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THE FEDERAL PROSECUTION SERVICE, ACT, 2023

ACT NO. LXV OF 2023

[26th October, 2023]

An Act to provide for establishment of federal prosecution service

WHEREAS it is expedient to establish Federal prosecution service and provide for powers and functions of prosecutors and matters incidental and ancillary thereto;

It is hereby enacted as follows:—

CHAPTER-I

PRELIMINARY

1. Short title and commencement.—(1) This Act shall be called the Federal Prosecution Service, Act, 2023.

(2) It shall extend to the whole of Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions.— In this Act unless the context provides otherwise —

(a) 'Code' means the Code of Criminal Procedure, 1898 (Act V of 1898);

(b) 'Federal agency' means a Federal Government agency empowered to investigate criminal offences under any law for the time being in force and

notified for the purposes of this Act;

(c) 'first information report' or "FIR" means a first information report lodged under section 154 of the Code;

(d) 'Government' means the Federal Government;

(e) 'Prescribed' means prescribed by rules made under this Act;

(f) 'prosecutor' means the Federal Prosecutor General, Additional Prosecutor

General, Deputy Prosecutor General, Assistant Prosecutor General, District Public Prosecutor, Deputy District Public Prosecutor and Assistant District Public Prosecutor and a special public prosecutor;

(g) 'Service' means the Federal Criminal Prosecution Service; and

(h) "Special Federal law" means a law enacted by the Majlis-e-Shoora (Parliament under paragraphs (a), (b) and (d) of Article 142 of the Constitution.

CHAPTER -II

ESTABLISHMENT, CONSTITUTION AND ADMINISTRATION OF THE SERVICE

3. Establishment and functions of the Service.—(1) The Government shall, by notification in the official Gazette, establish and maintain the Federal Criminal Prosecution Service.
(2) The Service shall consist of the Prosecutor General, Additional Prosecutors General, Deputy Prosecutors General, Assistant Prosecutor General, District Public Prosecutors, Deputy District Public Prosecutors and Assistant District Public Prosecutors and such other staff as may be appointed in prescribed manner.
(3) The functions of the service shall be to institute and conduct criminal proceedings initiated by the Islamabad Capital Territory police or a Federal agency.
(4) The functions of the service under sub-section (3) shall be performed by one or more prosecutors appointed in accordance with the provisions of this Act or rules made thereunder.
(5) The headquarters of the Service shall be at Islamabad.
4. Superintendence and administration of the Service —(1) The Government shall exercise superintendence over the Service to achieve the objectives of this Act.
(2) The administration of the Service shall, in the prescribed manner, vest in the Federal Prosecutor General.
(3) An Assistant District Public Prosecutor, a Deputy District Public Prosecutor, a District Public Prosecutor, an Assistant Prosecutor General, a Deputy Prosecutor General and an Additional Prosecutor General shall perform functions under the overall control and directions of the Federal Prosecutor General.
(4) Subject to the general directions of the Federal Prosecutor General-
 - (a) all prosecutors within a district shall perform functions under the control of the District Public Prosecutor; and
 - (b) all prosecutors in a court shall perform functions under the control of the Prosecutor in-charge of that court.
5. Appointment of Federal Prosecutor General.—(1) The Federal Prosecutor General shall be the head of the Service and shall be appointed by the Government on such terms and conditions as the Government may determine.
(2) The Federal Prosecutor General shall be appointed for a non-extendable term of three years.
(3) The Federal Prosecutor General may resign from his office during the tenure of his office in writing to the Government through the division to which business of this Act stands allocated.
(4) The Government may, in the prescribed manner for reasons; to be recorded in writing and after providing an opportunity of being heard, remove the Federal Prosecutor General prior to completion of tenure, on the grounds of misconduct, in-efficiency or physical infirmity.

6. Qualifications for the appointment of the Federal Prosecutor General.— A person shall not be appointed as the Federal Prosecutor General unless he is a citizen of Pakistan and is not less than forty-five years of age and he—

- (a) has, for a period of or for periods aggregating to not less than ten years, been an advocate of a High Court;
- (b) is a law graduate and has, for a period of not less than fifteen years, been a member of the prescribed civil service;
- (c) has, for a period of not less than fifteen years held a judicial office in Pakistan;
- (d) has, for a period of not less than five years performed functions of an Additional Prosecutor General; or
- (e) has, for a period of not less than seven years, performed functions of a District Public Prosecutor, or has performed functions of a prosecutor in Pakistan for not less than fifteen years

Explanation: In computing the period during which a person has been an advocate of a High Court or held judicial office, there shall be included any period during which he held judicial office after he became an advocate or, as the case may be, the period during which he has been an advocate after having held judicial office.

