

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW JUSTICE PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT MUZAFFARABAD**

Dated: 8th April, 2014.

No. LD/Legis-Act/339-51/2014. The following Act of Assembly received the assent of the President on the 1st day of April, 2014, is hereby published for general information.

(ACT XX OF 2014)

**An
Act**

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

WHEREAS, the Azad Jammu and Kashmir Interim Constitution Act, 1974 recognizes and guarantees the fundamental rights of citizens to security of person;

AND WHEREAS, it is expedient to make the provision for the protection of women from harassment at the workplace;

It is hereby enacted as follows:-

- 1. Short Title, Extent and Commencement.**- (1) This Act may be called the Azad Jammu and Kashmir protection against harassment of Women at the Workplace Act, 2014.
 - (2) It shall extend to the whole of Azad Jammu and Kashmir.
 - (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) “Appellate Authority” means the District and Session Judge /Additional District and Session Judge entrusted with the powers of Appellate Authority for the purposes of this Act;

- (c) “CBA” means Collective Bargaining Agent as provided in the Industrial Relations Act, 1976 (IV of 1976), as adapted in Azad Jammu and Kashmir or any other law for the time being in force;
- (d) “Code of Conduct” 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) “Complaint” means a written application from a woman working with an organization harassed by an Employee/Employer of the organization;
- (g) “Complainant” means a woman who has made a complaint to the Inquiry Committee on being aggrieved by an act of harassment;
- (h) “Employee” means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis and includes an intern or an apprentice;
- (i) “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 or employment or in any other manner whatsoever and includes,-
 - (i) an heir, successor or assignee, as the case may be, of such person or, body as aforesaid;
 - (ii) any person responsible for the directions, administration, management and control of the business or activities of the organization;
 - (iii) the authority, in relation of an organization or a group of organization run by or under the authority of any Ministry or

department of the Government appointed in this behalf, or, where no authority is appointed, the head of the department as the case may be;

- (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 office bearer of that authority;
- (v) the proprietor of any other 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 department of the Government, autonomous, semi autonomous or local authority who belong to the managerial, secretarial or directorial cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;
- (j) "Government" means the Azad Government of the State of Jammu and Kashmir;
- (k) "Harassment" means any sexual advance, request for sexual favors or other verbal or written communication or physical conduct of sexual nature or sexually demeaning attitude, 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;

- (l) "Inquiry Committee" means the Inquiry Committee established under sub-section (1) of Section 3;
- (m) "Management" means a person or body of persons responsible for the management of the affairs of an organization and includes an employer;
- (n) "Organization" means any ministry, department or attached department of the Government, a corporation or any autonomous or semi-autonomous body, educational or medical services controlled by the Government or registered civil society, associations or privately managed commercial or industrial establishment or institution, a Company as defined in the Companies Ordinance, 1984, as adapted in the State and includes any other registered private sector organization or institution.
- (o) "Schedule" means Schedule annexed to this Act;
- (p) "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;
- (q) "State" means the Azad Jammu and Kashmir.

3 **Inquiry Committee**.- (1) Every Organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act.

(2) The Inquiry 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, one or more members can be co-opted from outside the Organization, if the Organization is unable to designate three members from within the Organization 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.

4. Procedure for holding inquiry.— (1) The Inquiry Committee, within three days of receipt of a written complaint, shall,-

- (a) Communicate to the accused formal written receipt of charges and statement of allegations leveled against him;
- (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 Inquiry Committee shall proceed ex-parte; and
- (c) 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 Inquiry 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 or any rules made thereunder, the Inquiry Committee shall have powers to regulate its own procedure for conducting inquiry and for fixing place and time of its sitting.

(3) The following provisions *inter alia* shall be followed by the Inquiry 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 (CBA), 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 shall in no case create any hostile environment for the Complainant so as to pressurise 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 Competent Authority for imposing one or more of the following penalties;

(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 of the organization, 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) In case the Complainant is in trauma, the Organization shall arrange for psycho-social counseling or medical treatment and 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.- (1) 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 powers 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 Appellate Authority for appropriate action against the Complainant if allegations leveled against the Accused found to be false and made with mala-fide intention.

(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 may within thirty days of written communication of decision prefer an appeal to Appellate Authority.

(2) 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.

7. Appellate Authority.- The Government shall appoint District and Sessions Judges/Additional District and Sessions Judges at the district level to act as Appellate Authority for the purposes of this Act:

Provided that the District and Sessions Judges/Additional District and Sessions Judges, already appointed in districts shall deemed to be appointed under this Act.

8. Functions of Appellate Authority.- (1) The Appellate Authority shall within three days of receiving an appeal under Section 6, issue the notice to the parties to

appear before it.

(2) On appearance of the parties before Appellate Authority, the Accused may be ordered to submit written defense to the Appellate Authority within five days and in case of his failure to do so without reasonable cause the Appellate Authority may proceed ex-parte. Both the parties may appear in person or by their representative or through counsel before the Appellate Authority.

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

(4) Hearing of an appeal under this Act, the Appellate Authority may require any officer or member of an organization concerned to furnish any information or to produce any document which in the opinion of the Appellate Authority is relevant and helpful to decide the appeal.

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

9. Appeal against decision of Appellate Authority.

Any person aggrieved by a decision of Appellate Authority under sub-section (5) of Section 8, may, within sixty days of decision prefer an appeal to the High Court.

10. Power of the Appellate Authority.- The Appellate Authority shall for the purpose of this Act, have the same powers as are vested in it under the Code of Civil Procedures, 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 the witnesses;
- (v) entering any premises for the purpose of making any inspection or investigation, enter any premises where the Appellate Authority has a reason to believe that any information relevant to the case may be found; and
- (vi) the Appellate Authority shall have all powers to punish any person for its contempt.

11. 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 sub-section (4) of Section 3.

(2) The management shall display copies of the Code of Conduct in English as well as in language understood by the majority of Employees at a 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 Appellate Authority and on having been found guilty the Employer shall be liable to fine which may extend to one hundred thousand rupees but not less than twenty five thousand rupees.

12. Provisions of this 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. Powers to make rules.- The Government may make rules to carry out the purposes of this Act.

Sd/-
(Ch. Muhammad Nawaz)
Section Officer Law

SCHEDULE

[see sections 2 (e) 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 provide as under:-

- (i) The Code of Conduct 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 sexual advance, request for sexual favours 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 favours 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 sexual advance, request for sexual favours 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 favour 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.

- (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 formal channel. She can launch an informal 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 procedure for dealing with the cases of misconduct, if required;
- (xi) retaliation from either party should be strictly nominated. 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 case; and

(xiii) this 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.