

**A
BILL**

*further to amend the Khyber Pakhtunkhwa Police Act, 2017 and to
establish an Independent Police Complaints Authority
in the Province of the Khyber Pakhtunkhwa*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017), and to establish an Independent Police Complaints Authority in the Province of Khyber Pakhtunkhwa and for matters connected therewith and ancillary thereto;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Police (Amendment) Act, 2024.

(2) It shall come into force at once.

2. Amendment of section 2 of the Khyber Pakhtunkhwa Act No. II of 2017.---In the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017), hereinafter referred to as the said Act, in section 2, in sub-section (1),-

(a) for clause (f), the following shall be substituted, namely:

“(f) “Department” means the Home and Tribal Affairs Department of Government;” and

(b) after clause (bb), the following new clause shall be inserted, namely:


“(bb-i) “Secretary” means the Additional Chief Secretary or the Secretary of the Department, as the case may be;”.

3. Amendment of section 7 of the Khyber Pakhtunkhwa Act No. II of 2017.---In the said Act, in section 7, in sub-section (4), the words and comma “whenever need arises,” shall be deleted.

4. Substitution of section 8 of the Khyber Pakhtunkhwa Act No. II of 2017.---In the said Act, for section 8, the following shall be substituted, namely:

“8. Superintendence of Police.---Notwithstanding anything contained in any other law for the time being in force, the overall power of superintendence of Police shall vest in Government which shall be exercised through the Department.”.

5. Deletion of section 9 of the Khyber Pakhtunkhwa Act No. II of 2017.---In the said Act, section 9 shall be deleted.


Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

6. **Substitution of section 11 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, for section 11, the following shall be substituted, namely:

“11. Administration of Police.---The Administration of Police in the Province shall vest in the Provincial Police Officer, who shall exercise such operational and administrative powers, subject to policy, oversight and guidance given by the Chief Minister through the Secretary.”.

7. **Amendment of section 17 of the Khyber Pakhtunkhwa Act No. II of 2017.**--- In the said Act, in section 17,-

- (a) sub-section (3) shall be deleted;
- (b) for sub-section (4), the following shall be substituted, namely:

“(4) The posting and transfer in the Police shall be made in accordance with the Khyber Pakhtunkhwa Government Rules of Business, 1985:

Provided that the Chief Minister may delegate any of his powers of posting and transfer to the Provincial Police Officer:

Provided further that other posting and transfer in BPS-17 and 18 shall be made by the Provincial Police Officer.”; and

- (c) in sub-section (6), -
 - (i) in the beginning, for the word “The”, the words and comma “Subject to the approval of Government, the” shall be substituted; and
 - (ii) the words “for review by the Provincial Public Safety Commission” shall be deleted.

8. **Deletion of section 21 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, section 21 shall be deleted.

9. **Amendment of section 22 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, in section 22,-

- (a) for sub-section (1), the following shall be substituted, namely:

“(1) Head of District Police shall prepare an annual Policing Plan, consistent with Provincial Policing Plan, wherever applicable, in consultation with the Department, in the prescribed manner.”; and

- (b) sub-sections (3) and (4) shall be deleted.

mm
Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

10. **Amendment of section 24 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, in section 24, the words “by the Provincial Police Officer” shall be deleted.

11. **Substitution of section 25 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, for section 25, the following shall be substituted, namely:

“25. Posting of head of investigation.---(1) The head of investigation in the Province, other than the Capital City District, shall be of the rank of Additional Inspector General of Police.

(2) The head of investigation in a Capital City District shall not be below the rank of Senior Superintendent of Police.

(3) The head of investigation in a District shall not be below the rank of Superintendent of Police and shall be responsible to his own hierarchy subject to general control of the District Police Officer.

(4) All registered cases shall be investigated by the investigation staff in the district under the supervision of the head of investigation:

Provided that Government may, by a special or general order, entrust investigation of offences under local and special laws, as defined in the Pakistan Penal Code, 1860 (Act No. XLV of 1860), and punishable with imprisonment for a term not exceeding three years with or without any other punishment, to the police station staff.

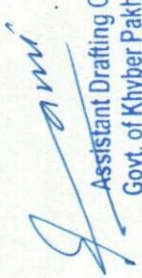
(5) The District Police Officer shall not interfere with the process of investigation. The head of investigation shall, however, keep the District Police Officer informed of the progress of all cases, which have a bearing on public order. The District Police Officer shall provide full support to the head of investigation in the performance of his duties.

