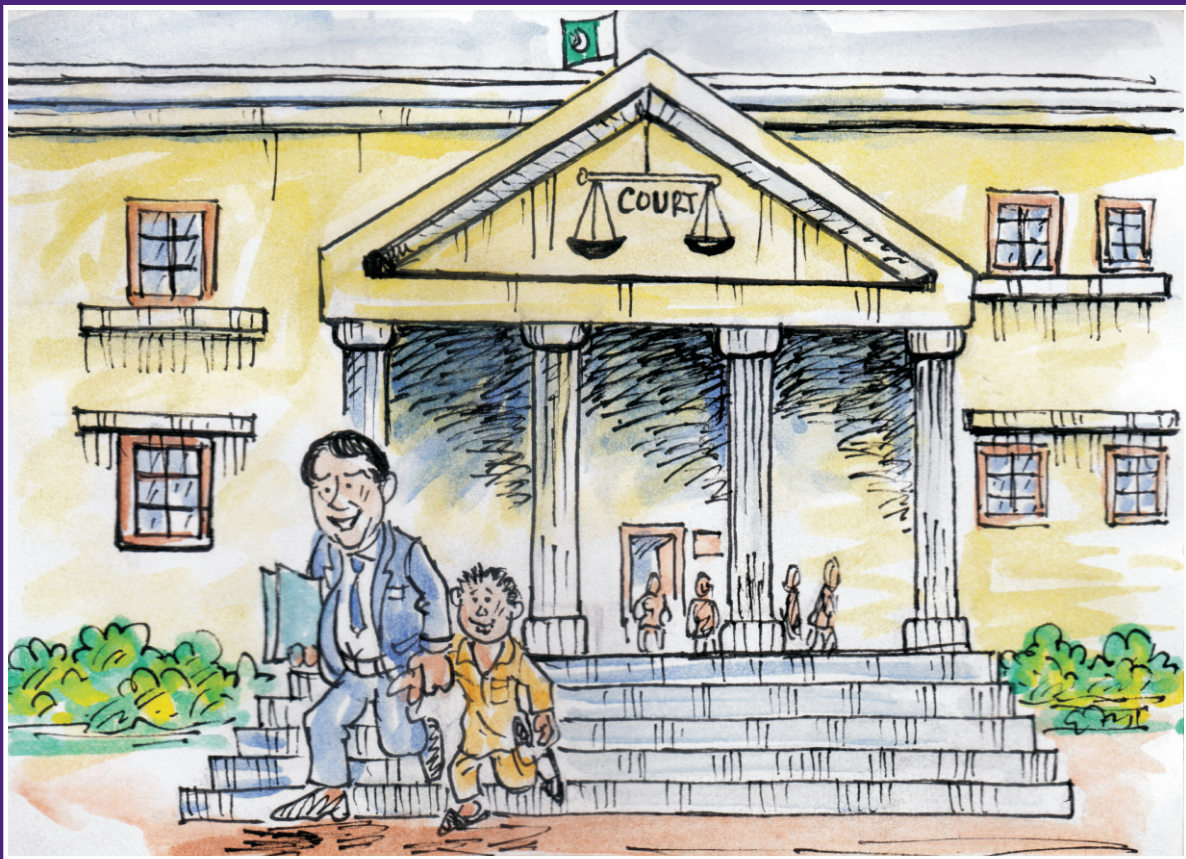




PROBATION AND PAROLE SYSTEM IN PAKISTAN: ASSESSMENT AND RECOMMENDATIONS FOR REFORM





PRI is an international, non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and Peoples' Rights and the Inter-parliamentary Union . It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims.



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DOST is a not-for-profit organisation that was formed in 1992 in Peshawar, Pakistan. Since its inception, it has been reaching out to people living on the margins of society, and bringing them back into the mainstream. DOST works with street children, drug addicts, destitute women, prisoners, refugees, youth and the general public. It strives to restore to them their lives, their dignity, and their humanity, and to bring them back as contributing members of society.

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Probation and Parole System in Pakistan: Assessment and Recommendations for Reform¹

1. Introduction

Pakistan after partition of sub-continent in 1947 continued to reinforce the Government of British India's laws for maintaining the probational aspect of the criminal justice system. It included the Good Conduct Prisoners Probational Release Act 1926, and sections 380 and 562-564 of the Indian Code of Criminal Procedure. Later on the Indian Code was renamed the Criminal Procedure Code².

Reclamation and Probation Departments (RPD) were established in all provincial governments in 1927, to deal with the release of prisoners on parole. After independence, Punjab was the only province in Pakistan that had a RPD in place. The rest of Pakistan established RPDs in 1957. The Good Conduct Prisoners Probational Release Act 1926 was effective in providing an opportunity for convicted prisoners who demonstrated good conduct for social reintegration through early conditional release, however its scope was limited in addressing the early conditional release of prisoners with short term sentences. The colonial government of British India tried to pass separate legislation on probation. In 1931, the All India Probation Bill was drafted and was circulated to all the provincial governments for their comments, however the Bill was not passed into law mainly due to the political crisis in the country associated with the ongoing independence movement³.

