?pid=S0080-21072016000200151&script=sci_abstract)

<sup>25</sup> Ratification' defines the international Act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, the usual procedure is for the depository to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. [Art-2(1)(b), 14(1) and 16, Vienna convention on the Law of Treaties]



although some progression has been made regarding maternity leave, protections for disable people (especially women) in Bangladesh; but regrettably, there were no reasons behind, for not withdrawing the reservations.<sup>26</sup>Whereas, article 2(CEDAW) that says, “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”; If that would have been accepted by Bangladesh without reservation, might broaden a way to stop discrimination, harassment at workplace.

#### **Existence of Human rights commission and their function in two countries:**

The ‘Human Rights commission’ established in Bangladesh in 2009 by statutory law having a limited power to arrange survey regarding human rights situations and merely has power of a ‘legal person’ to file any suit in any court, concerning human rights issues of Bangladesh. Surprisingly, nowhere, in Bangladesh Human rights Act 2009 (from section 1 to section 32) mentioned about harassment or discrimination. Only in section 12, it is mentioned, commission has a right to investigate any complaint filed by any individual. Its power is limited merely by recommending an issue to the government, to act afterwards or may directly file writ petition to Supreme Court or may informally do negotiation in between the parties.<sup>27</sup>Therefore, Human Rights commission in Bangladesh has no direct power concerning discrimination and harassment issues and has mere limited accessibility in case of investigation and filing cases to relevant courts.

On the other hand, as we have mentioned earlier, the Canadian government have taken drastic measure eliminating workplace discrimination including all harassments. Therefore, to CHRC, “Discrimination is an action or a decision that treats a person or a group badly for reasons such as their gender, race, age or disability”. These reasons, also called grounds, are protected under the **Canadian Human Rights Act**. Discriminations based on eleven grounds- race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction are prohibited under this law. That would mean, the aforesaid acts if occurred in Canadian workplaces, are violation of statutory laws. The meaning of ‘workplace’ also extends to other four areas, firstly, if the event takes place during the official travel, secondly, in any conference organized by the employer, thirdly, in any training program sponsored by the employer, fourthly, even in a social gathering event, organized / sponsored by the employer. The Canadian Human rights commission (CHRC) established in 1977 under Human right Act.

In addition, Canadian “Policy on Harassment Prevention and Resolution” is the core guideline for dealing with harassment and discrimination issues in Public administration. CHRC has been also empowered with “Human Rights Act” and “Employment Equality Act”, to ensure that all the employers provide equal opportunities for all; particularly, four designated groups: women, Aboriginal people and the disabled and people of visible minorities. The CHRC helps to enforce these human rights to the general public and the employers, so it has a wide jurisdiction over all the people living in Canada, regardless of citizens or foreigners. Any grievances filed to human rights commission, at first may tried to be solved by the of the concerned company, or aggrieved person may apply directly to CHRC to handle this issue without any cost; if the said allegation comes under eleven types of discriminations mentioned in the Act. Sometimes issues are sent to the HRT (human rights tribunal) for further action.<sup>28</sup>

However, Canadian human rights Act set the ‘limitation’ for filing any complaint within one year, that undoubtedly puts the complainant into a time frame restraint and might frustrate the main intent of the Law.<sup>29</sup>

<sup>26</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/50/PDF/N1640250.pdf?OpenElement> . Retrieval- 13/2/2019

<sup>27</sup>[http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/2364ce5d\\_70fd\\_4540\\_8f36\\_a5d316ca7b3a/NHRC%20ACT%20bangla.pdf](http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/2364ce5d_70fd_4540_8f36_a5d316ca7b3a/NHRC%20ACT%20bangla.pdf). Retrieval- 16/2/2019

<sup>28</sup> <https://www.chrc-ccdp.gc.ca/eng>. Retrieval- 17/2/2019

<sup>29</sup> <https://www.ontario.ca/document/your-guide-employment-standards-act>. Retrieval- 20/2/2019

Furthermore, the labor standard Act ensures pay rules, leave benefits of employees in each province. Any affected citizen or foreigner can ask for remedy by calling directly for executing his rights.<sup>30</sup>

