

THE [KHYBER PAKHTUNKHWA] PROSECUTION SERVICE (CONSTITUTION, FUNCTIONS AND POWERS) ACT, 2005.

([KHYBER PAKHTUNKHWA] ACT NO. I OF 2005)

CONTENTS

PREAMBLE
SECTIONS

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement.

2 Definitions.

CHAPTER-II

PROSECUTION INSTITUTION

3. Establishment of prosecution Institution.

CHAPTER-III
POWERS AND FUNCTIONS OF

PUBLIC PROSECUTORS

4. Powers and Functions of a Public Prosecutor.
5. Conduct of prosecution.
6. Liaison with Advocate General.
7. Additional Powers of District Public Prosecutor/Public Prosecutor.
8. Reports and guidelines.

CHAPTER-IV

MISCELLANEOUS

9. Representation of the Institution.
10. Fees and expenses etc.
11. Act to override other laws.
12. Power to make rules.
13. Repeal.

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

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THE *[KHYBER PAKHTUNKHWA] PROSECUTION SERVICE (CONSTITUTION, FUNCTIONS AND POWERS) ACT, 2005.

([KHYBER PAKHTUNKHWA] ACT NO. I OF 2005)

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AN

ACT

to reorganize and establish an Institution of Prosecution in the "[Khyber Pakhtunkhwa].

Preamble.-WHEREAS it is expedient to reorganize and establish a Prosecution Institution with a view to achieving a speedy justice process in the *!Khyber Pakhtunkhwa] and for matters ancillary or incidental thereto;

It is hereby enacted as follows:-

CHAPTER-I
PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the °[Khyber Pakhtunkhwa] Prosecution Service (Constitution. Functions and Powers) Act. 2005.

(2) It shall extend to whole of the '[Province of the Khyber Pakhtunkhwa].

(3) It shall come into force at once.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) 'Advocate General' means the Advocate General of the "[Khyber Pakhtunkhwa] appointed under Article 140 of the Constitution of the

Islamic Republic of Pakistan;

(b) 'Assembly' means the Provincial Assembly of the Khyber Pakhtunkhwa];

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

'District' means a District, a City District, as defined in the 'S[Khyber Pakhtunkhwa] Local Government Ordinance, 2001 '[Khyber Pakhtunkhwa] Ord. No. XIV of 2001);

'Director General Prosecution' means the Chief Prosecutor of the Province responsible for the management of prosecution and control over Prosecutors, appointed under sub-section (3) of section 3 of this Act;

'District Head of Prosecution' means the District Public Prosecutor or, where no District Public Prosecutor is appointed in a District, the Public Prosecutor of the District concerned;

'final report' means the report as mentioned in section 173 of the Code;

'Government' means the Government of the '°[Khyber Pakhtunkhwa];

'Head of Investigation' means a police officer appointed as such in the Province, City District or a District under the Police Order, 2002, or any other law for the time being in force;

'Investigation Officer' means an officer of the Law Enforcement Agency, competent under the law to conduct investigation of offences within his jurisdiction;

"Institution' means the Institution constituted under section 3 of this Act;

'Law Enforcement Agency' means the Provincial Police Department and includes any other law enforcement agency that may be notified by Government as such;

'offence' means an offence as defined in the Code;

'Officer-in-Charge of a Police Station' means an Officer-In-Charge as defined in the Code;

'prescribed' means prescribed by rules made under this Act;

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(p) 'Public Prosecutor' means a person appointed as Public Prosecutor under this Act for the purpose of section 492 of Cr.P.C. and includes District Public Prosecutor, Additional Public Prosecutor, Deputy Public Prosecutor and Assistant Public Prosecutor as well as Special Public Prosecutor; and

(q) 'rules' means the rules made under this Act.

CHAPTER-II PROSECUTION INSTITUTION

3. Establishment of prosecution Institution—(1) Notwithstanding anything contained in any other law for the time being in force, Government shall establish an Institution to be known as the *[Khyber Pakhtunkhwa] Prosecution Institution (hereinafter referred to as the Institution), for the conduct of the functions assigned to it or to the officers borne on the strength of the Institution under this Act.

