UNIVERSITY OF KARACHI

THE LAWS OF PROBATION AND PAROLE,THEIR APPLICABILITY AND EFFECTS IN PAKISTAN VIS-À-VIS THIRD WORLD COUNTRIES

A DISSERTATION SUBMITTED TO THE BOARD OF ADVANCED STUDIES AND RESEARCH, UNIVERSITY OF KARACHI, IN CANDIDACY FOR THE DEGREE OF Ph. D IN LAW

BY

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JULY 2008

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CERTIFICATE

THIS IS TO CERTIFY THAT Mr. Zafar Ahmed Khan Sherwani S/o Mr. Kifayat Nabi Khan Sherwani (late) Student of Ph.D University of Karachi, has prepared his Thesis after obtaining my approval on the Topic of Thesis i.e. "*The Laws of Probation and Parole, their applicability and effects in Pakistan vis-à-vis third world countries" under my supervision and guidance.*

The Topic of the Thesis relates to the subject of Law, The Thesis is based on his own personal research work carried under my supervision and is not copied from any thesis written earlier on the subject.

Karachi.

Dated: 29 07.2008

Justice Haziq-ul-Khairi

Supervisor

Acknowledgment

I acknowledge with thanks the guidance provided to me by my Director, Mr. Justice Haziq-ul-Khairi, the Honble. Chief Justice, of Fed. Shariat Court, in the preparation of this thesis.

I am also indebted to M/s. Muhammad Masood, Principal "Central Jail Staff Training School" Institute Lahore, Ministry of Interior, Govt. of Pakistan, my brother Brig.®Shafat Nabi Khan Sherwani, former Deputy Prosecutor General Sindh, NAB, Mr. Shaid Shafique, Additional Dist. And Sessions Judge, Abdul Qadir,Civil Judge,Sohail Ahmed Khan, Probation Officer Karachi, Waqar Korejo Advocate and Mr.Nusrat Magan, Supertendent,Central Jail Karachi for the assistance provided to me by providing valuable material for preparation of the thesis.

I am also thankful to Mr. Khadim, stenographer, without whose assistance the thesis couldn't be completed.

Zafar Ahmed Khan Sherwani.

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خلاصہ

قانون پر عملداری ہر مہذب انسانی معاشرے کا جزلاینفک ہے یعنی انسانی ترقی قانون پر عملدرآمدگی سے منسلک ہے۔ ہر انسان فطری طور پر قانون پر عمل پیرا ہونے کے لئے آمادہ رہتا ہے مگر بعض اوقات مختلف وجوہ کی بناء پر لاقانونیت پر مجبور ہو جاتا ہے یہ وجوہات نفسیاتی، معاشرتی اور دیگر مسائل پر مبنی ہو سکتی ہیں۔ کوئی بھی انسان پیدائشی مجرم نہیں ہو سکتا۔ لہٰذا ہر جرم کے پیچھے مجرم کے حالاتِ زندگی اور اسکے معاشرتی و تمدنی مسائل کا جائزہ لینا ضروری ہے جن کی بناء پر وہ شخص جرم کرنے پر مجبور اور آمادہ ہوا ہے۔

اٹھارویں عیسویں صدی کے عوائل تک عام طور پر یہ سمجھا جاتا تھا کہ ہر مجرم پیدائشی طور پر مجرمانہ ذہن اور مجرمانہ مزاج کے ساتھ پیدا ہوتا ہے لہٰذا ہر مجرم کو معاشرے سے دور رکھ کر اور بدترین سزاؤں کے ذریعہ ہی جرم کرنے سے روکا جا سکتا ہے اسی سوچ کے زیرِ اثر حکمرانوں نے نجی قید خانے بنوائے جن میں معمولی مجرموں کے ساتھ بھی بدترین اور انسانیت سوز سلوک روا رکھا جاتا تھا اٹھارویں صدی کے عوائل میں اس روائتی سوچ میں تبدیلی آئی اور کسی بھی مجرم کو مستقبل میں معاشرتی طور پر مفید بنانے کی افادیت پر کام ہونے لگا۔ اس سوچ کے تحت وہ غیر عادی مجرم جو چھوٹے جرائم میں ملوث پائے گئے ان کو سنوارنے کے لئے سوسائٹی کے کچھ لوگ آگے بڑھے اور ان کو معاشرے میں رہتے ہوئے سوارنے کی کوشش کی گئی جو بہت کامیاب رہی اور ایسا شخص جو کسی حادثاتی طور سے مجرم قرار پایا تھا نا صرف اپنے خاندان کے لئے بلکہ پورے معاشرے کے لئے اہم ثابت ہوا اس طریقہ کار کو پروبیشن پر رہائی Probational Release کہا جاتا ہے اس کے تحت کوئی عدالت کسی مجرم پر جرم ثابت ہونے کی صورت میں کسی مخصوص شخص (Probation Officer) کی زیرِ نگرانی دے دیا جاتا ہے یا اس سے پہلے یہ مجرم شخص مخصوص مدت کے لئے یہ اقرار نامہ دستخط کرتا ہے کہ وہ اپنے آپ کو کسی بھی جرم کے ارتکاب سے دور رکھے گا اور ناکامی کی صورت میں وہ عدالت قانون کے مطابق سزا سنانے کے بعد جیل روانہ کر دیتی ہے اس اقرار نامہ کا ایک ضامن بھی ہوتا ہے۔ ایسا مجرم اس مدت کے دوران اپنی معاشرتی ذمہ داریاں پوری کرتا رہتا ہے اس طرح وہ جیل کی صعبتوں سے محفوظ بھی رہتا ہے اور اپنے خاندان کے لئے ضروری فرائض بھی انجام دے سکتا ہے۔ یہ تمام پروسیس جس قانون کے تحت پورا کیا جاتا ہے اس کو Probation of Offinders Ordinance 1960 کہتے ہیں۔ اس قانون پر عمل درآمد کر کے نہ صرف غیر عادی مجرموں کو عادی مجرم بننے سے روکا جا سکتا ہے بلکہ اس کے خاندان کو بھی

مشکلات سے بچایا جاسکتا ہے اس طریقہ کار سے جیلوں کی آبادی کو بھی کم کیا جاسکتا ہے جو ہمارے ملک میں پہلے ہی انتہائی خطرناک حد کو تجاوز کر رہی ہے۔

بدقسمتی سے اس اہم قانون پر صحیح طور سے عمل درآمد نہ ہونے کی وجہ سے غیر عادی اور اتفاقیہ مجرمان اور ان کے خاندان مشکلات سے دوچار رہتے ہیں اسی وجہ سے ایسے مجرمان کی تعداد جن کو Probation پر رہا کیا گیا ہے کم سے کم تر ہوتی چلی جارہی ہے۔ اس کی وجہ قانون سے لاعلمی اور حکومت کی مجرموں کی بحالی کی طرف عدم توجہی ہے۔ اسکے علاوہ ہر صوبے میں ضرورت سے بہت کم Probation Officers کی تعیناتی اور دوسرے ضروری انتظامی اور انفرااسٹرکچر کی کمی ہے Probation Officers کی تربیت میں کمی اور عدم جوابدہی کا احساس بھی اسکی وجوہات میں شامل ہیں

حکومت کو چاہیے کہ اس قانون پر صحیح طور پر عملدرآمد کرائے، قانون میں موجودہ سقم دور کئے جائیں اور غیر حکومتی تنظیموں کو اس اہم پروسیس میں شامل کیا جائے۔

وہ مجرمان جو کسی ایسے جرم کے ارتکاب میں سزا پاکر جیل جاتے ہیں اور جو Probation کے قانون تحت فائدہ نہیں اٹھا سکتے ان کی طرف بھی توجہ کی ضرورت ہوتی ہے تاکہ سزا پوری کرنے کے بعد وہ انسانی معاشرے میں اپنی ذمہ داریاں پوری کرسکیں اور معاشرہ بھی انہیں اپنے اندر ضم کرنے پر تیار ہو اس Process کو Parole Release کہا جاتا ہے پاکستان میں اس اسکیم پر عملدرآمد Good Conduct (Prisioners Probational Release) ACT 1926 کے تحت کیا جاتا ہے جس کے تحت ایسے سزایافتہ مجرمان جو اپنی سزا کا ایک حصہ جیل میں گزار چکے ہوتے ہیں جس کے دوران ان کا طور طریقہ اور کردار قابلِ تحسین ہوتا ہے ان کے کیسس ایک کمیٹی جو صوبائی سیکریٹری داخلہ کے ماتحت ہوتی ہے غور کرتی ہے اور اگر کمیٹی اس نتیجہ پر پہنچتی ہے کہ یہ مجرم معاشرے اور اپنے خاندان کے لئے مفید ثابت ہوسکتا ہے ایسے شخص کو کسی شخص کی ضمانت پر باقی مدتِ سزا اپنے خاندان اور معاشرے کے ساتھ گزارنے کیلئے رہا کردیا جاتا ہے۔ اسکی دیکھ بھال Parole Officer کرتا ہے اس دوران کسی نئے جرم کے ارتکاب کی صورت میں اس شخص کو واپس جیل بھیج دیا جاتا ہے اس قسم کی اسکیم انتہائی نتیجہ خیز ثابت ہوتی ہے اور ساری دنیا میں اس کے فوائد اظہر من الشمس ہیں۔

ترقی یافتہ ممالک میں لاکھوں مجرمان اس قسم کی اسکیم سے فائدہ اٹھاتے ہوئے معاشرے کے لئے

اہم خدمات انجام دے رہے ہیں۔

بدقسمتی سے پاکستان میں اس قانون پر عملدرآمد بدنیتی اور سیاسی بنیادوں پر ہی کیا جاتا ہے اس سے صرف ایسے لوگوں کو جیلوں سے رہا کیا جاتا ہے جو با اثر اور سیاسی اثر ورسوخ رکھتے ہوں اگر ہم ایسے مجرموں کو جنہیں Parole پر رہائی ملی ہو کی تعداد پر غور کریں تو اندازہ ہوگا کہ ہم اس قانون کو صحیح استعمال نہیں کر رہے جسکی وجہ سے اسکے فوائد معاشرے تک نہیں پہنچ پا رہے۔ اس صورت حال کو دیکھتے ہوئے پاکستان کی سپریم کورٹ نے از خود کاروائی کرتے ہوئے چاروں صوبوں کی حکومتوں سے ایسے تمام کیسس کو ریویو کرنے کے لئے کہا جن کیسس میں مجرمان کو انٹی کرپشن کے قوانین کے تحت سزا ہونے کے باوجود صرف اس لئے Parole پر رہا کر دیا گیا کہ وہ کسی سیاسی جماعت سے تعلق رکھتے تھے۔ اگر ہم ایسے مجرموں کو جنہیں Parole پر رہائی ملی ہو کی تعداد پر غور کریں تو اندازہ ہو جائے گا کہ ہم اس قانون کو صحیح استعمال نہیں کر رہے اور اسکے فوائد معاشرے تک نہیں پہنچ پا رہے۔

حکومت کو چاہیے کہ فوری طور پر اس قانون کے بارے میں عوام تک آگاہی کا انتظام کرے جس کے لئے کانفرنسز، ورک شاپ اور سیمینارز کا انعقاد کیا جائے اور ہر ہائی کورٹ وقتاً فوقتاً جیل میں موجود سزا یافتہ قیدیوں کے کیسس بھی ریویو کرے۔

ABSTRACT OF THESIS

a. Concept

One of the basic human instincts is to survive and flourish. For this he is to make all sorts of efforts especially when he is to compete with his fellow beings. To congregate is the other human instinct .Congregation could be loosely arranged. These two human instincts form the basis of a competitive human society; hence aggression becomes part of each society. It is from these imperatives that the criminal law of a state is usually born in order to maintain peace in the society.

Crime is the breach of a rule or law for which a punishment may ultimately be prescribed by some governing authority or force. The word *crime* originates from the Latin *crimen* (genitive *criminis*), from the Latin

root *cernō* and Greek κρινω = "I judge". Originally it meant "charge (in law), guilt, and accusation."

Crimes are commissions of acts that are publicly proscribed or the omissions of duties that thereby make offenders liable to legal punishment. More colloquially, a crime is any grave offense, particularly against morality, and thus something reprehensible, foolish, or disgraceful.

Criminal behavior is in most cases Unethical; it has also been subjected to scientific study in Criminology. The modern criminologists have a tendency of a macro-approach to study the person and phenomena in an offence situation. They are prone to analyse not only the bio-socio-politico-cultural phenomena but also the psycho-pathological and genetic phenomena of the person What qualifies as crime in both its technical and informal meanings is cross-culturally variable, because laws and norms are cross-culturally variable. Premarital

sex, profanity, abortion, political dissent, alcohol use, homosexuality, littering, and remaining standing in the presence of the king are all crimes in most cases unethical; it has also been subjected to scientific study in Criminology.

To answer, therefore, the question why is punishment a necessary evil, Walter C.Recless[1] has summarized the arguments thus:

> "Retribution, atonement, deterrence, protection and reformation, rehabilitation and treatment are the justifications of punishment to which the public subscribes independent of the efficacy of punishment itself."[1] Crime is deviation from a social norm. There are various factors responsible for such deviation.

Criminologists have identified many of these reasons for such deviation to be bio-psycho-genetic or eco-socio-cultural

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1.W.C.Recless, *The Crime Problem*.p536.

Up to the 18th, century harsh and sever punishment used to be understood as panacea of the criminal behaviour. However, the advent of the 18th, century brought new concepts of crime and punishment on account of paradigm shift of the criminologist of that century from penal approach to reformatory or therapeutic approach.

It is heartening to mention here the impact of tortuous punishment on animal behavior experimented upon by James B. Apple[2] which is known as Apple's Thesis, that states "*While punishment may suppress behavior, it can by itself, have no therapeutic or beneficial consequences because it ordinarily neither permanently eliminates nor radically alters the disposition to commit the punished response.*" The theme of the above discussion, therefore, is that the present

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2. James B Apple,News letter of American Society of Criminology,Vol.II, No.I.p 1

course of punishment has only a very limited purpose.

Process of Criminality and Punishment

About the inevitability of criminality in all societies the famous criminologist, Emile Durkheim [3] in his book "" has described as under:-

> *"There is no society which is not confronted with the problem of criminality. Its form changes: the acts thus characterize are not the same everywhere; but, everywhere; and always, there have been men who have behaved in such a way as to draw upon themselves the Penal repression. It is to affirm that it is a factor in public health, an integral part of all healthy societies"*
>
> Only in the 19th century did prisons as we know them today become humdrum. It was till the end of 18th century, Cellars, Gate houses, which were used to serve as detention houses were kept in extremely inhuman conditions. Criminals guilty of serious as well as petty offences, debtors and insane persons were used to be put together in those detention houses. They were used to be kept without

3 Emile Durkheim "Rules of Sociological Method (1950) p.65

> distinction of their sex. All sort of crimes were common in these jails and there was no concept of humanity therein. These gaols were not maintained by the State and private parties used to conduct them on commercial lines. John Howard (1726-1790) [4] records "Many of these prisons were privately owned The Duke of Portland owned Chesterfield Gaol which consisted of one

room with a cellar beneath and he received a rent of 18 guineas a year from the keeper. The Duke of Leeds got £ 24 a year from Halifax Gaol and Bishop of Durham owned the County Gaol at Durham", John Howard: State of Prisons(1780 ED) pp 300,371 as quoted by A.S Raj [5] in his paper "The Early History of Modern Prison System" published in his book "Administration of Criminal Justice, The Correctional Services, Vol.2, page 11.

Inmates used to be charged for the accommodation even

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4 John Howard: State of Prisons (1780 ED) pp300,371 5. "Administration of Criminal Justice, The Correctional Services,Vol.2, page 11

for the chains used on their bodies and of course for supply meals, liquor and women. In the words of Lionel W. Fox,[6] "

The gaols were dens of lechery, debauchery, moral corruption and pestilence".

Recent development in the field of psychology, sociology, criminology and on account of later developments in penal theories have opened up new vistas of knowledge in human behavior.

It has now widely been recognized that imprisonment is not the best remedy to deal with crime as a societal issue. In addition, there has also been a significant shift in the understanding of prisoners' status.

6.Lionel W. Fox 6, The English Prison and Borstal System (1952)

Rather than viewing them as plain criminals, they are recognized as persons placed under the lawful custody of the state which is morally and legally responsible for their well being and reform. Under this paradigm, correctional and rehabilitation services become the most dominant function of any prison. On account of the shift towards the process of criminality i.e. opposed to the individualistic approaches, which focus attention on biological, mental and other characteristics of the offender but towards sociological approach which seeks to explain the phenomenon of criminal behaviour with reference to factor outside the personality of the delinquent. These approaches are called environmental approaches i.e. the behaviour of the criminal from the point of view of the sociological interactions.

Rehabilitation

Meta-analysis of previous studies shows that prison sentences do not reduce future offenses, when compared to non-residential sanctions.[7] This meta-analysis of one hundred separate studies found that post-release offenses were around 7% higher after imprisonment compared with non-residential sanctions, at statistically significant levels. Another meta-analysis of 101 separate tests of the impact of prison on crime found a 3% increase in offending after imprisonment.[8]

Longer periods of time in prison make outcomes worse, not better; offending increases by around 3% as prison sentences increase in length.[9]

7.Smith et al, 2002 8.Andrews and Bonta, 2003 9.Smith et al, 2002

Effective rehabilitation programs reduce the likelihood of re-offense and recidivism.[10] Effective programs are characterized by three things: first, they provide more hours for people with known offense risk factors (the Risk Principle); secondly, they address problems and needs that have a proven causal link to offending (the Needs Principle); and thirdly, they use cognitive-behavioural approaches (the Responsivity Principle). Providing rehabilitation to people at lower risk of reoffending results in a 3% reduction in reoffending, while providing rehabilitation to people with a high risk of reoffending is three times as effective, resulting in a 10% reduction in subsequent offending.[11] Risk factors for reoffending are: age at first offense, number of prior offenses, level of family and personal problems in

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10 Andrews and Bonta, 200311Andrews and Bonta, 2003

childhood and other historical factors, along with level of current needs related to offending. Those individuals who had many personal and family

problems in childhood (particularly 19 or more), started offending

before puberty, and have committed multiple priors are more likely to reoffend in future, according to longitudinal studies internationally. [12] In support of the Needs Principle:

Programs that specifically target criminogenic needs (causal needs and problems), see a 19% reduction in reoffending.[13]In support of the Responsivity Principle:

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12 e.g.Moffit T E, Caspi A, Harrington H and Milne B J (2002) Males on the life-course persistent and adolescence-limited pathways: Follow-up at age 26, Development and Psychopathology, 14: 179 - 207 ,13 Andrews and Bonta, 2003

There is a 23% reduction in reoffending after participating in programs that use cognitive-behavioural methods to bring about changes in behaviour, thinking, and relationships.[15]

When all three of these principles are effectively applied, the impact on offending is a 26-32% reduction.[16][17] This is in comparison to a 3-7% increase in offending that is found with imprisonment

As of 2006, it is estimated that at least 9.25 million people are currently imprisoned worldwide[18] prison. It is believed that this number is likely to be much higher, in view of general under-reporting and a lack of data from various countries, especially authoritarian regimes[19]

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15. Andrews and Bonta, 200316. Andrews and Bonta, 2003 17. Andrews et al, 1990 18.Walmsley, Roy (October 2006). "World Prison Population List (Seventh Edition)".

19 Harrison, Paige M., Allen J. Beck (June 2006). "Prison and Jail

Whereas only in Pakistan, including Azad Jammu and Kashmir the total no. of jail population, as on 30.4.2008 was 90468 in its 97 prisons.

Jail population in different countries of the world

In absolute terms, the United States currently has the largest inmate population in the world, with more than 2½ million [19] or more than one in a hundred adults [20] in prison and jails.

Although the United States represents less than 5% of the world's population, over 25% of the people incarcerated around the world are housed in the American prison system. Pulitzer Prize winning author Joseph T. Hallinan wrote in his book *Going Up the River: Travels in a Prison Nation*, "so common is the prison experience that the

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I19 Harrison, Paige M., Allen J. Beck (June 2006). "Prison and Jailnmates at Midyear 2005". Bureau of Justice Statistics.20. One in100: Behind Bars in America 2008". Pew Charitable Trusts (2008-02-28).

federal government predicts one in eleven men will be incarcerated in his lifetime, one in four if he is black." In 2002, both Russia and China also had prison populations in excess of 1 million. [21]

Reforms in Penal approach/ Probation and Parole

On account of therapeutic approach towards the process of criminality reforms were brought about in prison system in England, USA and other Western countries and educated societies. Various techniques of individualized actions based on the idea that all the offenders are not of the same kind were developed. Now it is the view that all the offenders and the crimes they commit are different in verities and they may be

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21. Prison population statistics".

poles a part from each other in terms of personal trade, motivation and the likelihood or otherwise of committing crimes in future. On account of this approach some realization that some kind of flexibility is desirable in the various sanctions available to courts, prison administrators and other agencies to deal with the offenders and this desired flexibility has been achieved through different techniques like probation and parole

In U.S.A. the Advisory Committee on Penal Institutions, Probation and Parole to the National Commission of Law Observance and Enforcement, defines probations as follows:-

"Probation is a process of treatment, prescribed by the Court for persons convicted of offences against the law, during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court..... and is subject to supervision by a probation office. Length of the probation period varies, and is determined by the court."[22]

David L. Sills defines probation as a procedure for "release of convicted criminals or adjudicate delinquents on a conditional basis in order to assist them in pursuing a non-criminal life.[23]

Edwin H. Sutherland says, "Probation is a status of a convicted offender during a period of suspension of the sentence by the Court". Sills, David; International Encyclopedia of the Social Science, vol, ii, p 518[24]

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22. Burton, C. William,Legal Thesurus,p.408

23. Sills,David; International Encyclopedia of the Social Science, vol,ii ,p 518

24. Sills,David; International Encyclopedia of the Social Science, vol,ii ,p 518

Application of the concept of Probation in Pakistan and India.

The scheme of probation although was introduced in the Western countries in the beginning of 19th century but in the countries like Pakistan and India the same is comparatively of recent time. When enactments known as Probation of Offenders Ordinance, 1960 (XLV of 1960) and Probation of Offender Act 1958 were promulgated in Pakistan and India, respectively, offenders were benefited with the same, albeit the same were never applied in the letter and spirit in both the countries by the concerned Governments functionaries for the reasons best known to them.

For example in Pakistan in its province of Sindh the attention of the Provincial Government was drawn towards the implementation of the law by the Sindh High Court in 1994 through a letter written to the Home

Secretary and in consequence thereof three probation officers were appointed for the three divisions of the province, i.e. Karachi, Hyderabad and Sukkur with insufficient supporting staff.

The offenders who were legally entitled to get the benefit of the provisions of the law were not benefited in true spirit of the legislation. Only in one jail of Karachi, as per information provided by the jail Superintendent, Central Prison on 5th.June 2008, during the period of about last 4 years 48 convicts who were remanded to the jail could be released on probation by the trial courts.

Although probation is a scheme of social re-education and rehabilitation of offender to avoid indiscriminate incarceration as jailing is not a panacea

Development

Origin

Probation and Parole are guided by the concept that offenders, by making use of appropriate rehabilitative services and refraining from illegal activities, can function responsibly, safely, and productively within society.

Probation and Parole are community-based component of the Department of Corrections that supervises adult community residents who have been placed on probation by the courts or on parole by the Parole Board/committee. Probation and Parole are mandated to provide community protection while working toward the rehabilitation of the offender in the community. Probation is often used by the courts as an alternative to incarceration, and can also provide an additional period of supervision following incarceration. Parole enables some

offenders to return to the community under stringent conditions of supervision after serving out a portion of their incarceration.

Both probation and parole are seen as provisional tolerance to remain in the community on the condition that certain requirements are fulfilled. Those requirements include accountability, responsible behavior and willingness to accept and make positive use of appropriate interventions. The objective of supervision is to assist offenders to integrate successfully into their communities as functioning, law-abiding members.

Concept of Probation and Parole in Islam

The concept of Probation and Parole was introduced very late in Western Countries i.e. in the 19th century whereas, in Islam, being a complete code of conduct of life for all time to come, it was in vogue during

the early days of holy profit (Peace be upon him). Islam considers human-being as the most respected creature on the earth amongst all the creatures of Al-Mighty God. It does not condemn an offender on account of his sin or misdemeanor. It also preaches the concept of tolerance, forgiveness and pardon in the interest of a tolerant integration of the society and for the peaceful life of its members. It put emphasis on *repentance. In* the book written by Dr. Abdul Majeed Auolakh titled as " Criminal Justice, Crime Punishment and Treatment in Islamic Republic of Pakistan." different instances in this regard have been quoted which are golden chapters of Islamic History and the same are reproduced hereunder:-

"*(A) Quranic Concept:*

(i) *The Holy Quran gives a clear concept of Probation and Parole.*

(ii) *Surah-e-Anfal (Chapter VIII) reveals the first use of the Islamic concept on Parole by the Holy Prophet (S.A.W.) for the Badar war convicts. The Holy Quran indicates in many verses that to forgive is Divine. Even the murderers can be forgiven, if they show sincere repentance. Not only private persons but the State has been directed by the Holy Quran to forgive the wrongs of those who return back to righteousness. Tauba or repentance is basic in Islam that a full (Chapter IX), relates to the principle of repentance and conditional release of convicts when they offer Tauba, or repent for their crimes.*

iii). *The concept of de-institutionalized treatment has its first and fore-most mention in the human history, More than1400 years ago*

through the Holy Quran. In Surah YUSUF (Chapter XII) it has been clearly indicated that Hazrat Yusuf (P.B.U.H.) interpreted (2000 B.C.) dreams of his two convicted Prison colleagues. The interpretation of dream of one convict was that he will be hanged but the other was prophesied to be conditionally released on Parole for royal cook-house and was induced as chief butler to Azeez-i-Misr. The Holy Quran also indicates how this ex-convict on Parole was absorbed in royal employment in an after-care rehabilitation service.

On honorable acquittal from judicial lock-up Hazrat Yusuf (P.B.U.H.) was appointed advisor on food and agriculture and then elected as Azeez-i-Misr although he was an ex-prisoner of the same country. Here we see the king in Prison on selection of a parolee, then on inspection to see the Prison conditions and then as judge to honorably acquit Hazrat Yusuf (P.B.U.H.).

