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The Inviolability of the 'Essential Core' of Human Rights: An Intersectional Feminist Vindication

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Abstract: *Navigating the jurisprudence of the United Nations (UN) Human Rights Committee, the UN Committee on the Economic, Social, and Cultural Rights, and the European Court of Human Rights, this article shows that while the two committees are by and large committed to the idea of absolute inviolability of "essential core" of human rights, the Court shows an erratic commitment to the same. This article dubs commitment to absolute inviolability as essentialist and commitment to violability (i.e., "essential core" being violable under certain circumstances), as non-essentialist, and argues in favour of an essentialist approach.This article argues that commitment to essentialist approach can potentially help solve the prioritization/hierarchization dilemma, reduce the implementation gap between Civil and Political (CP) and Economic, Social and Cultural (ESC) rights, and in a way contribute to reconciling the universalist agenda of the International Human Rights Law (IHRL) with cultural relativism—each of these specifically speak to the feminist approaches to, and critiques of, the IHRL more generally and the intersectional feminist approaches to IHRL in particular. This motivates the author to call her standpoint in favouring the essentialist approach, an intersectional feminist one.*

Keywords: Essential Core, Minimum Core, Human Rights, Intersectionality, Feminism

1. Introduction

There is a general presumption that most, if not all, human rights guarantees are not absolute in nature. With few exceptions, they can be subject to limitations[1], on specific grounds (e.g., legitimate aim, reasonableness, necessity, proportionality). However, this article argues, against these limitations, militate the "essential core"[2] of every human right.

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1 Examples of exceptions are prohibition of genocide, arbitrary killings, slavery, torture, inhuman and other degrading treatment, or the principle of non-retroactivity of criminal offence. See, Gilles Giacca, *Economic, Social, and Cultural Rights in Armed Conflict* (Oxford University Press 2014) 69.

2 For the purposes of this article, we use "essential core" in singular term, recognizing however,

By analysing the jurisprudence of the UN Human Rights Committee (hereinafter, the HRCttee), the UN Committee on the Economic, Social, and Cultural Rights (hereinafter, the CtteeESCR), and the European Court of Human Rights (hereinafter, the Court or the ECtHR), this article shows that while the two committees are by and large committed to the idea of absolute inviolability of "essential core" (i.e., it being violable under no circumstances), the Court shows an erratic commitment to the same. This article dubs commitment to absolute inviolability, essentialist and commitment to violability (i.e., "essential core" being violable under certain circumstances), non-essentialist,[3] and argues in favour of the former— the essentialist approach.

This article proceeds in three parts— the first two being doctrinal and the third being conceptual. The first two parts explore approaches of the HRCttee and CtteeESCR and glean from their jurisprudence, support in favour of the essentialist approach. Acknowledging the nuanced debate on whether or not the General Comments should be regarded as authoritative interpretations of the treaty provisions, in understanding both the Committees' position, this article puts major reliance on them. Indeed, the General Comments' normative legitimacy like much of International Human Rights Law scheme, hinges on their acceptance.[4] Siding with scholars who view General Comments as 'indispensable' sources of treaty interpretation,[5] this article endeavours to academically engage with them and to substantiate some of its arguments based on their content.

In the third part, this article shows how the ECtHR has at times been essentialist, and at times, non-essentialist, and briefly argues why a non-essentialist approach is inherently fallacious. The fourth part argues that commitment to essentialist approach can help solve prioritization/hierarchization dilemma, potentially reduce implementation gap between Civil and Political (CP) and Economic, Social and

that some human rights are quite intricate, containing several substantive attributes or elements. Several or all of such inter-connected, yet severally identifiable, elements of an intricate human right may have their own essential or core elements and hence, one particular treaty provision may have more than one core. See, Martin Scheinin, Core Rights and Obligations in Dinah Shelton (ed), *Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 536.

[3] Judge Pinto de Albuquerque in *Muhammad and Muhammad v Romania*, European Court of Human Rights (2020), described utilitarian and essentialist approaches permeating ECtHR judgments pertaining to essential core. I build on his idea to come up with the idea of essentialist and non-essentialist approaches.

[4] See Helen Keller and Leena Grover, General Comments of the Human Rights Committee and their legitimacy in Helen Keller and Geir Ulfstein (eds) *UN Human Rights Treaty Bodies Law and Legitimacy* (Cambridge University Press 2012) 120.

[5] Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel Verlag 2005) 749; Nowak cited the opening address by Kurt Herndl at the 29th session of the Human Rights Committee, observing that Herndl 'correctly' noted that the General Comments constituted indispensable source of information for the interpretation of treaty provisions.

Cultural (ESC) rights, and also contribute to reconciling the universalist agenda,[6] of International Human Rights Law (IHRL) with cultural relativism[7]— each of which specifically speak to the intersectional feminist approaches to, and critiques of, IHRL more generally.[8] This motivates the author to call her standpoint in favouring the essentialist approach, an intersectional feminist one.

The reason behind choosing the HRCttee and CtteeESCR is to assess the UN's overarching approaches with regard to "essential core" of the paradigmatic *kinds* of human rights (e.g., Civil and Political; Economic, Social and Cultural). The reason behind choosing the ECtHR is to bring forth perspectives from a regional court that has extensive judicial experience on deciding on reasonable restrictions or limitations to human rights.

2. Committees' Approaches to the "Essential Core"

From within the discourse of Economic, Social and Cultural Rights and the general lack of an effective scheme for such rights' enforcement, arose the commitment to popularise the concept of "essential core" of such rights. Arguably, finding an "essential core" for the economic, social and cultural rights could salvage the body of ESC rights from critiques pertaining to indeterminacy of content and lack of enforceability of such rights. However, conflicting with the widely held beliefs, it is not only the ESC rights, rather all and any human rights, that have an "essential core".

Over the years, as I discuss below at length, both the HRCttee and the CtteeESCR have shown inclination towards accepting the absolute inviolability of "essential core" (i.e., they have taken an essentialist approach).

2.1 HRCttee's Position: Steadfast commitment to the 'essential core'

In General Comment 27, the HRCttee elucidated its stance with regard to

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[6] In this article, we understand the universalist agenda of IHRL or universality of human rights to imply that human rights are similarly applicable everywhere across the world. For different perspectives on universality, see Shreya Atrey, 'Beyond Universality: An Intersectional Justification of Human Rights,' in Shreya Atrey and Peter Dunne (eds) *Intersectionality and Human Rights Law* (Hart Publishing 2020) 18.

[7] Cultural relativism questions the universal and culturally neutral scheme of International Human Rights Law and urges for a renegotiation of the human rights project putting multiculturalism at the centre. See generally, Makau W. Mutua, Savages, Victims, and Saviors: The Metaphor of Human Rights, (2001) 42 Harvard International Law Journal 201; Jack Donnelly, The Relative Universality of Human Rights (2007) 92 Human Rights Quarterly 281-306.

[8] See, Hilary Charlesworth, 'What are "women's international human rights"?' in Rebecca Cook (ed) *Human rights of women: National and International perspectives* (University of Pennsylvania Press 1994) 60.

"essential core" for the very first time.[9] The Committee emphasised that although freedom of movement is by nature limitable or derogable, restrictions or limitations *must never* impair its "essence".[10] In General Comment 31, the HRCttee further noted "[i]n no case may restrictions be applied or invoked in a manner that impair the essence of a Covenant right".[11] The latest General Comment 37 notes the same with regard to the "essence" of the right to freedom of assembly.[12]

Over the years, the Committee attempted to identify the "essential core" of different covenant rights. For instance, in General Comment 32 and General Comment 34 the HRCttee observed that "right to access to court"[13] and "freedom of opinion"[14] constitute "essential core" of articles 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), respectively.

The ICCPR provides in article 4 the caveat of public emergency in existence of which, covenant rights may be derogated from.[15] However, the said article also lists a number of covenant rights from which no derogation is permissible even during emergency.[16] Besides, there are an array of ICCPR rights that are by definition qualified/derogable (i.e., subject to reasonable/permissible restrictions). However, the Committee's jurisprudence has clarified over the years that the "essential core" of a covenant right cannot under any circumstances be impaired, restricted or limited— even when article 4 comes in play.

For instance, in General Comment 35 the committee categorically observed that even though article 9 (right to liberty) is not part of the list of rights enumerated in article 4, 'there are [...] elements in article 9 that cannot be made subject to lawful derogation even under article 4'.[17] Similar observations were made in

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[9] HRCttee, General Comment 27: Freedom of Movement (1999).

[10] Ibid. para 13.

[11] HRCttee, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (2004) para 6.

[12] HRCttee, General Comment 37: Right to Peaceful Assembly (2020) para 36.

[13] HRCttee, General Comment 32: Right to Equality before Courts and Tribunals and to a Fair Trial (2007) para 18.

[14] HRCttee, General Comment 34: Right to Freedom of Opinion and Expression (2011) para 9.

[15] Article 4(1) of the ICCPR: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

[16] Article 4(2) of the ICCPR: "No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision."

[17] HRCttee, General Comment 35: Right to Liberty (2014) para 66.

General Comment 34 (on the freedom of opinion and expression) with regard to the immunity of *freedom of opinion* from the caveat of article 4.[18]

With regard to limitations or restrictions that apply to so-called derogable rights too, the Committee favours inviolability of essential core (i.e., it takes an essentialist approach). For instance, the General Comment 27 (freedom of movement) notes, in adopting measures providing for permissible restrictions under 12(3),[19] "States should always be guided by the principle that the restrictions *must not* impair the essence of the right".[20] Thus, the Committee views "essential core" as a limit even upon what we call permissible limitations that are otherwise allowed under the Covenant. Based on this General Comment, Scheinin developed a rigorous structured seven-part test,[21] for assessing permissibility of limitations. He argued that in restricting or limiting a so-called deorgable human right, the inviolability of *essential core* is one of the steps that is to be passed, in conjunction with six others.[22]

[18] HRCttee, General Comment No 34: Freedoms of Opinion and Expression (2011) para 5.

[19] Article 12 (3) of the ICCPR: "[The rights under Art 12] shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant."

[20] "Other steps that any proposed restrictive measures must undergo to qualify as permissible are: any restrictions must be provided by law, restrictions must be necessary in a democratic society, any discretion exercised when implementing the restrictions must not be arbitrary, the restriction must be effective towards the proclaimed legitimate aim and be minimally intrusive in respect of other human rights, and the resulting human rights intrusion must remain proportionate to the effect delivered." See Martin Scheinin and Helga Molbæk-Steensig, 'Pandemics and Human Rights: Three perspectives on human rights assessment of strategies against COVID-19' European University Institute EUI Working Paper LAW 2021/01, 3.

[21] In order for a restriction or limitation to be permissible, it must pass all seven of the steps.

[22] "The following seven part test for permissible limitations is presented:

(a) Any restrictions must be provided by the law;

(b) The essence of a human right is not subject to restrictions;

(c) Restrictions must be necessary in a democratic society;

(d) Any discretion exercised when implementing the restrictions must not be unfettered;

(e) For a restriction to be permissible, it is not enough that it serves one of the enumerated legitimate aims; it must be necessary for reaching the legitimate aim;

(f) Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected;

(g) Any restrictions must be consistent with the other rights guaranteed in the ICCPR"; see, UNGA, ' 'Special Rapporteur's Report on the Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin' (28 December 2009) UN Doc A/HRC/13/37, para 17.

From the HRCttee's position therefore, steadfast support in favour of an essentialist approach, can be gleaned, inasmuch as it suggests that no limitation that impairs the essential core of a covenant right, is permissible.

2.2 CtteeESCR's stance: Consistent (even if not as staunch) commitment to the "essential core"

It is the view of the CtteeESCR that states are under an immediate "obligation to ensure the satisfaction of, at the very least, *minimum essential levels* of each of the rights".[23] Over the years, the Committee attempted to identify the said *minimum essential levels* by referring to "essential foodstuffs, essential primary health care, basic shelter and housing, or the most basic forms of education".[24]

While the Covenant does not contain any derogation clause similar to that of the ICCPR, it does provide a general limitation provision in article 4:

> […] the State may subject such rights only to such limitations as are determined by law *only in so far as this may be compatible with the nature of these rights* and solely for the purpose of promoting the general welfare in a democratic society.

As per the Limburg Principles (Principles on the Implementation of the ICESCR), the restriction "compatible with the nature of these rights" requires that a limitation is not interpreted in a way that jeopardizes the *essence* of the rights concerned.[25] It can thus be argued that the "essential core" is immune from article 4 limitations in the context of ICESCR too.