After independence in 1947, the Government of Pakistan passed legislation on probation, namely, the Probation of Offenders Ordinance 1960/Rules 1961. The Probation of Offenders Ordinance 1960 is largely an amended version of the 1931 Probation Bill. However, it mandates the RPDs to establish the probation arm of the department and enabled probation officers to be appointed for offenders on trial before the courts⁴.



Recently, another development took place when the government of Pakistan introduced the Juvenile Justice System Ordinance 2000 (JJSO) in compliance with its international obligations of the United Nations Convention on the Rights of the Child. Section 11 of the JJSO highlights the release of juvenile offenders on probation.

1. This report was researched and written by Zakir Shuaib

2. Fayyazuddin et. al (1998) *The State of Pakistan's Children 1997*. SPARC, Islamabad

3. Hussain, B, (2009) *Social Reintegration of Offenders: The Role of the Probation Service in North West Frontier Province, Pakistan*

4. Hussain, B. (2009) *Social Reintegration of Offenders: The Role of the Probation Service in North West Frontier Province, Pakistan*

In the existing criminal justice system of Pakistan alternatives to imprisonment have their legal basis at the pre-trial stage in the form of bail; at the sentencing stage with fines and probation; and at the post-sentencing stage with parole. The public are comparatively more familiar with the term bail and it is the most commonly exercised non-custodial measure in court settings. In contrast, probation and parole services are the least practiced alternative, depriving people in conflict with the law of their inherent right to freedom, family life and of becoming productive citizens of society. In recent decades, the retributive model of punishment is losing ground to the more humane models of community rehabilitation and restorative justice, which are often more effective at reducing reoffending, and enhancing the importance of non-custodial sanctions that serve the best interest of the offender and the victim. Evidence suggests that successful community reintegration of an offender also benefits the community in terms of safeguarding them from the negative impacts of crimes as well as giving better value of taxpayers' money in comparison to public expenditure on an offender in prison.

In Pakistan the majority of the prisons are overcrowded, which contributes to the emerging issues of poor health and hygiene, high risk behaviour (e.g suicide, unprotected and forced sexual contact, drug misuse), and poor prison management leading to torture, riots and corruption. The lack of proper rehabilitation services also puts prisoners at a high risk of reoffending, particularly criminalising first time offenders or those who have committed minor offences. According to the Human Rights Commission of Pakistan⁵, about 64% of the total prison population are remand prisoners awaiting their court decision. An effective and efficient probation and parole system can play a vital role in community rehabilitation of offenders and reducing the prison population, which in turn contributes to better prison management and the overall improvement of prison conditions. To assess and promote the non-custodial measures of probation and parole, Penal Reform International conducted this review to study the present probation and parole system in Pakistan and formulate recommendations for its improvement.

A questionnaire was used to gather information, supported by focus group discussions and key personnel interviews with stakeholders (Provincial Directors of Reclamation and Probation, probation and parole officers, prison officials, legal counsel, representatives of civil society/NGOs/INGOs), and desk reviews of the relevant reports and literature. The following findings were derived as an outcome of this review.

5. Human Rights Commission of Pakistan (2010) *The State of Human Rights 2010*

2. Structure and functioning of Probation and Parole system in Pakistan

As an alternative to imprisonment, release of prisoners on probation and parole is managed by provincial Directorates of Reclamation and Probation working as departments attached to the provincial Home Departments in Punjab, Sindh, Balochistan and Khyber Pakhtunkhwa. Each Provincial Directorate is headed by a Director of Reclamation and Probation (R&P) supported by Deputy Directors and Assistant Directors, probation and parole officers, office superintendents and other administrative and support staff. The overall mandate of the Directorates of Reclamation and Probation include: to 'kill the crime not the criminal'; to reduce overcrowding in prisons; to cut down government expenditure on prisons; and to rehabilitate and re-integrate offenders as law-abiding citizens. However, a lack of political will, inadequate human/skilled resources and weak infrastructure are hindering their potential to play an effective role in the criminal justice system of Pakistan.

Provincial differences do exist in the distribution and designation of staff, however overall functioning is identical and governed by the legal instruments of:

- Probation of Offenders Ordinance (XLV of 1960); and the West Pakistan Probation of Offenders Rules, 1961
- The Good Conduct Prisoners' Probation Release Act, 1926; and the Good Conduct Prisoners' Probation Rules, 1927
- Juvenile Justice System Ordinance 2000 and its Rules for Implementation

2.1 Definitions, procedures and statistics

Parole and probation are procedures for release of convicted offenders or adjudicated delinquents on a conditional basis in order to assist them in pursuing a non-criminal life, with the proviso that they may be committed or returned to a correctional institution if their behaviour after release fails to meet standards of the releasing authority. If granted by an administrative agency to someone who already has served part of a term of confinement this release is usually called parole in the United States and license in Britain. If granted by a court as an alternative to incarceration this release is generally called probation⁶. These provisions were primarily promulgated for the benefit of "first time" and offenders seen as able to reform who are capable of leading a useful and productive life so as to minimise their chances of becoming hardened criminals due to the effects of imprisonment.