(2) The .Institution shall consist of a Director General prosecution, who shall be assisted by such number of Regional Directors, Deputy Directors Prosecution, Assistant Directors Prosecution, Deputy Public Prosecutors, Assistant Public Prosecutors and such other officers and members of the staff as may be appointed by Government from time to time.

(3) | The Directorate of Prosecution shall be headed by the Director General of Prosecution under the administrative control of Government.

(4) The officers and members of the staff mentioned in sub-section (2) shall be civil servants within the meaning of the [Khyber Pakhtunkhwa] Civil Servants Act 1973 ('8[Khyber Pakhtunkhwa]Act No. XVIII of 1973), and their terms and conditions of service shall be such as may be prescribed under the said Act.

CHAPTER-HI POWERS AND FUNCTIONS OF PUBLIC PROSECUTORS

4. Powers and Functions of a Public Prosecutor.— (1) A District Public Prosecutor ora Public Prosecutor, as the case may be, shall be in-charge of the Prosecution in the district concerned and in discharge of his lawful duties with respect to a case the prosecution whereof is lawfully assigned to him, shall perform the following functions, in relation to conducting prosecution of offences before courts of competent jurisdiction, namely:-

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safeguard the interest of the public in prosecution of cases before the courts of competent jurisdiction;

shall, on receipt of the final report,-

(i) lodge the same before the competent court trial; or

(ii) | withhold the same for want of proper evidence and return it to the Investigation Officer with written direction to resubmit the report after removal of the deficiencies so identified by him;

in respect of compoundable offences, other than those which are punishable by death or life imprisonment, the Director General Prosecution, and in respect of compoundable offences punishable with imprisonment for seven years or less, the District Public Prosecutor, may-

(i) withhold prosecution if reasonable ground exists to believe that the offence is compoundable; provided that if the offence is not compounded within a period of one month, a report shall be lodged in the court of competent jurisdiction for prosecution and trial; or

(ii) apply, for reasons to be recorded in writing, to the court of competent jurisdiction for the discharge of the case, if its institution has been found to be malafide, wrongful or weak from evidentiary point of view:

Provided that an application under this section shall accompany the final report under section 173 of the Code:

Provided further that the competent court may dispose of the application in such manner as it may deem fit.

In respect of any case instituted by a Public Prosecutor before a competent

(a)

court, any private person representing the complainant shall act under the directions of the Public Prosecutor.

Conduct of prosecution.—The prosecution of criminal offences shall be conducted in the following manner, namely:

the Investigation Officer shall send the case together with the evidence to the concerned Public Prosecutor;

(b) prosecution shall not take effect against, persons other than those charged as accused, on the basis of available evidence, by the Public Prosecutor;

(c) the Public Prosecutor shall have the right of audience before any court in respect of any case assigned to him;

(d) a Public Prosecutor may, within his jurisdiction, issue general guidelines to police officers regarding the state of their investigation and other matters necessary for the fulfillment of the purpose of effective prosecution;

(e) a District Public Prosecutor may ask the Head of Investigation in a District to take disciplinary action against investigation Officer, where sufficient reasons exist to believe that Investigation Officer has colluded or has not exercised due diligence or honesty in conducting investigation, or misrepresented the facts of the case or prepared the report inefficiently; and

(f) the Director General Prosecution or the District Public Prosecutor may, when he deems necessary in cases where police officers fail to follow any suggestions or instructions of Public Prosecutor under this Act, call for disciplinary action against the Investigation Officer through the competent authority.

6. Liaison with Advocate General.—(1) The Director General Prosecution shall keep liaison with the Advocate General to ascertain the progress of criminal appeals and revisions and other legal proceedings pending before the Supreme Court, Federal Shariat Court and High Court or any other court established under the law.

(2) Director General Prosecution shall provide Prosecutors to all the criminal courts in the Province.

