

The Probation of Offenders Ordinance, 1960

(XLV OF 1960)

[1st November 1960]

An Ordinance to provide for the release on probation of offenders in certain cases.

Preamble. Whereas it is expedient to provide for the release on probationary offenders in certain cases and for matters incidental thereto;

Now, therefore, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

COMMENTS

"The object and punishing an offender is the prevention of offences or reformation of the offender. Punishment would be a greater evil, if instead of reforming an offender, it is likely to harm the offender to repetition of crime with the possibility of irreparable injury to him. The provisions of the Probation of Offenders Ordinance are, thus, intended to enable the Court to carry out the object of reformation and give the accused person a chance of reformation which he would lose by being incarcerated in the prison." "The provisions contained in the Probation of Offenders Ordinance are analogous, rather in modified and expanded form, to the provisions of law contained in sections 562, 563 and 564 of the Cr. P.C." *ibid.*

The object of the Probation of Offenders Ordinance is that if in the circumstances of a given case, the Court is of opinion that if the convict is released on probation, he will make amends in himself on the side of reformation and will become a good citizen in the society, the Court must be disposed to hand him over to the Probation Department to teach him morals and make him a civilized person. But this principle is not attracted in each and every case particularly in a case in which the offender committed by the accused is an offence not excusable in any way. For example *Zina*, abduction case (most heart-rending of minors), gambling, theft, lifting of cars, smuggling manufacture of liquor and dealing in narcotics are offences which are highly disgraceful and civilized people keep themselves on guard against the same. Such offences create chaos and confusion in the society. The Court declined request for release on probation to the accused who was involved in offence of dealing in narcotics."

1. Short title, extent and commencement. (1) This Ordinance may be called the Probation of Offenders Ordinance, 1960.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date or dates as the Federal Government may, by notification in the official Gazette, appoint, and different days may be appointed for different areas.

1. PLD 1969 Pesh. 226.

2. PLD 1985 Pesh. 59.

2. Definitions.--In this Ordinance, unless there is anything repugnant to the subject or context:-

- (a) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (b) "Court" means a Court empowered to exercise powers under an Ordinance;
- (c) "Officer-in-charge" means the head of Probation Department;
- (d) "Probation officer" means a person appointed as such under Section 12;
- (e) "Probation order" means an order made under Section 5;
- (f) "Probation Department" means the department responsible for the administration of this Ordinance; and
- (g) all other words and expressions used but not defined in this Ordinance and defined in the Code shall have the same meaning as assigned to them in the Code.

3. Courts empowered under the Ordinance.-- (1) The following Courts shall be the Courts empowered to exercise powers under this Ordinance namely:-

- (a) a High Court;
- (b) a Court of Session;
- (c) and (d) *Omitted by the Federal Laws (Revisions and Declaration) Ordinance, XXVII of 1981.*
- (e) a Magistrate of the 1st Class; and
- (f) any other Magistrate specially empowered in this behalf.

(2) A Court may exercise powers under this Ordinance, whether the case comes before it for original hearing or on appeal or in revision.

(3) Where any offender is convicted by a Magistrate not empowered to exercise powers under this Ordinance, and such Magistrate is of opinion that the powers conferred by section 4 or section 5 should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the 1st Class¹[.....] forwarding the offender to him, or taking bail for appearance before him, and such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

NOTES

High Court is competent to exercise powers under Ordinance even on reference under Section 438, Cr.P.C.²

"Under section 3 of the Ordinance, a High Court, a Court of Sessions and a District Magistrate, besides other Courts of original jurisdiction, are also empowered to exercise powers under the Ordinance and they may exercise these

1. The words omitted by Federal Laws (Revision & Declaration) Ordinance, XXVII of 1981.

2. PLD 1967 Pesh. 105.

powers, where the case comes before them on appeal or in revision. Section 8 of the Ordinance deals with the powers of Court in appeal and revision.¹

4. Condition, discharge, etc.-- (1) Where a Court by which a person, not provided to have been previously convicted, is convicted, of an offence not punishable with imprisonment for not more than two years is of opinion, having regard to--

- (a) the age, character, antecedents or physical or mental condition of the offender; and
- (b) the nature of the offence or extenuating circumstances attending the commission of the offence;

that it is inexpedient to inflict punishment and that a probation order is not appropriate, the Court may, after recording its reasons in writing, make an order discharging him after due admonition, or, if the Court thinks fit, it may likewise make an order discharging him subject to the condition that he enters into a bond, with or without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order as may be specified therein.

(2) An order discharging a person subject to such condition as aforesaid is hereafter in this Ordinance referred to as "an order for conditional discharge" and the period specified in any such order as "the period of conditional discharge".

