

**THE BALOCHISTAN PROTECTION AGAINST HARASSMENT OF
WOMEN AT WORKPLACE ACT, 2016**

(Baln Act I of 2016)

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'THE BALOCHISTAN PROTECTION AGAINST HARASSMENT OF WOMEN AT WORKPLACE ACT, 2015

(Balochistan Act I of 2016)

[22nd January, 2016]

An Act to provide for the protection of women against harassment at the workplace.

Preamble.

WHEREAS, the Constitution² of Islamic Republic of Pakistan recognizes the fundamental rights of every citizens of Pakistan to dignity of person, it is expedient to provide for the Protection Against Harassment of Women at the workplace and the matters connected therewith or ancillary thereto;

It is hereby enacted as follows:—

Short title, extent and commencement

1. (1) This Act may be called as the Balochistan Protection Against Harassment of Women at the Workplace Act, 2016.

(2) It shall extend to the whole of Balochistan, except the Provincially Administrative Tribal Areas.

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “**accused**” means an employee or employer of an organization against whom complaint has been made under this Act;

(b) “**Act**” means the Balochistan Protection Against Harassment of Women at the Workplace Act, 2016;

(c) “**CBA**” means Collective Bargaining Agent as provided in the Balochistan Industrial Relations Act, 2010 (Act No. XIII of 2010) or any other law for the time being in force;

(d) “**Code**” means the Code of Conduct as mentioned in the Schedule to this Act;

¹ This Act was passed by the Balochistan Assembly on 16th January, 2016; assented to by the Governor of Balochistan on 21st January, 2016; and published in the Balochistan Gazette (Extraordinary) No. 7, dated 22nd January, 2016.

² The Constitution of Islamic Republic of Pakistan, 1973; published in the Gazette of Pakistan on 12th April, 1973; and came into force with effect from 14th August, 1973.

- (e) “**Competent Authority**” means the authority as may be designated by the management for the purposes of this Act;
- (f) “**Complainant**” means a woman or man who has made a complaint to the Ombudsperson or to the Inquiry Committee on being aggrieved by an act of harassment;
- (g) “**Employee**” means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an apprentice;
- (h) “**Employer**” in relation to an organization, means any person or body of persons whether incorporated or not, who or which employs workers in an organization under a contract of employment or in any other manner whosoever and includes—
 - (i) an heir, successor or assign, as the case may be, of such person or, body as aforesaid;
 - (ii) any person responsible for the direction, administration, management and control of the management;
 - (iii) the authority, in relation to an organization or group of organizations run by or under the authority of the Government, the Federal Government or any other Provincial Government, appointed in this behalf or, where no such authority is appointed, the head of the organization or group of organizations;
 - (iv) the office bearer, in relation to an organization run by or on behalf of the local authority, appointed in this behalf, or where no officer is so appointed, the chief executive officer bearer of that authority;
 - (v) the proprietor, in relation to any other

organization, of such organization and every director, manager, secretary, agent or office bearer or person concerned with the management of the affairs thereof;

- (vi) a contractor or an organization of a contractor who or which undertakes to procure the labour or services of employees for use by another person or in another organization for any purpose whatsoever and for payment in any form and on any basis whatsoever; *and*
- (vii) office bearers of a Federal or a Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;
- (i) “**Government**” means the Government of Balochistan;
- (j) “**harassment**” means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, any kind of threats, blackmailing, mental and physical torture, attempt for defamation or defamation through modern techniques, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;
- (k) “**Helpline**” means the helpline to be established by the Women Department;
- (l) “**Inquiry Committee**” means the Inquiry Committee established under section 3 (1) of the Act;
- (m) “**Management**” means a person or body of person responsible for the management of the affairs of an organization and includes an employer;
- (n) “**Ombudsperson**” means the Ombudsperson

appointed under section 7 of the Act;

- (o) **“Organization”** means a Federal or Provincial Government ministry, division or department, a corporation or any autonomous or semi-autonomous body, Educational Institutes, Medical facilities established or controlled by the Federal or Provincial Governments or District Governments or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984¹ (XLVII of 1984) and includes any other registered private sector organization or institution;
- (p) **“Schedule”** means Schedule annexed to this Act;
- (q) **“Workplace”** means the place of work or the premises where an organization or employer operates and includes building, factory, transport, open area or a larger geographical area where the activities of the organization or of employer are carried out and including any situation that is linked to official work, official activity or other activities outside the office.
- (r) **“Restaurant”** means a public eating-house providing standard and variety of cuisines on monetary consideration to tourists, which conforms to the minimum prescribed criteria;
- (s) **“Service”** means any service provided in a hotel or a restaurant; *and*
- (t) **“Tourist”** means a person, whether a citizen of Pakistan or not, who stays over-night or more as a guest in a hotel or at a place other than his normal place of residence.