(B) Practices of the Holy Prophet, Sallallah-Ho-Alaihe-Wa-Sallam:

(i) *A dangerous and habitual criminal of worst nature, Sumama Bin Aasal of Yamama region was convicted by the Holy Prophet (S.A.W.) for his serious crimes but was conditionally released on probation. He was reformed by Prophet's (S.A.W.) psychiatric treatment in his Holy Mosque as a best Muslim. He contributed a lot for spread of Islam in the Yamama region and was made its Revenue Assistant.*

(ii) *For the first time in human history the Holy Prophet (S.A.W.), as Supreme Judge, paroled*

out 70 worst convicts of the war of Badar. They were dead enemies of Islam who committed serious most crimes including this War. They killed the Prophet's (S.A.W.) most exalted Companions and committed sabotage, subversion, as well as serious conspiracies against the new Islamic Republic of Madina. They were conditionally paroled-out on attachment to each Madinese family to educate ten illiterate immigrant Muslims or ten children of local Muslims of Madina. They themselves became the best Muslims after final release.

(iii) There are instances in Madina where the Holy Prophet (S.A.W.) noticing some juvenile delinquency ordered treatment of pre-offence anti-social activities of youth' under supervision of " Ashab-e-Suffa" (Prophet's Open University pupils). Community treatment and family attachment of casual, first offenders and juvenile delinquents in the houses of his Companions were also encouraged to achieve real crimelessness.

(C) Practices of Companions of the Holy Prophet (S.A.W.).

The concepts of Probation and Parole were also applied by Hazrat Abu Bakr and Hazrat Umar in some circumstances to conditionally release offenders sentenced for apostasy, treason and tax evasion. Hazrat Ali was the first Caliph of Islam who innovated regular Prisons on face of the earth in present shape, in the human history. Criminals were brought out of dungeons for remobilization. He also introduced the system of good conduct release of offenders. Same was followed by Hazrat Ameer Moavia. (Durral Mukhtar)

(D) Later Islamic Period:

Khalifa Haroon-ur-Rasheed used, in some form, Probation and Parole releases to give better treatment to his political opponents and convicts. Similar steps were taken by Khalifa Mehdi."

The Western History of Probation and Parole

In the Western world the concept of probation and parole was introduced on account of reforms in jails in the 19th century. It was thought that in this way not only the population in jails could be reduced but the offenders who are not habitual criminals can be kept away from other

criminals and the vigor of the punishment could be reduced by releasing them for certain period in order to see whether they could change their attitude and if there were positive signs in their attitude they could be released before expiry of their sentence.

In Encyclopedia of Crime and Justice by Sanford H. Kadish, Volume 3 the historical background of Probation has been provided as under:-

"Probation grew from a traditional use of the suspended sentence. There is a slight historical link to the practice, originating in the thirteenth century, by which ordained clergy could escape the harsh penalties of English law by "benefit of clergy." This was extended gradually to all who could read (or perhaps memorize) a text, which was the Twenty-first Psalm: a plea of mercy, an acknowledgment of sin, and, it may be noted particularly, a promise of reform. Those who could recite what came to be known as the 'neck verse, "and thereby escape hanging, could be branded on the thumb to prevent them from claiming the benefits again (Barnes and Teeters, pp. 373-375). Following this and related precedents, early American statutes authorized

suspension of sentences if the convicted offender demonstrated good behaviour."

IN England and U.S.A. the concept of probation was introduced somewhere in 1830. Professor Ahmad Siddique in his book "Criminology (problems and perspectives)" has traced out the history of probation and wrote as under:-

> *"In England and the U.S.A. the source of probation can be traced to the binding over a person for good behaviour or recognizance for appearance in the court when required. This was done with cooperation of friends or other persons who voluntarily stood sureties for the person who would have otherwise been sent to prison. In Massachusetts in 1830 a woman was prosecuted for committing a theft in a house. She pleaded guilty but upon application of her friends, the court did not sentence her on the condition that her friends are responsible for her appearance when called by the court. In 1831 she was acquitted before the same court of another charge of larceny. Curiously enough she was sentenced on the basis of earlier crime of larceny.*

John Augustus, a boot maker of Boston, and member of society working against alcoholism, is regarded in a way the pioneer of probation work in U.S.A. His shop was situated close to the police court in Boston. Once, while watching the court proceedings as a spectator, he asked the judge to permit him to be a surety for an offender who was to be given imprisonment. He continued providing bail to many offenders afterwards and was careful in selecting his cases on the basis of suitability for probation."

The above was the developments outside South East Asia, but the concept of probation was first time introduced in undivided India in 1923 by introducing in the Indian Criminal Procedure Code 1898 the Sections 380, 562-564 which provided the release of offender *on probation of good conduct* but without making the provision for the supervision and can be termed as heart and sole of the probation. These provisions were restricted to the first offender and to some extent with respect to the legal character of the offence. These

provisions were providing that an offender can be released on his entering into a bond with or without surety to appear for sentence when called upon during the period (not exceeding three years) as determined by the court and during the time he was to keep the peace and the good behaviour. For the first time the government announced its intention to introduce probation legislation in 1931 when All India Probation Bill was drafted and circulated to the Provincial Governments for their views but unfortunately the Bill did not see the light of the day on account of political upheaval associated with the independence movement. However, different laws on provincial basis were promulgated in the undivided India like Bengal, Bombay, Madras, U. P. Nagpur and Punjab during the period from 1930 to 1940.

After the partition both the countries i.e. India and Pakistan introduced their legislation on the subject.

Professor Ahmad Siddique in his book Criminology (problems and perspectives) has traced out the history of laws on the subject in the undivided India and thereafter in more detailed manner as under:-

> *"The first legislative piece on probation in India is Section 562 of the Code of Criminal Procedure, 1898. It provided for release on probation of the first offenders in the discretion of the court for minor offences punishable up to two years of imprisonment. The provision was liberalized in 1923 to include offences punishable up to 7 years 'imprisonment both under the Penal Code as well as under special or local laws. In case of young male offenders under the age of 21 years and all female offenders, the benefit extended to all the offences except those punishable with death or life imprisonment. The judicial discretion had to be exercised having regard to the age, character or antecedents of the offender. Release after admonition was also possible in trivial offences i.e. punishable up to two months' imprisonment. Section 360 of the Code of Criminal Procedure of 1973 has identical content on probation but the policy has been reinforced by Section 361 which requires special reasons to be given by the*

court for not granting probation under the Code, Probation of Offenders Act, 1958 and the Juvenile Act.

In 1934, the Government of India suggested to the provincial governments to enact probation laws and the same was complied with by quite a few of them. While there was no uniformity of laws among various provinces some of them even did not have any enactment on the subject. The most significant development occurred when the Jail Manual Committee under the stewardship of Dr. Walter Reckless was formed by the Government of India to review the working of jails and make recommendations for reforms. The recommendations of the Committee led to the passing of the Probation of Offenders Act, 1958 by the Central Government which sought to bring about uniformity of probation laws in the country."

With regard to the history of legislation of the Pakistan Probation Offenders Ordinance, 1960 it will be suffice to say that in the late Punjab the system was in vogue since 1927 in the shape of the Good Conduct Prisoners Probational Release Act, 1926 and this experiment had

given very encouraging and useful results during the period. This system was also brought on West Pakistan basis by the Govt. ever since 1957.

Probation of offenders Ord. 1960.

Background.

The simple primitive method of treatment of crime or criminals was to take as the starting point of a crime that was committed and to limit the social action to catching the criminal and the penalizing him. This was done according to a standardized tariff which made the "punishment fit the crime". The system of imprisonment has originated and developed more or less on the basis of this principle. But today an advanced community adopts as far as possible methods for the prevention of crime and treatment of offenders other than prison sentences. In the first instance, such a community takes steps to find

out and remove the various causes of crimes. Nevertheless, when a crime is committed, the treatment of the offender is directed more to obviating his committing a second offence than to his merely paying retribution for the first. Thus, more attention and importance is given today to the treatment of an offender than to his punishment or to decision as to his guilt. Such a course is not only useful to the offender but also to the society at large. Undue prison sentence has admittedly contributed largely to making a first offender commit further offences and in some cases ultimately, by force of contact, to becoming an habitual criminal. World statistics in this regard show that in 3 out of 5 sentences, after serving prison terms, the prisoners have turned into hardened criminals. Meta-analysis of previous studies shows that prison sentences do not reduce future offenses, when compared to non-residential sanctions. [2] This meta-analysis of one hundred separate studies

found that post-release offenses were around 7% higher after imprisonment compared with non-residential sanctions, at statistically significant levels. Another meta-analysis of 101 separate tests of the impact of prison on crime found a 3% increase in offending after imprisonment. [3] Longer periods of time in prison make outcomes worse, not better; offending increases by around 3% as prison sentences increase in length, *ibid.*

Today in Pakistan over 70% of the total population in Jails consist of those raw and chance offenders in whose cases the term of sentence ranges from one month or less to one year. And most of them are devoid of any criminal characteristic— their contamination with confirmed criminals and professionals in Jail only harms them rather than doing any good to them.

The great value of probation methods, therefore lies in the fact that it not only helps to separate the raw and

first offenders from the hardened ones in an institutional treatment like that of Jails but also goes a long way in their amelioration and rehabilitation by providing them a healthier environment and a wholesome treatment conducted in the light of a humane approach through the probation methods. It is admitted by the authorities on penal reforms that the very act of indiscriminate jailing of a chance and first offenders has contributed largely to the fearful rise of crime in the world today. the Pakistan Probation Offenders Ordinance, only aims at the treatment of such raw and chance offenders; and can also greatly help in bringing low the curve line of crime in our country.

If the work under the Ordinance is implemented in its letter and spirit, its effect in keeping out of jail persons, who are still serving short sentences as first offenders for

petty offences, will be felt and chances of contamination in jail through contact with hardened criminal will be greatly minimized

The decision to grant probation. The individuals convicted of a crime who are not given a prison sentence and whose cases are otherwise fit for probation are released on probation. Community corrections officials/probation officers are critical players in these sentencing decisions. They must assess the level of risk offenders present to the public safety and make recommendations to the court about the appropriate sentence.

Probation officers often begin the investigative process during the pretrial period by examining an offender's background and history to assist in determining whether a defendant can safely be released on his own recognizance or bail. The report from the officer is

frequently the primary source of information the court uses in this decision. At this point the court may *defer adjudication* or offer *pretrial diversion* and require probation supervision.

Reformatory Approach in Juvenile delinquency in South East Asian countries vis-à-vis Infra structure

All over the world the juvenile delinquency is being dealt with altogether different approach as compared to adult delinquency for which separate criminal systems are in vogue in each country. This is also a requirement of the United Nations as provided in the declaration signed by the member countries on Convention on the Rights of the Child (CRC) to establish laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law

A report of UNICEF for 2006 has given details with regard to the juvenile justice systems in south Asian counties in details highlighting the provisions with regard to probation.

It is worthwhile to note that the countries of the region which are signatories of CRC have established their respective juvenile justice systems which also provide an alternative of sentencing but the same are not being implemented in letter and sprit consequently the juvenile offenders are being confined in jails and other detention facilities.

For an outlook of the real position with regard to sentencing process in the region it will be worth while to summarize the ground situation in the following countries including Pakistan and India.

Pakistan

Pakistan In 2000, Pakistan introduced the Juvenile Justice System Ordinance (JJSO), with the intention of establishing a comprehensive, country-wide juvenile justice system. Prior to that, only two provinces– Sindh and Punjab - had separate juvenile justice legislation.The number of juvenile prisoners is falling rapidly all over the country. In the province of Punjab the number of juvenile prisoners on 1.1.2007 was 1164 which was 62% lower than the 2002 levels. This decrease seems to be sequential to the adoption of a concessionary regime juvenile justice ordinance for juvenile delinquents The JJSO states that a probation officer must assist the Juvenile Court by making a report about the child's character and background.

The Ordinance also includes some new sentencing powers, designed to give Courts alternatives to imprisonment. The Court may release the child on

probation under the care of a parent, guardian or any suitable person executing a bond with/out surety; reduce period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation is unnecessary. However, these sanctions are merely optional alternatives to the adult penalties stipulated under the Penal Code, and the Court may still in its discretion impose an adult prison sentence on the child, including life imprisonment. There is no statement that detention shall be used only as a measure of last resort, for the shortest appropriate period. On the contrary, the presumption is that children sent to Borstal institutions will remain there until they turn 18, unless the Court considers a lesser period appropriate. Importantly, for the first time the JJSO prohibits the death penalty from being imposed on children under the age of 18. For children who are processed through the formal court system, the number of alternative, non-custodial sentencing options is quite

limited. The main alternative is probation, which is governed by the Probation of Offenders Ordinance of 1960. The Ordinance gives the Court wide discretion to add and for rehabilitating offenders as an honest, industrious and law abiding citizen.

Infrastructure of Directorates of Reclamation and Probation

In total, there are 70 probation officers throughout the country and 22 parole officers. Fifty-three of the probation officers are in Punjab and three in Sindh. These numbers are insufficient to provide meaningful supervision and case management services to children in conflict with the law.

These services are administered by the Directorate of Reclamation and Probation which is a subordinate office of the Home Department. A Director is responsible for the

internal administration of the Directorate while oversight and policy functions rest with the Home Department. The legal framework for the administration of these services is provided respectively by the Probation of Offenders Ordinance 1960 and the Good Conduct Prisoners Probational Release Act 1926 and the rules made thereunder.

Despite its importance, probation and parole has remained a low priority area. Among other factors, this fact is illustrated by the poor resource allocations for the Directorates In respect of the province of Punjab . The total expenditure on the probation and parole service in 2006-07 was around Rupees 26 million which is less than 1% of the expenditure incurred on prisons administration. Even worst, no money has been spent on the strengthening or development of the service

Since at least 2002. To add to this, presently 24 positions are lying vacant. Out of this, 20 positions relate to the probation and parole officers. Interestingly, the post of the Director is also lying vacant since many years[1]. This critical deficiency is a crucial reason for the poor quality of service delivery. In addition there is also an acute deficiency of office accommodation, transport and other usual facilities.

The total no of officers posted in the four Directors of Probation and Reclamation, vis-à-vis sanctioned indicates the seriousness of the Provincial Governments on the subject.

NAME OF POST	PUNJAB	SINDH	NEFP	BALOCHISTAN
Rector	01	01	-	-
Deputy Director	01	-	-	-
Superintendent Certified School	01	-	-	-

Sahiwal				
Assistant Director	09	03	-	01
Office Superintendent	-	-	-	01
Parole / Probation Officer	69	06	13	04
Ministerial Staff	140	13	28	10
Grand Total:	221	23	42	17

5 YEARS PROGRESS REPORT ON WORKING OF PROBATION IN SINDH PROVINCE

YEAR	ADULTS	JUVENILES	TOTAL
2003	123	05	128
2004	188	46	234
2005	202	62	264
2006	156	44	200
2007	118	43	161
2008 (Upto May)	25	12	37

Similarly in the province of Sindh the thin figures of the juvenile offenders released on probation during the last five years, as shown below, indicates lack of interest of the courts in releasing the juvenile offenders on probation-:

SUB-ORDINATE OFFICES WISE 5 YEARS PROGRESS REPORT ON WORKING OF PROBATION

KARACHI

YEAR	ADULTS	JUVENILES	TOTAL
2003	118	05	123
2004	169	46	215
2005	157	62	219
2006	113	43	156
2007	37	40	77
2008 (Up to May)	10	11	21

HYDERABAD

YEAR	ADULTS	JUVENILES	TOTAL
2003	05	00	05
2004	16	00	16
2005	16	00	16
2006	03	00	03

2007	21	00	21
2008 (Up to May)	06	01	07

KHAIRPUR

YEAR	ADULTS	JUVENILES	TOTAL
2003	00	00	00
2004	03	00	03
2005	29	00	29
2006	40	01	41
2007	60	03	63
2008 (Up to May)	09	00	09

Source: Directorate of Probation and Reclamation, Sindh

India

In 2000, India introduced a new Juvenile Justice (Care and Protection of Children) Act (JJA 2000). The JJA 2000 calls for the creation of special juvenile police units to deal with children in conflict with the law and children in need of protection. Every police station is required to have at least one officer designated and specially trained as the "juvenile or child welfare officer." The JJA 2000 calls for the creation of special juvenile police units to deal with children in conflict with the law and children in need of

protection. Every police station must have at least one officer designated and specially trained as the "juvenile or child welfare
officer." juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person for up to three years; JJA 2000, Section 63)The juvenile can be released on probation of good conduct and placed under the care of any fit institution for up to three years;

Afghanistan

The Juvenile Code 2005 states explicitly that confinement of a child is a measure of last resort and requires the Court to impose confinement for the minimal possible duration. (Juvenile Code, Article 8) Contemptuous and harsh punishment are prohibited.(Juvenile Code, Article 7) The Court has a range of dispositions that it may impose on a child found guilty of an offence, including: Performing social service . Release to parents or guardian with a written guarantee that they will be responsible for monitoring the development and progress of the child Confinement to a juvenile rehabilitation centre.

Suspended sentence, if the sanction for the crime is for more than two years but less than three years.(Juvenile Code, Articles 35, 37, 40) However, there is no provision in the Act with regard to release of an offender on probation by the court after finding him guilty of the offence.

Bangladesh

In Bangladesh, the justice system for both children in conflict with the law and children in need of protection are governed by the Children Act, 1974 and the Children Rules, 1976. Although this legislation has been in place for almost 30 years, Bangladesh has yet to implement a fully comprehensive, separate system for children in conflict with the law. Immediately after the arrest of a child, the officer-in-charge shall inform to the Probation Officer of such arrest to enable the said probation officer to proceed forthwith in the matter of the juvenile

A court may, if it thinks fit, instead of directing any youthful offender to be detained in a certified institute under section 52 order him to be (a) discharged after due

admonition, or (b) released on probation of good conduct and committed to the care of his parent or guardian or other adult relative or other fit person on such parent, guardian, relative or person executing a bond, with or without sureties, as the court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding three years and the court may also order that the youthful offender be placed under the supervision of a Probation Officer. If it appears to the court on receiving a report from the probation officer or otherwise that the youthful offender has not been of good behaviour during the period of his probation, While probation officers may be instructed by the court to prepare a social inquiry report, in practice these are rarely requested.(Rahman, Mizanur, Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003; Institutional Reponses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and Child Hope UK, 2005). Upon finding a child under the age of 16 guilty of an offence, the Court may impose one of the following dispositions: inter alia ,r elease on probation in the care of a parent or other fit person, and under the supervision of a Probation Officer for a period of up to three years.

Bhutan

Bhutan's juvenile youth rates remain comparatively very low, and the majority of crimes committed by children are non-violent in nature, the most common offences committed being theft, followed by burglary and drug abuse.(Situation Analysis of Women and Children in Bhutan, NCWC and UNICEF, 2005) The types of sentences that may be imposed on. a person found guilty of a crime are stipulated in the Penal Code and include: imprisonment; release on probation; fine; or an order to pay compensation or damages and make restitution to the victim. The Civil and Criminal Procedure Code states:

"that the Court must take the following factors into consideration in making orders concerning a juvenile: age of the juvenile; physical and mental health; circumstances

in which the juvenile was living. Furthermore, the Court may allow a juvenile to go home after advice/ admonition or release the juvenile on probation, having regard to the severity of the charges, the juvenile's past criminal record, the likelihood of flight, the juvenile's age and physical/mental health condition, and the potential threat posed to civil society.

Maldives

Maldivian law is based on Shari'a, and Shari'a generally prevails over nation laws and international treaties. The juvenile justice system is currently governed by the Law on the Protection of the Rights of the Child, (Law No.: 9/91), as well as a set of detailed guidelines on procedures for investigation, court and sentencing of children in conflict with the law. (Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as mended.

Nepal

Nepal does not currently have a comprehensive juvenile justice system. Although a Children's Act 286 was introduced in 1992 to govern procedures for dealing

with children in conflict with the law and children in need of protection, the implementation of the law has been fragmented. A Committee has identified legislative reform as one of its priority activities, and has undertaken a consultation process to elicit stakeholder input. The Children's Act stipulates different categories of sentences for children, depending on their age but it lacks any provision of release of juvenile offender on probation.

Sri Lanka.

Sri Lanka has had separate legislation governing the administration of juvenile justice since 1939. Children under the age of 16 who are in conflict with the law should be dealt with under the Children and Young Person's Ordinance 1939 (which also deals with children in need of protection), however the law has never been fully implemented throughout the country. As yet, there is no

comprehensive justice system for children in conflict with the law.

In recent years, there has been growing consensus on the need for reform, and several initiatives are already planned or underway to improve the juvenile justice system In deciding what disposition to impose on a child or young person who has been found guilty of an offence, the Court must take into account "any information that is available about the child's antecedents and circumstances," including a social report which is to be prepared by a probation officer. To enable this information to be obtained, the Court can remand the child or young person to a Remand Home, or to the custody of a fit person, for a period of up to 21 days, extendable at the Court's discretion. A recent study conducted by Save the Children UK found that there is an organisational culture in which probation officers looked to institutional care as a

first resort for children, rather than a last resort as departmental policy requires

While the list of possible dispositions includes number of alternatives, in practice the Court tends to impose custodial sentences, even for minor offences such as theft.

Judicial Attitude/Review of Case Law of India and Pakistan.

On the basis of the report of the Probation Officer and within the area permitted by the legislature, the court is to exercise its discretion having regard to a number of factors and to pass the necessary order to release the offender or not on probation.

The judicial attitude towards this modern concept in both the countries can be appreciated with reference to some decided cases

(A) Emphasis on grant of Probation.

A survey of the cases decided by the superior courts on the subject it appears that in the lower courts in both the countries the law has not been fully applied in its letter and spirit. Superior courts of Pakistan have more than once stressed the application of the provisions of the Probation law. In ZULFIQAR ABBAS Versus THE STATE (2007 P Cr. L J 306 [Karachi]) Justice Rahmat Hussain Jafferi, has held that "one of the concepts of punishment is reformation. The present conditions of our jails are such where once a person is sent there then he may come out after serving out the sentence as a hardened criminal, therefore, instead of becoming a helping hand to the society he would become a cause of concern to it. It is possible that the appellant while mixing with the criminals might develop bad habits, which ultimately would not be beneficial to the society when he comes out after serving the sentence"

In the cases against juvenile offenders the superior courts are very specific and emphasized repeatedly to apply the provisions of the Probation law. In JAMIL AHMED Versus THE STATE, 2007 P Cr. L J 1577 [Quetta] the Hon court remanded the case to the trial court because before awarding sentence to the juvenile offender the trial court did not consider the application of probation law holding that the Juvenile Court was under legal obligation to consider said provisions before recording any conviction

The Supreme Court of India has observed in Musa Khan v. State of Maharashtra, 1977 SCC (Crl) 164 that though the provisions of Section 6 of the Probation of Offenders Act were mandatory, the courts have not made wise use of the provisions, which was necessary to protect our younger generation from becoming professional criminals and, therefore, a menace to society

B) Young age of the offender

The age of the offender is very material question while granting or refusing probation by the courts with the view that young offenders may be provided full opportunity for their reclamation.

In a case of Indian jurisdiction re:- Abdul Qayum v. State of Bihar (1972) 1 SCC 103, the appellant was only 16 years old boy when he was convicted for the offence of the theft of Rs.56 by pick pocketing. He was given six month's rigorous imprisonment and probation order was refused in spite of the fact that the probation officer had recommended it. The trial court observed:

"In spite of his recommendation I do not feel inclined to extend the benefit of the provisions of the Probation of Offenders Act to the accused Qayum. Apparently he is an associate of the accused Shamim who is hardened criminal and a person of

doubtful character. Incidents of pick pocketing are very rampant in this subdivision and it was just a stray chance that the accused Qayum was caught in this case. Having regard to these facts and the nature of offence and the circumstances in which accused Qayum was caught, he does not deserve the benefit of Section 4 of the Act."

Both the Appeal and the Revision were rejected by the Patna High Court but the Supreme Court while upholding the appeal directed the trial court to place him on probation on the following ground:

"..... there was no warrant for interfering that the appellant was his (Shamim's) associate. A

reference to the report of the Probation Officer would show that the accused was physically and mentally normal. Though he was illiterate he had a vocational aptitude for tailoring and was working in the Bihar Tailoring Works. He was interested towards his work as a tailor and behaves properly with his father and brothers and has normal association with friends...Both his father and his elder brother are employed. The attitude of the family towards the offender appellant was one of sympathy and affection and the father exercised reasonable control over him. The report of the nieghbours is also in his favour....there is no report

against the character of the offender, no previous conviction has been proved against him prior to this case and in the circumstances.. the release on probation may be a suitable method to deal with him."

Ahmad Siddique observed that it was ironical that by placing a restricted construction on the statue the court found probation inapplicable and let the boy loose, unsupervised, on society. A better way of doing the same thing would have been to hold that since life imprisonment was not the only punishment laid down in the Penal Code for robbery, the boy could be released on probation, in which case at least the advantage of supervision would have been available

c) Refusal of Probation in certain cases

The superior courts while emphasizing the importance of probation laws have also expressed

reservations regarding their use in crimes of socio-economic nature.

(a) Cases of Food Adulteration

Beginning with Ishar Dass v. State of Punjab (AIR 1972 SC. 1295) through a few other decisions, the Supreme Court of India expressed itself in favour of the exclusion of the probation laws in food adulteration cases, a policy also recommended by the Indian Law Commission in its Forty-seventh Report.

While in Pakistan in the case of Sarfraz Khan Vs. The State (1985 Cr. L. J. 167) while dealing with the case under Section 5(b) of West Pakistan Pure Food Ordinance (VII of 1960), the Peshawar High Court has not made any such observation but set aside the order of probation on technical ground and remanded the case for retrial.

(b) Offences Punishable with life imprisonment.

Pehshawar High Court re- The State Vs. Fazli Khalique (PLD 1967 Pesh. 105) set aside the order of probation passed by a Magistrate Ist Class to an offender while convicting him under Section 307 PPC and under Section 13(d) of Arms Ordinance holding that the offence under Section 307 PPC was punishable with transportation of life and therefore provision of Section 5 of the Probation Ordinance were not attracted

From the above reported cases it is clear that the observations of the superior courts of both Pakistan and India have curtailed the rights of the offenders to be released on probation unnecessarily on the ground of inexpediency.

