

Bangladesh sees Record \$2.9 Billion Private Investment Pledge in 2020, says World Bank

Bangladesh in 2020 has witnessed a record \$2.9 billion investment commitment for its infrastructure development from private sector sponsors, according to a latest report published by the World Bank (WB).

Country	2020 PPI (Million USD)	2020 PPI as a Share of GDP	2019 PPI as a Share of GDP	No. of Megaprojects in 2020
 Brazil	7,733	0.42%	1.01%	1
 China	6,285	0.04%	0.18%	1
 India	5,251	0.18%	0.26%	1
 Mexico	4,269	0.34%	0.23%	1
 Bangladesh	2,948	0.97%	0.34%	1

According to a latest WB report titled ***Private participation in infrastructure 2020: Annual report***, The country's (Bangladesh) 2020 investment amounted to US\$2.9 billion, a 190 per cent increase from 2019 levels, and increased investment as a share of GDP from 0.34 per cent to 0.97 per cent

As per the report, Bangladesh received South Asia region's second highest private participation in infrastructure (PPI) investment. The investment commitment across seven projects was the highest in Bangladesh's history, placing it among the top five countries for the first time. Bangladesh is a new entrant to the top five countries and the first International Development Association (IDA) country to enter the list, the report said. The other four top countries are Brazil, China, India and Mexico. Bangladesh led 2020's investment commitments in IDA countries.

Most of 2020's PPI investment commitments for Bangladesh were channeled to a series of fossil fuel powered electric plants. Conventional power plants received US\$2.0 billion in 2020, compared with US\$133 million investment commitments for two renewable power plants, according to the report. Bangladesh had the financial closure of seven projects, including a mega project - the Reliance Meghnaghat Combined Cycle Power Plant, it added. This trend is expected to continue for a while; Bangladesh, one of the world's fastest-growing economies, needs a robust power infrastructure that can sustain its long-term needs for electricity. PPI investments were made in the country in five successive years. A private company, mainly backed by Japanese financial institutions, is developing a 745 MW, liquid natural gas-fired, combined-cycle power plant in Bangladesh. The project is India's largest foreign direct investment (FDI) in the Bangladesh power sector and represents the first phase of a proposed 3,000 MW gas-based, combined-cycle power project.

CASE LAW UPDATE

Shahan Shah Sikder (Tito) and another Vs. The State (Jail Appeal(A) 9/2014)

Background Facts:

On 18.07.2000, P.W.1 Syed Idris Ali filed a petition of Complaint (exhibit 1) being M.P. No.366 of 2000 in the Court of cognizance Magistrate, Narail Sader under section 302/34 of the Penal Code and 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain (the Ain) against accused 1. Shahan Shah Sikder; 2. Aleya Begum; 3. Tanjina Begum and 4. Ruma Khatun alleging, *inter alia*, that appellant Shahan Shah Sikder demanding dowry from his wife Muslima, daughter of P.W.1, treated her improperly. On 14.07.2000, accused Aleya Begum having caught hold the heirs of victim Muslima dragged her out from their dwelling hut. Appellant Shahan Shah Sikder assaulted on her forehead and accused Ruma assaulted on the left eye of the victim who fell down on the ground. Then accused Shahan Shah, throttling her neck, killed her. Thereafter, the accused persons killed victim Keya, 4 years old daughter of victim Muslima and accused Shahan Shah. Jiku Sikder, brother of accused Shahan Shah raised protest against such occurrence but he was beaten by the accused persons. Consequently, he committed suicide. Hence, the P.W.1 filed the instant petition of complaint.

This jail appeal is directed against the judgment and order dated 19.06.2011 passed by the High Court Division in Death Reference No.62 of 2007 heard analogously with Criminal Appeal No.4016 of 2017 and Jail Appeal Nos.851 of 2007, 852 of 2007,

853 of 2007 and 854 of 2007 accepting the Death Reference in part and dismissing the Criminal Appeal No.4016 of 2017 and Jail Appeal preferred by the appellants.

Issues before the Court:

In a murder case, the Appellate Division of Supreme Court is charged with the supreme duty of making proper appreciation of evidence and of law before reaching the finding that the case proved is culpable homicide amounting to murder.

Decision of the court:

The Court is of the view that the prosecution has been able to prove each ingredient of the offences with which the appellant No.1 was charged i.e. under Section 11(Ka) of the Nari O Shishu Nirjatan Daman Ain, 2000 and Sections 302/201 of the Penal Code, 1860 beyond reasonable doubt.

