

Do Probation Laws Help in Reducing the Risk of Recidivism in Pakistan? A Critical Analysis

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How to Cite this Article:

Zaheer, A., Naz, F., Khan, Z. F., & Khadam, N. (2025). Do Probation Laws Help in Reducing the Risk of Recidivism in Pakistan? A Critical Analysis. *Law Research Journal*, 3(1), 122–134.

Abstract

Probation laws serve as a basic element of the modern criminal justice system, aiming to rehabilitate offenders and reintegrate them into the society while avoiding the adverse consequences of incarceration. The Probation of Offenders Ordinance, 1960, and the West Pakistan Probation of Offenders Rules, 1961, provide a legal framework for probation in Pakistan. These laws emphasize the role of probation officers in rehabilitation but lack specific mechanisms to address or reduce the risk of recidivism, a crucial measure of effectiveness of probation. This paper critically analyzes whether Pakistan's probation laws effectively mitigate the risk of reoffending. The analysis begins with an overview of probation laws in Pakistan, highlighting their structure and operational scope. Further, it highlights the concept of recidivism, exploring its causes and implications. The intrinsic link between Probation and Recidivism is examined, emphasizing how an ineffective system of probation can fail to reduce reoffending. The study identifies significant loopholes and challenges in the framework of probation in Pakistan, including legal ambiguities, inadequate enforcement mechanisms, and insufficient training and resources. The paper concludes with the practical recommendations to enhance the probation system addressing its intended objectives of reducing the risk of recidivism.

Keywords

Probation Laws, Recidivism, Pakistan, Critical Analysis, Probation of Offenders Ordinance

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1. Introduction

Criminal justice administration involves managing the criminal offenders from their entry into the justice system to their correctional supervision and rehabilitation.¹ The offenders in Pakistan, similar to the other countries of the world are given custodial or non-custodial sentences i.e., imprisonment or released on probation.² The main object of criminal justice administration is to reduce reoffending or prevent the recidivist criminal behavior. It has been established by many studies that custodial sentences do not help in reducing recidivism.³ The traditional deterrent aspect attached with the prisons has now been diminished with

¹ Javed Iqbal Khokhar, and Qamar Abbas Jafri, 'Association between effectiveness of probation system and rehabilitation of offenders in the Punjab' (2015) 7(4) PJC < <https://www.academia.edu/download/90195824/12.pdf>> 17 July 2024

² Louise Settle, 'Rehabilitating homes and humans: probation, gender and domesticity in Britain' (2023) 32(4) Women's History Review < <https://www.tandfonline.com/doi/pdf/10.1080/09612025.2022.2126636>> accessed 20 July 2024

³ Javed Iqbal Khokhar, M Arshad, and Afzaal Afzal, 'Perceived Effectiveness of Probation System under Criminal Justice Administration: Evidence from the Punjab' (2023) 4(3) QJSSH < <https://qjssh.com.pk/index.php/qjssh/article/download/100/84>> accessed 20 April 2024



the passage of time and there is likelihood of increased recidivism among low-risk offenders due to imprisonment.

Similarly, the offenders who are provided with the correctional community treatment including probation are observed to have reduced risk of recidivism.⁴ It is pertinent to quote the findings of a study that states, “if the object of Criminal Justice System (CJS) is to protect the community, the constructive community correctional program is the best approach to be followed”.⁵ Probation is one of the alternative sentences to imprisonment which intends to reform and reintegrate the offenders in the society who are convicted of minor offences by providing correctional treatment and supervision.⁶ The United Nations (UN) in 1951 has also elaborated the term probation which stipulates that; “It is a mode of dealing with specially selected offenders in which the punishment is suspended subject to some conditions, and the offender is placed under personal supervision and is provided individual guidance and treatment”.⁷ Probation, interchangeably used with community supervision, holds great significance as it intends to make the offender a normal member of the society.⁸

Furthermore, the role of probation officers is also very crucial in this regard. The offenders complete the duration of probation period under the supervision of an assigned probation officer which is employed by the state. However, the primary role of a probation officer is to focus on the rehabilitation aspect, finding suitable employment for the offender, and to refrain the offender from adopting criminal behavior so that he can be effectively reintegrated into the society.⁹ The United Nations Institute for Crime Prevention described that the object of the probation system is to improve rehabilitation process and reintegrate the offenders in the community and enable them to live in the society peacefully.¹⁰

Generally, in other jurisdictions, it is the duty of the probation officer to prepare the pre-sentence report (pre-investigation report) containing the information about the offence, offender, his family, and other related characteristics. This report assists the court to determine the suitable community-based sentence for the probationer. Along with this, the probation officers also assess the risks posed by the offender and provide the individualized treatment based upon the needs of the offender. In Pakistan, the probation laws are

