

## **Examining Legal Framework on Probation in Pakistan**

**Dr. Nadia Khadam<sup>\*1</sup>, Dr. Mazhar Hussain Bhutta<sup>2</sup>, Ms. Amna Zaheer<sup>3</sup>, Ms. Farrah Naz<sup>4</sup>**

<sup>1</sup> Associate Professor, Beaconhouse International College, Islamabad

<sup>2</sup> Associate Professor, PMAS Arid Agriculture University Rawalpindi

<sup>3</sup> LLB, Fatima Jinnah Women University, Rawalpindi

<sup>4</sup> LLB, Fatima Jinnah Women University, Rawalpindi

\*corresponding author [nadiakhadam@gmail.com](mailto:nadiakhadam@gmail.com)

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### **Abstract**

This paper examines probation, its objective, its mechanism, and outlines its legal framework in Pakistan. It delves into these laws to understand them in better way. Primarily, the Probation of Offenders Ordinance of 1960 which is a federal legislation is thoroughly analyzed in the light of case laws. Additionally, it covers the function of probation officials, the monitoring system, and the criteria used to choose probation officials. It also highlights global trends in probationary practices. It explores the shift toward evidence-based work, risk management, and need assessments. This study concludes by stressing on the significance of effective probation laws in Pakistan and the global arena. It highlights the potential benefits of probation in reducing recidivism, promoting rehabilitation, and alleviating prison overcrowding. It also presents the importance of aligning the probation policies of Pakistan with effective and contemporary international standards and incorporating best practices from around the globe. Also, it investigates the adoption of restorative justice, behavioral interventions, and reintegration followed by the identification of areas for improvement in Pakistan.

### **1. Introduction**

The etymology of word Probation shows that it has been used in variety of senses across different jurisdictions. It is derived from French word “probacion” which means proof or evidence. Its immediate ancestor is the Latin term “probationem,” which denotes consent or approval. (Probation | Etymology, Origin and Meaning of Probation by Etymonline, n.d.). In contrast to the lexical sense of probation in Russia, which suggests verification, the Latin word probation indicates verification or analysis. In English the word “probation” has emerged as a conditional form of criminal liability in the United States, the United Kingdom and some European Countries (S.S., 2021).

If a person on probation abides by the court-imposed rules and code of conduct, they will be released from detention and put under the oversight and special care of a probation officer through an order of probation by the court. (Herberman, 2013 ) Therefore, conformity to the rules and guidelines of monitoring that the court has imposed upon the criminal is a requirement before placing the offender on probation. Regardless of the individual circumstances, any person who is placed on probation has to follow the same guidelines and instructions, which are known as mandatory conditions. Similar requirements include abiding by all laws, permitting searches as instructed, reporting to the probation officer on a regular basis as per order, informing the

supervising officer of any change in address or employment, refraining from possessing a firearm, refraining from any form of association, whether direct or indirect, with other criminals, and obtaining prior court approval before leaving the jurisdiction of the court. (Labrecque, 2017)

Furthermore, the term probation denotes the suspension of sentence by the court. (Lewis, 1960) The Killit's case decided by the United States' Supreme Court laid down the pioneer concept of probation in the legal regime. It was upheld that the courts have the inherent authority to suspend a sentence for the purposes of administering justice. (Hursh v. Killits., 1932) Afterwards, probation has been seen of extensive application in the United States, and the idea of probation has greatly expanded over time. According to the definition of probation provided by Judge McKenzie Cleland in 1908, probation is a technique of deferring the severe penalty for offenders that is permissible by law. Offenders are then given the option to either keep the freedom they get by being placed on probation or lose it by violating the law; nevertheless, the probationers are fully aware that if they lose it, they would be subject to harsh punishment. (CLELAND, 1908)

### **1.1.Probation and Rehabilitation**

In contrast to judicial and legal dimensions of court work, the probation covers all of the social activity. As punishment and social inquiry have long been seen as two sides of the same coin, probation also involves the supervision of convicted offenders. Deterrence and retribution have been the main objectives of punishment in prehistoric legal systems, but as theories about rights and civil freedoms evolved, the restorative justice movement grew in popularity. The major objectives of punishment had to be re-evaluated as a result, and numerous theories were created to effectively contrast these two extremes on the scale of justice administration.

This study aims to discover the best ways to implement probation legislation in order to replace severe punishment that seems to have neglected the core goal of punishment, which is reformation for the benefit of society with community service. The three main components of the criminal justice system are the police, courts, and the prisons. The correctional facilities in Pakistan, which comprise prison and probation, are the third arm of the criminal justice system and are mostly neglected. The principal aim of probation is frequently thought of as rehabilitation and assisting criminals in living law-abiding lives. The introduction of probation and jail reforms are both fraught with problems.

### **1.2.Probation: Balancing Accountability and Rehabilitation in the Criminal Justice System**

Researchers in the disciplines of legal and correctional science, such as Panakal J.J. and Madhava N.R., believe that probation is entirely distinct from sentence suspension. The reparative and rehabilitative aspects of probation have received more attention. (Ram, 1979) The stigmatisation and privatisation effects of the traditional criminal justice system's implementation compel criminal law politics to prioritise the efforts of Alternative Dispute Resolution (ADR) when it comes to the resolution of criminal cases. The concepts of certainty, expediency, and fairness theoretically justify ADR at this level of the criminal justice system although the idea is the creation of civil law community. (Zarkasi, 2022) As far as the significance of restorative justice is concerned, the ADR strategy known as diversion is used in the Indonesian criminal court system. Instead of addressing the offenders with formal justice, which would likely result in them being cut off from his social milieu, the diversion strategy is a proactive attempt to mend strained social ties caused by illegal conduct (Akub & Sutiawati, 2018, p. 68).