(6) Investigation shall not be changed, except after due deliberations and recommendations by a board, headed by an officer not below the rank of Senior Superintendent of Police and two Superintendents of Police, one being in-charge of the investigation of the concerned district:

Provided that the final order for the change of investigation shall be passed by head of investigation in the general police area, who shall record reasons for change of such investigation:

Provided further that the change of investigation for the second time may only be allowed with the approval of the Provincial Police Officer or the Capital City Police Officer, as the case may be.”.

12. **Deletion of sections 26 and 27 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, sections 26 and 27 shall be deleted.


Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

13. **Substitution of section 37 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, for section 37, the following shall be substituted, namely:

“37. Posting in Police Training College and School and specialized School etc.---The posting of the Commandant of the Police Training College, Principal of each Police Training School and Director of Specialized Schools shall be made in accordance with the Khyber Pakhtunkhwa Government Rules of Business, 1985.”.

14. **Substitution of section 40 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, for section 40, the following shall be substituted, namely:

“40. Suspension.---A member of the Police Establishment shall be suspended as per relevant efficiency and discipline rules for the time being in force.”.

15. **Amendment of section 42 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, in section 42, in sub-section (1), after the words “Subject to rules”, the words “and approval of Government” shall be inserted.

16. **Amendment of section 43 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, in section 43, in sub-section (1), after the words “subject to the approval of the”, the words and comma “Government, through” shall be inserted.

17. **Amendment of section 45 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, in section 45,-

- (a) for the word, “Any”, occurring at the beginning, the words and comma “Subject to the provisions of the Khyber Pakhtunkhwa Civil Administration (Public Service Delivery and Good Governance) Act, 2020 (Khyber Pakhtunkhwa Act No. IX of 2020), any” shall be substituted; and
- (b) in the proviso, the words and comma “Nazim, District Government and the” shall be deleted.

18. **Deletion of section 46 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, section 46 shall be deleted.

19. **Deletion of Chapter-V of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, Chapter-V shall be deleted.

20. **Deletion of sections 66 to 72 and 77 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, sections 66 to 72 and 77 shall be deleted.

21. **Amendment of section 78 of the Khyber Pakhtunkhwa Act No. II of 2017.**---In the said Act, in section 78,-

- (a) in sub-section (1), before the words “Provincial Police Officer”, occurring at the beginning, the words and comma

and
Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

“Subject to the approval of Government,” shall be inserted;
and

- (b) in sub-section (2), the words, hyphen, brackets and figures “provided under sub-section (2) of section 77 of this Act” shall be deleted.

22. Amendment of section 84 of the Khyber Pakhtunkhwa Act No. II of 2017.---In the said Act, in section 84, in sub-section (1), for the word “The”, occurring at the beginning, the words and comma “Subject to the provisions of the Khyber Pakhtunkhwa Civil Administration (Public Service Delivery and Good Governance) Act, 2020 (Khyber Pakhtunkhwa Act No. IX of 2020), the” shall be substituted.

23. Substitution of section 140 of the Khyber Pakhtunkhwa Act No. II of 2017.---In the said Act, for section 140, the following shall be substituted, namely:

“140. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.”.

24. Enactment of the Khyber Pakhtunkhwa Independent Police Complaints Authority Act, 2024.---It is hereby enacted as the Khyber Pakhtunkhwa Independent Police Complaints Authority Act, 2024, in the manner as follows:

“AN
ACT

*to establish the Khyber Pakhtunkhwa Independent Police Complaints
Authority to inquire into cases of Police misconduct
in the Province of Khyber Pakhtunkhwa*

WHEREAS it is mandated upon the Government to ensure that Police of the Province shall act within the limits as defined by the law and shall put in place a mechanism to check their misconduct;

AND WHEREAS it is expedient to establish the Khyber Pakhtunkhwa Independent Police Complaints Authority in the Province of Khyber Pakhtunkhwa to ensure that inquiries into complaints against Police misconduct are conducted in swift and transparent manner;

It is hereby enacted by the Provincial Assembly of the Khyber Pakhtunkhwa as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Independent Police Complaints Authority Act, 2024.

