

THE KHYBER PAKHTUNKHWA FORENSIC SCIENCE AGENCY ACT, 2020.

(KHYBER PAKHTUNKHWA ACT NO. XXXIX OF 2020)

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THE KHYBER PAKHTUNKHWA FORENSIC SCIENCE AGENCY ACT, 2020.

(KHYBER PAKHTUNKHWA ACT NO. XXXIX OF 2020)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa. (Extraordinary), dated the 15th September, 2020).

AN

ACT

to establish the Forensic Science Agency in the Province of Khyber Pakhtunkhwa for forensic examination of documents, materials, equipment, impressions or other objects.

WHEREAS it is expedient to establish the Khyber Pakhtunkhwa Forensic Science Agency in the Province of Khyber Pakhtunkhwa for the examination of forensic material and rendering of expert opinion in respect thereof before any court, tribunal or other official authority and for matters related thereto;

AND WHEREAS the impartial examination of forensic material and rendering of expert opinion by an independent agency is essential for facilitating criminal investigation and authenticating evidence produced in courts of law;

It is hereby enacted by the Provincial Assembly of the Khyber Pakhtunkhwa as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Forensic Science Agency Act, 2020.

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

(3) It shall come into force at once.

2. Definitions.---In this Act, unless the context otherwise provides, the following expressions shall have the meanings that is to say-

(a) "Agency" means the Khyber-Pakhtunkhwa Forensic Science Agency, established and constituted under section 3 of this Act;

(b) "authority" includes a police officer, any officer or official, working for any law enforcement agency, a public servant or any other

Government official, authorized to hold an investigation or inquiry under any law for the time being in force;

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

(d) "Director General" means the Director General of the Agency, appointed under section 7 of this Act;

(e) "expert" includes a qualified local or foreign expert, working in a forensic science facility and having established qualification in any field of forensics;

(f) "forensic material" means a document, material equipment, impression or any other object connected with the commission of an offence, a civil cause or any other proceedings;

(g) "Government" means the Government of Khyber Pakhtunkhwa;

(h) "Home Department" means the Home and Tribal Affairs Department of Government;

(i) "offence" means an act or omission made punishable under any law for the time being in force;

Gj) "police officer" means a police officer, appointed under the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017), or any other person who has been conferred with the powers of a police officer under any other law for the time being in force;

(k) "prescribed" means prescribed by the rules; and

() "rules" mean rules made under this Act.

(2) Words or expressions, used but not defined under this Act, shall have the same meanings as are assigned to them in the Code.

3. Establishment of the Agency.---(1) Government shall, by a notification in the official Gazette, establish an Agency to be known as the Khyber Pakhtunkhwa Forensic Science Agency.

(2) The Agency shall consist of the Director General and such number of experts and officials as may be determined by Government.

(3) Government may, by a notification in the official Gazette, absorb in the Agency a body, bureau, laboratory or any other facility of Government connected with forensic examination and rendering expert opinion about forensic material.

(4) An officer or an employee of the body, bureau, laboratory or other facility may opt for employment for a relevant position in the Agency.

(5) The officer or the employee, who opts to become employee of the Agency and is otherwise qualified, shall be absorbed in the Agency in the manner prescribed.

4. Functions and responsibilities of the Agency.---The Agency shall-

(a) establish and operate a forensic science laboratory having all the requisite scientific equipment for examination of forensic material;

(b) undertake examination of forensic material;

(c) render expert opinion with regard to examination of forensic material undertaken by it;

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procure, operate and maintain scientific instruments for examination of forensic material;

propose advancement in forensic techniques and recommend use of suitable scientific equipment for examination of forensic material;

seek clarification from the person involved in collection or handling of forensic material in the prescribed manner;

specify the procedure for the collection, preservation and handling of forensic material;

subject to the direction of the Home Department, collect forensic material that requires special expertise or scientific methods for collection and preservation;

maintain record for examination of forensic material, including record relating to the identity of a person connected with or accused of an offence, in the prescribed manner;

conduct trainings relating to-

(i) forensic examination;

(ii) rendering expert opinion; and

(iii) collection, preservation and handling of forensic material; promote general awareness on matters relating to forensics; and

perform any other function connected with or ancillary to the above functions.

5. Superintendence of the Agency.---The superintendence of the Agency shall vest in the Home Department.

6. Administration of the Agency.---The administration of the Agency shall vest in the Director General.

7. Appointment of the Director General.---(1) Government shall appoint the Director General on the recommendation of a Search Committee, comprising the following members:

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the Chief Secretary, Khyber Pakhtunkhwa; Chairman

the Additional Chief Secretary, Khyber Member
Pakhtunkhwa;

the Secretary to the Government of Khyber Member
Pakhtunkhwa, Home and Tribal Affairs
Department; and

the Provincial Police Officer, Khyber Member
Pakhtunkhwa.