2.1.1 Probation

Under the Probation of Offenders Ordinance 1960, probation is the suspension of the imposition of a sentence of imprisonment or the postponement of final judgment in a court case. It is a judicial warning given to an offender for non-serious offences for the

6. *International encyclopedia of Social Sciences*

opportunity to reform him/herself and commit no more offences, as well as be subject to additional conditions which may be imposed by the court and under the supervision and guidance of a probation officer.

The Probation of Offenders Ordinance 1960 now contains 15 sections (after omission of two of its sections⁷). According to section 3, the following courts are empowered to exercise the power under the said ordinance:

- High Court
- Court of Session
- Judicial Magistrate
- Any other magistrate specially empowered.

The Ordinance empowers the above-mentioned courts to place eligible offenders either on conditional discharge or probation.

According to the Ordinance, the Trial Court may, keeping in view the age, character, health & background of the offender, and the nature & circumstances leading to the offence, discharge any offender after due admonishment, who has committed an offence punishable with imprisonment not more than two years.

Major clauses of section 4 of the Pakistan Probation of offenders Ordinance 1960:-

- (1) Where a court by which a person, not proved to have been previously convicted is convicted of an offence punishable with imprisonment for not more than two years is of opinion, having an regard to :-
 - (a) The age, character, antecedents or physical or mental conditions of the offender, and
 - (b) The nature of the offence or any 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 reason in writing, make an order discharging him after due admonition, or, if the court think 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 order as may be specified therein.
- (2) 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.

7. Two sections (15 & 16) have been omitted the Federal Laws (Revision & Declaration) Ordinance 1981

During the focus group discussion with R&P staff it was revealed that section 4 is very rarely or not at all exercised in courts and most of the time it is under section 5 of the ordinance that probation orders are issued. This is a grey area that needs to be further explored and taken up with the judiciary to examine exactly the reasons behind this and hence to improve its applicability in the court settings.

Major clauses of section-5 of the Pakistan Probation of offenders Ordinance, 1960:

(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 section 216-A, 328, 386, 387, 388, 389, 392,393, 397, 398, 399, 401, 402, 455 or 458⁸ of that code, or an offence punishable with death or transportation for life, or
- (b) any female person 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 offender 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 his 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 another 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 citizen⁹.

8. See narrative description of these sections of laws under 2.1.2-Scope of the Probation of Offenders Ordinance of this report.

9. Section 5 of the Probation of Offender Ordinance 1960

Once released on probation, the concerned probation officer is to supervise, monitor and facilitate rehabilitation of the offender in the community. In practice however, a probation officer's role is ineffective in the rehabilitation of offenders due to an inadequate institutional and personal capacity. The probation officer has been assigned an important role in the whole process of preparing and submitting the "social investigation report" (SIR) to the court. On the directive of the court, a probation officer prepares a SIR that includes information about an offender's character, background, commission and nature of offence, home surroundings and other circumstances. In practice, the court put a majority of the cases directly on probation without a formal SIR. Such practices on the part of the court need further exploration as this might be either due to the small number of probation officers¹⁰, the lack of confidence the court has regarding the professional abilities and skills of probation officers or the time it takes to provide one, as in a large number of the cases the courts release people on probation upon confession without asking probation officer for SIR. Whatever the case may be, the court has the powers to decide whether to put an offender on probation or to decide against it. SIRs are prepared to assist the courts to arrive at an appropriate decision.

The duties and functions of the probation officer after release of the offender on probation are mentioned in section 13 of the Probation of Offenders Ordinance 1960 and its Rule 10. Major duties and functions of a probation officer include:

- Explaining to every probationer placed under his charge, the terms and conditions of his/her probation order, and if deemed necessary, by warnings, endeavour to ensure their observance of the order.
- Meeting every probationer under his/her charge at least once a fortnight in the first two months of his/her probation, and thereafter, subject to the provisions of the officer in charge, keep in close contact with the probationer, meet him/her frequently, make enquiries into his/her conduct, mode of life and environments, and wherever practicable, visit his/her home from time to time.
- If any probationer under his/her charge be out of employment, endeavour to find suitable employment for him/her and assist, befriend, advise and strive to improve his/her conduct and general conditions of living.
- Encourage every probationer under his/her supervision to make use of any recognised agency, statutory or voluntary, which might contribute towards his/her welfare and general well-being, and to take advantage of the social, recreational and educational facilities which such agencies might provide



10. The consultant while working in Pakistan in a project on juvenile justice system-2001=2003 observed in some instances the low confidence of the courts in the skills and professional abilities of probation officers

- Where a probationer under his/her supervision, who has executed a bond, with sureties under section 5, is found to have committed any breach of the terms of his/her bond, or to have otherwise misconducted him/herself, to bring such breach or misconduct to the notice of his/her sureties.
- Maintain the books and registers and submit reports prescribed under these rules.
- Subject to the provisions of these rules; carry out the instructions of the court in regard to any probationer placed by the Court under his/her supervision.