It is however questionable whether essential core can be considered to be immune from the qualifying clause 'progressive realization',[26] which is, per the *travaux préparatoires*, different from the limitations under article 4.[27]

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[23] CESCR, General Comment 3: Nature of obligations on states parties' obligations enshrined in the Covenant (1990) para 10.

[24] Ibid. See CESCR, General Comment 12: Right to adequate food (1999) paras 8–13.

[25] 'The Limburg Principles on the Implementation of the International Covenant on Economic Social, and Cultural Rights', E/CN.4/1987/17 (1997) para 56.

[26] See Philip Alston, 'Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 332, 353.

[27] This can be inferred from the debates during meetings of the United Nations Commission on Human Rights in the years1951 and 1952, focusing on how the Economic Social and Cultural rights could be limited on account of the legitimate interests of the community at large. See A. Müller, 'Limitations to and Derogations from Economic, Social and Cultural Rights' (2009) 9 Human Rights Law Review 570. See analysis of the *travaux préparatoires* of article 4 by Alston and Quinn in Philip Alston and G. Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 156; M. Craven, *The International Covenant on Economic, Social and Cultural Rights, A Perspective on its Development* (Clarendon Press 1998) 132 and 214–15; M. Sepúlveda, *The Nature of the Obligations* (Intersentia 2003) 277–92; Gilles Giacca (n 1) 72.

The General Comment 3 notes that any assessment or evaluation as to whether a State has carried out its obligations of satisfying the minimum essential levels of the rights, must take account of the resource constraints at play within the country concerned.[28] The Comment further notes that in order for the States parties to be able to attribute its failure to satisfy the minimum core content of covenant rights on the lack of available resources, it has to "demonstrate that every effort has been made to use all the resources at its disposal in an attempt to satisfy as a priority" the *essential core* of such rights.[29] However, subsequently, in General Comment 14 (right to the highest attainable standard of health), the Committee categorically observed that obligations with respect to satisfying "the minimum core content are of an absolute nature, are non-derogable, and cannot be restricted under any circumstances".[30]

Through harmonious interpretation of General Comments 3 and 14, it can be argued that it is significant to distinguish between *inability* and *unwillingness* of a state party in determining which actions or omissions do or do not amount to a violation,.[31] If a state party argues that it is the "resource constraints" which make it virtually impossible to provide access to what is basic to the ones unable to secure the same for themselves, the state is obligated to demonstrate that "every effort has been made to use all the resources at the state's disposal in an attempt to provide such access, as a priority".[32] Inability to satisfy the minimum core (despite putting every effort to use all the resources at a state's disposal) will not as such amount to a violation— but sheer unwillingness will. Inability rather can trigger the extraterritorial scope of the ICESCR[33] and determine when the so-called developed states and international actors would be required to assist countries unable to implement the 'minimum core' content of the Covenant rights.[34]

3. ECtHR: Erratic commitment to the inviolability of essential core

In some instances, the Court held essential core entirely inviolable and in other, violable, subject to passing other tests (e.g., necessity, proportionality, legitimate aim). For our purposes, to remind the readers, the former approach is essentialist, and the latter, non-essentialist.

28 CtteeESCR, General Comment 3 (n 23).

29 Ibid.

30 CtteeESCR, General Comment 14: Right to the highest attainable standard of health (2000) para 47; General Comment 15: Right to water (2002), para 40.

31 CtteeESCR, General Comment 12: Right to adequate food (1999).

32 Ibid.

33 See generally, Fons Coomans, 'The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights,' 11(1) Human Rights Law Review (2011) 1–35,

34 See generally CESCR, General Comment No 3 (n 23), and M. Sepúlveda (n 24) 25–75; Gilles Giacca (n 1) 30.

3.1 Non-essentialist Approach

In *Young*, the Court held that it "strikes at the very *substance* of [freedom of association under article 11] to exert pressure, of the kind applied to the applicants," to impel someone to be part of an association that goes against his/her convictions.[35] The Court *then* went on to assess the counterbalancing factors,[36] and finally decided that the harm suffered by the applicants "went further than was required to achieve a proper balance between the conflicting interests of those involved and could not be regarded as proportionate to the aims pursued". Thus, the Court did not interpret infringement or violation of the *substance* of the right in and of itself as a violation.

In *Centre for Democracy,* the Court asserted that "the domestic authorities impaired [the applicant organisation's] freedom to receive and impart information, in a manner striking at the very *substance* of its article 10 rights"[37]— but still went on to inspect the legitimate aim behind, proportionality and legality of, the measure. Finally, the Court in fact found that there *in fact* was violation of article 10, on the ground that in the context of a democratic society, the refusal was not *'necessary*'.

In the recent *Muhammad and Muhammad*, the majority did something similar by first holding that the limitations affected the "essence" of Article 1.1 of Protocol 7, and then going on to examine the *need* for such limitations.[38]

The moment the Court moves on to assess proportionality, necessity or reasonableness of a measure which otherwise infringes the "essence" of a particular right, the Court *in fact* holds that "essence" is violable and thus, undertakes a non-essentialist approach. Justifying impairment of "essential core" with counterbalancing factors (e.g., aim, necessity, proportionality) goes against the "*raison d'être* of essential core". This also renders the right in question virtually meaningless. It is therefore "illogical"[39] to hold that any limitations or restrictions affecting the "essence" of a right can *in fact* be subsequently counterbalanced.[40]

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[35] *Young, James and Webster v the United Kingdom*, European Court of Human Rights (1981) 52, 55 and 57. I put emphasis on *substance*.

[36] Pertinent to mention that the respondent Government had explicitly stated that in case the Court comes to find infringement of a right protected by Article 11, paragraph 1, then they would not claim justification under Article 11, paragraph 2.

[37] *Centre for Democracy and the Rule of Law v Ukraine,* European Court of Human Rights (2020) 102. I put emphasis on *substance.*

[38] *Muhammad and Muhammad v Romania* (n 3) 144.

[39] This is Judge Pinto's wording in *Muhammad v Muhammad* (n 3).

[40] Opinion of Judge Sajó in *Regner v The Czech Republic*, European Court of Human Rights (2012) 5, 15.

3.2 Essentialist approach

As per the essentialist approach, the issue of proportionality and eventually, that of balancing exercise, can arise "as a subsidiary issue, in the event that the essence of the right has not been affected".[41] With regard to access to courts, the Court explained the essentialist approach thus: although the right of accessing courts "by its very nature calls for regulation by the State, any limitations applied thereto, must not restrict or reduce the said right in such a way or to such an extent that the very *essence* of the right is impaired. *Furthermore*, a limitation will not be upheld "if it does not pursue a legitimate aim as such and if there exists no reasonable relationship of proportionality between the means employed and the aims to be achieved".[42] Thus, counterbalancing factors are '*further*' considerations that only arise after the 'essence' test is passed.

In *Baka*, the applicant's dismissal as the President of the Supreme Court of Hungary was not amenable to any judicial scrutiny. This sufficed for the Court to observe that "the respondent State [had] impaired the essence of the applicant's right of access to a court".[43] Significantly, there was no subsequent assessment of either the objective/aim, proportionality, or necessity of the said infringement. The same methodology was adopted in cases on certain other Convention as well as Protocol rights (e.g., the right to participate in elections).[44]

Support for essentialist approach can also be found in the Court of Justice of European Union (CJEU) jurisprudence. For instance, in *Schrems 1*, the CJEU held inter-state agreement authorizing access to and transfer of mass electronic communications as invalid on ground of compromizing the *essence* of the right

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[41] Opinion of Judge Costa in *Prince Hans-Adam II of Liechtenstein v Germany*, European Court of Human Rights (2001-VIII); opinion of Judges Spielmann and Russo in *Lithgow and Others v the United Kingdom*, European Court of Human Rights (1986); opinions of Judges Martens, Matscher and Jambrek, in *Gustafsson v. Sweden* (revision) European Court of Human Rights (1998); opinion of Judge Bonello (joined by Judges Gyulumyan and Zupančič) in *Kart v Turkey,* European Court of Human Rights (2009); and opinion of Judge Serghides in *Regner v The Czech Republic,* European Court of Human Rights (2012) 44.

[42] See *Ashingdane v the United Kingdom*, European Court of Human Rights (1985) 57. *Bellet v France* European Court of Human Rights (1995) 31; *Stubbings and Others v the United Kingdom* European Court of Human Rights (1996) 50, 52 and 56; *Z and Others v the United Kingdom* (2001) 93; *R.P. and Others v. the United Kingdom* (2012) 64; *Al-Dulimi and Montana Management Inc. v Switzerland,* European Court of Human Rights (2016)129; *Lupeni Greek Catholic Parish v Romania*, European Court of Human Rights (2016) 89; *Zubac v Croatia*, European Court of Human Rights (2018); and *Nicolae Virgiliu Tănase v Romania*, European Court of Human Rights (2019)195.

[43] *Baka v Hungary*, European Court of Human Rights (2016) 120 and 121.

[44] *Clerfayt v Belgium*, European Court of Human Rights (1987) 52; *Matthews v the United Kingdom*, European Court of Human Rights (1999) 63; *Aziz v Cypras*, European Court of Human Rights (2004) 30.

to respect for one's private and family life.[45] The *Schrems 1* Court did not opt for any subsequent balancing of competing interests and/or rights, and established the principle that a measure which affects or infringes the *essence* of a right is to be instinctively deemed disproportionate.

4. Why adopt an essentialist approach: An intersectional feminist standpoint

Are *human rights* the ultimate panacea for women? Do the flames of human rights belong to *all* women *equally*? Not quite the case—International Human Rights Law with some of its core theoretical assumptions, has historically been deemed unhelpful for women in general,[46] and exclusionary towards the subaltern women, in particular. This however does not imply that the project of IHRL ought to be discarded altogether. We rather ought to reclaim its flames. Throughout, this part of the article traces the marginalised perspectives and experiences with the help of the language of "essential core" and puts them at the *centre* for reclaiming lost spaces within the "transformative terrain"[47] of IHRL.

In order to so reclaim, I elucidate three reasons to support an essentialist approach with regard to the "essential core" from an intersectional feminist standpoint. Before doing so, I try to justify an intersectional feminist standpoint too. "Feminism" is no one singular thing,[48] rather is a continuous dialogue having multiple tones, tunes, and layers,[49] therefore, it is important to justify why this article in the following discussion adopts an *intersectional* feminist standpoint over others.

4.1 Justifying the *intersectional* feminist standpoint

A major theoretical assumption pertaining to the equality discourse is that discrimination can be explained with a single-axis formulae. This approach is immensely problematic as it renders many women's unique experiences of discrimination entirely unaccounted for. As Crenshaw theorizes, women can experience discrimination and sustain violence or other forms of oppression for reasons of their multiple intersecting identities.[50] Indeed, "a Black

[45] *Schrems v Data Protection Commissioner*, Court of Justice of European Union (2015) 94, 95.

[46] Hilary Charlesworth (n 8) 74

[47] Ratna Kapur, 'Human rights in the 21st century: Take a walk on the dark side,' (2006) 28 Sydney Law Review 682.

[48] Owen M. Fiss, What Is Feminism? 26 (1994) Arizona State Law Journal 413.

[49] Feminism "spans the full range of feminist thinking and practice and encompasses its many framings, including formal equality, substantive equality […] post-colonial feminism, post-structural feminism, post-modern feminism, ecofeminism, and socialist or Marxist feminism." See Shreya Atrey, Feminist Constitutionalism: Mapping a Discourse in Contestation 20(2022) IConnect 616.

[50] *See* Kimberly W. Crenshaw, Background Paper for Expert Meeting on Gender and Racial Discrimination, November 21-24 (2000) Zagreb, Croatia.

woman's experience of discrimination might be lost in a system that defines violations of rights or sustenance of harms by treating race and gender as entirely distinct categories".[51] Extending this analysis to IHRL, Crooms notes that the International Convention on the Elimination of All Forms of Racial Discrimination and the CEDAW appear to treat racial groups and women as if they were entirely distinct.[52] This theoretical/conceptual separation thereby makes some of the discrimination as well as human rights violations that they experience entirely invisible.[53]

Like Black women, this is true for other subaltern groups of women as well (illustratively, the word 'subaltern' here may include, but certainly is not limited to Dalit or Harijan women),[54] who are subjected to intersectional caste-, class-, and gender-based discrimination and violence.[55] At the intersection of an array of identities, a distinct kind of harm is produced for the subaltern women that cannot be explained with a single-axis formulae.[56] This unique produce cannot even be explained by adding more axes to the single-axis analysis (i.e., through an additive formulae of understanding discrimination). The notion of being "multiple" or "additive" only inaccurately indicates that identities get formed by summating

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[51] Hope Lewis, 'Embracing Complexity: Human Rights in Critical Race Feminist Perspective' (2003) 12 Columbia Journal of Gender & Law 514.