(2) The Director General shall be a qualified and experienced expert in one or more disciplines of forensic science in accordance with the prescribed standards.

(3) The Director General shall hold office for a term of five years.

(4) Government shall determine the terms and conditions of service of the Director General which shall not be varied during his term of office.

(5) Government may, after notice and administrative inquiry in the prescribed manner, remove the Director General during the tenure of his office on the ground of inefficiency, misconduct, corruption or inability to perform officially assigned functions due to medical reasons.

(6) The Director General may tender his resignation to Government and shall cease to hold office upon acceptance of his resignation.

(7) The vacancy occurred due to removal of or resignation by the Director General, as the case may be, such vacancy shall be filled in a manner as the Home Department may deem appropriate.

8. Administrative and financial powers of the Director General.---The Director General shall exercise such administrative and financial powers as may be prescribed.

9. Experts.---(1) The Director General shall appoint an expert in the Agency in the manner prescribed by regulations.

(2) No person shall be appointed as an expert unless he is qualified to conduct examination of a forensic material.

(3) A person appointed in the Agency as an expert shall be deemed as an expert appointed under section 510 of the Code and a person specially skilled in examination of a forensic material under Article 59 of the Qanun-e-Shahadat Order, 1984 (X of 1984).

(4) The Agency shall not entrust examination of a forensic material to a person who has been convicted of an offence related to giving false evidence under any law for the time being in force.

10. Expert opinion.---(1) A Court, tribunal or authority may send to the Agency, any forensic material related to investigation or proceedings before it, for examination and expert opinion.

(2) The Agency shall authenticate and submit expert opinion to a Court, tribunal or authority in the manner prescribed.

(3) An expert opinion shall carry the name and designation of the expert who undertook the examination.

11. Clarification in case of certain opinion.---(1) If an expert opinion is not clear, the Court, tribunal or authority may refer it to the Agency for clarification on a specific question.

(2) The Agency shall, on receipt of such reference, send clarification on the question to the Court, tribunal or authority.

(3) If the condition of the forensic material or any other fact does not allow submission of a clear answer to the question, the Agency shall state its inability to answer the question citing reasonable grounds.

12. Re-examination of forensic material.---(1) A person affected by the opinion of an expert, may for a sufficient cause, submit an application for re-examination before the Court or tribunal, before which the opinion is rendered or the Court or tribunal before which the opinion is submitted by the authority.

(2) If the Court or tribunal is satisfied that there are sufficient grounds for re-consideration of the opinion, it may, for reasons to be recorded in writing, direct the Agency to re-examine the forensic material.

(3) The Director General shall, on receipt of the direction, constitute a panel of three or more experts to re-examine the forensic material or refer the same to a forensic examination facility for examination and opinion. Such panel shall not include the expert who had previously examined the forensic material or rendered the expert opinion.

(4) The Director General shall submit the finding of the panel of experts or the forensic facility and his opinion to the Court or tribunal may be.

13. Offence.---(1) If an expert or official of the Agency knowingly or negligently renders false, incorrect or misleading opinion before a Court, tribunal or authority, he in addition to any punishment for offence relating to false evidence under any other law for the time being in force, shall also be punished with imprisonment which may extend to seven years or with fine which may extend to one Million rupees or with both.

(2) An offence under this Act shall be triable by a Court of Sessions.

(3) The Court shall not take cognizance of an offence under this Act unless the Director General or any official, nominated by the Home Department, makes a complaint in writing in the prescribed manner.

14. Appeal.---Any person aggrieved by an order or sentence passed under section 13 may, within thirty days, prefer an appeal to the High Court.

15. Annual performance report.---(1) The Agency shall submit its annual performance report to the Home Department before July 31 in a year.

(2) The Home Department shall, within the period of one month of the receipt of the annual performance report, submit the same in the Provincial Assembly of the Khyber Pakhtunkhwa.

16. Bar to action.---(1) No action taken under this Act shall be called in question in any court or otherwise except in the manner provided in this Act.

(2) No civil or criminal proceedings shall be instituted against any person for

anything done in good faith or purported to have been done under this Act.

17. _ Act to be read in conjunction with other laws.---The provisions of this Act shall be read in conjunction with and not in derogation of any other law for the time being in force.

18. Power to make rules.---Government may make rules for carrying out the purposes of this Act.

19. Power to make regulations.--- The Agency may, with the approval of Home Department, make regulations for carrying out the purposes of this Act.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary
provincial assembly of Khyber Pakhtunkhwa