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## PART-IV

### PROVINCIAL ASSEMBLY OF SINDH NOTIFICATION

KARACHI, THE 30<sup>TH</sup> APRIL, 2010

**NO.PAS/Legis-B-23/2009-** The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Bill, 2009 having been passed by the Provincial Assembly of Sindh on 29<sup>th</sup> March, 2010 and assented to by the Governor of Sindh on 24<sup>th</sup> April, 2010 is hereby published as an Act of the Legislature of Sindh.

### THE SINDH CRIMINAL PROSECUTION SERVICE (CONSTITUTION, FUNCTIONS AND POWERS) ACT, 2009

**SINDH ACT NO: IX OF 2010**

(First published after having received the assent of the Governor of Sindh in the Gazette of Sindh (Extra-Ordinary) dated 30<sup>th</sup> April, 2010.)

## **AN ACT**

to provide for establishment of Criminal Prosecution Service in Sindh.

### **Preamble**

**WHEREAS** it is expedient to provide for establishment of Criminal Prosecution Service in Sindh.

It is hereby enacted as follows :-

## **CHAPTER-I**

### **PRELIMINARY**

#### **Short title, extent and commencement**

1. (1) This Act may be called the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009.
- (2) It extends to the whole of the Sindh.
- (3) It shall come into force at once and shall be deemed to have taken effect on and from 29<sup>th</sup> October, 2009.

#### **Definitions**

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



- (a) "Code" means the Code of Criminal Procedure, 1898 (Ordinance V of 1898);
- (b) "District" means a district as notified under the provisions of Sindh Land Revenue Act, 1967 ;
- (c) "First Information Report" means an information recorded under section 154 of the Code;
- (d) "Government" means the Government of Sindh;
- (e) "High Court" means the High Court of Sindh;
- (f) "Investigation Officer" means an officer of a Law Enforcement Agency competent under any law, for the time being in force, to investigate an offence;
- (g) "Law Enforcement Agency" includes Sindh Police and any other agency established under any law, as may be notified by Government;
- (h) "Lower Court" mean and include Criminal Court, Civil Court, Banking Court, Special Court and Tribunal;
- (i) "Order" means the Police Order, 2002 (Chief Executive's Order No.22 of 2002);
- (j) "Prescribed" means prescribed by rules;
- (k) "Prosecution" means the prosecution of a criminal case;
- (l) "Prosecutor" means the Prosecutor

General, Additional Prosecutor General, Deputy Prosecutor General, Assistant 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) "Rules" means rules made under this Act ;and
- (o) "Service" means Sindh Criminal Prosecution Service.
- (p) "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

#### **Establish- ment of the Service**

3. Government shall establish and maintain a Service to be called the Sindh Criminal Prosecution Service.

#### **Constitution**

4. 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.



5. (1) Government shall exercise general **Control and Administration** superintendence over the Service to ensure achievement of the objectives of this Act.

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

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

(4) Subject to the sub-clause (1) and (2) control of all Prosecutor within a District shall work under the supervision of the District Public Prosecutor.

6. (1) Government shall appoint a Prosecutor **Prosecutor General** General, who shall be the Head of the Service on such terms and conditions, as may be determined by 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 tendering resignation in writing to Government.
- (5) 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 Government in lower Court, the High Court, the Federal Shariat Court and the Supreme Court .
- (7) The Prosecutor General may delegate any of his powers and functions to an Additional Prosecutor General or to a Deputy Prosecutor General or an Assistant Prosecutor General.

**Qualification  
for the  
appointment  
of Prosecutor  
General**

7. 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 enrolled as an Advocate of the Supreme Court; or



- (b) he has, for a period of not less than five years, performed functions of an Additional Prosecutor General and is enrolled as an Advocate of High Court; or
- (c) 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 Sindh, under any law, for a period of not less than fifteen years, and is enrolled as an Advocate of High Court; 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 Sindh, 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.

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**Appoint-  
ments**

- 8 (1) Government may appoint any Prosecutor to conduct criminal cases in the High Court, Federal Shariat Court and Supreme Court or any other Special Court.
- (2) Government shall appoint a District Public Prosecutor in each district, who shall be Officer Incharge of the Prosecution in the district within the meaning of the Code.
- (3) All the appointments, except that of the Prosecutor General, to various posts in the Service, shall be made through initial recruitment in the manner, as may be prescribed:

Provided that, after initial recruitment, fifty percent of vacancies occurring on the post of Additional Prosecutor General, Deputy Prosecutor General, Assistant Prosecutor General, District Public Prosecutor and Deputy District Public Prosecutor shall be filled through promotion.

- (4) No direct recruitment shall be made on regular basis to the posts of District Public Prosecutor, Deputy District Public Prosecutor, Assistant District Public Prosecutor, Additional Prosecutor General and Deputy Prosecutor General and Assistant Prosecutor General except on the recommendation of Sindh Public Service Commission;



Provided that on commencement of this Act, the persons already performing functions of prosecution on regular basis in the Province, shall continue as such.

### **CHAPTER-III**

## **POWERS AND FUNCTIONS OF THE PROSECUTORS**

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

(2) A District Public Prosecutor shall distribute work to the Prosecutors with respect to the lower Court within a district.

(3) 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.

(4) 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.

(5) 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 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.

(6) 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. (1) An Officer Incharge of a Police Station or the Investigation Officer shall-

**Responsibilities of Police towards Prosecutors**

- (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 remove 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.

**Duties of  
the  
Prosecutors**

11. (1) the Prosecutor General shall-

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

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

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

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

(4) 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.

(5) 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 Government for preferring an appeal.

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

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

(8) 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) perform such other duties as may be assigned to him under this Act by Government.

#### **CHAPTER-IV**

### **ESTABLISHMENT OF PROCESS SERVING AGENCY**

#### **Establishment of Agency**

12. (1) 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

13. Government may, by notification, in the official gazette make rules for carrying out the purposes of this Act. **Power to make rules**
14. Subject to the provisions of this Act and the rules, members of the Service, including the staff, shall be appointed and governed under the Sindh Civil Servants' Act, 1973 (Sindh Act No. 14 of 1973) and rules made thereunder. **Terms and conditions of service**
15. The Prosecutor General shall, with the prior approval of Government, issue a code of conduct for the Public Prosecutors. **Code of Conduct**
16. (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. **Indemnity**
- (2) A Prosecutor appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code, 1860 (Ordinance XLV of 1860).
17. Government may, by order, provide for the removal of any difficulty, which may arise in giving effect to the provisions of this Act. **Removal of difficulties**

**Act to over-ride other laws**

18. The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

**Savings**

19. All appointments made, actions taken and notifications issued by 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.

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**BY ORDER OF THE SPEAKER  
PROVINCIAL ASSEMBLY OF SINDH**

**HADI BUX BURIRO  
SECRETARY  
PROVINCIAL ASSEMBLY OF SINDH**

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