7. Additional Powers of District Public Prosecutor/Public Prosecutor.—A Public Prosecutor, in discharge of his lawful duties and in respect of a case lawfully assigned to him, may also exercise the following powers, in addition to the powers conferred by section 4 of this Act, namely:-

(a) upon expiry of time period mentioned in the Code for submission of final report or after submission of final report, if necessary for proper and thorough investigation of an offence, a Public Prosecutor may request the court to issue warrants for search, seizure or inspection of evidence for compliance by the Investigation Officer;

(b) a Public Prosecutor may call for record or any other document from any law Enforcement Agency upon expiry of time period mentioned in the Code for submission of final report;

(c) a District Public Prosecutor in case of offences carrying seven years or less imprisonment and the Director General Prosecution for all other offences may withdraw prosecution subject to prior approval of Court:

Provided that prosecution of an offence falling under the Anti-Terrorism Act, 1997 (XXVII of 1997), shall not be withdrawn without prior permission in writing of the Secretary to Government, Home and Tribal Affairs Department; and

(d) the Public Prosecutor on completion of investigation shall scrutinize the case file and refer the shortcomings or faults in investigation to the Head of Investigation for removing or improving the same, which shall be complied with by the Head of Investigation within seven days, and on fulfillment thereof, it shall be sent to the Public Prosecutor putting it in the court.

8. Reports and guidelines.— (1) The District Public Prosecutor shall keep the Head of Investigation informed about the outcome of prosecution of cases.

(2) On registration of the First Investigation Report the Station House Officer of police station concerned shall send a copy of the First Investigation Report to the District Public .Prosecutor/Public Prosecutor of the District who on receipt shall inspect the same and issue necessary directions to the Head of Investigation, and shall also inspect, scrutinize and supervise the whole Investigation process of various cases so registered in the District.

(3) Officer-in-Charge of a police station shall report to the District Public Prosecutor cases of all persons arrested without warrant irrespective of the fact whether such person have been admitted to bail or not.

(4) During the investigation whenever any legal guidance/opinion is required by the Head of Investigation, the same shall be sought from the District Public Prosecutor/Public Prosecutor, and the guidance or opinion so given shall be followed.

(5) On the request of Head of Investigation, the District Public Prosecutor shall tender such advice on matters pertaining to investigation, prosecution and any matter ancillary to these matters, as may be necessary for effective prosecution.

(6) In cases which the prosecution of an offence results in acquittal of the accused or in cases when the punishment of offence does not appear to be commensurate with the offence, the District Public Prosecutor shall submit a report to Government in writing giving reasons therefor.

(7) | At the end of each year, the Director General Prosecution shall submit to Government a report on the discharge of functions of the Institution during the year. Government shall lay before the Assembly a copy of the report received from the Director General Prosecution.

(8) | The Director General Prosecution shall issue guidelines for the prosecutors on general principles for effective prosecution of the cases.

CHAPTER-IV MISCELLANEOUS

9. Representation of the Institution.— (1) Subject to prior approval of Government, the Director General Prosecution may, at any time, appoint a person otherwise qualified, who is not borne on the strength of the Institution to institute or take over the conduct of such legal proceedings in courts as the Director General Prosecution may assign to him.

(2) Any person conducting proceedings assigned to him under sub-section (1) shall have all the powers of Prosecutor subject to any instructions by District Public Prosecutor concerned.

10. Fees and expenses etc.— The Director General Prosecution may, with the approval of Government, by regulations, make such provisions as appropriate in relation to the fees to be paid to a legal representative appearing or appointed to appear on behalf of the Institution in any criminal proceedings.

11. Act to override other laws.—The provisions of this Act shall be enforced notwithstanding anything repugnant or contrary contained in any other law for time being in force.

12. Power to make rules.— Government may make rules for carrying out all or any of the following matters, namely:-

(a) powers, duties and functions of Regional Directors;

(b) conduct of inspections by Public Prosecutors;

(c) records and registers to be maintained by Public Prosecutors;

(d) the conduct of cases by Public Prosecutors;

(e) assessment of performance of Public Prosecutors based on quantifiable indices;

(f) shall transmit the results of the cases to the concerned District Police Officer; and

(g) any other matter that Government may deem fit.

13. Repeal.—The Khyber Pakhtunkhwa] Prosecution Service (Constitution, Functions and Powers) Ordinance, 2004 (°[Khyber Pakhtunkhwa] Ord: No. III of 2004) is hereby repealed.

Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
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