

Introduction to Barbados:

Barbados is a small island located in the Lesser Antilles. It is 166 square miles, with a population of around 270,000. Barbados operated as a British colony from 1627, and gained independence in 1966. It has remained a member of the Commonwealth; Queen Elizabeth II is the Head of State, and represented by a Governor General (who is required to give royal assent to Bills). Barbados has an independently elected Parliament, and operates under a common law legal system with an independent judiciary.

Position of women in Barbados:

Herskovits and Fraser: “*They both agreed that black family structure as ‘maternal’ and ‘extended’, that the bond between mother and child was close and the conjugal relations non-marital and loose*”¹

Influences on this position are often noted as historical and social factors, including slavery (through the movement of males from women and children, and operation of plantation), industrialization (in particular the mass migration which occurred during the construction of the Panama Canal) and poverty.

Status Quo:

The predominant features associated with the living conditions in Barbados include:

1. Households with high number of children 15 years and under
2. female-headed, and
3. engagement in informal sector activity.²

Type of Household	Rate of Poverty
Female headed	19.4%
Male headed	11.5%
All households	15% ³

- Female headed households account for 47.5% of all households
- Poor households headed by women account for 62.2% of all poor households⁴

Selected Hurdles facing Women and Economic Empowerment in Barbados:

Maternity leave:

Employment of Women (Maternity Leave) Act

Provision	Rights afforded
S4 (1)	<i>Female employees are entitled to 12 weeks maternity leave</i>
S3.1 (3)	- <i>Must have been employed for at least 12 months</i> - <i>Is not entitled by the same employer on more than 3 occasions.</i>
S7	<i>Protects seniority, however notes:</i> - <i>She shall not by reason only of the fact that she went on maternity leave, be paid a smaller remuneration than she received before she went on maternity leave.</i>
S3	For women who have not made sufficient NIS

¹ Gender in Caribbean Development; Working paper series “Women & Development Studies Project” Eds. Patricia Mohammed and Catherine Shepherd

² Barbados Country Assessment of Living Conditions 2010 – funded by Caribbean Development Bank

³ Caribbean Development Bank Jan 2016 : Country Gender Assessment

⁴ Ibid

	contributions (12 months), a grant of \$800 (\$400 US) is available if their spouse qualifies.
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Missing provisions include a lack of any mention of paternity leave. It is widely understood that males wishing to take leave on the birth of their child should do so using annual leave entitlement. The Act makes no mention of any protections afforded to a woman if she is dismissed when she becomes pregnant, nor are there any restrictions on employers asking potential employees as to whether they have dependents. Similarly persons have no legal redress should they not be offered employment if they answer yes to a question regarding dependents.

Childcare Provisions:

There is a shortage of childcare facilities for persons on lower incomes. Across the island, there are only 15 Government run day-cares. As of 2016, 1,056 children were enrolled with places, while 3,420 remained on a waiting list. In addition, the opening hours of day-care are limited, often to 8 hours per day (7:30 – 4:30 or 5:30). This is severely restrictive for working parents, in particular in an economy such as Barbados which is tourism focused.⁵

Flexible working:

There are no legal provisions for flexi-time, temporary or part-time working options. If dependents are sick or there is a family crisis, it is at the discretion of employers whether some time off is granted as annual leave.⁶

At present, there is no Equal Pay Act, therefore no guarantee of equal pay for work of equal value.

Domestic Workers

One area of special vulnerability for women concerns their employment in *domestic service*. Such persons engaged in domestic service are not covered by Safety at Work Act⁷. Limited legal protections are offered under the Domestic Employee Act CAP 344, which defines a “domestic employee” as *any person employed for reward for the purpose of performing household duties in a private dwelling-house*. It is made up of only 6 sections, which includes the responsibility of an employer to keep a record, the lack of entitlement to holiday pay, the requirement of a 1 hour break per ‘working day’ (which is without defined time limit) and a minimum of 2 rest days per month.⁸

Sexual harassment:

Legal protections against workplace harassment are:

- Criminal law⁹; or
- Claim of constructive dismissal¹⁰

Leading cases:

- *Bico v Jones* [1996]¹¹
- *Margaret Wharton v Bank of Nova Scotia*, S/Ct Suit No. 438 of 2005¹²

⁵ 2016 Development Bank Country Gender Assessment

⁶ Ibid.