It is to be considered by the courts that they should prefer to employ probation technique specially in the

cases of short term imprisonment because short term imprisonment neither fulfills the object of incapacitation nor it effects reformation of the offender.

PREDICTION TABLES

(a) Meaning.

This implies anticipation of the probable result of correctional treatment on a particular offender which requires the individualized study of the variable factors connected with the offenders and therefore, compilation of statistic on post release behaviour of different type of offenders .

The use of latest technology.

The use of modern technology such as computer software, is in use all over the world for monitoring the offenders released on probation and parole so that recidivism be minimized. One of such software is "Back On Track" which is a 97-item multiple choice in-depth assessment instrument, which produces research-

validated risk level scores measuring a juvenile's risk of re-offending while identifying the areas (domains) in which the juvenile is most at risk.

Importance.

Different theories of crime causation allow us to predict various facets of crime. Generally from different variables which are highly co-related to the crime the prediction of crime can be made. For example the police may want to know the group of people who are more likely to commit a crime. Similarly, a Judge or a parole officer may want to predict whether a particular person will commit a crime and if so of what nature, social scientist and law enforcement agency may want to predict whether the crime rate will change. (Crime and Criminology by Rohinton Metha)

ADMINISTRATIVE ATTITUDE

a). Infrastructure provided to theParle and Probation Officers.

In order to appreciate the requirements of application of the relevant laws on probation and Parole it is necessary that we may examine the present overcrowding of the jails all over Pakistan.

As per data available with the Central Jail Staff Training Institute Lahore , there is continuous increase in the jail population not only of the convicts but also of the under trial prisoners, both male and female .where as there is slight increase in the number of jails during the last five years.

In 2003 there were are in all 30 prisons in the province of Punjab including 10 Central prisons, 19 district prisons and one sub-jail. The authorized accommodation in respect of these jails was for 17637

persons but the population as on 31.3.2003 was 49098 which included 29143 male under trial prisoners and 10064 convicted male prisoners. Out of them there were 5503 male condemned prisoners and 24 female condemned prisoners whereas women under trail prisoners were 638 and 248 were convicts. The Juvenile population of under trial Prisoners was 2375 male, 21 female, 421 male convicts and 8 female convicts. Against this on 30. 4. 2008 there are in all 32 prisons in the province . The authorized accommodation in respect of these jails is for 21527 persons but the population was 58223 which included 34118 male under trial prisoners and 9821 convicted male prisoners. Out of them there were 6660 male condemned prisoners and 39 female condemned prisoners whereas women under trail prisoners were 372 and 14 were convicts. The Juvenile population of under trial Prisoners was 1084 male, 03 female.

Similarly in 2003 in Sindh there were in all 16 prisons which include 6 Central Prisons , 8 District Prison and 2 Sub-jails and the authorized accommodation was only for 7786 inmates but the population was 17909 which included 14148 male UTPs and 2032 male convicts, 250 male condemned prisoners and 1 female condemned prisoner, 243 women under trial prisoners and 32 convicts. Similarly there were 537 male juvenile under trial prisoners. Whereas, 18 male juvenile convicts were also there. Where as on 31.04.2008 there were in all 20 prisons and the authorized accommodation was only for 9761 inmates but the population was 19852 which included 14704 male UTPs and 2201 male convicts, 234 male condemned prisoners and 2 female condemned prisoner, 88 women under trial prisoners and 37 convicts. Similarly there were 204 male juvenile under trial prisoners.

In the N.W.F.P. there were in all 21 Jails which include 3 Central Prisons, 7 District Prisons and 11 Sub-Jails in respect of which the authorized accommodation was 7397 persons but the actual population was 9710 which included 5842 male U.T.Ps and 3006 male convicts, 119 male condemned prisoners and 3 female condemned prisoners whereas women under trial prisoner are 303 and convict 95. 537 were the juvenile under trial prisoner and 18 Juvenile convicts were also confined in 2003 where as in 2008 there were in all 22 Jails and the authorized accommodation became 7982 persons but population was 8301 which included 4696 male U.T.Ps and 2595 male convicts, 187 male condemned prisoners and 3 female condemned prisoners whereas women under trial prisoner were 90 and convict81. 245 were the juvenile under trial prisoners

In the province of Baluchistan there were in all 10 prisons, which included 4 central prisons and 6 district prisons and the authorized population was 1845 but the population as on 31.3.2003 was 2495 which included 688 male UTPs and 1470 male convicts, 127 male condemned prisoners, 18 women under trial prisoners, 13 women convicts, 56 juvenile under trial prisoners and 91 juvenile convicts. Where as on 30.4.2008 there was increase of only 1 prison and the total became11 prisons. The authorized population was 1823 but the actual population was 3169 which included 1147 male UTPs and 1200 male convicts, 161 male condemned prisoners, 14 women under trial prisoners, 18 women convicts, 65 juvenile under trial prisoners

In the Northern Areas there were 3 district prisons and the authorized population was 150 against which the actual population was 458 inmates including 314 male

U.T.Ps. and 123 male convicts, 8 condemned male prisoners, 12 women under trial prisoners and one female convict.

The position on 30.4.2008 was that district prisons became 6 with the authorized population 180 against which the actual population was 342 inmates including 299 male U.T.Ps and 39 male convicts, 3 condemned male prisoners, no women under trial prisoners and no female convict.

Similarly, in Azad Kashimri there were 6 prisons including 2 Central Prison and 4 District Prison having authorized population of 325 prisoners but their population as on 31.3.2003 was 2101 including 1592 male U.T.Ps, 423 male convict and 25 male condemned prisoners, 35 women U.T.P, 6 convicts, 6 Juvenile U.T.P.S. and 3 juvenile female convicts against this in 2008 though there were still 6 prisons but authorized

population was increased to 750 prisoners. However, their actual population as on 30.4.2008 was 581 including 338 male U.T.Ps, 175 male convict and 57 male condemned prisoners, 7 women U.T.P, 1 convicts, 2 Juvenile U.T.P.S.

In 2003 the total authorized population of these 86 prisons was 35140 against which there were 81771 prisoners, where as on 30.4.2008 the total authorized population of 97 prisons was increased to 42023 but this increase did not bear results and these jails still remained overcrowded by accommodating 90468 prisoners i.e. more than twice of the authorized population. From this it can be understood that how far the concept of corrections of the convicts in these Jails would be possible when these jails even lack basic facilities such as lavatories, hospitals and even proper place for sleeping of these prisoners.

Seeing the above population it was expected that the directorates of reclamation and probation which are responsible for the probation would be more active in all the provinces but unfortunately the situation is not encouraging.

The success of program of probation is solely dependent on the attitude of the government functionaries towards the law and its application. The negative attitude of the Govt. in this regard is apparent from the infrastructure provided to the organizations involved in the implementation of the law.

Training of the Probation Officers.

The training to the probation and parole officers plays a significant role in the success of these programs. The government of Pakistan, Ministry of Interior has established an institute in Lahore known as "Central Jail Staff Training Institute Lahore" which is responsible to

impart in service training to the probation/Parole officers and staff working in the provincial directorates of reclamation and probation. This institute has also established a research, development and publication (RD & P) Wing for collection, and updating prisons /prisoners probationers /parolee's data from all over the country which is quite useful for all academic purposes and research work.

When enquired from the officials of the Directorate Sindh it was informed that there is no consistent policy of the Provincial Govt. with regard to recruitment and training to the staff of the Directorate. It was also informed that neither the vacancies lying vacant have been filled nor there is any such program. There is dearth of probation officers in the province, specially female probation officers as not a such officer has ever been appointed in the provinces except in Punjab where there is only one such officer. On account of this short coming

no work of probation for female offenders is possible in the three provinces.

As per statement dated 31.12.2007 provided by the Central Jail Staff Training Institute, Lahore there were 1604 juvenile offenders in all the jails of the country including Azad Kashmir and Northern Areas. Out of this there were 1084 male and 3 female juvenile offenders in the jail of Punjab, 204 male juvenile offenders in the jails of Sindh, 245 male Juvenile offenders in NWFP,65 in Baluchistan,1 in Northern Areas and only 2 in Azad Kashmir. No female juvenile offenders is confined any where in Pakistan except in Punjab as mentioned above.

Bottlenecks in the implementation of the provisions of the Probation of Offenders Ordinance 1960 and suggestions for their removal.

(a) Courts.

Although the Probation of Offenders Ordinance was promulgated in the year 1960 but the courts as well as the legal fraternity is still unconscious in respect therereof. The members of the judiciary are therefore required to receive some orientation in this regard and other methods of correction works so that these courts may realize the implication of these provisions. The high courts are therefore required to hold seminars ,workshops from time to time to sensitize all the stakeholders in this regard. Till today the attitude of these courts is by, and large punitive. As indicted above very few judges and the advocates are conscious of these provisions and their importance and therefore they seldom apply the same for the benefits of the offenders and therefore, neither the public is reaping its benefits nor the jail population is being reduced.

In the province of Sindh the probation officers were appointed first time in the year 1995 when the High Court of Sindh drew the attention of the Provincial government in this regard. Since then 3 probation officers are working for the entire province in 21 districts. There is no female probation officer in the province.

The over all position of probationers and parolees all over Pakistan can be viewed in the statement which has been provided above'. This statement shows Table that in Punjab there are in all 7258 offenders on Probation whereas 7 are on parole. In Sindh there are 196 offenders on probation and 99 on parole. In N.W.F.P. 2849 offenders are on probation and 2 on parole whereas in Baluchistan there are 570 offenders on probation and 324 on parole. There are in all 10873 offenders on probation and 432 on parole. Had there been the correct perception

of the laws and their utility, the position would have been different. The over crowding of these jails would not have been so serious as apparent form the above figures.

Probation Officers.

As indicated above the thin strength of the probation officers is one of the major factor in the implementation of these provisions. There is no female probation officer working in the Province of Sindh. The Sindh finance department which was not ready to accept the proposals of the Home Department to create 17 other posts of probation officers as requested in the S.N.E. of 2003-2004 to implement the Chief Executive Directives to enforce the District Government Plan 2000 was ultimately accepted in 2006 and the vacancies were created but the same are still lying vacant on account of lethargic attitude and low priority in respect of the issue

Achievements of the Probation work in Pakistan and India.

(a) Pakistan.

As mentioned above in spite of number of hurdles and bottlenecks in the implementation of Ordinance a substantial work in this field is being performed. Even with very limited resources, the Directorates of Reclamation and Probation in the four provinces are managing significant number of persons released on probation parole and their number is increasing day by day. For example in Punjab only, the total number of offenders placed on probation in the year 1962-63 was 383 which was 767 in 1966-67. In the year 1970-71 this figure was 752 and reached to 1087 in 1975-76, 1275 in 1980-81 and 1514 in 1983-84 and in 2007 this figour was 6994(Source:- Probation and Parole Guide, Directorate of Reclamation and Probation Punjab, 1986). All over the

country on 31.3.2003 there were 7258 persons on probation. Whereas on 31.12.2007 the total no offenders on probation were 7737 which include 6994 in Punjab,190 in Sindh,1545 in NWFP and 8 in Baluchistan. The total no offenders released on parole and their bond still subsist was 92 on 31.12. 2007 including 26 in Punjab, %9 in Sindh, 01 in NWFP and 06 in Baluchistan.

India

The situation in India on the application of the laws on the subject (Probation of Offenders Act 1958) is altogether not different as compared to Pakistan.

As highlighted by Ahmad Siddique in his book "Criminology, problems and perspectives" the scheme has been extended to 182 districts. It will be worthwhile to reproduce the relevant Para of his book as under:-

"The five-year statistics show a slight increase in the number of inquiries received from courts or institutions, etc. and the number of probationers under supervision.

Any other country.

As compared to Pakistan, India and South Asian countries as well as Afghanistan as mentioned in the foregoing chapters, the work of probation is being carried out in other countries such as Japan and USA in its most effective manner being fully community based. In these countries not only government departments are involved in the program of rehabilitation and treatment of offenders but communities' involvement is of vital importance. In Japan the Japanese probation/parole supervision is operated through the cooperation between 1, 000 probation officers and 50, 000 volunteer probation officers. Without the help of volunteers, it would be impossible to supervise about 70,000 parolees/probationers, including juveniles, newly placed under supervision every year. In comparison, the United Kingdom (England and Wales), which does not have volunteer probation officers, has about 8, 000 probation officers (Source: Probation Statistics England and Wales 2002) despite the fact that its population is less than half of Japan.

Similarly, with regard to the work in U.S.A. a report is available on internet on the website of US Department of Justice, Office of the Justice Program, Bureau of Justice Statistics following facts in which the following figures have been provided:

- Nearly 4.7 million adult men and women were on probation or parole at the end of 2001, an increase of almost 113,791 during the year. Similarly at the end of 2006 this number was over five Million which includes approximately 4,237,000 on probation and 798,200 on parole.

- Form 2000 to 2001 the probation and parole population increased 2.5.% less than the 3.1 % average annual growth rate since 1995. The 1.8% growth in the probation and parole population during 2006 — an increase of 87,852 during the year — was slower than the average annual increase, of 2.2% since 1995.

- On December 31, 2001 approximately 3,932,800 adults were under Federal State, or local jurisdiction probation and about 731,100 were on parole,

whereas as mentioned above in 2006 approximately 4,237,000 were on probation and 798,200 on parole.

- Among offenders on probation, slightly more than half (53 percent) had been convicted for committing a felony, 45 percent for a misdemeanor, and 1 percent for the infractions, Seventy-four percent of probationers were being actively supervised at the end of 2001; 11 percent were inactive cases and 10 percent had absconded, whereas at the end of 2006 Among offenders on probation, about half (49 percent) had been convicted for committing a felony, 49% for a misdemeanor, and 2% for other infractions. Nearly three-quarters of probationers were supervised for a non-violent offense, including more than a quarter for drug law violation and a sixth for driving while intoxicated.

Proposals and Suggestions.

Probation and parole is the main means of non-custodial sentencing in our penal system. However as indicated earlier, its use has remained rather poor. Swelling prisoner population, overcrowding and rising cost of maintaining prisons amply reflect the inadequacy of the present warehousing strategy. It is therefore

important to re-align our sentencing policy to increase the ratio of non-custodial sentences to an appropriate level.

The low use of non-custodial sentences seems to result mainly from two problems existing in the current sentencing policy. The first relate to the deficiencies in laws relating to probation and parole[2] while the second relates to hesitation among the judicial officers to resort to non-judicial sentencing. Important legal shortcomings relate to higher discretions of judicial and probationary officers with regard to admission of offenders, cumbersome procedures for accessing services and lack of emphasis on reformation of the released offenders. Hesitation among judicial officers results due to lack of information and training.

Presently, authority for parole related decisions rests with the Home Department. This is not a good arrangement as it comes in conflict with the Department's supervisory role. In addition, other preoccupations of the Department tend to dilute focus on this function. For these reasons it may be appropriate to transfer this function to an independent statutory authority. Further more there should be representation of all the stakeholder in the parole

committees. Strengthening of Probation and Parole Service

It is quite obvious that the efficacy of non-custodial sentences is critically linked to the capacity of probation services which are weak. Major deficiencies in this regard pertain to following areas:

(1) Acute shortage of staff, financial and material resources;
(2) Poor training regimen and professional standards;

(3) Weaknesses in the law and governance arrangements;

(4) Absence of detailed working procedures; and

(5) Poor performance monitoring and evaluation regimen.

Strengthening of probation services will require wider reforms and on sustainable basis. Apart from steady investments, the success of reforms will depend upon

political will and ownership of the reform process at all levels.

Suggestions:-

1. The public at large may be apprised through Seminars, Workshops and Electronic Media about the provisions of the law and the benefits of the same.

2. The provisions of Section 5 with regard to condition that either the offender or his surety must be having a fixed place of abode or regular occupation within the local limits of jurisdiction of the court ordering the probation may be amended to make it more effective keeping in view the fact that in metropolis most of the offenders come from up countries for earning of their livelihood and have no permanent abode or sureties.

3. The condition to call for report from the probation officers may be dispensed with in respect of the areas where the probation officers are not posted, in that case similar report from any revenue officer like Mukhtiarkar can make such requirement, and

therefore such amendment may be made in this regard in the Probation of Offenders Ordinance 1969 and the Rules.

4. The Directorate of Reclamation and Probation may also be established in Northern area and Azad Jammu and Kashmir.

5. Similar provisions may be inserted in Criminal Procedure Code on the pattern of Section 361 in the Indian Criminal Procedure Code 1973t *which requires special reasons to be given by the court for not granting probation under the Code, Probation of Offenders Act, 1958 and the Juvenile Act.*

6. Each High Court should monitor the application of the provisions of the Probation of Offenders Ordinance 1960 in the relevant cases in the subordinate courts and call for the reasons from these courts in which the Ordinance could be invoked but no order was passed.
7. Special refresher courses be conducted for the Judicial Officers all over the country to abreast the provisions so that they may invoke these provisions without hesitation.

8. Female Probation Officer may be appointed in sufficient number in each province in order to give the benefit of the law to the female offenders
9. Voluntary Probation Officers may be appointed to strengthen a bond between an offender and community. For this purpose services of NGOs working in the field can be availed of
10. In service training be made compulsory for the Probation and parole officers and their working be closely monitored.
11. Probation of Offenders Rules be amended to include after care program for the probationers completed their probation

The End.

In the Name of Allah

The Most Gracious, the Most Merciful

Chapter- 1

INTRODUCTION

a. Concept

Crime is the breach of a rule or law for which a punishment may ultimately be prescribed by some governing authority or force. The word *crime* originates from the Latin *crimen* (genitive *criminis*), from the Latin root *cernō* and Greek κρινω = "I judge". Originally it meant "charge (in law), guilt, and accusation."

Crimes are commissions of acts that are publicly proscribed or the omissions of duties that thereby make offenders liable to legal punishment. More colloquially, a crime is any grave offense, particularly against morality, and thus something reprehensible, foolish, or disgraceful. Criminal behavior is in most cases unethical; it has also been subjected to scientific study in Criminology.

b. Reformation

It was not until the late 19th Century did rehabilitation through education and skilled labor becomes the standard goal of prisons. The modern attitude to punishment to an offender is that it is an individualized treatment process and a sure response to every individual events of crime. The question, what the punishment is, cannot be distin-

guished from who is the offender and what is his offending phenomenon. The modern criminologists have a tendency of a macro-approach to study the person and phenomena in an offence situation. They are prone to analyse not only the bio-socio-politico-cultural phenomena but also the psycho-pathological and genetic phenomena of the person.

To answer, therefore, the question why is punishment a necessary evil, Walter C.Recless[1] has summarized the arguments thus: "*Retribution, atonement, deterrence, protection and reformation, rehabilitation and treatment are the justifications of punishment to which the public subscribes, independent of the efficacy of punishment itself.*"[1] Crime is deviation from a social norm. There are various factors responsible for such deviation.

1.W.C.Recless, *The Crime Problem*.p536.

Criminologists have identified many of these reasons for such deviation to be bio-psycho-genetic or eco-socio-cultural.

This is a desperate condition which sociologists, criminologists, genetical scientists as well as reformists are all concerned with. Society does not have at the present time any other answer to this norm variance expecting punishing the man who causes the variance. While explaining the efficacy of punishment holding social control functions of punishment include crime prevention that sustains the moral of the conformist and the rehabilitation of the offenders. Jackson Toby,[2] however, comments:

"*Whether punishment is or is not necessary rests ultimately on the following empirical questions:-*

(I) he extent to which identification with the victim occurs,

2 Jacson Toby,"Is Punishment Necessary",Journal of Criminal Law, Criminology and Police Setence,Vol.55,No,III,pp336-337

(II) the extent to which non-conformity is prevented by the anticipation of punishment,

(III) What the consequences are for the morale of conformists of punishing the deviant or of treating his imputed pathology, and

(IV) compatibility between punishment and rehabilitation".

It is heartening to mention here the impact of tortuous punishment on animal behavior experimented upon by James B. Apple[3] which is known as Apple's Thesis, that states "*While punishment may suppress behavior, it can by itself, have no therapeutic or beneficial consequences because it ordinarily neither permanently eliminates nor radically alters the disposition to commit the punished response.*" The theme of the above discussion, therefore, is that the present course of punishment has only a very limited purpose. While the experimental psychologists like Apple have established that there is some very physicals short limited response of punishment for a neither socials

3. James B Apple,News letter of American Society of Criminology,Vol.II, No.I.p 1

nor deviation, it does not have a lasting impact on the deviant.

Naturally the fear of punishment as an a priori condition to not causing crime can substantially be questioned through it may have a very limited deterrent effect. On the other hand, punishment does not have a permanent approach of either delinking the phenomenological conditions of crime with the criminal or treating the psycho-genetic aberrations to decondition the person concerned in the trigger operative socio-cultural and/or politico-economic situation. While theoretical jurists have explained the very limited scope of punishment, it possesses many other ecological, social, economic and rehabilitative problems.

Legal Traditions.

In some legal traditions, there is a distinction between *crimes* and *torts.* The former are offenses against the state or society that are enforced by agents of the state. The latter are offenses against specific citizens, which the machinery of the state will enforce only if victims pursue their grievances in the form of a civil suit. The boundary between these categories is fluid, as discussed below with respect to homicide's historical transition from tort to crime.

Process of Criminality and Punishment

About the inevitability of criminality in all societies the famous criminologist, Emile Durkheim [4] in his book "" has described as under:-

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4 Emile Durkheim "Rules of Sociological Method (1950) p.65

> *"There is no society which is not confronted with the problem of criminality. Its form changes: the acts thus characterize are not the same everywhere; but, everywhere; and always, there have been men who have behaved in such a way as to draw upon themselves the Penal repression. It is to affirm that it is a factor in public health, an integral part of all healthy societies".*

What qualifies as crime in both its technical and informal meanings is cross-culturally variable, because laws and norms are cross-culturally variable. Premarital sex, profanity, abortion, political dissent, alcohol use, homosexuality, littering, and remaining standing in the presence of the king are all crimes in some societies but not in others.

Since beginning of civilization the criminals have been dealt in different ways. Initially they were treated like animals and they were used to undergo most hardened labour as their punishments with the view that they are not the species who can be refined by inflicting light punishment, Torture, mutilation of limbs and outlawry were the common modes of punishment. For most of history, imprisoning has not been a punishment in itself, but rather a way to lock up criminals until corporal or capital punishment. There were prisons used for detention in Jerusalem in Old Testament times. Dungeons were used to hold prisoners; those who were not killed or left to die there often became galley slaves or faced penal transportations. In other cases debtors were often thrown into debtor's prisons, until they paid their jailers enough money in exchange for a limited

degree of freedom. Only in the 19th century did prisons as we know them today become humdrum. It was till the end of 18th century, Cellars, Gate houses, which were used to serve as detention houses were kept in extremely inhuman conditions. Criminals guilty of serious as well as petty offences, debtors and insane persons were used to be put together in those detention houses. They were used to be kept without distinction of their sex. All sort of crimes were common in these jails and there was no concept of humanity therein. These gaols were not maintained by the State and private parties used to conduct them on commercial lines. John Howard (1726-1790) [5] records "Many of these prisons were privately owned The Duke of Portland owned Chesterfield Gaol which consisted of one

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5. John Howard: State of Prisons (1780 ED) pp300,371

room with a cellar beneath and he received a rent of 18 guineas a year from the keeper. The Duke of Leeds got £ 24 a year from Halifax Gaol and Bishop of Durham owned the County Gaol at Durham", John Howard: State of Prisons(1780 ED) pp 300,371 as quoted by A.S Raj [6] in his paper "The Early History of Modern Prison System" published in his book "Administration of Criminal Justice, The Correctional Services, Vol.2, page 11.

Inmates used to be charged for the accommodation even for the chains used on their bodies and of course for supply meals, liquor and women. In the words of Lionel W. Fox,[7] "

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6 "Administration of Criminal Justice, The Correctional Services,Vol.2, page 11

7.Lionel W. Fox 6, The English Prison and Borstal System (1952)

The gaols were dens of lechery, debauchery, moral corruption and pestilence".

The traditional idea of social defence was the protection of society by way of repressive punishment. For centuries, it was believed that crime could be controlled by inflicting sever punishment on the offender.

Recent development in the field of psychology, sociology, criminology and on account of later developments in penal theories have opened up new vistas of knowledge in human behavior.

It has now widely been recognized that imprisonment is not the best remedy to deal with crime as a societal issue. In addition, there has also been a significant shift in the understanding of prisoners' status. Rather than viewing them as plain criminals,

they are recognized as persons placed under the lawful custody of the state which is morally and legally responsible for their well being and reform. Under this paradigm, correctional and rehabilitation services become the most dominant function of any prison. On account of the shift towards the process of criminality i.e. opposed to the individualistic approaches, which focus attention on biological, mental and other characteristics of the offender but towards sociological approach which seeks to explain the phenomenon of criminal behaviour with reference to factor outside the personality of the delinquent. These approaches are called environmental approaches i.e. the behaviour of the criminal from the point of view of the sociological interactions.

