

Punjab Public Defender Service Act, 2007

14 of 2007

[30 October 2007]

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An Act to make provisions for free legal assistance to the indigent persons. Preamble.- Whereas it is necessary to establish and maintain a public defender service to ensure equal protection of law to indigent persons through free legal assistance in the Courts, in the manner hereinafter appearing; It is hereby enacted as follows:-

CHAPTER 1

PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be cited as the Punjab Public Defender Service Act, 2007.
- (2) It extends to the whole of the Punjab.
- (3) It shall come into force at once.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context:

- (a) "Act" means the Punjab Public Defender Service Act, 2007;
- (b) "Additional Chief Public Defender" means the Additional Chief Public Defender appointed under section 8;
- (c) "Advocate" shall have the same meaning as in the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973);
- (d) "Chief Public Defender" means the Chief Public Defender appointed under section 5;
- (e) "Court" includes all courts and tribunals established under the Constitution or under any law;
- (f) "District Public Defender" means the District Public Defender appointed under section 10;
- (g) "Fund" means the Punjab Public Defender Service Fund;
- (h) "Government" means the Government of the Punjab;
- (i) "indigent person" means a person, including a convict or accused of an offence who can not afford to engage an Advocate to represent him/her in any stage of case in a Court;

- (j) "prescribed" means prescribed by the rules or the regulations made under this Act;
- (k) "Public Defender" means a Public Defender appointed under section 12;
- (l) "regulations" means the regulations framed under this Act;
- (m) "rules" means the rules made under this Act;
- (n) "Search Committee" means a Committee constituted for making recommendation for appointment of Chief Public Defender; and
- (o) "Service" means the Punjab Public Defender Service established under section 3.

CHAPTER 2

ESTABLISHMENT, CONSTITUTION AND ADMINISTRATION OF SERVICE

3. Establishment Of The Service :-

The Government shall, by notification in the official gazette, establish and maintain a Service to be called the Punjab Public Defender Service.

4. Constitution Of The Service :-

- (1) The Service shall consist of the Chief Public Defender, the Additional Chief Public Defenders, the District Public Defenders and the Public Defenders.
- (2) The Additional Chief Public Defenders, the District Public Defenders and the Public Defenders shall perform their duties under the administrative control of the Chief Public Defender.
- (3) The Government shall make appointments under the Act in accordance with the Contract Recruitment Policy of the Government.
- (4) Notwithstanding anything contained in sub section (3), the Government shall make appointments on Adhoc basis as may be prescribed.
- (5) The promotion or transfer in the service shall be made in the manner as may be prescribed.
- (6) The Government shall exercise the general control and supervision over the Service.
- (7) The Government may direct the Chief Public Defender, an Additional Chief Public Defender, a District Public Defender or a Public Defender to represent an indigent person in a Court.

CHAPTER 3

CHIEF PUBLIC DEFENDER AND ADDITIONAL CHIEF PUBLIC DEFENDERS

5. Chief Public Defender :-

(1) The Chief Public Defender, who shall be the head of the Service, shall be appointed by the Government on the recommendation of Search Committee, on such terms and conditions as may be determined.

(2) The Chief Public Defender shall hold office for non-renewable term of four years.

(3) The terms and conditions of the Chief Public Defender shall not be varied during his term in office.

(4) The Chief Public Defender may resign his office by writing under his hand addressed to the Government and shall cease to hold office upon acceptance of his resignation.

(5) The Government may, after providing an opportunity, of being heard, remove the Chief Public Defender during the term of his office.

6. Qualifications Of Chief Public Defender :-

A person shall not be appointed as the Chief Public Defender unless he is a citizen of Pakistan, is not less than forty five years of age, and -

(a) he 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 is a law graduate and has, for a period of not less than fifteen years, been a member of the prescribed civil service; or

(c) he has, for a period of not less than ten years, held a judicial office in the Punjab;

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 for 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.

7. Functions And Powers Of Chief Public Defender :-

(1) The Chief Public Defender shall-

(a) administer and manage the Service under the general supervision and control of the Government;

(b) allocate work to the Additional Chief Public Defenders, the District Public Defenders and the Public Defenders;

(c) keep the Government informed about the performance of the

Service;

(d) evaluate and monitor the performance and conduct of the Additional Chief Public Defenders, the District Public Defenders and the Public Defenders; and

(e) perform such other functions as may be assigned to him by the Government;

(2) The Chief Public Defender may -

(a) represent an indigent person before a Court;

(b) refer cases of an indigent person to an Additional Chief Public Defender, District Public Defender or a Public Defender; and

(c) refer a matter to the Government for initiating a disciplinary action against an Additional Chief Public Defender, a District Public Defender or a Public Defender on the ground of misconduct, physical or mental incapacity in accordance with the law for the time being in force.