⁷ The Act includes provisions in areas such as health and safety, duties on employers to provide safe working environment, checks on equipment etc.

⁸ See S2 – 6 Domestic Employee Act CAP 344

⁹ Criminal law options: Minor Offenses Act, 1998–1 : “Harassment” is defined as the use of obscene language, gestures, and actions to annoy, taunt, abuse, and insult a person

¹⁰ See *Margaret Wharton v Bank of Nova Scotia*, S/Ct Suit No. 438 of 2005

¹¹ Women employees were introduced to factory floor – no facilities for them to change so had to change in the managers office Allegations:

- i) Intentionally walking through office knowing women were changing, watching them change
- ii) Touched employee on her leg and made sexual remarks to her,
- iii) Made a disrespectful remark to employee about the size of her mouth and her genitalia

Jones is dismissed - He appeals to magistrates court

Held:

Jones’ behaviour was disrespectful and reprehensible and merited firm discipline, but did not warrant dismissal - Upheld by Barbados Court of Appeal.

Held: Punishment was too harsh given over ten years of loyalty and service and his ‘unblemished record’.

Worthy of note: Term ‘sexual harassment’ appears only once in the Bico case

In our judgment the approach must be the same with respect to misconduct consisting of sexual harassment or other unwelcome or unpleasant behaviour of a sexual nature by a male employee towards a female co employee or female co employees.

¹² P alleged harassment from assistant manager, D. D offered P a lesser post, with no loss in salary. P resigned. Questions for the court:

The Barbados Employers' Confederation have developed a model policy which companies can use if they pay \$150BBD, but how many have taken it up is unknown.

Informal sector

Evidence of presence:

Contributor to survival of the poor in Barbados¹³

Often in traditional roles such as food preparation & selling excess produce from subsistence farming

Poorer women are particularly likely to be found in the informal labour force¹⁴

Reasoning:

- Lack of access to affordable childcare; and
- Lack of access to financial resources

2002 study¹⁵ noted that women are less likely to finance their businesses from commercial sources than men. From interviews carried out with those in government, business support organisations and commercial banking institutions, most of whom were men, it was generally felt that women were risk averse. This led to a denial by banks for credit, leading the women interviewed either having their partners apply for loans for them if they applied or borrowing from family members.

The study notes¹⁶:

When women are constantly denied access to credit – even though they meet the formal requirements of obtaining it – then financial institutions and governments are shifting to women the costs of operating in the public domain of the economy....

Impact:

Women concentrated in informal sector work may be more vulnerable than men to unemployment, both due to the nature of the work and the lack of protection under the employment law framework. In addition, due to the informal nature of the employment, it is likely that NIS contributions for future benefit (maternity, pension contributions etc) will be minimal or non-existent. Consideration must also be given to the statistic that women comprise the majority of migrants to Barbados, and therefore have limited protection when engaged in the informal economy.

i) Behaviour of the defendant's employees amounted to a breach in the contract of employment?

ii) Breach was sufficient to substantiate a finding of constructive dismissal?

Court found that the behaviour was sexual harassment. It also determined such behaviour was "clearly inappropriate and must be deprecated...and was a serious breach of the employment contract." The court held that employees are deserving of "civility, decency, respect and dignity."

Held: "a fundamental breach in the plaintiff's contract of employment." As a result, damages for breach = the minimum she would have been entitled to receive had she been made redundant.

¹³ Evidence above shows that female headed households make up majority of 'poor' households in Barbados (see fn 3).

¹⁴ Caribbean Development Bank Country Gender Assessment (CGA) Barbados – January 2016

¹⁵ Barribeau, E. (2002), "Women Entrepreneurs and Economic Marginality: Rethinking Caribbean women's economic relations", in P. Mohammed (ed.), *Gendered Realities: Essays in Caribbean feminist thought*, University of the West Indies Press, Mona, Jamaica, pp. 221–48.

¹⁶ Barribeau, E. (ed.) (2012), *Love and Power: Caribbean discourses on gender*, University of the West Indies Press, Mona, Jamaica