

**The Sindh Criminal Prosecution Service
(Constitution, Functions and Powers) Act, 2009**

and

**The Sindh Prosecutors (Appointment and
Conditions of Service) Rules, 2006**



2014

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Title:

**The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009 *and*
The Sindh Prosecutors (Appointment and Conditions of Service) Rules, 2006**

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PROVINCIAL ASSEMBLY OF SINDH

NOTIFICATION

Karachi, the 30th April, 2010

NO.PAS/Legis-B-23/2009- The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Bill, 2009 having been passed by the Provincial Assembly of Sindh on 29th March, 2010 and assented to by the Governor of Sindh on 24th April, 2010 is hereby published as an Act of the Legislature of Sindh.

THE SINDH CRIMINAL PROSECUTION SERVICE (CONSTITUTION, FUNCTIONS AND POWERS) ACT, 2009 (Sindh Act No. IX of 2010)

(First published after having received the assent of the Governor of Sindh in the Gazette of Sindh (Extra-Ordinary) dated 30th April, 2010.)

AN ACT

to provide for establishment of Criminal Prosecution Service in Sindh

Preamble.- WHEREAS it is expedient to provide for establishment of Criminal Prosecution Service in Sindh.

It is hereby enacted as follows:-

CHAPTER – I PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009.

(2) It extends to the whole of the Sindh.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 29th October, 2009.

2. Definitions.- (1) In this Act, unless the subject or context otherwise requires:

(a) “Code” means the Code of Criminal Procedure, 1898 (Ordinance V of 1898);

(b) “District” means a district as notified under the provisions of Sindh Land Revenue Act, 1967;

(c) “First Information Report” means an information recorded under section 154 of the Code;

(d) “Government” means the Government of Sindh;

(e) “High Court” means the High Court of Sindh;

(f) “Investigation Officer” means an officer of a Law Enforcement Agency competent under any law, for the time being in force, to investigate an offence;

(g) “Law Enforcement Agency” includes Sindh Police and any other agency established under any law, as may be notified by Government;

(h) "Lower Court" mean and include Criminal Court, Civil Court, Banking Court, Special Court and Tribunal;

(i) "Order" means the Police Order, 2002 (Chief Executive's Order No.22 of 2002);

(j) "Prescribed" means prescribed by rules;

(k) "Prosecution" means the prosecution of a criminal case;

(l) "Prosecutor" means the Prosecutor General, Additional Prosecutor General, Deputy Prosecutor General, Assistant Prosecutor General, District Public Prosecutor, Deputy District Public Prosecutor, Assistant District Public Prosecutor and a Public Prosecutor appointed under this Act and shall be deemed to be the Public Prosecutor under the Code;

(m) "Prosecutor General" means the Prosecutor General appointed under Section 6;

(n) "Rules" means rules made under this Act;

(o) "Service" means Sindh Criminal Prosecution Service; and

(p) "Supreme Court" means the Supreme Court of Pakistan.

(2) The words and expressions used herein, but not defined, shall have the same meaning as are assigned to them in the Code or the Order.

CHAPTER – II ESTABLISHMENT, CONSTITUTION AND ADMINISTRATION OF THE SERVICE

3. Establishment of the service.- Government shall establish and maintain a Service to be called the Sindh Criminal Prosecution Service.

4. Constitution.- The Service shall consist of the Prosecutor General, Additional Prosecutors General, Deputy Prosecutors General, Assistant Prosecutor General, District Public Prosecutors, Deputy District Public Prosecutors and Assistant District Public Prosecutors.

5. Control and administration.- ¹[(1) Notwithstanding any judgement of any court including the Supreme Court or High Court, the Government shall exercise exclusive superintendence over the service to ensure achievement of the objectives of this Act.

(2) The administration of the service shall vest in Government.

(3) A prosecutor General, a Public Prosecutor, an Additional Prosecutor General, a Deputy Prosecutor General, an Assistant Prosecutor General, a District Public Prosecutor, a Deputy District Public Prosecutor and an Assistant Public Prosecutor shall perform their functions under the control and administration of Government.]

(4) Subject to the sub-clause (1) and (2) control of all Prosecutor within a District shall work under the supervision of the District Public Prosecutor.

¹ Substituted by Sindh Act No. I of 2012, dated 3-1-2012

6. Prosecutor General.- ¹[(1) Government shall appoint a Prosecutor General, on such terms and conditions, as may be determined by Government.]

(2) The terms and conditions of service of the Prosecutor General shall not be varied during the term of his office.