(2) It shall extend to the whole of the Province of Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. **Definitions.**---In this Act, unless the context provides otherwise, the following expressions shall have the meanings as are respectively assigned to them, that is to say,-

- (a) **“Authority”** means the Independent Police Complaints Authority, established under this Act;
- (b) **“Chief Minister”** means the Chief Minister of Khyber Pakhtunkhwa;
- (c) **“Competent Authority”** means an authority competent to impose a punishment on a police officer;
- (d) **“Department”** means the Home and Tribal Affairs Department of Government;
- (e) **“Government”** means the Government of Khyber Pakhtunkhwa;
- (f) **“local resolution”** means resolution of a complaint through explanation of conduct complained, an apology or satisfying the complainant that appropriate action is being taken. A local resolution shall not lead to disciplinary proceedings;
- (g) **“misconduct”** means failure to follow standards of professional behavior or conduct applicable to a police officer;
- (h) **“Police Establishment”** means the Police Establishment, mentioned under the Khyber Pakhtunkhwa Police Act, 2017 and any other policing organization as Government may like to include in the purview of this Act;
- (i) **“prescribed”** means prescribed by rules;
- (j) **“recordable conduct”** means a conduct that is required to be recorded by the appropriate authority under section 10 of this Act;
- (k) **“rules”** mean rules made under this Act; and
- (l) **“service punishment”** means the service punishment as provided under the relevant efficiency and discipline rules for the time being in force.

3. **Establishment of Authority.**---On commencement of this Act, Government shall, by a notification in the official Gazette, establish an Authority to be known as the Khyber Pakhtunkhwa Independent Police Complaints Authority.

4. Constitution of the Authority.---The Authority shall consist of the Chairman and up-to five members.

5. Superintendence.---(1) The superintendence of the Authority shall vest in the Government, which shall be exercised strictly in accordance with this Act and the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017).

(2) The Chairman and members of the Authority shall hold office for such period as may be prescribed.

(3) The Chairman and members shall have such experience and qualifications as may be prescribed.

(4) The Chairman and members shall be appointed in the prescribed manner by Government.

(5) The Authority shall have its head office at Peshawar and a regional office at each police region level.

(6) All the existing staff of the Provincial Public Safety Commission, Capital City Public Safety Commission and District Public Safety Commission shall deem to be the employees of the Authority for all intent and purposes and shall continue with their existing terms and conditions of service under this Act.

6. Functions of the Authority.---The Authority shall-

(a) ensure the maintenance by Police Establishment of adequate and satisfactory arrangements with respect to the following matters:

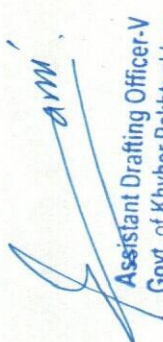
(i) handling of complaints made about the conduct of persons serving in or with the Police;

(ii) reporting and recording of information from which it appears that there may have been a conduct by such persons, which constitutes or involves the commission of a criminal offence or behavior justifying disciplinary proceedings;

(iii) the reporting and recording of information from which it appears that a person had died or received serious injuries during or following contact with a person serving with the police; and

(iv) the manner in which any such complaints and any such information as are mentioned above are investigated, inquired into or otherwise handled or dealt with;

(b) keep under review all arrangements maintained with regard to the matters under clause (a);


Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

- (c) ensure that arrangements maintained with respect to matters under clause (a) comply with the requirements of this Act, are efficient and effective and contain and manifest an appropriate degree of independence;
- (d) ensure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to the matters under clause (a);
- (e) supervise, manage and undertake inquiries in accordance with the provisions of this this Act and the rules;
- (f) carry out inquiries in case of death or serious injury in a prison; and
- (g) any other complaint, relating to the Police Establishment, referred by the Chief Minister, in a manner as prescribed.

7. Provision of information to the Authority.---It shall be the duty of every Police Establishment to provide such information and documents to the Authority as may be required by the Authority or is prescribed.

8. Inspection of police premises by the Authority.---(1) The Authority shall require police force to allow a person nominated by it to have access to police premises and to the documents and other relevant materials or things available or presumed to have been available on those premises for the purposes mentioned in sub-section (2) below.

(2) The purposes, mentioned in sub-section (1), shall be-

- (a) the examination by the Authority of the efficiency and effectiveness of the arrangements made by the Police for handling complaints or recording of information mentioned in section 7; and
- (b) inquiry by the Authority or any other inquiry carried out under its supervision or direction.

(3) Where the Authority issues a requirement under sub-section (1), the police authority concerned shall immediately provide the requisite access.

9. Complaints and their handling.---(1) A complaint of misconduct may be made to the relevant police officer or the Authority, as the case may be.

(2) The relevant police officer shall decide in accordance with rules, whether the complaint discloses recordable conduct or otherwise.

(3) Where the complaint discloses recordable conduct, the relevant police officer shall record the complaint or cause it to be recorded in the

am,
Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

prescribed manner and shall inform the complainant.

(4) Where the complaint does not disclose recordable conduct, the appropriate police officer shall not record the complaint but shall inform the complainant.