(3) The Chief Public Defender may delegate any of his powers to an Additional Chief Public Defender or a District Public Defender.

8. Appointment Of Additional Chief Public Defenders :-

(1) The Government may appoint such number of Additional Chief Public Defenders on the terms and conditions as it may determine.

(2) The Additional Chief Public Defender shall be a person who has, for a period of ten years, been an Advocate of the High Court.

9. Functions Of Additional Chief Public Defender :-

The Additional Chief Public Defender shall-

(a) assist the Chief Public Defender in discharge of his official duties;

(b) represent an indigent person before a Court;

(c) submit a monthly performance report to the Chief Public Defender; and

(d) perform such other functions as may be assigned to him by the Chief Public Defender.

CHAPTER 4

DISTRICT PUBLIC DEFENDERS AND PUBLIC DEFENDERS

10. Appointment Of District Public Defender :-

(1) The Government may appoint a District Public Defender in a district on such terms and conditions as it may determine.

(2) The District Public Defender shall be a person who has, for a

period of not less than ten years, been an Advocate of the High Court.

11. Functions Of District Public Defender :-

(1) The District Public Defender shall-

(a) assist the Chief Public Defender in discharge of his official duties;

(b) have authority to visit the Jails of his District during the office hours with prior intimation for identification of indigent persons. Where there is no Jail in a district, shall have authority to visit the Jails, where the prisoners of that district are officially kept.

(c) submit a monthly performance report to the Chief Public Defender; and

(d) perform such other functions as may be assigned to him by the Chief Public Defender.

(2) The District Public Defender may-

(a) determine a person as an indigent for entitlement to free legal assistance; and

(b) represent an indigent person before a Court.

12. Appointment Of Public Defenders :-

(1) The Government may appoint the Public Defenders in a district on such terms and conditions as it may determine.

(2) The Public Defender shall be a person who has, for a period of at least two years, been an Advocate.

13. Functions Of Public Defenders :-

A Public Defender shall-

(a) represent an indigent person in a Court;

(b) submit a monthly performance report to the District Public Defender; and

(c) perform such other functions as may be assigned to him by the District Public Defender.

CHAPTER 5

PROCEDURE, DETERMINATION AND REPRESENTATION

14. Procedure For Legal Assistance :-

(1) A person who desires to avail free legal assistance may submit an application to the Government, the Chief Public Defender or the District Public Defender and on receipt of the application such

person shall be entitled to free legal assistance. The Government, the Chief Public Defender or the District Public Defender, as the case may be, shall arrange for the representation of such person.

(2) In case such person is in jail, the application shall be submitted through the Superintendent Jail.

(3) Where the person in need of free legal assistance, is under the age of eighteen years, insane or is otherwise unable to make an application, any other person interested in the welfare of such person may submit the application on behalf of such person.

(4) The application under sub-section (1) shall be accompanied by an affidavit to the effect that such person is an indigent person. No further enquiry shall be made regarding the determination of indigency.

(5) The provision of sub-section (4) shall not apply to a person who is in jail or in police custody.

(6) Notwithstanding the provisions of section 14, the Government may direct the Chief Public Defender or a District Public Defender or a Public Defender to provide free legal assistance to an indigent person.

CHAPTER 6

MISCELLANEOUS

15. Staff :-

(1) The Government may create posts in the Service consisting of various categories of employees.

(2) The Chief Public Defender shall, with the approval of the Government, appoint the subordinate staff of the Service.

(3) The Chief Public Defender shall, with the approval of the Government, determine the terms and conditions of service of the subordinate staff.

16. Public Servant :-

The Chief Public Defender, the Additional Chief Public Defenders, the District Public Defenders, the Public Defenders and the subordinate staff of the Service shall be deemed to be public servants within the meanings of section 21 of the Pakistan Penal Code, 1860 (XLV of 1860).

17. Submission Of Report :-

(1) The Chief Public Defender shall, within the period of six months

o f closing of the financial year, submit annual audit and performance report to the government.

(2) The government shall, within two months of receipt of the report submit the same before the Provincial Assembly of the Punjab.

18. Act Not To Override Other Laws :-

The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

19. Rules :-

The Government may, by notification, make rules to carry out the purposes of this Act.

20. Regulations :-

Subject to the provisions of this Act and the rules, the Chief Public Defender may frame regulations to give effect to the provisions of this Act.

21. Repeal :-

The Punjab Public Defender Service Ordinance 2007 (XVI of 2007), is hereby repealed.