(3) ² [³ ⁴[The Prosecutor General shall hold office at the pleasure of Government.]]]

(4) The Prosecutor General may resign from his post during the tenure of his office by tendering resignation in writing to Government.

(5) Government may, for reasons to be recorded in writing and after providing him an opportunity of being heard, remove the Prosecutor General prior to the completion of his tenure, on the ground of misconduct or physical infirmity.

(6) The Prosecutor General shall have a right of representation and audience on behalf of Government in lower Court, the High Court, the Federal Shariat Court and the Supreme Court.

(7) The Prosecutor General may ⁵[assign] any of his powers and functions to an Additional Prosecutor General or to a Deputy Prosecutor General or an Assistant Prosecutor General.

7. Qualification for the appointment of Prosecutor General.- ⁶[A person shall not be appointed as Prosecutor General unless he is a citizen of Pakistan, and is

¹ Substituted by Sindh Act No. I of 2012, dated 3-1-2012

² Substituted by Sindh Act No. XVI of 2011, dated 15-6-2011

³ Substituted by Sindh Act No. I of 2012, dated 3-1-2012

⁴ Substituted by Sindh Act No. XIV of 2014, dated 11-6-2014

⁵ Substituted by Sindh Act No. XIV of 2014, dated 11-6-2014

⁶ Substituted by Sindh Act No. XIV of 2014, dated 11-6-2014

not less than forty five years of age, he has, for a period of, or for the period aggregating, not less than ten years, been an advocate of the High Court.]

(a) ¹[is or was qualified to be appointed as judge of High Court or has for a period of, or for the periods aggregating, not less than ten years, been an Advocate of the High Court]; or

(b) he has, for a period of not less than five years, performed functions of an Additional Prosecutor General and is enrolled as an Advocate of High Court; or

(c) he has, for a period of not less than seven years, performed the functions of a District Public Prosecutor or has performed functions of a Prosecutor in Sindh, under any law, for a period of not less than fifteen years, and is enrolled as an Advocate of High Court; or

(d) he has, for a period of not less than five years, performed functions of an Additional Prosecutor General; or

(e) he has, for a period of not less than seven years, performed the functions of a District Public Prosecutor or has performed functions of a Prosecutor in Sindh, under any law, for a period of not less than fifteen years.

Explanation.- In computing the period during which a person has been an Advocate of the High Court or held judicial office, there shall be included any period during which he has held judicial office after he became an Advocate or, as the case may be, the period during which he has been an Advocate after having held judicial office.

8. Appointments.- (1) Government may appoint any Prosecutor to conduct criminal cases in the High Court, Federal Shariat Court and Supreme Court or any other Special Court.

¹ Substituted by Sindh Act No. I of 2012, dated 3-1-2012

(2) Government shall appoint a District Public Prosecutor in each district, who shall be Officer Incharge of the Prosecution in the district within the meaning of the Code.

(3) All the appointments, except that of the Prosecutor General , to various posts in the Service, shall be made through initial recruitment in the manner, as may be prescribed:

Provided that, after initial recruitment, fifty percent of vacancies occurring on the post of Additional Prosecutor General, Deputy Prosecutor General, Assistant Prosecutor General, District Public Prosecutor and Deputy District Public Prosecutor shall be filled through promotion.

(4) No direct recruitment shall be made on regular basis to the posts of District Public Prosecutor, Deputy District Public Prosecutor, Assistant District Public Prosecutor, Additional Prosecutor General and Deputy Prosecutor General and Assistant Prosecutor General except on the recommendation of Sindh Public Service Commission:

Provided that on commencement of this Act, the persons already performing functions of prosecution on regular basis in the Province, shall continue as such.

CHAPTER – III POWERS AND FUNCTIONS OF THE PROSECUTORS

9. Conduct of prosecution.- (1) The Prosecutors shall be responsible for the conduct of prosecution on behalf of Government.

(2) A District Public Prosecutor shall distribute work to the Prosecutors with respect to the lower Court within a district.

(3) A police report under section 173 of the Code, including a report of cancellation of the First Information Report or a request for discharge of a suspect or an accused shall be submitted to a Court through the Prosecutor appointed under this Act.

(4) The Prosecutor shall scrutinize the report or the request and may-

(a) return the same within three days to the Officer Incharge of Police Station or Investigation Officer, as the case may be, if he finds the same to be defective, for removal of such defects, as may be identified by him; or

(b) if it is fit for submission, file it before the Court of competent jurisdiction.