- Inquiry Committee.
3. (1) Each organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under the Act.
- (2) The Committee shall consist of five members, out of whom at least two members shall be women. One

¹ An Ordinance made by the President of Pakistan and published in the Gazette of Pakistan (Extraordinary), Part I, dated 8th October, 1984; saved and protected under Article 270A of the Constitution of Islamic Republic of Pakistan, 1973; which repealed the earlier Act VII of 1913, S. 508, 7th Schedule.

member shall be from senior management and shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.

(3) In case a complaint is made against one of the members of the Inquiry committee that member should be replaced by another for that particular case. Such member may be from within or outside the organization.

(4) In case where no competent authority is designated the organization shall within thirty days of the enactment of this Act designate a competent authority.

Procedure for holding Inquiry.

4. (1) The Inquiry Committee, within three days of receipt of a written complaint, shall—

- (a) communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given;
- (b) require the accused within seven days from the day the charge is communicated to him to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed ex- parte; and
- (c) enquiry into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him.

(2) Subject to the provisions of the Act and rules made there under, the Inquiry Committee shall have power to regulate its own procedure for conducting inquiry and for fixing the place and time of its sitting.

(3) The following provisions *inter alia* shall be followed by the Committee in relation to inquiry:—

- (a) the statements and other evidence acquired in the inquiry process shall be

considered as confidential;

- (b) an officer in an organization, if considered necessary, may be nominated to provide advice and assistance to each party;
- (c) both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agent, a friend or a colleague;
- (d) adverse action shall not be taken against the complainant or the witnesses;
- (e) the Inquiry Committee shall ensure that the employer or accused shall in no case create any hostile environment for the complainant so as to pressurize her from freely pursuing her complaint; *and*
- (f) the Inquiry Committee shall give its findings in writing by recording reasons thereof.

(4) The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties;

(a) **Minor penalties:**

- (i) Censure;
- (ii) withholding, for a specific period, promotion or increment;
- (iii) stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; *and*
- (iv) recovery of the compensation payable to the complainant from pay or any other source of the accused; *and*

(b) **Major penalties:**

- (i) Reduction to a lower post or

time-scale, or to a lower stage in a time-scale;

- (ii) removal from service;
- (iii) dismissal from service;
- (iv) fine of rupees fifty thousand, which may extend to rupees five hundred thousand;

Provided that the amount of fine or a part thereof may be paid as compensation to the complainant or the victims; *and*

- (c) The Inquiry Committee may besides the aforesaid punishments, recommend for a criminal proceeding against the accused.

(5) The Competent Authority shall impose the penalty recommended by the Inquiry Committee under subsection (4) within one week of the receipt of the recommendations of the Inquiry Committee.

(6) The Inquiry Committee shall meet on regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of the Competent Authority and Appellate Authority, have been implemented.

(7) In case the complainant is in trauma the organization will arrange for psycho-social counseling or medical treatment and for additional medical leave.

(8) The organization may also offer compensation to the complainant in case of loss of salary or other damages.

Powers of Inquiry Committee.

5. (1) The Inquiry Committee shall have power to —
- (a) summon and enforce attendance of any person and examine him on oath;
 - (b) require the discovery and production of any document;
 - (c) receive evidence on affidavits; *and*
 - (d) record evidence.

(2) The Inquiry Committee shall have the power to inquire into the matters of harassment under the Act, to get the complainant or the accused medically examined by an

authorized doctor, if necessary, and may recommend appropriate penalty against the accused within the meaning of sub-section (4) of section 4.

(3) The Inquiry Committee may recommend to Ombudsperson for appropriate action against the complainant if allegations leveled against the accused found to be false and made with mala fide intentions.

(4) The Inquiry Committee can instruct to treat the proceedings confidential.

Appeal against
minor and
major penalties.

6. (1) Any party aggrieved by decision of the Competent Authority on whom minor or major penalty is imposed may within thirty days of written communication of decision prefer an appeal to an Ombudsperson established under section 7 of the Act.

(2) A complainant aggrieved by the decision of the Competent Authority may also prefer appeal within thirty days of the decision to the Ombudsperson.

(3) The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer.

(4) Until such a time that the Ombudsman is appointed the District Court shall have the jurisdiction to hear appeals against the decisions of Competent Authority and the provisions of sub-sections (1) to (3) shall *mutatis mutandis* apply.