(3) Before making an order for conditional discharge, the Court shall explain to the offender in ordinary language that if he commits any offence or does not remain of good behaviour during the period of conditional discharge he will be liable to be sentenced for the original offence.

(4) Where a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

NOTES

Release on probation of good conduct is not new or unusual in history of Law of Contempt. High Court is competent to release offender on probation of good conduct.²

The chief factors for the guidance of the Magistrates in selection of suitable cases of offenders for placing on probation are the personal characteristics and social needs of the offender. The knowledge of the social facts, like the character, antecedents, health, etc. of the offender and the nature of the offence as well as the extenuating circumstances if any, under which the offence was committed, are the prerequisites which should govern the decision of the Magistrates.

The factors of 'age' 'health', etc., have been made in section 4 of the Ordinance as it provides for absolute discharge with admonition outside the domain of probation and its administration and also because these factors help to guide the judiciary in taking proper decision in the cases of offences of very minor nature.

1. P.L.D 1969 Pesh. 226.

2. P.L.D 1976 Lah. 373.

High Court is competent to exercise powers under Ordinance even on reference under section 438, Cr.P.C.¹

Conviction under Art. 4 of the order.--Court can make probation order in case of male person if he is convicted of an offence not falling under Chapter VI and VII of P.P.C. or under some other sections of P.P.C. or offence punishable with death or transportation--Case of petitioner falls within category of offence punishable with death or imprisonment for life--*Held* learned Judge has rightly observed that petitioner was not entitled for relief.²

5. Power of Court to make a probation order in certain cases.-- (1) Where a Court by which-

- (a) any male person is convicted of an offence not being an offence under Chapter VI or Chapter VII of the Pakistan Penal Code (Act XLV of 1860), or under sections 216-A, 328, 312, 386, 387, 388, 389, 392, 393, 397, 398, 401, 402, 455, or 458 of that Code, or an offence punishable with death or ³[imprisonment for life, or]
- (b) any female person is convicted of any offence other than an offence punishable with death,

is of opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to do so, the Court may, for reasons to be recorded in writing, instead of sentencing the person at once, make a probation order, that is to say, an order requiring him or her to be under the supervision of a probation officer for such period, not being less than one year or more than three years, as may be specified in the order:

Provided that the Court shall not pass a probation order unless the offenders enters into a bond, with or without sureties, to commit no offence and to keep the peace and be of good behaviour during the period of the bond and to appear and receive sentence if called upon to do so during that period:

Provided further that the Court shall not pass a probation order under this section unless it is satisfied that the offender or one of his sureties, if any, has a fixed place of abode or a regular occupation within the local limits of its jurisdiction and is likely to continue in such place of abode or such occupation, during the period of the bond.

(2) While making a probation order, the Court may also direct that the bond shall contain such conditions as in the opinion of the Court may be necessary for securing supervision of the offender by the probation officer and also such additional conditions with respect to residence, environment, abstention from intoxicants and any other matter which the Court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or a commission of other offences by the offender and for rehabilitating him as an honest, industrious and law-abiding citizen.

(3) When an offender is sentenced for the offence in respect of which a probation order was made that probation order shall cease to have effect.

1. PLD 1967 Pesh. 105.

2. PLJ 1992 Quetta 27.

3. Subs. by the Federal Laws (Revision and Declaration) Ordinance (XXVII of 1981).

NOTES

It will be implicitly clear from the above discussion that an order of probation under section 4 or section 5 is not a sentence. A conviction coupled with an order under section 4 or section 5 is, therefore, a conviction, without a sentence.¹

In a Peshawar case the accused was convicted and sentenced under West Pakistan Arms Ordinance, 1965. There was no record available in appeal with regard to the plea raised by the accused that he was not a previous convict. The Court however, released the accused on bail with the direction that he would be at liberty to file an application before the trial Magistrate under the provisions of the Ordinance and to serve out sentence in case of such application being disallowed.²

When it was satisfied that the boy accused of rape was only 13 years of age Mr. Justice Shaukat Ali of the Lahore High Court held that it was inadvisable on the part of Courts below to lodge the accused in ordinary jail. At the age of 13, when a boy had just come to the age of puberty, he might do many things which he would never think of doing when he was old one. It is even possible that he might become a useful citizen. In the circumstances it would have been appropriate for the Courts below to invoke the aid of section 5 of the Probation of Offenders Ordinance, 1960, instead of sentencing them. In consequence, I order, that Muhammad Jamil and Nazir shall remain in probation for a period of one year.³

