



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & T.A.S DEPARTMENT.**

No. _____

Dated Peshawar, the _____ 20

NOTIFICATION

No. SO(Prose)/HD/1-5/2010-Vol-I:- In exercise of the powers conferred by section 12 of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 (Khyber Pakhtunkhwa Act No. 1 of 2005), the Government of Khyber Pakhtunkhwa is pleased to make the Rules namely the Khyber Pakhtunkhwa Prosecution Service (Constitution, Function and Powers) Rules, 2012 (Copy enclosed).

Sd/-
Secretary to Govt: of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department

Endst: No. SO(Prose)/HD/1-5/2010-Vol-I

Dated Peshawar the 1st March 2012

Copy forwarded to:

1. The Chief Secretary Khyber Pakhtunkhwa.
2. The Secretary, Law, Parliamentary Affairs & Human Rights Department, Khyber Pakhtunkhwa.
3. The Director General Prosecution, Khyber Pakhtunkhwa.
4. All District Public Prosecutors in Khyber Pakhtunkhwa.
5. The Controller Government Printing Press with the request to publish these Rules in the next issue of the official Gazette.

(MUHAMMAD REHMAN)
Section Officer (Prosecution)

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT.

NOTIFICATION

Peshawar, dated the 22.02.2012.

No. _____.-In exercise of the powers conferred by section 12 of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 (Khyber Pakhtunkhwa Act No. 1 of 2005), the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA PROSECUTION
SERVICE (CONSTITUTION, FUNCTION
AND POWERS) RULES, 2012.

1. Short title, application and commencement.---(1) These rules may be called the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Rules, 2012.

(2) It shall apply to every person working in the Khyber Pakhtunkhwa Prosecution Institution including the employees of the Provincial Government deputed to serve in the Prosecution Service, on deputation basis, from time to time.

(3) It shall come into force at once.

3. Definitions.---In these rules, unless the context otherwise requires,-

- (a) "Act" means the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 (Khyber Pakhtunkhwa Act No. 1 of 2005); and
- (b) "Regional Director" means a divisional officer to assist the Director General Prosecution in the performance of his functions and to whom the responsibility of looking after the work of District Head of Prosecution and other subordinate Prosecuting Officers in various Districts offices has been assigned.

4. Powers and functions of the Regional Director.---Subject to the administrative control of Director General Prosecution, the Regional Director shall-

- (a) check that the First Information Reports are received regularly by the District Head of Prosecution;
- (b) issue guidelines to the Investigation Officer on receipt of copy of First Information Report;
- (c) check that as to whether the guidelines, issued by the District Head of Prosecution, are complied with in letter and spirit by the concerned Investigating Agency;
- (d) check that the case files are properly scrutinized by the Public Prosecutor concerned;
- (e) consider the opinion tendered by the District Head of the Prosecution, whether it is in accordance with law or not;
- (f) check as to how many cases are withheld in accordance with section 4 of the Act;
- (g) check that the fit cases have been recommended by the office of District Head of Prosecution for the purpose of trial;
- (h) look that the cases are properly prosecuted in the Courts;
- (i) check that the appeals or revisions have been preferred in fit cases within stipulated period;
- (j) monitor the fitness of cases not recommended by the District Head of Prosecution for the purpose of trial in accordance with section 4 of the Act;
- (k) keep a close liaison with the Director General Prosecution and will communicate the outcome of the criminal cases on weekly or fortnightly basis to him;
- (l) monitor the coordination between Police and Prosecuting Agency in the respective Districts;
- (m) evaluate the knowledge of the Public Prosecutors and will suggest training and refresher courses for improvement of skills of the Public Prosecutors;
- (n) monitor the mechanism to analyze crime data and send a consolidated report on weekly basis to the Director General, Prosecution which shall also include analysis about crime trends; and
- (o) monitor the timely submission of proformas ^{it} criminal cases being approved and circulated by the Home and Tribal Affairs Department.

5. Conduct of inspections by Public Prosecutors.---(1) The inspections will be conducted in the following manners:

- (i) on receipt of copy of First Information Report, and first investigation report, the same shall be scrutinized by the District Head of Prosecution who shall issue necessary guidelines, to the Investigation Officer who will provide legal assistance to him from time to time. The Investigation Officer after completion of the investigation, in the light of directions of the District Head of Prosecution, shall submit complete challan to the District Head of Prosecution within stipulated period who shall further scrutinize the same through Public Prosecutors and case files complete in all aspects shall be forwarded to the Court for trial;
- (ii) at the time of registration of the case if some ambiguity is found in applicability of correct section of law, the concerned police officer shall contact the District Head of Prosecution in order to ascertain as to which section of law is applicable in the case. The District Head of Prosecution shall tender legal opinion in this regard, so that there shall be no apprehension of having vital lacuna in the case at initial stage; and
- (iii) the case files shall be thoroughly scrutinized by an officer of the Institution in the following manner,-
 - (a) the case file is complete in all respect and all necessary papers are attached thereto;
 - (b) the identity and previous convictions of the accused have been established by appended previous conviction slip with the case file for earning enhanced punishments;
 - (c) in case when an accused person is on bail on account of preventive measures shall be incorporated in the case file for forfeiture of the same in case of violation on the part of accused;
 - (d) the names, parentages, addresses and cell number of prosecution witnesses have been reflected in the charge sheet or otherwise;
 - (e) the police file and judicial files have been properly bifurcated; and
 - (f) no omission or defect in the investigation remains uncertified or unexplained.