⁴ Daniel S Nagin, Francis T. Cullen, and Cheryl Lero Jonson, ‘Imprisonment and reoffending’ (2009) 38(1) *Crime and justice* <https://www.researchgate.net/profile/Cheryl-Jonson/publication/279416500_Imprisonment_and_Reoffending/links/5661cc4308ae192bbf8bcb06/Imprisonment-and-Reoffending.pdf> accessed 1 May 2024

⁵ M. K Bokil, *Probation Offenders Act 1958* (24 Samaj Seva 1969)

⁶ Ian O'Donnell, ‘Prison Matters’ (2001) 36 *Irish Jurist* <<http://www.irishjurist.com/previous.htm>> accessed 15 April 2024

⁷ ‘Probation And Related Measures’, United Nations Publications Sales No. IV.2. (1951) (New York: United Nations Dept. Of Soc. Affairs, at xvi and 407), H.M.S.O. 22s. 6d.

⁸ O'Donnell (n 6).

⁹ Ming-Li Hsieh and others, ‘Probation Officer Role: A Statutory Analysis’ (2015) 79(3) *Federal Probation* <https://scholarworks.utrgv.edu/cgi/viewcontent.cgi?article=1097&context=cj_fac> accessed 20 June 2024

¹⁰ Annual Report For 2003, United Nations and Asia and Far East Institute for the ‘Prevention of Crime and the Treatment of Offenders’ (UNAFEI) (July 2004) Resource Material Series No. 63, Tokyo, Japan

governed by the Probation of Offenders Ordinance, 1960¹¹ along with the West Pakistan Probation of Offenders Rules, 1961.¹² At the provincial level, there are different laws governing the legal framework of probation in respective provinces. In Punjab, there is Punjab Probation and Parole Service Act, 2019.¹³ Furthermore, the working of the probation department in Punjab is regulated by the Reclamation and Probation Department, Punjab (R&PD). These laws describe the overall working of the probation process including the role and responsibilities of probation officers. Unlike other jurisdictions such as the United States (US), United Kingdom (UK), Ireland, and Poland, the courts in Pakistan disregard the alternative sentencing modes including probation. Even if it is decided by the court to release a person on probation, the essence and the real philosophy of probation i.e., reformation and successful reintegration is often overlooked. Due to this, it becomes quite apparent that the offender is likely to recidivate since the appropriate level of treatment based upon the individualized needs is ignored. Thus, the probation laws of Pakistan contain some administrative and statutory lacunas which need to be addressed according to the international standards followed worldwide.

1.1 Current Probation Laws in Pakistan

Pakistan's law relating to probation widely signifies the role of probation officers in relation to rehabilitation and reintegration but not specifically reducing the risk of recidivism. There have been numerous laws included in the Criminal Justice System of Pakistan after the British Rule. These laws provide a comprehensive input about the mechanism of probation in Pakistan and the role of probation officers to give it a practical motion. These roles and standards shape the probation methods in Pakistan in its form that exists today.¹⁴ Following are the legislations dealing with the probation in Pakistan.

1.1.1 The Probation of Offenders Ordinance, 1960

The Probation of Offenders Ordinance, 1960 (hereinafter referred to as "Ordinance") outlines the role and duties of probation officers. Section 2 clause d talks about the probation officer as an officer identified in the manner as in Section 12.¹⁵ A probation officer referred to in a probation order is any person who is appointed by the probation officer in-charge.¹⁶ The qualifications for probation officer shall be prescribed by the rules made in this behalf under this ordinance.¹⁷

Section 4 explains the conditional discharges. Where a court in which a person is not previously convicted, has been convicted for offence punishable with imprisonment not exceeding two years, is of opinion with regard to; the age, character, antecedents or physical or mental condition of the offender, and the nature of the offence or extenuating circumstances; that it is inadvisable to inflict punishment or the probation order is

¹¹ The Probation of Offenders Ordinance 1960

¹² West Pakistan Probation of Offenders Rules 1961

¹³ Punjab Probation and Parole Service Act 2019

¹⁴ Aisha Tariq and Muhammad Mumtaz Ali Khan, 'Aimless Sentencing Through Probation in Pakistan: Time to Revisit Statutory and Administrative Practices' (2022) 23(1) Pakistan Vision <https://pu.edu.pk/images/journal/studies/PDF-FILES/5_v23_1_22.pdf> accessed 8 June 2024

¹⁵ The Probation of Offenders Ordinance 1960, s 2(d).