Under the Probation of Offenders Rules 1961, each district has a Case Committee comprising of the district Magistrate as chairman, with all first class Magistrates in the district and the district probation officer as members. The committee functions as an advisory body on the casework within its area of jurisdiction; it is meant to receive and consider verbal or written reports presented by probation officers and to make recommendations concerning the status of probationers. These committees are supposed to meet once every three months, however in practice, it is often less or nonexistent. The Case Committees' role has been taken to a greater extent by Criminal Justice Coordination Committees (CJCC) mandated under the Police Order 2002. Monthly meetings of CJCCs are held comprising of the District and Session Judge as chairperson, the Superintendent of Police as Secretary, with other members including a District police officer, District Prosecutor, Superintendent (governor) of the Prison, and probation officer of the district. The CJCC provides a more effective and robust forum to discuss the issues and progress related to probation. However it has been observed that in many districts the participation of probation officers in these meetings is symbolic or sometimes absent. The comparatively lower service grade and inadequate professional capacity of probation officer often puts them at a disadvantage to adequately play their due role. Individual differences do exist in a few cases where the probation officers are more proactive in these CJCC meetings.

2.1.2 Scope of the Probation of Offenders Ordinance 1960

The Pakistan Probation of Offender Ordinance 1960 is limited in its scope as:

- Probation is not extended to all types of offences. The personal characteristic, the needs of the offender and the type of offence is taken into consideration while issuing a court probation order thus depriving the first time offenders in heinous crimes to benefit from probation. Instead, a comprehensive risk assessment should be given prime importance while deciding the cases fit for probation and not purely the nature of an offence.
- The probation law is applicable to both male and female offenders, however the law is more lenient towards female offenders. In addition to the offences punishable by

death or life imprisonment, the probation law is not applicable to male offenders convicted of offences of heinous nature as described in the Pakistan Penal Code of 1860 under the following sections¹¹:

- 216 - harbouring robbers or dacoits,
- 311 - 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 commit the theft,
- 386 - 389 - putting a person in fear of injury or death in order to commit extortion
- 392 - 402 - commitment of robbery, dacoity or belonging to a gang of thieves,
- 413 - habitual dealing in stolen property,
- 455 - house-trespass or house-breaking after preparation for hurt or assault,
- 460 - where several persons are jointly concerned in house-trespass or house-breaking by night and death or grievous hurt was caused by one of them
- Chapter VI - offences against the state,
- Chapter VII - offences relating to the Army, Navy and Air Force
- Offence of Zina Ordinance 1979 – offences of rape, adultery and fornication
- Offence of Qazf Ordinance 1979 - offence of false accusation of zina (rape)

In contrast, female offenders are eligible for a probation order in all offences except offences punishable by the death penalty.

Release on probation for children under the Juvenile Justice System Ordinance, 2000.

According to section 11 of the Juvenile Justice System Ordinance:

- Where on conclusion of an inquiry or trial, the juvenile court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for the time being in force, the juvenile court may, if it thinks fit—
- (a) direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the court may require, for the good behaviour and well being of the child for any period not exceeding the period of imprisonment awarded to such child;
Provided that the child released on probation be produced before the juvenile court periodically on such dates and time as it may direct.
 - (b) make an order directing the child offender to be sent to a borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.
 - (c) reduce the period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation shall be unnecessary.

11. Hussain, B. (2009) *Social Reintegration of Offenders: The Role of the Probation Service in North West Frontier Province, Pakistan*

Child offenders who at the time of commission of an offence has not attained the age of eighteen years can benefit from the above provision.

It is encouraging that releases on probation have increased in recent years particularly in cases of child offenders; however practice shows in most of the cases release orders are issued in cases where the state is the party e.g narcotics offences. Cases in which a private party is a victim, the courts exercise considerable restraint to the extent that even in appropriate cases the courts do not pass orders for release on probation due to the apprehension that the victim may take the law into its own hands and resort to revenge outside the court¹². The overriding influences of special laws like the Anti-terrorism Act further limit the practice of non-custodial sentencing.

2.1.3 Parole

Parole refers to the conditional release of prisoners or offenders in certain cases before the completion of the term of imprisonment to which they have been sentenced. With parole the prisoners serve the last portion of their sentence in the community after completing a mandatory period of substantive sentence in prison as required under the good conduct Prisoner's Probationary release Act, 1926 and Rules 1927.

