

Rehabilitation Over Incarceration: An Analysis of Probation Laws in the Criminal Justice System of Pakistan



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Abstract: *The criminal justice system (CJS) of Pakistan is heavily relying on incarceration which it has inherited from colonial legislations. However, policymakers now have acknowledged its limitations in its capacity for rehabilitation of offenders. Scholars advocate for a shift towards more humane approaches like community rehabilitation and restorative justice, with probation being its key component. This study examines the benefits of effective utilization of probation laws in the CJS of Pakistan. Probation offers a viable alternative to alleviate prison overpopulation. The paper underscores the need to prioritize rehabilitation over incarceration due to the deteriorating conditions of our prisons. This research is conducted to highlight the importance of effective use probation laws keeping in due regard to the international best practices for reintegration of offender and decreasing recidivism. It concludes that it is imperative to prioritize the implementation of probation laws over incarceration for effective offender reintegration in our society.*

Keywords: Criminal Justice System, Probation, Rehabilitation, Incarceration, Community Service

1. Introduction

Incarceration has been a part of the Criminal Justice System (CJS) of Pakistan since its creation. Though it originally is a legacy that we adopted from the colonial era (Shahbaz et al., 2023), yet it is now governed by our own laws. Policy-makers within the CJS recognize that our jails are in poor condition and facing many administrative issues. Researcher's data shows that inmates are not treated in such ways that will promote their rehabilitation. The main contributing factors are: unhygienic food and water issues, unsanitary barracks, poor sanitation facilities, and deteriorating conditions in kitchens, etc. These issues highlight the ugly picture of incarcerated ones. Further barriers to

rehabilitation comprise severe punishments, the absence of educational, technical, and vocational training, and the full practice of probation laws in our CJS. Moreover, young adults are being frequently subjected to physical, moral, and sometimes sexual abuse. (Idrees & Bilal, 2023). These condition of our jails and the welfare of inmates are now considered as a major concern for the policymakers and researchers for the reason that they directly influence the rehabilitation of offenders. Criminologists are now seeing rehabilitation as a viable alternative to incarceration. They emphasis that simply expansion in prisons and imposition of severer punishments cannot adequately tackle the issue of enhancement in

the crime rate; instead, rehabilitation provides a viable solution. Active rehabilitation can lead toward a decrease in crime rate (Siddique Akbar & Bhutta, 2013).

Researchers argue that effective rehabilitative jail environments and administration always play a vital role in this process. However, our jails are failing to operate as intended by law to facilitate rehabilitation, and this failure contributes in the increase in the crime rate. Major problems are: mismanagement, poor administrative environment, lack of fundamental facilities, above all the improper treatment of inmates. All these become the cause of hinderances in the rehabilitation of offenders and it contribute to higher rates of crime in our country (Ali et al., 2020). Furthermore, scholars have thoroughly examined the current condition of jails in Pakistan. They have highlighted its overcrowding problems which is existing in all four provinces. They discovered that despite the country have a total number of 120 prisons which are designed to accommodate 57,712 inmates, the actual number of prisoners have surpassed their authorized capacity. This overpopulations in jails are not only hampering inmates' rehabilitations but they are also worsening their criminal behaviours due to their mixture with other offenders. Moreover, it also leads to a host of health and social issues. To cope with this issue, scholars have put forth practical recommendations for the relevant authorities, particularly through probation programmes to reduce jail populations (Nabi et al., 2021).

After the partition in 1947, our country adopted British Indian laws regarding probation, it includes the Good Conduct Prisoners Probation Release Act of 1926. Initially, only province of the Punjab had a working Reclamation and Probation Department (RPD). Other provinces established their RPDs in the year 1957. Then there was an effort to introduce separate probation legislation in the year 1931, however that effort was impeded by the then political turmoil about the independence movement. Despite this setback, our country enacted its independent legislation, Probation of Offenders Ordinance in 1960 (POO). This

legislation is governing probation in Pakistan (Shuaib, 2012).

Within CJS of Pakistan, alternatives to incarceration are legally provided at different stages: pre-trial stage, where it is in the shape of bail; during sentencing, where it is available with options like fines and probation; and post-sentencing stage, where it is available in the form a parole. In our country, bail is widely understood and commonly utilized option. Whereas, probation and parole services are less frequently used ones. Resultantly, citizens are being denied with their inherent rights to freedom, their family life rights, and with opportunities for societal contribution. In recent years, there has been a notable shift which takes us away from the retributive punishment paradigm towards more compassionate approaches such as community rehabilitation and restorative justice programmes, etc. These approaches not only benefits the society by reducing crime rates but also offers a more efficient use of taxpayers' funds when we compared it with the costs attached with imprisonment of an offender (Shuaib, 2012). As a result, the administration must work towards reforming the system in line with international best practices. The time has come for our administration to shift its approach from imprisonment to rehabilitation. The aim of reintegration of offenders and reducing recidivism must be our top priority.