¹⁶ Ibid. s 12.

¹⁷ Ibid.

inappropriate, the court may make an order discharging him after taking bond with or without sureties. Such order is termed as “an order for conditional discharge”, and the period specified in such order is called “the period of conditional discharge”. Before making such an order, the court shall explain in ordinary language to the offender the precondition of such order and the consequences of violation of this order, i.e. liability for the original offence. The conditional order shall cease to have effect if the person is sentenced for the original offence. Section 13 describes the duties of a probation officer including visit or receive visits from the offender at reasonable intervals which may be specified in probation order¹⁸, advise, assist, and befriend the offender and where necessary also find him suitable employment and perform any other duty which may be prescribed by rules under this ordinance.¹⁹

1.1.2 West Pakistan Probation of Offenders Rules, 1961

The West Pakistan Probation of offenders Rules, 1961 (hereinafter referred to as “Rules”) have been made in exercise of the powers conferred by section 14 read with section 15 of the Ordinance.²⁰ Under Section 3(2), the officer in-charge is responsible for the overall control, supervision and direction of probation work in a province.²¹ Section 5 pertains to the appointment of the chief probation officers.²² Section 7 describes the qualifications of a probation officer including his age, good character, education, and training to influence the good probationers who are placed under his supervision. He must have working knowledge or practical experience in social work.²³

Section 9 restricts the officer or employee of the jail or the police department to be appointed as a probation officer or a chief probation officer.²⁴ Section 10 enlists the duties of a probation officer, which states explanation of the terms and conditions of the probation order to every probationer under his charge, and if deemed necessary, endeavor to ensure the observance of the probation order by warnings. During the first two months of probation, he shall meet every probationer under his charge at least once in a fortnight and as per the provisions of probation order or any general or special orders of officer in-charge, stay in touch close with the probationer, meet him frequently, make inquiries into his conduct, mode of life and environments and if necessary, visit his home from time to time. If any probationer is out of employment, he should find suitable employment, assist, befriend, advise and strive to improve his conduct and general conditions of living. He shall encourage every probationer to seek guidance from any other recognized agency which may contribute to his welfare and general well-being and to benefit from the social recreational and educational facilities as provided by such agencies, take notice of the sureties in a situation where a probationer under his supervision has committed any breach of his terms under section 5 or have otherwise misconducted himself, regularly maintain the books and registers and submit reports which may be prescribed under these rules, and carry out the instructions of the court regarding any probationer placed by the court under his

¹⁸ Ibid. s 5.

¹⁹ Ibid. s 13.

²⁰ Ibid. s 14-15.

²¹ West Pakistan Probation of Offenders Rules 1961 r 3(2).

²² Ibid. r 5.

²³ Ibid. r 7.

²⁴ Ibid. r 9.

supervision subject to the provisions of these rules.²⁵ Section 14(b) states that a diary shall be maintained on a yearly basis regarding meetings with the probationer.²⁶ Section 22 requires the probation officer to submit reports from time to time regarding the conduct and mode of life of the probationer when such an order has been passed by the court. In this case, the probation officer has to comply with such an order.²⁷

2. How Probation Influences the Risk of Recidivism?

Recidivism is one of the finest and most fundamental problems in CJS. It amounts to a person's relapse towards criminal behavior even after he receives either punishment or undergoes interventions including rehabilitation, or probation for a previous crime.²⁸ Recidivism is simply a reversion to criminal behavior. It may be defined variously in terms of reconviction, reimprisonment, re-arrest or reoffending. The reasoning of recidivism may vary with human nature and different jurisdictions.²⁹ Rehabilitation is necessary to make the offenders think about being law-abiding citizens and work on their socially constructive roles. Not only juveniles but other criminals also contribute to protecting the society they belong to. Therefore, reintegration through probation is a basic necessity. The normal reintegration programs generally aim to bring a general behavioral change in the offender, however, the reintegration programs specifically designed for probation are highly significant as they intend to not only alter the offender's personal behavior but reduce reoffending to ever take place.³⁰

Probation and recidivism are intrinsically linked, as the effectiveness of probation is measured by its ability to prevent reoffending. Probation serves as an alternative to incarceration, offering offenders an opportunity for rehabilitation within the community. However, if probation fails to address the root causes of criminal behavior such as lack of education, unemployment, or social isolation, it becomes ineffective and may inadvertently lead to reoffending. Without a reduction in recidivism, probation loses its significance as a tool for fostering positive behavioral change, rendering it little more than temporary reprieve for offenders without any long-term societal benefits.³¹ Furthermore, the role of probation officers is not just the supervision of

²⁵ Ibid. r 10.