(5) On the appointment of Ombudsman all appeals pending before the District Court shall stand transferred to Ombudsman who may proceed with the case from the stage at which it was pending immediately before such transfer.

Ombudsperson.

7. There shall be an Ombudsperson preferably a woman, for the Province of Balochistan, who shall be appointed by the Government.

(2) The Ombudsperson shall, in all matters, perform his function and exercise his powers fairly, honestly, diligently and independently of the executive and all executive authorities shall act in aid of the Ombudsperson

(3) A person shall be qualified to be appointed as

the Ombudsperson, who is not less than forty five years of age, and—

(a) has been or is qualified to be a Judge of a High Court; *or*

(b) is or has been in the service of Pakistan in BPS-19 or above, possessing LLB Degree and having sufficient experience in the field of Law; *or*

(4) The Ombudsperson shall not—

(a) hold any other office of profit in the service of Pakistan; or

(b) occupy any other position carrying the right to remuneration for the rendering of services.

(5) The Ombudsperson shall hold office for a period of three (3) years, which may be extended for a further period of two years, and shall not be eligible for re-appointment as ombudsperson under any circumstances.

(6) The Ombudsperson may any time resign his office by writing under his hand addressed to the Government.

(7) The Ombudsperson shall be entitled to such salary, allowances and privileges and other terms and conditions of service as the Government may determine and these terms shall not be varied during the term of his office as the Ombudsperson.

(8) The Ombudsperson may appoint such staff as may be required to achieve the purpose of this Act.

(9) At any time, when the Office of the Ombudsperson is vacant, or the Ombudsperson is absent or is unable to perform his function due to any cause, the Government shall appoint an acting Ombudsperson.

Ombudsperson to enquire into complaint.

8. (1) Any employee shall have the option to prefer a complaint either to the Ombudsperson or the Inquiry Committee.

(2) The Ombudsperson shall within 3 days of receiving a complaint issue a written show cause notice to the accused. The accused after the receipt of written notice, shall submit written defense to the Ombudsperson within five days and his failure to do so without reasonable cause the

Ombudsperson may proceed ex parte. Both the parties can represent themselves.

(3) The Ombudsperson shall conduct an inquiry into the matter according to the rules made under this Act and conduct proceedings as the Ombudsperson deems proper.

(4) For the purposes of an investigation under this Act, the Ombudsperson may require any office or member of an organization concerned to furnish any information or to produce any document which in the opinion of the Ombudsperson is relevant and helpful in the conduct of the investigation.

(5) The Ombudsperson shall record his decision and inform both parties and the management of the concerned organization for implementation of the orders.

Representation to Governor.

9. Any person aggrieved by a decision of the Ombudsperson under sub-section (5) of section 8 of the Act, may make a representation to the Governor within thirty days of the communication of the decision, whose decision shall be final.

Powers of the Ombudsperson.

10. (1) The Ombudsperson for the purpose of this Act, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedures, 1908 (Act No. V 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of evidence;
- (c) receiving evidence on affidavits;
- (d) issuing commission for the examination of witnesses;
- (e) entering any premises for the purpose of making any inspection or investigation, enter any premises where the Ombudsperson has a reason to believe that any information relevant to the case may be found; *and*

(2) The Ombudsperson for its contempt shall have the same powers as the High Court has to punish any person for its contempt.

(3) The Ombudsperson while making the decision on the complaint, may impose any of the Minor or Major Penalties as specified in sub-section (4) of section 4 of the Act.

Responsibility of employer.

11. (1) It shall be the responsibility of the employer to ensure implementation of this Act, including but not limited to incorporate the Code of Conduct for protection against harassment at the workplace as a part of their management policy and to form Inquiry Committee referred to in section 3 of the Act and designate a Competent Authority referred to in section 4 of the Act.

(2) The management shall display copies of the Code in English with Translation in Urdu as well as in the language understood by the majority of employees at conspicuous place in the organization and the work place within six months of the commencement of the Act.

(3) On failure of an employer to comply with the provisions of this section any employee of an organization may file a complaint before the Ombudsperson and on having been found guilty the employer shall be liable to fine which may extend to one hundred thousand rupees but shall not be less than twenty-five thousand rupees.

(4) A person aggrieved by an order under sub-section (3) may, within thirty days of the communication of the order, make representation to the Governor whose decision shall be final.

Provision of the Act in addition to and not in derogation of any other law.

12. The provision of this Act shall be in addition to and not in derogation of any other law for the time being in force.

Helpline.

13. The Provincial Women Development Department shall establish a helpline which shall provide information for the help and guidance of victims.

Power to make rules.

14. The Government may make rules to carry out the purposes of this Act.

Repeal and saving.