The case against the appellant No.2 Aleya Begum so far as she has been charged with under Sections 11(Ka)/30 of the Ain, 2000 and Sections 302/201 of the Penal Code appear, however, not to have been proved beyond reasonable doubt. PW.5 is the sole independent/neutral witness to this case. In his deposition he said nothing regarding Aleya's participation in pushing Muslima and Keya into the pond. So the statements of other PWs regarding the involvement of Aleya in killing Muslima and Keya are not reliable and worthy of credence

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So, the appellant No.2 Aleya Begum is acquitted from the charge levied against her. In view of the facts and evidence discussed above, the Court's considered opinion is that the prosecution has been able to prove beyond reasonable doubt that the appellant No.1 demanded dowry and having not gotten said dowry, he murdered the victim. Therefore, the conviction and sentence in respect of Appellant No.1 Shahansha Sikder (Tito) cannot be said to be illegal.

Reasoning of the court:

- The well settled principle is that if, after an examination of the whole evidence, the Court is of the opinion that there is a reasonable possibility that the defense put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt, not as a matter of grace, but, as of right, because the prosecution has not proved its case beyond reasonable doubt. The prosecution story must be true. Between "may be true" and "must be true" there is travel and the whole of this distance must be covered by legal, reliable and unpeachable evidence. Proof "beyond reasonable doubt" is a guide line and not a fetish.
- Appellate Division of the Supreme Court of Bangladesh is uniquely provided the authority under Article 104 of the Constitution to consider all reasons in order to ensure complete justice.

The preamble of the Constitution and Part-III promises to uphold and enumerates fundamental rights, including that of the right to life. It is of utmost importance that the apex Court is allowed the opportunity to award punishment as seen fit for the purposes of administering complete justice. If the law, is contrary to the notion of justice, it is important that the intent of the law be taken into account. Principles of Criminal Justice focus on all aspects of punishment, restitution, retribution, rehabilitation, deterrence and incapacitation. The penalty of death eliminates possibility all of such beyond retribution. Hence, it must be allowed for the Appellate Division of Supreme Court to consider and award punishment that posits all possible outcomes of any punishment rendered. An Act/Or Any Law that confines such notions of justice to only seeking retribution, is ultra vires to the Constitution. This Division has discretion to award any sentence either imprisonment for life or death penalty upon the accused, who committed offence under Section 11(Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, (Ain 2000).



Legislative Updates

Online Training Guide, 2021- Summary

An Online Training Guide, 2021 was published by the Ministry of Public Administration through a gazette notification dated 2nd May, 2021 and shall be considered effective as of the date of the publication of the official gazette. The Guide has provided few definitions for ease of understanding the online learning and training process and the list of which reads as follows:

- a) Distance Learning: a formal teaching process where trainers and trainees do not stay in the same place when most of the course activities, including interaction between trainers and trainees, take place.
- b) Synchronous Learning: Trainers and trainees participate in online training programs at the same time.
- c) Asynchronous Learning: Trainers and trainees participate in online training programs at different times.
- d) Online Training: Training under Public Administration Training Policy organized in pursuance to distance learning process.
- e) Government Offices: Institutions established by law, rules or government orders, statutory bodies and any institution or authority owned or controlled by the government.
- f) Government Training Institutes: Training institutions under the jurisdiction or control of a Ministry/Department.
- g) Blended Training: Training conducted by attending training sessions in part lying in person and partly in online processes.
- h) Special Situation: The following situations will be considered as special circumstances: (a) The period for which the affected areas are declared under Disaster Management Act, 2012 (b) the period for which the infected area is declared under the Infectious Diseases (Prevention, Control and Elimination) Act, 2018; And (c) Any other special situation declared by the Government when there is no scope or limited training in the conventional manner.
- i) Normal Situation: Special situations are not going on and it is possible to attend training activities directly by appearing in training institutes.

The guide mentions that it shall be applicable for the training program organized inside or outside Bangladesh under the Public Administration Training Policy and also for higher education courses or programs and among other specifications, the guide also imposes the following conditions, guidelines while conducting online training and course activities,

1. Institutes responsible for imparting online training; such as government training institutes, institutes through agreement with the government or approved by the government to conduct online activities.