### Supreme Court's role as a lawmaker in transition:

In democratic countries, the Apex court's function is to act as a guardian of constitution and to fill up the lacunas of laws by giving decision as precedent.<sup>31</sup> The Supreme Court is also considered as a custodian of the constitution. Any violation of fundamental promise stated in the constitution is therefore adjudicated by Supreme court only. In Canada also, time to time, workplace anti-harassment initiatives had been directed through Supreme Court rulings. In its 1987 decision in *Canadian National Railway Co. v. Canada*<sup>32</sup>(*Canadian Human Rights Commission*), the Supreme Court of Canada defined sexual harassment in the workplace as "unwelcome conduct of a sexual nature" that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment." It also defines gender-based discrimination in the workplace as "practices or attitudes" which have the effect of limiting the conditions of employment or the employment opportunities available to employees on the basis of a characteristic related to gender".

However, in Bangladesh, the anti-discrimination process also began with a supreme court's decision through filing a writ petition by women lawyers' association (BNWLA), mentioning numerous facts of recent harassment incidents that have been taking place. In fact, the focus of the BGD writ petition was on "sexual harassments of females" as a whole, rather than covering "discrimination issues in workplaces". However, the court discussed a several issues thereof, in references of two Canadian cases - "*Janzen and Government Vs. Platy enterprise, Manitoba*" (decision of S.C of Canada) and "*the Canadian Pacific Ltd and BMW(Parker)*" case. In the findings, the court mentioned that the international treaties and convention are the guidelines to achieve the common purposes. Secondly, the court said, international laws are to be read into fundamental rights (since the writs are enforced as fundamental rights in absence of any domestic law), occupying the field when there is no inconsistency between them. But, In the same finding, court also mentioned "Our courts (S.C of Bangladesh) will not enforce those covenants as treaties and conventions, even if ratified by the state, as they are not the part of the "corpus-Juris", unless they are being incorporated in municipal laws(state laws).<sup>33</sup>

On the other hand, SC has no original jurisdiction other than company matters and writ. As a result, giving punishment to an offender is out of its jurisdiction even in writ petition. Again, BD writ petition 8769/2010 delivered on similar findings following the previous precedent. In that writ, court issued—"an interim order". By the interim order, section 509 of penal code is assigned on the mobile court and the executive magistrates are being able to punish a perpetrator instantly in the palace of occurrence. However, the process raised controversy because, there is no system of defending by a lawyer in mobile court. Further another important issue, had been raised by the court, was to give evidential value to the video or audio recording, amending the Evidence Act. Till today, in many laws, the electronic evidence did not get firsthand admissibility in the court.<sup>34</sup> Thus, despite of having strong digital proof, many cases in court do not get footing.

In fact, the first case on 'sexual harassment' was writ petition's no: 5916/2008<sup>35</sup> and there, 'sexual harassment' defined as – 'unwelcome sexually determined behavior' as physical contact and advances (whether directly or by implication); Sexually colored

<sup>30</sup> <https://www.ontario.ca/document/your-guide-employment-standards-act>. Reteival-17/2/2019

<sup>31</sup> <https://www.labourandemploymentlaw.com/2017/12/supreme-court-of-canada-expands-workplace-discrimination-protections-to-cover-non-employees>. Retrieval- 24/02/2019

<sup>32</sup> <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6280/index.do>. Retrieval -27/02/2019

<sup>33</sup> [http://bdpil.org.bd/search/full\\_view/202](http://bdpil.org.bd/search/full_view/202). Pg:18 of writ petition 5916/2008. Retrieval- 13/03/2019

<sup>34</sup> [https://www.law.cornell.edu/sites/www.law.cornell.edu/files/women-and-justice/BNWLA-v-Bangladesh\\_0.pdf](https://www.law.cornell.edu/sites/www.law.cornell.edu/files/women-and-justice/BNWLA-v-Bangladesh_0.pdf). Retrieval-30/3/2019

<sup>35</sup> [http://bdpil.org.bd/search/full\\_view/202](http://bdpil.org.bd/search/full_view/202)

verbal representation; Demand or request for sexual favors; Sexually colored remark or gesture; Indecent gesture, teasing through abusive language, stalking, joking having sexual implication; Insult through letters, telephone calls, cell phone calls, SMS, notice, cartoon, writing on bench, chair, table, notice boards, walls of office, factory, classroom, washroom having sexual implication, taking still or video photographs for the purpose of blackmailing and character assassination; Making love proposal and exerting pressure or posing threats in case of refusal to love proposal etc.