In a case where the price of stolen articles was only 99 rupees and the petitioner was young man having no record of previous conviction, the High Court ordered his release on probation under section 5 of the Probation of Offenders Ordinance (XLV of 1960).⁴

In an earlier case when there was no previous conviction to the credit of the petitioner and he was the sole bread-earner of the family a direction was made to the lower Court to pass an order for probation under section 5 of the Ordinance No. XLV of 1960.⁵

Magistrate convicting accused and sentencing him to one year's R.I. but at the same time in a view of accused being "first-offender and young man", releasing him on probation under section 5. Composite order was not proper. Mere fact, however, that by inadvertence the Magistrate while releasing offender on probation has also at same time nominated a sentence does not render order regarding probation unlawful.⁶

Male persons convicted of grave offences like those punishable with the penalty of death or transportation for life or of heinous offences of the nature, as described in the Pakistan Penal Code under sections 216-A (Penalty for harbouring robbers or dacoits), 311 (For being a thug), 328 (causing hurt by means of poison, etc., with intent to commit an offence), 346 (kidnapping or abducting in order to murder), 382 (Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft), 386-389 (Putting a person in fear of injury or death in order to commit extortion, etc.,) 392-402

1. PLD 1969 Pesh. 226.

2. PLD 1976 Pesh. 26.

3. 1970 P Cr. LJ 252.

4. 1973 P Cr. LJ 118.

5. 1971 P Cr. LJ 1313.

6. PLD 1969 Pesh. 226.

(Regarding commitment of robbery, dacoity or belonging to gang of thieves, etc.), 413 (Habitual dealing in stolen property), 455 (lurking house-trespass or house-breaking after preparation for hurt or assault, etc.), 460 (All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them), or of serious offences under Chapter VII (Offences against the State) and VII (Offences relating to the Army, Navy and Air Force) of the Pakistan Penal Code, have been totally debarred from the benefit of the provisions of the Pakistan Probation of Offenders Ordinance, 1960. This bar has been effected in the Ordinance more or less on the lines of the Good Conduct Prisoners Probation Release Act, 1926, which is already in force in West Pakistan. These legal safeguards and restrictions are provided in the Ordinance keeping in view the peculiar conditions of this country. A total bar with regard to sections 302 and 303 and partial bar with regard to section 307 of the Pakistan Penal Code is also provided, as Section 5 restricts the application of the Ordinance in respect of a male person convicted of an offence punishable with death or transportation for life. In fact, in the matter of offences the scope of the Ordinance is limited to a greater degree than that of the Good Conduct Prisoners Probation Release Act, 1926, in that it precludes wholesale the offences punishable with transportation of life against the Good Conduct Prisoners Probation Release Act, 1926, which is applicable also to such offences under certain sections such as 304, 305 and 326 of the Pakistan Penal Code. Relaxations in this respect may, however, be desirable and possible in due course if and when the standards and conditions in the country so permit. It will also then bring the probation system in its full form in this country as it is in the more advanced countries of the world today.

As regards women offenders, no restriction or discrimination, is, however, made, in regard to offences other than an offence punishable with death, for availing of the provisions of the Ordinance; as offences of grave and heinous type are but rarely found among the womenfolk and also because probation methods are found much more successful in their case than in that of male offenders.

The factors like 'age' and 'health' have not been provided under section 5 since it is considered that while the 'age' factor may give the impression that probation is to be used only in the cases of young persons, the factor of 'health' should not be taken into account as *firstly* the probation itself is hardly suitable to cases involving ill-health, physical or mental, and *secondly* because proper and elaborate medical facilities are not likely to be available to the machinery of the probation administration in this country for a long time to come. The scope of section 5 has been widened by providing the proviso of "having regard to the circumstances including the nature of the offence and the character of the offender".

Where price of stolen article only was Rs. 99 petitioner was a young man and not a previous convict, release of petitioner on probation, was held, proper in circumstances of cases.¹

Accused was not previous convict and was sole bread-winner of family, sentence of six months was substituted by probation order.²

Accused guilty of rape not more than 13 years of age at time of occurrence inadvisable on part of Courts to lodge them in ordinary jail section 5,

1. 1973 P Cr. LJ 118.

2. 1974 P Cr. LJ 1313.

