



Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh, et al.

Bangl. Nat'l Women Lawyers Ass'n. v. Government of Bangl. & Ors., WP 5916 of 2008 (2008) (Bangl.).

Country: Bangladesh

Region: Asia

Year: 2009

Court: High Court

Health Topics: Child and adolescent health, Mental health, Occupational health, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to bodily integrity

Facts

The Bangladesh National Women Lawyers Association (BNWLA) filed a writ petition against the Government, seeking urgent steps to be taken to prevent sexual harassment against women at the place of work or study. On the date the petition was filed, there existed no legislative provisions protecting women from abusive behavior by men in high-level positions in the workplace or in educational institutions.

BNWLA requested that the Court order the Government to adopt legislation aimed at preventing sexual harassment and protecting and safeguarding the rights of women. Several incidents involving sexual harassment in workplaces or in places of study, such as schools and universities, were highlighted in the petition.

Decision and Reasoning

The Court acknowledged that sexual harassment experienced by women at the place of work or study constitutes a violation of the constitutional provision that recognizes women's right to be free from sexual harassment, in addition to impairing or nullifying the observance, enjoyment and exercise of the rights and freedoms granted to women by the Constitution. The Court held that, in order for all these rights to be exercised, women must be free from sexual harassment at the place of work or study. The Court considered its responsibility to guarantee women's enjoyment of the fundamental rights enshrined by the Constitution, even in the absence of pertinent legislation, based on the international agreements to which Bangladesh is a signatory and which stipulate that States Parties to these agreements shall adopt such measures as may be necessary to put their provisions into practice.

The Court issued a set of guidelines --which will be considered law until necessary laws are enacted by the government-- to be followed by the institutions that define what would be called sexual misbehavior at the workplace, educational institutions, and public places.

Decision Excerpts

"The fundamental rights guaranteed in chapter III of the Constitution of Bangladesh are sufficient to embrace all the elements of gender equality including prevention of sexual harassment or abuse. Independence of judiciary is an integral part of our constitutional scheme. The international conventions and norms are to be read into the fundamental rights in the absence of any domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction to interpret municipal law in conformity with international law and conventions when there is no inconsistency between them or there is a void in the domestic law.

Protection from sexual harassment and right to education and work with dignity is universally recognised as basic human rights. The common minimum requirement of these rights has received global acceptance. Therefore, the International Conventions and norms are of great significance in the formulation of the guidelines to achieve this purpose.

The responsibility of this Court under article 102 of the Constitution for the enforcement of the fundamental rights enumerated in chapter III of the Constitution in the absence of legislation must be viewed along with

the role of judiciary [...]." Page 12.

"In February, 2008, the Government of Bangladesh in the Ministry of Women and Children Affairs adopted the National Women Development Policy (in short, the Policy). In the Policy, the Government stated about its confirmation and commitment to abide by different International Conventions and other International Instruments to safeguard and uphold the rights of the women in Bangladesh. At the Millennium Summit, 2000, Bangladesh was among the 10 States to have signed the Optional Protocol of CEDAW. In chapter III of the Policy, the Government stated that strong measures were taken to remove discrimination against women and girl children..." Page 14.

"Our courts will not enforce those Covenants as treaties and conventions, even if ratified by the State, are not part of the corpus juris of the State unless those are incorporated in the municipal legislation. However, the court can look into these conventions and covenants as an aid to interpretation of the provisions of Part III, particularly to determine the rights implicit in the rights like the right to life and the right to liberty, but not enumerated in the Constitution. In the case of H.M. Ershad v. Bangladesh, 2001 BLD (AD) 69, it is held: "The national courts should not straightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments." In the case of Apparel Export Promotion Council v. Chopra, AIR 1999 SC 625 it is held, "In cases involving violation of human rights, the courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field." Page 18.

"As stated earlier equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment at the workplace and educational institutions." Page 18.

"While analyzing the definition of sexual harassment in the case of Vishaka and Others Vs. State of Rajasthan and Others, the Supreme Court of India in the case of Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625 has held that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her." Page 22.

"In the backdrop of our discussion and observations made above, and in view of the inadequacy of safeguards against sexual abuse and harassment of women at work places and educational institutions whereby noble pledges of our Constitution made in so many articles to build up a society free from gender discrimination and characterized by gender equality are being undermined everyday in every sphere of life, we are inclined to issue certain directives in the form of guidelines as detailed below to be followed and observed at all work places and educational institutions till adequate and effective legislation is made in this field. These directives are aimed at filling up the legislative vacuum in the nature of law declared by the High Court Division under the mandate and within the meaning of article 111 of the Constitution." Page 23.

"3. Duties of employers and authorities.

Since it is the duty of all citizens and public servants to observe the Constitution and the laws, and since the Constitution of the Republic in several articles ensures gender equality and the State's firm and consistent stand against all sorts of discrimination on the ground of sex, and since the Constitution ensures equal rights of women with men in all spheres of the State and public life and contemplates equality before law and right to equal protection of law, it shall be the duty of the employers and other responsible persons in work places, and the authorities of all educational institutions to maintain an effective mechanism to prevent or deter the commission of offences of sexual abuse and harassment, and to provide effective measures for prosecution of the offences of sexual harassment resorting to all available legal and possible institutional steps.

4. Definition.

i) Sexual Harassment includes-

a. Unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances;

- b. Attempts or efforts to establish physical relation having sexual implication by abuse of administrative, authoritative or professional powers;
- c. Sexually coloured verbal representation;
- d. Demand or request for sexual favours;
- e. Showing pornography;
- f. Sexually coloured remark or gesture;
- g. Indecent gesture, teasing through abusive language, stalking, joking having sexual implication.
- h. Insult through letters, telephone calls, cell phone calls, SMS, pottering, notice, cartoon, writing on bench, chair, table, notice boards, walls of office, factory, classroom, washroom having sexual implication.
- i. Taking still or video photographs for the purpose of blackmailing and character assassination;
- j. Preventing participation in sports, cultural, organizational and academic activities on the ground of sex and/or for the purpose of sexual harassment;
- k. Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;
- l. Attempt to establish sexual relation by intimidation, deception or false assurance.

Such conduct mentioned in clauses (a) to (l) can be humiliating and may constitute a health and safety problem at workplaces or educational institutions; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her education or employment in various ways or when it creates a hostile environment at workplaces or educational institutions." Page 24-25.

"We direct that the above guidelines will be strictly followed and observed in all educational institutions and work places in both public and private sectors until adequate and appropriate legislation is made in this field."
Page 30.