²⁶ Ibid r 14(b).

²⁷ Ibid r 22.

²⁸ National Institute of Justice (NIJ) <<https://nij.ojp.gov/>> accessed 4 June 2024.

²⁹ Curt T. Griffiths, Yvon Dandur and Danielle Murdoch, 'The Social Reintegration of Offenders and Crime Prevention' (2007) ICCLR <<https://curtgriffiths.com/wp-content/uploads/2023/07/social-reintegration.pdf>> accessed 4 June 2024

³⁰ Losel, 'Counterblast: The Prison Overcrowding Crisis and Some Constructive Perspectives for Crime Policy' (2007) 46 Howard Journal of Criminal Justice < https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/hjcj46§ion=68> accessed 10 June 2024

³¹ Andrew Smith and others, 'The Effectiveness of Probation Supervision Towards Reducing Reoffending: A Rapid Evidence Assessment' (2018) 65(4) Probation Journal < <https://e-space.mmu.ac.uk/621492/17/The%20effectiveness%20of%20probation%20supervision%20towards%20reducing%20reoffending%20-%20a%20Rapid%20Evidence%20Assessment%20-%20FINAL.pdf>> accessed 22 July 2024

offenders to the extent of personal life of that offender, but to dig deeply into their criminal behavior to put in reinforcement and interventions aiming to control recidivism.

Therefore, the increased risk of recidivism demands legal reforms.³² It has been readily seen that the recidivism rates fell due to increase in the working of community services and reinforcement methods.³³ The role of probation officers is very crucial in reducing the risk of recidivism. It is also related to the critical yet vulnerable responsibility of bringing the offender back to normal life and also reducing the risk of reoffending by promoting rehabilitation by working within an effective legal framework.

3. Probation and Recidivism: An International Discourse

3.1 Probation and Recidivism in the U.S. Legal Framework

Probation officers in the United States play an important role in the federal criminal justice process. Broadly, the probation officers aid in community correction of the federal court system. The task assigned by the court is to investigate and supervise the offenders who have been conditionally released to the community on probation.³⁴ According to Section 4 of the Federal Probation Act, of 1925, probation officers provide two crucial services to the court:

1. Investigation
2. Supervision

The probation officer is duty bound to investigate the referred case and then report back to the court. Each person under probation shall be provided with a written statement by the probation officer regarding the conditions of the probation and shall be instructed to comply with those instructions. The officer shall monitor the conduct and conditions of the persons placed under probation, report to the court along with utilizing appropriate methods to help them in their improvement. Furthermore, it is also mandated for the probation officers to keep records and provide receipts of the money collected under his supervision and report to the Attorney General as instructed and perform such duties that the court may direct. A probation officer in the US also has the power of arrest which is exercised by the deputy marshal.³⁵

By court order, the process of “**Investigation**” starts when the officer conducts the presentence investigation, and collects and verifies the significant information about the offender and offence with the help of interviews and document reviews. However, the foundation of the investigation lies with the interview of the offender during which the officer asks about the offender’s family, education, employment, physical and mental

³² Ian O’Donnell, ‘An Evidence Review of Recidivism and Policy Responses’ (2020) Institute of Criminology and Criminal Justice School of Law, University College Dublin < <https://assets.gov.ie/74991/b2d18629-257a-4dd4-b72c-38cefa3ed809.pdf>> accessed 6 July 2024

³³ Ian O’Donnell and others, ‘Recidivism in the Republic of Ireland’ (2008) 8(2) Criminology and Criminal Justice < <https://www.academia.edu/download/89643830/RecidivismRepublicIrelandODonnell.pdf>> accessed 20 July 2024

³⁴ Office of Probation and Pretrial Services, Administrative Office of the US Courts, *Probation Officers and Their Roles* (2007) 1.

³⁵ Federal Probation Act 1925, s 4, 43 Stat 1259.

health, finances, alcohol or drug abuse including the home visits which may aid in assessing living conditions and detect alcohol or drugs.³⁶

The second step is “**Report Preparation**” in which the officer prepares a presentence report that encompasses the following information:

- i. The offence
- ii. The offender
- iii. Impact on the victim
- iv. Sentencing choices available under federal guidelines
- v. The ability of the offender to pay the fines and restitution

The presentence report helps the court to determine the suitable sentence for the offender. It also assists the U.S probation officers in assessing the risks and needs of the offender.³⁷ The third and final step is “**Supervision**” which involves supervision by the officers. It includes:

- vi. Assessment of the offenders
- vii. Identification of the potential supervision problems
- viii. Improvising supervision plans based upon risks