One of the angles of these approaches is to study the crimes and the criminals with reference to society i.e. to find the causative factors of the crime

in the institutions of society like family relationships, educational institution, economic relationships, organized religion and means of mass communication

Rehabilitation

Meta-analysis of previous studies shows that prison sentences do not reduce future offenses, when compared to non-residential sanctions.[8] This meta-analysis of one hundred separate studies found that post-release offenses were around 7% higher after imprisonment compared with non-residential sanctions, at statistically significant levels. Another meta-analysis of 101 separate tests of the impact of prison on crime found a 3% increase in offending after imprisonment.[9]

8.Smith et al, 2002

9.Andrews and Bonta, 2003

Longer periods of time in prison make outcomes worse, not better; offending increases by around 3% as prison sentences increase in length.[10]

Effective rehabilitation programs reduce the likelihood of re-offense and recidivism.[11] Effective programs are characterized by three things: first, they provide more hours for people with known offense risk factors (the Risk Principle); secondly, they address problems and needs that have a proven causal link to offending (the Needs Principle); and thirdly, they use cognitive-behavioural approaches (the Responsivity Principle). Providing rehabilitation to people at lower risk of reoffending results in a 3% reduction in reoffending, while

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10.Smith et al, 2002

11Andrews and Bonta, 2003

providing rehabilitation to people with a high risk of reoffending is three times as effective, resulting in a 10% reduction in subsequent offending.[12] Risk factors for reoffending are: age at first offense, number of prior offenses, level of family and personal problems in childhood and other historical factors, along with level of current needs related to offending. Those individuals who had many personal and family problems in childhood (particularly 19 or more), started offending before puberty, and have committed multiple priors are more likely to reoffend in future, according to longitudinal studies internationally. [13]

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12 Andrews and Bonta, 2003 .13. e.g.Moffit T E, Caspi A, Harrington H and Milne B J (2002) Males on the life-course persistent and adolescence-limited pathways: Follow-up at age 26, Development and Psychopathology, 14: 179 - 207

In support of the Needs Principle: Programs that specifically target criminogenic needs (causal needs and problems), see a 19% reduction in reoffending.[14]

In support of the Responsivity Principle: There is a 23% reduction in reoffending after participating in programs that use cognitive-behavioural methods to bring about changes in behaviour, thinking, and relationships.[15]

When all three of these principles are effectively applied, the impact on offending is a 26-32% reduction.[16][17] This is in comparison to a 3-7% increase in offending that is found with imprisonment.

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14 Andrews and Bonta, 2003 15. Andrews and Bonta, 2003
16. Andrews and Bonta, 2003 17. Andrews et al, 1990

Residential approaches—whether in prison or some other live-in option—tend to be less effective than non-residential approaches. These researchers found that effective programs delivered in the community were followed by a 35% reduction in reoffending, whereas effective programs delivered in residential settings (such as prisons and halfway houses) were followed by a 17% reduction in reoffending. One very likely reason for this is that for teens and adults, mixing with antisocial peers increases the risk of offending. In prison or residences inmates spend a great deal of time with other people immersed in criminal pursuits and beliefs, whereas in community-based programs there is more opportunity to mix with people involved in constructive, law-abiding activities. Antisocial peers in prisons and residences can form a very powerful

pressure group, subtly and not so subtly influencing the behavior of other inmates.

As of 2006, it is estimated that at least 9.25 million people are currently imprisoned worldwide[18] Prisons, whereas only in Pakistan, including Azad Jammu and Kashmir the total nom of jail population, as on 30.4.2008 was 90468 in its 97 prisons. It is believed that this number is likely to be much higher, in view of general under-reporting and a lack of data from various countries, especially authoritarian regimes. [19]

Jail population in different countries of the world

In absolute terms, the United States currently has the largest inmate population in the world, with more than 2½ million [19] or more than one in a hundred adults [20] in prison and jails.

18.Walmsley, Roy (October 2006). "World Prison Population List (Seventh Edition)".

19 Harrison, Paige M., Allen J. Beck (June 2006). "Prison and Jail Inmates at Midyear 2005". Bureau of Justice Statistics.

20. One in100: Behind Bars in America 2008". Pew Charitable Trusts (2008-02-28).

Although the United States represents less than 5% of the world's population, over 25% of the people incarcerated around the world are housed in the American prison system. Pulitzer Prize winning author Joseph T. Hallinan wrote in his book *Going Up the River: Travels in a Prison Nation*, "so common is the prison experience that the federal government predicts one in eleven men will be incarcerated in his lifetime, one in four if he is black." In 2002, both Russia and China also had prison populations in excess of 1 million. [21] By October 2006, the Russian prison population declined to 869,814 which translated into 611 prisoners per 100,000 population.

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21. Prison population statistics".

As a percentage of total population, the United States also has the largest imprisoned population, with 739 people per 100,000 serving time, awaiting trial or otherwise detained. [22]

In March 2007, the United Kingdom had 80,000 inmates (up from 73,000 in 2003 and 44,000 in 1985) in its facilities, one of the highest rates among the western members of the European Union (EU) (a record formerly held by Portugal). The highest imprisonment rates among the larger EU members include that of Poland, which in August 2007 had about 90,000 inmates, i.e. 234 prisoners per 100,000 inhabitants,[23] while the highest rates are in the Baltic states Estonia, Latvia and Lithuania with estimated rates of 240, 292 and 333 respectively in 2006. [17]

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22 World Prison Population List (Seventh Edition)".

23. "Statistics - August 2007" (pdf) (in Polish). Prison Service, Poland (Służba Więzienna) (August 2007).

The high proportion of prisoners in some developed countries is from various causes, but the attitude towards drug-taking plays a considerable part. In undeveloped countries, rates of incarceration are often lower, though this is not a rule. In general, such societies have less goods to steal and a more community based social system, with less judicial law-enforcement. Also their economies may not support the high cost of incarceration.

Prison population per 100,000 inhabitants[13]

...ited States of America	Russian Federation	New Zealand	Australia	United Kingdom	Turkey	Canada	Germany	India	Italy	France	Vietnam	Sweden	Denmark	Japan	Iceland
756[1]	611	186	126	148	91	107	95	22	104	85	105	82	77	62	40

Reforms in Penal approach

On account of therapeutic approach towards the process of criminality reforms were brought about in prison system in England, USA and other

Western countries and educated societies. Various techniques of individualized actions based on the idea that all the offenders are not of the same kind were developed. Now it is the view that all the offenders and the crimes they commit are different in verities and they may be poles a part from each other in terms of personal trade, motivation and the likelihood or otherwise of committing crimes in future. On account of this approach some realization that some kind of flexibility is desirable in the various sanctions available to courts, prison administrators and other agencies to deal with the offenders and this desired flexibility has been achieved through different techniques like probation and parole.

N K Chakrabarti in his article "Conceptual and Historical Development of the system of probation

published in his book "Administration Of Criminal Justice" has written that "Etymologically probation means "I prove my worth" derived from the Latin word 'probatus' meaning 'tested' or "proved '. Don M.Gottfredson observed probation as " a procedure by which a convicted person is released by the court without imprisonment, subject to conditions imposed by the Court . Thus probation is part of the decision-making process of judges at the time of sentencing". The legal concept of probation as a criminal justice system is 'Conditional suspension of sentence. It is the modern trend of community-based correctional treatment of offenders.

In U.S.A. the Advisory Committee on Penal Institutions, Probation and Parole to the National Commission of Law Observance and Enforcement, defines probations as follows:-

"Probation is a process of treatment, prescribed by the Court for persons convicted of offences against the law, during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court..... and is subject to supervision by a probation office. Length of the probation period varies, and is determined by the court."[24]

David L. Sills defines probation as a procedure for "release of convicted criminals or adjudicate delinquents on a conditional basis in order to assist them in pursuing a non-criminal life.[25]

Edwin H. Sutherland says, "Probation is a status of a convicted offender during a period of suspension of the sentence by the Court". Sills, David; International Encyclopedia of the Social Science, vol, ii, p 518[26]

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24. Burton, C. William,Legal Thesurus,p.408 25. Sills,David; International Encyclopedia of the Social Science, vol,ii ,p 518 *26.* Sills,David; International Encyclopedia of the Social Science, vol,ii ,p 518

As per Blacks Law Dictionary, Seventh Edition, the definition of probation is as under:-

> "A court imposed criminal sentence that, subject to stated conditions, releases a convicted persons into the community instead of sending the criminal to jail or prison.

Similarly Rohinton Mehta in his book Crime and Criminology has mentioned as under:-

> *"Funk and Wagnalls' standard Desk Dictionary defines probation as a method of Allowing a person convicted of an offence to go at large but usually under the supervision of a probation officer . Probation denotes the conditional release of the offender into the community under supervision. Probation is a judicial act and is given by grace of the State; in its true form it is not a right of the offender. However, today specially in the United States some offences and some categories of offenders (such as first time offender) seem to enjoy a de facto right to probation! ...*

Probation includes all the below mentioned conditions.

1. *No punishment is imposed initially.*
2. *The offender is given a fixed period to redeem himself*
3. *During this period he is placed under the supervision of a probation officer-;*

   (a) In order to keep the court informed of his progress, and

   (b) To help him make the best of the oppor tunity given to him.

4. If he makes good, the origin crime is considered to nullify, but if he fails to do, he may be brought back into court for sentence not only for the fresh offence but also for the original offence."

1. it is quite distinguished from certain To understand the term probation further, it would be suffice to say that analogous techniques like parole which means the release of a prisoner whose term has not expired on condition of sustained lawful behavior that is subject to regular monitoring by an officer of the law for a set period of time.

The word probation although has not been defined anywhere even in any statute, however, an official definition has been provided in the Morrison Committees' report which can be reproduced hereunder: (Criminology, Problems and Perspectives by Ahmad Siddique).

"It is the submission of an offender while at liberty to a specified period of supervision by a social caseworker who is an officer of the court."

Application of the concept of Probation in Pakistan and India.

The scheme of probation although was introduced in the Western countries in the beginning of 19th century but in the countries like Pakistan and India the same is comparatively of recent time. When enactments known as Probation of Offenders Ordinance, 1960 (XLV of 1960) and Probation of Offender Act 1958 were promulgated in Pakistan and India, respectively, offenders were benefited with the same, albeit the same were never applied in the letter and spirit in both the countries by the concerned Governments functionaries for the reasons best known to them.

For example in Pakistan in its province of Sindh the attention of the Provincial Government was drawn towards the implementation of the law

by the Sindh High Court in 1994 through a letter written to the Home Secretary and in consequence thereof three probation officers were appointed for the three divisions of the province, i.e. Karachi, Hyderabad and Sukkur with insufficient supporting staff. Similar sort of approach of the courts of the country is visible from the following figures of the probationers as on 31.12.2007

PROVINCE	NO. OF PERSONS ON PROBATION
Punjab	5994
Sindh	190
NWFP	1545
Balochistan	08
Total:-	**7737**

Source -: Central Jail Staff Training Institute, Lahore, **Ministry of Interior** Government of **Pakistan,**

Contrary to this, the number of convicts who were sentenced and confined in jail were 18100 on 31.12.2007 as per information provided by the Cen-

tral Jail Staff Training Institute, Lahore Ministry of Interior, Government of Pakistan,

The offenders who were legally entitled to get the benefit of the provisions of the law were not benefited in true spirit of the legislation. Only in one jail of Karachi, as per information provided by the jail Superintendent, Central Prison on 5th.June 2008, during the period of about last 4 years 48 convicts who were remanded to the jail could be released on probation by the trial courts.

Although probation is a scheme of social re-education and rehabilitation of offender to avoid indiscriminate incarceration as jailing is not a panacea for all convicts and harmful for some offenders and Jails have become places where crime begets crimes on account of evil and contaminating influences of hardened criminals but no proper attention

Source:- Directorate of Reclamation & Probation Department of Four Provinces of Pakistan.

NAME OF POST	PUNJAB	SINDH	NEFP	BALOCHISTAN
Director	01	01	-	-
Deputy Director	01	-	-	-
Superintendent Certified School Sahiwal	01	-	-	-
Assistant Director	09	03	-	01
Office Superintendent	-	-	-	01
Parole / Probation Officer	69	06	13	04
Ministerial Staff	140	13	28	10
Grand Total:	221	23	42	17

was paid in this regard and the law of probation remained on statute book and became redundant rather.

In all the four provinces of Pakistan the directorates of reclamation and probation are under-staff as indicated in the following table

The above figures show the mindset of the provincial governments towards rehabilitation's scheme of offenders.

Chapter- 2

Development

Origin

Probation and Parole are guided by the concept that offenders, by making use of appropriate rehabilitative services and refraining from illegal activities, can function responsibly, safely, and productively within society.

Probation and Parole are community-based component of the Department of Corrections that supervises adult community residents who have been placed on probation by the courts or on parole by the Parole Board/committee. Probation and Parole are mandated to provide community protection while working toward the rehabilitation of the offender in the community. Probation is often used by

the courts as an alternative to incarceration, and can also provide an additional period of supervision following incarceration. Parole enables some offenders to return to the community under stringent conditions of supervision after serving out a portion of their incarceration.

Both probation and parole are seen as provisional tolerance to remain in the community on the condition that certain requirements are fulfilled. Those requirements include accountability, responsible behavior and willingness to accept and make positive use of appropriate interventions. The objective of supervision is to assist offenders to integrate successfully into their communities as functioning, law-abiding members.

With reference the development of the concept, as indicated in the Ist Chapter, the concept

was introduced very late in Western Countries in the 19th century whereas, in Islam, being a complete code of conduct of life for all time to come, it was in vogue during the early days of holy profit (Peace be upon him). Islam considers human-being the most respected creature on the earth amongst all the creatures of Al-Mighty God. It does not condemn an offender on account of his sin or misdemeanor. It also preaches the concept of tolerance, forgiveness and pardon in the interest of a tolerant integration of the society and for the peaceful life of its members. It put emphasis on *repentance. In* the book written by Dr. Abdul Majeed Auolakh titled as " Criminal Justice, Crime Punishment and Treatment in Islamic Republic of Pakistan." different instances in this re-gard have been quoted which are golden chapters of Islamic History and the same are reproduced hereunder:-

"*(A) Quranic Concept:*

(i) *The Holy Quran gives a clear concept of Probation and Parole.*

(ii) *Surah-e-Anfal (Chapter VIII) reveals the first use of the Islamic concept on Parole by the Holy Prophet (S.A.W.) for the Badar war convicts. The Holy Quran indicates in many verses that to forgive is Divine. Even the murderers can be forgiven, if they show sincere repentance. Not only private persons but the State has been directed by the Holy Quran to forgive the wrongs of those who return back to righteousness. Tauba or repentance is basic in Islam that a full (Chapter IX), relates to the principle of repentance and conditional release of convicts when they offer Tauba, or repent for their crimes.*

iii). *The concept of de-institutionalized treatment has its first and fore-most mention in the human history, More than1400 years ago through the Holy Quran. In Surah YUSUF (Chapter XII) it has been clearly indicated that Hazrat Yusuf (P.B.U.H.) interpreted (2000 B.C.) dreams of his two convicted Prison colleagues. The interpretation of dream of one convict was that he will be hanged but the other was prophesied to be conditionally released on Parole for royal cook-house and was induced as chief butler to Azeez-i-Misr. The Holy Quran also indicates how this ex-convict on Parole was absorbed in royal employment in an after-care rehabilitation service.*

On honorable acquittal from judicial lock-up Hazrat Yusuf (P.B.U.H.) was appointed advisor on food and agriculture and then elected as Azeez-i-Misr although he was an ex-prisoner of the same country. Here we see the king in Prison on selection of a parolee, then on inspection to see the Prison conditions

and then as judge to honorably acquit Hazrat Yusuf (P.B.U.H.).

(B) Practices of the Holy Prophet, Sallallah-Ho-Alaihe-Wa-Sallam:

(i) A dangerous and habitual criminal of worst nature, Sumama Bin Aasal of Yamama region was convicted by the Holy Prophet (S.A.W.) for his serious crimes but was conditionally released on probation. He was reformed by Prophet's (S.A.W.) psychiatric treatment in his Holy Mosque as a best Muslim. He contributed a lot for spread of Islam in the Yamama region and was made its Revenue Assistant.

(ii) For the first time in human history the Holy Prophet (S.A.W.), as Supreme Judge, paroled out 70 worst convicts of the war of Badar. They were dead enemies of Islam who committed serious most crimes including this War. They killed the Prophet's (S.A.W.) most ex-

alted Companions and committed sabotage, subversion, as well as serious conspiracies against the new Islamic Republic of Madina. They were conditionally paroled-out on attachment to each Madinese family to educate ten illiterate immigrant Muslims or ten children of local Muslims of Madina. They themselves became the best Muslims after final release.

(iii) *There are instances in Madina where the Holy Prophet (S.A.W.) noticing some juvenile delinquency ordered treatment of pre-offence anti-social activities of youth' under supervision of " Ashab-e-Suffa" (Prophet's Open University pupils). Community treatment and family attachment of casual, first offenders and juvenile delinquents in the houses of his Companions were also encouraged to achieve real crimelessness.*

(C) Practices of Companions of the Holy Prophet (S.A.W.).

The concepts of Probation and Parole were also applied by Hazrat Abu Bakr and Hazrat Umar in some circumstances to conditionally release offenders sentenced for apostasy, treason and tax evasion. Hazrat Ali was the first Caliph of Islam who innovated regular Prisons on face of the earth in present shape, in the human history. Criminals were brought out of dungeons for remobilization. He also introduced the system of good conduct release of offenders. Same was followed by Hazrat Ameer Moavia. (Durral Mukhtar)

(D) Later Islamic Period:

Khalifa Haroon-ur-Rasheed used, in some form, Probation and Parole releases to give better treatment to his political opponents and convicts. Similar steps were taken by Khalifa Mehdi."

Chapter Three

The Western History of Probation and Parole

In the Western world the concept of probation and parole was introduced on account of reforms in jails. It was thought that in this way not only the population in jails could be reduced but the offenders who are not habitual criminals can be kept away from other criminals and the vigor of the punishment could be reduced by releasing them for certain period in order to see whether they could change their attitude and if there were positive signs in their attitude they could be released before expiry of their sentence.

In Encyclopedia of Crime and Justice by Sanford H. Kadish, Volume 3 the historical background of Probation has been provided as under:-

"Probation grew from a traditional use of the suspended sentence. There is a slight historical link to the practice, originating in the thirteenth century, by which ordained clergy could escape the harsh penalties of English law by "benefit of clergy." This was extended gradually to all who could read (or perhaps memorize) a text, which was the Twenty-first Psalm: a plea of mercy, an acknowledgment of sin, and, it may be noted particularly, a promise of reform. Those who could recite what came to be known as the 'neck verse, "and thereby escape hanging, could be branded on the thumb to prevent them from claiming the benefits again (Barnes and Teeters, pp. 373-375). Following this and related precedents, early American statutes authorized suspension of sentences if the convicted offender demonstrated good behaviour."

IN England and U.S.A. the concept of probation was introduced somewhere in 1830. Professor Ahmad Siddique in his book "Criminology (problems and perspectives)" has traced out the history of probation and wrote as under:-

> *"In England and the U.S.A. the source of probation can be traced to the binding over a person for good behaviour or recognizance for appearance in the court when required. This was done with cooperation of friends or other persons who voluntarily stood sureties for the person who would have otherwise been sent to prison. In Massachusetts in 1830 a woman was prosecuted for committing a theft in a house. She pleaded guilty but upon application of her friends, the court did not sentence her on the condition that her friends are responsible for her appearance when called by the court. In 1831 she was acquitted before the same court of another charge of larceny. Curiously enough she was sentenced on the basis of earlier crime of larceny.*

John Augustus, a boot maker of Boston, and member of society working against alcoholism, is regarded in a way the pioneer of probation work in U.S.A. His shop was situated close to the police court in Boston. Once, while watching the court proceedings as a spectator, he asked the judge to permit him to be a surety for an offender who was to be given imprisonment. He continued providing bail to many offenders afterwards and was careful in selecting his cases on the basis of suitability for probation."

In England the first legislation on the subject was the Act known as the First Offender Act, 1887 of England which can also be termed as the Megna Carta of Probation Method since it introduced the first time the statutory status of the idea. This was repealed by British Probation of Offenders Act of 1907. The last legislation on the subject in England is British Criminal Justice Act 1948 which embodied the probation system and a like method in the high-

est developed form the world has ever known. (Criminology, Problems and Perspectives, by Ahmad Siddique).

The above was the developments outside South East Asia, but the concept of probation was first time introduced in undivided India in 1923 by introducing in the Indian Criminal Procedure Code 1898 the Sections 380, 562-564 which provided the release of offender *on probation of good conduct* but without making the provision for the supervision and can be termed as heart and sole of the probation. These provisions were restricted to the first offender and to some extent with respect to the legal character of the offence. These provisions were providing that an offender can be released on his entering into a bond with or without surety to appear for sentence when called upon during the period

(not exceeding three years) as determined by the court and during the time he was to keep the peace and the good behaviour. For the first time the government announced its intention to introduce probation legislation in 1931 when All India Probation Bill was drafted and circulated to the Provincial Governments for their views but unfortunately the Bill did not see the light of the day on account of political upheaval associated with the independence movement. However, different laws on provincial basis were promulgated in the undivided India like Bengal, Bombay, Madras, U. P. Nagpur and Punjab during the period from 1930 to 1940.

After the partition both the countries i.e. India and Pakistan introduced their legislation on the subject. Professor Ahmad Siddique in his book Criminology (problems and perspectives) has traced out

the history of laws on the subject in the undivided India and thereafter in more detailed manner as under:-

> *"The first legislative piece on probation in India is Section 562 of the Code of Criminal Procedure, 1898. It provided for release on probation of the first offenders in the discretion of the court for minor offences punishable up to two years of imprisonment. The provision was liberalized in 1923 to include offences punishable up to 7 years 'imprisonment both under the Penal Code as well as under special or local laws. In case of young male offenders under the age of 21 years and all female offenders, the benefit extended to all the offences except those punishable with death or life imprisonment. The judicial discretion had to be exercised having regard to the age, character or antecedents of the offender. Release after admonition was also possible in trivial offences i.e. punishable up to two months' imprisonment. Section 360 of the Code of Criminal Procedure of 1973 has identical content on probation but the policy has been reinforced by Section 361 which re-*

quires special reasons to be given by the court for not granting probation under the Code, Probation of Offenders Act, 1958 and the Juvenile Act.

In 1934, the Government of India suggested to the provincial governments to enact probation laws and the same was complied with by quite a few of them. While there was no uniformity of laws among various provinces some of them even did not have any enactment on the subject. The most significant development occurred when the Jail Manual Committee under the stewardship of Dr. Walter Reckless was formed by the Government of India to review the working of jails and make recommendations for reforms. The recommendations of the Committee led to the passing of the Probation of Offenders Act, 1958 by the Central Government which sought to bring about uniformity of probation laws in the country."

With regard to the history of legislation of the Pakistan Probation Offenders Ordinance, 1960 it will be suffice to say that in the late Punjab the sys-

tem was in vogue since 1927 in the shape of the Good Conduct Prisoners Probational Release Act, 1926 and this experiment had given very encouraging and useful results during the period. This system was also brought on West Pakistan basis by the Govt. ever since 1957. But this act played its role only in a very limited shape of offences or offenders. These circumstances, therefore fully warranted that legislation on probation particularly for adults in Pakistan –probation methods comprising in their regular and true form should be implemented. Hence Pakistan Probation Offenders Ordinance, 1960 was promulgated.

© The Position under Pakistani Law.

Pakistan has seven enactments for operation of probation and parole institutions as well as regulations of non-institutional treatment of the young offenders.

i. Good Conduct Prisoners Probational Release Act, 1926

ii. Probation of Offenders Ordinance 1960;

iii. Pakistan Criminal Procedure Code 1898;

iv. Goonda Act, 1960;

v. Punjab Children Ordinance 1983/ Sindh Children Act 1953;

vi. Punjab Young Offenders Ordinance 1983/ Sindh Young Offenders Act 1952;

vii. Juvenile Justice System Ordinance, 2000.

Probation and parole organizations are working in the four province of Pakistan under Probation

of Offenders Ordinance, 1960 and Good Conduct Prisoners Probationer Release Act, 1926, respectively.

Chapter- Four

Aims and Objects of Probation

Rehabilitation of the offender which is the ultimate object of probation, means; *To restore to useful life, as through therapy and education* or *To restore to good condition, operation, or capacity.* The assumption of rehabilitation is that people are not natively criminal and that it is possible to restore a criminal to a useful life, to a life in which they contribute to themselves and to society. Rather than punishing the harm out of a criminal, rehabilitation would seek, by means of education or therapy, to bring a criminal into a more normal state of mind, or into an attitude which would be helpful to society, rather than be harmful to society.

This theory of punishment is based on the notion that punishment is to be inflicted on an offender so as to reform him/her, or rehabilitate them so as to make their re-integration into society easier. Punishments that are in accordance with this theory are community service, probation orders, and any form of punishment which entails any form of guidance and aftercare towards the offender.

This theory is founded on the belief that one cannot inflict a severe punishment of imprisonment and expect the offender to be reformed and to be able to re-integrate into society upon his release. Although the importance of inflicting punishment on those persons who breach the law, so as to maintain social order, is retained, the importance of rehabilitation is also given priority. Humanitarians

have, over the years, supported rehabilitation as an alternative, even for capital punishment.

Rehabilitation theories present however the following deficiencies:

First, there is no sound scientific research to determine how different individuals react to the same rehabilitating methods.

Second, rehabilitation may depend more decisively on the individual psychological background, hence on his particular motives to commit crimes, than on the rehabilitating methods or philosophy.

Third, a rehabilitation program may prove to be too costly and complex to be successfully implemented in most countries.

Finally, rehabilitation must refer to the sociological findings on the socialization and resocialization processes, as change in life-long socially acquired patterns of behavior and values entails a much more complex – and sometime traumatic – change on the individual's structure of character.

The enactment of the laws relating to probation and similar type of technique to deal with non professional criminals are out come of therapeutic approach towards criminal behaviour of the offenders who have committed crime on account of passion or under other compulsion of similar nature and also the realization that the jails are not suitable places for the correction and reclamation of these offenders. Especially after the civil war, the focus shifted to dealing with individual offenders, rather than focusing on the crime that had been committed.

(a) Recommendation of UNESCO (1951)

In 1951 the United Nations Economic and Social Council (UNESCO) made recommendation to all its members' countries to draft laws in respect of the criminals who are not criminals by profession.

These recommendations were carried out by Pakistan in 1960 when the Probation of Offenders Ord. 1960 was passed. However, in India these recommendations were acted upon in 1958 when similar legislation known as Probation of Offenders Act 1958 was passed and at that time, the only piece of Central Legislation reflecting the philosophy of probation was section 562 of the Code of Criminal Procedure which gave discretion to a Criminal Court to release the persons who are convicted of an offence punishable with imprisonment for not more than 7 years on probation of good conduct by entering into a bond with or without surety. The Section also provided that any one convicted of theft, dishonest misappropriation, cheating or any offence under the Penal Code punishable with up to two years of imprisonment could be released after due admonition.