### **1.3.Jurisprudence behind Probation in Criminal Justice System**

The idea of probation has its origins in the humanitarian work and religious zeal of the nineteenth century, which showed concern for the well-being of the impoverished and a desire to reform their morals and conduct. In the United States, probation has a lengthy history and John

Augustus is known as the “father of probation”. Approximately 2000 men, women, and children who were unable to pay their fine posted on bail between 1841 and 1858. Majority of them were drinkers and petty criminals (Taxman 2012). Augustus assisted those offenders in finding jobs. He later updated the court on their rehabilitation efforts. Massachusetts, where Augustus was born, was the first state to pass legislation governing probation in 1858. Eventually, both juvenile and adult probation laws were passed by the federal government and all 50 states. (Dauria, 2022)

The majority of industrialised countries were responding to requests for the government to do more to safeguard the wellbeing of their citizens by the beginning of the 20th century, and procedures like social work and probation were integrated into this endeavour. The British Probation of Offenders Act, 1907, for instance, was a part of social reform led by the government that laid the foundation for the welfare state that would later develop. (Vanstone, 2004) As a result, probation moved from the periphery of charitable and religious activity to become a small but major part of the system of government-funded social services and an important part of the criminal justice system in numerous countries during the first half of the 20th century. Early in the 1950s, Max Grunhut, a criminologist who founded the discipline of criminology at Oxford University, combined two concepts: conditional suspension of punishment and monitoring by a court welfare officer, to define probation. This definition has received professional consensus. Contemporary Significance of Probation (Hood, 2004)

Even if promising, it appears probable that political decisions reflecting various political cultures among different jurisdictions would affect probation rather than advancements within the area of probation itself. Neoliberal political systems and governments have a propensity to "responsibilize" citizens, holding them accountable and guilty for most of the difficulties and problems they encounter in life: social causation is ignored, and personal responsibility is paramount. In neoliberal political cultures, criminal justice systems generally have high imprisonment rates and prioritise punishment over rehabilitation or reintegration (Cunneen, 2009).

On the basis that community responsibility plays a large role in addressing social issues, there is frequently a predisposition to embrace a rehabilitative and inclusive approach to criminal justice in political cultures that are more strongly social democratic. In these settings, governmental assistance and individual initiatives are seen as collaborative efforts to promote social growth and wellbeing. (Downes, 2006) These may also support the development of restorative justice, which is now the preferred method for dealing with juvenile offenders in numerous countries, including Northern Ireland (Jacobson, 2009). Politicians, voters, and other social influencers finally must decide between the two possibilities indicated in this paragraph. By pursuing research into the factors that encourage criminals to stop committing crimes and disseminating the findings, probation officers and other professionals may better position themselves and their organisations to meet future difficulties.

## **2. Probation in early Research**

The introduction of a probation and parole framework as an alternative to customary punishment has made it possible for Pakistan, a welfare state, to incorporate the values of corrective and restorative justice into its legal system. To promote the concepts of restorative justice all over the nation, numerous laws have been passed. An important turning point in Pakistan's criminal justice system may be seen with the introduction of these legislation. However, where prisons across the world have shown that they can serve as centers for rehabilitation, in Pakistan, there are more than 120 prisons overcrowded with an enhanced number than the authorized space. This congested prison system creates more hurdles than the crime itself.

The indulgence and gathering of different categories of criminals create more offending capabilities. It has been stressed over the years on the fact that mismanagement and even leaving the prisons unmanaged created more crimes. It has also been a point of concern that juvenile

offenders are also sometimes kept for a little time in prisons with other criminals which affects their mental capabilities to a great extent. Moreover, the ineffective check and balance mechanism provides stress on achieving the means of rehabilitation in Pakistan. The risk of re-offending enhanced with the passage of time although the aim would have been contrary. Inadequate processes and the inadequate operation of the probation system have been identified as potential contributors to the probability of reoffending.

Although Pakistani laws provide a broad framework for dealing with probation-related issues, the country has lost the actual spirit of probation as a result of straying from the fundamental concepts of rehabilitation and reformatory justice. The new trends around the globe that were to be introduced or made possibly fruitful have not been catered and the very first example is the lack of legislation for the said arena in Pakistan. Although there have been quite a number of cases that established new mechanisms regarding newly established facts in daily life, however, the risk assessment mechanisms and alike models have not been worked upon or implemented by the global utility. In the field of criminal justice administration, the idea of rehabilitating criminals has become a useful and practical strategy, supporting the adoption of a punishment philosophy that emphasizes reform.