Continued in page 5



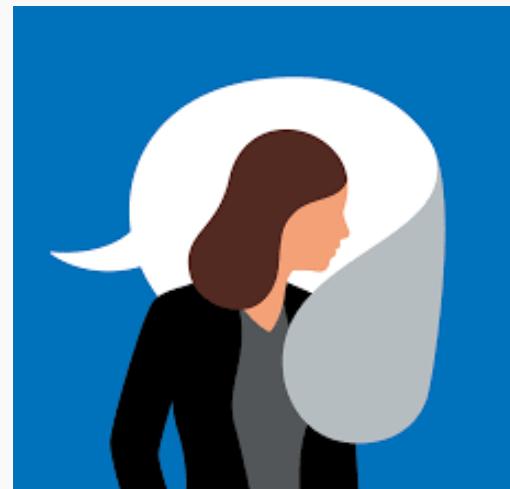
Legislative Updates

2. Online training in normal situations, (a) in case of short term training for a period of 8 (eight) weeks, (b) obligatory/basic/basic or fundamental trainings, mid-term training for a period of more than 8 weeks and up to 6 months; in case of long term training (more than 6 months); (c) internal departments (in house) training.
3. New training included in the training calendar in special conditions such as, (a) obligatory/basic training, (b) in case of short term training, not exceeding 8 weeks; (c) mid-term training for a period of more than 8 weeks and up to 6 months; (d) in case of long term training for a period of more than 6 months; (e) In house training.
4. Suspended training due to special circumstances, such as, (a) obligatory training, (b) in case of other short term trainings for a period not exceeding 8 weeks and in case of mid-term trainings for a period more than 8 weeks and up to 6 months.
5. Grant of approval of online higher education and grant of dispatch/study leave.
6. Courses must be consistent with special circumstances.
7. Working training and professional degree. These may include a degree/diploma/certificate or course from recognized international professional body but in case of courses, the period of the course must not be more than 1 month.
8. Assessment through written exam, assignment, or any other methods though in such a case the trainees shall be given an "online assessment guidelines".
9. The Guide also mentions regarding training allowance in clause 12.
10. In clause 13 & 14 of the Online Training Guide, 2021 states certain Trainer's Honorary and Other Honoraries.
11. Certain exemptions of trainees from official activities are also provided through this Guide.
12. Creation and use of training software.
13. It also states that some activities may be considered unauthorized sharing and if conducted shall be regarded as a misconduct.
14. Intellectual Property and Copyright.

In any case, if at the time of applying this guide, conditions or terms contained in the guide seems unclear then it is the Ministry of Public Administration who will provide such clarifications.

Sexual Harassment at Workplace

Despite all the attention in media and court, sexual harassment remains a significant problem in today's workplaces. It ranges from unwanted chit-chat, name-calling, sexualized assaults and threats, various kinds of control and coercion, to physical and sexual assaults. A recent survey conducted by Karmojibi Nari (2019) asserts that 12.4% of ready-made garment workers report sexual harassment in the workplace. Moreover, many incidents remain unreported in Bangladesh due to the fear of public shaming, humiliation, job loss etc.



Multiple articles of the Constitution of the People's Republic of Bangladesh (the 'Constitution') ensures the protection of female dignity, safeguarding the respect of a female citizen of the country, equality before law etc. Accordingly, it is the responsibility of every citizen of Bangladesh to abide by the provisions of the Articles of the Constitution. Certain articles which ensures gender equality ensures the prevention of gender discrimination are as follows:

Sl. No.	Articles	Details
1.	27	Ensures that all citizens are equal before law hence are entitled to get equal protection of law
2.	28	Ensures non-discrimination on the ground of sex, race, caste religion or place of birth and also ensures that the women shall have equal right in every spheres of life.
3.	29	Ensures equal opportunity of all citizens in respect of employment and also prohibits any discrimination in respect of any employment on the ground of religion, sex, race, caste or place of birth.

Since the Constitution ensures equal rights of women with men in every spheres of life and right to equal protection of law, being the citizen of Bangladesh it shall be a duty of the employer and other related personnel in workplaces to maintain an effective mechanism to prevent or deter commission 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.

Although there are multiple articles at the Constitution which have mentioned about the protection of women rights, equality of women before law, but unfortunately there are no specific laws and/or rules existing in Bangladesh to address sexual harassment at the work place. Sexual harassment has not been included as an element of misconduct as per the Bangladesh Labour Act, 2006. The existing laws of Bangladesh provide completely ambiguous, misleading and inappropriate view of sexual harassment.