On account of promulgation of Probation of Offenders Ordinance 1960 the Sections 380, 562 to 564 which were concerning with the release of an offender after admonition were deleted vide Section 16 of the Ordinance, *ibid.*

(b) Probation of offenders Ord. 1960.

Background.

The simple primitive method of treatment of crime or criminals was to take as the starting point of a crime that was committed and to limit the social action to catching the criminal and the penalizing him. This was done according to a standardized tariff which made the "punishment fit the crime". The system of imprisonment has originated and developed more or less on the basis of this principle. But

today an advanced community adopts as far as possible methods for the prevention of crime and treatment of offenders other than prison sentences. In the first instance, such a community takes steps to find out and remove the various causes of crimes. Nevertheless, when a crime is committed, the treatment of the offender is directed more to obviating his committing a second offence than to his merely paying retribution for the first. Thus, more attention and importance is given today to the treatment of an offender than to his punishment or to decision as to his guilt. Such a course is not only useful to the offender but also to the society at large. Undue prison sentence has admittedly contributed largely to making a first offender commit further offences and in some cases ultimately, by force of contact, to becoming an habitual criminal. World statistics in this regard show that in 3 out of 5 sen-

tences, after serving prison terms, the prisoners have turned into hardened criminals. Meta-analysis of previous studies shows that prison sentences do not reduce future offenses, when compared to non-residential sanctions. [2] This meta-analysis of one hundred separate studies found that post-release offenses were around 7% higher after imprisonment compared with non-residential sanctions, at statistically significant levels. Another meta-analysis of 101 separate tests of the impact of prison on crime found a 3% increase in offending after imprisonment. [3] Longer periods of time in prison make outcomes worse, not better; offending increases by around 3% as prison sentences increase in length, *ibid.*

Effective rehabilitation programs reduce the likelihood of re-offense and recidivism, *ibid.* Effec-

tive programs are characterized by three things: first, they provide more hours for people with known offense risk factors (the Risk Principle); secondly, they address problems and needs that have a proven causal link to offending (the Needs Principle); and thirdly, they use cognitive-behavioural approaches (the Responsivity Principle). Providing rehabilitation to people at lower risk of reoffending results in a 3% reduction in reoffending, while providing rehabilitation to people with a high risk of reoffending is three times as effective, resulting in a 10% reduction in subsequent offending, *ibid.* Risk factors for reoffending are: age at first offense, number of prior offenses, level of family and personal problems in childhood and other historical factors, along with level of current needs related to offending. Those individuals who had many personal and family problems in childhood (particularly

19 or more), started offending before puberty, and have committed multiple priors are more likely to reoffend in future, according to longitudinal studies internationally, *ibid*

In support of the Needs Principle:

Programs that specifically target criminogenic needs (causal needs and problems), see a 19% reduction in reoffending. *ibid*

In support of the Responsivity Principle:

There is a 23% reduction in reoffending after participating in programs that use cognitive-behavioural. methods to bring about changes in, *ibid,* behaviour, thinking, and relationships When all three of these principles are effectively applied, the impact on offending is a 26-32% reduction, *ibid.* This is in comparison to a 3-7% increase in offending that is found with imprisonment.

Residential approaches—whether in prison or some other live-in option—tend to be less effective than non-residential approaches. *ibid* .These researchers found that effective programs delivered in the community were followed by a 35% reduction in reoffending, whereas effective programs delivered in residential settings (such as prisons and halfway houses) were followed by a 17% reduction in reoffending. One very likely reason for this is that for teens and adults, mixing with antisocial peers increases the risk of offending. In prison or [30] ibid other people immersed in criminal pursuits and beliefs, whereas in community-based programs there is more opportunity to mix with people involved in constructive, law-abiding activities. Antisocial peers in prisons and residences can form a very powerful pressure group, subtly and not so subtly influencing the behavior of other.

Offenders generally fall into three categories. First group, about one-third of the total consists of those who have stumbled into an offence accidentally or incidentally but find themselves on the road to recovery by realizing their fault soon after its commission. The second group almost half of the offenders is, however, the real problem. Driven by temperament, quarrels, over land or water, broken homes, family troubles and other similar disputes, they are those borderline cases which must be treated. These offences in the eye of law may be serious but the moral character and outlook life of the offender are far from " criminal". After the commission of their first offence they can be reclaimed and recovered in a friendly atmosphere and under sympathetic supervision and guidance. It is in dealing with this group that the administration generally shows neglect—for too many of them are sent to

prison without trying other methods of treatment. The prison system should in fact, be the last resort. It is only fit for the third group of offenders in which the incorrigibles, or recidivists and hardened criminals or professionals, who are, generally speaking, were 15% of the total number, come. It would not only be cruel to the offender but also disservice to the Nation to send the offender to prison if he could be dealt with more effectively and usefully by other suitable methods, and the failure to provide such facilities to the deserving offender only tantamount to denial of justice!

The year 1960-61 can, no doubt, be called in the history of criminal administration of Pakistan as a sort of watershed for the development of the measures concerning the prevention of crime and treatment of offenders in the country. Although the

draft of this legislation was prepared several years before, taking into consideration the needs of the country and the developments made in the line aboard. But, unfortunately the credit for the passage of this legislation goes to the then Military Regime and particular to the then President of Pakistan, who evinced a keen interest in the introduction of the Probation Methods by according his assent to the Ordinance for the benefit of the people of this Islamic State. The probation methods as embodied in this Ordinance certainly constitute a bold experiment and a very big step forward towards the progress of the country in the filed of its criminal justice. This also brings Pakistan in line in this behalf with the other advanced countries of the world. In fact, the very way in which a nation views crime and treats its criminals is considered today as one of the tests of its civilization. It may, however, be that one

may not be able to appreciate the importance of this progressive legislation and its far-reaching beneficial character as much as it deserves at the moment, but by passage of time the common man will be able to realize it fully.

The Ordinance is a legislation of great significance inasmuch as it makes available to a Judicial Officer, in case of certain offences, the option to put the law breaker on "good conduct" rather than to send him to prison. This method of dealing with offenders has far reaching implications as it rekindles the spark of goodness in human beings by giving them a chance and by reposing in them trust so that through supervision and care they continue to be a part of the community as normal healthy citizens.

The Ordinance is indeed a landmark in the field of welfare work connected with the rehabilitation of those who break the law.

It embodies the latest effective and salutary measures for the prevention of crime and treatment of offenders. The usefulness of these measures has been acknowledged by modern penologists almost all over the civilized world which were practically little known in Pakistan.

As usually said a wise legislature shows its trust in the discretion of its judiciary by placing in their hands as large a variety of weapons to deal with criminals as possible. And Probation is one of the many weapons which the judiciary may make use of. A skilful judiciary always shapes its strategy by patient and expert enquiry but that strategy must be a redemptive one. The redemptive feature being an intrinsic part of the strategy of probation, if this system is wisely used, it will prove the most

useful and effective weapon in the hands of the judiciary. To grow and develop it, however, requires proper treatment.

Probation pertains to Social Welfare Work and it should be treated as such. As indicated earlier the world Organization of the order of U.NO. has also accepted this work as one of the important aspects of the developments of a rational social criminal policy and accordingly the subject of Probation was included in 1948 by the Social Commission of Economic and Social Council on its work programme in the field of prevention of crime and treatment of offenders.

Probation is particularly useful in the cases of those offenders, who are not yet committed to a life crime.

In this regard it will be worthwhile to reproduce a paragraph from the Handbook of Crime and Punishment Edited by Michael Tonry:

"Anyone who is convicted, as well as many of those arrested, comes into contact with the probation department, and probation officials, operating with a great deal of discretion, dramatically affect most subsequent processing decisions. Their input not only affect the subsequent liberties offenders will enjoy, but also an influence on public safety, since they recommend (within certain legal restraints) which offenders will be released back to their communities, and judges usually accept their sentence recommendations.

Probation officials are involved in decision making long before sentencing, often beginning from the point of a crime being noted by the police. They usually perform the personal investigation to determine whether a defendant will be re-

leased on his own recognizance or bail. Probation reports are the primary source of information the court uses to determine which cases will be deferred from formal prosecution."

Today in Pakistan over 70% of the total population in Jails consist of those raw and chance offenders in whose cases the term of sentence ranges from one month or less to one year. Generally these cases are of those persons, who have landed themselves behind the bars as a result of a fight over land or water or due to some family feuds or disputes. And most of them are devoid of any criminal characteristic— their contamination with confirmed criminals and professionals in Jail only harms them rather than doing any good to them. The great value of probation methods, therefore lies in the fact that it not only helps to separate the raw

and first offenders from the hardened ones in an institutional treatment like that of Jails but also goes a long way in their amelioration and rehabilitation by providing them a healthier environment and a wholesome treatment conducted in the light of a humane approach through the probation methods. It is admitted by the authorities on penal reforms that the very act of indiscriminate jailing of a chance and first offenders has contributed largely to the fearful rise of crime in the world today. the Pakistan Probation Offenders Ordinance, only aims at the treatment of such raw and chance offenders; and can also greatly help in bringing low the curve line of crime in our country.

If the work under the Ordinance is implemented in its letter and spirit, its effect in keeping

out of jail persons, who are still serving short sentences as first offenders for petty offences, will be felt and chances of contamination in jail through contact with hardened criminal will be greatly minimized.

Probation of Offender Ordinance, 1960.

The Ordinance XLV of 1960 was promulgated on 1.11.1960 with the aim and object to provide for the release on probation on offender and for the matters incidental thereto in respect of territorial jurisdiction of whole of Pakistan. The same was required to come into force on such date or dates as the Federal Govt. may, by notification in the official gazette appoint and different dates may be approved for different areas. The Ordinance was made applicable in the former West Pakistan with effect from 1st July 1961 vide Gazette of Pakistan 1961 Ext. Page 967 whereas in the whole of tribal areas of Pakistan by the Baluchistan Regulation –II of 1972 as per its Section 2.

For an over view it would be advantageous to reproduce the provisions of the Ordinance as

amended up to date vide Ordinance No. LXVI/2002 dated 5.2.2002

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

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

Short title, extent and commencement:

1. (1) This Ordinance may be called the Probation of Offender Ordinance, 1960.

2. It extends to the whole of Pakistan.

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

Definitions:

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

(a) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);

(b) "Court" means a Court empowered to exercise powers under this Ordinance;

(c) "officer-in-charge" means the head of Probation Department;

(d) "Probation officer: means a person appointed as such under Section 12;

(e) "Probation order" means an order made under Section 5;

(f) "Probation Department" means the department responsible for the administration of this Ordinance; and

(g) all other words and expressions used but not defined in this Ordinance and defined in the Code shall have the same meaning as assigned to them in the Code.

Courts empowered under the Ordinance:

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

(a) a High Court

(b) a Court of Sessions

(c) -------- and

(d) Omitted by the Ordinance No. LXVI/2002 dated 5.10.2002

(e) a Magistrate of the Ist Class; and

(f) any other Magistrate specially empowered in this behalf.

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

(3) Where any offender is convicted by a Magistrate not empowered to exercise powers under this Ordinance, and such Magistrate is of opinion that the powers conferred by Section 4 or Section 5

should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the Ist Class forwarding the offender to him, or taking bail for appearance before him, and such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and if, he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Conditional, discharges etc.:

4:- (1) Where a Court by which a person, not proved to have been previously convicted, is convicted, of an offence not punishable with imprison-

ment for not more than two years is of opinion, having regard to;

(a) the age, character, antecedents or physical or mental condition of the offender; and

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

2. An order discharging a person subject to such condition as aforesaid is hereafter in this Ordinance referred to as "an order for conditional discharge',

and the period specified in any such order as 'the period of conditional discharge.

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

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

Power of Court to make a probation order in certain cases:

5:- (1) Where a Court by which—

(a) any male person is convicted of an offence not being an offence under Chapter VI or Chapter VII of the Pakistan Penal Code (Act XIV of 1860) or under Section 216-A, 328, 382, 386, 387, 388, 389, 392, 393, 397, 398, 399, 401, 402, 455 or 458 of that Code, or an offence punishable with death or imprisonment for life, or

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

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

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

2. While making a probation order, the Court may also direct that the bond shall contain such

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

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

Order for payment of costs and compensation:

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

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

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

3. The amount ordered to be paid under subsection (1) may be recovered in accordance with the provisions of Sections 386 and 387 of the Code.

Failure to observe conditions of the bond.

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

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

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

(a) Sentence him for the original offence, or

(b) without prejudice to the continuance in force of the bond, impose upon him a fine not exceeding one thousands rupees:-

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

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

Powers of Court in appeal and revision:

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

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

Provisions of Code to apply sureties and bond:

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

Variation of conditions of probation.

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

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

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

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

Effect of discharge and probation:

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

Provided that where an offender, being nct less than eighteen years of age at the time of his conviction of an offence for which an order discharging him conditionally or placing him on probation is made, is subsequently sentenced under this Ordinance for that offence, the provisions of this subsection shall cease to apply to the conviction.

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

(3) The forgoing provisions of this section shall not affect:-

(a) any right of any such offender to appeal against his conviction or to rely thereon in bar of any subsequent proceedings for the same offence;

(b) the revesting or restoration of any property in consequence of the conviction of any such offender

Appointment of Probation Officers.

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

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

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

Duties of a probation officer:

13- A probation officer shall, subject to the rules made under this Ordinance—

(a) visit or receive visits from the offender at such reasonable intervals as may be specified in the probation order or subject thereto, as the Officer-in-charge may think fit.

(b) see that the offender observes the conditions of the bond executed under Section 5.

© report to the Officer-in-charge as to the behavior of the offender

(d) advise, assist and befriend the offender, and when necessary endeavour to find him suitable employment;

and

(e) perform any other duty which may be prescribed by the rules made under this Ordinance.

Power to make rules:

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

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

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

Powers to Provincial Government:

15. (Omitted by A.O, 1964, Art. 2nd Sch.

16. [Repeal of Sections 380 and 562- 564 of the Code] Omitted by Federal Laws Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and II Sch.

Provisions of this Ordinance, to be in addition to and not in derogation of certain laws:

17- The provisions of this Ordinance shall be in addition to and not in derogation of Reformatory Schools, Act, 1897 (VIII of 1897) the Punjab Borstal Act, 1926 (Punjab Children Ordinance) 1983 and Punjab Youthful Offenders Ordinance, 1983 and the Sindh Children Act, 1955 (Sindh Act, XII of 1955).

On 1st July 1961 the rules which were to be framed to act upon the Ordinance as required under Section 15 of the Ordinance, ibid, were framed.

Pakistan Probation Of Offenders Rules, 1961.

FROM THE GAZETTE OF WEST PAKISTAN (EX-TRAORDINARY) LAHORE, SATURDAY, JULY I.

HOMEDEPARTMENT, The 1st July, 1961

NOTIFICATION

No.5 (3)-H (SOIID-M/61.-In exercise of the powers conferred I)y section 14, read section 15 of the Pro-bation of Offenders Ordinance,] 960 (XL V of 1960), the Governor of West Pakistan is pleased to make the following rules, namely-

THE WEST PAKISTAN PROBATION OF OFEND-ERS RULES, 1961

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

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

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

(a) "Assistant Director" means Assistant Director, Reclamation and Probation, West Pakistan.

(b) "Case Committee" means a Case Committee constituted (for a district) under rules 16.

(c) "Form" means a Form appended to these rules.

(d) "Ordinance means the Probation of Offenders Ordinance. 1960.

(e) "Probation" means a person in respect of whom a probation order has been made by a Court under section 5.

(f) "Probation area" means the area in the charge of an Assistant Director.

(g) "Probation Department" means the Department of ReGlant' tion and Probation, West Pakistan.

(h) "Province" means the Province of \\'est Pakistan.

(i) "Section" means a section of the Ordinance.

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

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

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

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

(3) Subject to any general or special orders of the Officer-in Charge, an Assistant Director Shall:-

(a) supervise, inspect and exercise general control over the work of the Probation Officers under him;

(b) be responsible for the organization of the probation work in the area under his charge; and

(c) advise the Case Committee for the area under

"his charge upon matters relating to probation work.

5. (1) The Officer-in-Charge may appoint as many Chief Probation Officers as the number of such posts are sanctioned by Government.

(2) Chief Probation Officer shall be in charge of a district or such other area as the Officer-in-Charge may specify.

(3) A Chief Probation Officer shall-

(a) be responsible for the organization and supervision of the probation work in the area under his charge, and the distribution of such work among~ the Probation Officers under him;

(b) guide and advise the Probation Officers under him in the performance of their duties; and

(c) perform such duties of a Probation Officer as "may be assigned to him by the Officer-in-Charge or the Assistant Director to whom he is subordinate.

6. Probation. Officers shall be appointed by the Officer-in-Charge and shall exercise their powers and perform duties as such officers within such local area or for such class or classes of cases of probationers as may be directed by the Officer-in-Charge.

7. No person shall be appointed as a probation officer unless-

(a) he is at the time of his first appointment as a Probation Officer, more than twenty-three years and less than thirty-five years of age;

(b) he is at least a graduate of a recognised University;

(c) he possesses good character and is in the opinion of the Officer-in-Charge competent by his personality education and training to influence for the good probationers placed under supervision: and

(d) he has a working knowledge or practical experience of Social work;

8. The terms and conditions of service of Probation Of11cers and Chief Probation Officers, including their emoluments and allowances and the taking of disciplinary action against them shall be regulated by' the appropriate rules framed in that behalf by Government.

9. No Officer or employee of the Jail or Police Department' shall be appointed as a Probation Officer or a Chief Probation Officer.

10. Duties of probation officer-A probation officer shall-

(a) explain to every probationer placed under his charge, the terms and conditions of the probation order made in respect of such probationer and if so deemed necessary, by warnings endeavours to ensure their observance by the probationer;

(b) in the first two months of probation of every probationer under his charge, meet the probationer at least once in a fortnight, and thereafter subject to the provisions of the probation order and any general or special orders of the Officer in-Charge, keep in close touch with the probationer, meet, him frequently make enquiries into his conduct mode of life and environments, and wherever practicable visit his home from' time to time:

(c) if any probationer under his charge be out of them out of employment Endeavour to find suitable employment for him and assist be friend advise and strive to improve his conduct and general conditions of living:

(d) encourage every probationer placed under his supervision to make use of any recognised agency. Statutory or voluntary which might contribute to-

wards his welfare and general wellbeing and to take advantage of the social recreational and educational facilities which -such agencies might provide:

(e) Where a probationer under his supervision. Who has executed a bond with sureties under section 5 is found to have committed any breach of the terms of his bond or to have otherwise misconducted himself to bring: such breach or misconduct to the notice of his sureties: -

(f) maintain the books and registers and submit reports prescribed under these rules; and

(g) subject to the provisions of these rules carry out the instructions of the court in regard to and probationer placed by the Court under his supervision.

11 No Uniform or distinctive badge shall be worn by a Probation Officer.

12. (1) The Officer-in-Charge or such other officer of the Probation Department as the Office~-in-Charge may authorized in this behalf shall forward to every District Magistrate the name, address and headquarters of every Probation Officer appointed for in his District and shall without delay inform the District

Magistrate when any person ceases or is about to cease to be a Probation Officer within the District. Or proceeds on leave other than casual leave,

(2) The District Magistrate shall communicate to every Court in his District having jurisdiction under the Ordinance the information received by him under sub-rule (I),

13. A Probation Officer may with the permission of the appropriate Court inspect any j4dicial record in which any probationer under his charge was a party, and take notes from such record but shall in no case communicate the contents thereof to any person, save with the permission of that Court or the Officer-in-Charge.

14. (I) Every Probation Officer shall maintain-

(a) a Register of Probationers in Form A. which shall be kept in his office under his custody;

(b) a diary on yearly basis. in which shall be recorded from day to day such I1l'ltters as his visits [Q and meeting with. the probationers under his supervision and their sureties. the work done by him for the betterment of the probationers and his' observations· with regard to their conduct :and. employ-

ment:

(c) a book in which separate pages shall be allotted to each probatiol1er under his supervision wherein he shall from time to time make entries regarding the progress or otherwise made by the probationers under his charge: and

(d) Such other record as the Government or officer-in-Charge may direct.

(2) The records required to be maintained under this rule shall be preserved for a period of ten years from the date of the last entry borne thereon.

(3) Entries in the registers prescribed under clause (a) of sub-rule (1) shall be initialed by the presiding officer of the Court passing the probation order:

Provided that where the Court passing the probation order is the High Court, it may direct the District Magistrate to initial such entries.

(4) The diary and the book prescribed under clause (b) and' (c) of sub-rule 0) shall be checked and initialed at least once a month by the Assistant Director.

(5) The diary to be maintained under clause (b) of sub-rule 0) shall be closed on the 31st of December and shall be deposited by the 15th January of the following year as a confidential record with such ofl1cer of the Probation Department as the Officer-in-Charge may direct.

(6) The Registers of Probations and the diaries and books prescribed under clauses (a) and (c) of sub-rule (I) shall, when completed, be deposited in the manner prescribed in sub-rule (5)

15. If a Probation Officer fails to perform the functions and duties imposed on him by or under these rules or the Ordinance the Deputy Commissioner or the Court under whol11 such Probation Officer is working, may report the fact to the Officer-in-Charge, who shall take such action in the matter as he may deem it and as he may be authorised.

16. Case Committees, their constitution and procedure-(I) There shall be constituted for each District in the Province a Case Committee, with the following membership-

(i) the District Magistrate;

(ii) all First Class Magistrates 111 the District; and

(iii) the Assistant Director-in-charge of the District such other officer of the Probation Department not below the rank of a Chief Probation Officer as the Assistant Director may nominate in this behalf.

(2) The District Magistrate shall be the Chairman of the Case Committee.

(3) The Assistant Director or the Oll1cer of the Probation Department nominated by him under the provisions of sub-rule (1) as the case may be, shall be the" Secretary of the Case Committee.

(4) A Case Committee shall meet at least once in every three months at the head quarters of the District or at such other place as may be fixed by the Chairman.

(5) The .Chairman shall preside at the meeting of the Case Committee and in the absence of the Chairman, the senior most Magistrate present at the meeting shall preside at the meeting. -

(6) The quorum necessary for the transaction of business at a meeting of a Case Committee comprising less than six members shall be two and for a Committee comprising more than six members sha1l be two third of this total number.

(7) The Secretary shall record the minutes of the proceedings of the meeting of the Case Committee which shall be singed by person presiding at the meeting and shall be submitted for approval at the following meeting and shall be submitted for approval at the following meeting of the Committee.

(8) Probation Officer dealing with cases to be considered by a Case Committee may be required by the Committee to attend its meeting, at which such cases are to be considered and if so required they shall attend such meetings and give such information to the Committee as the Committee may require.

(9) Subject to the provisions of these rule a Case Committee shall regulate its own procedure.

17. Case Committees shal1-

(i) function as advisory bodies in respect of the case work within their respective District. and shall exercise general guidance over such work;

(ii) receive and consider written or oral report from the probation Officers for or in the areas within their jurisdiction concerning; probationers and discuss with such Probation officer the progress or the pro-

bationers placed under the supervision of such officers; and

(iii) make such recommendations or communications concerning any probationers residing in the area under their jurisdiction or require a probation Officer to make in respect of any such probationer such communication to the Court which passed the probation order in respect of such probationer a. the Case Committee thinks necessary.

18) Where' a Court proposes to make a probation order. it shall require a Probation Officer with such period as the Court may fix to make preliminary enquiries as regard the character, antecedents home' surroundings and other matters of a like nature of the offender: and the court may postpone the passing of the .finial orders in the case until the probation Officer has submitted his report.

(2) A Court requiring a Probation Officer to make enquiries under sub-rule (1) may of its own motion or in the request of the Probation officer, extend the time fixed by it for submission of the report by the Probation Officer.

(19) The bound to be executed under section 4 or section 5 shall be in the Form B or Form C the case may be.

(20) The probation order under section 5 shall be in Form D.

21. (I) A Court making a probation order sha1l, without payment of costs, furnish to the Officer-in-Charge, the Probation Officer, the person in respect of whom the order is made and his sureties, if any, a copy of such order and shall also furnish to the Probation Officer a copy of the bond executed by the probationer and his sureties if any and copies of such proceedings relating to the probationer as the Court may deem fit.

(2) The conditions to be specified in probation order or a bond executed under section 5, shall generally be such as will tend to the moral and social progress and development of the probationer.

22. (I) Where a Court decides to place an offender on probation under section 5 it shall entrust the offender to the charge of the Probation Ofl1cer.

(2) If the Probation Officer be not present in the Court when an order of probation is made by the

Court, the Court shall issue a notice to Probation Officer to attend the Court on a specified date and take charge of the offender, and in the meanwhile, the Court may either direct the' offender to be kept in custody or may grant him bail, with or without sureties and in such amount as the Court, in the circumstances of the case, may deem fit.

(3) No female offender shall be placed under the supervision of a male Probation Officer.

23. A Court passing a Probation order may require the Probation Officer to submit reports to it from time to time on the conduct and mode of life of the Probationer and the Probation Officer shall comply with such order.

24. A Probation Officer shall, without unnecessary delay, report to his immediate superior, any failure on the part of a probationer placed under his supervision, to observe any conditions of the bond executed by such probationer, and such superior officer shall, after making such personal enquiries into the matter, as the circumstances of the case may require, forward the report of the Probation Officer with his remarks to the Court making the probation order

25. (I) Before the 31st of March of every year,' the District Magistrate shall forward to the Officer-in-Charge a report for the proceeding calendar year on the working of the Ordinance in his District.

(2) The report shall make special mention of the conduct in general of the probationers residing in the District; and the work in general of the Probation Officer appointed for or in the District.

26. Before the 1st of May of every year, the Officer-in-Charge shall submit to Government a report for the previous calendar) car on the working of the Ordinance in the Province.

By order of the Governor of West Pakistan

A. H. SADIQUE

Deputy Secretary

to Government, West Pakistan Home Department

FORM B

BOND BY A PROBATIONER TO KEEP THE PEACE AND TO BE OF GOOD BEHAVIOUR

(See RULE 19 THE WEST PAKISTAN PROBATION OP OFFENDERS RULES, 1961)

WHEREAS I (names--------- son of --------Caste ---------- religion-·-----

inhabitant of place ----------District -----have been ordered to be pleased under section 4 of the Probation of Offenders Ordinance, 1960, by the Court.----------'on the condition of my entering into a bond to appear and receive sentence when called upon during a period of--- - --------hereinafter referred to as the said period;

I hereby bind my self-

(1) to appear and receive sentence when called upon to do so during the said period;

(2) not to commit any breach of the peace Or do any act that may occasion a breach of the peace: and

(3) to be of good behaviour in all respects during the said period.

