

### **Directives in the form of Guidelines:**

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.

1. Extent. These guidelines shall apply to all work places and educational institutions in both public and private sectors within the territory of Bangladesh.

2. Aims and objectives.

The aims and objectives of these guidelines include-

- (a) to create awareness about sexual harassments;
- (b) to create awareness about the consequences of sexual offences;
- (c) to create awareness that sexual harassment is punishable offence.

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.

- ii) **Concerned Authority** means an authority of any educational institution or work place in both public and private sectors, which is authorised under the relevant disciplinary rules to take action in case of misconduct.
- iii) **Disciplinary Rules** mean rules prescribed by any Act or Ordinance or any other sub-ordinate legislations and include any rules framed for maintenance of discipline in any public or private institutions, organisations and work places.

5. Creating awareness and public opinion.

- a. In order to deter and eliminate sexual harassment and torture, and to create a safe environment for work and education, the employers/ management of all workplaces and authorities of all educational institutions will attach prime importance to the publicity and publication against sexual harassment and gender discrimination. There must be sufficient orientation before the formal classes start for a new session in educational institutions, and monthly, half yearly orientation in all workplaces and institutions;
- b. There must be arrangement for proper counselling for the concerned persons, if necessary;
- c. Awareness of the rights of female students and employees guaranteed and conferred by the Constitution and the statutes should be created by notifying in simple words the relevant provisions of the Constitution and the statutes;

- d. The educational institutions and the employers will maintain regular communication and effective consultation with the administrative authorities to create awareness among the personnel in law enforcing agencies in this regard;
- e. To prepare and publish booklets containing these guidelines and provisions of the Constitution and statutes regarding gender equality and sexual offences;
- f. To create awareness regarding fundamental rights guaranteed in the Constitution;

6. Preventive steps.

All employers and persons in charge of work places and authorities of all educational institutions shall take effective measures for prevention of sexual harassment. To discharge these obligations, they shall take, amongst others, the following steps:

- a. Prohibition of sexual harassment and sexual torture as defined in clause 4 above should be notified, published and circulated widely and in an effective manner;
- b. Constitutional and statutory provisions against gender discriminations and sexual harassment and punishment for the offences of sexual harassment and torture should be widely circulated;
- c. To ensure that there is no hostile environment towards women at workplaces and educational institutions, and to engender confidence and trust in women workers and students that they are not placed in a disadvantaged position in comparison to their male colleagues and fellow students.

7. Disciplinary Action:

Appropriate disciplinary action must be initiated in case of any falling within the definition of sexual harassment and torture in clause 4 of these guidelines.

8. Complaints:

Where such acts do not constitute misconduct under the disciplinary rules, an appropriate and effective mechanism must be evolved at the workplaces, and educational institutions, in both public and private sectors for record and redress of the complaint made by the victim. The following measures must be included in the complaint mechanism.

- (a) It must be ensured that the identity of the complainant and also that of the accused will not be disclosed until the allegation is proved;
- (b) Security of complainant will be ensured by the Concerned Authority;
- (c) Complaint can be lodged by the victim or through her relatives, friends or lawyers, and it can be sent by mail also;
- (d) A complainant can file the complaint with a female member of the Complaint Committee separately;

- (e) The complaint will be lodged with the Complaint Committee to be constituted as provided in clause 9 below.
9. Complaint Committee.
- (a) In all work places and educational institutions in both public and private sectors, the Concerned Authority will constitute a Complaint Committee in order to receive complaints, and to conduct investigation and make recommendations.
  - (b) The Complaint Committee will have minimum five members and majority of the members will be women. The head of the Complaint Committee should be a woman, if available.
  - (c) The Complaint Committee should have at least two members from outside the organization concerned, preferably from organizations working on gender issues and sexual abuse.
  - (d) The Complaint Committees will submit annual reports to the Government on the compliance of these guidelines.
10. Procedure of the Complaint Committee. Normally the complaint has to be lodged with the Complaint Committee within 30 working days of the occurrence. To verify the complaint the Complaint Committee will:
- i) In case of minor harassment, if it is possible, the Complaint Committee shall dispose of the complaint with the consent of the parties involved and shall report to the Concerned Authority of the educational institution or work place in public or private sector, as the case may be.
  - ii) In all other cases the Complaint Committee shall investigate the matter.
  - iii) The Complaint Committee will have the power to send registered notice by mail to the parties and the witnesses, conduct hearing, gather evidence, and examine all relevant papers. In this type of complaint, apart from oral evidence emphasis should be placed on circumstantial evidence. To conduct the work of the Complaint Committee effectively the related office of the educational institutions and workplaces in both public and private sectors will be bound to extend any cooperation which is requested from them. The Complaint Committee will keep the identities of the complainant/s confidential. While recording the testimony of the complainant/s any question or behaviour which is intentionally base, insulting or harassing should be avoided. The testimony must be recorded in camera. If the complainant wants to withdraw the complaint or stop the investigation then the reason behind this has to be investigated and mentioned in the report.

The Complaint Committee shall submit the investigation report with recommendation within 30 working days to the Concerned Authority of the educational institution or work place, as the case may be. The period of 30 days may be extended up to 60 days where it is found necessary.

If it is proved that a false complaint has been filed intentionally then a report will be submitted to the Concerned Authority recommending appropriate action for the complainant/s. The Complaint Committee will take decisions on the basis of the view expressed by the majority of its members.

11. Punishment:

The Concerned Authority may suspend temporarily the accused person (other than students) and in case of students, may prevent them from attending their classes on the receipt of the recommendation of the Complaint Committee. If the accused is found guilty of sexual harassment, the Concerned Authority shall treat it as misconduct and take proper action according to the disciplinary rules of all work places and the educational institutions in both public and private sectors within 30 (thirty) days and/or shall refer the matter to the appropriate Court or tribunal if the act complained of constitutes an offence under any penal law.

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.

In this judgment the expression, "woman" has been used to include a female of any age as defined in the Nari-O-Shisu Nirjaton Daman Ain, 2000.

In the result, the Rule and the supplementary Rule are made absolute with the directives in the form of guidelines described hereinbefore.

We would like to record our note of appreciation to Mr. Mahmudul Islam who assisted the Court as *amicus curiae* by rendering valuable assistance in the performance of the difficult task, in public interest.

There is no order as to costs.

*Quamrul Islam Siddiqui, J*

I agree.

Syed Mahmud Hossain

Quamrul Islam Siddiqui

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