[52] Lisa A. Crooms, Indivisible Rights and Intersectional Identities or What Do Women's Human Rights Have to Do with the Race Convention? 40 Howard Law Journal (1997).

[53] Hope Lewis (n 51)

[54] Similar to race, caste or *varna* is a social construct that denotes a perennial form of hierarchy, segregation, subjugation, and domination. All Hindus, per caste system, are primarily divided into four *varnas* or castes— Brahmin or priests, Kshatriya or warriors, Vaishya or merchants/ farmers, and Shudra or menial workers. The four castes are divided further into several sub-castes. Those who fall outside the four-tiered caste system, are the out-castes or— 'as a matter of assertive pride and resistance', *Dalits*. *Dalits* suffer the worst consequences of the existence of the system as a whole with 'lower social status, reduced cultural capital, lack of economic security, diminished political power, and heightened aggression and violence'. Tellingly, *Dalit* women suffer the consequences of casteism along with patriarchal oppression. As the '*Dalits* amongst the *Dalits*', women's condition is worsened manifold on account of intersectional forms of harms (on ground of caste, gender, class, and religion in some contexts). See generally Shreya Atrey, Intersectional Discrimination (Oxford University Press 2016) 63-64. The level of suffering also varies in different locations. In Muslim majority countries, that officially adopts a formal equality approach, being outcastes (that too within a religious minority group), has distinct ramifications. "Oppressed *Dalits* of Bangladesh fight for their future", Independent, 20 December 2008 https://www.independent.co.uk/news/world/asia/oppressed-dalits-of-bangladesh-fight-for-their-future-1205005.html (accessed on 22 January 2024)

[55] S. J. Aloysius, J. P. Mangubhai and J. G. Lee, 'Why intersectionality is necessary' in Sunaina Arya and Aakash Singh Rathore (eds.) *Dalit feminist story: A* reader (Routledge 2020) 180

[56] 'Intersectionality: A Tool for Gender and Economic Justice', *Women's Rights and Economic Change* No 9, August 2004, p 3.

various axes or structures.[57] In this line of reductionist thought, a subaltern woman only becomes a combination of two identities: *subaltern* (be it class- or caste-wise, socially, culturally, and/or economically) and *woman*. In order to adequately address the intersectional harms or discrimination from falling through the cracks, what we need are truly *intersectional approaches*.

In and of itself, intersectional feminism is a *corrective* to the mainstream postcolonial feminist thoughts and methodologies. For instance, mainstream postcolonial feminist movement, with an *essentialized* understanding of postcolonial women in mind, does not account for the many intersecting identities of the *subaltern* women, and ends up being only about *savarna* (higher or upper caste) women in India[58] or upper/middleclass Muslim women in Bangladesh. Highlighting that *subaltern* women cannot be forced to fit into the unalloyed, almost monolithic category of 'women' within an uncritical mainstream feminist framework, intersectional feminism seeks to opt for an alternate methodology that more accurately explains the harms sustained by women of all class, caste, and religion.[59] Indeed, in other words, intersectional feminism is but an appropriate response to the essentialization of womanhood.[60]

Against this backdrop, there are broadly two reasons for adopting an intersectional feminist standpoint in the present article. First, from a normative point, *intersectional* feminism is expressly asymmetric as well as axiomatically intersectional, and it creates a paradigm for demanding emancipation of the entire womanhood,[61] while opening its doors to many other oppressed groups.[62] In other words, with *intersectional* feminism, one does not need to fear under-inclusion of groups or communities. Second, intersectional feminism is better equipped to provide a bottom-up corrective to the IHRL project (marred by various hegemonic theoretical assumptions) and an appropriate space for *owning and using* of the human rights vernacular by and for the subaltern women.[63]

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[57] Mary E. John, 'Intersectionality: Rejection or Critical Dialogue', (2015) L (33) Economic and Political Weekly 2.

[58] Ibid 71

[59] Ibid.

[60] See generally, Sharmila Rege, 'Dalit Women Talk Differently: A Critique of "Difference" and towards a Dalit Feminist Standpoint Position' (1998) 33(44) Economic and Political Weekly 42.

[61] Surendra Jondhale, 'Theoretical Underpinnings of Emancipation of Dalit Women' in PG Jogdand (ed), *Dalit Women in India: Issues and Perspectives* (GPH 1995) 107.

[62] Shreya Atrey (54) 72

[63] Ibid.

4.2 An intersectional feminist vindication of the inviolability of 'essential core'

In the following part of this article, I show what potential the inviolability of "essential core" essentially possesses so as to correct some theoretical assumptions pervading the broad schema of IHRL and to reclaim the language of IHRL for women across all strata.

- **Reconciling the potential conflicts of women's rights with other rights and interests**

Essentialist approach is antithetical to arbitrary hierarchization of rights, which a non- essentialist approach inevitably engenders. Arbitrary hierarchization is particularly problematic from an intersectional feminist standpoint. Right to education, equal opportunity, or right to sexual as well as reproductive health (in particular, with respect to women) is often perceived to be in collision with freedom of religion and an array of collective rights.[64] Particularly for women subjected to intersectional harms (based on class, gender, and sex, for instance), such perceived conflicts prove to be menacing. Claims of group or collective rights couched in the language of right to culture or religion often prove to be too difficult for the subaltern women to counteract. When we adopt essentialist approach to address collision between and among different human rights, no arbitrarily-imagined hierarchically-superior right, but the inviolable essential core of one human right, would be prioritized over the non-core or non-essential dimensions of other such conflicting human rights.[65] Similarly, by adopting an essentialist approach, women's rights can be salvaged from the infinite regress induced by appeals to reasonableness, proportionality, or common interests. Indeed, it requires substantive works to identify the core and non-core dimensions of different human rights. However, the UN treaty bodies are in a position to incrementally develop through General Comments, Concluding Observations, and Views, a reliable body of substantive interpretations in this regard.

The first two core parts of this article show that there are ample resources within the UN treaty bodies' approaches to support our case for an essentialist approach. While the ECtHR appears erratic, due to the inherent fallacy of non-essentialist approach, it is the essentialist stream of cases, that we can rely on, for doctrinal support.

- **Reclaiming women's rights from narratives that prioritize some generation of rights over others**

Human rights are understood in generational terms: civil and political (i.e.,

[64] See Eva Brems, 'Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse' (1997) 19 Human Rights Quarterly 140.

[65] Martin Scheinin and Helga Molbæk-Steensig (n 20).

freedom of expression, freedom of association) being *first*, economic, social, and cultural (i.e., the rights to food, clothing, shelter) being *second*, and collective rights (i.e., development, self-determination) being *third*. Although official United Nations dogma holds that human rights are indivisible, in reality, second and third generation rights often take a back seat in terms of implementation.[66]

Underscoring the political realm as 'male' and the socio-economic realm as relatively more significant for women's advancement, cultural feminists disapprove of the priority generally accorded to civil and political rights as well as the second-grade status conferred almost by default upon social and economic rights.[67] Cultural feminists also think that "women are more oriented towards the family and other groups or communities than men are" and therefore, attention to third generation or collective rights is significant for women.[68]

The prioritization of one generation of rights over another is inherently problematic but not in light of the assumption that women are more oriented towards family or because socioeconomic sphere is more crucial to women's lives, as cultural feminists would hold (such a view would only perpetuate gendered stereotypes). Rather, as critical race feminists say, empirically, women and children make up the majority of the poorest in most countries, and this reality makes the protection of economic, social, and cultural rights for women in general and for women belonging to socially and culturally subjugated groups in particular, of critical importance.[69] In a similar vein, prioritization of one generation of rights over others contribute to maintaining and cementing the social classes, strata, and categories, and thereby add up to the intersectional harms caused to women, especially those who belong to the lower class and stratum of the society, and are materially disadvantaged.

The essentialist approach can potentially help strengthen the discourse of indivisibility of CP and ESC rights. If we commit to the notion that every human right has an inviolable "essential core" that cannot be affected by any limitations or be counterbalanced against any claims of reasonableness, aim, necessity, or proportionality, we will be able to reasonably reduce conceptual as well as practical implementation gap between CP and ESC rights to a considerable extent.[70]

Furthermore, from an intersectional feminist perspective, it is not *only* the prioritization, but also how gender is problematized within various 'category'

[66] Hope Lewis (n 51) 517.

[67] Eva Brems (n 64) 140.

[68] Ibid.

[69] Hope Lewis (n 51) 517.

[70] However, we ought to still recognize that 'resource constraints' would play as but one limitation on the essential core of ESC rights.

or 'generation' of rights, that has to be attended to. Had we prioritized third generation rights, it would have *not* been beneficial for women in and of itself. For instance, development as a third generation right, often marginalizes the already marginalized groups, including women. Subaltern groups, including women, end up shouldering the heavy burden of development without actually enjoying its benefits.[71]

Therefore, prioritizing collective rights— if defined from a hegemonic male standpoint and in a male chauvinistic sense— will keep being problematic for women, no matter where on the hierarchy, they are situated. The intersectional feminist approach here is not *only* about reimagining the prioritization, but about reclaiming and redefining the rights (in the language of inviolability of "essential core") from a subaltern perspective.

- **Reconciling the *universalism* and *cultural relativism* dilemma**

Essentialist approach not only potentially provides an answer to the pressing question of prioritization, but also to that of universality.[72] Particularly, with respect to women's human rights, the claim of universality of human rights is discarded in favour of cultural relativism. (Mis)appropriation of the language of relativism more often than not produces and reproduces images of women, who, without normative agency to stand against the *status quo*, fall victims to the tropes of multiculturalism and sustain intersectional harms (on grounds of sex, gender, religion, culture, ethnicity, to name a few).[73]

Arguments in this regard are seemingly quite compelling too— ranging from universality being a Western White Male standard to it being blind to the real differences on the ground.[74] "Essential core" specifies a baseline of immediate compliance with rights that binds all states parties around the world on equal terms.[75] Thereby, an essentialist approach potentially undercut defences that co-opt the language of cultural relativism so as to eschew the language of universal application of human rights for women, harming women in general and subaltern women in particular.

True that the language of 'universal' is not all fair and just, rather the same can

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[71] See Mohammad Shahabuddin, Development, Peacebuilding, and the Rohingya in Myanmar, *Ejil:Talk!,* 5 October 2020 https://www.ejiltalk.org/development-peacebuilding-and-the-rohingya-in-myanmar/ (accessed on 22 November 2022).

[72] John Tasioulas, Minimum Core Obligations: Human Rights in the Here and Now, Nordic Trust and World Bank (2017) 15.

[73] See generally, Susan Moller Okin, Is Multiculturalism Bad for Women? (Princeton University Press 1999)

[74] See generally, Makau Mutua (n 7) 235.

[75] John Tasioulas (n 72) 15.

lead to forced assimilation in complete denial or disregard for cultural relativities. However, the language of "essential core" as an intersectional feminist corrective and medium, also has the potential to utilise the language of IHRL for women across borders so as to extract rights from the airy "universal" and to get them adapted to specific national and local contexts.[76] It is about taking a nascent step and finding a universally applicable baseline or minimum to deal with the all-devouring concept of cultural relativism that at times quells the universal agenda of human rights rather uncritically.

5. Conclusion

The idea of "essential core" earned fame specially with respect to the ICESCR jurisprudence, as already mentioned. However, the conception of "essential core" pervades the entire overarching framework of human rights (be it under the HRCttee's or the CtteeESCR's jurisprudence). In this article, I argue that there is "essential core" to every human right, which is inviolable. I critically examine the approaches of the HRCttee, CtteeESCR, and ECtHR and gleaning support from their jurisprudence, discuss reasons to adopt an essentialist approach from an intersectional feminist standpoint.

In order to reclaim the transformative terrain and flames of human rights, human rights theories, concepts, practices, and assumptions need "re-reading".[77] The task of such re-reading cannot be uncritical. It involves challenging, contesting, correcting— and then reclaiming the transformative potential of IHRL. Through such re-reading only, 'human rights can be *remade* in the vernacular' for the margins, peripheries, and the suburbs.[78] The language of "essential core", in this respect, can enhance our ability to re-read the global human rights dicta, upon combining diverse local specificities, intricacies, symbols, and aspirations. In particular, as this article illustrates, the idea of "essential core" can help solve prioritization dilemma, adequately treat the perceived conflicts between women's rights and various collective rights and reconcile universality and cultural relativity with regard to the applicability of human rights.

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[76] Sally Engel Merry uses the term 'vernacularization' in order to explain how the language of global human rights dicta is extracted from airy the "universal" and adapted to specific local and national contexts. See Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108 American Anthropologist 38-51.

