

# 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.<sup>1</sup> 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.<sup>2</sup> These actions create a hostile working environment and can lead to forced labour practices.<sup>3</sup> Contrary to popular belief, GBV at work

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<sup>1</sup> 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](https://www.care.at/wp-content/uploads/2018/06/ThisIsNotWorking_CA-Advocacy-Report_April-2018.pdf)> accessed 3 June 2024.

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

<sup>3</sup> 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.<sup>4</sup> Even though the feminisation of labour in the RMG industries<sup>5</sup> 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.<sup>6</sup>

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

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*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>>.

<sup>4</sup> 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.

<sup>5</sup> F Begum and others, 'Harassment of Women Garment Workers in Bangladesh' (2010) 8 *Journal of Bangladesh Agricultural University* 291.

<sup>6</sup> Fair Wear Foundation, 'Breaking the Silence: The FWF Violence and Harassment Prevention Programme' (Fair Wear Foundation 2018) <[https://api.fairwear.org/wp-content/uploads/2018/04/2018\\_FWF\\_Breaking-the-silence.pdf](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...](https://www.solidaritycenter.org/category/asia/bangladesh/#:~:text=In%20Bangladesh%2C%2080%20percent%20of,other%20women%20in%20the...)> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> GBV and harassment can manifest as physical, psychological, verbal or non-verbal actions,<sup>10</sup> 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

<sup>7</sup> 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.

<sup>8</sup> Sandra Fredman FBA KC, *Discrimination Law* (Oxford University Press 2022).

<sup>9</sup> Fitzgerald, Gelfand and Drasgow (n 2); Fitzgerald and others (n 7).

<sup>10</sup> 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.<sup>11</sup> Contrary to common belief, GBV can be directed to any person regardless of gender.<sup>12</sup> Men and non-binary individuals can also experience workplace GBV, but women are more susceptible to it.<sup>13</sup> 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.<sup>14</sup> The biological model suggests that men's sexual advances toward women in the workplace are inherent behaviours driven by evolutionary imperatives.<sup>15</sup> The organizational model argues that harassment is often employed as a tool for dominance within organizations, embedded in power structures and workplace norms.<sup>16</sup> Besides, workplaces with lenient attitudes towards sexual behaviour and weak sanctions experience higher harassment rates.<sup>17</sup> It is evident in Bangladesh, where harassment is rampant in the RMG industries due to weak organizational prevention and remedial measures.<sup>18</sup>

The sociocultural model views workplace harassment as a manifestation of male dominance that hinders the professional and economic growth of women.<sup>19</sup> 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.<sup>20</sup> The sex-role spillover model, another well-known framework, indicates that harassment is more frequent in

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

<sup>12</sup> Lach and Gwartney-Gibbs (n 4).

<sup>13</sup> 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.

<sup>14</sup> Sandra S Tangri, Martha R Burt and Leonor B Johnson, 'Sexual Harassment at Work: Three Explanatory Models' (1982) 38 Journal of Social Issues 33.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid; O'Hare and O'Donohue (n 11); Fitzgerald, Gelfand and Drasgow (n 2).

<sup>17</sup> Fitzgerald, Gelfand and Drasgow (n 2).

<sup>18</sup> 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).

<sup>19</sup> O'Hare and O'Donohue (n 11); Tangri, Burt and Johnson (n 14).

<sup>20</sup> Begum and others (n 5); Solidary Center (n 6).

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

*Quid pro quo*<sup>23</sup> and hostile workplace conditions<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> High pressure to meet production targets often creates hostile working environments, where slang and physical abuse are used to speed up work.<sup>28</sup>

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

<sup>21</sup> 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).

<sup>22</sup> 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](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).

<sup>23</sup> *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)

<sup>24</sup> *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993)

<sup>25</sup> 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).

<sup>26</sup> Fitzgerald, Gelfand and Drasgow (n 2); Fitzgerald and others (n 7).

<sup>27</sup> 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).

<sup>28</sup> 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.<sup>29</sup> It not only impairs workers' competence but also tarnishes the workplace's reputation.<sup>30</sup> It affects women's physical and mental well-being, productivity, career development, and integration into the economy, and RMG workers reported the same.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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

<sup>29</sup> 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).

<sup>30</sup> Fitzgerald and others (n 7); Truskinovsky, Rubin and Brown (n 27); Anjum and others (n 29).

<sup>31</sup> 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).

<sup>32</sup> Yasmin (n 22).