While supervising the offenders, the maintenance of public safety is also the responsibility of the probation officers. The risk control techniques are used by them to detect the criminal behavior, such as, by verifying employment and sources of income, observing their associates, restricting travel, and requiring them to receive correctional treatment. Correctional treatment is considered crucial to control the risk which the offenders may pose. Furthermore, it also helps them to transform the criminal behavior which leads towards criminality. The supervision is done by providing services such as treatment for mental health and drug or alcohol, training i.e., educational or vocational, medical care and assistance in employment. The officer discovers and avails the community resources to fulfill the needs of the offender in these areas.³⁸ Moreover, the supervision plans are evaluated and adjusted by the officers periodically while being aware regarding the offenders’ conduct. If necessary, the officer can also request the court to modify the conditions such as home confinement to reduce risk. However, non-compliance with the conditions may lead to sanctions.³⁹

3.2 The Legal Framework of Probation and Recidivism in Poland

In Poland, the individuals who are placed under court probation supervision include those who are sentenced with a conditional discharge, conditional suspension of imprisonment not exceeding one-year, conditional early release, electronic supervision, custodial sentences, and medicinal security measures. The probation system broadly aims to help rather than create any inconvenience for the defendant which subsequently aids

³⁶ Office of Probation and Pretrial Services, Administrative Office of the US Courts, *Probation Officers and Their Roles* (2007) 1.

³⁷ Ibid.

³⁸ Office of Probation and Pretrial Services, Administrative Office of the US Courts, *Probation Officers and Their Roles* (2007) 1.

³⁹ Ibid.

them during the trial period and supports their reintegration into society.⁴⁰ The probation officers are supposed to play the role of Supporters, Mediators, and Counselors.⁴¹ The role of professional probation officers is regulated by the Act of 6 June 1997 - Kodeks Karny Wykonawczy (Executive Penal Code) (Journal of Law 2018, item 652).⁴² According to Article 173 § 1, a probation officer helps the condemned person socially readapt, prevent reoffending, controls compliance with court-imposed duties, and manages electronic supervision.⁴³ Additionally, a detailed list of duties has been mentioned under Article 173 § 2, including supervision of the condemned and regulating their duties during the trial period, submitting motions to the court relating to those who are under probation officer's custody, conducting community interviews, providing post-penitentiary support, participation in court hearings, and preparing the condemned for life after being released from prison.⁴⁴

Furthermore, the activities of social probation officers have been outlined under Article 174.⁴⁵ The individuals placed under probation are categorized into "Reduced Risk A", "Basic Risk B", and "Increased Risk C".⁴⁶ Under the 'Reduced Risk Group (A)', they are those individuals who have been released under conditional discharge and have no prior criminal record. It is also believed that they will comply with the court order during the trial period and will not likely commit a crime again.⁴⁷

Under the 'Increased Risk Group (C)', they are those individuals who have committed a similar crime after being sentenced or during the trial period, have committed a crime due to alcohol addiction, have been sentenced due to the commission of a crime against sexual liberty or decency on a juvenile including the crime against sexual liberty on adults, have been convicted of inflicting violence on their families and are linked with criminal subcultures in one way or another. Those individuals have been supervised due to their prior criminal record and require strong interactions. The 'Basic Risk Group (B)' individuals lie in between the reduced risk group and the increased risk group. These individuals do not match the criterion of either

⁴⁰ Barbara Wilamowska, 'Chapter 25: Poland' <<https://www.cep-probation.org/wp-content/uploads/2018/10/2008 Poland.pdf>> accessed 27 December 2024.

⁴¹ Ewelina Silecka-Marek, 'The Characteristics of Court Probation Service for Adults in Poland' (2019) 52 *Studia Edukacyjne* 257, 257-271. See also, Katarzyna Nanowska, 'Kompetencje profesjonalne kuratorów sądowych dla dorosłych wobec zmieniającej się rzeczywistości prawnej w perspektywie specjalizacji zawodowej' (2016) 2 *Edukacja Humanistyczna* 135, 135-146.

⁴² Act of 6 June 1997, *Kodeks karny wykonawczy* (Executive Penal Code) (Journal of Laws 2018, item 652) (hereinafter 'KKW').

⁴³ KKW, s 173(1).

⁴⁴ Ibid, art. 173 s 2.

⁴⁵ Ibid, art. 174.

⁴⁶ Ibid, art. 169(b).

⁴⁷ Ewelina Silecka-Marek, 'The Characteristics of Court Probation Service for Adults in Poland' (2019) 52 *Studia Edukacyjne* 257, 266-271.

group.⁴⁸ Consequently, these risk groups assist in determining the risk of reoffending among different offenders.

