WOMAN AND LAW

ADDRESSING SEXUAL HARASSMENT in workplace and educational institutions

Our judiciary has often led from the front in cases concerning environmental justice, electoral integrity, and constitutional governance. But without legislative reinforcement, judicial pronouncements become paper tigers—courageous in ink, ineffective in impact.

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The Constitution of Bangladesh promises equality, but for a sizeable population of women, this promise has yet to be materialised. In factories and industries where labour powers the economy, in offices where decisions are made, in schools, colleges, and universities where minds are shaped, in hospitals where care is delivered, and in courtrooms where justice should reside, harassment is a common occurrence. Notably, in *Bangladesh National Women Lawyers Association (BNWLA)* v *Government of Bangladesh* (2009), the Court issued detailed guidelines to be followed by all workplaces and educational institutions, including the establishment of complaint committees, confidentiality protections, timelines for investigation, and public awareness obligations. Drawing inspiration from the Indian Supreme Court's judgement in *Vishaka* v *State of Rajasthan* (1997), our Court gave these binding guidelines to be followed until a suitable legislation is enacted in its place.

Subsequently, in another writ petition by the same petitioner (*BNWLA* v *Bangladesh*, 2011), the Court determined that sexual harassment outside workplaces and educational institutions must also be addressed. In full agreement with the 2009 judgment, the Court issued a supplementary set of guidelines. It opined that the term 'sexual harassment' should be used instead of the euphemistic term 'eve-teasing'. It also defined stalking, including following a woman, making unwanted contact through cyberspace and other media, as well as other acts which may reasonably cause a woman to fear or apprehend for her safety.

Yet today, more than 15 years later, no law has been enacted and the directives are also seldom observed. Most workplaces in Bangladesh, public and private alike, have failed to implement effective grievance redressal mechanisms as well. Where committees exist, they often lack independence, gender representation, or any functional authority. The BNWLA judgment, meant to be a temporary fix, has instead become a shield for legislative inaction.

This neglect is not merely a policy failure. It is also a breach of Bangladesh's international obligations. As a ratifying state to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 1984, Bangladesh is bound to take all appropriate measures to eliminate discrimination against women in the workplace. Article 11 of CEDAW specifically addresses the right to protection of health and safety in working conditions, including safeguarding women from sexual harassment. Bangladesh has routinely submitted reports affirming its commitment to these principles. But domestically, the legislative record betrays a different truth.

The Penal Code 1860, albeit a colonial legacy, criminalises "outraging the modesty of a woman" under section 354 and "insulting the modesty" under section 509. These terms are not only outdated but also steeped in patriarchal morality. What constitutes "modesty" remains undefined and dangerously subjective, often turning trials into moral audits of victims rather than legal scrutiny of offenders.

The Bangladesh Labour Act 2006 (BLA), on the other hand, only has section 332 relating to sexual harassment at the workplace, which is vague and hardly ever applied in real life. The Bangladesh Labour Rules 2015 (after amendment of 2022) has rule 361A, which gives some clarity to section 332 of the BLA. However, in real life, these provisions are seldom applied. Moreover, its scope excludes the informal sector workers, where a large percentage of women work as domestic workers, garment labourers, or caregivers. Furthermore, other laws such as the Nari o Shishu Nirjatan Daman Ain 2000, or the Prevention and Suppression of Human Trafficking Act 2012, address violence and exploitation broadly, but fail to define or target workplace-specific harassment, power asymmetries, or institutional duties of care.

Let us look at how other countries have dealt with this issue. India, prompted by the Vishaka judgment, passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013. The law mandates internal complaints committees, provides protections against retaliation, enforces timelines, and recognises harassment in a wide spectrum, from physical to verbal to non-verbal. Beyond South Asia, Canada's Human Rights Act 1985 compels federally regulated employers to maintain harassment-free workplaces, backed by specialised tribunals. In the UK, the Equality Act 2010 imposes a proactive duty on employers to prevent harassment, and failure to do so results in liability. Kenya's Employment Act 2007 requires a sexual harassment policy statement from any employer employing 20 or more individuals. These systems also have flaws, but they demonstrate a trend toward proactive, preventive, and participatory frameworks.

Recent statistics underscore the urgency of the situation in Bangladesh. A 2022 survey by the BNWLA revealed that only 71% of educational institutions and 39% of workplaces have sexual harassment prevention committees, and of these, merely 44% are effective in addressing the issue, while 57% of them do not have complaint boxes to report incidents. Additionally, a study by Plan International revealed that approximately 74% of female students face violence and harassment at their educational institutions, underscoring the prevalence of such issues in academic settings. These experiences have profound effects on women's mental health thereby contributing to their reluctance to participate fully in educational and professional life.