15. (1) The Protection Against Harassment of Women at the Workplace Act, 2010 (Act No. IV of 2010) as applicable and to the extent of the Province of Balochistan, is hereby repealed.

(2) Notwithstanding the repeal of the Protection Against Harassment of Women at the Workplace Act, 2010 (Act No. IV of 2010) under sub-section (1) (hereinafter referred as the repeal Act), the rules, regulations, bye laws made or saved, orders, and notifications issued, anything done, action taken, obligation, liability, penalty of punishment incurred, inquiry or proceeding commenced, person authorized, jurisdiction of powers conferred under any of the provisions of the repealed Act, if not inconsistent with the provisions of this Act, shall continue to be in force and deemed to have been done, taken, incurred, commenced, appointed, authorized, conferred, made, imposed or assessed, released or issued under this Act, until they are repealed, rescinded, withdrawn, cancelled, replaced or modified in accordance with the provisions of this Act.

(See *Schedule* on next page)

SCHEDULE

[See sections 2(c) and 11]

CODE OF CONDUCT

FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE

Whereas it is expedient to make the Code of Conduct at the Workplace etc to provide protection and safety to women against harassment, it is hereby provided as under:

- (i) The Code provides a guideline for behavior of all employees, including management, and the owners of an organization to ensure a work environment free of harassment and intimidating.
- (ii) “Harassment” means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature, or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;

The above is unacceptable behavior in the organization and at the workplace, including in any interaction or situation that is linked to official work or official activity outside the office.

Explanation: There are three significant manifestations of harassment in the work environment:

(a) Abuse of authority.—

A demand by a person in authority, such as a supervisor, for sexual favors in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job itself.

(b) Creating a hostile environment.—

Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, which interferes with an individual’s work performance or creates an intimidating, hostile, abusive or offensive work environment. The typical “hostile environment” claim, in general, requires finding of a pattern of

offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.

(c) Retaliation.—

The refusal to grant a sexual favor can result in retaliation, which may include limiting the employee's options for future promotions or training, distorting the evolution reports, generating gossip against the employee or other ways of limiting access to his/her rights. Such behavior is also a part of the harassment;

- (iii) An informal approach to resolve a complaint of harassment may be through mediation between the parties involved and by providing advice and counseling on a strictly confidential basis;
- (iv) A complainant or a staff member designated by the complainant for the purpose may report an incident of harassment informally to her supervisor, or a member of the Inquiry Committee, in which case the supervisor or the Committee member may address the issue at her discretion in the spirit of this Code. The request may be made orally or in writing;
- (v) If the case is taken up for investigation at an informal level, a senior manager from the office or the head office will conduct the investigation in a confidential manner. The alleged accused will be approached with the intention of resolving the matter in a confidential manner,
- (vi) If the incident or the case reported does constitute harassment of a higher degree and the officer or a member reviewing the case feels that it needs to be pursued formally for a disciplinary action, with the consent of the complainant, the case can be taken as a formal complaint;
- (vii) A complainant does not necessarily have to take a complaint of harassment through the informal channel. She can launch a formal complaint at any time;
- (viii) The complainant may make formal complaint through her incharge, supervisor, CBA nominee or worker's representative, as the case may be, or directly to any member of the Inquiry Committee. The Committee member approached is obligated to initiate the process of investigation. The supervisor shall facilitate the process and is obligated not to cover up or obstruct the inquiry;
- (ix) Assistance in the inquiry procedure can be sought from any member of the organization who should be contacted to assist in such a case;

- (x) The employer shall do its best to temporarily make adjustments so that the accused and the complainant do not have to interact for official purposes during the investigation period. This would include temporarily changing the office, in case both sit in one office, or taking away any extra charge over and above their contract which may give one party excessive powers over the other's job conditions. The employer can also decide to send the accused on leave, or suspend the accused in accordance with the applicable procedures for dealing with the cases of misconduct, if required;
- (xi) Retaliation from either party should be strictly monitored. During the process of the investigation work, evaluation, daily duties, reporting structure and any parallel inquiries initiated should be strictly monitored to avoid any retaliation from either side;
- (xii) The harassment usually occurs between colleagues when they are alone; therefore usually it is difficult to produce evidence. It is strongly recommended that staff should report an offensive behavior immediately to someone they trust, even if they do not wish to make a formal complaint at the time. Although not reporting immediately shall not affect the merits of the cases; *and*
- (xiii) The Code lays down the minimum standards of behavior regarding protection of women from harassment at workplace etc but will not affect any better arrangement that an organization may have developed nor will it bar the grant of protection that employees working in an institute may secure from their employers through negotiation.