In case of my making default therein, 1 hereby bind my self to forfeit to the Government of West Pakistan the sum of rupees -.-----Dated this ----- ---- day of ----.------ 200 ...

Signature-

(When a bond with sureties is to be executed) Add-

We'----------and----- ---

do hereby declare ourselves as Sureties for the above; named

_-------- son of _

_____ ------and undertake--

(a) that he will appear and receive sentence when called upon to do so during: the said period~

(b) that he will not commit any breach of the peace or do any act that may occasion a breach of the peace: and

(c) that he will be of good behaviour in. :all other respects during the said period.

In case of making default therein severally to forfeit to the Government of Sindh a sum of

Rupees .....

Dated this -----.------

we bind ourselves. Jointly and of West Pakistan a sum of

day of ------ -- 200

Signatures

and flu! {Addresses of the sureties

'BOND BY A PROBATIONES TO OBSERVE THE CONDITIONS OF A PROBATION ORDER.

(See RULE 19 OF THE WEST PAKISTAN PROBATION OF OFFENDERS RULES.(1961)

WHEREAS I (name) Caste ---------- religion ------ inhabitant of (place)

Tehsill Taluka --~------ District -------

Have been ordered to be released by the Court of -- -------

on the condition of my entering into observe the conditions specified in the probation order made in respect of me by the Court, during a period

of -------- hereinafter referred to as the said period;

hereby bind myself as fol1ows:-

(a) that I shall faithfully fulfill the said conditions: (b) that I shall during the said period-

(i) submit myself to the supervision of the Probation Officer appointed by the Court this behalf;

(ii) keep the Probation Officer informed of my place of residence and means of livelihood;

(iii) live honesty and peacefully and endeavour to earn an honest livelihood;

(iv) abstain from taking intoxicants;

(v) appear and receive sentence whenever called upon to do so.;

(vi) be of good behaviour; and

(vii) carry out all such directions as may, from time to time, be given by the Probation Officer, either verbally or in writing, for the due observance of the conditions mentioned above;

(c) that I shall not during the said period:-

(i) leave the District of -------- or the area specified in the probation order without the written permission of the Probation Officer of any other officer appointed by the Court in this behalf;

(ii) associate with bad characters or lead a dissolute life.

(iii) commit any offence punishable by any law in force in West Pakistan; or

(iv) commit any breach of the peace or do any act that may occasion a breach of the peace.

In case of my making default in any of the above conditions, I hereby bind myself to forfeit to the Government of West Pakistan the sum of rupees ---- --- in addition to any other sentence as may be ordered by the Court.

Dated this -~---- day of ----- 19

Signature

(Where bond with sureties is to be executed) Add·

We --------- and ------

do hereby declare ourselves as sureties for the above-named ----.--

son of ----------~ of -------

and undertake-

(a) that he will appear and receive sentence when

called upon to do so during the said period;

(b) that he will not commit any breach of the peace or do any act that may occasion a breach of the peace; and

(c) that he will be of good behaviour in all other respects during the said period.

In case of his making default therein we hind ourselves jointly and severally, to forfeit to the Government of Pakistan a sum of rupees.----

Dated this -------- day of -------] 9

Signature and full addresses of the sureties

FORM D PROBATION ORDER

SEE RULE 20 OF WEST PAKISITAN PROBATION OF OF-FENDERS RULES 1961

IN THE COURT OF ----------

THE STATE

versus

---,----------.- -Accused.

WHEREAS -,----------. son of -----

caste -------. religion ------- resident of --------_-----. Police Station ----------

District -------. who appears to the Court to be of ----------;!i~ years of age, has been found guilty of an offence ----

(state description of offence) under section ----------- of ----------_----, and the Court is satisfied that it is expedient to deal with the offender under section 5

Ordinance, follow the procedure provided for in the Code.

(1) A juvenile Court shall not ordinarily take up any other case on a day when the case of a child accused in fixed for evidence on such a day.

(2) No person shall be present at any sitting of a Juvenile Court except,

a. Members and officers of the Juvenile court;

b. Parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers.

c. Such other persons as the Juvenile court directs to be present;

d. Guardian of the child.

(3) At any stage during the course of the trial of a case under this Ordinance, the Juvenile Court may, in the interest of such child, decency or morality, direct any person to withdraw from Court for such period as the Court may direct.

(4) Where at any stage during the course of the trial of a case, the Juvenile Court is satisfied that the attendance of the child is not essential for the purpose of the trial, the Juvenile court may dispose with the attendance and proceed with the trial of the case in absence of the child.

(5) When a child who has been brought before a Juvenile Court and is found to be suffering from serious illness, whether physical or mental, and requires treatment, the Court shall send such child to a hospital or a medical institution where treatment shall be given to the child at the expense of the state.

7. Determination of age... If a question arises as to whether a person before it is child for the purposes of this Ordinance, the Juvenile Court shall record a finding after such inquiry, which shall include a medical report for determination of the age of the child.

8. <u>Prohibition to public proceedings of cases.</u>

(1) Unless the Juvenile Court specifically authorizes, the Court proceedings shall be published in any

Dated this ----- --- day of --------19

Signature of the Judge or Magistrate *To be struck off if no surety is taken.

Here the Court may enter any other condition which it may consider fit to impose for preventing the repetition of the same offence or the commission of other offences by the offender)

Chapter Five

Difference between Parole and Probation.

There is apparent difference between the technique of probation and the parole although both have same object i.e. rehabilitation of offenders and in both the techniques skilful supervision of selected offenders is involved outside the prison. The important distinction in the two technique is that in probation the offender is not sentenced and sent to jail after being found guilty of the offence and the court is to take decision with regard to grant of probation whereas in parole the convict is released by the Government or a Committee after he had served some part of the sentence and the release is not the result of any judicial decision.

Ahmad Siddique in his book "Criminology, problems and perspectives" has described the difference as under:-

> *"Probation and parole have the same objectives-rehabilitation of offenders. In both the techniques, skilful supervision of selected offenders is involved outside the prisons. But there is an important distinction between the two. In probation the offender is not sent to jail after being found guilty and the decision to grant probation is to be made by the court. In parole the convict is released after serving his sentence for some time and the release is not the result of any judicial decision"*

Parole is the release of an offender from the prison before the expiration of the term of imprisonment. The object of parole is to prepare the prisoner for adjustment to normal social life outside the prison and it therefore signifies the transitory phase from imprisonment to normal freedom. While on pa-

role the prisoner lives at liberty subject to the conditions which may be imposed by the parole order, violation of any condition in the parole order may result in the cancellation of the order and the convict is to be sent back to prison.

The term parole is also often used to express the idea of 'furlough' granted to the prisoners to visit their families for short periods while completing their terms of imprisonment. The object evidently is to keep the prisoner in contact with society in general and his family in particular, which would not otherwise be possible in case of long imprisonment. In particular, it is conducive to a normal sex life of the prisoner, not possible otherwise, and an opportunity is also provided to the prisoner to make financial

contribution to the family by his earnings outside the jail.

In detail it can further be differentiated as under:-

> Probation is a sentencing option available to local judges. Convicted offenders are released by the court to serve a sentence under court-imposed conditions for a specified period. It is considered an alternative to incarceration. In most cases the entire probation sentence is served under supervision in the community. The court retains the authority to supervise, modify conditions, cancel probation and re-sentence if the probationer violates the terms of probation. The responsible agency for overseeing probation can be either state or local. In contrast to probation, parole is the early release of inmates from correctional institutions prior to the expiration of the sentence on the condition of good behavior and supervision in the community. It is also referred to as supervised release, community supervision, or after-care. The parole board is the legally designated paroling authority. The board has the

> authority to release on parole adults (or juveniles) who are committed to correctional institutions, to set conditions that must be followed during supervision, to revoke parole and return the offender to an institution, and to discharge from parole. Thus, probation is a front-end decision that is made prior to incarceration in a jail or prison, while parole is a back-end decision to release inmates from jail or prison.

Probation System is a suspension of imprisonment by a court of law. It affords to the offender an opportunity for readjusting himself and making amends, while living as a member of the community, subject to the conditions imposed by the court. The offender remains during the period of probation, as fixed by the court, under the supervision and guidance of a probation officer. A high moral character, a love for mankind, a desire to help the unfortunate, an understanding of problems of human be-

haviour and training in case-work for the individual treatment of an offender constitute, among other things, the most important and indispensable pre-requisites for the performance of this guidance work. Probation is not only a substitute for imprisonment, but also has an enduring value in enabling the courts to provide individualized treatment for a certain class of offenders, both young and adult.

Whereas the term Parole comes from French and is used in the sense of Parole d'honourer or word of honour. Parole differs from probation in that it is used after a sentence of imprisonment has been imposed and partially served while probation is an alternative imprisonment. Parole is usually an administrative act carried out by the executive while probation is a judicial act of the court of justice. In casework technique, an administrative method, the two services are however, not very dissimilar. It is a

sort of bridge between the strict and rigorous regime of the prison and swift and rapid life of the community i.e. a measure designed to facilitate the transition of the convict person from the highly controlled life of the prison to the free community life.

From the above discussion the differences between the two techniques would have been cleare.The two services are invoked all over the world in order to minimize the risk that offenders who are not habitual may not become hard criminals with the interaction of such offenders in the jail and on account of their incarceration their families may not face hardship and the convicts may not be completely disassociated from civil society and when they come out from the prison the society may not refuse to accept them as its members.

Chapter six

Application of law of Parole in Pakistan and other countries

As discussed earlier the term "parole" is also often used to express the idea of ' furlough' granted to the prisoners to visit their families for short periods while completing their terms of imprisonment. It is a form of conditional release granted to the prisoners after they have served a portion of their sentence. In contrast to probation, parole is the early release of inmates from correctional institutions prior to the expiration of the sentence on the condition of good behavior and supervision in the community. It is also referred to supervised release, community supervision, or after-care. The parole

board is the legally designated paroling authority. The board has the authority to release on parole adults (or juveniles) who are committed to correctional institutions, to set conditions that must be followed during supervision, to revoke parole and return the offender to an institution, and to discharge from parole. Thus, probation is a front-end decision that is made prior to incarceration in a jail or prison, while parole is a back-end decision to release inmates from jail or prison.

The object evidently is to keep the prisoner in contact with society in general and his family in particular, which would not otherwise be possible in case of long imprisonment. In particular, it is conducive to a normal sex life of the prisoner, not possible otherwise, and an opportunity is also provided to the prisoner to make financial contribution to the family by his earnings outside the jail. It involves a

service which includes the control, assistance, and guidance the offenders need as they serve their remainder of their sentences within the free community, it is advantageous for the person released on parole and the society as a whole.

Parole Release

The parole board (or parole commission), an administrative body, is empowered to decide whether inmates shall be conditionally released from prison prior to the completion of their sentence. The board is also responsible for determining whether to revoke parole and to discharge from parole those who have satisfactorily completed the terms of their sentence. In most jurisdictions, once the parole board makes the decision to grant parole, the responsibility for supervision in the community is turned over to parole officers who are supervised by

the department of corrections/Directorate of Reclamation and Probation.

The decision to grant parole is usually based on a review of the individual offender's case file and an interview with the inmate. Eligibility for parole is determined by statutory requirements and is usually based on the completion of the minimum sentence less any *good-time* credits earned during incarceration. Technically, parolees are still prisoners who can be recalled to serve the remainder of their sentence in prison if the parole board decides they have not fulfilled the terms of their release.

Parole boards/committees have traditionally had great leeway in deciding when to grant parole. During the hearing stage when the board met with the inmate they were expected to observe whether the prospective parolee demonstrated his or her re-

habilitation, a willingness to accept responsibility, and self-understanding. Decisions were not based on formally articulated criteria or policies but on subjective and intuitional judgments of the individuals on the board. Few courts have reviewed parole decision-making and those that have appear to agree with the contentions of paroling authorities that to impose even minimal due-process constraints on the decision-making process would interfere with the board's goals of diagnosis and prediction (Cromwell and Del Carmen).

Position in Pakistan

In Pakistan the offenders/convicts are being released on parole by the Provincial Governments under Section 2 of the Good Conduct Prisoners Probational Release Act, 1926.

Section 2 of the Act *supra, provides as under*

Power of Government to release by license on conditions imposed by it .

Notwithstanding anything contained in section 401 of the Code of Criminal Procedure, 1898, where a person is confined in prison under a sentence of imprisonment, and it appears to the Provincial Government] from his antecedents or his conduct in the prison that he is likely to abstain from crime and lead useful and industrious life, if he is released from prison, the Provincial Government may by license permit him to be released on condition that he be placed under the supervision or authority of a servant of the state or a secular institution or of a person or society professing the same religion as the prisoner, named in the license and willing to take charge of him.

Explanation.—the expression "sentence of imprisonment" in this section shall include imprisonment in default of payment of fine and imprisonment for failure to furnish security under Chapter VIII of the Code of Criminal Procedure, 1898, V of 1989.

The Sindh Government has framed the Sindh Good Conduct Prisoners Probational Release Rules, 2001 and has been releasing convicts on parole. During the period w.e.f 1.1.2002 to 31.10.2006 it released 619 convicts on parole after examining the cases of 2241 convicts recommended by the Directorate of Reclamation and Probation which were fully covered under Section 8 of the Act, *supra* after the scrutiny by the committee, called Parole Committee comprising officials of Home Department, Prison Department and Director of Reclamation and

Probation and also concerned District Police Officer on the basis of reports received from the Director of Reclamation and Probation which is finally approved by the Home Secretary. Most of the people released on parole were from low income groups and were sole bread earner for their families and none of them was released due to any political influence. None of the parolee so released during the period violated the conditions imposed while granting parole to him (Report submitted by the Govt. of Sindh in Supreme Court, Shariat Appellate Jurisdiction, in Cr. Appeal No.14 (s) of 2003 on 22.11.2006.

Whereas during the last 5 years till 22.11.2006, only 79 convicts were released on parole by the Punjab Govt. as per report submitted by the Home Secretary, Punjab before the same bench of the Supreme Court. Similarly, the Govt. of NWFP reported to the same bench that only 30 convicts

were released on parole during this period. Nevertheless, no report was submitted by the Baluchistan Govt. although the apex court had taken *suo muto* notice on news that the said govt. had released some high profile convicts on parole after their conviction in corruption cases by the Accountability Courts. However, on 31.12.2007 the total no of convicts who were released on parole were only 92 with the following break up-:

26 in Punjab,57 in Sindh,1 in NWFP and 6 in Balochistan(Source Central Jail Staff Training Institute, Lahore, Ministry of Interior Government of Pakistan)

It is very interesting to note that the apex court had passed the order dated 22.11.2006 as referred to above with the view to examine and review the policy of the provincial governments regarding release of dangerous criminals on parole even in the cases pending trial including those case in which bail to such person had been denied by the apex court

and to set the controversy at naught forever. However the question remained unexamined by it for the reasons remained shrouded in mystery as the petition was disposed of by a short order dated 3.1.2008 which reads as under-:

"Learned counsel for the appellants informs that the appellants have already under gone their sentences while they were on Parole. He therefore does not press this appeal but request that the appellants be allowed to seek revival of the appeal in case some development takes place in the law of Parole. The appeal is accordingly disposed of. It will be taken again in case any change in the law of parole takes place which may adversely affect the parties"

Inspite of the fact that the Supreme Court has disposed of the petition in January 2008 but work of release of convicts on parole is standstill which is evident from the figures provided by the Ministry of Interior.

Position in India.

Similar question was examined by the Andhra Pradesh High Court in a writ Petition No 12150 of 1984 *Veeramachaneni Raghavendra Rao versus Govt.of A. P.*It has been held that Rule 23 of Andhra Pradesh Suspension of Sentence and Parole Rules was void, as it was inconsistent with Section 432(5) read with Section 389 of Criminal Procedure Code,1973, and the last clause in Rule 974(2) of Andhra Pradesh Prison Rules of 1979 was liable to struck down as being *ultra vires* the statutory powers of the state Government as the rule making authority has no plenary power and it has to act in the limits granted to it. The statutory power conferred by the statute can not be transgressed by the rule making authority. (Parole in India by N.K. Chakrabarti). However it is matter of record that in India around 16,000 convicts are released on parole in each year

Position in Bangladesh

The government of Bangladesh is going to introduce a massive amendment to the Jail Code about to be implemented soon.

The amendment will also introduce provisions of freeing inmates on parole.

Following demands from different rights groups for modernising the Jail Code and removing inhumane provisions from it, which had been introduced by the British government in 1864, the Government of Bangladesh formed Bangladesh Jails Reform Commission in 1978 with Justice FKMA Munim as its head.

Although the commission submitted its report in 1980 after studying jail codes of 14 countries and a committee was formed to implement its recommendations, the British-introduced jail code is still in effect

Chapter-Seven.

CRITERIA OF SELECTION OF OF-FENDERS FOR PROBATION

The court before taking a decision to allow an offender to be released on probation considers several aspect of the case and behaviour and conduct of the offender as well as the probability of his correction and reclamation.

The decision to grant probation. The individuals convicted of a crime who are not given a prison sentence and whose cases are otherwise fit for probation are released on probation. Community corrections officials/probation officers are critical players in these sentencing decisions. They must assess the level of risk offenders present to the public safety

and make recommendations to the court about the appropriate sentence.

Probation officers often begin the investigative process during the pretrial period by examining an offender's background and history to assist in determining whether a defendant can safely be released on his own recognizance or bail. The report from the officer is frequently the primary source of information the court uses in this decision. At this point the court may *defer adjudication* or offer *pretrial diversion* and require probation supervision.

Once an offender is convicted, the probation officer prepares a *presentence investigation report* (PSI). The PSI is the major source of information on which courts base sentences. The primary function of the PSI report is to provide the sentencing court with timely, relevant, and accurate data about the of-

fender. Such information is used to determine the sentence and classify offenders as to risk and therapeutic needs. The information is used to plan programming in institutions and in the community, to set conditions of supervision, and for release planning.

The task to submit a detailed report on these subjects is of the probation officer who is called upon before passing an order to give the report about the offender who after taking the necessary information on all these subjects submits a report along with his program for the reclamation of the offender. This report is of primary importance for the court for making the decision regarding his release. This report containing social, economic factors of the offender alongwith a plan for the correctional treatment of the offender is termed as an ideal report. (Ahmad Siddique – Criminology – Problems and Perspectives).

The most important consideration for the court before passing an order in this regard is to consider the risk involved to the society in releasing the offender viz-a-viz his personality. Similarly it is to be regarded that certain offenders are potential threat to society at large for example psychopaths, rapists hoodlums , arsonist, terrorists etc giving such criminal a new lease via probation may seriously jeopardize security of the community and the probation which is mere judicial leniency and should not be available to certain offenders.

Chapter Eight.

"Juvenile Justice in South East Asia"

An overview on the report issued by the regional office, South East Asia, UNICEF

All over the world the juvenile delinquency is being dealt with altogether different approach as compared to adult delinquency for which separate criminal systems are in vogue in each country. This is also a requirement of the United Nations as provided in the declaration signed by the member countries on Convention on the Rights of the Child (CRC) to establish laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law. 1. Adopted by

General Assembly resolution 45/113 of 14 December 1990
2 Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990
3 Adopted by General Assembly resolution 40/33 of 29 November 1985

For last several years, it has been universally recognised to brig about reforms in the laws dealing with the children in conflict with law .Countries of South Asia, are therefore in the process of imple-

mentation of the convention and the guidelines issued by the United Nations, known as UN guidelines on juvenile justice: the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs); the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

Significant reform initiatives are underway in most countries in the region. In the latest report issued by the regional office, South East Asia, UNICEF titled as "Juvenile Justice in South East Asia" following has been observed:-

" While all countries have some differentiated procedures for children who commit crimes, as yet no country in the region has fully acted upon and implemented a separate and distinct juvenile justice system to ensure that the juvenile delinquency be ca-

tered in a manner substantially different than adults at all stages of the proceedings.....

"*With the exception of Maldives and to a lesser extent Afghanistan, the concepts of diversion and restorative justice have yet to take hold in South Asia. In general, insufficient emphasis has been placed, either legislatively or in practice, on introducing alternatives to the formal justice system, or on changing the fundamentally custodial nature of the entire juvenile justice system.....*

"Significant reforms are necessary throughout the region to ensure compliance with the CRC and UN Guidelines. It is therefore recommended that each country in the region develop a coordinated, strategic plan for the reform of juvenile justice legislation systems and practices that is designed to ensure that: extends juvenile justice protections to all children under the age of 18; sets a minimum age of criminal responsibility that conforms to international standards;..... promotes diversion and informal mechanisms to resolve minor juvenile crimes outside the formal system; prioritises the development of non-custodial sentencing alternatives; limits the use of detention, both pre-trial and as a sentencing option, to children who commit serious crimes of violence or persist in committing other serious offences; ....."

The report has given details with regard to the juvenile justice systems in south Asian counties in details.

It is worthwhile to note that the countries of the region which are signatories of CRC have established their respective juvenile justice systems which also provide an alternative of sentencing but the same are not being implemented in letter and sprit consequently the juvenile offenders are being confined in jails and other detention facilities.

For an outlook of the real position with regard to sentencing process in the region it will be worth while to summarize the ground situation in the following countries including Pakistan and India.

1. Adopted by General Assembly resolution 45/113 of 14 December 199.
2 Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990
3 Adopted by General Assembly resolution 40/33 of 29 November 1985

Pakistan

Pakistan In 2000, Pakistan introduced the Juvenile Justice System Ordinance (JJSO), with the intention of establishing a comprehensive, country-wide juvenile justice system. Prior to that, only two provinces– Sindh and Punjab - had separate juvenile justice legislation. The JJSO overrides the provincial laws to the extent that they conflict. All provinces have now established rules under the new JJSO and are in the process of implementing them. In addition, ongoing law reform and review is underway to further improve the juvenile justice system. The number of juvenile prisoners is falling rapidly all over the country. In the province of Punjab the number of juvenile prisoners on 1.1.2007 was 1164 which was 62% lower than the 2002 levels. This decrease seems to be sequential to the adoption of a concessionary re-

gime juvenile justice ordinance for juvenile delinquents A new national Child Protection Law has been drafted, which would address both children in conflict with the law and children in need of protection. In December 2004, the Lahore High Court struck down the JJSO on the grounds that it was "impracticable" and "unconstitutional". The judgment stated that the ban on the death penalty for juveniles led to children being used by adults to carry out capital offences. The court also commented that the choice of 18 for the definition of a juvenile was as "arbitrary." It opined that the socio-economic conditions, "hot climate and exotic and spicy food" in Pakistan all contribute towards a "speedy physical growth and an accelerated maturity of understanding of a child in our society." This decision is currently under appeal. The JJSO states that a probation officer

must assist the Juvenile Court by making a report about the child's character and background.

The Ordinance also includes some new sentencing powers, designed to give Courts alternatives to imprisonment. The Court may release the child on probation under the care of a parent, guardian or any suitable person executing a bond with/out surety; place the child in a borstal institution until 18 years or for the period of imprisonment stipulated for the offence, whichever is earlier; reduce period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation is unnecessary. However, these sanctions are merely optional alternatives to the adult penalties stipulated under the Penal Code, and the Court may still in its discretion impose an adult prison sentence on the child, including life imprisonment. There is no statement that detention shall be used only as a measure

of last resort, for the shortest appropriate period. On the contrary, the presumption is that children sent to borstal institutions will remain there until they turn 18, unless the Court considers a lesser period appropriate. Importantly, for the first time the JJSO prohibits the death penalty from being imposed on children under the age of 18. However, as noted above, since the JJSO does not apply to federally administered territories, children are still subject to the death penalty in those areas. For children who are processed through the formal court system, the number of alternative, non-custodial sentencing options is quite limited. The main alternative is probation, which is governed by the Probation of Offenders Ordinance of 1960. The Ordinance gives the Court wide discretion to add and for rehabilitating offenders as an honest, industrious and law abiding citizen.

In total, there are 70 probation officers throughout the country and 22 parole officers. Fifty-three of the probation officers are in Punjab and three in Sindh. These numbers are insufficient to provide meaningful supervision and case management services to children in conflict with the law.

These services are administered by the Directorate of Reclamation and Probation which is a subordinate office of the Home Department. A Director is responsible for the internal administration of the Directorate while oversight and policy functions rest with the Home Department. The legal framework for the administration of these services is provided respectively by the Probation of Offenders Ordinance 1960 and the Good Conduct Prisoners Probational Release Act 1926 and the rules made thereunder.

Despite its importance, probation and parole has remained a low priority area. Among other factors, this fact is illustrated by the poor resource allocations for the Directorates In respect of the province of Punjab . The total expenditure on the probation and parole service in 2006-07 was around Rupees 26 million which is less than 1% of the expenditure incurred on prisons administration. Even worst, no money has been spent on the strengthening or development of the service

Since at least 2002. To add to this, presently 24 positions are lying vacant. Out of this, 20 positions relate to the probation and parole officers. Interestingly, the post of the Director is also lying vacant since many years[1]. This critical deficiency is a crucial reason for the poor quality of service delivery. In addition there

[1] Presently this position is being occupied on additional charge basis.

is also an acute deficiency of office accommodation, transport and other usual facilities.

The total no of officers posted in the four Directors of Probation and Reclamation, viz a viz sanctioned indicates the seriousness of the Provincial Governments on the subject.