4. Identifying the Lacunas in Pakistan's Probation System

Unlike other jurisdictions, the probation system is frequently overlooked by the courts. According to Rule 8.1 United Nations Standard Minimum Rules for Non-Custodial Measures, 1990 (the Tokyo Rules), to award sentences through non-custodial measures for instance probation, the judge is under the obligation to comply with the 'triangular threshold checks' while fulfilling the needs of justice. According to this rule, the authority is required to keep under consideration the Rehabilitative requirement of the offender, the interests of the victims and the protection of society.⁴⁹

From the above-given factors, it has been observed that the decisions encompassing the non-custodial sentences such as probation discuss only one aspect i.e., the rehabilitative requirement of the offender. Similarly, the other two elements i.e., the protection of society and the interests of victims are often disregarded. While many states in the world have reshaped the dynamic and structure of probation laws according to international standards, Pakistan lags far behind in this area. There are no substantial amendments made according to the international standards through which the triangular criterion is maintained.⁵⁰ Furthermore, there are several administrative and legal gaps existing in the legal framework of Pakistan concerning probation.

4.1 Legal Gaps in the Probation System

There is a practical requirement regarding the preparation of "Pre-sentence Report" that the report must include certain recommendations of the probation officer concerning the time-period of probation period and the conditions to be imposed on the probationer for his reformation. There is no requirement under the law to provide substantive data related to it, the courts also do not wait for the probation officers to submit these reports. This is also considered a major impediment for the courts to impose alike conditions according to the guilt of the offender.⁵¹ In addition to this, Rule 16.2 of the Tokyo Rules also requires that the staff should be trained before assuming such roles and responsibilities. It further opines that they should be provided extensive training relating to the scope of non-custodial sentences, the objects of supervision and the modes through which non-custodial sentences can be carried out.⁵² However, this substantial change has not been brought into account.

It has been observed that the National Academy for Prison Administration (NAPA), which primarily aims to provide training for prison staff, provides brief sessions to probation officers regarding their duties. However, the nature of duties exercised by the probation staff is different from the prison staff which subsequently has

⁴⁸ Ibid. See also T Jedynek, 'O diable, który tkwi w szczegółach' <<http://docplayer.pl/7989443-O-diable-ktory-tkwi-w-szczegolach>> accessed 27 December 2024.

⁴⁹ G.A. Res. 45/110, *United Nations Standard Minimum Rules for Non-custodial Measures* (The Tokyo Rules), Rule 8.1 (14 December 1990) (hereinafter 'The Tokyo Rules')

⁵⁰ Aisha Tariq and Muhammad Mumtaz Ali Khan, 'Aimless Sentencing Through Probation in Pakistan: Time to Revisit Statutory and Administrative Practices' (2022) 23 Pakistan Vision 68, 69-80.

⁵¹ Ibid. at 71; The Ordinance, 1960, s 4.

⁵² The Tokyo Rules, r 16.2.

perplexing impacts on probation officers.⁵³ Moreover, the conditions of the probation bond in each case remain similar without considering the needs of probationers. The probation officers are required under the law to explain the conditions of the bond and the importance of compliance with such conditions by the probationer. However, the inability to understand the condition of the probation bond leads to the non-fulfilment of this requirement.⁵⁴ Furthermore, there is no difference between the consequences of “re-offending” and “violation of any other condition of probation bond”. If the probationers are sent to prison due to the violation of any condition of the probation bond, then it cannot be termed as equal to re-offending.⁵⁵

4.2 Administrative Problems

Human resources are also not available in the Reclamation and Probation Department which also halts in preparing presentence reports promptly due to which the courts avoid giving instructions for these presentations. Moreover, the probation officers are also responsible for conducting scheduled visits and helping the probationer to improve his behavior during the post-sentence stage. As a principle, three visits should be conducted to effectively reform the probationer and oversee the recidivist phenomena. It is nonetheless considered as a formality by the probation officer and the purpose of every visit is only general counselling that solely depends upon the discretion and personal judgment of the probation officer.

