

THE PUNJAB CRIMINAL PROSECUTION SERVICE (CONSTITUTION, FUNCTIONS AND POWERS) ACT 2006

(III OF 2006)

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TEXT

¹THE PUNJAB CRIMINAL PROSECUTION SERVICE (CONSTITUTION, FUNCTIONS AND POWERS) ACT 2006

(III of 2006)

[8th April, 2006]

An

Act

to establish a Criminal Prosecution Service in the Punjab.

Preamble.— Whereas it is expedient to establish an independent, effective and efficient service for prosecution of criminal cases, to ensure prosecutorial independence, for better coordination in the criminal justice system of the Province and matters incidental thereto;

It is hereby enacted as follows:-

CHAPTER-I

PRELIMINARY

1. Short title, extent and commencement.— (1) This Act may be called the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006.

- (2) It extends to the whole of the Punjab.
- (3) It shall come into force at once.

2. Definitions.— (1) In this Act, unless the subject or context otherwise requires—

- (a) “Act” means the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006;
- (b) “Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (c) “District” means a district as defined in the Punjab Local Government Ordinance, 2001 (XIII of 2001);
- (d) “First Information Report” means an information recorded under section 154 of the Code;
- (e) “Government” means the Government of the Punjab;
- (f) “High Court” means the Lahore High Court;
- (g) “Investigation Officer” means an officer of a law enforcement agency competent under any law, for the time being in force, to investigate an offence;

¹ This Act was passed by the Punjab Assembly on 20 March 2006; assented to by the Governor of the Punjab on 1 April 2006; and was published in the Punjab Gazette (Extraordinary), dated 8 April 2006, pages 3949-55.

- (h) "law enforcement agency" includes the Punjab Police and any other agency established under any law, as may be notified by the Government;
 - (i) "Order" means the Police Order, 2002 (Chief Executive's Order No.22 of 2002);
 - (j) "prescribed" means prescribed by rules or regulations made under this Act;
 - (k) "prosecution" means the prosecution of a criminal case;
 - (l) "Prosecutor" means the Prosecutor General, Additional Prosecutor General, Deputy Prosecutor General, District Public Prosecutor, Deputy District Public Prosecutor, Assistant District Public Prosecutor and a Public Prosecutor appointed under this Act and shall be deemed to be the public prosecutor under the Code;
 - (m) "Prosecutor General" means the Prosecutor General appointed under section 6;
 - (n) "regulations" means the regulations framed under this Act;
 - (o) "rules" means rules made under this Act;
 - (p) "Service" means the Punjab Criminal Prosecution Service; and
 - (q) "Supreme Court" means the Supreme Court of Pakistan.
- (2) The words and expressions used herein but not defined shall have the same meaning as are assigned to them in the Code or the Order.

CHAPTER-II

ESTABLISHMENT, CONSTITUTION AND ADMINISTRATION OF THE SERVICE

3. Establishment of the Service.— The Government shall establish and maintain a Service to be called the Punjab Criminal Prosecution Service.

4. Constitution.— The Service shall consist of the Prosecutor General, Additional Prosecutors General, Deputy Prosecutors General, District Public Prosecutors, Deputy District Public Prosecutors and Assistant District Public Prosecutors.

5. Superintendence and administration.— (1) The Government shall exercise general superintendence over the Service to ensure achievement of the objectives of this Act.

(2) The administration of the Service shall vest in the Prosecutor General.

(3) A Public Prosecutor, an Additional Prosecutor General and a Deputy Prosecutor General shall perform their functions under the control and supervision of the Prosecutor General.

(4) Subject to the general control of the Prosecutor General, all other Prosecutors within a district shall be under the control and supervision of the District Public Prosecutor.

6. Prosecutor General.— (1) The Government shall appoint a Prosecutor General, who shall be the head of the Service, on such terms and conditions as may be determined by the Government.

(2) The terms and conditions of service of the Prosecutor General shall not be varied during the term of his office.

(3) The Prosecutor General shall hold office for a non-extendable period of three years.

(4) The Prosecutor General may resign from his post during the tenure of his office by submitting his resignation in writing to the Government.

(5) The Government may, for reasons to be recorded in writing and after providing him an opportunity of being heard, remove the Prosecutor General prior to the completion of his tenure, on the ground of misconduct or physical infirmity.

(6) The Prosecutor General shall have a right of representation and audience on behalf of the Government in all courts including the High Court, the Federal Shariat Court and the Supreme Court.

(7) The Prosecutor General may delegate any of his functions to an Additional Prosecutor General or to a Deputy Prosecutor General.