NAME OF POST	PUNJAB	SINDH	NEFP	BALOCHISTAN
Rector	01	01	-	-
Deputy Director	01	-	-	-
Superintendent Certified School Sahiwal	01	-	-	-
Assistant Director	09	03	-	01
Office Superintendent	-	-	-	01
Parole / Probation Officer	69	06	13	04
Ministerial Staff	140	13	28	10
Grand Total:	**221**	**23**	**42**	**17**

5 YEARS PROGRESS REPORT ON WORKING OF PROBATION IN SINDH PROVINCE

YEAR	ADULTS	JUVENILES	TOTAL
2003	123	05	128

2007		118		43	161
2008	(Upto	May)	25	12	37

Similarly in the province of Sindh the thin figures of the juvenile offenders released on probation during the last five years, as shown below, indicates lack of interest of the courts in releasing the juvenile offenders on probation-:

SUB-ORDINATE OFFICES WISE 5 YEARS PROGRESS REPORT ON WORKING OF PROBATION

KARACHI

YEAR	ADULTS	JUVENILES	TOTAL
2003	118	05	123
2004	169	46	215
2005	157	62	219
2006	113	43	156
2007	37	40	77
2008 (Up to May)	10	11	21

HYDERABAD

YEAR	ADULTS	JUVENILES	TOTAL
2003	05	00	05
2004	16	00	16

2005		16		00		16
2006		03		00		03
2007		21		00		21
2008	(Up	to	May)	06	01	07

KHAIRPUR

YEAR	ADULTS	JUVENILES	TOTAL
2003	00	00	00
2004	03	00	03
2005	29	00	29
2006	40	01	41
2007	60	03	63
2008 (Up to May)	09	00	09

Source: Directorate of Probation and Reclamation, Sindh

India

In 2000, India introduced a new Juvenile Justice (Care and Protection of Children) Act (JJA 2000). The JJA 2000 calls for the creation of special juvenile police units to deal with children in conflict with the law and children in need of protection. Every police station must have at least one officer designated and specially trained as the "juvenile or child welfare officer." The JJA 2000 calls for the creation of special juvenile police units to deal with children in conflict

with the law and children in need of protection. Every police station must have at least one officer designated and specially trained as the "juvenile or child welfare
officer."juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person for up to three years; JJA 2000, Section 63)The juvenile can be released on probation of good conduct and placed under the care of any fit institution for up to three years; In Delhi, for example, in addition to the probation officers of the government social welfare department, the probation officers at the Prayas Observation Home also provide this service to the Juvenile Justice Board.

Afghanistan

The Juvenile Code 2005 states explicitly that confinement of a child is a measure of last resort and requires the Court to impose confinement for the minimal possible duration. (Juvenile Code, Article 8) Contemptuous and harsh punishment are prohibited.(Juvenile Code, Article 7) The Court has a range of dispositions that it may impose on a child found guilty of an offence, including: Performing social service , Release to parents or guardian with a written guarantee that they will be responsible for monitoring the development and progress of the child Confinement to a juvenile rehabilitation centre, Suspended sentence, if the sanction for the crime is for more than two years but less than three years.(Juvenile Code, Articles 35, 37, 40) However, there is no provision in the Act with regard to release of an offender on probation by the court after finding him guilty of the offence.

Bangladesh

In Bangladesh, the justice system for both children in conflict with the law and children in need of protection are governed by the Children Act, 1974 and the Children Rules, 1976. Although this legislation has been in place for almost 30 years, Bangladesh has yet to implement a fully comprehensive, separate system for children in conflict with the law. Immediately after the arrest of a child, the officer-in-charge shall inform to the Probation Officer of such arrest to enable the said probation officer to proceed forthwith in the matter of the juvenile

. **Alternative measures** A court may, if it thinks fit, instead of directing any youthful offender to be detained in a certified institute under section 52 order him to be (a) discharged after due admonition, or (b) released on probation of good conduct and committed to the care of his parent or guardian or other adult relative or other fit person on such parent,

guardian, relative or person executing a bond, with or without sureties, as the court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding three years and the court may also order that the youthful offender be placed under the supervision of a Probation Officer. If it appears to the court on receiving a report from the probation officer or otherwise that the youthful offender has not been of good behaviour during the period of his probation, it may, after making such inquiry as it deems fit, order the youthful offender to be detained in a certified institute for the unexpired period of probation. When making an order under the Act, the Court must take into consideration the character and age of the child; the circumstances in which the child is living; and the report from a Probation Officer as to the child's background and family history (Children Act, Section 15)

While probation officers may be instructed by the court to prepare a social inquiry report, in practice these are rarely requested.(Rahman, Mizanur, Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, 2003; Institutional Reponses to Children in Conflict/Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, Aparajeyo Bangladesh and Child

Hope UK, 2005). Upon finding a child under the age of 16 guilty of an offence, the Court may impose one of the following dispositions: inter alia ,admonishment and discharge; Release on probation in the care of a parent or other fit person, and under the supervision of a Probation Officer for a period of up to three years. The Children Act does not include any statement of preference for non-custodial dispositions, and there are no guidelines governing the Court's exercise of its sentencing discretion. Probation remains under-utilized. (Dr. Kamal Uddin Siddiqui, Concept Paper: The Age of Criminal Responsibility and Other Aspects of the Children's Act, 2004)

There is also no explicit requirement that deprivation of liberty be used only for the appropriate period.

Bhutan

- Bhutan's juvenile youth rates remain comparatively very low, and the majority of crimes committed by children are

non-violent in nature, the most common offences committed being theft, followed by burglary and drug abuse.(Situation Analysis of Women and Children in Bhutan, NCWC and UNICEF, 2005) For example, statistics provided by the Government of Bhutan in its Written Reply to UN Committee on the Rights of the Child in 2001 indicated that in 2000, there were only 42 children convicted of offences in Bhutan, 28 for theft, five for burglary/robbery, five for drugs, one for rape, one for assault, one for cheating and one for pick-pocketing The types of sentences that may be imposed on. a person found guilty of a crime are stipulated in the Penal Code and include: imprisonment;

release on probation; fine; or an order to pay compensation or damages and make restitution to the victim. The Civil and Criminal Procedure Code states:

"that the Court must take the following factors into consideration in making orders concerning a juvenile: age of the juvenile; physical and mental health; circumstances in which the juvenile was living; reports made by the police; and other circumstances as are, in the opinion of the Court, required to be taken into consideration in the best interest and welfare of the Juvenile.(Section 213.2) Furthermore, the Court may allow a juvenile to go home after advice/ admonition or release the juvenile on probation, having regard to the severity of the charges, the juvenile's past criminal record, the likelihood of flight, the juvenile's age and physical/mental health condition, and the potential threat posed to civil society.

Maldives

Maldivian law is based on Shari'a, and Shari'a generally prevails over nation laws and international treaties. The juvenile justice system is currently gov-

erned by the Law on the Protection of the Rights of the Child, (Law No.: 9/91), as well as a set of detailed guidelines on procedures for investigation, court and sentencing of children in conflict with the law. (Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended)

The Law on the Protection of the Rights of the Child promotes rehabilitation, rather than punishment, of child offenders. The Rules state that child offenders between the age of seven and 14 who commit serious offences shall be committed by the Juvenile Court to the Community Centre for Rehabilitation.

Nepal

Nepal does not currently have a comprehensive juvenile justice system. Although a Children's Act 286 was introduced in 1992 to govern procedures for dealing with children in conflict with the law and children in need of protection, the implementation of the law has been fragmented. A Committee has identified legislative reform as one of

its priority activities, and has undertaken a consultation process to elicit stakeholder input. The Children's Act stipulates different categories of sentences for children, depending on their age.

Sri Lanka.

Sri Lanka has had separate legislation governing the administration of juvenile justice since 1939. Children under the age of 16 who are in conflict with the law should be dealt with under the Children and Young Person's Ordinance 1939 (which also deals with children in need of protection), however the law has never been fully implemented throughout the country. As yet, there is no comprehensive justice system for children in conflict with the law.

In recent years, there has been growing consensus on the need for reform, and several initiatives are already planned or underway to improve the juvenile

justice system In deciding what disposition to impose on a child or young person who has been found guilty of an offence, the Court must take into account "any information that is available about the child's antecedents and circumstances," including a social report which is to be prepared by a probation officer. To enable this information to be obtained, the Court can remand the child or young person to a Remand Home, or to the custody of a fit person, for a period of up to 21 days, extendable at the Court's discretion.444 This practice of detaining 436 CPYO, Section 5 ©a child for "observation" by a probation officer is contrary to the principles of the CRC. In effect, this provision permits children to be detained solely for the purpose of facilitating the job of the probation officer, and leads to anomalous situation where a child may spend 21 days or more in detention waiting for a report to be prepared in relation to an offence that in

itself does not warrant a custodial disposition. Although the child must be brought before the court every 21 days, there is no limit on the number of times the case can be adjourned waiting for the report to be prepared. While some probation officer are very dedicated and diligent, lack of staffing and other practical and financial constraints make it difficult to fulfill their obligations under the CPYO. Delays in compiling Social Reports

result in children spending lengthy periods in remand homes and making numerous court appearance waiting for the report to be completed. A recent study conducted by Save the Children UK found that there is an organisational culture in which probation officers looked to institutional care as a first resort for children, rather than a last resort as departmental policy requires

While the list of possible dispositions includes number of alternatives, in practice the Court tends to impose custodial sentences, even for minor offences such as theft.

Juvenile Justice System Ordinance, 2000 (XXII of 2000)

To provide for protection of the rights of children involved in criminal litigation. Whereas it is expedient to prove for protection of children involved in criminal litigation, their rehabilita-

tion in society, re-organization of Juvenile Courts and matters connected therewith and incidental thereto;

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of Proclamation of Emergency of the fourteenth day of October, 1999, and Provisional Constitution Order No. 1 of 1999 as well as Order 9 of 1999, and in exer-

cise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

1. Short title; extent and commencement.

(1) This Ordinance may be called the Juvenile Justice System Ordinance, 2000,

(2) It extends to the whole of Pakistan,

(3) It shall come into force at once,

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

a. "Borstal Institution" means a place where child offender may be detained and given educational and training for their mental, moral and psychological development;

b. " Child" means a person who at the time of com-

mission of an offence has not attained the age of eighteen years;

c. "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898;

d. "Guardian" means a parent or a person who has actual care of the child and includes such relative who is willing to bear the responsibility of the child;

e. "Juvenile Court" means a Court established under section 4;

f. " Offence" means an offence punishable under any law for the time being in force; and

g. "Probation officer" means a person appointed under the Probation of Offenders Ordinance, 1960 (XLV of 1960), or such person as the Provisional Government may appoint to perform the functions of Probation Officer under this Ordinance.

3. Legal Assistance.

(1) Every child who is accused of the commission of an offence or is a victim of an offence shall have the right of legal assistance at the expense of the State.

(2) A legal practitioner appointed by the state for providing legal assistance to a child accused of the commission of an offence, or victim of an offence, shall have at least five years standing at the Bar.

4. Juvenile Courts.

(1) The Provisional Government shall, in consultation with the chief Justice of High Court, by notification in the official Gazette, establish one or more juvenile Courts for any local are within its jurisdiction.

(2) The High Court may...

a. Confer powers of Juvenile courts on

i. Courts of Sessions;

ii. Judicial Magistrate of the First Class; and b. Appoint, from amongst practicing advocates having atleast seven years standing at the bar, Presiding officers of Juvenile Courts with powers of a judicial Magistrate of the First Class for the purpose of this Ordinance on such terms and conditions as the high court may determine.

(3) The Juvenile Court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence.

(4) Subject to sub section (3) on commencement of this ordinance, all cases pending before a Trial Court in which a child is accused of an offence shall stand transferred to the Juvenile Court hav-

ing jurisdiction.

(5) The Juvenile shall not, merely by reason of a change in its composition, or transfer of a case under sub-section (4), be bound to recall or re-hear any witness who has given evidence and may act on the evidence already recorded.

(6) On taking cognizance of an offence, the Juvenile Court shall decide the case within four months.

5. No joint trial of a child and adult person,

(1) Not withstanding anything contained in section 239 of the Code, or any other law for the time being in force, no child shall be charged with or tried for an offence together with an adult.

(2) If a child is charged with the commission of an offence for which under Section 239 of the Code, or any other law for the time being in force such child could be tried together with an adult, the Court taking cognizance of the offence shall direct separate trial of the child by the Juvenile Court.

6. Procedure of the Juvenile Courts. A Juvenile Court shall, unless provided otherwise in this Ordinance, follow the procedure provided for in the Code.

(1) A juvenile Court shall not ordinarily take up any other case on a day when the case of a child accused in fixed for evidence on such a day.

(2) No person shall be present at any sitting of a Juvenile Court except,

a. Members and officers of the Juvenile court;

b. Parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers.

c. Such other persons as the Juvenile court directs to be present;

d. Guardian of the child.

(3) At any stage during the course of the trial of a case under this Ordinance, the Juvenile Court may, in the interest of such child, decency or morality, direct any person to withdraw from Court for such period as the Court may direct.

(4) Where at any stage during the course of the trial of a case, the Juvenile Court is satisfied that the attendance of the child is not essential for the purpose of the trial, the Juvenile court may dispose with the attendance and proceed with the trial of the case in absence of the child.

(5) When a child who has been brought before a Juvenile Court and is found to be suffering from serious

illness, whether physical or mental, and requires treatment, the Court shall send such child to a hospital or a medical institution where treatment shall be given to the child at the expense of the state.

7. Determination of age... If a question arises as to whether a person before it is child for the purposes of this Ordinance, the Juvenile Court shall record a finding after such inquiry, which shall include a medical report for determination of the age of the child.

8. Prohibition to public proceedings of cases.

(1) Unless the Juvenile Court specifically authorizes, the Court proceedings shall be published in any newspapers, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published.

9. Probation Officer.

(1) The Probation Officer shall assist the Juvenile Court by making a report on the child's character, educational, social and moral background.

(2) Subject to sub-section (2) of the report of the Probation Officer submitted to the Juvenile court shall be treated as confidential.

(3) The Juvenile Court may, if so thinks fit, communi-

cate the substance of the report to the child or his guardian and, where anyone of them disputes the contents or views contained therein, the Juvenile court may give such child or, as the case may be, guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

10. Arrest and bail.

(1) Where a child is arrested for commission of an offence, the officer incharge of the police station in which the child is detained shall, as soon as may be, inform.

a. the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the child shall be produced; and

b. the concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile Court for making inquiry.

(2) Where a child accused of non-bail able offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the Juvenile Court.

(3) Without prejudice to the provisions of the Code, a child accused of a bail able offence shall, if already not released under Section 496 of Code, be released

by the juvenile Court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation officer or a suitable person or institution dealing with the welfare of the children if parents or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.

(4) The Juvenile Court shall, in a case where a child is not grantee bail under sub-section (3), direct for tracing the guardian of such child and where the guardian of the child is traced out, the juvenile Court may immediately release the child on bail.

(5) Where a child under the age of fifteen years is arrested or detained for an offence which is punishable with the imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence.

(6) No child under the age of fifteen years shall be arrested under any of the laws dealing with the previous detention or under the provisions of Chapter VII of the Code.

(7) Notwithstanding anything contained in the Code

and except where a Juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail.

a. If, being accused of an offence punishable with death has been detained for such offence for a continuous period exceeding one year and whose trial for such an offence has not concluded.

b. If, being accused of any offence punishable for improvement for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or

c. Who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded.

Provided that where a child of the age of fifteen years or above is arrested, the court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its

option Is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.

11. Release on Probation: - Where on conclusion of an inquiry or trial, the Juvenile Court finds that a child has committed an offence, then not withstanding anything to the contrary contained in any law for the time being in force, the Juvenile Court may, if it thinks fit.

(a) Direct the child offender to be released on probation for good conduct and place such child under the case of guardian or any suitable person executing a bond with or without surety as the court may require, for the good behavior and wellbeing of the child for any period not exceeding the period of imprisonment awarded to such child:

Provided that the child released on probation be produced before the Juvenile Court periodically on such dates and time as it maydirect.

(b) Make an order directing the child offender to be sent to a borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.

(c) Reduce the period of imprisonment or probation in the case where the Court is satisfied that further imprisonment or probation shall be unnecessary.

12. Orders that shall not be passed with respect to a child... Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be:

(a) Awarded punishment of death, or ordered to labor during the time spent in any borstal or such other institution; and

(b) Handcuffed, put in fetters or given any corporal punishment at any time which is custody; Provided that where there is reasonable apprehension of the escape of the child from custody, he may be handcuffed.

13. Appeal, etc.,

(1) A child convicted on a trial by a Juvenile Court, or any other person on his behalf, may, within thirty days from the date of such order, prefer an appeal in accordance with the provisions of the Code.

(2) The Provisional Government or any person aggrieved by an order or acquittal passed by a Juvenile Court, may within thirty days prefer an appeal against such order in accordance with the provisions of section 417 of the Code.

14. Ordinance not to derogate from other laws. The provisions of this Ordinance shall be in addition to and not in derogation of, any other law for the time in force.

15. Power to make rules The Provisional Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

Chapter Nine

Judicial Attitude/Review of Case Law of India and Pakistan.

On the basis of the report of the Probation Officer and within the area permitted by the legislature, the court is to exercise its discretion having regard to a number of factors and to pass the necessary order to release the offender or not on probation.

The judicial attitude towards this modern concept in both the countries can be appreciated with reference to some decided cases.

A. Emphasis on grant of Probation.

A survey of the cases decided by the superior courts on the subject it appears that in the lower courts in both the countries the law has not been fully applied in its letter and spirit. Superior courts of Pakistan have more than once stressed the application of the provisions of the Probation law. In **ZULFIQAR** ABBAS Versus THE STATE (2007 P Cr. L J 306 [Karachi]) Justice Rahmat Hussain Jafferi, has **held that** one of the concepts of punishment is reformation. The present conditions of our jails are such where once a person is sent there then he may come out after serving out the sentence as a hardened criminal, therefore, instead of becoming a helping hand to the society he would become a cause of concern to it. It is possible that the appellant while mixing with the criminals might develop bad habits, which ultimately would not be beneficial to the soci-

ety when he comes out after serving the sentence.

The court has held

as under

"*on them the normal punishment for their crimes. The basic idea of putting the accused in jail is to reform him so that he may not commit offence when he comes out from the jail, therefore, a balanced approach is to be made while punishing a person keeping in view the reformation concept of punishment, as such, the option between reformation and punishment is an 1nerous one and it requires a judicious application of mind by the person or authority dealing with such offender. This election must be made keeping in view the ultimate good of providing justice to the victim, society and the offender within the framework of law. The greatest virtue of the law is its flexibility and it's adaptability. It must change from time to time so that it answers the demand of the*

people, the need of the hour and order of the day. One school of thought argues that the function of the law Court is that of a social reformer. It is important to note that the process of rehabilitation and reformation has to take care of both the offender and the victim".

"One of the systems, which plays a very important role in the rehabilitation and reformation of the offender, is probation system. On first November, 1960 "The Probation Offenders Ordinance, 1960" was promulgated under which the benefit of probation has been made available to the offenders. The Ordinance was enacted to provide for the release of offenders on probation or admonition and for matters connected therewith. The Ordinance shifts emphasis from deterrence to reformation and from crime to the criminal in accordance with modern outlook on the punishment. Reformation and rehabilitation are the

the increasing emphasis on the reformation and rehabilitation of the offenders as a useful and self-reliant member of the society without subjecting them to the deleterious effects of the jail life. The Ordinance is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of the law is more to reform the individual offender than to punish him. The Ordinance empowers the Court to release on probation an offender found guilty of having committing an offence not punishable with death or imprisonment for life or for the description mentioned in sections 4 and 5 of the Ordinance. It is true that nobody can claim the benefit of sections 4 and 5 of the Ordinance as a matter of right and the Court has to pass appropriate orders in the facts and circumstances of each case having regard to the nature of the offence, its general effect on the society and the character of the offender, etc. It, generally, does not exercise its discretion in favour of the accused when he has committed heinous crime, which shakes the conscience of the Court. There may be cases under other laws, which may not justify the exercise of power under the Ordinance. The Court should be wary of extending benefit of the Ordinance to offences relating to corruption, narcotic drugs, etc. The Court is also slow to come to the rescue of the

guilty of having committing an offence not punishable with death or imprisonment for life or for the description mentioned in sections 4 and 5 of the Ordinance. It is true that nobody can claim the benefit of sections 4 and 5 of the Ordinance as a matter of right and the Court has to pass appropriate orders in the facts and circumstances of each case having regard to the nature of the offence, its general effect on the society and the character of the offender, etc. It, generally, does not exercise its discretion in favour of the accused when he has committed heinous crime, which shakes the conscience of the Court. There may be cases under other laws, which may not justify the exercise of power under the Ordinance. The Court should be wary of extending benefit of the Ordinance to offences relating to corruption, narcotic drugs, etc. The Court is also slow to come to the rescue of the offender when he has committed economic offences

for the reasons that the kindly application of the probation principle is negative by the imperatives of social defence. No chance can be taken by the society with a man whose anti-social operations imperil numerous innocents. He is the security risk. Secondly, these economic offences committed by the white-collar criminals are unlikely dissuaded by the gentle probationary process.

There may be cases where the Court may conclude that the offender could be released after due admonition and there is no need for putting him under the probation. Section 4 of the Ordinance takes care of such an eventuality. The sole intention of the section 4 is that the accused should be given a chance of reformation without even subjecting him to the probation system. It cannot be disputed that even when a person is relieved after granting him the pro-

bation, he remains under the constructive control of Court through the probation officer. He is required to comply with the conditions of his release and is kept under constant supervision of the probation officer. This takes away some of the freedom of the offender, but section 4 takes care of it.

The reformation and rehabilitation of the offender is incomplete unless he can live a life free from stigma. The stigmatization is bound to occur to offender once a Court convicts him. On the conviction, the chances of survival through earning are jeopardized largely. Section 11 of the Ordinance gives effect to this rehabilitative concern by removing the disqualification attached to the conviction of an offender who has been released under section 4 or section 5 of the Ordinance. This provision is vital importance as it contributes significantly to the rehabili-

tation and reformation' of the offender. The provision of section 11, however, makes it clear that the benefit of this proviso cannot be extended to person who after his release on probation subsequently sentenced for original offence.

In the cases against juvenile offenders the superior courts are very specific and emphasized repeatedly to apply the provisions of the Probation law. In **JAMIL AHMED** Versus THE STATE, 2007 P Cr. L J 1577 [Quetta] the Hon court remanded the case to the trial court because before awarding sentence to the juvenile offender the trial court did not consider the application of probation law holding that the Juvenile Court was under legal obligation to consider said provisions before recording any conviction

The Supreme Court of India has observed in Musa Khan v. State of Maharashtra, 1977 SCC (Crl) 164 that though the provisions of Section 6 of the Probation of Offenders Act were mandatory, the courts have not made wise use of the provisions, which was necessary to protect our younger generation from becoming professional criminals and, therefore, a menace to society.

Similarly another case of Indian jurisdiction Rattan Lal v. State of Punjab (AIR 1965 SC 444) is a good example of liberal approach where Subba Rao J. gave retrospective application to the Probation of Offenders Act which had been notified in a certain district a few months after the conviction of the appellant.

The same concern in favour of probation is reflected in applying Sections 360 and 361 of the Criminal Procedure Code. While applying the provisions, the Supreme Court observed in Bishnu Deo v. State of Bengal (AIR 1979 S.C. 964) as under:-

> *"In the context of Section 360, 'the special reasons' contemplated by Section 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed..."*

Similer observations were made by the Orissa High Court in Bipin Bihari Sahu V. State of Orissa". (1986 Cr. L. J. 406)

(B) Young age of the offender

The age of the offender is very material question while granting or refusing probation by the courts

with the view that young offenders may be provided full opportunity for their reclamation.

In a case of Indian jurisdiction re:- Abdul Qayum v. State of Bihar (1972) 1 SCC 103, the appellant was only 16 years old boy when he was convicted for the offence of the theft of Rs.56 by pick pocketing. He was given six month's rigorous imprisonment and probation order was refused in spite of the fact that the probation officer had recommended it. The trial court observed:

> *"In spite of his recommendation I do not feel inclined to extend the benefit of the provisions of the Probation of Offenders Act to the accused Qayum. Apparently he is an associate of the accused Shamim who is hardened criminal and a person of doubtful character. Incidents of pick pocketing are very rampant in this subdivision and it was just a stray chance that the accused Qayum was caught in this case. Having*

regard to these facts and the nature of offence and the circumstances in which accused Qayum was caught, he does not deserve the benefit of Section 4 of the Act."

Both the Appeal and the Revision were rejected by the Patna High Court but the Supreme Court while upholding the appeal directed the trial court to place him on probation on the following ground:

"..... there was no warrant for interfering that the appellant was his (Shamim's) associate. A reference to the report of the Probation Officer would show that the accused was physically and mentally normal. Though he was illiterate he had a vocational aptitude for tailoring and was working in the Bihar Tailoring Works. He was interested towards his work as a tailor and behaves properly with his father and brothers and has normal association with friends...Both his father and his elder brother are employed. The attitude of the family towards the offender appellant was one of sympathy and affection

and the father exercised reasonable control over him. The report of the nieghbours is also in his favour....there is no report against the character of the offender, no previous conviction has been proved against him prior to this case and in the circumstances.. the release on probation may be a suitable method to deal with him."

In Pakistan the Lahore High Court has otherwise observed. In the case of Muhammad Jamil and another Vs. The State (1970 P.Cr.L.J 251) Shaukat Ali J, while hearing the appeal of the young offenders of rape aged 13 years released them on probation holding that they had just come to the age of puberty, might do many things which they would never think of doing whey they were old one---- The relevant para of the judgment is reproduced hereunder:

"The question of sentence requires consideration. On the record there are school certificates of Muhammad Jamil and Nazir, according to which Muhammad Jamil was born on 7th May 1954, and passed his middle standard examination in the year 1968, securing first division. Muhammad Nazir according to the certificate was born on 28th April 1954, and passed his middle standard examination in second division in the year 1968. Officially, at the time of the incident they were 13 years of age. Considering their age it was inadvisable on the part of the Courts below to lodge them in ordinary jail. At the age of 13, when a boy had just come to the age of puberty, he might do many things which he would never think of doing when he was old one. It is even possible that he might become a useful citizen. In the circumstances it would have been appropriate for the Courts below to invoke the aid of Section 5 of the Probation of Offenders Ordinance, 1960 instead of sentencing them. In consequences, I order that Muhammad Jamil and Nazir shall remain on probation for a period of one year."