However in WP 8769/2010, the court tried to be more specific about the 'harassment issue' and introduced a new term 'stalking' (the same word is now being used in Canada) instead of "eve-teasing" (that had been used in harassment cases in Bangladesh). However, the honorable judges define in writ no: 8769, that— "Any male individual stalks a female, if the male engages in a course of conduct with the intention of causing sexual harassment or of arousing apprehension of sexual harassment in the female. That includes any of the following: (i) following the female; (ii) contacting the female by post, telephone, fax, text message (SMS/MMS/blogging/tweeting), email or other electronic communication or by any other means whatsoever; (iii) causing an unauthorized computer function in a computer owned or used by the female or her family members; (iv) entering or loitering outside or near the female's place of residence or place of business or work or any other place frequented by the female; (v) keeping the female under surveillance; (vi) acting in any other way that could reasonably be expected to arouse apprehension or fear in the female for her own safety or the safety of her family members". Court also declares this as a criminal offence.

"Criminal harassment" is also known as "stalking" under section 264(1)<sup>36</sup> In Canada, which bears the same meaning given by the SC of Bangladesh.

However, in both the writ petitions of Bangladesh, 'workplace harassment or discrimination' (in terms of definition and meaning) are not fully covered; but that is necessarily important for subordinate courts in execution of laws into application. Unlike supreme court, subordinate courts are allowed not to deal with more interpretation but to work with only laws in texts.

Apart from this, precedent of Writ petition no: 4459 of 2009 of Bangladesh<sup>37</sup> was partially related with "workplace harassment", where court ordered a high ranked government official to seek apology in front of full court for his abusive direction on a lady schoolteacher not to wear veil in her workplace. The Bangladesh supreme court declared harassment as a punishable offence. Although, it did not recommend any term of punishment. Because, determining the term is not an act of Supreme Court rather the act of legislature; the parliament.

#### **Proactive pay legislation in Canada for eliminating gender wage gap:**

US Equal opportunity commission Vs. Wells Fargo Bank, was the leading case that reflected discrimination between same gender.<sup>38</sup> However, this case also indicates, only the gender related harassments & discriminations are not be the issues for polluted workplace, rather pay inequality, power imbalance, disability also plays a vital role. Pay inequality creates inferiority often results in harassment incidents even sexual. These harassments of different nature constitute a form of psychological terror, that generates mental damage, leading the victim's exclusion from the workplace and even from the labor market and ultimately down trend of GDP as a distant effect. In fact, through labor code and employment standard legislation Canada fixed standard guidelines for employers a long ago. Latest and magnificent achievement of Canada has taken place through commencement of "Pay Equity Act". According to this Act, Pay Equity commissioner individually is working under Human Rights commission with a vast power of

<sup>36</sup> <https://www.crcvc.ca/docs/crimharass.pdf>. Retrieval-29-03-2019

<sup>37</sup> <https://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/writ-petition-no-4495-of-2009-bangladesh-headscarf-case>. Retrieval-29/03/2019

<sup>38</sup> Preventing and correcting workplace harassment: Guidelines for employers.



escalating pay equity matters, audits, investigation and imposing penalty in this regard.<sup>39</sup> For the purpose of pay equity, the commission would take some proactive decision like engaging more women in overtime work, evaluating their hard work, empowering them through promotion etc.

On the other hand, although some developments are seen in empowering women in Bangladesh<sup>40</sup>, a significant portion of women still experiencing discrimination and wage gap in the root level.<sup>41</sup> Regrettably, the “state statistics” says otherwise.