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

(a) he has, for a period of, or for the periods aggregating, not less than ten years, been an advocate of the High Court; or

(b) he is a law graduate and has, for a period of not less than seventeen years, been a member of the prescribed civil service; or

(c) he has, for a period of not less than ten years, held a judicial office in the Punjab; or

(d) he has, for a period of not less than five years, performed functions of an Additional Prosecutor General; or

(e) he has, for a period of not less than seven years, performed the functions of a District Public Prosecutor or has performed functions of a Prosecutor in the Punjab, under any law, for a period of not less than fifteen years.

Explanation.— In computing the period during which a person has been an advocate of the High Court or held judicial office, there shall be included any period during which he has 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.

8. Appointments.— (1) The Government may appoint Additional Prosecutors General and Deputy Prosecutors General to conduct criminal cases in the Supreme Court, the High Court, the Federal Shariat Court or any other Special Court.

(2) The Government shall appoint a District Public Prosecutor in each district who shall be the officer incharge of the prosecution in the district within the meanings of the Code.

²[(3) Appointments to the Service, except appointment of the Prosecutor General under section 6, shall be either by initial recruitment or by promotion or by transfer as prescribed.

(4) All appointments by initial recruitment shall be made on the recommendation of Punjab Public Service Commission.]

Provided that the Government shall, by a special order, invite one time options from the persons already performing functions of Prosecutors on regular basis in the Province and may induct them in the Service upon such terms and conditions which are not detrimental to their existing terms and conditions of service.

(5) ³[*****]

CHAPTER-III

POWERS AND FUNCTIONS OF THE PROSECUTORS

9. Conduct of prosecution.— (1) The Prosecutors shall be responsible for the conduct of prosecution on behalf of the Government.

(2) The Prosecutor General or if so authorized by him, an Additional Prosecutor General shall distribute work to the Prosecutors in the Supreme Court, the High Court, the Federal Shariat Court or a Special Court established under any law for the time being in force.

(3) A District Public Prosecutor shall distribute work to the Prosecutors with respect to the Courts of Session and Courts of Magistrates within a district.

(4) A police report under section 173 of the Code including a report of cancellation of the first information report or a request for discharge of a suspect or an accused shall be submitted to a Court through the Prosecutor appointed under this Act.

(5) The Prosecutor shall scrutinize the report or the request and may—

(a) return the same within three days to the officer incharge of police station or investigation officer, as the case may be, if he finds the same to be defective, for removal of such defects as may be identified by him; or

(b) if it is fit for submission, file it before the Court of competent jurisdiction.

(6) On receipt of an interim police report under section 173 of the Code, the Prosecutor shall—

(a) examine the reasons assigned for the delay in the completion of investigation and if he considers the reasons compelling, request the Court

2 Substituted by the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) (Amendment) Act 2015 (XVII of 2015); and published in the Punjab Gazette (Extraordinary), dated 18.3.2015, pages 3433-3434, s.2.

3 Omitted by the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) (Amendment) Act 2015 (XVII of 2015); and published in the Punjab Gazette (Extraordinary), dated 18.3.2015, pages 3433-3434, s.2.

for the postponement of trial and in case investigation is not completed within reasonable time, request the Court for commencement of trial; and

- (b) in cases where reasons assigned for delay in the completion of investigation are not compelling, request the Court for commencement of trial on the basis of the evidence available on record.

(7) A Prosecutor may submit to the Court results of his scrutiny in writing as to the available evidence and applicability of offences against all or any of the accused as per facts and circumstances of the case.

10. Powers of Prosecutor.— (1) The Prosecutor General may issue general guidelines to the Prosecutors or officers responsible for investigation for effective and efficient prosecution.

(2) The 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 and is prejudicial to the prosecution.

(3) 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 any officer of law enforcing 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 other Government department or agency as may be necessary for the purposes of prosecution;
- (d) perform such functions and exercise such powers as may be entrusted to him under the Code and any other law for the time being in force;
- (e) with the consent of the Court, withdraw from prosecution of any person either generally or in respect of any one or more of the offences for which he is being tried, after obtaining prior approval of—
 - (i) the District Public Prosecutor, where the offence is punishable up to three years;
 - (ii) the Prosecutor General, where the offence is punishable upto seven years; and
 - (iii) the Government, in all other offences and for the offences triable by the Special Courts; and
- (f) at any stage of a trial before any trial court subordinate to the High Court before the judgment is passed, the 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 and from the same:

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

11. Conduct of prosecution before Superior Courts.— (1) Without prejudice to the powers conferred under any law on the office of the Attorney General of Pakistan and the Advocate General, the Prosecutor General and the Additional Prosecutor General may depute any Prosecutor, otherwise qualified, for conducting prosecution before the Supreme Court, the High Court or the Federal Shariat Court.

