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PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF GILGIT-BALTISTAN

LAW AND PROSECUTION DEPARTMENT

(Gilgit-Baltistan Secretariat)

Gilgit, the 31st December, 2019

Gilgit-Baltistan Prosecution (Functions and Powers) Act No. X 2019

(ACT NO. X OF 2019)

An Act to re-organize and establish Prosecution in the Gilgit-Baltistan.

Preamble.—WHEREAS it is expedient to re-organize and establish Prosecution department in Gilgit-Baltistan with a view to achieving speedy justice in transparent manner in the Gilgit-Baltistan and for matters ancillary or incidental thereto.

CHAPTER-I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Gilgit-Baltistan Prosecution (Functions and Powers) Act, 2019.

Price : Rs. 20.00

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(2) It shall extend to whole of the Gilgit-Baltistan.

(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 Gilgit-Baltistan appointed under Article 45 of the Government of Gilgit-Baltistan Order, 2018;

(b) **'Assembly'** means the Gilgit-Baltistan Assembly;

(c) **'Code'** means the Code of Criminal Procedure, 1898 (V of 1898);

(d) **'District'** means a District, as defined in the Gilgit-Baltistan Local Government Act, 2014;

(e) **'Prosecutor General'** means the Prosecutor General of Gilgit-Baltistan who will be responsible for the Management of Prosecution Department and control over Prosecutors, appointed under sub-section (3) of section 3 of this Act; or who have already been appointed prior to this Act under the Legal Advisory Service Rules, 2014;

(f) **'District Head of Prosecution'** means the District Public Prosecutor or, where no District Public Prosecutor is appointed in a District, the Deputy District Public Prosecutor of the District concerned;

(g) **'Final report'** means the report as mentioned in section 173 of the Code of Criminal Procedure;

(h) **'Government'** means the Government of the GB;

(i) **'Concerned Superintendent of Police'** means a police officer appointed as such in the Gilgit-Baltistan Police or under 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) **'Department'** means the Law & Prosecution Department, Gilgit-Baltistan as defined in Rule 3(3) read with Schedule-II entry No.3 of Gilgit-Baltistan Rules of Business, 2009;

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(l) **'Law Enforcement Agency'** means the Gilgit-Baltistan Police Department and includes any other law enforcement agency that may be notified by the Gilgit-Baltistan Government as such;

(m) **'Offence'** means an offence as defined in the Code or by any other law;

(n) **'Officer-in-Charge of a Police Station'** means an Officer-in-Charge as defined in the Code or any other law;

(o) **'Prescribed'** means prescribed by rules made under this Act;

(p) **'Public Prosecutor'** means a person appointed as Public Prosecutor under this Act or under Section 492 of Cr.P.C. and includes District Public Prosecutor, Deputy District Public Prosecutor and Assistant Deputy Public Prosecutor as well as Special Public Prosecutor; and

(q) **'Rules'** means the rules made under this Act.

(r) **'Contract / adhoc'** employees mean employees validly appointed by the Law & Prosecution Department Gilgit-Baltistan against the vacant posts of District Attorney/District Public Persecutor BS-18, Deputy District Public Prosecutor BS-17 and Assistant District Public Prosecutor BS-16.

(s) **"Seniority"** means the employees whose services are regularized under this Act shall be determined from the commencement of this Act in accordance the prevalent general seniority rules.

CHAPTER-II

PROSECUTION DEPARTMENT

3. **Establishment of Prosecution.**—(1) Notwithstanding anything contained in any other law for the time being in force, Government shall establish the Gilgit-Baltistan Prosecution Department (hereinafter referred to as the Prosecution), for the conduct of the functions assigned to it or to the officers borne on the strength of the prosecution under this Act.

(2) The Prosecution Department shall consist of a Prosecutor General, who shall be assisted by such number of Divisional DPGs, DDPPs, Deputy District Public Prosecutors, Assistant District Public Prosecutors, and such other officers and members of the staff over all as may be appointed by Government from time to

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time and will be under the administrative control of Government of Gilgit-Baltistan through Law & Prosecution Department, Gilgit-Baltistan.

(3) The Office of Prosecution shall be headed by the Prosecutor General Gilgit-Baltistan who will be under the overall administrative control of the Government through Law & Prosecution Department, Gilgit-Baltistan.

(4) The officers and members of the staff mentioned in sub-section (2) shall be civil servants within the meaning of the Gilgit-Baltistan Civil Servants Act 2011, and their terms and conditions of service shall be such as may be prescribed under the said Act and the Rules made thereunder:

Provided that if any conflict of opinion arises between Investigation Officer and Public Prosecutor concerned then Investigation Officer will inform PG through concerned district SP.

(5) Notwithstanding anything contained in the law or rules, all the District Attorney's/District Public Persecutors BS-18, Deputy District Public Prosecutors BS-17 and Assistant District Public Prosecutors BS-16 who are currently holding the permanent posts and have been completed two years contractual service shall be appointed on regular basis from the commencement of this Act.