7. Appointment of other prosecutors.—

- (1) The Government shall appoint a District Public Prosecutor who shall be the officer-in charge of prosecution in the district.
- (2) The Federal Prosecution General shall appoint a prosecutor-in charge in the special court.
- (3) Appointments to the Service except appointment of the Federal Prosecutor General under section 5 shall either by initial recruitment or promotion or by transfer as may be prescribed.
- (4) All appointments by initial recruitment shall be made on the recommendations of the Federal Public Service Commission.
- (5) The licence or enrolment of a person in the bar council shall not stand cancelled or suspended by his appointment as a prosecutor.

CHAPTER- III

POWERS AND FUNCTIONS OF PROSECUTORS

8. Powers of prosecutors.

- (1) The Federal Prosecutor General may issue general guidelines to the Prosecutors or officers responsible for investigation for effective and efficient prosecution.
- (2) The Federal Prosecutor General or the District Public Prosecutor may refer to the authority competent to initiate disciplinary proceedings under any law for the time being in force, to take

disciplinary action against any public servant working in connection with investigation or prosecution, for any act committed by him which is prejudicial to the prosecution.

(3) A prosecutor shall have right of representation and audience in every court assigned to him.

(4) A prosecutor may—

(a) exercise all or any of the powers mentioned in section 9;

(b) call for a report within a specified time from a law enforcement agency in relation to an investigation;

(c) call for record or any other document within a specified time from a law enforcement agency and if necessary, from any Government department or agency as may be necessary for the purposes of prosecution;

(d) perform such other functions and exercise such powers as may be entrusted to him under the Code and any other law for the time being in force; and

(e) with the consent of the court, withdraw from the prosecution of any person either generally or in respect of any one or more offences for which he is being tried, after obtaining approval of—

(i) the District Public Prosecutor in cases of offences triable in court of sessions or court of magistrates and punishable with imprisonment of up to three years;

(ii) the prosecutor-in-charge of a court in case of offences triable by special courts and punishable with imprisonment of up to three years;

(iii) the Federal Prosecutor General where the offence is punishable by imprisonment of up to seven years; and

(iv) the Government or one or more officers of the division concerned not below the rank of Additional Secretary authorized by the Government in case of all other offences.

(2) At any stage of a trial before any trial court sub-ordinate to a High Court before the judgement is passed, the Federal Prosecutor General or any prosecutor specifically authorized by him may, for reasons to be recorded in writing, inform the court on behalf of the Government that the prosecutor shall not prosecute the accused upon the charge and thereupon all proceedings against the accused shall be stayed and he shall be discharged of from the same:

Provided that such discharge shall not amount to an acquittal unless the court directs otherwise.

(3) A prosecutor shall have right of representation and audience on behalf of the Government in all courts including Federal Shariat Court, High Courts and the Supreme Court.

9. Conduct of Prosecution.—(1) A prosecutor shall be responsible for the conduct of prosecution on behalf of the government in—

(a) all cases tribal before the courts of sessions and courts of magistrates in Islamabad.

(b) all cases tribal by special courts on a police report or other report submitted by a Federal agency.

(2) A police report under section 173 of the Code, including a report of cancellation of the FIR or a request for a discharge of a suspect or an accused or a complaint by a public servant authorized to file a complaint shall be submitted to the court through the prosecutor.

(3) A prosecutor shall review the police report or the complaint, as the case may be, in accordance with the provisions of the Code, this Act and code of conduct.

(4) Where a prosecutor requires clarifications, or is of the view that additional evidence needs to be collected, he may return the police report or complaint with one or more of the following directions:

(f) to clarify the method of collection of evidence;

(g) to explain why a particular line of inquiry was not followed;

(h) to explain why a defence was not considered; or

(i) to collect additional evidence.

(5) The response of the police shall be submitted within the least practicable time but not later than the time indicated by the prosecutor.

