

THE ¹[KHYBER PAKHTUNKHWA] PROSECUTION SERVICE
(CONSTITUTION, FUNCTIONS AND POWERS) ACT, 2005.

(²[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.
- ³[11A. Indemnity.]
- 12. Power to make rules.
- 13. Repeal.

¹ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

² Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Inserted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

**THE ¹[KHYBER PAKHTUNKHWA] PROSECUTION SERVICE
(CONSTITUTION, FUNCTIONS AND POWERS) ACT, 2005.**

(²[KHYBER PAKHTUNKHWA] ACT NO. I OF 2005)

*[First published after having received the assent of the Governor of the
³[Khyber Pakhtunkhwa] in the Gazette of the ⁴[Khyber Pakhtunkhwa]
(Extraordinary), dated the 29th January, 2005].*

**AN
ACT**

*to reorganize and establish an Institution of
Prosecution in the ⁵[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 ⁶[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 ⁷[Khyber Pakhtunkhwa] Prosecution Service (Constitution. Functions and Powers) Act. 2005.

(2) It shall extend to whole of the ⁸[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 ⁹[Khyber Pakhtunkhwa] appointed under Article 140 of the Constitution of the Islamic Republic of Pakistan;
- (b) 'Assembly' means the Provincial Assembly of the ¹⁰[Khyber Pakhtunkhwa];
- (c) 'Code' means the Code of Criminal Procedure, 1898 (V of 1898);
- (d) 'District' means a District, a City District, as defined in the ¹¹[Khyber Pakhtunkhwa] Local Government Ordinance, 2001 ¹²[Khyber Pakhtunkhwa] Ord. No. XIV of 2001);
- (e) '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

¹ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

² Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

⁵ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

⁶ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

⁷ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

⁸ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

⁹ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

¹⁰ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

¹¹ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

¹² Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

Act;

- (f) '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;
- (g) 'final report' means the report as mentioned in section 173 of the Code;
- (h) 'Government' means the Government of the ¹[Khyber Pakhtunkhwa];
- (i) '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;
- (j) 'Investigation Officer' means an officer of the Law Enforcement Agency, competent under the law to conduct investigation of offences within his jurisdiction;
- (k) 'Institution' means the Institution constituted under section 3 of this Act;
- (l) 'Law Enforcement Agency' means the Provincial Police Department and includes any other law enforcement agency that may be notified by Government as such;
- (m) 'offence' means an offence as defined in the Code;
- (n) 'Officer-in-Charge of a Police Station' means an Officer-In-Charge as defined in the Code;
- (o) 'prescribed' means prescribed by rules made under this Act;
- (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, ²[Senior] 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 ³[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.

¹ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

² Substituted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

³ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

(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 ¹[Khyber Pakhtunkhwa] Civil Servants Act 1973 (²[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-III **POWERS AND FUNCTIONS OF** **PUBLIC PROSECUTORS**

4. Powers and Functions of a Public Prosecutor.— (1) A District Public Prosecutor or a 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:-

- (a) safeguard the interest of the public in prosecution of cases before the courts of competent jurisdiction;
- (b) shall, on receipt of the final report,-
 - (i) lodge the same before the competent court trial; ³[* * * * *]
 - (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;
 - ⁴[(iii) withhold prosecution, keeping in view the interest of the victim or legal heirs of deceased, if reasonable grounds exists to believe that the offence is compoundable; provided that if the offence is not compounded within a period of one month, report shall be lodged in the Court of competent jurisdiction for prosecution and trial; or
 - (iv) apply, for reasons to be recorded in writing, to the Court of competent jurisdiction for the discharge of the accused, 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.]

⁵[(c) * * * * *]

(2) In respect of any case instituted by a Public Prosecutor before a competent court, any private person representing the complainant shall act under the directions of the Public Prosecutor.

¹ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

² Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Deleted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

⁴ Added vide the Khyber Pakhtunkhwa Act No. XX of 2025.

⁵ Deleted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

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

- (a) 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
- ¹[(f) the police officer, who fails to follow any advice, directions, guidelines, instructions or opinion of the District Public Prosecutor or Public Prosecutor, as the case may be, it shall be deemed to be misconduct in terms of section 118 of the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017) and shall be dealt under sub-section (2) of section 118 of the said Act.]

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;

¹ Substituted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

- ¹[(c) subject to approval of the trial Court, for reasons to be recorded in writing, and under intimation to Director General Prosecution, a District Public Prosecutor or any other Public prosecutor with the approval of District Public Prosecutor, as the case may be, may withdraw from prosecution of an accused, either generally or in respect of any or more of the offences, for which he is tried:

Provided that prosecution of an offence falling under the Anti-Terrorism Act, 1997 (Act No. XXVII of 1997), shall not be withdrawn without prior permission in writing of the Secretary to Government, Home and Tribal Affairs Department;]

- (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 ²[; and]
- ³[(e) the Regional Director may, on application of the aggrieved party, revise any opinion of the District Public Prosecutor, at any time, before the commencement of trial, if found inconsistent with the relevant law or facts on record.]

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 ⁴[First Information Report] the Station House Officer of police station concerned shall send a copy of the ⁵[First Information 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.

⁶[(4) During the inquiry or investigation, whenever any legal guidance or opinion is required by the District Police Officer of the concerned District or Head of Investigation, the same shall be sought from the District Public Prosecutor or 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.

¹ Substituted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

² Replaced vide the Khyber Pakhtunkhwa Act No. XX of 2025.

³ Added vide the Khyber Pakhtunkhwa Act No. XX of 2025.

⁴ Substituted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

⁵ Substituted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

⁶ Substituted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

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.

¹**[11A. Indemnity.**—No suit, prosecution or other legal proceedings shall lie against a Public Prosecutor, in respect of any act done or attempted to be done by him in good faith under this Act.]

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 ²[Khyber Pakhtunkhwa] Prosecution Service (Constitution, Functions and Powers) Ordinance, 2004 (³[Khyber Pakhtunkhwa] Ord: No. III of 2004) is hereby repealed.

¹ Inserted vide the Khyber Pakhtunkhwa Act No. XX of 2025.

² Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Substituted vide the Khyber Pakhtunkhwa Act No. IV of 2011.