

**A
Bill**

further to amend the Khyber Pakhtunkhwa Prosecution Service
(Constitution, Functions and Powers) Act, 2005

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 (Khyber Pakhtunkhwa Act No. I of 2005), for the purposes hereinafter appearing;

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 Prosecution Service (Constitution, Functions and Powers) (Amendment) Act, 2025.

(2) It shall come into force at once.

2. Amendment of section 2 of the Khyber Pakhtunkhwa Act No. I of 2005.---In the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 (Khyber Pakhtunkhwa Act No. I of 2005), hereinafter referred to as the said Act, in section 2, in clause (p), for the word "Additional", the word "Senior" shall be substituted.

3. Amendment of section 4 of the Khyber Pakhtunkhwa Act No. I of 2005.---In the said Act, in section 4, in sub-section (1),-

(a) in clause (b),-

(i) in sub-clause (i), the word "or", appearing at the end, shall be deleted; and

(ii) after sub-clause (ii), the following new sub-clauses shall be added, namely:

“(iii) withhold prosecution, keeping in view the interest of the victim or legal heirs of deceased, if reasonable grounds exist 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 disposed of the application in such manner as it may deem fit.”; and

Assessing Officer-VII
Govt. of Khyber Pakhtunkhwa
Law Department

- (b) clause (c) shall be deleted.

4. Amendment of section 5 of the Khyber Pakhtunkhwa Act No. I of 2005.---In the said Act, in section 5, for clause (f), the following shall be substituted, namely:

- “(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.”.

5. Amendment of section 7 of the Khyber Pakhtunkhwa Act No. I of 2005.---In the said Act, in section 7,-

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

- “(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;”;

- (b) in clause (d), the full stop, appearing at the end, shall be replaced by a semi-colon and the word “and”, and thereafter the following new clause shall be added, namely:

- “(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.”.

6. Amendment of section 8 of the Khyber Pakhtunkhwa Act No. I of 2005.---In the said Act, in section 8,-

- (a) in sub-section (2), for the words “First Investigation Report”, occurring twice, the words “First Information Report” shall respectively be substituted; and

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

- “(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.”.

P. Bal
Assistant Drafting Officer-VII
Govt. of Khyber Pakhtunkhwa
Law Department

7. **Insertion of new section 11A to the Khyber Pakhtunkhwa Act No. I of 2005.**---In the said Act, after section 11, the following new section shall be inserted, namely:

“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.”.

8. **Amendment of section 417 Act No. V of 1898.**---In the Criminal Procedure Code, 1898 (Act No. V of 1898), in section 417, in sub-section (1), for the words “Provincial Government”, the words and comma “Director General Prosecution, Khyber Pakhtunkhwa” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The power of a Public Prosecutor, in recommendation of weak cases for discharge, is insignificant, resulting in poor administration of justice. Cases are delayed in Courts and pendency increased. The Prosecution, even if consider a case non-prosecutable, still are bound to put up case for trial due to limitation in the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005. Moreover, the law on the subject for withdrawal of a criminal case (i.e. section 494 Cr. PC) empowers the Public Prosecutor to withdraw from Prosecution of a case, however, the said Prosecution Act, stipulates certain limitations, resulting in increased pendency of cases and acquittals reflecting negatively on State or Government. Additionally, the opinion, so tendered by the Public Prosecutor, has been declared as mandatory, which shall be followed by police and shall be dealt under Khyber Pakhtunkhwa Police Act, 2017. Moreover, the words “First Investigation Report” used in section 8 (2) have not been mentioned correctly and as such the same needs rectification by substituting with the words “First Information Report”. Similarly, under section 8 (4), in addition to Head of Investigation, the District Police Officer of the concerned District has also been proposed to seek guidance of the Public Prosecutor even at the stage of an inquiry of the case. Furthermore, no indemnity to the prosecutors has been provided in the existing Act, so under section 11A of the proposed Bill, a clause relating to indemnity has been incorporated in the Act *ibid*. Since, filing of appeal, in cases of acquittal, as per section 417 of the Cr.P.C, requires approval of Provincial Government, which is a cumbersome procedure and needs to be simplified, thus, for the purpose of speedy disposal the powers have been assigned to Director General Prosecution by suitably amending section 417 of the Code *ibid*. Hence, this Bill.

Peshawar,
dated the
, 2025.


MINISTER-IN-CHARGE.