(6) On receipt of the response under sub-section (5) or where no response is received a prosecutor shall assess the case on the basis of the available evidence and inform the trial court of the results of his assessment and names of the accused persons who may stand trial on the basis of that assessment.

(7) The magistrate shall give due consideration to the report of the prosecutor. Where a magistrate acts differently than the recommendations of the Prosecutor, he may refuse to act on the directions of the magistrate subject to the approval of the—

(a) Federal Prosecutor General in case of offences punishable with death or life imprisonment;

(b) prosecutor-in-charge in case of special courts for all other offences; and

(c) District Public Prosecutor in case of offences tribal before the court of sessions or the court of magistrates for all other offences.

(8) Where an accused pleads guilty or when the prosecutor sums up the case, the prosecutor shall propose to the magistrate or the court, the punishment which in his opinion the accused may be awarded.

10. Distribution of work.—(1) The Federal Prosecutor General or, if so authorized by him, an Additional Prosecutor General shall distribute work among prosecutors in respect of the Supreme Court, the High Court, the Federal Shariat Court or a special court established under any law for the time being in force.

(2) The District Public Prosecutor shall distribute work among prosecutors under his control.

(3) A prosecutor-in-charge of a special court shall distribute work among prosecutors under his control.

11. Responsibility of police or a Federal agency towards prosecutors.—(1) An officer-in-charge of a police station or an investigation officer shall—

(a) immediately report to the district public prosecutor or prosecutor in charge as the case may be, the registration of each criminal case by sending a copy of the FIR:

(b) send the police report or complaint to the specified prosecutor; and

(c) if an investigation has not been completed or cannot be completed within the time provided under law, record reasons for the delay and inform the prosecutor.

(2) An officer-in-charge of the police station or investigation officer, as the case may be, shall within the time specified by the prosecutor or before that comply with the directions and remedy the defects pointed out by the prosecutor under section 8 in a police report under section 173 of the Code including report for cancellation of the FIR or request for discharge of an accused or suspect.

12. Duties of prosecutors.—(1) A prosecutor shall—

(a) review the complete record of a case prior to taking a prosecutorial decision;

(b) act in accordance with law and fair trial requirements at all times;

(c) undertake such inquiries and seek such clarifications as may be required;

(d) take into consideration likely defences;

(e) provide information to the defence regarding any matter which may affect the case of the prosecution or assist the defence in material ways; and

(f) inform the defendants of their right to legal aid where they are unable to access the same for want of financial resources.

(2) A prosecutor shall keep the District Public Prosecutor or Prosecutor in-charge informed of the progress of all criminal cases under his charge.

(3) A District public prosecutor or the prosecutor in charge shall keep the Federal Prosecutor General informed about the progress of all cases in the district or court assigned to him.

(4) Where a prosecutor is of the opinion that an application for enhancement of sentence or revision should be filed in any case, he shall refer the matter to the District Public Prosecutor or Prosecutor In-charge of the court.

(5) In case of an acquittal, the concerned prosecutor shall report the details of the case to the Federal Prosecutor General through the District Public Prosecutor or Prosecutor in-charge as the case may be along-with ground of appeal if any, who may request the Government to prefer an appeal.

(6) A prosecutor shall maintain an independent file in the prescribed manner of each case assigned to him.

(7) A prosecutor shall—

(a) in all matters, perform his functions and exercise his powers fairly, honestly with due diligence, in accordance with law and in the public interest;

(b) on receipt of a police report under section 173 of the code including report for cancellation of the first information report or request for discharge of an accused or suspect review and process it under section 9;

(c) make such entries in the record and registers as may be prescribed; and

(d) report to the district public prosecutor or prosecutor in charge, details of investigation, if any, conducted in violation of law or instructions issued by the prosecutor general or not completed in time provided under the law without reasonable cause.

13. Special Prosecutors.—(1) Government may appoint a special federal prosecutor in a case where the case requires special expertise and the said expertise is not available in the Service.

(2) Where a special federal prosecutor has been appointed in a case he shall not take decisions with regard to filing or withdrawal of a case.

(3) The appointment of a special federal prosecutor may be withdrawn at any time.