(2) The Prosecutor General shall keep liaison with the office of the Attorney General of Pakistan and the Advocate General in relation to criminal matters pending in any such Court.

12. Responsibilities of Police towards Prosecutors.— (1) An officer incharge of a police station or the investigation officer shall—

- (a) immediately report to the District Public Prosecutor, the registration of each criminal case by sending a copy of the first information report;
- (b) send the police report under section 173 of the Code, to the concerned Prosecutor within the period prescribed by law; and
- (c) if an investigation is not completed or cannot be completed within the time provided under the law, record reasons for the delay and inform the Prosecutor.

(2) An officer incharge of the police station or investigation officer shall, within the time specified by the Prosecutor, comply with the directions and remedy the defects pointed out by the Prosecutor in 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.

13. Duties of the Prosecutors.— (1) The Prosecutor General shall—

- (a) submit an annual report of the Service to the Government within three months of the conclusion of the calendar year to which the report pertains:

Provided that the Government shall lay the report before the Provincial Assembly within two months of its receipt; and

- (b) keep the Government informed about the performance of the Service.

(2) A Prosecutor, working under the supervision and control of the Prosecutor General, shall keep the Prosecutor General informed about the progress of all the cases under his charge.

(3) The District Prosecutor shall keep the Prosecutor General informed about the progress of all criminal cases in the district.

(4) A Prosecutor, working under the supervision and control of the District Public Prosecutor, shall keep the concerned District Public Prosecutor informed about the progress of all criminal cases under his charge.

(5) Where a Prosecutor is of the opinion that an application for enhancement of sentence or a revision should be filed in any case, he shall refer the matter to the District Public Prosecutor or the Prosecutor General, who shall take appropriate measures thereon under the law.

- (6) In case of acquittal by a—

- (i) Court in a district, the concerned District Public Prosecutor; and
- (ii) Special Court, the concerned Prosecutor, shall report the details of the case to the Prosecutor General along with grounds for appeal and the Prosecutor General may request the Government for preferring an appeal.

(7) A Prosecutor shall maintain an independent file in the prescribed manner of each case assigned to him for prosecution.

(8) A District Public Prosecutor shall act as a member of the Criminal Justice Coordination Committee established under Article 110 of the Order.

(9) A Prosecutor shall—

- (a) in all matters, perform his functions and exercise his powers fairly, honestly, with due diligence, in the public interest and to uphold justice;
- (b) on receipt of the police report, final or interim, including a report for cancellation of first information report or request for discharge of an accused, scrutinize the same and process it under section 9;
- (c) make such entries in the record and registers as may be prescribed;
- (d) report to the District Public Prosecutor, details of investigations, if any, conducted in violation of law or instructions issued by the Prosecutor General or not completed in the time provided under law without reasonable cause and the District Public Prosecutor may inform the head of investigation and the Prosecutor General for appropriate action; and
- (e) perform such other duties as may be assigned to him under this Act by the Government or the Prosecutor General.

CHAPTER-IV

ESTABLISHMENT OF PROCESS SERVING AGENCY

14. Establishment of agency.— (1) The Government may establish a criminal process serving agency to perform such process serving functions as may be prescribed.

(2) The criteria for appointment and terms and conditions of service of the members of criminal process serving agency shall be such, as may be prescribed.

CHAPTER-V

MISCELLANEOUS

15. Power to make rules and regulations.— (1) The Government may, by notification, make rules for carrying out the purposes of this Act.

(2) The Prosecutor General may, subject to rules and with the prior approval of the Government, frame regulations for giving effect to the provisions of this Act.

16. Terms and conditions of Service.— Subject to the provisions of this Act and the rules, members of the Service, including the staff, shall be appointed and

governed under the Punjab Civil Servants Act, 1974 (VIII of 1974) and rules made thereunder.

17. Code of conduct.— The Prosecutor General shall, with the prior approval of the Government, issue a code of conduct for the Public Prosecutors.

18. Indemnity.— (1) No suit, prosecution or other legal proceedings, shall lie against a Prosecutor in respect of anything done or attempted to be done by him in good faith under this Act.

(2) A Prosecutor appointed under this Act shall be deemed to be a public servant within the meanings of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

19. Removal of difficulties.— The Government may, by order, provide for the removal of any difficulty which may arise in giving effect to the provisions of this Act.

20. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

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