(2) After completion of scrutiny, the officer of the Institution shall prepare a memorandum with the case file and place the file before the District Head of Prosecution or, in his absence, before Public Prosecutor, who may have been nominated for such purpose, and shall explain the case to him, and take his orders as to whether it shall be sent up for trial or withheld for compromise or for further police action, as the case may be. Such officer shall satisfy himself that the prosecution case is presented in the best possible and in professional manner and that all material evidence is produced, including evidence calculated to rebut probable lines of defence.

6. Record and registers to be maintained by the Public Prosecutors.---The District Head of Prosecution, shall maintain the-

- (a) register of receipt and dispatch of under-trial prisoners;
- (b) register of warrants and summons received for execution and served by the police;
- (c) register of intermediate orders;
- (d) register of cases scrutinized;
- (e) register of cases withheld and disposed of on the basis of compromise;
- (f) register of cases forwarded for discharge;
- (g) register of cases forwarded to Court for trial;
- (h) register of absconders;
- (i) register of appeals, revision and bail cancellation;
- (j) register of conviction;
- (k) register of acquittal;
- (l) register showing progress of action against absconders under section 88 of the Code and perpetual warrants;
- (m) register of cases challenged at higher forum; and
- (n) general crime register in the office of District Head of Prosecution and the particulars of every cognizable offence reported to the police shall be entered in such register.

7. The conduct of cases by Public Prosecutor.---The Public Prosecutor shall-

- (a) prosecute, watch or direct the prosecution of cases in the Courts of the district. In this connection it shall be realized that his duty embraces not only the presentation of the

prosecution case but contesting the claims of the defence and ensuring the observance of conditions and restrictions imposed by the law on the discretion of Courts to pass orders in certain circumstances, and the observance of all orders of the High Court issued with the object of expediting decisions and preventing abuses;

- (b) supervise and distribute the work of Prosecuting officers subordinate to him and of the police personnel attached to his office or to the Courts; and
- (c) see that the results of cases in Courts are promptly communicated to police concerned according to the Act, and especially to bring it into the notice of the Superintendent Investigation, together with an abstract or copy of the judgment if necessary, orders of acquittal or discharge or other orders of Courts, which either reflect in any way on the conduct of the police or indicate that the theory on which the case was prosecuted has broken down.

(2) In the performance of above-mentioned functions, the District Head of Prosecution may distribute work and delegate his duties amongst the Public Prosecutors subordinate to him.

(3) In each District, one of the Head Constable shall be appointed as the direct assistant of each Public Prosecutor for the purpose of maintaining the registers of case property, and under the immediate supervision of the prosecution officer, nominated by him, receiving, checking, cataloging and issuing to Court order files, exhibits and other case property.

8. Assessment of performance of Public Prosecutors based on quantification.---At the end of each month, the performance report of each Public Prosecutor be communicated to the Director General Prosecution by the District Head of Prosecution. The said report will be examined and if needed further proceedings may be initiated on the basis of the said monthly report under the order of Director General Prosecution.

9. Transmission of result of the cases to the District Police Officer concerned.---There shall be close liaison in between District Head of Prosecution and District Police Officer, who shall hold meetings on monthly basis discussing various issues with regard to the criminal cases and the result of the cases be communicated by the District Head of Prosecution to the District Police Officer concerned.

10. Police brief.---In all important cases sent for trial, the Investigation Officer shall, whenever possible, attend and personally brief the Public Prosecutor. In such case he will also prepare a "police brief" and shall mention therein all matters connected with the case, including the probable line of defence, which in his opinion, should be specially brought to the notice of the Prosecutor.

11. Proof of previous convictions.---(1) The particulars of previous convictions, when required by the Prosecutor, shall be made in proper form by the Investigation Officer.

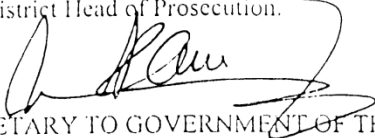
(2) The police shall, in conducting the investigation, take proper steps to establish the identity of an accused and obtain and produce evidence of previous conviction against him.

12. Action on breach of terms of security bond or conditions of restriction.---(1) Whenever a person on security of any kind is prosecuted for an offence, implying a breach of the terms of his bond, special application shall be made at the time of presentation of the charge sheet, that the Court may, in the event of conviction, order the confiscation of the security.

(2) The Officer of Institution shall watch the progress of realization of forfeited security. When Regional Director Prosecution finds that, either generally in the District or in a particular case, undue delay or laxity in realizations is taking place, he shall bring the matter to the notice of the Director General Prosecution, in order to invite his attention to the matter.

13. Appeal and access to judicial records.---(1) An application for the representation of the State in criminal case, for the institution of appeal against the order of acquittal or for the exercise of its powers of revision by the High Court, shall be made through the District Head of Prosecution.

(2) All modifications of original decisions made in appeal, revision or reference are required to be communicated by the Director General, Prosecution to the District Head of Prosecution.


 SECRETARY TO GOVERNMENT OF THE
 KHYBER PAKHTUNKHWA HOME AND
 TRIBAL AFFAIRS DEPARTMENT.