CHAPTER-IV MISCELLANEOUS

14. Chief Executive and staff—(1) The Government shall appoint a Chief Executive Officer of the Service.

(2) The Chief Executive Officer shall be responsible for—

- (a) budget formation;
- (b) expenditures in accordance with law and rules;
- (c) procurement in accordance with public procurement rules;
- (d) training of prosecutors; and

(e) maintenance of record.

(3) The chief executive officer shall perform his functions under the supervision of the Federal Prosecutor General.

(4) The chief executive officer shall be assisted by such number of directors and staff as the Government may specify by the rules.

(5) The directors shall be responsible to the chief executive officer.

(6) The chief executive, directors and staff shall be appointed in the prescribed manner and till so prescribed as directed by the Secretary of the Interior Division.

(7) The Federal Prosecutor General may grant one or more of the following powers to non-legal staff designated by him, namely:—

(a) the power to obtain an adjournment of a hearing; or

(b) the filing of applications before a court or a court registry.

(c) The conduct of criminal proceedings in magistrate courts other than trials

(8) Where the Federal Prosecutor General grants powers under sub-section (1). the chief executive officer shall ensure that they have the requisite training.

(9) The number of persons granted powers under sub-section (7) shall be reported in the annual report.

15. Reports.—(1) The Chief Executive Officer shall submit an annual report of the Service to the Government through the division concerned within three months of the conclusion of the calendar year to which the report pertains.

(2) The Report shall contain amongst other things: —

(a) desegregated data regarding the number of persons charged and convicted;

(b) number of charges recommended to be modified by prosecutors including those recommended to be dropped or added;

(c) number of cases in which fir was not received from the police;

(d) number of revisions and appeals filed and the results thereof;

(e) number of prosecutors available; and

(f) time taken to complete trials of different criminal cases.

(3) The Government shall lay the report before the Majlis-e-Shoora (Parliament) within two months of its receipt.

(4) In addition to the annual report, the chief executive officer shall provide such information in such format as the Government may seek from time to time provided that the chief executive officer shall be under no obligation to disclose the identity of a person whose identity has been withheld in accordance with law.

16. Code of conduct.—(1) The Federal Prosecutor General shall, with the prior approval of the Government, issue a code of conduct for federal prosecutors.

(2) A federal prosecutor shall perform his functions under this Act in accordance with the code of conduct issued under sub-section (1).

17. Guidelines —(1) The Federal Prosecutor General in consultation with the chief executive officer may issue guidelines to prosecutors which are not inconsistent with the provisions of this Act, any other law for the time being in force and the code of conduct.

(2) Notwithstanding anything contained in sub-section (1) the Federal Prosecutor General shall issue guidelines within 12 months of the commencement of this Act regarding the following:

- (a) charging standards in serious criminal cases;
- (b) the formulation of adverse outcome reports;
- (c) processing of applications for withdrawal of cases;
- (d) processing of applications for filing of appeals and revisions; and
- (e) disclosure of used and unused material.

18. Prosecutors to be public servants.—Subject to the provisions of this Act and the rules, members of the Federal Prosecution Service, including the staff, shall be deemed to be public servants within the meanings of section 21 of the Pakistan Penal Code (Act XLV of 1860).

19. Indemnity. — No suit, prosecution or other legal proceedings shall lie against a federal prosecutor in respect of anything done or attempted to be done by him in good faith under this Act.

20. Overriding effect (1) This Act shall have overriding effect on all other laws including the Code.

(2) Section 9 of this Act shall be deemed to have amended the Code to the extent specified therein and the word prosecutor used therein shall be deemed to extend to provincial prosecutors.

(3) Section 12 shall be deemed to be part of the Code.

(4) Where the Government notifies an agency under section 2(b) of this Act, the prosecution function undertaken by that agency shall cease and any provisions of law authorizing the same shall stand repealed, forthwith.

21. Transfer of work.— Where a federal agency empowered to investigate criminal offences under any law for the time being in force is notified by the Government under section 2 of the Act, all prosecution work related to the said agency shall be taken over by the Federal Prosecution Service.

22. Power to make rules.— The Government may, by notification in the official Gazette make rules for carrying out the purposes of this Act.

23. Savings.— All appointments made, actions taken and notifications issued before the commencement of this Act, with respect to prosecution of cases shall be deemed to have been made, taken and issued under this Act.