[77] Ratna Kapur (n 47) 685.

[78] Sally Engle Merry (n 76) 39.

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Behind the Seam: Addressing Workplace GBV in the RMG Sector of Bangladesh

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Abstract: *Gender-based violence (GBV) at workplaces undermines decent work standards, and female workers are the primary victims in the Ready-Made Garments (RMG) industries of Bangladesh. The Violence and Harassment Convention 2019 (Convention no. 190) addresses workplace GBV with strict compliance requirements. The qualitative research examines the scope of C.190 in eliminating GBV from the RMG industries of Bangladesh. It analyses national measures against workplace GBV from primary data, such as relevant laws, policies and judicial decisions. It also evaluates RMG workers' access to judicial and quasi-judicial remedies using secondary data from journal articles, books, newspapers, and reports. Finally, it examines the scope of C.190 to eradicate GBV from RMG industries. Findings reveal limited access to justice by female workers and employers' non-compliance with laws. C.190 mandates government action to amend current legislation, ensuring accessible remedies and employers' compliance. The ratification of C.190 can significantly enhance legal protection for RMG workers in Bangladesh.*

Keywords: C.190; Gender-Based Violence (GBV), Workplace, RMG workers, Bangladesh

1. Introduction

Workplace GBV is seldom taken seriously by employers and is often unidentified. It is frequently mistaken for normal workplace behaviour. A 2018 survey across eight countries revealed that 23% of males believe that employers soliciting sexual favours from employees is acceptable conduct.[1] Workplace GBV encompasses unwanted physical advancement, abusive sexual comments, inappropriate and vulgar requests, the displaying or sharing of obscene materials, sexual assault and/or rape.[2] These actions create a hostile working environment and can lead to forced labour practices.[3] Contrary to popular belief, GBV at work

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[1] CARE International, 'This Is Not Working: Stopping Sexual Harassment in Workplaces Across Our Region' (CARE Australia 2018) <https://www.care.at/wp-content/uploads/2018/06/ThisIsNotWorking_CA-Advocacy-Report_April-2018.pdf> accessed 3 June 2024.

[2] Louise F Fitzgerald, Michele J Gelfand and Fritz Drasgow, 'Measuring Sexual Harassment: Theoretical and Psychometric Advances' (1995) 17 Basic and Applied Psychology 425.

[3] UN Women and ILO, *Handbook: Addressing Violence and Harassment against Women in the*

is not merely an individual issue but a systematic phenomenon (Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Para 9 read with Recommendation no. 35 (R.35)). It is a form of discrimination that violates the principles of decent work. Most of the victims of workplace GBV are women and often refrain from reporting due to social stigma.[4] Even though the feminisation of labour in the RMG industries[5] has significantly contributed to the economic growth of Bangladesh, the workplace GBV still remains a desolated topic in these industries.

Despite various international laws addressing violence against women, extensive workplace protection has been lacking, leaving a significant gap in the international framework. The International Labour Organisation (ILO) Convention no. 190 (C.190), also known as the Violence and Harassment Convention 2019, was formulated to address this vacuum in international laws. It is the first international standard-setting document that aims to eliminate GBV from the world of work. C.190 provides an inclusive definition of workplace GBV and compels state parties to implement agreed standards to ensure a safer working environment. Although Bangladesh has enacted gender-inclusive legislation to promote workplace equality in compliance with international standards and constitutional obligations, harassment and violence are still rampant in the RMG sector.[6]

This legal research examined the scope of C.190 in eliminating GBV from the RMG industries of Bangladesh. As the majority of the workers in the RMG industries are women, the study focused on their workplace conditions. This qualitative research collected data from both primary and secondary

World of Work (Jane Pillinger ed, UN Women 2019) <https://www.unwomen.org/en/digital-library/publications/2019/03/handbook-addressing-violence-and-harassment-against-women-in-the-world-of-work>.

[4] Denise H Lach and Patricia A Gwartney-Gibbs, 'Sociological Perspectives on Sexual Harassment and Workplace Dispute Resolution' (1993) 42 Journal of Vocational Behavior 102; Fitzgerald, Gelfand and Drasgow (n 2); UN Women and ILO (n 3); Shojag Coalition, 'Let's End Gender-Based Violence in the Garments Sector' (2018) <https://www.shojagcoalition.org/reports/> accessed on 24 May 2024.

[5] F Begum and others, 'Harassment of Women Garment Workers in Bangladesh' (2010) 8 Journal of Bangladesh Agricultural University 291.

[6] Fair Wear Foundation, 'Breaking the Silence: The FWF Violance and Harassment Prevention Programme' (Fair Wear Foundation 2018) <https://api.fairwear.org/wp-content/uploads/2018/04/2018_FWF_Breaking-the-silence.pdf> accessed on 24 May 2024; Human Rights Watch, 'Combating Sexual Harassment in the Garment Industry' 18 <https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry>; Shojag Coalition (n 4); Solidary Center, 'In Our Own Words: Workers Address Gender-Based Violence and Harassment in Garment Factories in Bangladesh' (2023) <https://www.solidaritycenter.org/category/asia/bangladesh/#:~:text=In Bangladesh%2C 80 percent of,other women in the...> accessed on 24 May 2024.

sources. It examined the existing regulatory framework of Bangladesh aimed at preventing workplace GBV by analyzing national and international legislation, policies and necessary judicial decisions. Furthermore, the study evaluated the access to non-judicial internal remedial mechanisms by RMG workers based on secondary data from books, journal articles, newspaper articles and reports. The research is divided into four parts, with the introductory section being the first part. Following the introduction, the paper reviews the existing literature and theories of workplace GBV and the international framework to eliminate it. The subsequent part analyses the existing legislative framework of Bangladesh, the remedial mechanisms available to RMG workers, and their access to these remedies. The third section evaluates the potential impact of Bangladesh ratifying C.190 to eradicate workplace GBV in the RMG industries. Key findings and recommendations are then summarized in a dedicated section, followed by the conclusion. Employers in the RMG industries are reluctant to comply with existing laws, and workers rarely report workplace GBV. Ratifying C.190 can enhance protection by enforcing strict compliance for both the government and employers and ensure RMG workers' access to justice.

2. Theoretical Foundations and Literature Review on Eliminating Workplace GBV

2.1 Definition, Types and Models of Workplace GBV

Prior to C.190, workplace GBV often remained undefined in international law and psycho-social theories as a distinct form of offence.[7] Harassment comprises any unwanted behaviour causing humiliation and violates the recipient's dignity in the workplace and ranges from slang, unwanted gestures, and displaying obscene materials to sexual assault and rape and creates an intimidating, degrading and hostile environment.[8] Sexual harassment particularly includes unwelcome and sexually determined physical contact, sexual advances, and remarks (CEDAW, R.19, Article 11, Para 18). These behaviours are categorised into three based on dimensions: sexual coercion, unwanted sexual attention, and gender harassment.[9] GBV and harassment can manifest as physical, psychological, verbal or non-verbal actions,[10] with the latter being particularly difficult to prove due to lack of concrete evidence. For harassment to occur, four conditions need to be fulfilled: the perpetrator's motivation, internal inhibitors (i.e. fear of punishment), external

[7] Michelle J Gelfand, Louise F Fitzgerald and Fritz Drasgow, 'The Structure of Sexual Harassment: A Confirmatory Analysis across Cultures and Settings' (1995) 47 Journal of Vocational Behavior 164; Louise F Fitzgerald and others, 'The Incidence and Dimensions of Sexual Harassment in Academia and the Workplace' (1988) 32 Journal of Vocational Behavior 152.

[8] Sandra Fredman FBA KC, *Discrimination Law* (Oxford University Press 2022).

[9] Fitzgerald, Gelfand and Drasgow (n 2); Fitzgerald and others (n 7).

[10] UN Women and ILO (n 3); Gelfand, Fitzgerald and Drasgow (n 7).

inhibitors (i.e. sex ratio in the organization, grievance procedure, sexist attitude, sociocultural variables), and the victim's ability to recognize and take action against harassment.[11] Contrary to common belief, GBV can be directed to any person regardless of gender.[12] Men and non-binary individuals can also experience workplace GBV, but women are more susceptible to it.[13] It is often a sign of male domination, power, and control (R.35 to CEDAW, Para.14).

Though sexual harassment is a form of GBV, the terms are often used interchangeably. Earlier psycho-social research primarily focused on workplace harassment rather than GBV, which is a relatively new concept. Workplace harassment is categorized into three primary models: the natural/biological model, the organizational model, and the sociocultural model.[14] The biological model suggests that men's sexual advances toward women in the workplace are inherent behaviours driven by evolutionary imperatives.[15] The organizational model argues that harassment is often employed as a tool for dominance within organizations, embedded in power structures and workplace norms.[16] Besides, workplaces with lenient attitudes towards sexual behaviour and weak sanctions experience higher harassment rates.[17] It is evident in Bangladesh, where harassment is rampant in the RMG industries due to weak organizational prevention and remedial measures.[18]

The sociocultural model views workplace harassment as a manifestation of male dominance that hinders the professional and economic growth of women.[19] Apparently, workplace GBV in RMG industries is directly linked with female workers' vulnerability in the patriarchal and conservative societal setting and the negative victim-blaming mindset of Bangladesh.[20] The sex-role spillover model, another well-known framework, indicates that harassment is more frequent in

[11] Elizabeth A O'Hare and William O'Donohue, 'Sexual Harassment : Identifying Risk Factors' (1998) 27 Archives of Sexual Behavior 561.

[12] Lach and Gwartney-Gibbs (n 4).

[13] Ibid; Fitzgerald, Gelfand and Drasgow (n 2); Louise F Fitzgerald and Michele J Gelfand, 'Suffering in Silence: Procedural Justice Versus Gender Socialization Issues in University Sexual Harassment Grievance Procedures' (2010) 17 Basic and Applied Psychology 37.

[14] Sandra S Tangri, Martha R Burt and Leanor B Johnson, 'Sexual Harassment at Work: Three Explanatory Models' (1982) 38 Journal of Social Issues 33.

[15] Ibid.

[16] Ibid; O'Hare and O'Donohue (n 11); Fitzgerald, Gelfand and Drasgow (n 2).

[17] Fitzgerald, Gelfand and Drasgow (n 2).

[18] ActionAid, 'ActionAid Briefing Paper: Sexual Harassment and Violence against Garment Workers in Bangladesh' <https://actionaid.org/publications/2019/sexual-harassment-and-violence-against-garment-workers-bangladesh#downloads.> accessed on 20 April 2024; Shojag Coalition (n 4); Solidary Center (n 6).

[19] O'Hare and O'Donohue (n 11); Tangri, Burt and Johnson (n 14).

[20] Begum and others (n 5); Solidary Center (n 6).

organizations with imbalanced sex ratios, where women often hold low-status and insecure jobs.[21] The situation is also apparent in the RMG industries, where men usually occupy leadership positions, and women are employed in menial jobs.[22]

Quid pro quo[23] and hostile workplace conditions[24] are recognized as forms of workplace harassment. *Quid pro quo* harassment involves demanding sexual favours for job security or benefits and making harassment part of service conditions, with the perpetrator leveraging power over the victim.[25] Hostile working conditions refer to an environment where any individual's (not necessarily holding power over the victim) unwelcome conduct creates an intimidating work atmosphere.[26] R. 19 lists behaviours amounting to both *quid pro quo* harassment and hostile working environments. In the RMG industries, female workers are particularly vulnerable to *quid pro quo* harassment due to power imbalances, social and economic vulnerability, and the social stigma attached to sexual harassment.[27] High pressure to meet production targets often creates hostile working environments, where slang and physical abuse are used to speed up work.[28]

Unfortunately, the adverse effects of workplace GBV are often overlooked in RMG industries. A sexualized and toxic work environment with normalized abusive practices, like the RMG industries, often facilitates violence and

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[21] Barbara A Gutek and Bruce Morasch, 'Sex-Ratios, Sex-Role Spillover, and Sexual Harassment of Women at Work' (1982) 38 Journal of Social Issues 55; O'Hare and O'Donohue (n 11); Tangri, Burt and Johnson (n 14).

[22] Taslima Yasmin, 'Overview of Laws , Policies and Practices on Gender-Based Violence and Harassment in the World of Work in Bangladesh' (2020) <https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_757149/lang--en/index.htm> accessed on 20 April 2024; Md Manirul Islam, 'A Situation Analysis Study: Workers Rights & Gender Based Violence in the RMG and TU Capacity to Deal with These' <http://bilsbd.org/wp-content/uploads/2018/01/Workers-Rights-Gender-Based-Violence-in-the-RMG-and-TU-Capacity-to-Deal-with-These-Final-Draft.pdf> accessed on 3 June 2024; Shojag Coalition (n 4); Solidary Center (n 6).

