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REGISTERED No.  
REGISTERED No 1.7646

The Gasette of Pakistan

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

ISLAMABAD, THURSDAY, MARCH 11, 2010

PART I

Acts. Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 11th March, 2010

No. F. 9 (5)/2009-Legis.—The following Acts of Majlis-e-Shoora'  
(Parliament) received the assent of the President on 9th March, 2010, are hereby  
published for general information: —

Acr No. IV ar 2010

An Act to make provisions for the protection against harassment of  
women at the workplace

WHEREAS the Constitution of the Islamic Republic of Pakistan recognizes  
the fundamental right of citizens to dignity of person;

AND WHEREAS it is expedient to make this provision tor the protection of  
women from harassment at the workplace:

(63)

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It is hereby enacted as follows:

1, Short title, extent and commencement.—(1) This Act may be called the Protection against Harassment of women at the Workplace Act, 2010.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.—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) “CBA” means Collective Bargaining Agent as provided in the Industrial Relations Act, 2008 (IV of 2008), or any other law for the time being in force,

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

(d) “Competent Authority” means the authority as may be designated by the management for the purposes of this Act:

(e) “complainant” means a woman or man who has made a complaint to the Ombudsman or to the Inquiry Committee on being aggrieved by an act of harassment; :

(f) “employee” means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an apprentice;

(g) “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:

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the authority, in relation of an organization or a group of Organizations run by or under the authority of any Ministry or department of the Federal Government or a Provincial government, appointed in this behalf or, where no authority is appointed, the head of the Ministry or department as the case may be;

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:

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;

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

office bearers of a department or a Division 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;

“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;

“Inquiry Committee” means the Inquiry Committee established under sub-section (1) of section 3;

“management” means a person or body of persons responsible for the management of the affairs of an organization and includes an employer;

(k) "Ombudsman" means the Ombudsman appointed under section 7:

(1) "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 Government or District Government 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 (XLVI] of 1984) and includes any other registered private sector organization or institution;

(m) "Schedule" means Schedule annexed to this Act; and

(n) "workplace" means the place of work or the premises where an organization or employer operates and includes building, factory, 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 or official activity outside the office.

3. Inquiry Committee.—(1) Each organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act.

(2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one 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.

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

4. Procedure for holding inquiry.— (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

(ce) enquire 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 this Act and any rules made thereunder the Inquiry Committee shall have power to regulate its own procedure for conducting inquiry and for the fixing 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 representative, 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 shail 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 inttiation 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:

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{i} Minor penalties:

- (a) censure;
- (b) withholding, for a specific period, promotion or increment:

{c} stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and

{d} recovery of the compensation payable to the complainant from pay or any other source of the accused:

{ii} Major penalties:

{a} reduction to a lower post or time-scale, or to a lower stage in a time-scale;

(b) compulsory retirement;

(c) removal from service,

{d} dismissal from service; and

(e) Fine. A part of the fine can be used as compensation for the complainant. In case of the owner. the fine shall be payable to the complainant.

(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 Competent Authority and Appellate Authority have been implemented.

(7) Incase 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.

5. Powers of the Inquiry Committee.—(!) The Inquiry Committee shall have power -- .

(a) to summon and enforce attendance of any person and examine him on oath;

(b) to require the discovery and production of any document;

(c) to receive evidence on affidavits; and

(d) to record evidence.

(2) The Inquiry Committee shall have the power to inquire into the matters of harassment under this 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 Ombudsman 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.

6. Appeal against minor and major penalties.—(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 Ombudsman established under section 7.

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

(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. [t 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.



7. Ombudsman.—(1) The respective Governments shall appoint an Ombudsman at the Federal and Provincial levels.

(2) A person shall be qualified to be appointed as an Ombudsman who has been a judge of High Court or qualified to be appointed as a judge of High Court. The Ombudsman may recruit such staff as required to achieve the purposes of this Act and the finances will be provided by the respective Governments.

8. Ombudsman to enquire into complaint.—(1) Any employee shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee.

(2) | The Ombudsman 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 Ombudsman within five days and his failure to do so without reasonable cause the Ombudsman may proceed ex-parte. Both the parties can represent themselves before the Ombudsman.

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

(4) For the purposes of an investigation under this Act, the Ombudsman 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 Ombudsman is relevant and helpful in the conduct of the investigation.

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

9. Representation to President or Governor.—Any person aggrieved by a decision of Ombudsman under sub-section (5) of section 8, may, within thirty days of decision, make a representation to the President or Governor. as the case may be, who may pass such order thereon as he may deem fit.

10. Powers of the Ombudsman. - The Ombudsman shall for the purpose of this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908). in respect of the following matters, namely:

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of evidence;

(iii) receiving evidence on affidavits;

(iv) issuing commission for the examination of witnesses;

(v) entering any premises for the purpose of making any inspection or investigation, enter any premises where the Ombudsman has a reason to believe that any information relevant to the case may be found; and

(vi) the Ombudsman shall have the same powers as the High Court has to punish any person for its contempt.

(2) Ombudsman shall while making the decision on the complaint may impose any of the minor or major penalties specified in sub-section (4) of section 4.

II. Responsibility of employer—(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 and designate a Competent Authority referred to in section 4,

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

(3) On failure of an employer to comply with the provisions of this section any employee of an organization may file a petition before the District Court 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.

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

13. Power to make rules.—The Federal Government may make rules to carry out the purposes of this Act.

Schedule

[See sections 2(c) and t1]

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 intimidation;

(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.

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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 evaluation 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.

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;

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;

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,

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;

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;

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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;

Assistance in the inquiry procedure can be sought from any member of the organization who should be contacted to assist in such a case;

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;

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;

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 case; and

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.