Probation of Offenders Ordinance, 1960, *held*, could be properly invoked in circumstances.¹

Magistrate cannot pass order of sentence of imprisonment against accused while placing him on probation.²

Offences punishable with death or "transportation for life" are not covered by section 5 (1) (a). Person convicted of offence under section 377, P.P.C. is not eligible to benefit of Section 5.³

Words "death or transportation for life" must be read disjunctively. Offences punishable with "death" or "transportation for life" are excepted from provision of section 5 (a). Person convicted of offence under section 307, P.P.C. cannot be released on probation.⁴

6. Order for payment of costs and compensation.-- (1) A Court directing the discharge of an offence under section 4 or making a probation order under section 5 may order the offender to pay such compensation or damages for loss or injury caused to any person by the offence and such costs of the proceedings as the Court thinks reasonable:

Provided that the amount of compensation damages and costs so awarded shall in no case exceed the amount of fine which the Court might have imposed in respect of the offence.

(2) At the time of awarding compensation or damages in any subsequent civil suit or proceeding relating to the same offence, the Court hearing such suit or proceeding shall take into account any sum paid or recovered as compensation, damages or costs under sub-section (1).

(3) The amount ordered to be paid under sub-section (1) may be recovered in accordance with the provision of sections 386 and 387 of the Code.

7. Failure to observe conditions of the bond.--(1) If the Court by which an offender is bound by a bond under section 5 has reason to believe that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his arrest or may, if it thinks fit, issue summons to the offender and his sureties, if any, requiring them to appear before it at such time as may be specified in the summons.

(2) The Court before which an offender is brought or appears under sub-section (1) may either remand him to judicial custody until the case is heard or admit him to bail, with or without sureties, to appear on the date of hearing.

(3) If the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of his bond including any condition which may have been imposed under sub-section (2) of section 5, it may forthwith:-

- (a) sentence him for the original offence, or
- (b) without prejudice to the continuance in force of the bond, impose upon him a fine not exceeding one thousand rupees :

1. 1970 P Cr. LJ 252.

2. PLD 1967 Pesh. 105.

3. PLD 1967 Pesh. 362.

4. PLD 1967 Pesh. 105.

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Provided that the Court imposing the fine shall take into account the amount of compensation, damages or costs ordered to be paid under Section 6.

(4) If a fine imposed under clause (b) of sub-section (3) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

NOTES

Magistrate passing order imposing penalty without recording any evidence, having only a report of Probation Officer before him. Probationer in his statement simply showing disgust against police which could not be deemed to be an admission. Order, *held*, was not lawful and was set aside.¹

If a probationer is brought before a Court for mere breach of probation, not involving the commission of fresh offence, three ways are open to the Court--

- (a) It can amend the probation order, insert new requirements, but not extend it beyond the statutory maximum limit of three years;
- (b) It can punish the offender for breach of probation order by fine up to Rs. 1,000; and
- (c) If the fine is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

(2) In the case of a fresh offence no other course is open to the Court than dealing with the original offence as well.

8. Powers of Court in appeal and revision.--When an appeal or application for revision is made against conviction of an offence for which an order is made under section 4 or section 5 discharging the offender absolutely or conditionally or placing him on probation the appellate Court or the Court sitting in revision may pass such order as it could have passed under the Code, or may set aside or amend the order made under section 4 or Sec. 5 and in lieu thereof passed sentence authorized by law:

Provided that the appellate Court or the Court sitting in revision shall not impose a greater punishment than the punishment which might have been imposed by the Court by which the offender was convicted.

9. Provisions of Code to apply to sureties and bonds.--The provisions of sections 122, 406-A, 514-A, 514-B and 515 of the Code shall, so far as may be, apply in the case of sureties and bonds taken under this Ordinance.

10. Variation of conditions of probation.-- (1) The Court by which a probation order is made under section 5 may at any time on the application of the person under probation or of the probation officer or of its own motion, if it thinks it expedient to vary the bond taken under that section, summon the person under probation to appear before it, and, after giving him a reasonable opportunity of showing cause why the bond should not be varied, vary the bond by the extending or reducing the duration thereof or by altering any other of its terms and conditions or by inserting additional conditions therein:

Provided that in no case shall the duration of the bond be less than one year or more than three years from the date of the original order:

1. PLD 1971 BJ 65 at 67 *et seq.*

Provided further that where the bond is with surety or sureties, no variation shall be made in the bond without the consent of the surety or sureties; and if the surety or sureties do not consent to the variation, the Court shall require the person under probation to execute a fresh bond, with or without sureties.

(2) Any such Court as aforesaid may, on the application of any person under probation or of the probation officer or of its own motion, if satisfied that the conduct of the person under probation has been satisfactory as to render it unnecessary to keep him under supervision, discharge the probation order and the bond.