[23] *Meritor Savings Bank v. Vinson,* 477 U.S. 57 (1986)

[24] *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993)

[25] Fitzgerald and others (n 7); Dina M Siddiqi, 'The Sexual Harassment of Industrial Workers: Strategies for Intervention in the Workplace and Beyond' (2003) 26; UN Women and ILO (n 3).

[26] Fitzgerald, Gelfand and Drasgow (n 2); Fitzgerald and others (n 7).

[27] Siddiqi (n 25); Yulya Truskinovsky, Janet Rubin and Drusilla Brown, 'Sexual Harassment in Garment Factories: Firm Structure, Organizational Culture and Incentive Systems' (2014) 14 <https://betterwork.org/portfolio/sexual-harassment-in-garment-factories-firm-structure-organizational-culture-and-incentive-systems/>; Shojag Coalition (n 4); Solidary Center (n 6).

[28] Caren B Goldberg, Shannon L Rawski and Elissa L Perry, 'The Direct and Indirect Effects of Organizational Tolerance for Sexual Harassment on the Effectiveness of Sexual Harassment Investigation Training for HR Managers' (2019) 30 Human Resource Development Quarterly 81; Fair Wear Foundation (n 6); Shojag Coalition (n 4); Solidary Center (n 6).

harassment.[29] It not only impairs workers' competence but also tarnishes the workplace's reputation.[30] It affects women's physical and mental well-being, productivity, career development, and integration into the economy, and RMG workers reported the same.[31] The Committee of Experts on the Application of Conventions and Recommendations (CEACR) in the Special Survey on The Discrimination (Employment and Occupation) Convention 1958 (C.111) declared that sexual harassment impairs productivity and workplace relations.[32] C.190 explicitly recognizes that workplace GBV impairs sustainable enterprises and details its adverse effects on health (psychological, physical, and sexual), dignity, and the family and social environment (C.190, Preamble, Para 9 read with Para 11). The Convention declares zero tolerance towards workplace harassment and mandates member states to ensure sustainable workplaces (Preamble, Para 8). Therefore, the ratification of C.190 is crucial in creating safer workplaces for RMG workers in Bangladesh.

Prior to C.190, a comprehensive and wide definition of workplace GBV was absent in the international legal framework. Without any internationally recognized definition, victims face challenges to prove workplace GBV and *locus standi* even within the national legal framework.[33] Two accompanying Recommendations of CEDAW recognise *quid pro quo* harassment and hostile working conditions (R.35, para 20 read with R.19, Article 11 Para 18). Neither CEDAW nor its recommendations explicitly define workplace GBV despite being a global phenomenon. The C. 111 and Indigenous and Tribal Peoples Convention 1989 (C.169) also include GBV and aim to eliminate it from workplaces without defining it (C.111, Article 1 and C.169, Article 20(3)(d)). Besides, the Beijing Declaration and Platform for Action 1995 only recognize the term workplace GBV and calls for governmental efforts to eliminate it (Declaration no.113(a)). The Declaration on the Elimination of Violence against Women (DEVAW) 1993 seeks to address workplace GBV despite failing to define it explicitly (Article 2 (b) read with Article 1). The World Report on Violence and Health by the World Health Organization (WHO) also elaborates on different types of

[29] Goldberg, Rawski and Perry (n 28); Fitzgerald and others (n 7); Lach and Gwartney-Gibbs (n 4); Amna Anjum and others, 'An Empirical Study Analyzing Job Productivity in Toxic Workplace Environments' (2018) 15 International Journal of Environmental Research and Public Health; Solidary Center (n 6).

[30] Fitzgerald and others (n 7); Truskinovsky, Rubin and Brown (n 27); Anjum and others (n 29).

[31] Fitzgerald, Gelfand and Drasgow (n 2); Fitzgerald and others (n 7); Emily A Leskinen, Lilia M Cortina and Dana B Kabat, 'Gender Harassment: Broadening Our Understanding of Sex-Based Harassment at Work' (2011) 35 Law and Human Behavior 25; UN Women and ILO (n 3); Anjum and others (n 29); Truskinovsky, Rubin and Brown (n 27); Solidary Center (n 6).

[32] Yasmin (n 22).

[33] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, USA 2019).

workplace GBV without precisely defining the concept.[34] Even though the ILO Declaration on Fundamental Principles and Rights at Work 1998 ensures equality in achieving human potential and promotes social justice, the document also fails to explicitly address violence in the workplace. The lack of legal definition and standard resulted in ambiguity due to varying perceptions of harassment among individuals and jurisdictions.[35] Many women struggled to label unwanted conduct as harassment due to vague and inconsistent definitions across different legal systems and organizational policies.[36] C.190 addressed these issues by providing the first internationally recognized definition of workplace violence and harassment as unacceptable behaviours resulting in physical, psychological, sexual, or economic harm (Article 1). It not only establishes workplace GBV as a distinct offence through a comprehensive and inclusive definition but also sets international standards for remedial measures.

2.2 Substantive Equality to Address GBV of Female RMG Workers

Discrimination undermines human dignity, which is the inherent worth and autonomy of a person, by treating individuals or groups as inferior and less worthy based on characteristics like race, gender, disability, and age and often marginalizes them.[37] It can be direct, where someone is treated less favourably, and indirect, where apparent neutral policies disproportionately affect disadvantaged groups.[38] Workplace GBV curtails human dignity and infringes the right to work guaranteed under the Universal Declaration of Human Rights (UDHR) (Article 1 read with 23.1) and protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) (Preamble read with Article 6 (1) in both of the documents). The CEDAW also establishes that GBV at work violates dignity, invalidates the enjoyment of human rights and constitutes gender-based discrimination (CEDAW, Article 1 read with R.19, Article 11 and Background 1 and R.35, Para 15 and 20). Besides, C. 111 and C.169 acknowledge workplace GBV as a form of gender-based discrimination (C.111, Article 1 and C.169, Article 20(3)(d)). Moreover, the CLEACR in the Special Survey in 1996 on C.111 included sexual harassment as a form of sex-based discrimination.[39] The DEVAW also recognizes that workplace GBV is discriminatory to women (Article 2 (b) read with Article 1). A universal anti-discrimination framework accommodating intersectionality with a flexible,

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[34] Michel Daher, 'World Report on Violence and Health' (2003) 51 Journal Medical Libanais 59.

[35] Gelfand, Fitzgerald and Drasgow (n 7); Fitzgerald and others (n 7).

[36] Fitzgerald and others (n 7); Gelfand, Fitzgerald and Drasgow (n 7).

[37] KC (n 8).

[38] Ibid.

[39] Yasmin (n 22).

context-sensitive approach is crucial for ensuring justice for victims.[40]

However, international instruments failed to stipulate standards for remedial mechanisms addressing workplace GBV before C.190. Even though CEDAW obliges member states to eliminate discrimination against women in employment (Article 2(e) read with Article 11), it also lacks any redressal mechanism. The absence of international standards rendered a uniform remedial mechanism impossible and created inconsistent and ambiguous formulation of domestic legislation. C.190 is the first international instrument detailing a standard procedure focusing on substantive equality and acknowledging intersectional discrimination of workers. Substantive equality goes beyond formal equality of treating everyone the same and addresses structural and systemic discrimination.[41] It considers historically disadvantaged groups like women, ethnic and racial minorities, and disabled individuals and aims to create equality in opportunities for them and eliminate social injustice based on a four-dimensional[42] model.[43] Recognizing intersectional[44] discrimination is essential, as individuals often face compounded disadvantages due to multiple and intersecting factors like race, gender, age, class, and disability. [45] Previously, anti-discrimination laws had a single-axis approach and treated each social category (like gender and age) separately, which was inadequate for addressing intersectional discrimination and guaranteeing substantive equality to victims.[46] Even though some countries are currently focusing on intersectional discrimination, progress remains insufficient to ensure justice for victims due to theoretical and practical challenges like inadequate standards of proof, *locus standi*, and limited legal definitions.[47]

C.190 attempts to solve this problem by providing an internationally acceptable and broad definition of workplace GBV, advocating for establishing a remedial process based on substantive equality, and providing a standard to guide national formulation (C.190, Preamble, Para 6 and 12 read with Article 1 and 4; R. 206, Para 8). Gender-neutral policies often focus on formal equality and fail

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[40] Atrey (n 33).

[41] Sandra Fredman, 'Substantive Equality Revisited' (2016) 14 International Journal of Constitutional Law 712.

[42] The four-dimensional approach to substantive equality focuses on redistributing resources, recognizing diverse identities, ensuring equal participation in society, and transforming social structures to eradicate disadvantages. Ibid.

[43] KC (n 8); Fredman (n 41); Atrey (n 33).

[44] Intersectionality refers to the interconnected nature of social categorizations such as race, gender, class, age, and disability, leading to overlapping forms of disadvantage. Atrey (n 33).

[45] KC (n 8); Fredman (n 41); Atrey (n 33).

[46] Atrey (n 33).

[47] Ibid.

to accommodate intersecting identities to guarantee adequate protection against discrimination.[48] C.190 acknowledges transactional factors of discrimination (like power and gender imbalance, cultural hegemony, and employment conditions) and mandates state parties to adopt integrated and gender-responsive legislation to guarantee access to justice by victims (C.190, Preamble, Para 12 read with Article 4; R. 206, Para 8). Workplace GBV often intersects with economic vulnerability, social stigma, and workplace power dynamics of the female RMG workers of Bangladesh.[49] Therefore, gender-sensitive remedial measure addressing intersectional factors are also crucial to eliminating systematic workplace GBV for women RMG workers. C.190 is more pragmatic in promoting substantive equality and eliminating workplace GBV, considering transactional factors. Therefore, the adoption of this Convention by Bangladesh can render better protection to the RMG workers by creating safe workplaces and ensuring their access to justice.

2.3. Workplace GBV Disrupts Occupational Health and Safety (OSH)

Safe employment is a crucial element of decent work conditions, and Occupational health and safety (OSH) is a part of it. OSH is a broad and multidisciplinary concept that deals with all aspects of the well-being and safety of workers. The UDHR declares, and ICESCR reaffirms the right to work in a just, safe and favourable condition (UDHR, Article 2 and ICESCR, Article 7). A healthy workspace encompasses the absence of any harmful element affecting physical or mental health, hygene and safety (The Occupational Safety and Health Convention 1981 (C. 155), Article 3 (e) and accompanying R. 164, para 2(e)). The Joint ILO/WHO Committee on Occupational Health declared that OSH should promote and maintain workers' highest degree of physical, mental and social well-being and protect them from risks (adopted in 1950 and revised in 1995). The focus of OSH is threefold: maintenance of workers' health, improving a safe and healthy working environment and developing a work culture that supports workplace health and safety.[50] The member states should also eliminate harmful physical or mental stressors from workplaces and establish, maintain and promote OSH measures (R. 164, para 3(e); The Promotional Framework for Occupational Safety and Health Convention 2006 (C. 187), Article 2 and accompanying R.197). State parties are obliged to establish a coherent national OSH policy to prevent and minimize workplace risks, and many countries have complied (C. 155, Article 4 and C. 187, Article 4). However, the international framework before C.190 fails

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[48] Fredman (n 41); KC (n 8).

[49] Atrey (n 33); Shojag Coalition (n 4); Solidarity Center, 'In Our Own Words: Women Workers Address Gender-Based Violence in Garment Factories in Cambodia' 1 <https://www.solidaritycenter.org/publication/in-our-own-words-women-workers-address-gender-based-violence-in-garment-factories-in-cambodia/>.

[50] Benjamin O Alli, *Fundamental Principles of Occupational Health and Safety* (Second Edi, International Labour Organization 2008) 22.

to include workplace GBV within OSH protection measures explicitly.

C.190 is the first document that extends OSH's purview, explicitly includes workplace GBV and encourages states to enact and implement necessary measures (C.190, Article 12). It can be introduced into existing labour laws, OSH laws, criminal laws, equality and non-discrimination laws or any other appropriate law (R. 206, para 2). The anti-harassment policy, either embedded in the OSH policy or a distinct one, should be holistic and adhere to the international OSH framework (C. 190, Article 9(a) read with R. 206, para 6). The member states should carry out preventive measures, conduct risk assessments and implement remedial mechanisms in collaboration with the employers, workers, and their representative groups for an ideal work environment (C. 190, Article 9 read with the Occupational Health Services Convention 1985 (C. 161), Article 1-3). During risk assessment, factors such as the likelihood of workplace harassment, psycho-social hazards and OSH management risks should also be considered (C.190, Article 9(b) and (c) read with R.206, para 8). Particular attention should be given to intersectional factors like workplace and social settings, power and gender imbalance, cultural hegemony, employment conditions, human resource management, issues involving third parties (clients, customers) etc. (R.206, para 8). C.190 advocates to include workplace GBV within the OSH framework, and state parties have an obligation to formulate comprehensive OSH legislation after the ratification. The following part discusses the existing safeguard measures in Bangladesh to eliminate workplace GBV. Then, it highlights the distinctive features of C.190 and studies its scope in rendering better protection to RMG workers.