(6) The employees whose services are regularized under this Act, their seniority shall be determined from the commencement of this Act as provided in General Seniority Rules.

CHAPTER-III

POWERS AND FUNCTIONS OF PUBLIC PROSECUTORS

4. **Powers and Functions of the Public Prosecutor.—** (1) A District Public Prosecutor or Deputy 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 the Courts of competent jurisdiction, namely:—

(a) Safeguard the interest of the State and public in conducting of 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 for trial; or

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(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—

(i) withhold prosecution if reasonable ground exists to believe that the offence is compoundable; provided that if the offence is not compounded within a period of one month, a report shall be lodged in the Court of competent jurisdiction for prosecution and trial; or

(ii) apply, for reasons to be recorded in writing, to the Court of competent jurisdiction for the discharge of the case, if its investigation 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. However, the concerned Prosecutor will also obtain prior permission of the Government through Law & Prosecution Deptt. GB.

(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.

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

(a) The Investigation Officer shall forward 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;

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(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 request 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 mis-represented the facts of the Case or prepared the report in-efficiently; and

(f) the Prosecutor General or the District Public Prosecutor or the Deputy District Public Prosecutor or Assistant Deputy Public Prosecutor or as the Case may be, when he deems necessary in Cases where police officers fail to follow any suggestions or instructions of Public Prosecutor under this Act, call for disciplinary action against the Investigation Officer through the competent authority.

6. **Liaison between Prosecutor General and IG Police.**—(1) The Prosecutor General shall keep liaison with the IG Police to ascertain the progress of Criminal appeals and Revisions and other legal proceedings pending before the Supreme Appellate Court Gilgit-Baltistan, and Gilgit-Baltistan Chief Court or any other Court established under the law. The PG will also will keep inform the Law & Prosecution Department as well.

(2) Prosecutor General shall issue directions to Prosecutors regarding all the Criminal Cases which are subjudice before the Courts in the Gilgit-Baltistan.

7. **Additional Powers of District Public Prosecutor/Deputy District Public Prosecutor/ Assistant Deputy District 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 through investigation of an offence, a Public Prosecutor may

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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) a 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 Court and in consultation with the Gilgit-Baltistan Government:

Provided that prosecution of an offence falling under the Anti-Terrorism Act, 1997 (XXVII of 1997), shall not be withdrawn without prior permission in writing of Government; and

(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 through District Public Prosecutor for removing or improving the same, which shall be complied with by the Investigating Officer within seven days, and on fulfillment thereof, it shall be sent to the Public Prosecutor for putting it in the Court.

8. **Reports and guidelines.—** (1) The District Public Prosecutor shall keep the Government, Gilgit-Baltistan informed about the outcome of prosecution of Cases in respect to his district.

(2) On registration of the First Information Report the Station House Officer of police station concerned shall send a copy of the First Information Report to the District Public Prosecutor/Deputy District 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 the Cases of all persons arrested without warrant irrespective of the fact whether such persons have been admitted to bail or not.

(4) During the investigation whenever any legal guidance/opinion is required by the Head of Investigation, the same shall be sought from the District

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Public Prosecutor/Deputy District Public Prosecutor and Assistant Public Prosecutor as the Case may be, and the guidance or opinion so given shall be followed.

(5) On the request of Head of Investigation, the 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 where 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 thereof.

(7) At the end of each year, the Prosecutor General shall submit a report to the Government through Law & Prosecution Department, Gilgit-Baltistan on the discharge of functions of the Prosecution during the year. Government shall lay before the Assembly a copy of the report received from the Prosecutor General.

(8) The Prosecutor General shall issue guidelines for the prosecutors on general principles for effective prosecution of the Cases, after seeking prior approval from Government of Gilgit-Baltistan.

CHAPTER-IV

MISCELLANEOUS

9. **Representation of the Service.—** (1) Subject to prior approval of Government, the Prosecutor General may, with the approval of Government at any time, appoint a person otherwise qualified, who is not borne on the strength of the Service to institute or take over the conduct of such legal proceedings in Courts as the Prosecutor General 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 Prosecutor General 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 Prosecution in any Criminal proceedings.

11. **Merger of Prosecuting Officers/Officials in Police Department.—**After establishment of Law & Prosecution Department and

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appointment of Independent Prosecutors the services of Police Prosecuting Officers/ Officials have already been repatriated to Police Department by the Provincial Government as such their services will be counted in Police Department as Regular Police Force.

12. **Act to override other laws.**—The provisions of this Act shall prevail notwithstanding anything repugnant or contrary contained in any other law for time being in force.

13. **Power to make rules.—** Government may make rules for carrying out the purpose of this Act.

FIDA MUHAMMAD NASHAD,
Speaker
Gilgit-Baltistan Assembly.

RAJA JALAL HUSSAIN MAQPOON,
Governor
Gilgit-Baltistan.

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