Under these rules, the Executive (Home Secretary) of the province is empowered to release certain offenders on parole. When the provincial government is satisfied that a prisoner's track record or good conduct behind bars suggests that he or she would likely abstain from crime and would lead a "useful and industrious life" in the community, it may grant a license of release on the condition that the prisoner remains under the supervision of a parole officer or a "secular institution or of a person or society professing the same religion as the prisoner".

The parolees, under the supervision of a parole officer, are employed on fixed wages and under specific terms and conditions with the approved employers of the respective provincial R&P Directorates. Any person or institution can apply to be a potential employer to the R&P Director who, after proper scrutiny and on the recommendations of the relevant district administration where the potential employer belong to, decides whether to approve the employer or reject the application if it does not fulfil the selection criteria. The required standards for the employer include: to be resident of the same province, being of a good repute, not involved in any illegal trade/activities, being able to provide accommodation, clothes, food and wages to the parolee. The monthly wages must be minimum 1000 Pak Rupees and can be more depending upon the skills of the parolee. The employer deposits the wages in a Bank Account in the name of the relevant parole officer and at the end of the total parole period the parolee receives the total deposited amount. The parolee can also get part of the monthly wages for his personal or family use on the approval of the relevant parole officer. Prisoners may be selected for parole on an application by themselves or their family members; or on the recommendation of the

12. Observation shared by Dr Parveen Azam Khan, president Dost Welfare Foundation

Superintendent (governor) of the jail. The Assistant Director and parole officer are also authorised to visit the jails to select suitable prisoners for release on parole. The evidence shows these visits are not frequently carried out due to a low number of parole officers and weak coordination between prison management and the parole officers. In most of the districts, the probation officers have been assigned additional duties of a parole officer to cover the issue of under-staffing.



Other responsibilities and functions of the parole officer after the release of prisoners on parole include supervision and rehabilitation of offenders, periodic visits to parolees, collecting wages and submitting reports to his/her supervising officer (for example to the Assistant Director R&P about a parolees work performance) and to process any complaints.

In pursuance of the recommendation made by the National Judicial Policy Making Committee (NJPMC) in June 2009, all the four provinces have established Parole Committees comprising the Additional Secretary Home (chairman), Director R&P, District Police officer of the concerned district, Additional Inspector General Prison, Superintendent of the concerned prison, Director Prosecution, Representative of civil society organization, prominent academic and any other member co-opted by the chairman. The arrangement of the committee may differ in minor ways in some of the provinces keeping in view their own available human resources. The role of the committee is advisory and on its recommendations the Home Secretary approves the cases for parole. This is certainly a positive development in strengthening the parole system by involving members from a range of relevant agencies.

Scope of parole system:

The parole system is primarily based on The Good Conduct Prisoners' Probation Release Act, 1926 and its Rules, 1927; and executive orders for implementation. Some of the provisions/executive orders limit its scope and need addressing, for example:

Parolees must be employed a minimum of 45 miles away from their immediate families and can meet their families by taking casual leave with the approval of the relevant parole officer. The parolee becomes eligible for casual leave after completion of the first six months of the parole period. This is a clear violation of the right to family life and

contradicts the basic philosophy of community reintegration of the prisoner released on licence (parole). Security and safety of the parolee and others were the main reason given for such restrictions. There is no second opinion to the security and safety of the parolee and community; however we should avoid generalisation of such provisions on the basis of some worst case studies where the parolee put himself or community at high risk of harm. This again call for comprehensive risk assessment of each individual case eligible for conditional release on parole where such restrictions of distant working can be put on high risk cases in the best interest of parolees, family and community.

A parolee's access to his/her own money during parole and having no personal Bank Account is another area that needs extensive debate on the part of legal experts and legislators to make the process less procedural.

2.1.4 Difference between probation and parole

Probation and parole both serve the purpose of community rehabilitation and reintegration of offenders. The main structural and procedural differences between the two non custodial sanctions are:

- probation is given by the judiciary while parole is authorised by the Executives;
- probation refers to suspending the sentence or postponement of decision while parole is given in the last portion of the sentence after a prisoner's has completed mandatory imprisonment; and
- the judiciary is responsible for probation revocation while parole revocation is made by the Executive.

2.1.5 Province-wise strength of probation and parole officers

The below table shows the existing number of probation and parole officers in all provinces:

Province	Director	Deputy Director	Assistant Director	Probation Officers		Parole Officers		Total
				Male	Female	Male	Female	
Punjab	1	1	10	53	4	16	4	89
KPK	1	1	0	21	7	2	0	32
Sindh	1	0	2	15	1	14	0	33
Balochistan	1	2	2	7	2	5	1	20

In Sindh, 15 probation officer and 13 parole officers have been recently recruited and will resume their duties by the end of March 2012. In KPK, the induction of 7 female probation officers is very encouraging and they are optimistic this will increase the number of female offenders released on probation. According to Director R&P Balochistan, 9 further posts of

probation and parole officers are sanctioned by the government and would be advertised in the first quarter of this year (2012). The recent activism on the part of provincial governments by increasing the human resource springs stem from the recommendations made by the National Judicial Policymaking Committee in June 2009. The number of staff is still not up to the required capacity; however these developments can be termed revolutionary in the history of R&P department in Pakistan. The DRP is currently dealing with the issue of understaffing by giving additional charge to probation and parole officer on the need felt basis. There is a dire need to involve mentors and volunteers under the guidance and supervision of probation and parole officers to improve service delivery. Students from Universities can also be engaged for completion of their study field work with DRP that would contribute addressing staffing issue and would bring the rich knowledge base to the service e.g students from the fields of social work, sociology, psychology who will have studied criminology as part of their curriculum.