It is the probation officer who decides the behavior of the probationer to be maintained during each visit and the method chosen at his sole discretion. This is because no expert training programs are arranged by the R&PD (provincial level) to educate the probation officers. Thus, it becomes complex for untrained and inept probation officers to effectively execute the intended outcomes of the probation system based on theoretical education.⁵⁶ Further, it has also been recorded that in comparison to the probationers, the number of probation officers working and effectively performing their duties according to the law is extremely low. Consequently, it raises questions on whether the required level of supervision and treatment is provided to the probationer by the probation officer. Due to excessive workload, the probation officer faces challenges in effectively carrying out the tasks required under the law irrespective of his dedication and commitment towards his work.⁵⁷

5. Recommendations

Keeping in view the administrative and legal lacunas in the probation laws of Pakistan, there is a need for amendment in several provisions to make the probation system updated and aligned with international standards. Legal and administrative amendments have been proposed as follows:

5.1 Legal Amendments Proposed in the Probation Laws

The following amendments are proposed in the probation laws of Pakistan:

⁵³ International Crisis Group, *Reforming Pakistan's Prison System*, Asia Report No 212 (2011).

⁵⁴ The Ordinance, s 5(2). See also The Rules, r 10(a).

⁵⁵ Aisha Tariq and Muhammad Mumtaz Ali Khan, ‘Aimless Sentencing Through Probation in Pakistan: Time to Revisit Statutory and Administrative Practices’ (2022) 23 Pakistan Vision 68, 75-80.

⁵⁶ Ibid. at 72; The Ordinance, 1960, s 13.

⁵⁷ Ibid. at 73.

1. The definition section of the Ordinance i.e., Section 1, and Rules i.e., Rule 2 must include and define the term “Community Sentence”. Furthermore, it is also suggested the term “Probation Orders” should be renamed as “Community (Service) Rehabilitation Order” to give it clarity and precision for the society.⁵⁸
2. The “Conditional Discharge” outlined under Section 4(b) should contain a requirement for the probationer to attend a rehabilitative program recommended by the court to prevent him from criminal intentions.⁵⁹ In addition to this, the pre-sentence report containing information on the offender and other related characteristics should be made a legal requirement and it should be complied with mandatorily instead of just a formality. Furthermore, the courts should wait for the submission of reports by the probation officer so that suitable conditions can be imposed.
3. Under Section 7, the distinction must be made between “Re-offending i.e., commission of new crime during the probation period” and “technical violation of a condition of probation bond” as both lead to different consequences. For instance, the breach of a minor condition of a probation bond should not change the nature of the sentence i.e., termination of a non-custodial sentence to custodial sentence. However, the treatment for the breach of the substantial condition of the probation bond should be left at the discretion of the judge keeping in view the recommendations of the probation officer. On the other hand, the consequences for the commission of a new offence during the probation period i.e., re-offending should change in nature of the sentence i.e., imprisonment for the probationer.⁶⁰
4. The duties of the probation officers mentioned under Section 13 need to be revisited considering the need for rehabilitation and reformation of the probationer. Under Section 13(a), the term “visit” should be given an elaborated meaning. Under Section 13(d), the words “for reformation of probationer” should be included. In addition to this, under Rule 10, the essence of rehabilitation and reformation should also be upheld by including these words.⁶¹
5. Under Rule 17, there should be an addition of responsibility of the “Case Committee” through which the probationer should be able to make a complaint against the probation officer.⁶²
6. Under Rule 18, the condition of “preliminary enquiries” must be made a mandatory requirement by the court. The probation officer who conducted the preliminary enquiry of the probationer should be given the responsibility of supervising him on a priority basis.⁶³

5.2 Administrative Amendments Proposed for Probation Department

Along with the reframing of laws, alterations concerning the administrative work of the probation department are also required. The administrative work of the probation department can be remodeled as follows:

⁵⁸ Aisha Tariq and Muhammad Mumtaz Ali Khan, ‘Aimless Sentencing Through Probation in Pakistan: Time to Revisit Statutory and Administrative Practices’ (2022) 23 *Pakistan Vision* 68, 77-80. See also The Ordinance, s 1; The Rules, Rule 2.

⁵⁹ Ibid. See also The Ordinance, s 4(b).

⁶⁰ Ibid. See also The Ordinance, s 7.

⁶¹ Ibid. See also The Ordinance, s 13, r 10.

⁶² Ibid. See also The Ordinance, s 17.

⁶³ Ibid. See also The Rules, r 18.