(5) Once a complaint has been recorded, the appropriate police officer shall decide in accordance with rules whether the complaint needs to be forwarded to the Authority and a complaint, which does not require to be forwarded to the Authority, shall be resolved through local resolution.

(6) Cases, mentioned in sub-section (2) of section 16, shall be intimated to the Authority as soon as they become known whether a complaint has been made or not.

10. Recordable conduct.---(1) The following shall constitute the recordable conduct:

- (a) failure to act in accordance with mandatory requirement(s) of this Act and rules; and
- (b) failure to act in accordance with a Code of Conduct as provided in the Khyber Pakhtunkhwa Police Act, 2017.

(2) Without prejudice to the generality of sub-section (1), the following instances shall be considered to be cases of recordable conduct:

- (a) failure to register an FIR;
- (b) failure to respond to a call for help;
- (c) use of unjustified force against a person;
- (d) use of gross or abusive language;
- (e) use of torture, including physical, mental, psychological, emotional or inhumane treatment;
- (f) failure to inform the near ones of a person who has been arrested;
- (g) failure to inform the complainant of the outcome of a complaint;
- (h) failure to process a crime scene;
- (i) failure to prosecute a person who has registered a false FIR;
- (j) detention of a person in unclean and unhygienic conditions;
- (k) instances mentioned in sub-section (2) of section 16 of this Act; and

mm
Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

- (l) any other matter as prescribed regarding willful negligence or action in violation of law.

11. Inquiry into complaints.---(1) On receipt of a complaint, the Authority shall conduct an inquiry in order to inquire into the complaint made against a member of the police.

(2) Once evidence has been collected, the officer, complained against, shall be intimated of the evidence and opportunity shall be provided to him to present a defence.

(3) Every inquiry shall result into a report, which shall set out and analyze evidence on each allegation.

(4) Every complaint, referred to the Authority, shall be inquired into by one of the following methods:

- (a) local inquiry;
(b) supervised inquiry;
(c) directed inquiry; and
(d) independent inquiry.

12. Method of inquiry.---When the Authority receives a complaint from the relevant police officer, it shall decide in accordance with the provisions of this Act and the rules and the type of inquiry that shall be conducted from amongst those mentioned in sub-section (4) of section 11 of this Act.

13. Local inquiry.---(1) A local inquiry shall be conducted by an officer of the police, unrelated to the complainant and not subordinate to the officer complained against.

(2) The relevant police officer shall determine the officer who shall conduct the local inquiry.

(3) A local inquiry shall be conducted in such matters as may be specified in the rules.

14. Supervised inquiry.---(1) A supervised inquiry shall be conducted by an officer of the police, unrelated to the complainant and not subordinate to the officer complained against.

(2) The relevant police officer shall determine the officer who shall conduct the supervised inquiry.

(3) A supervised inquiry shall be conducted in such matters as may be prescribed.

(4) A copy of the supervised inquiry report shall be intimated to the

Authority.

(5) The Authority may call for a new inquiry where it finds that the inquiry was not conducted properly or in violation of this Act or rules.

15. Directed inquiry.---(1) A directed inquiry shall be conducted by an officer of the police, unrelated to the complainant and not subordinate to the officer complained against, and whose name has been approved by the Authority.

(2) A directed inquiry shall be conducted in such matters as may be prescribed.

(3) The inquiry proceedings shall be conducted on the active advice and guidance of the Authority.

(4) A copy of the inquiry report shall be intimated to the Authority.

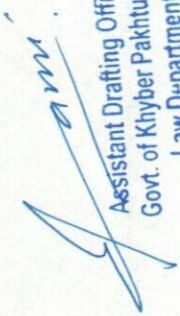
16. Independent inquiry.---(1) An independent inquiry shall be conducted by one or more officers of the Authority.

(2) An independent inquiry shall be conducted where,-

- (a) a member of the public has died or suffered a serious injury due to contact with a police officer;
- (b) death or serious injury has occurred due to failure of the police to act;
- (c) death or serious injury has occurred to a person in police custody;
- (d) death or serious injury has occurred in a road accident involving the police;
- (e) serious torture, including physical, mental, psychological, emotional is caused to any person;
- (f) where sexual contact has taken place between a police officer and a member of the public, who has come into contact with a police officer, acting in discharge of his professional duties;
- (g) where a police person has been allegedly involved in property grabbing or illegally supporting a person; and
- (h) a matter is referred by the Chief Minister for the inquiry to be conducted by the Authority itself.

17. Action on inquiries.---(1) Every inquiry report shall include suggested actions that shall be taken with regard to the misconduct of police.