3. Legal Framework of Bangladesh and Implementation Gaps in the RMG Sector

3.1 Legislation Preventing Workplace GBV in RMG Industries of Bangladesh

Sustainable Development Goals (SDG) aim to create decent workplace conditions for women to empower them and promote gender equality (Goals 5 and 8). Besides, gender equality is crucial for steady economic growth.[51] Eliminating GBV is one of the proprieties of Bangladesh to accelerating women's progress. However, women workers still face vulnerability in labour integration, and GBV is extreme in the RMG industries.The following section discusses the existing legal framework of Bangladesh to prevent workplace GBV and evaluates the RMG workers' access to remedies in Bangladesh.

[51] Naila Kabeer and Luisa Natali, 'Gender Equality and Economic Growth: Is There a Win-Win?' (2013) 417; Naila Kabeer, 'Women's Economic Empowerment and Inclusive Growth: Labour Markets and Enterprise Development' (2012) 44 International Development Research Centre 1 <www.soas.ac.uk/cdpr> accessed on 22 April 2024.

a. Acts of Parliament

The Constitution of Bangladesh provides necessary protection to women at work. It pledges to ensure a safe and healthy workspace by creating favourable work conditions, guaranteeing equality and non-discrimination, and prohibiting exploitation and forced labour (Articles 10, 14, 19, 20, 26, 28 and 34). Despite constitutional safeguards, Bangladesh has no specialised legislation preventing GBV in the workplace. Some scattered penal provisions addressing GBV are available for women victims, including workers. The Penal Code 1890 (PC) stipulates punishment for rape (s 375), outraging the modesty of women (s 354), and criminal intimidation (s 509) but omits GBV or sexual harassment. Besides, the Prevention of Oppression against Women and Children Act 2000 provides stringent punishment for rape (s 9) and penalises sexual assault with a maximum of seven years imprisonment and fine (s 10). However, physical contact (by any organ or object) is crucial to constitute an offence under s 10. Therefore, psychological and economic abuse remain outside the scope of both the Acts. C. 190, on the contrary, includes psychological and economic abuse within workplace GBV (Article 1.1 (C)). PC s 354 is seldom used because it often overlaps with other offences.[52] Moreover, the crimes defined in both Acts often fail to include all forms of workplace GBV due to a lack of adequate definitions. For example, both the Acts use 'outraging the modesty of a woman', a vague and outdated concept without definition, which hamper victims' access to the criminal justice system. The conviction rate for rape and other sexual offences is also low under the penal laws of Bangladesh due to gender-insensitive remedial processes.[53]

The Pornography Control Act 2012 penalises producing, distributing and blackmailing pornographic materials via mobile phones, websites, or other electronic devices (s 2(c) read with s 8). However, pornographic materials are becoming available, and the incidents of blackmail are increasing at an alarming rate despite the strict law and government efforts to ban these.[54] Sending inappropriate messages and causing annoyance to others via phone calls are punishable under the Bangladesh Telecommunication Act 2001 (s 69 and 70). The Cyber Security Act 2023 includes offences like digital fraud, spreading defamatory statements, deceiving, cyberbullying, catfishing etc. (s 23-29, 32 and 34). The Information Communication Technology (ICT) Act 2006 penalises transmission of fake or obscene materials and violation of privacy (s 57 and s 63). However, none of these laws explicitly defines GBV in cyberspace, but they

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52 Yasmin (n 22).

53 Taslima Yasmin, "Sexual Violence in Bangladesh: Addressing gaps in the Legal Framework", Dhaka University Law Journal, 28 (2017) 109.

54 Md Shahnawaz Khan Chandan, 'Pornography Spreads amid Futile Govt Ban' *The Daily Star* (24 December 2020) <https://www.thedailystar.net/backpage/news/pornography-spreads-amid-futile-govt-ban-2016313> accessed on 22 April 2024.

include a range of behaviours constituting harassment. Even though the directive of the High Court Division (HCD Directives) in the *Bangladesh National Women Lawyers Association (BNWLA) v Bangladesh and Others*[55] case list some forms of cyber-sexual offence, it is not exhaustive. These laws also fail to define digital workplaces and safeguard workers from cyber harassment. C.190 aims to protect workers from cyber-harassment through information and communication technology (ICT) (Article 3(d)). The women victims of Bangladesh often feel disinterested in filing cases due to social stigma, and nearly 90% of the incidents of harassment remain unreported.[56] C.190 guarantees victims' access to remedy through strict compliance mechanisms and by facilitating access to judicial and internal mechanisms (Article 10). The criminal laws are failing to protect women in Bangladesh, including workers, from GBV, and ratification of C.190 will render better protection.

The Bangladesh Labour Act 2006 (BLA), the employment law of Bangladesh, contains no provisions regarding harassment and violence. Even though it prohibits indecent or unmannerly behaviours disgracing the modesty of women workers (s 332), the penalty prescribed is trivial (only 25,000 taka fine, s 307). However, neither indecent behaviours nor modesty of women is defined, making the whole concept ambiguous and rarely invoked by the victims.[57] The Bangladesh Labour Rules 2015 (BLR) stipulates a new rule in the 2022 amendment, which lists a range of behaviours as harassing and indecent (behaviour towards women, BLR, Rule 361A). The amended BLR is the only legislation of Bangladesh that includes such a list in compliance with the HCD directives. However, the BLA and BLR both fail to define the notion of workplace or GBV, which is crucial in addressing workplace violence. C.190 is the first international document that clearly defines workplace GBV as a range of unacceptable behaviours in the world of work resulting in physical, psychological, sexual or economic harm (C.190, Article 1). The wide definition includes any unwanted and harmful behaviours towards the recipient. Moreover, it has widened the notion of the workplace and includes GBV occurring in workplace rest areas and travelling (Article 3(a)-(f)). Thus, employers cannot escape liability when harassment occurs beyond the physical workspace, but the worker remains within the employment contract. Bangladesh has yet to adopt a comprehensive definition of workplace GBV, and many indecent behaviours remain outside the scope of laws.

The HCD directives call for establishing a complaint committee (CC) in all industrial establishments and educational institutions. In compliance, the BLR also provides that every institution must have a CC of a minimum of 5 members,

[55] [2009] 14 BLC 694.

[56] Saraban Tahura Zaman and others, 'Legal Action on Cyber Violence Against Women' (2017) <https://www.blast.org.bd/content/publications/Cyber-violence.pdf> accessed on 22 April 2024.

[57] Yasmin (n 22).

headed by a female, and the majority of the committee members must be women (Rule 361A). Furthermore, every industry must have a guideline preventing sexual harassment in line with the HCD directives, circulate it among workers, have a complaint box to file complaints and register them in a complaint registrar (Rule 361A). However, the formation of CC is not mandatory, and many NGOs are helping to establish it in the RMG industries in Dhaka and Chittagong.[58] Hence, the number of CCs is still insignificant in the RMG industries of Bangladesh.

The BLA (s 90(a)) and BLR 2015 (rule 81) also stipulate the formation of a mandatory safety committee in industrial establishments with more than 50 workers to oversee the OSH measures and ensure compliance. This committee reports any non-compliance of OSH measures to the Department of Inspection for Factories and Establishments (DIFE), and it takes necessary and speedy action upon receiving the report (BLR, Rule 81 (4) and Schedule 4). However, the safety committee cannot distinctively recommend anti-harassment measures within OSH because the BLA or BLR do not explicitly include it. Thus, workplace GBV is still considered outside of the OSH in Bangladesh. C. 190, on the other hand, includes the elimination of workplace GBV within OSH measures explicitly (Article 12) and prescribes member states to simply broaden the existing OSH framework (C.190, Article 12 read with R. 206, para 2). The Government of Bangladesh (GoB) has been paying special attention to implementing OSH measures in RMG industries, and the inclusion of workplace GBV within the OSH framework can ensure workers' speedy access to remedies.

b. The HCD Directives

The HCD directives in the milestone judgment in the *BNWLA v Bangladesh and Others*[59] are binding in the vacuum of adequate legislation and mandate to establish CCs in all private and public workplaces and educational institutions (Article 111 of the Constitution read with HCD directives, para 49). Bangladesh has yet to formulate an anti-harassment law, but section 361A of the BLR was amended in 2022 in light of the HCD directives. These directives contain a list of verbal and non-verbal actions constituting harassment, including unwelcome and sexually determined behaviours, physical advances, intimidation, capture and display of obscene video or photographs, indecent gestures, offensive writing (e.g. letters, marks, wall-writing), phone calls (including SMS) etc. (clause 4, (1)(a)-(l)). It also includes *quid pro quo* harassment by authoritative persons. However, the directive fails to provide an exhaustive and wide definition of GBV, like C.190, despite a detailed list. C.190 also covers physical, psychological and economic, and the inclusion of a broad spectrum of harm ensures better protection in the workplace (Article 1). Abusive workplace practices are often normalised

[58] Awaj Foundation, 'Annual Report 2019-2020' (2020).

[59] [2009] 14 BLC 694

even though they are detrimental to workers. C.190 also addresses these abusive workplace practices (Article 1). Besides, the singular incident of harassment is often trivialised in the work setting. Indecent behaviours, on single and repeated occasions, result in harassment (C.190, Article 1). The HCD directives are not explicit regarding unwanted workplace practices and singular indecent.

The directives also lack an adequate and inclusive definition of workplaces, where C.190 extends the notion by the term "world of work". Previously, workplaces were defined as places under the direct or indirect control of the employer where workers stay or go for work (C.155, Article 3(C)). However, work events are no longer confined to physical spaces and extend to digital and remote workplaces. The world of work encompasses all work-related activities, within and beyond workplaces, linked with and arising out of employment contracts (e.g., rest areas, training, tours, social activities, accommodations, travelling to and from work, etc.) (C.190, Article 3). Employers often deny responsibility for GBV incidents outside workstations while commuting.[60] C.190 guarantees employers' strict liability in this regard and thus ensures workers' safety. Besides, the HCD directive is inadequate in addressing cyber-workspace harassment, even though it includes limited forms of cyber-crimes (clause 4). The C.190 is futuristic in this regard and can help the state parties to enact better remedial mechanisms to address workplace GBV (Article 3(d)).

The HCD directives require all workplaces and educational institutions to have a CC where victims (or any person on their behalf) can lodge complaints (Clause 8 read with Clause 10). The CC is comprised of a minimum of five members headed by a female member, and two of the members shall be from outside the concerned organization (Clause 9(c)). The CC submits an investigation report with recommendations to the Concerned Authority, and it takes appropriate disciplinary action against the perpetrator, ranging from temporary suspension to dismissal (Clause 7 and 11). The matter can also be referred to the Court if the alleged action constitutes an offence under penal laws (Clause 11). However, the HCD serves only as a guideline for the institutional formulation, without adequate sanction for non-compliance. Therefore, the RMG industries are reluctant to establish the CC and suffer no consequences for non-compliance. Besides, the BLR lacks detailed guidelines for forming CCs in industrial establishments. The HCD directives and section 361A of BLR also lack adequate guidelines regarding membership criteria, quorum, and termination of the CC members.[61] C.190, in contrast, provides a guideline for national formulation, guarantees employers' strict liability to eliminate workplace GBV and thus ensures workers' safety.

In the RMG industry, the CC members face threats (firing, blacklisting,

[60] Siddiqi (n 25); Fair Wear Foundation (n 6).

[61] Yasmin (n 22).

physical harm etc.) and are often forced to step down for any action detrimental to the employer's interest.[62] Female representation at the managerial level is minimal (95% male), and the perpetrators are mostly supervisors.[63] As a result, the perpetrators often escape liability by misusing their powerful positions.[64] Even when a formal complaint is lodged, the CC often face hurdles in investigating the perpetrators.[65] The owners also fear a bad reputation and losing buyers if the incidents of harassment are reported.[66] They often oppose the formation of the CC, and most of the RMG industries do not have a committee.[67] The RMG workers are also reluctant to complain to CC because of fear of retaliation by the employers, economic vulnerability and social stigma.[68] Moreover, many workers are unaware of the CC in their establishment.[69] RMG employers' organisations

[62] Fair Wear Foundation (n 6); Simon Murphy, 'Factory That Supplied Tesco Compensated Abused Worker' *The Guardian* (22 January 2019) <https://www.theguardian.com/world/2019/jan/22/bangladeshi-factory-that-supplied-tesco-and-marks-and-spencer-compensates-abused-worker> accessed on 3 June 2024; Simon Murphy and Redwan Ahmed, '"Girl Power" Charity T-Shirts Made at Exploitative Bangladeshi Factory' *The Guardian* (1 March 2019) <https://www.theguardian.com/business/2019/mar/01/charity-t-shirts-made-at-exploitative-bangladeshi-factory> accessed on 22 April 2024.