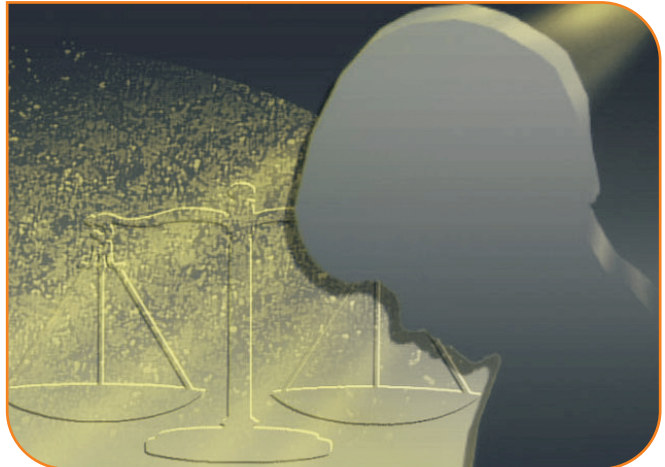
2.1.6 Number of probationers and parolees

In the province of Sindh, 1000 probationers were under the supervision of probation officer including 50 juveniles, while 22 prisoners were released on parole¹³.

In KPK the total numbers of probationers were 1789 including 1697 male, 33 females and 59 juveniles; prisoners released on parole was 14¹⁴.

In Punjab province there were 22000 offenders including 243 women and 247 juveniles released on probation while 150 prisoners were released on parole¹⁵.

In the province of Balochistan, 25 offenders were released on probation including 5 juveniles; 76 prisoners released on parole¹⁶.



13. R&P Directorate Sindh: Dec 2011 data

14. R&P Directorate PK: Sept 2011 data

15. R&P Directorate Punjab: Dec 2011 data

16. R&P Directorate Baluchistan: Dec 2011 data

3. International framework supporting non-custodial measures

Many of the international legal instruments cover the subject matter of alternatives to imprisonment. The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) were exclusively formulated for this purpose.

Rule 1.5 of the Tokyo Rules encourage member States to “develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.”

Rule 2.3, states that, “in order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions.”

Rule 2.5 recommends that States give consideration to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law. They also urge States to develop new non-custodial measures and to closely monitor and systematically evaluate their use.

Rules 8 and 9 of the Tokyo Rules talk about sentencing dispositions:

“8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;

- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.”

Rule 9 of the Tokyo Rules explains post-sentencing alternatives; “[t]he competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society”. Rule 9.2 refers to furlough or half-way houses, work or educational release, various forms of parole, remission and pardon, in this context. Among these, parole and remission, could be considered as the main alternatives to prison, to be applied at post-sentencing stage.

In specialist areas, the UN has given considerable attention to alternatives to imprisonment. For example for:

- Juveniles: the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);
- Drug users: the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations;
- the mentally ill: the UN Principles for the Protection of Persons with Mental Illness; and
- Women: the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

The International Covenant on Civil and Political Rights (ICCPR) and the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment also focuses on alternatives to custody and stress the minimum use of custodial sanctions.

3.1 Assessment and analysis of probation and parole service in Pakistan

In light of the international framework, the capacity and key functions of probation and parole services in Pakistan can be summarised as follows:

- ⇒ Probation is the supervision of a suspended sentence or postponed final judgment of the court which does not require deprivation of liberty and where the offender is sent back to community for a period of not less than one and not more than three years. The probation officer on the directives of the court prepares a SIR to assist the court in reaching a decision regarding whether or not the offender is released on probation. In the context of parole, it is the early conditional release of a good conduct prisoner in the last part of his/her imprisonment under the supervision of a parole officer.