1. There should be an information management which should record the necessary data and information related to probationers within the domain of R&PD by the concerned probation officer.⁶⁴
2. To strengthen supervision and surveillance mechanisms concerning the role of a probation officer, there is a need to enhance the budget of R&PD at the provincial level. Furthermore, the human resource also needs to be increased specifically the number of seats of probation officers. A specific number of probationers to be assigned to the probation officer should be set according to which automatic recruitment of probation officers should take place once the maximum limit is crossed.⁶⁵
3. For the efficient working of the department, the staff should be increased and the distribution of duties should be done accordingly. For instance, new positions can be introduced such as case management officer, the assessment officer, reporting officer, compliance and surveillance officer, program staff, court-related staff, and intelligence service.⁶⁶
4. The professional training should be arranged for the probation officers immediately after they assume their role. In addition to this, the R&PD should conduct awareness programs regarding the importance of probation bonds and their compliance by the probationer, the purpose of community sentences, and rehabilitation and reformation programs.⁶⁷
5. For the effective supervision of the probationer, the involvement of the community as a whole is important to keep the probation officer informed about the contacts of the probationer. Thus, community involvement in the process of reforming the offender is considered important.⁶⁸

6. Amendments proposed as per Best International Practices

Considering the best practices incorporated in other jurisdictions, the following improvements can be made to the probation laws in Pakistan:

1. In the US, the probation officer first conducts the investigation and gathers information through interviews and document reviews. He also enquires from the offender regarding his family, employment means, drug consumption etc.⁶⁹ Further, the probation officer presents the pre-sentence report which contains information related to the offence, the offender, the impact on the victim, sentencing choices available to the offender according to guidelines, and the ability of the offender to pay fines and restitution. Keeping in view this report, the court imposes the conditions on the offender.⁷⁰ On the contrary, in Pakistan, this is considered a practical requirement that a probation officer should submit this report containing recommendations but the courts do not wait till submission and order is passed without taking into account the important conditions related to the offender. Thus, this practice can have positive impacts if it is made practicable in Pakistan.

⁶⁴ Aisha Tariq and Muhammad Mumtaz Ali Khan, 'Aimless Sentencing Through Probation in Pakistan: Time to Revisit Statutory and Administrative Practices' (2022) 23 Pakistan Vision 68, 77-80.

⁶⁵ Ibid. at 78.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Federal Probation Act of 1925, s 4, 43 Stat 1259.

⁷⁰ Office of Probation and Pretrial Services, Administrative Office of the U.S. Courts, Probation Officers and their Roles (2007) 1.

2. Additionally, the probation officer while supervising the offender must assess the offender, identify the potential supervision problems, and consequently propose the supervision plans based on the risks. This is the most appreciated and valuable practice which makes the offenders reintegrate into society and also reduces the risk of recidivism. However, this aspect is lacking in Pakistan which can positively reshape the probation system and can aid in reducing the risk of recidivism among offenders.⁷¹

3. In Poland, the probation officer is responsible for helping the person socially readapt, prevent reoffending, control compliance with court-imposed duties, and manage electronic supervision.⁷² The recidivist aspect of the probationer and the electronic supervision of the offender is lacking under the probation laws of Pakistan which can be incorporated to make the system effective overall.

4. Furthermore, the individuals released on probation are placed according to the categorization of risk groups such as ‘reduced risk, basic risk and increased risk’ keeping in view the prior criminal record, individual characteristics and risk factors of the offender.⁷³ In Pakistan, this practice should be followed by placement of the probationer in appropriate risk groups, thus providing suitable treatment can lead to effectiveness in the working of the probation department.

5. In light of the above arguments, it is concluded to make the above-highlighted amendments in the probation laws to keep the probation department upgraded within international standards.

7. Conclusion

There are several statutory and administrative lacunas in the probation laws of Pakistan. The findings of various studies as quoted above highlight that the probation officers are not vigilant in performing their duties due to which the productive relationship is not maintained between the probationers and probation officers. It is not just because of the sole carelessness of probation officers towards their duties. Nonetheless, there exists excessive workload on the shoulders of probation officers which leads to negligence of several mandatory requirements under the law as evident in preparation of pre-sentence report. Due to this, the conditions of probation bond in each case remain the same with no substantial changes and the probationers are not assessed and provided individualized treatment according to their needs. Administratively, the R&P department (Punjab) lacks in arranging the specialized training programs. This increases the possibility of risk of recidivism which require redressal in the form of amendments under the laws along with the incorporation of RNR model within the legal framework of Pakistan. Thus, it has been recommended to make the following amendments in the laws; the definition section of the Ordinance and Rules should define “Community Sentence”, and “Probation orders” to be renamed as “Community (Service) Rehabilitation”. The distinction should be made under section 7 between consequences of re-offending and technical violation of the condition of the probation bond. The duties of probation officers outlined under the Ordinance and Rules should include the words rehabilitation and reformation of the offenders. Furthermore, the requirement of preliminary enquiries must be made a mandatory requirement instead of fulfillment of formality. In addition to this, the R&P department should increase the number of seats of probation officers to lessen their excessive workload along with organizing specialized training programs for the probation officers.

⁷¹ Ibid.

⁷² KKW, s 173(1).

⁷³ Ibid. art 169(b).