(5) On receipt of an interim police report under section 173 of the Code, the Prosecutor shall-

(a) examine the reasons assigned for the delay in the completion of investigation and if he considers the reasons compelling, request the Court for the postponement of trial and in case investigation is not completed within reasonable time, request the Court for commencement of trial; and

(b) in cases where reasons assigned for delay in the completion of investigation are not compelling, request the Court for commencement of trial on the basis of the evidence available on record.

(6) Prosecutor may submit to the Court results of his scrutiny in writing as to the available evidence and applicability of offences against all or any of the accused as per facts and circumstances of the case.

10. Responsibilities of Police towards Prosecutors.- (1) An Officer Incharge of a Police Station or the Investigation Officer shall-

(a) immediately report to the District Public Prosecutor, the registration of each criminal case by sending a copy of the First Information Report;

(b) send the police report under section 173 of the Code, to the concerned Prosecutor within the period prescribed by law; and

(c) if an investigation is not completed or cannot be completed within the time provided under the law, record reasons for the delay and inform the Prosecutor.

(2) An officer Incharge of the Police Station or Investigation Officer shall, within the time specified by the Prosecutor, comply with the directions and remove the defects pointed out by the Prosecutor in a police report under section 173 of the Code, including report for cancellation of the First Information Report or request for discharge of an accused or suspect.

11. Duties of the Prosecutors.- (1) The Prosecutor General shall-

(a) submit an annual report of the Service to Government within three months of the conclusion of the calendar year to which the report pertains ;

(b) keep Government informed about the performance of the Service.

(2) A Prosecutor, working under the supervision of the Prosecutor General, shall keep the Prosecutor General informed about the progress of all the cases under his charge.

(3) A Prosecutor, working under the supervision of the District Public Prosecutor, shall keep the concerned District Public Prosecutor informed about the progress of all criminal cases under his charge.

(4) Where a Prosecutor is of the opinion that an application for enhancement of sentence or a revision should be filed in any case, he shall refer the matter to the District Public Prosecutor or the Prosecutor General, who shall take appropriate measures thereon under the law.

(5) In case of acquittal by a-

(i) Court in a District, the concerned District Public Prosecutor; and

(ii) Special Court, the concerned Prosecutor, shall report the details of the case to the Prosecutor General, along with grounds for appeal and the Prosecutor General may request Government for preferring an appeal.

(6) A Prosecutor shall maintain an independent file in the prescribed manner of each case assigned to him for prosecution.

(7) A District Public Prosecutor shall act as a member of the Criminal Justice Coordination Committee established under Article 110 of the Order.

(8) A Prosecutor shall-

(a) in all matters, perform his functions and exercise his powers fairly, honestly, with due diligence, in the public interest and to uphold justice;

(b) on receipt of the police report, final or interim, including a report for cancellation of First Information Report or request for discharge of an accused, scrutinize the same and process it under section 9;

(c) make such entries in the record and registers, as may be prescribed;

(d) perform such other duties as may be assigned to him under this Act by Government.

CHAPTER – IV ESTABLISHMENT OF PROCESS SERVING AGENCY

12. Establishment of Agency.- (1) Government may establish a Criminal Process Serving Agency to perform such process serving functions as may be prescribed.

(2) The criteria for appointment and terms and conditions of service of the members of Criminal Process Serving Agency shall be such, as may be prescribed.

CHAPTER – V MISCELLANEOUS

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

14. Terms and conditions of service.- Subject to the provisions of this Act and the rules, members of the Service, including the staff, shall be appointed and governed under the Sindh Civil Servants' Act, 1973 (Sindh Act No.14 of 1973) and rules made thereunder.

15. Code of conduct.- The Prosecutor General shall, with the prior approval of Government, issue a code of conduct for the Public Prosecutors.

16. Indemnity.- (1) No suit, prosecution or other legal proceedings shall lie against a Prosecutor in respect of anything done or attempted to be done by him in good faith under this Act.

(2) A Prosecutor appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code, 1860 (Ordinance XLV of 1860).

17. Removal of difficulties.- Government may, by order, provide for the removal of any difficulty, which may arise in giving effect to the provisions of this Act.

18.- ¹[Omitted * * *]

19. Savings.- All appointments made, actions taken and notifications issued by Government before the commencement of this Act, with respect to prosecution

¹ Omitted by Sindh Act No. I of 2012, dated 3-1-2012

The Sindh Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2009

of criminal cases, shall be deemed to have been made, taken and issued under this Act.