#### **Employers liability and the workplace:**

Furthermore, the term ‘Workplace’ inevitably attracts the employer. Legally, ethically he/she is responsible for taking care of the workplace. It is apparent, without implicating employer’s liability it is very difficult to control the discrimination in workplaces. Furthermore, a holistic approach in harassment prevention program would not possible other than doing that. In that reference, Canadian perspective is worthy to mention under the section 5(1) of the Employment equity Act (EEA)<sup>42</sup>, where it said, -- ‘Every employer shall establish employment equity by identifying and eliminating barrier and would introduce system, policies and practices that are unauthorized by law against persons from the four designate groups. Furthermore, Employment equity law put another obligation on employer to ensure for their representation in Canadian workforce under section 14 of the same Act. It is noteworthy, that the employer’s duty is monitored through ‘compliance audit’ by human rights commission and the ministry of labor has also power to track the companies.<sup>43</sup> Thus the pay equity is being determined over there.

On the other hand, there is no such obligation for employers by any law in Bangladesh. From the time immemorial ‘tort’ law is protecting the employees under ‘Vicarious liability’ in western countries. That is, any wrong done by the employees equally implicate the master or the employer while he is in workplace. Bangladesh is under common law’ stream. However, the ‘principal of tort’ are partly incorporated in specific relief Act 1877 and the Code of civil procedure 1908, but nowhere principal of ‘vicarious liability’ had been followed. Therefore, chances are minimum that these issues can be brought somehow, for making the employers liable in Bangladesh. So, as per the Bangladesh supreme court directives, there is no way other than enacting new laws imposing responsibility on ‘each employer’ to form a monitoring system and vigilance of such cases.

#### **Harassment as a mode of discrimination and an offence in workplace:**

Both for the western world and for Bangladesh, most of the harassment-incidents and the events remained unreported.<sup>44</sup> Whether it is reported or unreported, the discrimination and harassment is an offence. So is to adjudicate by the state under criminal law and penal law. The existing penal provisions did not directly mention anything for harassment in workplaces under Bangladesh penal code 1860. Merely section 354 mentioned, any assault or using criminal force, causing outrage the modesty of any woman with, would be punishable by law, with a maximum term of two years. Again section 509 mentioned, “to intend insult of modesty of any women, if might take place through a sound, gesture or exhibiting an object, that intrudes the privacy of women, shall be punished with maximum 1-year imprisonment, fine or both”. However, in the exiting provisions of penal code, no how attract the area of workplace or protect discrimination and harassments in Bangladesh. Suffice it to say, minimum punishment mentioned in the act does not have any “deterrent effect”. Section 76, of the Metropolitan police Ordinance 1976, is often said ‘harassment preventive’ law. However, here the section only emphasis ‘harassment in public places and in streets’, nothing mentioned

<sup>39</sup> <https://www.canada.ca/en/employment-social-development/news/2018/10/backgrounder-pay-equity.html> . Retrieval- 24/1/2019

<sup>40</sup> <https://www.dhakatribune.com/opinion/special/2018/07/12/women-empowerment-bangladesh-sets-example-for-the-world> . Retrieval- 24/1/2019

<sup>41</sup> [http://carebangladesh.org/publication\\_list.php?pub\\_cat=Women%20Empowerment](http://carebangladesh.org/publication_list.php?pub_cat=Women%20Empowerment) . Retrieval-1/04/2019

<sup>42</sup> Employment Equity Act (S.C. 1995, c. 44)

<sup>43</sup> <https://www.canada.ca/en/employment-social-development/corporate/reports/audits/2016-health-safety.html>. Retrieval-23/03/2019

<sup>44</sup> Edited by Margaret S. Stockdale “Sexual harassment in the workplace”, ‘Women and Work’, Volume - 5:220.

regarding the 'workplace harassment'. Lastly, "Prevention of oppression against women and children Act" of 2000, section 10 and 10(2) somehow, touches the area of workplace harassment, but also does not cover the full meaning and the definition.