All parties involved in resolving the harm brought on by crime is to be linked together via restorative justice, which is seen as a rapidly expanding trends. Every person who participates in the administration of justice has the goal to be included in the transition from retributive penalties to a reformatory strategy in order to promote an adequate comprehension of their distinct rights and responsibilities. It offers offenders the chance to do more than just make restitution. The main goal of the concept of probation is to provide both the victim and the offender a second chance by giving the latter a chance to change his behavior and contribute positively to society. Establishing mechanisms for its implementation is urgently needed given the growing acceptance of corrective justice as a powerful tool for improving the criminal justice system and adopting a new viewpoint on crime and offenders. To that end, efforts are made to develop a sentencing system that is more equal. Probation is one such initiative designed to strike a reasonable balance between crime and punishment as a corrective justice approach.

Probation is founded on the idea that punishing criminals will not make them better or protect the society. While probation offers a vital, progressive strategy for achieving the likely goal of justice, which is the victim's restoration and the criminal's reformation. The honorable high court emphasized that the decision between punishment and rehabilitation is difficult and requires serious consideration by everyone involved in the criminal justice system. (Zulfiqar Abbas v. The State,, 2007) It indicates that the only justification for discipline, that necessitates the state to care for wrongdoer demands, is reformation. It aids in preventing prison congestion and an increase in the price of incarceration. In one instance, the court noted that adopting corrective justice practises like parole and probation would further the sentencing goal of rehabilitation. These actions free the offender from the stigma connected to imprisonment for the rest of their lives while also allowing them to take care of their basic necessities and societal obligations. (Nizamuddin Vs. State ;2007).

A strategy known as Acceptance and Commitment Therapy (ACT) is used all around the world to help people change unhelpful verbal descriptions of their environment that might be damaging to their overall psychological health. However in Pakistan, psychological wellbeing of the offenders is rarely kept in consideration. Probation education and training has been delivered throughout the globe which is lacking in our society. It has been considered important internationally that the occupational identity of the probation officers is to be recalled so as to make them aware of their responsibility, however in Pakistan there is a traditional mechanism, stuck by and worked upon throughout the years without its interest and responsible attitude. Job satisfaction and distress in rehabilitation officers is an important determinant which is not

effectively managed in Pakistan. In the UK, academics participating in the education and training of probation officers have been responsive to a number of changes. Up until this point, they have been able to accommodate these and modify training curricula. Recent government-sponsored recommendations for such a shift have had a favorable effect on the Probation system. From Probation as social welfare to Probation as social work and responsibility, the interest in the undertaking of Probation has evolved. In Pakistan, it has instead been seen as a social welfare measure, and that too without the diligent involvement of probation officers. It also affected the area of probation since Pakistan's law enforcement agencies struggled to manage employees' commitment in profitable and even non-profitable sectors.

The major barrier to the efficiency of such a crucial and society-building area is the lack of professionalism in the organizations incorporated in the support of Probation. Professionalism is constantly linked to expert skills, knowledge, values and authority. It is often understood that being a member of a profession entails extensive training, the development of skills, enhanced quality of service, qualification, regulation, a sense of service, and a sense of preference of collective benefit over personal gains. However, there have been significant revisions made to the Probation of Offenders (Scotland) Act, 1951, including a ban on current or former police officers serving as probation officials. This change may be linked to the expanding therapeutic values' impact and the related move away from paternalistic and strict monitoring. (The Probation (Scotland) Rules,, 1951)

Following the publication of the Kilbrandon Report in 1964, the Scottish juvenile justice system underwent a considerable overhaul in the 1960s as a result of its recommendations. (Lord Fraser of Carmyllie, 1995) The Children's Hearing System was established by the Social Work (Scotland) Act, 1968, which brought about a radically different method of handling juvenile offenders. This law also combined social work and probation agencies, highlighting their shared role in advancing social welfare. As a result, criminals were seen as a vulnerable population that required supporting measures, similar to elderly people in need of care, children with special needs, and orphans. In contrast, in Pakistan no such system has been established or is being maintained to deal with juvenile criminals.

Risk management has taken over modern probationary practice and is a crucial organizational component of judicial procedure and offenders' supervision. The practice of risk assessment has been a part of probation practice for a while, but the proliferation and broad use of standardized assessment instruments are more recent innovations. Numerous risk assessment instruments, including Assessment Case Management and Evaluation (ACE) and the Canadian instrument Level of Service Inventory-Revised (LSI-R), have been used in probation practice in the UK (Flores, 2006). Offender Assessment System (OAS) is an important tool now in use. This approach tries to evaluate the likelihood of detecting particular requirements connected to criminal behavior, permitting focused surveillance and interventions. Its main goal is to make sure that resources are allocated properly and that intervention tactics are successful. OAS tends to encourage systematic examinations in which practitioner discretion is minimized by assigning numerical scores. (Whitehead, 2016)

By contrasting an offender's traits with those of a sizable sample of previously convicted criminals who have also been reconvicted, it calculates the likelihood of an offender being reconvicted. On the other hand, actual evaluations have accentuated static elements of offenders' criminal history while downplaying their social and economic conditions when creating risk scores. A new generation of initiatives called "Intensive Rehabilitation Supervision" (IRS), have been developed. After such monitoring, a relationship between the staff and the probation applicants would be formed, and a beneficial outcome would be followed. (Viglione, 2019)