- The probation and parole officers are mandated by law to visit prisons and assist prison management in identification of offenders who seem eligible for probation or parole and to conduct assessment interviews with them. Under the prevalent law no other work is carried out by probation and parole officers to assist prisoners inside the penitentiary.
- The probation system becomes active once a trial begins. It has no assigned role under the law at the pre-trial stage of criminal proceedings to provide or monitor alternatives to pre-trial detention or offer mediation; with the exception of the Juvenile Justice System Ordinance 2000 where the probation officer has some role to play at the police station level. It is stated that at the time of arrest the officer in charge of the police station in which the child is detained shall, as soon as may be, inform (a) the guardian of the child, and (b) the concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile court for making inquiry. In practice there are no such precedents where police have contacted probation officers at the time of arrest of a juvenile. Evidence shows that most of the police are even unaware of the very existence of probation officers.
- Similarly, the Reclamation and Probation Department has no assigned role in primary prevention of crimes; for example working with groups or individuals at high risk of committing an offence for the first time. Their work in preventing crimes starts during the community rehabilitation of offenders released on probation or parole in order to minimise the chances of recidivism. The community rehabilitation of offenders in Pakistan is almost non-existent. The R&P department lacks the capacity in terms of skilled human resource and logistics to meet the requirements for the effective community reintegration of offenders. At present the basic facilities of phone and fax are also not available in every district. In some places there is no proper office. Very recently provincial government KPK sanctioned official transportation for probation and parole staff which is yet to be provided. Other provincial governments, except Punjab, have also taken steps for the provision of transport.
- There are no provisions given in the existing probation and parole legislations to work with the victims of crime, enforcing fines or to compensate the victims of crime thus limiting its scope in addressing the needs of the victim. However, it will be too early to add the component of restorative justice to the role of probation or parole departments as the system is going through a rapid transition stage at the moment.
- The Reclamation and Probation departments lack a systemic training programme for their staff. On initial induction staff usually receive short term training at the National Institute for Prison Administration (NAPA) Lahore that is primarily responsible for training prison personnel. Capacity building of the staff is the most important area that needs immediate attention.

4. Recent developments; challenges and issues; suggestions and recommendations

- Strong physical presence and up-to-date means of communication are the basic requirements for any institution mandated for multi-agency and community rehabilitation work. As a follow up action to the recommendations made by the National Judicial Policymaking Committee, the government of Balochistan has taken a step forward in constructing a new R&P Directorate building that is in the final stages of completion. Such actions need to be replicated in the rest of provinces, particularly in the province of Sindh.
- As one of the outcomes of the “post crises need assessment KPK and federally administered tribal areas, Sep 2010”, the KPK government has allocated funds to establish a Directorate of Human Rights at the district level including office accommodation for district probation/parole officers, Public Prosecutor and public pleaders¹⁷. This will resolve the current infrastructure issues in the districts and will contribute in strengthening the probation services in KPK. In the rest of the three provinces the infrastructure for R&P at district level needs immediate attention of the authorities.
- At present, no transportation facilities are provided to probation and parole staff to carry out their field work. The probationers as part of their probation order attend the offices of their assigned officers. Limited money is allocated for transportation purposes and when a community visit is deemed necessary, the probation officers use public transport which in cases of remote areas from district headquarters often results in de-motivation of the probation officers due to dismal public transport facilities which again is subject to availability at a particular time of the day. The provincial government KPK has taken a positive step and sanctioned twenty four 800cc cars and a motorbike to improve the mobility of probation/parole staff to the far-flung areas. Such steps have also been taken by the respective provincial directorates of other provinces but needs approval of the concerned authorities. It is highly recommended that civil society organisations through effective advocacy and media campaigns influence the decision makers to prioritise provision of office accommodation and equipments (telephone, fax, computer printers) to make the probation and parole officers accountable and able to play their due role in the rehabilitation and community reintegration of offenders.
- Having up to date infrastructure and equipments is important but also needs skilled and knowledgeable R&P staff to ensure its effectiveness. Investment in human capital is necessary in order to yield the desired results. At present no regular trainings are held for R&P personnel. It is recommended that chapters on probation and parole system should be added to the training curriculum of judicial academy, police training academies and to update the syllabus of the National Academy for Prison Administration. Multi-agency focused trainings are required to empower the key players in criminal justice system to offer their services in a more holistic and integrated manner. This will also help to bridge the communication gap between the judiciary, police, probation and prison departments. The capacity building component can best be achieved through involvement of civil society organisation to design public private partnerships. Such interventions will pave the way for

17. Pleader- with reference to any proceedings in the Court a pleader means a pleader or Mukhtar authorised under law for the time being in force and includes:

(1) An advocate;
(2) A vakeel or any attorney of High Court so authorised;
(3) Any other person appointed with the permission of the Court.

more sustainable system change. Sensitisation trainings are also required for the bar association as most of the legal community is not aware of how the probation system works.