Having said the above, in the Prevention of Women and Children Repression Act, 2000, Sexual assault is defined as “touching the sexual organ or other organs of a woman or a child” or “indecent gestures”. Thus, as per the said definition, harassment does not include the use of slang or inappropriate or even unexpected words that also contribute offending and undermining victims. Thus, if anyone were to be sexually assaulted for offensive jokes and unwanted “appreciation”, then under the existing law, it is almost impossible to offer an “authoritative resolution”. Therefore, in most of the cases it remains either unreported or unaddressed.

In absence of adequate laws and rules covering this area, the Hon’ble High Court Division of the Supreme Court laid down a guideline through Writ Petition no. 5916/2008, which shall be strictly followed and observed in the workplaces until adequate and appropriate legislation is made in this field.



Now question arises what would amount to a “Sexual Harassment”? The High Court Division of the Supreme Court of Bangladesh, in Writ Petition No. 5916/2008 defines “Sexual Harassment” to include unwelcome sexually determined behavior (whether directly or by implication) as physical contact and advances, attempts or efforts to establish physical relation having sexual implication by the abuse of administrative, authoritative or professional powers, sexually coloured verbal representation,

demand or request for sexual favours, showing pornography, sexually coloured remarks or gesture, indecent gesture, teasing through abusive language, jokes having sexual implication, insult through letters, telephone calls, cell phone calls, SMS, pottering (i.e. casual remarks), notice, cartoon, writing on the 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, attempt to establish sexual relation by intimidation, deception or false assurance, stalking, annoying and/or making inappropriate comments in the social media or through any communication means, including mobile or email, or any other act or behavior that the Complaints Committee determines to come with the purview of sexual harassment within the spirit of the Guidelines issued by Honorable High Court Division.

In the event of harassment, anyone who is subject to sexual harassment should, if possible in the context of safety, should inform the alleged harasser that the conduct is unwanted and unwelcome. However, sexual harassment may occur in unequal relationships (i.e. between a supervisor and his/her employee) and that it may not be possible for the victim to inform the alleged harasser.

If a victim cannot directly approach an alleged harasser, or if the alleged harasser has not discontinued after being informed that such behavior is unwanted and unwelcomed, he/she can approach one of the designated staff members responsible for receiving complaints of sexual harassment. This person could be another supervisor or a member of the human resources department.

Also as per the Guideline every work place shall constitute a Complaint Committee to receive the complaint of sexual harassment. Accordingly the victim may file the complaint separately to the Complaint Committee, which shall comprises with at least 5 members among them and majority of them would be women members. Also it is pertinent to mention here that the Complaint Committee shall have at least 2 members from outside of the organization and it is preferable to select the members from the organizations working on gender issues and sexual abuse.

The procedure for initiation of complain of sexual harassment to the Complaint Committee shall follow the following steps:

1. Filing of a Complainant:

Normally the victim has to lodge the complain of sexual harassment to the complaint committee within 30 (thirty) working days of the occurrence.

2. Acceptance of the Complaint by the Complaint Committee:

Depending on the gravity of the offence the Complaint Committee shall take its decision and the committee may take following decisions:

- a. The committee shall dispose of the complaint with the consent of the parties involved in case of the minor harassment and accordingly shall report to the employer about such disposal; or
- b. Initiate investigation proceedings and will examine the proceedings.



3. Investigation of the Complaint:

- a. The committee shall have the power to send registered notice by mail to the parties and witnesses, conduct hearing, gather evidences and examine all relevant papers.
- b. During investigation the committee should take into its consideration about the circumstantial evidences and also emphasis on that matter.
- c. During investigation and later on the committee shall keep the identity of the complainant(s) confidential. And during recording of the testimony, the committee should avoid any question and/or behavior which is insulting, harassing, humiliating and intestinally base.
- d. It is mandatory requirement to record the testimony in camera.
- e. Also 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.

4. Investigation Report:

The committee shall submit the investigation report with recommendation within 30 working days to the employer. The period of 30 days may be extended up to 60 days where it is found necessary.

Moreover, if it is proved that a false complaint has been filed intentionally then a report will be submitted to the employer 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.

5. Punishment:

During investigation of the committee the management of the employer may temporarily suspend the accused person at its discretion. If the accused is found guilty of sexual harassment, the employer shall treat it as misconduct and take proper action according to the disciplinary rules of all work places 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.

That is how our Hon'ble High Court Division gave direction to address sexual harassment to all organizations of Bangladesh. Accordingly every organization should have necessary policy to address the sexual harassment. The policy should be a zero tolerance policy and of course the alleged victim/complainant must be protected but considering the nature of the complaint and its implication, the accused must also be given fair chance and should be presumed innocent until determination.



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