BY ORDER OF THE SPEAKER
PROVINCIAL ASSEMBLY OF SINDH

HADI BUX BURIRO
SECRETARY
PROVINCIAL ASSEMBLY OF SINDH

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The Sindh Prosecutors (Appointment & Conditions of Service) Rules, 2006

THE SINDH GOVERNMENT GAZETTE

Published by Authority

Karachi, Tuesday the 7th November, 2006

PART – I

GOVERNMENT OF SINDH

CRIMINAL PROSECUTION SERVICE DEPARTMENT, SGA & CD

**THE SINDH PROSECUTORS (APPOINTMENT AND
CONDITIONS OF SERVICE) RULES, 2006**

NOTIFICATION

Karachi, the 4th November, 2006

No. SO (P-I)/CPSD/1-7/2006: In exercise of the powers conferred by sub-section(1) of section 15 read with section 8 of the Sindh Criminal Prosecution Service (Constitution, Function and Powers) Ordinance, 2006, the Government of Sindh are pleased to make the following rule:-

1. Short title and commencement.- (1) These rules may be called the Sindh Prosecutors (Appointment and Conditions of Service) Rules, 2006.

(2) They shall come into force at once.

2. Definitions.- In these rules, unless the subject or context otherwise requires-

(a) "Administrative Secretary" means the secretary of the Sindh Criminal Prosecution Service Department;

(b) "Commission" means the Sindh Public Service Commission;

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The Sindh Prosecutors (Appointment & Conditions of Service) Rules, 2006

(c) "Initial appointment" means the appointment made otherwise than by promotion or transfer;

(d) "Selection committee" means the selection committee constituted under rule 5.

3. Appointment and promotion of Prosecutors.- (1) The appointments of Additional Prosecutor General, Deputy Prosecutor General, District Public Prosecutor, Deputy District Public Prosecutor and Assistant District Public Prosecutor shall be made by Government-

(i) by initial appointment on regular basis on the recommendations of the Commission or on contract basis for a non-extendable period of three years on the recommendations of the Selection Committee;

(ii) by promotion or transfer.

In accordance with their respective recruitment rules.

(2) Government may, from time to time prescribed the quota for initial appointment and promotion.

4. Appointments on contract.- (1) Where appointments of the Prosecutor are to be made on contract basis, Government shall invite applications from the Lawyers who are domiciled in and are permanent residence of Sindh:

Provided that applications for the post of Assistant District Public Prosecutor shall be invited from the Lawyers of the District in which the post is to be filled in.

(2) Administrative Secretary shall ascertain the views of the District Judge and the District Public prosecutor as to the suitability of the applicant for the post of Assistant District Public Prosecutor.

The Sindh Prosecutors (Appointment & Conditions of Service) Rules, 2006

5. Constitution of selection committee.- (1) There shall be a Selection Committee to assess the suitability of lawyers for appointment on contract basis.

(2) The Selection Committee shall comprise of the following:-

- | | | |
|-----|---|----------|
| (a) | Administrative Secretary | Chairman |
| (b) | Prosecutor General, Sindh | Member |
| (c) | Nominee of Law Department not below the rank of Additional Secretary | Member |
| (d) | Nominee of the SGA&CD (Services) not below the rank of Additional Secretary | Member |
| (e) | Additional Advocate General to be nominated by the Advocate General Sindh | Member |

6. Test and interview.- (1) On receipt of applications under-rule4, the Selection Committee shall arrange for holding of written test of eligible applicants.

(2) The Selection Committee shall interview the candidates who have qualified the written test and after considering the views, if any, recommendations and forward the same to Government.

7. Period and termination of appointment.- (1) A Prosecutor appointed on contract basis shall hold office for a non-extendable period of three years during the pleasure of Government.

(2) Save as otherwise provided in rule-8, the contract appointment shall not be terminated by either party except by one month's notice one month's pay in lieu thereof.

The Sindh Prosecutors (Appointment & Conditions of Service) Rules, 2006

(3) A deed of contract in the form prescribed by Government shall be executed by the parties.

8. Removal from office.- (1) A Prosecutor appointed on contract basis shall be liable to be removed from his office at any time, if he is guilty of any act or conduct which, in the opinion of Government, is incompatible with his duties as such prosecutor:

Provided that no Prosecutor shall be removed unless he has been informed in writing of the grounds of the action proposed to be taken against him and has been given opportunity of showing cause against that action.