The criminal justice system has been overburdened altogether since the inclination to use such trends in Pakistan is equivalent to none. England and Wales are home to two community-

based initiatives, namely the Integrated Domestic Abuse Programme (IDAP) and the Community Domestic Violence Programme (CDVP). These programs actively work to address domestic abuse issues within the community. In general, Pakistan does not have any such designed programmes, and in particular areas, such as case-based programmes, corrective justice is hardly ever used, which is concerning. There is a need to create or adopt systems, tools, or management techniques to first assess the motivations behind crimes, then classify case-specific crimes, then consider the nature of offenders generally and in the majority, their trend, and their needs, in order to develop criteria-specific rehabilitation procedures. (Maguire, 2004)

### **3. Legal Development of Probation Laws in Pakistan**

Probation was adopted to restore the culprits in the society and this is for first time offenders. To achieve the aim of reformative and rehabilitation purpose of sentencing, Pakistan implemented legal framework for the Probation and early release as alternate to imprisonment passed in jail premises. There is different legislation introduced at different times at federal and provincial levels which includes Code of Criminal Procedure, 1898 (Cr.P.C.), The Good Conduct Prisoners' Probation Release Act, 1926 (GCPA), The Punjab Youthful Offenders' Ordinance, 1983 (PYOO), the Sindh Children Act, 1955 (SCA), The Probation of Offenders Ordinance, 1960 (POO), The West Pakistan Probation of Offenders Rules 1961 (WPPOR), and The Juvenile Justice System Act, 2018 (JJSA).

If we look into historical background, after independence of Pakistan along with other laws probation law i.e., GCPA. This law allows the early release of those prisoners who spend some time in jail and demonstrate decent and good behaviour during that time and executive then release them on fulfilling certain conditions. The unique feature of this relief is that this power is given to the executive. It was applicable in the province of Punjab. It is stated that if it appears to the Government that a person will refrain from the offences and will live a purposeful life keeping in view his good conduct during the prison time, he may be released from the prison and placed under the supervision or under any government officer. This release may be valid till the end of the imprisonment time or if it is revoked. This law makes it a punishable act if any person on probation fails to obey the law and its requirements. (The Good Conduct Prisoners' Probation Release Act, (Act X of 1926), § 2.)

Additionally, there were provisions for probation under the Cr. P. C. (which were taken from the Indian Cr. P. C.), notably Sections 562, 563, and 564. In place of imposing a punishment, some offenders portraying good behaviour may be released on probation under Section 562, and Sections 563 and 564 set down the necessary processes. These clauses from the Cr. P. C. were, however, repealed in Pakistan in 1960 after the enactment of POO. (Code of Criminal Procedure, (Act V of 1898), §§ 562-564.)

In next part of the paper author analysed the federal and provincial laws on Probation.

### **3.1 FEDERAL LAWS**

#### **3.1.1 Probation of Offenders Ordinance, 1960**

The legislation's main goal was to provide criminals the option of probation in specific situations. The 1931 Probation Bill was updated into the 1960 Probation of Offenders Ordinance. With the aim of rehabilitating criminals while minimising the interruption to their daily lives and enabling them to stay in their comfortable homes, this system was put in place. (Vikas Chaudhary v. State of Delhi, 2022) This ordinance mandates the establishment of the probation branch within the department and allows for the appointment of probation officers for offenders being tried in court. The aim of this law is to reform the offenders because if they spend their punishment duration in jail, they would interact with hardened criminals and their future is at stake (Jashan Lal v. The State, 2007)

There are 17 sections in this law. Section 01 depicts the federal nature of law, it is applicable all over Pakistan. Section 02 defined different terms to understand the law in better way. Section 03 provides that the authority to grant probation is vested in the High Court, Court of Session, and magistrates. Moreover, this provision states that a court has the authority to exercise powers granted by this ordinance, regardless of whether the case is being heard for the first time, on appeal, or in revision. Moreover, this power can be exercised before the final adjudication of the case and no later than that. “indeed, courts after exhaustively exercising jurisdiction become functus officio to exercise this authority. If a magistrate convicts an offender without having the authority granted by this ordinance but thinks that Section 4 or Section 5 should be applied, they are obligated to document their belief and transfer the case to a first-class magistrate. The chosen magistrate is then permitted to render a judgement or make an order just as though they had presided over the matter initially. Additionally, they are free to make more inquiries or collect more evidence if they think it is essential.

According to section 4, the court has the discretion to forego imposing a penalty if the offender is found guilty of an offence carrying a maximum sentence of two years in prison and has no prior convictions. Instead, the court may choose to discharge the offender after admonishing them, or they may impose a discharge order with certain conditions. These requirements might include the criminal signing a bond, with or without sureties, abstaining from engaging in more crimes, and maintaining good conduct for a certain amount of time, usually not longer than one year. A police officer being first offender put under probation keeping in view the reforming objective of this law, here putting the accused behind does not seem to serve the purpose. It is the duty of the courts to analyse between the reformation and imprisonment and apply the flexibility of the law (Zulfiqar Abbas v. The State,, 2007)

The term “order for conditional discharge” refers to a court-issued directive that releases a person under specific restrictions, and the specified time period is known as the “period of conditional discharge.” The court is duty bound to elaborate to the offender, in simple language, before issuing an order for conditional discharge that failure to behave properly during the conditional discharge period or any subsequent offence could result in sentencing for the initial offence. The conditional discharge order will no longer be in force if the person who was granted one is later charged for the offence.