(2) For the purposes of sub-section (1), one or more of the following


Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

actions may be suggested:

- (a) creating an improvement plan for the police officer(s);
- (b) compensation to be paid to the complainant(s);
- (c) one or more service punishments; and
- (d) initiation of criminal proceedings.

18. Imposition of punishments.---(1) The Competent Authority shall decide the action that should be taken in accordance with section 16 of this Act, in case of a local inquiry and supervised inquiry.

(2) In case of a directed inquiry or independent inquiry, action to be taken shall require the prior approval of the Authority.

(3) Where the Competent Authority and the Authority fail to agree on the action to be taken within thirty (30) days, the matter shall be decided by Government:

Provided that if Government disagrees with the views of the Authority regarding the action to be taken, it shall provide an opportunity to the Authority to present its views.

19. Powers of officers of the Authority.---The officers of the Authority shall have the power of a police officer to question any person(s) or police personnel, collect evidence and make recordings.

20. Restriction on disclosure of sensitive information.---(1) The Authority or the relevant police officer shall not disclose the following sensitive information to any person other than the relevant inquiry officer:

- (a) intelligence information;
- (b) protected information; and
- (c) likely to jeopardizes the security of any person;

(2) The inquiry officer shall not disclose sensitive information to any person and where the sensitive information has been relied upon as a result of the inquiry, he shall declare that the inquiry was relied on the same.

21. Duty to keep the complainant informed.---(1) The outcome of every complaint shall be intimated to the complainant.

(2) The intimation to the complainant shall include details about any right of appeal he may have.

22. Right of appeal.---(1) A complainant shall have a right to file an appeal to be made to the Authority against the following decisions:

- (a) not to record a complaint;
- (b) not to refer a matter to the Authority; and
- (c) to discontinue an inquiry.

(2) Notwithstanding anything contained in sub-section (1), the complainant may file a complaint directly to the Chief Minister and the Chief Minister, on receipt of such complaint, may pass such order as he may deem appropriate.

23. Power to review.---The Chairman of the Authority may review a decision against using a particular type of inquiry under sub-section (4) of section 11, upon receipt of application from the complainant.

24. Power to issue guidance.---(1) The Authority may, with prior approval of Government, issue guidance to the Police Establishment with regard to-

- (a) the handling of complaints; and
- (b) the detection or deterrence of misconduct by persons serving with the police.

(2) Without prejudice to the generality of the powers contained in sub-section (1), such guidance may include-

- (a) handling of complaints which have not yet been recorded and about dealing with recordable conduct matters;
- (b) procedure to be followed by the appropriate authority when recording a complaint or any recordable conduct matter;
- (c) whether a complaint is suitable for local resolution;
- (d) how to protect the scene of a complaint or recordable conduct; and
- (e) provision of information regarding a complaint or recordable conduct to the Authority.

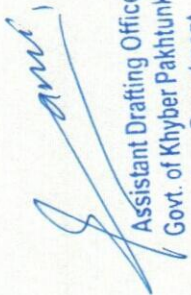
(3) A Police Establishment shall comply with the guidance of the Authority.

25. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

26. Reports.---(1) At the end of each financial year, the Authority shall make a report to Government on the carrying out of its functions.

(2) The Authority shall also make such reports to Government as Government may from time to time require.

(3) A report under sub-section (1) shall be provided to the head of Police Establishment.


Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department

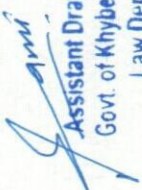
(4) Government shall lay down the report, received under sub-section (1), to the Provincial Assembly of Khyber Pakhtunkhwa, within three (03) months.”.

STATEMENT OF OBJECTS AND REASONS

It is desirable to amend the Khyber Pakhtunkhwa Police Act, 2017 and to establish an independent system of monitoring and inspection of agencies performing criminal justice system in the Province of the Khyber Pakhtunkhwa. Moreover, keeping in view the expediency to strengthen law enforcement capabilities and boost public trust in law enforcement and improve crime prevention and investigation, enhance accountability and transparency, improve community-police relations and address existing gaps and ambiguities the instant enactment is imperative. In furtherance to the said premise, these amendments will enhance police professionalism. By enactment of the proposed legislation, police will effectively uphold and enforce laws, maintain public order, protect the lives, properties and honour of the people without discrimination through modern proactive policing and community participation. Hence, this Bill.

Peshawar,
dated the
, 2024.


MINISTER-IN-CHARGE.


Assistant Drafting Officer-V
Govt. of Khyber Pakhtunkhwa
Law Department