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BALOCHISTAN PROVINCIAL ASSEMBLY SECRETARIAT.

NOTIFICATION.

Dated Quetta, the 17th October, 2003.

No. PAB/Legis: V(8)/2003. The Balochistan Prosecution Service (Constitution Functions and Powers) Bill, 2003 having been passed by the Provincial Assembly of Balochistan on 7th October, 2003 and assented to by the Governor of Balochistan, is hereby published as an Act of the Provincial Assembly.

THE BALOCHISTAN PROSECUTION SERVICE (CONSTITUTION FUNCTIONS AND POWERS) ACT, 2003. **(BALOCHISTAN ACT No. VI OF 2003).**

(First published after having received the assent of the Governor of Balochistan in the Balochistan Gazette (Extra Ordinary) dated the 17th October, 2003).

AN ACT

to reorganize and establish the Prosecution Service in the
Province of Balochistan.

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Preamble.

WHEREAS the goal of achievement of speedy *Justice* requires the organization, control, powers and duties of a *separate* Prosecution Service for the Prosecution of offences and matters incidental thereto in the Province of Balochistan in the manner hereinafter appearing:

It is hereby enacted as follows:-

CHAPTER 1 – PRELIMINARY.

Short title extent, application and commencement.

1. (1) This Bill may be called the Balochistan Prosecution Service (Constitution, Functions & Powers) Act, 2003.
- (2) It shall extend to the whole of Balochistan.
- (3) It shall come into force on a date notified by the Provincial Government in the official gazette in the areas and to the extent as stipulated therein.

Definitions.

2. In this Act, unless the context otherwise requires;
 - (a) "Advocate General" means Advocate General of Balochistan, appointed under Article 140 of the Constitution of Islamic Republic of Pakistan, 1973.
 - (b) "Assembly" means the Provincial Assembly of the Balochistan;
 - (c) "Code" means the Code of Criminal Procedure 1898;
 - (d) "District" means a district notified under the Balochistan Land Revenue Act, 1967 (W.P. Act, XVII of 1967), and includes a City Distt: or a Capital City District;
 - (e) "Government" means the Government of Balochistan;
 - (f) "Head of Investigation" means a police officer appointed as such in a Capital City District, City District or a District under Police Order, 2002 or any law for the time being in force;

- (g) "Investigation Officer" means an officer of the law enforcement agency competent under the law to conduct investigation of offences within his territorial jurisdiction;
- (h) "Law Enforcement Agency" includes the Balochistan Police and any other Provincial law enforcement agency that may be notified by the Government as such;
- (i) "Offence" means an offence as defined in the Code;
- (j) "Officer in-charge of a Police Station" means the police officer as defined in the Code;
- (k) "Prescribed" means prescribed by the rules made under this Act;
- (l) "Prosecutor General" means the Chief Prosecutor of the province responsible for the management of prosecution and control over prosecutors, appointed under sub-section (1) of section 4 of the Act;
- (m) "Public Prosecutor" means a prosecutor appointed by the Provincial Government in accordance with the Code;
- (n) "Public Service Commission" means the Balochistan Public Service Commission;
- (o) "Final Report" means final report as mentioned in section 173 of the Code;
- (p) "Rules" means rules framed under the provisions of this Act;
- (q) "Service" means the Balochistan Prosecution Service established under this Act consisting of Prosecutor General, Additional Prosecutor General, Deputy Prosecutor General, Assistant Prosecutor General, District Public Prosecutor, Additional District Public Prosecutor, Deputy and Assistant District Public Prosecutors and such other civil servants that the Government may appoint as Public Prosecutors;

CHAPTER II – PROSECUTION SERVICE.

- Power to constitute and maintain a Prosecution Service.
3. (1) The Government shall establish a Service to be called the Balochistan Prosecution Service.
- (2) The members of the Service shall be appointed on such terms and conditions as may be prescribed.
- Constitution of Prosecution Service.
4. (1) The Government of Balochistan shall appoint a Prosecutor General who shall be the head of the service.
- (2) The Prosecutor General shall be assisted by such number of Public Prosecutors as the Government may determine from time to time.
- (3) There shall be a District Public Prosecutor in each district appointed by the Government.
- (4) The District Public Prosecutor shall be assisted by such number of Public Prosecutors as the Government may determine from time to time.
- Control over and Administration of the service.
5. (1) The Government shall exercise control over the Service.
- (2) The Administration of the service shall be vested in the Prosecutor General.
- (3) The Prosecutor General shall distribute work among the public prosecutors on the basis of territorial and functional jurisdiction of criminal courts.
- (4) All Public Prosecutors within a district shall be under the control and supervision of the District Public Prosecutor of that district.
- (5) Public Prosecutors empowered to appear in courts having territorial jurisdiction in part or whole of a district shall be under the control and supervision of the District Public prosecutor of that district unless the Government so directs otherwise in a specific case.
- Recruitment.
6. (1) Subject to rules framed by the Government in this behalf, the recruitment in the Service shall be through a competitive examination held by the Balochistan Public Service Commission.