Our research on probation is an important work due to the fact that historically it has been a neglected subject within the CJS. Whereas other institutions of CJS such as the police, prisons, and judiciary have always received a considerable attention, yet probation has often been overlooked. Despite of the fact that it has proven its effectiveness in CJS, there still persists a general lack of understanding among the public regarding its objectives. Consequently, there is not much public concern regarding its potential use to reduce criminal behaviour and to facilitate offenders' rehabilitations. Our research seeks to tackle this gap through highlighting the importance of probation laws in CJS of Pakistan. Our aim is to raise awareness about its significance in

reduction of recidivism and to foster offender reintegration into our society. Through our analysis, we attempt to promote for more recognition and utilization of probation laws as a valuable tool in the pursuit of effective and humane CJS practices in Pakistan.

2. Research Methodology

This study employs a qualitative research design to analyze probation laws within CJS of Pakistan. Data collection involves general use of secondary sources, including literature review of academic papers, books, government reports, policy documents, and NGO reports. Legislation such as the POO and its related case law has also been examined. Reports and statistical data from government and non-governmental agencies has also been analyzed to understand the implementation and impact of probation. Data analysis has been conducted through thematic and content analysis to identify common themes, patterns, and insights about the role of probation laws within our community. Our purpose is to provide a comprehensive analysis of probation as a rehabilitative alternative to incarceration.

3. Deteriorating Prison Conditions in Pakistan

It is true that prisons are essential for the maintenance of public order and the rule of law in society. Yet, the state must ensure that their legislations must be updated regarding the sentencing purposes and about the protection of inmate rights. This includes the protection of their dignity in accordance with international humanitarian law and best practices (Ali et al., 2020). Prisons in our country are facing a serious overpopulation emergency. According to a 2023 report of the Justice Project Pakistan, as of October 2023, there were over 100,366 prisoners that have been held in just 127 jails (excluding Gilgit-Baltistan). This means that occupancy rate is of 152.2%, with some facilities exceeding 200% capacity. There is another concerning trend: 73% of these prisoners are awaiting trial, some are even for minor offences. Moreover, there is a severe shortage of staff to manage this growing population. In the province of the Punjab alone, as of August 2023, there were only 79 probation

officers who are overseeing around 500 offenders each. Whereas, the international standards recommend a maximum caseload of 50 offenders per probation officer (Sheikh, 2024).

Furthermore, researchers have highlighted severe issues of prisons in Punjab. They show that there exists an institutionalized corruption issues and incompetence besides the overcrowding and inhumane living conditions. They observed that inmates often lack basic sanitation, proper hygiene, and medical care, and it often led them to the rapid spread of infectious diseases. Meals are usually substandard therein, and inmates are also charged for the basic maintenance services. Private canteens are being run with the complicity of jail authorities. Bribery is rampant for their better treatment and most importantly it is being used for contraband smuggling. Human rights abuses are another issue: it includes sexual harassment cases and physical assault cases. These are the common problems, particularly among juveniles and adolescents in our prisons. Over-all, these conditions violate not only the international standards but also exacerbate the crime (Shahbaz et al., 2023).

Moreover, researchers also highlight that although the prisons are meant to ensure public safety and to hold individuals accountable for their unlawful actions similarly the preservation of the fundamental human rights of inmates is also vital. Common violations of their rights include the absence of privacy, as cells can be searched without a warrant, in our jail systems. They are not afforded the same employment rights, such as minimum wage entitlement, as others. Additionally, they can lose certain rights if they violate jail policies or if they are considered to be a threat to others. They cannot directly seek legal remedies without first exhausting all internal avenues and tactics, in addition they also sometimes be restricted from using personal items in the name that they could be used as weapons (Idrees & Bilal, 2023).