What is required now is a standalone, comprehensive statute in Bangladesh addressing workplace sexual harassment as a matter of civil, criminal, and constitutional urgency. Such legislation must clearly define sexual harassment in all its forms—verbal, non-verbal, physical, and online. It must mandate the creation of gender-balanced Internal Complaint Committees with genuine independence, transparency, and proper training. Importantly, the law must adopt an intersectional approach. Women from marginalised communities—garment workers, domestic workers, gender-diverse individuals, rural labourers, and women with disabilities —face heightened risks and almost no access to legal recourse. We must listen to these voices, not just echo parliamentary drafts written in urban echo chambers.

The real impediment is not resource scarcity but political inertia. Bangladesh is not a country lacking in legal imagination. Our judiciary has often led from the front in cases concerning environmental justice, electoral integrity, and constitutional governance. But without legislative reinforcement, judicial pronouncements become paper tigers—courageous in ink, ineffective in impact.

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RIGHTS AND POLITICS

Exploring the legality of visa restrictions

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In recent years, governments of so-called developed countries have increasingly restricted their visa policies as a diplomatic measure against developing nations. More often than not, such restrictions are imposed without legitimate justification, only as a means of expressing diplomatic disapproval, exerting pressure on other governments, or targeting individuals solely based on their nationality or race.

For instance, in 2025, the United States imposed additional travel restrictions on an array of countries on two separate occasions, saying it was due to "security threats." Similarly, since July-August 2024, India sharply reduced visa services for Bangladeshi citizens. Although staffing shortages was cited as the reason, critics alleged that the decision was politically motivated.

Admittedly, under international law, each country has the right to control who can enter its borders. Foreign nationals do not have an automatic right to visit another country. However, arbitrary policy decisions translating into visa or travel restrictions potentially also have human rights implications. National immigration laws often give officials wide discretion to refuse visas based on reasons such as "national interest" or "public safety," which are broad enough to be used to justify otherwise politically motivated policy decisions. For instance, in the United States, section 212(f) of the Immigration and Nationality Act of 1952 allows the executive branch to suspend entry of any aliens or any class of aliens whose presence would be "detrimental to the interests of the United States."

Courts, too, have historically been significantly deferential to executive determinations on immigration, recognising immigration control as a sovereign function. In the landmark case *Chae Chan Ping* v *United States* (1889), the US Supreme Court established the "plenary power" doctrine, affirming Congress's nearly absolute authority over immigration. More recently, in *Department of Homeland Security* v *Regents of the University of California* (2020), the Court ruled that immigration-related agency actions are usually subject to judicial review but emphasised strong deference to executive decisions on immigration policy.

Similarly, in Australia, the Migration Act 1958 gives the Minister for Immigration wide "public interest" discretion that cannot be challenged, as confirmed in recent High Court cases such as *Davis* v *Minister for Immigration* (2023).

In a similar vein, international tribunals, such as the European Court of Justice (ECJ), in *Sahar Fahimian* v *Bundesrepublik Deutschland* (2017), upheld a wide degree of discretion for states in immigration matters (para 42).

However, it is important to note that the ECJ, while granting such wide discretion, also established that this discretion needs to be proportionate and be based upon "sufficient grounds" and a "sufficiently solid factual basis." Similarly, General Comment No. 15 (1986) by the UN Human Rights Committee, which interprets the International Covenant on Civil and Political Rights ('ICCPR'), states that an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

Importantly, in the case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v *United Arab Emirates)* in 2018, International Court of Justice (ICJ), in its Order on Provisional Measures directed the UAE to allow Qatari nationals access to courts and family reunification, implicitly acknowledging the human rights impact of entry restrictions. However, the ICJ, in the preliminary objection stage of the case, declared that it did not have the jurisdiction to hear the case because the impugned actions by the UAE were based on nationality, and not "race, colour, descent, or national or ethnic origin", as required under Article 1(1) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The findings of the ICJ apparently seem to be in contradiction with the jurisprudence of the Committee on the Elimination of Racial Discrimination (CERD Committee). This is because in General Recommendation XXX on Discrimination Against Non-Citizens, the CERD Committee mentions that if a state treats people differently just because of their nationality or immigration status, and if that treatment is not pursuant to legitimate aim and is disproportional to the achievement of such aim, then it counts as racial discrimination under the CERD.

However, the ICJ did deal with this apparent contradiction in the Qatar case. It found, "the Committee's aim was obviously to make clear that differential treatment on the basis of citizenship or immigration status is prohibited in so far as, "judged in light of the objectives and purpose of the Convention", the criteria used are a vehicle for disguised racial discrimination as defined in the CERD. The UAE, however, did not hide behind non-citizenship in order to racially discriminate (as defined in the CERD) against Qataris. The Recommendation has no bearing on the present case." Hence, the ICJ, here too, impliedly admitted that differential treatments based on citizenship or immigration status are prohibited if they are discriminatory or go against the objectives of the Convention.

In light of the above, in my opinion, blanket visa restrictions may fall under the kind of discrimination that the CERD prohibits. However, challenging such practice (which violates the non-discrimination obligations under ICCPR and CERD) remains difficult in the current international legal framework, as the enforcement of such laws largely depends on the willingness of the states imposing such restrictions.

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