(2) The Government may frame rules prescribing qualifications and other eligibility criteria for deputation to and induction into various posts of the Serive.

CHAPTER III – POWERS AND FUNCTIONS OF PUBLIC PROSECUTORS.

Functions of a Public Prosecutor.

7 A Public Prosecutor, in discharge of his lawful duties and in respect of a case, the prosecution whereof, is lawfully assigned to him, shall perform the following functions, namely:-

(a) It shall be the duty of a public prosecutor to safeguard the interest of the state in prosecution of cases before the competent courts.

(b) The Public Prosecutor being competent in respect of a particular case or class of cases shall on receipt of the final report:-

(i) send the same before the competent court for trial; or

(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.

(c) in respect of compoundable offences other than those which are punishable by death or life imprisonment, the Prosecutor General, and in respect of compoundable offences punishable with imprisonment for seven years or less, the District Public Prosecutor, may withhold prosecution if reasonable grounds exist for the Public Prosecutor to believe that the same shall be compounded.

Provided that if the offence is not compounded within a period of one month, he shall send the report in the competent court for prosecution and trial.

(d) in respect of offences other than those which are punishable by death or life imprisonment, the Prosecutor General, and, in respect of offences punishable with imprisonment for seven years or less,

the District Public Prosecutor, may apply supported with reasons, to the court of competent jurisdiction for the discharge of case if the institution of the case has been found to be malafide, wrongful or weak from evidentiary view point:

Provided that an application under this section shall accompany the report under section 173 of the Code:

Provided further that the competent court may dispose off the application as it may deem fit; and

- (e) in respect of any case instituted by a public prosecutor before a competent court, any private person representing the complainant shall act under the direction of the Public Prosecutor.

Conduct of
Prosecution:

8. 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 designated as the accused on the basis of available evidence, by the competent 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 guideline to police officers regarding the state of their investigation and other matters necessary for the fulfillment of the purpose of effective prosecution;
- (e) District Public Prosecutor may ask Head of Investigation in district to take disciplinary action against investigation officer, where sufficient reasons exist to believe that investigating officer has colluded or has not exercised due diligence in conducting investigation, misrepresented the facts of the case or prepared the report inefficiently; and

- (f) The Prosecutor General or the District Public Prosecutor may, when he deems necessary in cases where police officers fails to follow any suggestions or instructions of Public Prosecutor under this Ordinance. call for disciplinary action against the investigation officer with the competent authority and the Government.

Liaison with Advocate General.

9. The Prosecutor General shall keep liaison with Advocate General to ascertain the progress of criminal appeals and revision and other legal proceedings pending before the Supreme Court, High Court or any other court established under the law.

Powers of a Public Prosecutor.

10. A Public prosecutor, in discharge of his lawful duties and in respect of a case lawfully assigned to him, may exercise the following powers, 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 through 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;
- (c) District Public Prosecutor in case of offences carrying seven years or less imprisonment and the Prosecutor General for all other offences may withdraw prosecution, subject to prior approval of the Government.

Reports and Guidelines.

11. (1) District Public Prosecutor shall keep the Head of Investigation informed about the outcome of prosecution of case.

(2) On the request of Head of Investigation, District Public Prosecutor shall render such advice, on matters pertaining to investigation, prosecution and may matter ancillary to these matters, as may be necessary for effective prosecution.

(3) In those cases in 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 the Provincial Government in writing giving reasons for the acquittal.

(4) Officer in-charge of a police station shall report to the District Public Prosecutor cases of all persons arrested without any warrant irrespective of whether such persons have been admitted to bail.

(5) At the end of each year, the Prosecutor General shall submit to the Government of Balochistan a report on the discharge of functions of the Service during the year. The Government shall lay before the Provincial Assembly a copy of the report received from the Prosecutor General.

(6) The Prosecutor General shall issue guidelines for the prosecutors on general principles for effective prosecution of cases.

CHAPTER IV – MISCELLANEOUS.

Representation of Service form without.

12. (1) Subject to prior approval of the Government, the Prosecutor General may at any time appoint a person otherwise qualified who is not a member of the service to institute or take over the conduct of such legal proceedings in court as the Prosecutor General may assign to him.

(2) Any person conducting proceedings assigned to him under subsection (1) shall have all the powers of a prosecutor subject to any instructions by District Public Prosecutor.

Fees and expenses etc. paid by the Service.

13. The Prosecutor General may, with the approval of the Government, by regulations make such provisions as appropriate in relation to the fees to be paid to a legal representative appearing briefed to appear on behalf of the service in any criminal proceedings.

Act to override other laws.

14. The provisions of this Act shall be enforced notwithstanding anything repugnant to contrary contained in any other law for the time being in force.

Power to make rules.

15. The Government may make rules for carrying out the provisions of this Act and for regulating the following matters, namely:-