- Exposures visits and exchange programmes should be arranged at regional and international level for R&P management and staff to study the successful non-custodial models in practice and to learn from each other's field experiences. Civil society organisations in Pakistan with financial and technical support of the international community should come forward to design such projects that target attitudinal change through improving skills and knowledge-base.
- The District Criminal Justice Coordination Committees provide a more effective forum for joint working. Currently with the exception of few districts, in the majority of the districts the representation of probation officers in these coordination meetings is not very effective or absent all together. The provincial R&P Directors need to specifically focus to make the role of their staff more visible and essential at such important forum.
- Releases of prisoners on parole are comparatively lower than releases of offenders on probation. Obvious reasons include the low number and less exposure of parole staff to prison settings. The R&P Directorates should make monthly visits of parole officers compulsory in their respective yearly activity planner supported by regular supervision meetings on part of the R&P senior management. It also puts an obligation on prison management to make best use of parole services in order to reduce overcrowding in prisons.
- Amendments are required in the current probation of offender ordinance to widen its scope to include community service as part of community sentencing. At present the law is silent about any such provisions, particularly in the existing situation of Pakistan where there is no framework for formal rehabilitation of offenders outside the prison. Evidence suggests that voluntary work under the supervision of probation officers does help to improve an offender's self image and increases his/her acceptability by community members leaving a longer lasting effect in breaking the crime cycle.
- Additional measures need to be taken to address the issue of overcrowding in prisons. For example, introducing the use of cautions at the police station to divert the offender in minor cases from the formal criminal justice system. A caution is a formal warning about future conduct given by a senior police officer, usually in a police station, after a person has committed an offence and admitted guilt. It is used as an alternative to a charge and possible prosecution. Likewise the provision of conditional discharge under section 4 of the Pakistan Probation of Offender Ordinance 1960 needs to be brought to the immediate attention of the judiciary to increase releases on conditional discharge.
- Musalihat Anjumans can also play a vital role in this case through victim-offender mediation.
- Implementation of the Juvenile Justice System Ordinance 2000 needs to be improved. Special Juvenile Courts and panels of lawyers for free legal aid must be constituted and made functional as a priority. The competent courts during the trial of a first time juvenile offender should exercise the release on probation as a first option through the active involvement of probation officers. This will prevent chance offenders from becoming hardened criminals during incarceration.

- Pilot projects on probation through public-private partnership should be developed in specialised sectors, for example juveniles in conflict with the law, substance misusers and women in prisons. For instance, by designing a diversion project for first time juvenile offenders integrating police, probation, district judiciary, prison, child protection commission, Musalihat Anjumans (Alternate Dispute Resolution Committees), human rights directorate, social welfare department and other skill training institutes in the best interest of the offender and victim.
- Similarly pilot projects can be designed for drug dependent persons to be diverted into drug treatment and rehabilitation facilities under the supervision of a probation officer from the level of police station and courts. Women prisoners with minor children also require our special attention and such non custodial probation-led projects would provide women offenders equal opportunities to better reintegrate into community not only for their own self but also for their children and loved ones.
- Alternate Dispute Resolution (ADR) has strong roots in Pakistani society in the form of jirga, punchayat. These informal community-based dispute resolution approaches are subject to high criticism from civil society and human rights institutions for some of their biased decision on heinous crimes such as honour killing and rape; however it still retains an important place in the social fabric of Pakistan. In the Local Government Ordinance 2000, ADR is given a formal place in the form of Musalihat Anjuman (Reconciliation Committee) and each province has constituted their respective rules for implementation vetted by respective provincial law departments. The police and the courts can refer cases to Musalihat Anjuman (MA) for ADR. These MA will be very effective in victim offender mediation if linked with diversion projects.
- In the government hierarchical service structure, probation and parole officers stand as a universal constant, hired and retired in the same grade most of the time. The R&P department unlike other government departments lacks proper service structure which manifests itself in the form of demotivated staff always looking for other job opportunities with good service structure resulting in loss of skilled manpower. This doesn't mean blocking the way of staff so they do not join other departments but to make the R&P service equally attractive for others to join.
- Among the government department, R&P department remains a low priority area when allocating financial resources. For example the budget for R&P Punjab for the fiscal year 2011-2012 is approximately Rs. 80 million which should be at least 3 times more keeping in view the population of the province, the ratio of offences and to establish rehabilitation network for offenders.
- Data collection and data management is another area that needs to be a focus for effective service delivery and research purposes. There are no Research and Development units in R&P Directorates and data is kept in either hand written registers or on Excel-based data sheets without a proper computer database. Development of an extensive database system will also help the key criminal justice partners in sharing valuable information about offenders to ensure public safety and reduce recidivism.



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5. Conclusion

The recent judicial activism in Pakistan has brought the probation and parole system into the lime light. The respective provincial governments have taken some encouraging steps in terms of infrastructure development and recruiting new staff. The coordination among key partners in criminal justice system has comparatively improved due to regular meetings of CJCCs. The criminal justice system has realised the importance of integrated working. It is a high time for local civil society organisations and the international community to come forward and support the Reclamation and Probation Departments so it can effectively play its due role in the community rehabilitation and reintegration of persons in conflict with the law.

For more information please contact:

► **Penal Reform International**

60-62 Commercial Street
London
E1 6LT
United Kingdom
www.penalreform.org

► **Dost Welfare Foundation**

House 8, Sector B-2,
Phase 5, Hayatabad, Peshawar
Tel: (+92 91) 5811914
Fax: (+92 91) 5818328
www.dostfoundation.org