[63] Aya Matsuura and Carly Teng, 'Understanding the Gender Composition and Experience of Ready-Made Garment (RMG) Workers in Bangladesh' (2020) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_754669.pdf> accessed on 20 May 2024; Shojag Coalition (n 4); Solidary Center (n 6).

[64] ActionAid (n 18); Matsuura and Teng (n 64); Shojag Coalition (n 4).

[65] Yasmin (n 22); Karmojibi Nari, 'Monitoring Work and Working Condition of Women Employed in Ready-Made Garment Industries of Bangladesh' <https://www.karmojibinari.org/wp-content/uploads/2019/04/factsheetMarch19EN.pdf> accessed on 20 May 2024."type":"report"},"uris":["http://www.mendeley.com/documents/?uuid=44310eec-6657-4e71-a99c-537512dc18d6"]},{"id":"ITEM-2","itemData":{"ISBN":"1200120000","abstract":"Bangladesh's ready-made garment (RMG

[66] Yasmin (n 22).

[67] ActionAid (n 18); Karmojibi Nari (n 66); Yasmin (n 22).{"id":"ITEM-2","itemData":{"ISBN":"1200120000","abstract":"Bangladesh's ready-made garment (RMG

[68] Human Rights Watch, '"Whoever Raises Their Head Suffers the Most" : Workers' Rights in Bangladesh's Garment Factories' (Human Rights Watch 2015) <https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladeshs-garment>; Shojag Coalition (n 4); Solidary Center (n 6).

[69] Karmojibi Nari (n 66); Solidary Center (n 6).irregularity in timeliness of wage payments, unsafe working conditions. Specifically, women workers have many issues that need to care especially in areas of workplace discrimination and career prospect, harassment, work and working time including rest, occupation health and safety, welfare provision, social protection and freedom of association, collective bargaining and social dialogue. Although gender-based wage discrimination is not seen that much now a day, discrimination exists in areas of equal treatment-women are forced to do overtime more than the men and the cut from the overtime allowance is more for women workers than men. Women workers face severe discrimination with regard to the scope of promotion and their career prospect is limited. A study shows that only 5-10 percent of the women workers to become supervisors (The Daily Star, March 8, 2015

(Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA)) and workers' associations are also reluctant to adhere to HCD directives.[70] Besides, the GoB lacks the effort to introduce a comprehensive plan of action to implement the directives.[71]

In 2019, six human rights organisations in Bangladesh filed a writ petition to the HCD seeking a report on compliance with the directives from the GoB.[72] Though the case is pending further hearing,[73] the HCD expressed dissatisfaction because of the absence of anti-harassment committees in all educational institutions and workplaces.[74] A lack of consensus among the stakeholders in formulating comprehensive legislation against workplace GBV is evident.[75] At least five different drafts were prepared,[76] and none became enactment. Despite legislative efforts, the RMG workers still face GBV due to a lack of implementation. C. 190 guarantees access to justice and imposes a three-fold duty on the member states to prevent and protect workplace GBV and enforce legislation (Article 7- 10), which can ensure compliance by the GoB and employers groups.

b. Policies and Implementation Plans

The Government of Bangladesh (GoB) has adopted several policies to ensure an equal and violence-free workplace for women as per the constitutional obligation. The National Women Policy 2011 aims to eliminate discrimination and violence against women in workplaces and pledges for necessary enactment (clauses 16, 17 and 19). The Ministry of Employment and Labour (MoEL) aims to implement the Women Policy in all industries, including RMG, through the DIFE. It prioritises several areas, and eradicating workplace GBV is one of them.[77] The Ministry of Women and Children Affairs also formulated the National Action Plan to Prevent Violence against Women and Children 2013-2025 (Plan of Action) to establish a multidimensional and holistic remedial mechanism

[70] Yasmin (n 22); Solidary Center (n 6).

[71] Yasmin (n 22); Solidary Center (n 6).

[72] The Daily Star, 'Not Forming Body to Prevent Sexual Harassment Disappointing: HC' *The Daily Star* (Dhaka, 6 May 2019) <https://www.thedailystar.net/country/news/not-forming-body-prevent-sexual-harassment-disappointing-hc-1739572>.

[73] Yasmin (n 22).

[74] The Daily Star (n 73).

[75] Solidary Center (n 6).

[76] The Daily Star (n 73).

[77] Ministry of Labour and Employement, 'Gender Roadmap for the DIFE (2020-2030)' (2020) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_753443.pdf> accessed on 22 May 2024.

against GBV in all spheres, including workplaces.[78] In the National Labour Policy 2012, the GoB also pledges to maintain international labour standards, create a decent and safe workplace free from harassment for women, and enact necessary legislation (clauses 4, 12 and 19). However, in the absence of comprehensive anti-discrimination law, the MoLF has adopted an operational strategy to guide the DIFE in preventing GBV from industrial establishments, including RMG industries, in compliance with the Plan of Action (2013-2025).[79] Besides, the BLR 2015 also guides the DIFE in establishing CC in RMG industries.

The National Occupational Health and Safety Policy 2013 (OSH Policy) is crucial to ensure a safe workspace for women and improve OSH measures (Background). The GoB and the stakeholders (i.e. employers' associations, owners, workers' organisations, TUs) have an ethical-legal obligation to comply with the OSH measures as per the international standard (OSH Policy, clause 3.a.14,4.a.14 and 4.a.21). Moreover, industrial establishments should be provided with incentives to safeguard the OSH of woman workers (clause 4.a.7 and 4.a.24). Unfortunately, Bangladesh is yet to ratify the crucial international OSH standards, i.e. C. 187, C161 and C.155. Nonetheless, 50% of the labour inspections by the DIFE are focused on OSH measures of RMG industries, and collaborative measures with INGOs and NGOs also focus on the same after the Rana Plaza incident.[80] However, the DIFE activities put less concentration on workplace GBV, as it is not included within OSH measures. Moreover, the GB-centered initiatives in the RMG industries are short-term, and the DIFE inspectors lack adequate capacity to handle these issues.[81]

Even though workplace GBV is not included within OSH, the Labour Inspection Checklist[82] (including the checklist for RMG industries) incorporated some critical issues relating to harassment like the formation of CC in the industry, the awareness of workers regarding the complaint procedure and the presence of restraints in lodging complaints (part-2, section 11 of the Inspection Checklist).

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78 Government of the People's Republic of Bangladesh and Ministry of Women and Children Affairs, 'National Action Plan to Prevent Violence Against Women and Children (2013-2025)' (2013) <https://mowca.gov.bd/site/page/a21d8ca7-c186-4f7f-b376-978d6e4d11d2/National-Action-Plan-to-prevent-violence-against-women-and-children-2013-2025> accessed on 20 May 2024.

79 Ministry of Labour and Employement (n 78).

80 Yasmin (n 22); Ministry of Labour and Employement (n 78).

81 Yasmin (n 22); Better Work Bangladesh, 'Strategy Report, Phase II (2018-2021)' (2019) <https://betterwork.org/wp-content/uploads/2020/01/BW-AplifyingImpact-Bangladesh.pdf> accessed on 3 June 2024; Solidary Center (n 6).

82 Ministry of Labour and Employment, Department of Inspection for Factories and Establishment, RMG Inspection checklist, http://www.dife.gov.bd/site/page/d60953be-00d2-4325-9637-f81d5a35f6e3/- accessed on 21 May 2024.

The Labour Inspectors score the industry's compliance while inspecting. [83] However, the formation of the CC is not yet mandatory, and no action can be taken for not establishing it. Women workers hesitate to discuss their grievances with men, so the DIFE has appointed female labour inspectors.[84] It also launched a helpline to receive direct complaints from workers but has received fewer complaints regarding workplace violence.[85] Additionally, the Labour Inspection Management Application (LIMA) was launched by the DIFE in 2018, where workers can anonymously file online complaints on GBV and track progress. No separate accounts of GBV-related complaints have been found yet on the website.[86] Even though DIFE has taken some measures, these are still trivial to eliminate widespread GBV from RMG industries.

3.2 Ratification of C.190 in Addressing GBV in RMG Industries

Women comprise 61.2 % of the RMG workers in Bangladesh, and most have poverty-stricken backgrounds.[87] It is reported in a 2023 study that 45% of women experience sexual violence, 22% endure psychological harassment, 17% face verbal abuse, 7% are victims of physical violence, and 9% encounter economic exploitation.[88] 86% of women workers reported that the perpetrators are their male supervisors.[89] GBV in the RMG industries ranges from bullying, beating, indecent gestures, improper touching, deprivation of bathroom breaks etc., to sexual coercion, assault, and rape.[90] Managers and supervisors frequently use sexualised threats, offensive words, slang for errors, late arrival, asking for leave, involvement in TU activities, and increasing productivity.[91] The female workers rarely protest or complain against ill-treatment because it is considered

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83 Ministry of Labour and Employement (n 78).

84 Ibid.

85 Ibid.

86 Department of Inspection for Factories & Establishment and Ministry of Labour and Employment, 'Labour Inspection Report (2019-2020)' (2019) <http://www.dife.gov.bd/site/publications/33dcce2d-e813-468d-9d71-67d5a3723d92/শ্রম-পরিদর্শন-প্রতিবেদন-২০১৮---২০১৯/-> accessed on 12 April 2024.

87 Department of Inspection for Factories & Establishment, 'National Profile on Occupational Safety and Health in Bangladesh 2019' (2021) <https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_819727/lang--en/index.htm> accessed on 12 April 2024; Siddiqi (n 25); Naila Kabeer, 'Gender Equality and Economic Growth' [2018] Women and Girls Rising 205.

88 Solidary Center (n 6).

89 Shojag Coalition (n 4).

90 ActionAid (n 18); Human Rights Watch (n 69); Islam (n 22); Shojag Coalition (n 4); Solidary Center (n 6).

91 Islam (n 22); Human Rights Watch (n 6); Siddiqi (n 25); Karmojibi Nari (n 66); Fair Wear Foundation (n 6); Matsuura and Teng (n 64); Shojag Coalition (n 4); Solidary Center (n 6).

indecent.[92] Thus, their vulnerable economic condition and strict patriarchal sociocultural setting also contribute to normalizing GBV in the RMG sector. C.190 identifies that workplace GBV curtails human rights and is incompatible with decent work conditions (Preamble, Para 6). It declares zero-tolerance against abusive workplace practices and singular incidents of harassment (Preamble, Para 8, read with Article 1). The ratification of the Convention will guide the GoB in eradicating abusive practices in RMG industries. C. 190 protects all workers in public and private, formal and informal, and urban and rural sectors and includes apprentices, volunteers, job seekers, and trainees (Article 2). The inclusion of informal workers is noteworthy because they are often least protected by law. Since most RMG workers are appointed without a contract or appointment letter,[93] C.190 can safeguard them.

Formal reporting is less frequent in the RMG industries, and complaints are only lodged for severe incidents like rape.[94] They often prefer resigning to filing complaints.[95] Workers receive threats (e.g. beating, firing, blacklisting) or psychologically harassed (threats of demotion, bullying, and prevention from using restrooms) after formal reporting.[96] The workers are also not well informed about the formation of the CC or the employer's responsibilities in this regard, making the formal reporting even lower.[97] Moreover, the scattered penal provisions in different criminal laws have different jurisdictions, procedures and remedial mechanisms.[98] The complexity of the judicial process makes access to justice even more confusing to the victims, and the RMG workers are less likely to pursue courts. C.190 advocates for a uniform remedial mechanism, and the accompanying R.206 provides comprehensive guidance to the member state. It also guarantees access to remedies through judicial and internal mechanisms (Articles 4 and 10), which is minimal in RMG industries. C.190 also entails behavioural training and awareness programs (Article 11), which are much needed in the RMG sector.

The small sub-contracting RMG industries are less likely to comply with

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92 Begum and others (n 5); Shojag Coalition (n 4); Solidary Center (n 6).