<sup>33</sup> Shreya Atreya, *Intersectional Discrimination* (Oxford University Press, USA 2019).

workplace GBV without precisely defining the concept.<sup>34</sup> 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.<sup>35</sup> Many women struggled to label unwanted conduct as harassment due to vague and inconsistent definitions across different legal systems and organizational policies.<sup>36</sup> 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.<sup>37</sup> It can be direct, where someone is treated less favourably, and indirect, where apparent neutral policies disproportionately affect disadvantaged groups.<sup>38</sup> 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.<sup>39</sup> 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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<sup>34</sup> Michel Daher, 'World Report on Violence and Health' (2003) 51 *Journal Medical Libanais* 59.

<sup>35</sup> Gelfand, Fitzgerald and Drasgow (n 7); Fitzgerald and others (n 7).

<sup>36</sup> Fitzgerald and others (n 7); Gelfand, Fitzgerald and Drasgow (n 7).

<sup>37</sup> KC (n 8).

<sup>38</sup> *Ibid.*

<sup>39</sup> Yasmin (n 22).

context-sensitive approach is crucial for ensuring justice for victims.<sup>40</sup>

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.<sup>41</sup> 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<sup>42</sup> model.<sup>43</sup> Recognizing intersectional<sup>44</sup> discrimination is essential, as individuals often face compounded disadvantages due to multiple and intersecting factors like race, gender, age, class, and disability.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

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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<sup>40</sup> Atrey (n 33).

<sup>41</sup> Sandra Fredman, 'Substantive Equality Revisited' (2016) 14 International Journal of Constitutional Law 712.

<sup>42</sup> 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.

<sup>43</sup> KC (n 8); Fredman (n 41); Atrey (n 33).

<sup>44</sup> 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).

<sup>45</sup> KC (n 8); Fredman (n 41); Atrey (n 33).

<sup>46</sup> Atrey (n 33).

<sup>47</sup> Ibid.

to accommodate intersecting identities to guarantee adequate protection against discrimination.<sup>48</sup> 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.<sup>49</sup> 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, hygiene 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.<sup>50</sup> 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

<sup>48</sup> Fredman (n 41); KC (n 8).

<sup>49</sup> Arey (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/>>.

<sup>50</sup> 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.<sup>51</sup> Eliminating GBV is one of the properties 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.

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<sup>51</sup> 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](http://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.<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup> 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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<sup>52</sup> Yasmin (n 22).

<sup>53</sup> Taslima Yasmin, “Sexual Violence in Bangladesh: Addressing gaps in the Legal Framework”, *Dhaka University Law Journal*, 28 (2017) 109.

<sup>54</sup> 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*<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> 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,

<sup>55</sup> [2009] 14 BLC 694.

<sup>56</sup> 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.

<sup>57</sup> 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.<sup>58</sup> 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*<sup>59</sup> 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

<sup>58</sup> Awaj Foundation, 'Annual Report 2019-2020' (2020).

<sup>59</sup> [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.<sup>60</sup> 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.<sup>61</sup> 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,

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<sup>60</sup> Siddiqi (n 25); Fair Wear Foundation (n 6).

<sup>61</sup> Yasmin (n 22).

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

<sup>62</sup> 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.

<sup>63</sup> 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](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_754669.pdf)> accessed on 20 May 2024; Shojaq Coalition (n 4); Solidary Center (n 6).

<sup>64</sup> ActionAid (n 18); Matsuura and Teng (n 64); Shojaq Coalition (n 4).

<sup>65</sup> 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

<sup>66</sup> Yasmin (n 22).

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

<sup>68</sup> 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>>; Shojaq Coalition (n 4); Solidary Center (n 6).

<sup>69</sup> 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.<sup>70</sup> Besides, the GoB lacks the effort to introduce a comprehensive plan of action to implement the directives.<sup>71</sup>

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.<sup>72</sup> Though the case is pending further hearing,<sup>73</sup> the HCD expressed dissatisfaction because of the absence of anti-harassment committees in all educational institutions and workplaces.<sup>74</sup> A lack of consensus among the stakeholders in formulating comprehensive legislation against workplace GBV is evident.<sup>75</sup> At least five different drafts were prepared,<sup>76</sup> 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.<sup>77</sup> 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

<sup>70</sup> Yasmin (n 22); Solidary Center (n 6).

<sup>71</sup> Yasmin (n 22); Solidary Center (n 6).

<sup>72</sup> 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>>.

<sup>73</sup> Yasmin (n 22).

<sup>74</sup> The Daily Star (n 73).