In accordance with Section 5 of the aforementioned law, the court may order probation in certain circumstances. This section gives the court the discretion to choose a probation order rather than immediately imposing a sentence if a male person is found guilty of an offence not listed in specific sections of the Pakistan Penal Code (PPC) or if a woman is found guilty of any offence except the one that is punishable by death. The facts of the case and the offender’s character will determine the court’s ruling.

The probation order requires the offender to remain under a probation officer’s supervision for a specified amount of time, usually between one and three years. However, before granting the probation order, the court requires the offender to post a bond, either with or without sureties, promising not to engage in further criminal matters, to behave well, and to appear in court for sanction if required during the bond time. In 2022 a judgement titled Adeel Rasheed vs. State, probation service is mentioned as community service. Learned judge mentioned the benefits of probation that it benefits the offender, society and the state (Rasheed v. The State and another,, 2022)

In order to ensure that the offender is under a probation officer’s supervision, the court also has the power to add extra conditions to the probation order. These requirements may be related to the offender’s place of residence, surroundings, avoiding alcohol, or any other issue that the court judges essential to rehabilitate the offender as a law-abiding citizen and to prevent

the commission of other offences. It should be noted that the probation order ceases to have effect if the offender receives a term for the crime for which it was issued.

According to Section 6, a court may require an offender who has been given a probationary or discharged sentence to pay compensation or other damages to anybody who has incurred loss or harm as a result of the offence. The court may also require the offender to cover fair procedural expenses. However, the entire sum granted in terms of compensation, damages, and costs should not be greater than the highest fine the court might have imposed for the offence. Any compensation, damages, or costs previously paid or collected under the prior order should be considered by the court conducting the following civil suit or procedure if it relates to the same offence. According to the applicable provisions of the code, the sum that must be paid may be collected as a fine.

According to Section 7, the court has the power to issue an arrest warrant or a summons the relevant person or persons to appear before the court if it thinks that the criminal has not complied with the terms of their bond. The perpetrator may be kept in custody until the matter is heard by the court or may be released on bail, with or without surety, pending the hearing.

If the court thinks after hearing the evidence that the bail terms have been breached, including those imposed under Section 5, it has two choices. First, the offender might be sentenced right away by the court for the initial offence. The court may also impose a fine on the offender instead of cancelling the bond, although the amount cannot be greater than one thousand rupees. However, the court shall take into account any remuneration, damages, or expenses awarded under Section 6. The offender may be punished for the first offence if the fine imposed under paragraph (3)(b) is not paid within the allotted time period.

Section 8 states that the appellate court or the court reviewing the case has the authority to take various actions when an appeal or revision is filed against the conviction in which case an order was issued under Section IV or Section V. They can either issue an order as they would have been able to under the applicable legal code, or they can alter or annul the Section 4 or Section 5 order that was already made. They may also impose a sentence authorised by law.

It is crucial to remember that the appellate court or the court hearing the appeal cannot impose a sentence that is more severe than the one that could have been handed down by the court that first found the offender guilty. In other words, they cannot raise the sentence beyond what the court that the convicted offender originally decided.

According to Section 9, Sections such as 122, 406A, 514, 514A, 514B, and 515 of the Code must apply where required. According to Section 10, the court that issued a probation order pursuant to Section 5 has the power to alter the conditions of the probationary bond on the request of the relevant person kept on probation or on the court's own initiative, this can be done at any moment. The individual on probation may be ordered to appear before the court and given the chance to argue against changing the bond. The bond may be subject to additional or altered conditions, as well as an extension or reduction in its term.

However, from the date of the initial order, the bond's tenure cannot be less than one year or greater than three years. Any modifications to the bond require the approval of the surety(ies) named in the bond, if any. The court may order the probationer to sign a new bond, with or without sureties, if the surety or sureties object to the change.

On the application of the person who is on probation, the relevant officer, or at the discretion of court, it has authority to discharge the probation order and the related bond. This can be done where the court determines that the probationer's behaviour has been sufficient and that no more monitoring is required.

According to Section 11, the conviction for the offence is not considered a conviction for any purpose other than the situation in which the order is made and where any subsequent related situation under the applicable laws when offender is released after due consideration,



unconditionally or otherwise, or put through probation through an order under Section 4 or Section 5. However, this clause no longer applies to the first conviction if the offender, who was at least eighteen years old at the time of their conviction, is later punished under this Ordinance for the same offence.

In addition, despite the foregoing, any law that imposes disqualifications or disabilities on convicted individuals or permits or mandates that such disqualifications or disabilities be imposed disregards conviction of person who is discharged after due proceedings.

The ability of an offender to appeal against their conviction or raise it as a defence in later proceedings for the same offence is unaffected by these rules. Furthermore, these regulations do not bar the reconsideration or restoration of any property connected to the offender's conviction.