11. Effect of discharge and probation.--(1) A conviction of an offence, for which an order is made under section 4 or Sec. 5 for discharging the offender after the due admonition or conditionally or placing him on probation, shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Ordinance:

Provided that where an offender, being not less than eighteen years of age at the time of his conviction of an offence for which an order discharging him conditionally or placing him on probation is made, is subsequently sentenced under this Ordinance for that offence, the provisions of this sub-section shall cease to apply to the conviction.

(2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is discharged after due admonition or conditionally, who is placed on probation, shall in any event be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons, or authorizes or requires the imposition of any such disqualification or disability,-

- (a) any right of any such offender to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;
- (b) the revesting or restoration of any property in consequence of the conviction of any such offender.

12. Appointment of probation officers.--(1) A probation officer referred to in a probation order may be any person appointed to be probation officer by the Officer-in-charge.

(2) A probation officer referred to in sub-section (1) shall be a person who shall possess such qualifications as may be prescribed by rules made in this behalf under this Ordinance.

(3) A probation officer, in the exercise of his duties under any probation order, shall be subject to the control of the officer-in-charge.

13. Duties of a probation officer.--A probation officer shall, subject to the rules made under this Ordinance--

- (a) visit or receive visits from the offender at such reasonable intervals as may be specified in the probation order or, subject thereto, as the officer-in-charge may think fit;
- (b) see that the offender observes the conditions of the bond executed under section 5;
- (c) report to the officer-in-charge as to the behaviour of the offender;

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- (d) advise, assist and befriend the offender, and when necessary endeavour to find him suitable employment; and
- (e) perform any other duty which may be prescribed by the rules made under this Ordinance.

14. Power to make rules.--(1) The Federal Government may, by notification in the official Gazette, make rules for effect the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing provision, the Federal Government may make rules:-

- (a) regulating the appointment, resignation and removal of probation officers and prescribing the qualification of such officers;
- (b) prescribing and regulating the duties of probation officers; and
- (c) regulating the remuneration payable to probation officers.

15. Delegation of powers to Provincial Government.--The Federal Government may, by notification in the official Gazette, delegate to a Provincial Government all or any of the powers and functions conferred by this Ordinance on the Federal Government.

16. Repeal of sections 480 and 562, 564 of the Code.--*Repealed by the Federal Laws (Revision and Declaration) Ordinance, XXVII of 1981.*

17. Provisions of this Ordinance, to be in addition to and not in derogation of certain laws.--The provisions of this Ordinance shall be in addition to and not in derogation of Reformatory Schools Act, 1897 (VIII of 1897) [.....] the Punjab Borstal Act, 1926 (Pun. Act, XI of 1926), [.....] the Punjab Children Act, 1952 (Pun. Act, VI of 1953), the Punjab Youthful Offenders Act, 1952 (Pun. Act, XIV of 1953), and the Sind Children Act, 1955 (Sind Act, XII of 1955).

The Probation of Offenders Rules, 1961

[1st July, 1961]

Notification No. 5 (3)-II (SO-III)-M/61.--In exercise of the powers conferred by Section 14, read with Section 15 of the Probation of Offenders Ordinance, 1960 (XLV of 1960), the Governor of West Pakistan is pleased to make the following rules, namely--

1. Title and commencement.--(1) These rules may be called the West Pakistan Probation of Offenders Rules, 1961.

(2) They shall come into force on 1st July, 1961.

2. Definitions.--In these rules unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say--

- (a) "Assistant Director" means Assistant Director, Reclamation and Probation, West Pakistan.
- (b) "Case Committee" means a Case Committee constituted (for a district under rule 16.
- (c) "Form" means a Form appended to these rules.
- (d) "Ordinance" means the Probation of Offenders Ordinance, 1960.
- (e) "Probationer" means a person in respect of whom a probation order has been made by a Court under Section 5.
- (f) "Probation area" means the area in the charge of an Assistant Director.
- (g) "Probation Department" means the Department of Reclamation and Probation, West Pakistan.
- (h) "Province" means the Province of West Pakistan.
- (i) "Section" means a section of the Ordinance.

3. (1) The Director, Reclamation and Probation, West Pakistan, shall for the purposes of the Ordinance and these rules, be and exercise the powers of the Officer-in-charge throughout the Province.

(2) The Officer-in-charge shall be responsible for the overall control, supervision and direction of probation work in the Province.

4. (1) The Officer-in-charge shall be assisted in the discharge of his duties under the Ordinance and these rules by Assistant Directors, who shall be appointed by the Officer-in-Charge.

(2) Subject to such general or special directions as Government may issue in this behalf from time to time, an Assistant Director shall be in charge of a probation area.

(3) Subject to any general or special orders of the Officer-in-charge, an Assistant Director shall--