<sup>75</sup> Solidary Center (n 6).

<sup>76</sup> The Daily Star (n 73).

<sup>77</sup> Ministry of Labour and Employment, '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](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.<sup>78</sup> 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).<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup>

Even though workplace GBV is not included within OSH, the Labour Inspection Checklist<sup>82</sup> (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).

<sup>78</sup> 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.

<sup>79</sup> Ministry of Labour and Employment (n 78).

<sup>80</sup> Yasmin (n 22); Ministry of Labour and Employment (n 78).

<sup>81</sup> 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).

<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup> It also launched a helpline to receive direct complaints from workers but has received fewer complaints regarding workplace violence.<sup>85</sup> 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.<sup>86</sup> 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.<sup>87</sup> 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.<sup>88</sup> 86% of women workers reported that the perpetrators are their male supervisors.<sup>89</sup> GBV in the RMG industries ranges from bullying, beating, indecent gestures, improper touching, deprivation of bathroom breaks etc., to sexual coercion, assault, and rape.<sup>90</sup> Managers and supervisors frequently use sexualised threats, offensive words, slang for errors, late arrival, asking for leave, involvement in TU activities, and increasing productivity.<sup>91</sup> The female workers rarely protest or complain against ill-treatment because it is considered

<sup>83</sup> Ministry of Labour and Employment (n 78).

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> 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/33dccc2d-e813-468d-9d71-67d5a3723d92/শ্রম-পরিদর্শন-প্রতিবেদন-২০১৮---২০১৯/->> accessed on 12 April 2024.

<sup>87</sup> 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](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.

<sup>88</sup> Solidary Center (n 6).

<sup>89</sup> Shojag Coalition (n 4).

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

<sup>91</sup> 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.<sup>92</sup> 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,<sup>93</sup> C.190 can safeguard them.

Formal reporting is less frequent in the RMG industries, and complaints are only lodged for severe incidents like rape.<sup>94</sup> They often prefer resigning to filing complaints.<sup>95</sup> Workers receive threats (e.g. beating, firing, blacklisting) or psychologically harassed (threats of demotion, bullying, and prevention from using restrooms) after formal reporting.<sup>96</sup> 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.<sup>97</sup> Moreover, the scattered penal provisions in different criminal laws have different jurisdictions, procedures and remedial mechanisms.<sup>98</sup> 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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<sup>92</sup> Begum and others (n 5); Shojag Coalition (n 4); Solidary Center (n 6).

<sup>93</sup> Fair Wear Foundation (n 6); Siddiqi (n 25).

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

<sup>95</sup> 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).

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

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

<sup>98</sup> Yasmin (n 22).

labour laws.<sup>99</sup> 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.<sup>100</sup> Moreover, establishing CC is not yet mandatory, so many RMG industries are negligent in forming it.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> Trade Unions (TU) have less female representation in RMG industries and often remain negligent about harassment.<sup>104</sup>

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

<sup>99</sup> Mahmud and Kabeer (n 96); Siddiqi (n 25).

<sup>100</sup> ActionAid (n 18); Fair Wear Foundation (n 6); Human Rights Watch (n 69); Yasmin (n 22); Shojag Coalition (n 4); Solidary Center (n 6).

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

<sup>102</sup> Yasmin (n 22).

<sup>103</sup> Ibid; Solidary Center (n 6).

<sup>104</sup> Matsuura and Teng (n 64); Islam (n 22); Human Rights Watch (n 69); Solidary Center (n 6).

the compliance cost.<sup>105</sup> They often terminate contracts if records of harassment are found in the establishment, so the employers discourage formal complaints.<sup>106</sup> 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.<sup>107</sup> 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.<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup> Fair Wear Foundation and Solidarity Center is also working with GoB, DIFE, international brands and suppliers to eliminate GBV from RMG industries.<sup>111</sup> Therefore, the ratification of C.190 by Bangladesh can legally bind GoB and employers to eliminate GBV for RMG industries.

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<sup>105</sup> 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).

<sup>106</sup> Fair Wear Foundation (n 6); Human Rights Watch (n 6); Matsuura and Teng (n 64); Yasmin (n 22); Shojag Coalition (n 4).

<sup>107</sup> Human Rights Watch (n 69).

<sup>108</sup> 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](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312247)> accessed on 19 May 2024.

<sup>109</sup> Better Work Bangladesh (n 82).

<sup>110</sup> Shojag Coalition (n 4).

<sup>111</sup> Fair Wear Foundation (n 6); Solidarity 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