Sections 12 and 13 pertain to probation officers. These officers are appointed by the head of the Probation Department. However, Section 12 is omitted for its application in the province of Punjab through the new law Punjab Probation and Parole Act 2019. Moreover, the duties of probation officers, as per Section 13, include:

- (a) Visiting the offender or receiving him at reasonable time given in relevant command or in a way that deemed appropriate by the Officer-in-charge.
- (b) Ensuring that said person complies with the rules stated in the bond acknowledged u/s V.
- (c) Providing reports to the relevant officer regarding the conduct of the bound person.
- (d) Offering guidance, assistance, support to the person under command and making efforts to help them find worthy occupation when necessary.
- (e) The probation officer is also obliged to carry out any other duties assigned by the rules established under this Ordinance.

Section 14 enables the Provincial government to make further rules for the implementation of this law. Whereas Section 16 repeals the Section 380, 562-564 of the Cr. P. C. Last is Section 17 that clarifies that this law is not in derogation of other law but an addition to them.

It is important to mention that this law is applicable in Punjab, Sindh and Islamabad. However, as per Section 30 of Kyber Pakhtunkhwa Probation and Parole Act 2021, the POO 1960 is repealed to the extent of Kyber Pakhtunkhwa.

### **3.1.2 Juvenile Justice System Act 2018**

The introduction of the Juvenile Justice System Act 2018 (JJSA) by the Pakistani government to achieve its goals as per the ICRC (International Convention on Rights of Child) is a recent development. (International Convention on Rights of Child, 1989 ) Section 06 of this law give about the release of juvenile offenders on probation. The objective is to help the young offenders to reintegrate in the society. A young boy involved in narcotic case was given under the supervision of probation officer due to his age.

GCPA gives the relief of parole to be exercised by the executive however POO gives this power to the court to exercise the discretion to award probation sentence at the time of decision, fulfilling few requirements.

## **3.2 Provincial Laws**

### **3.2.1 Good Conduct Prisoners Probational Release Act 1926**

The executive to release the prisoner and make this decision on basis of the behaviour of the prisoners within the jail is empowered by GCPA. It allows for the conditional release of prisoners before the completion of their sentence, provided they demonstrate good behaviour and meet specific criteria. The act aims to rehabilitate offenders by giving them an opportunity to reintegrate into society under supervision, while also reducing the burden on overcrowded prisons. This law also gives the power to government to revoke this

The purpose is to conditionally release the convicted prisoners who show good conduct in the prisons. This law was effective in providing chance of early release to convicted prisoners, however only prisoners with small term imprisonment sentences are under the scope of this law. The law was helpful in social reintegration of the convicted persons to fulfil the restorative justice concept.

There are eight sections in this law. Section 01 mentions its title, scope and extent. This is applicable only in Punjab Province. Section 02 mentions the criteria for the release of a convicted prisoner. It mentions that if a person is convicted under sentence of imprisonment and he shows good conduct within the prison, authorities can apply for his early release on basis of his good conduct. This early release prisoner must now be kept under the authority of functionary of state or an institution, or of a person or community owning the same religious beliefs as the captive, as mentioned in the commitment order and consented to take charge of him by the Provincial Government.

Section 3 defines the duration of this release. It might be up to the period of sentence or it may be revoked under powers exercised under section 6. Revocation power is also with provincial government. This period of release will be counted in the duration of imprisonment, this is mentioned in section 4. A release granted under section II of the law is termed as “license” and government may make any condition(s) to this license as per section 5 of the law. In accordance with Section 7, a person can be convicted by a magistrate if they flee from the custody or control of state servant, a secular organisation, a group of people, or the person in charge of their care u/s II, or if the said person’s licence has been nullified under Section VI and they fail to return to prison as ordered. The punishment for this offense can be imprisonment for up to two years, a fine, or both. Additionally, this offense is considered a cognizable offense under the Cr.P.C 1898. The final section grants the Provincial Government the authority to establish regulations concerning the following matters:

- (1) The format and requirements for licenses that enable the release of prisoners.
- (2) The specification of powers and responsibilities for government officials, societies, or individuals who oversee and supervise conditionally released prisoners.

The identification of categories of offenders who may qualify for conditional release and the duration of imprisonment after which they become eligible for such release.

The overall implementation of all the objectives outlined in this Act.

The GCPA is practiced in Punjab province only. Moreover The GCPA enables the Government to release the offender whereas the POO enables the courts to release the convicted person (Muhammad Ismaeel vs Govt.of Punjab, 2018)

### **3.2.2 Punjab Probation and Parole Act 2019**

In 2019, Punjab Probation and Parole Act (PPPA 2019) is promulgated with an aim to establish an efficient Probation and Parole service (PPS) to assess the offenders referred to probation and to play its role for betterment of criminal Justice System. The objective of this law is to establish a Probation and Parole Service in Punjab. PPPA 2019 defined the probation as per POO and Parole is the release as per the GCPA. The key functions of this PPS are to assess the risks and needs of the offender, manage the risks of offender, maintaining of data of offenders on probation, ensuring the conditions of release are fulfilled and facilitation in rehabilitation of offenders.

Moreover, this law requires the constitution of Parole Board by the Government with and objective to consider offenders for parole and recommend these offenders to government for release and conditions required to be fulfilled for such release. It omitted the criteria of appointment of Probation Officers under POO to the extent of its application in Punjab. Additionally, this law required the conversion of Directorate of Reclamation and Probation, Punjab into Probation and Parole Service established under PPS 2019.