(2) The decision of Government shall be final.

9. Appointment by promotion / transfer.- (1) Persons as possess the qualifications and meet the conditions laid down for the purpose of promotion to a post shall be considered by the Departmental Promotion Committee or Selection Board, as the case may be.

(2) No Promotion on regulation basis shall be made to posts in basic pay scales 17 to 20 unless the officer concerned has completed such minimum length of service, attended such training and passed such departmental examination, as may be prescribed from time to time.

(3) Promotions to posts in basic pay scale 2 to 18 shall be made on the recommendations of the appropriate Departmental Promotion Committee and promotions to posts in basic pay scales 19 and 20 shall be made on the recommendations of the Selection Board.

(4) Where the appointing authority considers it to be in the public interest to fill a post reserved under these rules for promotion and the most senior officer belonging to service who is otherwise eligible for promotion does not possess the

The Sindh Prosecutors (Appointment & Conditions of Service) Rules, 2006

specified length of service the authority may appoint him to that post on acting charge basis.

(5) In the case of a post in basic pay scale 17 to 20 reserved to be filled by initial appointment, where the appointing authority is satisfied that no suitable officer in which the post exist is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on the acting charge basis the most senior officer otherwise eligible for promotion in the service, in excess of the promotion quota.

(6) Acting charge appointment shall be made against the posts which are likely to fall vacant for a period of six months or more and against the vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(7) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Selection Board, as the case may be.

(8) Acting Charge Appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority.

(9) Acting charge Appointment shall not confer any vested right or regular promotion to the post held on acting charge basis.

10. Minimum length of service for Promotion- (1) The minimum length of service for eligibility for promotion to various basic pay scales shall be as follows:

For Basic Pay Scale 18	5 Years in BPS-17
For Basic Pay Scale 19	12 Years in BPS-17 and above
For Basic Pay Scale 20	17 Years in BPS-17 and above

The Sindh Prosecutors (Appointment & Conditions of Service) Rules, 2006

Provided that where initial appointment takes place in BPS-18 or 19, the length of service for promotion to higher scales shall be as follows:

For Basic Pay Scale 19	5 Years in BPS-18
For Basic Pay Scale 20	12 Years in BPS-18 and above or 5 Years in BPS-19 and above

11. May not appear act or advise against government.- (1) No Prosecutor appointed on regular basis or on contract or any of his partners shall hold any brief against Government or give advice to private parties in the cases in which he is likely to be required to advise to Government or any government officer.

(2) If a partner of a prosecutor had advised, appeared or acted in any case against Government, he shall stop doing so as soon as Government intimates to the prosecutor that, in view of possible conflict of interest, his partner shall not so advise, appear or act.

(3) No District Public Prosecutor, Deputy District Public Prosecutor or Assistant Public Prosecutor shall appear for an accused person in any case arising within his own district.

12. Not to disclose information.- Save as may be required for the purpose of any case in which a Prosecutor appears on behalf of Government, he shall not, without the permission of the Government, communicate directly or indirectly to any person any document or information which has come into possession in the course of his duties.

13. Duties of the Additional Prosecutor General and Prosecutors.- (1) The Prosecutor General or Additional Prosecutor General shall give advice to Government in such legal matters as may be referred to him.

The Sindh Prosecutors (Appointment & Conditions of Service) Rules, 2006

(2) The other Prosecutors shall perform such duties as may from time to time be assigned to them by Government.

14. Pay and emoluments of Prosecutors.- (1) The Prosecutor General shall be entitled to pay, emoluments and perks as admissible to a BS-20 officer.

(2) The Additional Prosecutor General and District Public Prosecutor shall be entitled to pay, emoluments and perks as admissible to a BPS-19 Officer.

(3) The Deputy Prosecutor General and Deputy District Public Prosecutor shall be entitled to pay, emoluments and perks as admissible to a BPS-18 Officer.

(4) The Assistant District Public Prosecutor shall be entitled to Pay, emoluments and perks as admissible to a BPS-17 Officer.

(5) The Public Prosecutor shall be entitled to such pay, emoluments and perks as may be determined by Government on case to case basis.

(6) The Prosecutors in addition to their pay, emoluments and perks shall also be entitled to such special allowance at such rate as may be determined by Government.

15. Performance of duties of the Prosecutor General in his absence.- Where the Prosecutor General Sindh proceeds on leave or he his otherwise absent from his duties, the Government shall authorize any of the Additional Prosecutors General to perform the duties of the Prosecutor General.

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