93 Fair Wear Foundation (n 6); Siddiqi (n 25).

94 Islam (n 22); Human Rights Watch (n 6); Matsuura and Teng (n 64); Shojag Coalition (n 4).

95 Simeen Mahmud and Naila Kabeer, 'Compliance Versus Accountability: Struggles for Dignity and Daily Bread in the Bangladesh Garment Industry' (2003) 29 Bangladesh Development Studies 21; Matsuura and Teng (n 64); Solidary Center (n 6).

96 Human Rights Watch (n 6); Islam (n 22); Fair Wear Foundation (n 6); Shojag Coalition (n 4); Solidary Center (n 6).

97 Yasmin (n 22); Human Rights Watch (n 6); Matsuura and Teng (n 64).

98 Yasmin (n 22).

labour laws.[99] The owners are still reluctant about workplace violence, and the RMG industries also lack proper human resource policies and safeguard mechanisms within their institutional setting to address it.[100] Moreover, establishing CC is not yet mandatory, so many RMG industries are negligent in forming it.[101] The OSH measures in the labour legislation focus on health and safety and discusses workplace harassment separately. The conceptual ambiguity and lack of definitive legal standards confuse the employers and stakeholders, and they refuse to include GBV within OSH within institutional measures.[102] The safety committee can safeguard minimal institutional compliance for OSH measures but cannot recommend actions to eliminate GBV. Employers' organisations like BGMEA and BKMEA also do not prioritise GBV.[103] Trade Unions (TU) have less female representation in RMG industries and often remain negligent about harassment.[104]

After ratification of C.190, the member states are bound to adopt intersectional and gender-responsive legislation to guarantee access to justice (Preamble, Para 12 and Article 4). C.190 imposes a three-fold duty on the states to prevent and protect (Articles 7 and 8) workplace GBV, enact necessary legislation, and guarantee access to remedy (Articles 9 and 10). The employers and TUs are equally responsible for implementing anti-harassment laws under C.190. This strict liability can secure compliance by the GoB and employers groups. It is thus more practical in terms of implementation than other international instruments. Besides, ratification of C.190 may require a new legal formulation or amendment in the laws of Bangladesh (specifically the BLA), as the existing labour legislation lacks necessary sanctions for non-compliance. Furthermore, it advocates for including workplace violence within the existing OSH measure to make the notion of workplace safety even more holistic (Article 12). After the Rana Plaza incident, Bangladesh has already been prioritising OSH measures in RMG industries. The inclusion of GBV within the OSH legislation can ensure better implementation.

The buyers' groups of RMG products (mostly Multi-National Corporations (MNCs), brands, and supply chains) are reluctant to comply with the international standards of decent work, only prioritise cheap labour and are unwilling to pay

[99] Mahmud and Kabeer (n 96); Siddiqi (n 25).

[100] ActionAid (n 18); Fair Wear Foundation (n 6); Human Rights Watch (n 69); Yasmin (n 22); Shojag Coalition (n 4); Solidary Center (n 6).

[101] ActionAid (n 18); Karmojibi Nari (n 66); Yasmin (n 22). {"id":"ITEM-2","itemData": {"ISBN": "1200120000","abstract":"Bangladesh's ready-made garment (RMG

[102] Yasmin (n 22).

[103] Ibid; Solidary Center (n 6).

[104] Matsuura and Teng (n 64); Islam (n 22); Human Rights Watch (n 69); Solidary Center (n 6).

the compliance cost.[105] They often terminate contracts if records of harassment are found in the establishment, so the employers discourage formal complaints.[106] Unfortunately, existing labour laws of Bangladesh omit MNCs within the definition of 'employers'. They remain outside the jurisdiction of labour legislation, thus evading their responsibilities. The UN Guiding Principles on Business and Human Rights (UNGP) 2011 requires the MNCs to respect human rights without imposing strict liability (Principles 13 and 17). The ILO Resolution Concerning Decent Work in Global Supply Chains 2016 also outlines their responsibility to respect labour rights and promote sustainable workplaces. However, the MNCs are reluctant to extend their responsibilities to the RMG industries.[107] C.190 is not explicit on the responsibility of the MNCs, but a liberal interpretation of the term 'employers' can bring them under its scope. Ratification of C.190 will require the GoB to enact new laws or make necessary amendments to bring the MNCs under national jurisdiction and impose strict liabilities.

C.190 is now open for ratification and has entered into force on 25 June 2021. It has been ratified by thirty-nine (39) countries so far.[108] Upon ratification, it will be legally binding on member states (the ILO Constitution, Article 19,5). Some NGOs have already started advocating against workplace GBV from RMG industries, taking the C.190 as a gold standard. Better Work Bangladesh (BWB) partnered with 400 RMG factories, brands and realtors to implement the standards set in the C.190.[109] The Shojag (Awaken) Coalition, a partnership of BLAST, BRAC, Christian Aid, Naripokkho etc., are conducting awareness campaigns among RMG workers about workplace GBV in line with the standard of C.190.[110] Fair Wear Foundation and Solidarity Center is also working with GoB, DIFE, international brands and suppliers to eliminate GBV from RMG industries.[111]Therefore, the ratification of C.190 by Bangladesh can legally bind GoB and employers to eliminate GBV for RMG industries.

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[105] Clean Cloth Campaign, 'Gender Based Violence in the Walmart Garment Supply Chain: Workers Voices from the Global Supply Chain' <https://asia.floorwage.org/wp-content/uploads/2019/10/GBV-walmart.pdf> accessed on 19 May 2024; Fair Wear Foundation (n 6).

[106] Fair Wear Foundation (n 6); Human Rights Watch (n 6); Matsuura and Teng (n 64); Yasmin (n 22); Shojag Coalition (n 4).

[107] Human Rights Watch (n 69).

[108] ILO, 'Ratifications of ILO Conventions: C.190' (*Normlex*, 2021) <https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312247> accessed on 19 May 2024.

[109] Better Work Bangladesh (n 82).

[110] Shojag Coalition (n 4).

[111] Fair Wear Foundation (n 6); Solidary Center (n 6).

4. Findings and Conclusion by way of Recommendations

4.1. Findings

Harassment and violence against female workers are endemic in RMG industries. It is often used as a mechanism to discipline them and increase their productivity. Power imbalance due to weak social and economic position, strict cultural mindset, lack of decision-making capacity, etc., contributes to their vulnerability. GBV is normalised, and employers, supervisors, and even workers consider this to be normal workplace behaviour. The concept of workplace GBV is relatively vague in Bangladesh's legislative framework. Although different forms of GBV are penalized, none of the legislation distinctively defines GVB or sexual harassment as a crime. Moreover, the complexity of the judicial process makes RMG workers less likely to pursue the criminal justice system.

Despite several efforts, Bangladesh still has no anti-harassment law, and the HCD directives remain binding for workplaces in the vacuum. However, the directives provide a list of conducts resulting in sexual harassment at the workplace but lack a precise definition of GBV or harassment. The labour legislation of Bangladesh also fails to define workplace GBV as a distinct offence, but the BLR Amendment of 2022 lists some behaviours resulting in workplace GBV in compliance with the HCD directives. The directives require all industries to form CC but fail to provide adequate guidelines regarding the formation, procedures and safeguard measures for CC members. The BLR is also silent in this regard. Therefore, CCs often fail to function properly, and the owners often threaten the committee members in the RMG industries. Besides, no action can be taken for non-formation of the CC in industries. Hence, the RMG industry owners and employers' associations are reluctant to form the CC.

The owners are also unwilling to assist workers in accessing internal remedial mechanisms as they fear losing the buyer's contract. Besides, the perpetrators are often among the supervisors and can escape liability because of their power dominance. Workers are unwilling to avail of remedies as they fear retaliation and prefer leaving their jobs. Reporting is infrequent unless the incident is serious, like rape. TUs are also less engaged with advocacy against workplace GBV. Thus, the absence of proper punitive measures against the perpetrators and inadequate policy implementation is making the internal non-judicial settlement mechanisms obsolete. The labour legislation of Bangladesh also omits workplace GBV within OSH measures. Therefore, the existing OSH implementation measures in the RMG industries via the safety committee, cannot foster the notion of a harassment-free workplace. In all, the suffering of the RMG workers remains unchanged in the absence of anti-harassment legislation or necessary amendments in the BLA.

C.190 can transform the current situation because it protects workers and mandates the implementation of laws. It is the first international document

that explicitly defines harassment and violence as a range of behaviours in the world of work causing physical, psychological, sexual or economic harm. C.190 also protects all kinds of workers, including informal workers, jobseekers and apprentices. The Convention includes a wide range of work-related situations to clarify the world of work. The employer is still liable when GBV occurs beyond the physical workplace, but the worker remains within the employment contract. The holistic view can help Bangladesh to redefine the concept and formulate a gender-sensitive remedial mechanism. C.190 not only delivers a uniform standard but also includes GBV within OSH measures. Besides, R.206 suggests detailed guidelines for the state party to formulate comprehensive legislation. Bangladesh is already invested in improving OSH conditions in the RMG industries, and the inclusion of workplace GBV within its purview can ensure the ultimate well-being of female workers.

C.190 also imposes a strict liability of compliance on states and employers. Thus, it conveys better protection to workers and guarantees access to remedial measures. After ratifying the Convention, the RMG industry owners will not be able to escape liability and will be obliged to form CC and effectively implement internal remedial mechanisms. Furthermore, the national legislative frameworks will be exhaustive in rendering adequate remedies to victims and punishing perpetrators. A new amendment to the existing legislative framework and strict implementation of anti-harassment laws can be expected upon ratifying C.190. Unfortunately, The existing labour legislation of Bangladesh omits the responsibility of the MNCs, though they are the primary buyers of RMG products. Even though C.190 does not clarify the obligation of MNCs, a liberal interpretation of the term ‘employer’ can place the MNCs within its scope. Bangladesh can also formulate or amend labour legislation by broadly defining ‘employers’ to make the MNCs accountable after the ratification of the Convention. The situation of female RMG workers is yet to change in Bangladesh despite legal advancements, and Bangladesh must ratify C. 190 to render better protection to RMG workers.

4.2. Recommendations

The ratification of C.190 can eliminate violence and harassment from the RMG industries of Bangladesh. The country should ratify the Convention to fulfil its constitutional obligation, and TUs and labour activists should create pressure. Comprehensive anti-harassment legislation should be drafted, and the labour legislation should be amended as per C.190 with strict compliance requirements and necessary sanctions. Guidelines provided in R.206 can be taken into account while formulating gender-sensitive remedial mechanisms. The GoB and the judiciary should also take dynamic steps to ensure compliance with the existing remedial mechanism. Moreover, workplace GBV should be included within the purview of OSH measures under BLA to ensure compliance through

the safety committee. Bangladesh should also ratify necessary international OSH instruments and adhere to international standards to ensure the highest attainable well-being of a worker.

Awareness is essential to guarantee access to justice. Rules and procedures for non-judicial settlement mechanisms should be well-circulated among RMG workers. The MoEL, through DIFE, should speed up the formation of the CC and ensure regular surveillance. The DIFE needs to enhance the capacity of the labour inspectors to identify and deal with the workplace. TUs, labour activists, and buyer groups can also help the MoEL to make owners accountable and collaborate in awareness campaigns. Workplace behavioural training is needed for owners, workers, and other personnel to change the sociocultural mindset. Employers' encouragement and TU's representation can help victims break the silence and come forward with formal complaints. Moreover, legal aid in formal litigations should be accessible to underprivileged RMG workers. A liberal interpretation of the term employers can bring the MNCs and international retailers under the scope of C.190. The labour legislation should be amended accordingly to make them liable for workplace GBV in RMG industries. The concept of ethical products should be promoted to make consumers aware of the harassment and violence in RMG industries. Pressure from consumers can compel the owners and buyers to comply with national and international standards.

4.3. Conclusion

Despite significant economic contribution, female RMG workers in Bangladesh face GBV in the workplace. Bullying and sexualised threats are customary practices. Even though some legal protection is granted, GBV is prevalent in RMG industries. Workers are unwilling to access the criminal justice system unless the crime is serious. They are less likely to lodge formal complaints with CC because of a lack of faith in the internal remedial mechanism, fear towards management and other economic and sociocultural factors. Employers are reluctant to comply with laws and escape liability due to inadequate sanctions. Workplace GBV remains a neglected topic and is not included within the existing OSH framework. Overall, the existing legislation is failing to render adequate protection to the RMG workers. C.190 has made the member states and the employers equally responsible for ensuring compliance with international standards, which can help to improve the situation. It has not only broadened the concept of workplace GBV but also urges its inclusion within the OSH policy of the states to render holistic protection to workers. It pledges to create a world of work free from GBV, contains detailed guidelines for the national formulation, and guarantees access to justice by workers. The ratification of C.190 can ensure gender equality and safe workplaces for RMG workers in Bangladesh.