No initiative from government is seen for amendment of the provisions of two hundred years old 'penal code'. However, analyzing the penal laws in Bangladesh it seems that, in fact, no laws mentioned about workplace harassment, effectively cover any allegation for workplace harassment. And even if cases are brought under those sections, will not be sustainable in eye of law. Thus, the perpetrator gets escape easily. Most importantly. in existing law, even though the compensation recovers from the perpetrator, it goes to government treasury, and victim does not get anything for any injury, (either physical or mental).

Adversely, Under Canadian penal law, criminal harassment is a serious crime. Physical assault, sexual violence and offensive harassment are dealt with Canadian criminal code. Also 'stalking' as a mode of harassment is a serious concern for the jurists in Canada. Approximately 80% of the 4450 of the stalking victims in Canada were women. 88% of accused of stalking in these cases, were male (Bunge and levett 1998, 8).<sup>45</sup> The Canadian criminal code, section 264(1) has clear similarity with the directives given by Supreme Court of Bangladesh in writ petition 5916/2008. It is praiseworthy that the punishment under the aforesaid section in Canadian criminal code is, ten (10) years. However, similar punishment term was suggested by the Bangladesh Supreme court as well.

#### **Social programs and set ups in Canada for handling the harassment and discrimination issues:**

Although the laws are sometimes black and white, their application in practice are often in question. Moreover, the punishments stated in the provisions seem to be too petty in comparison to the crime committed. They are so poorly drafted that the victims hardly get any assistance from the law enforcing agencies. Owing to the loopholes in the existing legal regime, the culprits can easily escape the appropriate punishment while the people in general and the law enforcer cannot do anything but observe inertly.<sup>46</sup> Hence, 'social mechanism' is a great way to move forward beside the law. As for example, in Canadian Employment equity Act, "federal Contractors Program (FCT)" is provided for four designated groups. The FCT applies specifically to employers that fall under the jurisdiction of province and have been awarded a federal government contract for goods and services \$1 Million or more.<sup>47</sup>

Another program is LEEP (the legislated Employment equity program) in Canada. That requires federally regulated organizations and businesses to report each year on how many individuals from this four groups (Female, disabled, aboriginal people and minorities) are represented in their workplaces and what are "the steps" employers have been taken to achieve for their full representation. The labor programs are administering and enforces through LEEP, includes an online management system for the employers and the labor ministry for checking through "WEIMS"<sup>48</sup> (the workplace equity information management system).

Other social organization and NGO s like CUPE, CICR, SHEPELL are continuously working for the workplace atmosphere development, for conflict management, several trainings, campaigns creating awareness and consciousness, even by providing instant job facilities, just to protect women from workplace harassment and discrimination. on the other hand, Bangladesh government's initiative limited to establishing a "victim support center" for women and set up a special cell for women in each police station<sup>49</sup> fair enough, in absence of any specific law by which police can act in this regard. Though Bangladesh has introduced

<sup>45</sup> <https://www.crcvc.ca/docs/crimharass.pdf> . Retrieval- 22/1/2019

<sup>46</sup> <http://bdlawdigest.org/laws-relating-to-eve-teasing-in-bangladesh.html> Retrieval-22/1/2019

<sup>47</sup> <https://www.canada.ca/en/employment-social-development/programs/employment-equity/federal-contractor-program.html>. Retrieval-22/1/2019

<sup>48</sup> <https://equity.esdc.gc.ca/sgiemt-weims/emp/WeimsMaintLogin.jsp> Retrieval-23/3/2019

<sup>49</sup> <http://dmpwsid.gov.bd/view/details/achievements> Retrieval-23/3/2019

its women empowerment policy in 2011, but absence of any anti discriminatory workplace law, not even after seven years, is making the situation complicated.

### **Proposed Recommendation:**

Considering above discussion, it can be said, since Bangladesh signed CEDAW, (which is considered as the core guideline for women's emancipation), Bangladesh government must adopt it, without any reservation. Thus, at least would not only allow supreme court to deliver some relives through writ petitions but also open ways for making parliamentary laws in this regard. Simultaneously, strong penal law having maximum punishment is required for the mischievous perpetrator. This has also to be done by the parliament. Otherwise, workplace discrimination and harassment will become a common practice, in which government will have no control. Hence, urgent law in this regard is desired to be made which would not only meet up present need but also ensure a civilized society like a developed world.