4. Overview of the Probation Law in Pakistan

The POO is designed to release offenders on probation under certain circumstances. Under this law, there are designated courts: it includes High Courts, Courts of Sessions, the Magistrates of the 1st Class, and specially empowered magistrates. These courts are authorized to exercise powers under this Ordinance. They can utilize these powers in their original hearings, appeals, or even in revisions. Moreover, if a Magistrate who is not empowered under the Ordinance convicts an offender but if he believes that probation should be considered then he, after recording his opinion, can transfer his proceedings to the Magistrate of the 1st Class for consideration of the case for probation. Furthermore, Section 4 of the POO outlines the provisions for conditional discharges. Under this, if a court convicts a person, who is not previously convicted, of an offence which is punishable with imprisonment for not more than two years and if the court deems it inappropriate to inflict punishment, then it has the power to discharge him after due admonition. Alternatively, the court may also discharge the offender subject to the condition that they enter into a bond for committing no offence in future and for maintaining a good behaviour for a specified period which should not be exceeding one year. This order is termed as "an order for conditional discharge," (Probation of Offenders Ordinance 1960, S 3).

Furthermore, Section 5 of the POO empowers the courts to make probation orders in certain cases. If a court, while convicting upon a male person but of a non-serious offence or a female person though of any offence other than those punishable with death, deems it appropriate while bearing in mind the circumstances of the case, it may opt for a probation order instead to send to prison. This probation order requires that person to be supervised by a probation officer for a specified period: it is usually between one to three years. However, the court can only pass such an order if the offender enters into a bond by committing to do good behaviour, and peacekeeping, and making sure his appearance before court if required. Additionally, the court must also ensure that the offender or their surety has a fixed place of abode or occupation within

its jurisdiction. The court also holds the power to impose more specific conditions on the bond to ensure supervision, rehabilitation, and prevention of future offences, etc.

Lastly, section 7 of the POO deals with the failure to comply with the conditions of the bond. If the court, which has bound an offender by a bond under section 5, has reason to believe that the offender has not adhered to any of the conditions, then it may issue a warrant for their arrest or it may summon them and their sureties as well, if any, to appear before it. Upon appearance, then the court may either remand the offender to judicial custody until the case is heard or it may grant them bail, with or without sureties, for the hearing date. After hearing the case, if the court is satisfied that the offender has indeed violated any condition of the bond, it may choose to sentence him for the original offence or it may impose a fine not exceeding one thousand rupees. However, if the fine remains unpaid within the specified period, then the court may again sentence the offender for the original offence.

5. Benefits of effective use of Probation Laws

Stefanovska in his research shows that traditional punishments like imprisonment are not effective in deterring or incapacitating offenders. There is little evidence that severer punishments or lengthier sentences can reduce crime rates. It was concluded in the research that merely focusing on punishments may not address the root causes of crime and they may even lead to higher crime rates (Stefanovska, 2018). Probation represents a flexible penalty system which is administered within the community. This adaptability allows probation to use customization-based decision making keeping in due regard to the individual risk factors, offence severity, and the rehabilitation needs. Unlike incarceration, which involves a complete loss of liberty, probation uses supervision tools to control the degree of liberty restrictions (Taxman & Maass, 2016).

Raynor and Robinson in their research have examined the history and highlighted the reasonings behind preferences of rehabilitation

approaches to incarcerations. They traced the development of rehabilitation ideas from their religious roots and then based them in their modern justifications on the basis of public safety and risk reduction. They argue that there are justifications for rehabilitation for the benefits of all parties involved in a criminal case: offenders, victims, communities. In other words, rehabilitation programmes can answer the needs of multiple stakeholders and for the benefit of all (Raynor & Robinson, 2009).

Furthermore, Probation offers a multifaceted approach to justice system. It caters individual needs and circumstances. It promotes rehabilitation and community reintegration. Through letting offenders to remain within their communities, although under supervision, yet it reduces recidivism rates and it enhances public safety. Moreover, its cost-effectiveness coupled with the support from offenders that is received from their families and communities makes it a preferred alternative to incarceration. Additionally, through diversion of offenders from prisons, probation helps in alleviating the overcrowd problems and associated costs. Probation works on the basis of restorative justice principles. It encourages offenders to take responsibilities for their actions and make amends. Finally, it offers offenders a chance for their redemption and it provides them a path towards law-abiding lives, simultaneously it holds them accountable for their past actions (Allen, 2016). This is its beauty.

Isha observed that punishment inevitably involves some level of suffering. It may be a physical or mental. It also entails the loss of freedom, sometimes reputation or possessions as well. It also affects the mindset of the offender. Traditionally, the prevailing belief in penology was that incarceration and other custodial punishments were the most effective deterrents to crime. However, modern criminological approaches have introduced new sentencing standards, wherein balance is maintained between the interests of both the offender and the community. Probation is one such method. It is a form of suspended-punishment which is supervised by probation officers. The rule is that if the terms of probation are violated, the

original punishment is reinstated forthwith. However, these conditions are designed to support the rehabilitation efforts presented by offenders. Consequently, those who are willing to reform, to mend their ways, and have not committed severe crimes, they may find standard probation beneficial. Probation fulfills the goals of punishments but in a positive way (Anand, 2022).