### **3.2.3 The Khyber Pakhtunkhwa Probation and Parole Act, 2021**

This law is introduced to formulate the rules for the probation of convicts their rehabilitation and rules for the parole in the province of Khyber Pakhtunkhwa. Purpose is to devise a framework to help the offenders to reintegrate in the society and play their part for a peaceful society.

This law is having the overriding effect to all other laws. It is important to mention that this law repealed the POO and the GCPA to the extent of province of Khyber Pakhtunkhwa.

Section 3 empowers all competent courts having jurisdiction over matter to pass the sentence of probation. Different types of probation are provided under this law. First, putting an offender under supervision of a probation officers with an aim to reform and rehabilitate the offender. Second, passing the sentence by doing community service without any compensation and as per the requirement by this law. Third, if conviction of a person is upheld for an offence carrying maximum punishment of two year, court may after considering all the details as per this law, not award any fine or imprisonment but order the release of person with strong warning. Fourth, court may award a fine or imprisonment or both to the convict but suspend his sentence. It is required that convict with suspension order shall not commit any other offender, if so he would be liable for the new offence Moreover his suspended sentence will be activated. Last that convict may be sent for the drug treatment. This law also mentions that community service is not mandatory for any prisoners. However, probation officers will see that whether convict is capable of doing that and it is also beneficial for the rehabilitation and reformation of him. The most important thing is the consent of the convict for the community service.

Similarly, vocational training is not mandatory but probation officers will look into the facilities available and the suitability of that training for the concerned convict.

Vocational training should be beneficial for the convict. Moreover, court shall explain the need and the details about the vocational training before making the order. It should not be longer than the probation time. On failure to fulfil the conditions made for the probation order, the court granting the probation order shall revoke it and sentence the convict for original offence. This law also requires the pre-sentencing report prepared by the probation officer to be considered by the court.

Chapter III of this law deals with Parole. Parole committee is required to be established under this law at provincial level. Parole committee is required to convene the meeting once a month to deliberate upon the recommendations made by the parole sub-committee. Moreover, parole committee can take the notice of the cases on their own.

## **4. Probation in The Light of Case Laws**

### **4.1 Abdul Rasheed vs. The State PLD 2022 SC 795 (Probation as a community Service through ...)**

The said judgement contains the ideology of Probation either in terms of legal provisions regarding probation in Pakistan, also it depicts the idea of Shariah. It further mentions the Section: 05 of Probation Ordinance that is a way out of rendering an offender on probation. It further produces details regarding the legal criteria of order for releasing an offender on probation as per the said section.

It also entertains the duties of probation officer including encouragement of the probationer that is placed under the former's supervision. It elaborates in detail the principles of Probation laws as, The provisions of the Probation of Offenders Ordinance are intended to carry out the objective of reformation and it provides the accused person an opportunity of reformation which he would lose by being incarcerated in prison.

Furthermore, the importance of community service requirements put in the probation order has been safely stated in the ruling. The community service may help in restricting growth of prisoners in prisons, lessening prison expenditure, giving offenders a way to pay for their offender by not putting humiliation to the families of offenders. In this regard reference is made to the use of community service by Prophet Muhammad after the Battle of Badr when a prisoner was offered to earn the freedom by teaching ten muslims to read and write.

It further aids in presenting constructive work for the society, opportunity for social integration and getting an atmosphere of cooperation with the community, and to develop a sense of social responsibility and provides a less costly rehabilitation.

The said ruling presents the efficient intake on the analogous concept of community service in Shari'ah i.e., fida' bil amal. It furthers the importance of Probation. (Abdul Rasheed vs. The State, 2022)

#### **4.2 First time offenders and Rule of Probation (Saeed Ahmed Kalhoro Vs The State, PLD 2017 Sindh 592 )**

The Probation of Offenders Ordinance 1960 has been discussed as a reformatory measure, and its goal is to reclaim amateur offenders. The importance of the fact that their abilities can be usefully rehabilitated in society has been highlighted. A period that is spent in jail is presumed to be enough to wipe out the sign of guilt, but the sentence which the society passes on convicts is forever. Moreover, the social stigma that the society attaches to convicts often render the remedy worse than the issue, in this way the main purpose of punishment stands nullified.

Not in all cases but the cases which involve a novice who gets entangled into the path of crime, in the interest of society, ought to be treated as being socially sick. Crimes are not always rooted in criminal abilities, and their origin may be traced back in psychological elements produced by lack of fulfilment of basic needs. This judgment gives the direction that if offender is first time offender with no criminal record he must be placed on probation for his wellbeing and for the betterment of the society. It is also mentioned to involve the offender in community service for his reformation. (Saeed Ahmed Kalhoro vs The State, 2017)

#### **4.3 Reformation through probation (Vikash vs. The State 2018 YLR 461 )**

In the concerned judgement the role of probation laws and their efficacy has been discussed and how a positive impact may be ensured by adopting their spirit. It has been quoted that the prohibition ordinance of 1960 provides a reformatory mechanism to reduce reoffending. It furthers the positive attitude of an offender and makes him useful for society. In addition to it, it also put forward that the probation is not of and for special form or nature that may make it limited but it can be enhanced via additional procedures in the probation order to meet the objectives of probation laws.

