

BALUCHISTAN PROVINCIAL ASSEMBLY SECRETARIAT
NOTIFICATION

Dated Quetta, the 22nd January 2016

No.PAB/Legis:V(07)/2015. The Balochistan Protection Against Harassment of Women At Work Place Bill,2015 (Bill No 07 of 2015) having been passed by the Provincial Assembly of Balochistan on 16th January 2016, and assented by the Governor, Balochistan on **21st January 2016**, is hereby Published as an Act of the Balochistan Provincial Assembly.

**THE BALUCHISTAN PROTECTION AGAINST HARASSMENT OF
WOMEN AT WORK PLACE**

Act No.01 of 2016

AN

Act

to provide for the protection of women against harassment at the workplace

Preamble.

WHEREAS the Constitution 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;

(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 whatsoever 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, 1984 (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 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;
 - (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 sub-section (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 mutqis 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.

**Secretary,
Balochistan Provincial Assembly**