5.1. Cost Effective

Worldwide best-practices show that the effective use of community sentences and probation can lead to considerable cost savings within the CJS. Though the extent of these savings may differ from one country to another because it hinges on the specific alternatives available in different countries. However, research conducted across different nations indicates that adoption of these non-custodial measures for sentences can result in notably reduced expenses as compared to custodial measures (Gelb et al., 2019; Hamilton, 2021; Polinsky & Riskind, 2019).

5.2. Reduction in Prison Overpopulation

Today, Probation has been serving as a key tool in reducing prison overpopulations. There are various reasons for this: firstly, it offers an alternative to incarceration, thus, it allows offenders to serve their sentences under supervision within the community. This gets some space in already overcrowded jails and prisons. It has also been used pre-trial stages for keeping people out of jail simply in awaiting their cases for regular hearings. Furthermore, it provides opportunities for rehabilitation (Healy, 2009).

5.3. Decreasing Recidivism

Probation offers a broader platform in order to aid accused persons in abstaining them from their criminal conduct. Many accused persons contend with mental health issues or sometimes with mild mental disabilities and these are often left unattended for correctional facilities. Probation presents for them an opportunity for intervention and to change the root causes of their criminal behaviours. Through this they can receive assistance in securing their

employments. Probation coupled with support services does possess the potential to reduce the rates of recidivism. Though there are treatments and support that may be available to them in their detentions, yet they are generally more effective when it is provided to them within their community (Bonta & Andrews, 2016; Trotter, 2013).

5.4. Rehabilitation

After their return to their societies, the majority of offenders always aim to actively engage and positively play their contributions to their communities. This can be understood that a prospect of a bright future will act as a powerful catalyst to get behavioural changes in them. Therefore, it is essential for the society like ours to embrace the rehabilitation of accused persons who have made mistakes in their past. Many of them face numerous challenges in their returning back to their societies. Their rehabilitation, especially those who have committed serious offences, involves an assessment and complete process which should be aimed at improvement of their vital skills and analyzing their potential risks (Ward & Marshall, 2007). Probation here serves as a central link between the justice system and the community. Through provision of support and enabling connections with local social services, employers, NGOs and especially with the broader community, the probation plays a vital role in promotion of reintegration and social inclusion of accused persons (Robinson & Raynor, 2006).

5.5. Reformation

In traditional legal systems, punishment was served mainly as a tool for deterrence and retribution. However, with the evolution of rights and civil liberties, the restorative justice movements have gained momentums in CJSs worldwide. This shift prompted researchers to reassess objectives of incarcerations, besides it also leads them to the develop various theories to maintain balance between the deterrence and the rehabilitation. In this context, in their research, Zarfishan and Khushbakht explore effective implementation of probation laws. They discovered that probation represents a

progressive approach towards the justice. It has its focus on the reformation of the offender besides the restoration of the victim as well. They highlighted that the importance of reformation as the primary goal of the CJS and probation is one of its ways (Qaiser & Qaiser, 2020).

6. Conclusion

The purpose of incarceration as a punishment for an accused person is to prevent him from future offences, and other purpose is it facilitate him for the reformation and rehabilitation. But incarceration would become more detrimental if it fails to reform and rehabilitate the accused person or the offender and instead if it increases the likelihood commission of further crimes. In such a case it would be potentially an irreparable harm not only for them but also for the state. The POO is designed to tackle this problem. It allows the court to achieve the goal of reformation and provide the accused person an opportunity for rehabilitation that would otherwise be lost if they were incarcerated (*State v. Mazdoor, 1969*).

In a recent case, our Supreme Court referenced Kilcommins' work on probation and community service (Kilcommins, 2014), and highlighted the several key positive aspects of probation laws. These include reduction in the growth of prison over-populations, reduction in the prison-related expenses, and letting offenders to make mend their ways for their wrongdoings without further harming their own families and others. It also reduces their feelings of alienation because it gives them the chance to engage in constructive community work. It provides them opportunities to participate and encourage them to get social integration through their interactions with community members. It basically facilitates reparation in a cooperative manner. Additionally, it offers them with the opportunity to participate in society, to develop social responsibility in them, and to engage in constructive community work for the benefit of all. Probation is a cost-effective, humane, and flexible method of rehabilitation with a meaningful impact (*Adeel Rasheed v. The State and another, 2022*). It is high time to implement probation laws within our community for the

benefit of all: let us foster rehabilitation, the main objective of the criminal justice system, reduce incarceration costs, and promote social harmony.

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