The institution of probation may be used as reformation of an individual and also to contribute in compensating the society by making the offender capable enough to work to add required needs of the society by his abilities. The said case via its judgement clearly depicts the idea of community service as an essential objective of probation in Pakistan for leading an amateur offender to play a vital role in the well-being of society. (Vikash vs. The State, 2018)

#### **4.4 Probation orders by Special courts ( ANF vs. The State, 2016 PCrLJ 953)**

The said case holds an important position regarding a special case and the applicability of Probation Laws on said circumstance i.e., a case when registered under Narcotics law.

The court in the said case presented the conclusion that it can reasonably be held that even in narcotic cases, if the court would deem it proper and it appears appropriate to the court deciding the issue, for betterment of an offender, may instead of sending him to prison can send him on probation. This case actually helps in understanding the scope of section 3 of Probation ordinance that there is no specific nature of case that a probation order is made. Under this provision, "a High Court, a Court of Session, a Magistrate of 1st Class and any other Magistrate

especially empowered in this behalf, may exercise powers under the Ordinance, whether the case comes before it for original hearing or in appeal or in revision”.

Moreover Section 47 of the criminal Procedure code 1898(Cr.P.C.) mentions that the Cr.P.C. is applicable in trial and appeal before Special courts. In this manner Section 562 of Cr.P.C. is equally applicable in narcotics cases where court is allowed to order for sending convict for probation instead of prison. (ANF vs. The State, 2016)

#### **4.5 P L D 2023 Lahore 19**

The court in this case enlightened the Section 2 of The Probational Release Act which has also been supported by Good Conduct Prisoners’ Probational Release Rules, 1927 (“Probational Release Rules”).

It was stated that the Provincial Government under Section 2 of The Probational Release Act is empowered to release a prisoner by license subject to the condition that he maintained his good conduct whilst in prison. It further reflects that the prisoner would abstain from engaging in any criminal activity after being released from the prison.

The purpose of these provisions is the rehabilitation of the offender in the society after release, however, the government may entertain an application of the convict on the medical parole if the criterion is fully satisfied.

In the present case, the petitioner’s application was rejected by Additional Chief Secretary on the ground that the convict was suffering from chronic liver disease and the Director General, Punjab Probation and Parole Service, issued the Executive Order No. 47 which bars the release of the prisoner on medical ground. Although, there was no such thing mentioned by the Director General in that order, and the Additional Chief Secretary has drawn the unnecessary inference out of that order.

Thus, the Probational Release Act and the Probational Release Rules do not impose such restriction, hence the Director General is not allowed to give any direction against their scope or limitation. (Mubarak Ali v. Government of the Punjab, 2023)

#### **4.6 2007 Y L R 303 [Karachi]**

In the present case, Section 3 and 5 of Probation of Offenders Ordinance, 1960 were applied. Since the appellants were the first offenders and had no criminal record before, and the offence neither involved capital punishment nor attracted the provisions of Section 5 Probation of Offenders Ordinance, 1960, thus instead of sending the convict into the prison, the custody was handed over to the probation officer by complying all the formalities mentioned therein.

It was elaborated further that sending the offenders into the prison might lead in mixing up with hardened criminals, ultimately having an impact on their future. Therefore, as mentioned under Probation of Offenders Ordinance, 1960, it would be appropriate to release them on probation and reform them as law-abiding citizens. (Jashan Lal and another v. The State, 2007)

#### **4.7 P L D 2018 Lahore 114**

The court in the case at hand reproduced the Section 2 of The Good Conduct Prisoners Probational Release Act, 1926.

It was stated that the condition precedent before the release of offender from the prison is that he was confined under a sentence of imprisonment along with another condition that his conduct in prison must demonstrate that he would act as law-abiding citizen and would abstain from criminal acts.

Moreover, the probation is granted by the judiciary under the Probation of Offenders Ordinance, 1960 (Ordinance No.XLV of 1960), while in the case of parole, the executive is authorized to grant under Section 2 of The Good Conduct Prisoners Probational Release Act, 1926.

However, the primary objective of both Probation and Parole is rehabilitation and reintegration of the offenders. (Muhammad Ismaeel v. Secretary Home Department, Government of Punjab, 2018)

## 5 Conclusion

This work analysed the concept of probation, link between probation and rehabilitation and its significance in criminal justice system. The laws around the world are discussed to see the importance of the probation in any country. As the last part in detail discussed the laws in Pakistan on this subject. If we conclude it is mentioned there are two kinds of law federal laws and provincial laws on this subject. Federal laws include GCPA and POO. GCPA enables the executive and the provincial governments to early release the convict prisoners who maintain good behaviour within prisons. However POO is the probation law which enables the court with a discretion to put the convict under the supervision of probation officer instead of in prisons. It is important to mention that the JJSA was introduced in 2018 with the same directions to put the offenders under probation.

At provincial level Kyber Pakhtunkhwa a law is promulgated in 2021 covering both probation and parole related rules and regulations. Similarly in Punjab, a law is introduced in 2019 which required establishment of probation and parole service (PPS). The key functions of this PPS are to assess the risks and needs of the offender, manage the risks of offender, maintaining of data of offenders on probation, ensuring the conditions of release are fulfilled and facilitation in rehabilitation of offenders. Progress with regard to laws is good at national level but need is to use these laws more efficiently and effectively to achieve the ultimate purpose of the probation.

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