As we see, Canada is not only signed and accessed in the international treaty, rather, made laws to prove its accession status. It is notable that, for Canada the laws are not only deterrent but also a way of social execution. Because, although the program like FCT is a social incentive, it can also be called as "target achieving" rule, which inspire the employer to keep the workplace harassment free. The LEEP is a process for monitoring the "employee management system" from workplace to highest regulating authority (ministry), through which accountability regarding pay is ensured. So, both are social mechanism, operated by the law. The organization like CUPE, SHEPHELL are supportive organizations that have been working from underneath for women empowerment, even for employment, besides training and campaign and third-party negotiation. Like CUPE, SHEPHELL our NGO's should come forward to increase consciousness.

Bangladesh women Lawyers Association already proposed a draft law in this respect, but no initiative has been made yet to enact laws. It is apparent from the discussion either the Ngo or the judiciary would work according to law. So, for Bangladesh, undoubtedly anti discriminatory law is required now.

In addition, amendment must be brought in age old evidence Act, as without giving evidentiary value to audio, video or the digital media, the adjudication will be valueless.

We have Human rights commission like Canada. So, a drastic development in this field can be achieved, if the government increases the power of Human Rights commission following Canada.

Moreover, Emphasis must be given to Employer's responsibility. It is the common practice of the most developed countries that the salary giving process is monitored by the ministry with common software sharing system with the company. This system should be mandatory in Bangladesh. So, that, every "pay inequality" comes into attention of the labor ministry. It is desired to be followed by public and for private companies.

### **Conclusion:**

The origin of harassment is deeply rooted in human- Psychology which often forms in a patriarchal society, often had been worsen by colonial oppression in Indian sub-continent. Colonial life always had an influential role forming the mentality of social system in South East Asia. This Power based theory increasing directly and indirectly the 'moral bullying' or 'psychological violence' which has been increasing during last three decades proved by the researchers.<sup>50</sup> Men and women, remaining in same job, holding the same designation/position, are also entitled to be treated in the same way. Only due to vulnerable physical structure or

<sup>50</sup> <http://dmpwsid.gov.bd/view/details/achievements>. Retrieval- 4/4/2019

circumstantial insecurities, they cannot receive negativity from their counterpart. The tradition of controlling the females under patriarchal dominion from male members of the family, often in long run turns into a violent, dominating behavior towards their female- colleagues in workplaces. Therefore Psychological factors always playing a vital role in a way, for perpetrators and in other way, for the victims in harassments issue, which needs to be adjudicated and controlled through social activities like training and campaign. Now, through above comparison and discussion, it can be assumed, with a little bit modification in criminal law, present discrimination situation against women can be checked.

Last but not least, it is always important for a strong political will to achieve a better working system.

We expect, the present prime minister of Bangladesh being a lady would act, in making law or building social systems, make the workplace free from harassment and discrimination. In order to do that Bangladesh would follow not only Canada but also the good system from other countries.

### **End notes:**

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<sup>19</sup> <https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution-harassment/harassment-tool-employees.html#c2>

20. *ibid*

<sup>21</sup> 'Workplace moral harassment and its consequence: A case study in a higher educational institute'.

22. Ratification' defines the international Act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, the usual procedure is for the depository to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. [Art-2(1)(b), 14(1) and 16, Vienna convention on the Law of Treaties]

'Accession'- is the act whereby a state accepts the offer or the opportunity to become a party or the treaty already negotiated and signed by the other states. It has the same legal effect as ratification. Accession occurs after the treaty has entered into force. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such provision accession can only occur where the negotiating was agreed or subsequently agreed on it, in case of state in question. [Art-2(1)(b) and 15 Vienna Convention on the Law of Treaties 1969], UN Documentation research guide, International Law.]

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<sup>31</sup> <https://www.canada.ca/en/employment-social-development/corporate/reports/audits/2016-health-safety.html>. Retrieval- 23/03/2019

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