Ahmad Siddique (Criminology, Problems and Perspectives) has observed about Indian case that not only did the Supreme Court of India refuse to see that the offender was in fact an associate of Shamim, a seasoned pickpocket, but the Court also ignored two very pertinent observations made by the trial court while refusing probation to the offender. Firstly it was pointed out by the trial judge that incidents of pick pocketing were very rampant in the subdivision and secondly, that it was just a stray chance that accused Qayum was caught in this case. The considerations were weighty enough to warrant a refusal for probation to the offender. The nature of the offence of pick pocketing is such that the first conviction does not ordinarily mean that it was really the first act of pick pocketing committed by the person. It is common knowledge that this type of offence requires intensive training before the offender embarks on his

criminal career and the chances of the offender being detected while on the job and his arrest are generally not very bright.

Whereas in the Lahore's case the leniency was shown in spite of the fact that the offenders had committed serious offence such as rape with a girl of 9/10 yeas old while playing outside her house. One of the offender caught hold of her by her arms while the other gagged her, carried her in the neighboring house, threatened her not to raise alarm, put on a cot and one of them committed rape on her. There was material evidence against them warranting conviction. The leniency shown by the court was extraordinary which was obliviously on account of tender age of the offenders.

Another case of Indian jurisdiction decided by the Orissa High Court Jogi Nayak Vs. The State (AIR 1965 Ori-106) shows even much more latitude to young offenders, though in a more questionable way was shown. In this case, the accused, a young boy of fifteen years, was found guilty of robbery under Section 394 of the Penal Code and sentenced to undergo rigorous imprisonment for one year. The boy had removed jewelry from the body of a young girl after making her unconscious by inflicting grievous injuries to her. In this case it was held that probation could not be granted since the offence was punishable with life imprisonment. But strangely enough, after holding that the boy could not be released on probation, the High Court ordered his release by saying that the accused was a young boy of 15 years and a longer stay in the company of criminals would

only turn him into a hardened criminal and the sentence was reduced to the period already undergone.

Ahmad Siddique observed that it was ironical that by placing a restricted construction on the statue the court found probation inapplicable and let the boy loose, unsupervised, on society. A better way of doing the same thing would have been to hold that since life imprisonment was not the only punishment laid down in the Penal Code for robbery, the boy could be released on probation, in which case at least the advantage of supervision would have been available.

(c) Refusal of Probation in certain cases

The superior courts while emphasizing the importance of probation laws have also expressed reservations regarding their use in crimes of socio-economic nature.

(a) Cases of Food Adulteration

Beginning with Ishar Dass v. State of Punjab (AIR 1972 SC. 1295) through a few other decisions, the Supreme Court of India expressed itself in favour of the exclusion of the probation laws in food adulteration cases, a policy also recommended by the Indian Law Commission in its Forty-seventh Report. (Ahmad Siddique-Criminology, Problems and Perspectives) The desired legislation was eventually passed in 1976 by inserting Section 20-AA in the Prevention of Food Adulteration Act which barred the application of Section 360, Criminal Procedure Code

and the provisions of Probation of Offenders Act to the violations under the food adulteration laws.

While in Pakistan in the case of Sarfraz Khan Vs. The State (1985 Cr. L. J. 167) while dealing with the case under Section 5(b) of West Pakistan Pure Food Ordinance (VII of 1960), the Peshawar High Court has not made any such observation but set aside the order of probation on technical ground and remanded the case for retrial.

(b) Offences Punishable with life imprisonment.

Pehshawar High Court re- The State Vs. Fazli Khalique (PLD 1967 Pesh. 105) set aside the order of probation passed by a Magistrate Ist Class to an

offender while convicting him under Section 307 PPC and under Section 13(d) of Arms Ordinance holding that the offence under Section 307 PPC was punishable with transportation of life and therefore provision of Section 5 of the Probation Ordinance were not attracted.

The same attitude of the Indian Supreme Court is reflected in the case of J.K. Parshad Vs. The State (1972) 2 SCC 633 when the offender was refused the benefit of Probation Act and his conviction under Section 326 IPC read with Section 149 IPC for 5 years imprisonment on the ground that offender is punishable with life imprisonment.

© Cases of obscenity.

In other case of Uttam Singh v. State (Delhi Administration), (1974) 4 SCC 590 the appellant was convicted under Section 292, IPC for being in possession, for the purpose of sale, three packets of playing cards with obscene photographs and sentenced to six months' rigorous imprisonment and a fine of Rs.500/-. The Supreme Court of India refused to interfere with the sentence on the following grounds:-

> *"The accused is married and is said to be 36 years of age. Having regard to the circumstances of the case and the nature of the offence and the potential danger of the accused's activity in this nefarious trade affecting the morals of the society, particularly of the young, we are not prepared to release him under Section 4 of the Probation of Offenders Act. These offences of corrupting the internal fabric of the mind have got to be treated on the*

same footing s the cases of food adulteration and we are not prepared to show any leniency...."

(d) Driving vehicle in rash and negligent manner.

In the case re: Dalbir Singh Vs. State of Haryam and others (AIR 2000 S.C. 1677) the Indian Supreme Court has declined probation to an offender convicted of offences of causing death by rash and negligent driving holding as under:-

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families. Criminal Courts

cannot treat the nature of the offence under S.304-A, I.P.C. as attracting the benevolent provisions of S, 4 of the Probation of Offenders Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime consideration should be deterrence. A professional diver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afforded to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensures he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the Court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

(e) Respectability of offender.

The courts while employing probation can consider all those grounds such as the age of the offender and his capacity to cause damage to the society if released on probation, the family which is dependent on him but it will be no valid reason for granting probation that he holds a position in the society because it will differentiate the application of law as between responsible and irresponsible person in favour of the former which would amount to gross failure of justice.

In Akhtar Munir v. Emperor (AIR 1937 Pesh 51)a person was convicted under the Arms Act for possessing an unlicensed dagger. No sentence was passed but he was placed on secu-

rity under Section 562 of the Criminal Procedure Code. The reasons given for not imposing sentence were as follows: (i) The accused was a lambardar; (ii) he was 30 years of age; and (iii) it was his first offence. It was held on appeal to the High Court that the first reason was no reason whatever for leniency. The position of the offender, if at all relevant, showed that he should have set a better example for others. To treat him leniently because he held that position would be to differentiate the application of law as between responsible and irresponsible persons in favour of the former. The second reason regarding age also did not carry any weight because at that age he was fully responsible for his actions and fully capable of realizing their nature. If the punishment was waived merely because he was a first offender, the principle would have to be applied in all similar cases under the Arms Act. It was, therefore, held that the law should take its normal course and if not allowed to do so, the result would be that an exception would be made in favour of an offender merely because he was a man of above-average position which would amount to gross failure of justice.

In the case of Atmacoori v. State (AIR 1967) Ori 54 however, 'respectability' of the offender was given due consideration by the Orissa High Court. A merchant from Berhampur was caught with 13 maunds and16 seers of poppy seed from his godown and shop. He was given the benefit of the Act because in the opinion of the court he was a " respectable merchant" and a "fairly important businessman". They were also impressed by the fact that the poppy seed being stored by the merchant was not for "preparing opium for his consumption but for carrying on the business of dispatching... and making some profit". It is obvious that no consideration was given by the court of ' setting good example' by the 'respectable merchant' as was done by the Peshawar High Court in Akhtar Munir's case, *supra*.

(f) Public Policy.

Usually it is seen that the courts while taking decision in the cases in which there was an incident in which on account of the act of the offender there was apprehension of breach of peace or public tranquility, the offender is not released on probation with the view that it is not in public policy. This can be found from the following cases f Indian jurisdiction.

In the case of Ahmad V. State (AIR 1967 Raj. 190) where one Ahmad and his friend were convicted for stealing an idol form a temple. In sentencing them to imprisonment and refusing them the benefit of probation, the Rajasthan High Court referred to the "explosive situation which could have triggered off a chain of reactions producing results which may have been more lamentable and far-

reaching. This case has no place for leniency or grant of probation."

Ahmad Siddique in his book Criminology, problems and perspectives, has observed as under:-

> *"Whether the court was justified in estimating the potential danger to the extent it did, is a question which involves conjecture and hence cannot be answered with even a fair amount of precision. But whether the courts should deny probation in an otherwise fit case on such considerations is an entirely different matter. The court, it appears, did not confine itself to the question of the interests of society in the usual context i.e. whether the offender would be reformed or not and what were the chances of his committing similar offences in future if released on probation, but it applied policy consideration in a different and an unusual context."*

He has also highlighted an English and American Case on the subject in the following words:-

"An extreme example of public policy being considered in deciding the question of probation is presented by an English case where an elderly woman of small means pleaded guilty of a charge of having attempted to take out of the country 85 ponds sterlings knowing that she was permitted to take only 5 pond sterling under the Exchange Control Act, 1947. She pleaded that ' it was a matter of life and death " that she should take the money to her son in Italy who had no work and was in debt. She was released on probation but on appeal it was held that it was extremely difficult to imagine any circumstances which would justify a court in treating an offence under the Exchange Control Act, 1947 as a trivial offence, and that as the respondent by her own admission knew that she was committing and intended to commit an offence, the justices were not justified in dealing with the case under the Probation Act. The case was remitted to the justices with a direction that a penalty must be inflicted, and that it must not be a nominal penalty."

"This was a case where too much emphasis was given on the enforcement problem

of an Act regulating a country's economy resulting in great harshness to the offender who did not, as such, have any criminal propensities and was probably a good case for probation. Contrary to this sort of judicial attitude is the one reflected in an American case where considerations for the individual offender outweighed the possible risk in releasing a confirmed drug addict and one who was responsible for the sale of narcotics in certain college campuses. A judge of the Judicial Circuit had found the accused guilty of violating the drug laws and refused to grant probation in view of the seriousness of the offence. The appellate court disagreed with the verdict regarding probation and sent back the case to another judge of the Judicial Circuit for reconsideration of the application for probation. The appellate court was influenced by the fact that " the defendant had, until recently, been a boy of excellent character who received a commendation as a National Merit Scholar and had been accepted for attendance at Boys State by the American Legion". Also, the record indicated that this was the first time that the defendant had ever experienced any kind of trouble with the law,

and that his mother and stepfather were ready and willing to furnish him excellent psychiatric care."

He has also appreciated the sympathetic view of the Supreme Court of India in a case in which the offence was committed quite long time ago and the question of probation was decided by it in the appeal later in the following words:-

"Although the Supreme Court refused to apply the provisions of the Probation of Offenders Act 1958, in the case of person found guilty of any offence under the Prevention of Food Adulteration Act because of " imperatives of social defence and the improbabilities of moral proselytisation' it appears that the court is not always averse to probation in such offences. In a later case the benefit of probation was given on the ground that the conviction was based on an offence committed many years before the disposal of the appeal by the Supreme Court. The Appellant was found guilty of an adultera-tion offence committed in 1965 and the Assis-

tant Sessions Judge ordered release under Section 4 of the Probation Act. The order of probation was quashed by the High Court. The Supreme Court accepted the appeal against the High Court's order holding that it was not proper to send the appellant to jail in view of the fact that the offence was committed a long time ago.

However, in the cases of moral turpitude such as sexual offences or immoral trafficking of girls the probation law was not advised to be invoked by the Indian Superior Courts.

A reported case on the subject is Devki alias Kala 8v. State of Haryana, 1979 SCC (Crl) 861. The victim, an unsophisticated girl of 17 years of age, was abducted by the Petitioner and was taken to various towns where she was presented to affluent lecherous youths. The Supreme Court disallowed the

petition and expressed its anguish saying that such a case ought not to have come for the benefit under the probation laws. It was observed:

> *"Counsel dared to urge that the Probation of Offenders Act should be extended to this abominable culprit who had shown sufficient expertise in the art of abduction, seduction and sale of girls to others who offer a tempting price.... It is an insulting stultification of the amelioratory legislation, viz Probation of Offenders Act, to extend his considerate provision to such anti-social specialties criminals. All that we can do is to reject the plea with indignation."*

From the above reported cases it is clear that the observations of the superior courts of both Pakistan and India have curtailed the rights of the offenders to be released on probation unnecessarily on the ground of inexpediency.

It is to be considered by the courts that they should prefer to employ probation technique specially in the cases of short term imprisonment because short term imprisonment neither fulfills the object of incapacitation nor it effects reformation of the offender.

Chapter-Ten

PREDICTION TABLES

(a) Meaning.

This implies anticipation of the probable result of correctional treatment on a particular offender which requires the individualized study of the variable factors connected with the offenders and therefore, compilation of statistic on post release behaviour of different type of offenders .

Ahmad Siddique in his book "Criminology problems and perspectives" has described these Prediction Tables as under:-

> *"An important aid in probation decisions can be provided what are known as 'prediction tables'. Prediction implies anticipation of the probable result of correctional treatment on a particular*

offender. This can be done if some data is available regarding the response of similarly situated offenders to probation and parole programmes in the past. The prediction tables may, therefore be defined as any compilation of statistics on the post-release behaviour of different types of offenders. The prediction tables can only serve to supplement the assessment of the offender's personality which requires the individualized study of the variable factors connected with the offender. Because the prediction tables are based on the past experience of the correctional agencies, they cannot take care of any changes which might have taken place in the environment factors in the period between the compilation of the statistics and the presentation of an individual offender's case before the court.

The advantages of prediction tables are that inconsistencies can be avoided to some extent by applying the standard tests in all the cases coming up for probation and parole decisions. After eliminating the cases, which are clearly inappropriate for parole and probation, the courts are left with relatively fewer cases where more intensive studies of individual needs are

possible. They are useful for responses to public criticism. If, for instance, a Parole Board is asked, "Why did you parole that murderer?" the Board can cite the low violation rate of paroled murderers when compared with other types of offenders."

(b) The use of latest technology.

The use of modern technology such as computer software, is in use all over the world for monitoring the offenders released on probation and parole so that recidivism be minimized. One of such software is "Back On Track" which is a 97-item multiple choice in-depth assessment instrument, which produces research-validated risk level scores measuring a juvenile's risk of re-offending while identifying the areas (domains) in which the juvenile is most at risk. A core feature of the software is its unique ability to measure risk and protective factors. Risk factors are events or circumstances in the youth's life

that increase the likelihood that the youth will start or continue criminal activities. Conversely, protective factors are events or circumstances in the youth's life that reduce the likelihood of the youth committing a crime. The benefit of measuring both is that a juvenile justice professional is better able to match a child's current needs with appropriate programs and services, which would be most effective in reducing the risk of recidivism. The comprehensive assessment instrument measures a youth's risk and protective factors in the following ten domains: Criminal History School Use of Free Time Employment Relationships Living Environments Alcohol and Drugs Mental Health Attitudes/Behaviors Skills.The software may be used by non-clinical staff in juvenile intake, diversion, probation, detention, group home placement, and aftercare settings. The instrument is

administered in a client interview setting and requires approximately 45 minutes to administer.

(c) Importance.

Different theories of crime causation allow us to predict various facets of crime. Generally from different variables which are highly co-related to the crime the prediction of crime can be made. For example the police may want to know the group of people who are more likely to commit a crime. Similarly, a Judge or a parole officer may want to predict whether a particular person will commit a crime and if so of what nature, social scientist and law enforcement agency may want to predict whether the crime rate will change. (Crime and Criminology by Rohinton Metha)

From these Prediction Tables in respect of Probationers one can judge the probable behaviour of an offender released on probation or parole and can help in making decision to release the person on probation or parole. This statistic can also be useful for dissemination of informations on different variable to a general public and different research institute as well as government agencies.

Chapter- Eleven

ADMINISTRATIVE ATTITUDE

a). Infrastructure provided to theParle and Probation Officers.

In order to appreciate the requirements of application of the relevant laws on probation and Parole it is necessary that we may examine the present overcrowding of the jails all over Pakistan.

As per data available with the Central Jail Staff Training Institute Lahore , there is continuous increase in the jail population not only of the convicts but also of the under trial prisoners, both male and female .where as there is slight increase in the number of jails during the last five years.

In 2003 there were are in all 30 prisons in the province of Punjab including 10 Central prisons, 19 district prisons and one sub-jail. The authorized accommodation in respect of these jails was for 17637 persons but the population as on 31.3.2003 was 49098 which included 29143 male under trial prisoners and 10064 convicted male prisoners. Out of them there were 5503 male condemned prisoners and 24 female condemned prisoners whereas women under trail prisoners were 638 and 248 were convicts. The Juvenile population of under trial Prisoners was 2375 male, 21 female, 421 male convicts and 8 female convicts. Against this on 30. 4. 2008 there are in all 32 prisons in the province . The authorized accommodation in respect of these jails is for 21527 persons but the population was 58223 which included 34118 male under trial prisoners and 9821 convicted male prisoners. Out of them there were 6660 male

condemned prisoners and 39 female condemned prisoners whereas women under trail prisoners were 372 and 14 were convicts. The Juvenile population of under trial Prisoners was 1084 male, 03 female.

Similarly in 2003 in Sindh there were in all 16 prisons which include 6 Central Prisons , 8 District Prison and 2 Sub-jails and the authorized accommodation was only for 7786 inmates but the population was 17909 which included 14148 male UTPs and 2032 male convicts, 250 male condemned prisoners and 1 female condemned prisoner, 243 women under trial prisoners and 32 convicts. Similarly there were 537 male juvenile under trial prisoners. Whereas, 18 male juvenile convicts were also there. Where as on 31.04.2008 there were in all 20 prisons and the authorized accommodation was only for 9761 inmates but the population was 19852

which included 14704 male UTPs and 2201 male convicts, 234 male condemned prisoners and 2 female condemned prisoner, 88 women under trial prisoners and 37 convicts. Similarly there were 204 male juvenile under trial prisoners.

In the N.W.F.P. there were in all 21 Jails which include 3 Central Prisons, 7 District Prisons and 11 Sub-Jails in respect of which the authorized accommodation was 7397 persons but the actual population was 9710 which included 5842 male U.T.Ps and 3006 male convicts, 119 male condemned prisoners and 3 female condemned prisoners whereas women under trial prisoner are 303 and convict 95. 537 were the juvenile under trial prisoner and 18 Juvenile convicts were also confined in 2003 where as in 2008 there were in all 22 Jails and the

authorized accommodation became 7982 persons but population was 8301 which included 4696 male U.T.Ps and 2595 male convicts, 187 male condemned prisoners and 3 female condemned prisoners whereas women under trial prisoner were 90 and convict81. 245 were the juvenile under trial prisoners

In the province of Baluchistan there were in all 10 prisons, which included 4 central prisons and 6 district prisons and the authorized population was 1845 but the population as on 31.3.2003 was 2495 which included 688 male UTPs and 1470 male convicts, 127 male condemned prisoners, 18 women under trial prisoners, 13 women convicts, 56 juvenile under trial prisoners and 91 juvenile convicts. Where as on 30.4.2008 there was increase of only 1 prison and the total became11 prisons. The authorized population was 1823 but the actual population was

3169 which included 1147 male UTPs and 1200 male convicts, 161 male condemned prisoners, 14 women under trial prisoners, 18 women convicts, 65 juvenile under trial prisoners

In the Northern Areas there were 3 district prisons and the authorized population was 150 against which the actual population was 458 inmates including 314 male U.T.Ps. and 123 male convicts, 8 condemned male prisoners, 12 women under trial prisoners and one female convict.

The position on 30.4.2008 was that district prisons became 6 with the authorized population 180 against which the actual population was 342 inmates including 299 male U.T.Ps and 39 male convicts, 3 condemned male prisoners, no women under trial prisoners and no female convict.

Similarly, in Azad Kashimri there were 6 prisons including 2 Central Prison and 4 District Prison having authorized population of 325 prisoners but their population as on 31.3.2003 was 2101 including 1592 male U.T.Ps, 423 male convict and 25 male condemned prisoners, 35 women U.T.P, 6 convicts, 6 Juvenile U.T.P.S. and 3 juvenile female convicts against this in 2008 though there were still 6 prisons but authorized population was increased to 750 prisoners. However, their actual population as on 30.4.2008 was 581 including 338 male U.T.Ps, 175 male convict and 57 male condemned prisoners, 7 women U.T.P, 1 convicts, 2 Juvenile U.T.P.S.

In 2003 the total authorized population of these 86 prisons was 35140 against which there were 81771 prisoners, where as on 30.4.2008 the total authorized population of 97 prisons was increased to

42023 but this increase did not bear results and these jails still remained overcrowded by accommodating 90468 prisoners i.e. more than twice of the authorized population. From this it can be understood that how far the concept of corrections of the convicts in these Jails would be possible when these jails even lack basic facilities such as lavatories, hospitals and even proper place for sleeping of these prisoners.

Seeing the above population it was expected that the directorates of reclamation and probation which are responsible for the probation would be more active in all the provinces but unfortunately the situation is not encouraging.

The success of program of probation is solely dependent on the attitude of the government functionaries towards the law and its application. The

negative attitude of the Govt. in this regard is apparent from the infrastructure provided to the organizations involved in the implementation of the law.

P. Louis Carney in his book Probation and Parole: Legal and Social Dimension (1970) has observed about the need to provide resources to the organizations responsible for supervising probation as under:-

> *"The key to effective probation lies in the quality of the professional staff that implement the probation service. However, the agency must provide climate, resources and philosophy that will allow the staff to perform at a high level"*

ADMINISTRATIVE CHART DIRECTORATE OF RECLAMATION AND PROBATION PROVINCE-WISE

NAME OF POST	PUNJAB	SINDH	NEFP	BALOCHISTAN
Director	01	01	-	-
Deputy Director	01	-	-	-
Superintendent Certified School Sahiwal	01	-	-	-
Assistant Director	09	03	-	01
Office Superintendent	-	-	-	01
Parole / Probation Officer	69	06	13	04
Ministerial Staff	140	13	28	10
Grand Total:	221	23	42	17

Position as on 31-12-2007

Government of Pakistan
Ministry of Interior
Central Jail Staff Training Institute, Lahore
Complied by: -RD&P Wing, CJSTI, Lahore.

These directorates which are functioning under the Provincial Governments, Home Department are under staff because the number of the sanctioned strength of the staff is not as per requirements keeping in view the population of the jails and the criminal

courts dealing with the cases in these provinces. The Judges and the Magistrates are, therefore, reluctant to apply the schemes of probation to the offenders because most of the courts, specially those situated in remote areas, have no interaction with the probation officers.

A statement of sanctioned strength of the staff of reclamation and probation Directorates in the four provinces of Pakistan as on 31.12.2007 has been provided in the previous chapter. The cursory look of the statements shows that the sanctioned strength of the officers in the province of Punjab is only 78 and of other staff in 144. In Sindh the sanctioned strength of the probation officers is only 3 with 13 other staff members. In N.W.F.P. the sanction strength is 15 officers and 28 other staff whereas in

Baluchistan this sanctioned strength is 17 including 6 officers and 11 other staff.

Against the above sanctioned posts of the staff of the Reclamation and Probation Directorates there are a number of vacancies in each province apart from over all short fall in the sanctioned posts. 321 posts in different cadres in the four provinces of Pakistan are still vacant besides short fall of 70 posts in these cadres including Director Reclamation and Probation. The comparison between the sanctioned posts of probation staff and the vacancies would show the mindset of the bureaucracy of the country towards rehabilitative approach for the offenders.

(b) Training of the Probation Officers.

The training to the probation and parole officers plays a significant role in the success of these

programs. The government of Pakistan, Ministry of Interior has established an institute in Lahore known as "Central Jail Staff Training Institute Lahore" which is responsible to impart in service training to the probation/Parole officers and staff working in the provincial directorates of reclamation and probation. This institute has also established a research, development and publication (RD & P) Wing for collection, and updating prisons /prisoners probationers /parolee's data from all over the country which is quite useful for all academic purposes and research work.

When enquired from the officials of the Directorate Sindh it was informed that there is no consistent policy of the Provincial Govt. with regard to recruitment and training to the staff of the Directorate. It was also informed that neither the vacancies lying vacant have been filled nor there is any such pro-

gram. There is dearth of probation officers in the province, specially female probation officers as not a such officer has ever been appointed in the provinces except in Punjab where there is only one such officer. On account of this short coming no work of probation for female offenders is possible in the three provinces.

As per statement dated 31.12.2007 provided by the Central Jail Staff Training Institute, Lahore there were 1604 juvenile offenders in all the jails of the country including Azad Kashmir and Northern Areas. Out of this there were 1084 male and 3 female juvenile offenders in the jail of Punjab, 204 male juvenile offenders in the jails of Sindh, 245 male Juvenile offenders in NWFP,65 in Baluchistan,1 in Northern Areas and only 2 in Azad Kashmir. No

female juvenile offenders is confined any where in Pakistan except in Punjab as mentioned above.

It is, however, heartening that jail population of juvenile offenders is on continuous decline on account of promulgation of Juvenile Justice System Ordinance, 2002. If data available in this regard is compared one can find that in 1997 the total population of juvenile offenders was 4000 which increased in 2002 and became 4546 but immediately declined and became to 2019 in December 2006.

The figure of jail population of juvenile offenders indicates that the courts dealing with their cases are unconscious of the provisions of Juvenile Justice Ordinance 2002 or Probation of Offenders Ordinance, 1960, otherwise the situation would have been quite different and the offenders who are in incarceration would have been part of the community playing their due role.

Chapter Twelve

Bottlenecks in the implementation of the provisions of the Probation of Offenders Ordinance 1960 and suggestions for their removal.

(a) Courts.

Although the Probation of Offenders Ordinance was promulgated in the year 1960 but the courts as well as the legal fraternity is still unconscious in respect therereof. The members of the judiciary are therefore required to receive some orientation in this regard and other methods of correction works so that these courts may realize the implication of these provisions. The high courts are therefore required to hold seminars ,workshops from time to time to sensitize all the stakeholders in this regard. Till today the

attitude of these courts is by, and large punitive. As indicted above very few judges and the advocates are conscious of these provisions and their importance and therefore they seldom apply the same for the benefits of the offenders and therefore, neither the public is reaping its benefits nor the jail population is being reduced.

In the province of Sindh the probation officers were appointed first time in the year 1995 when the High Court of Sindh drew the attention of the Provincial government in this regard. Since then 3 probation officers are working for the entire province in 21 districts. There is no female probation officer in the province.

The over all position of probationers and parolees all over Pakistan can be viewed in the state-

ment which has been provided above'. This statement shows Table that in Punjab there are in all 7258 offenders on Probation whereas 7 are on parole. In Sindh there are 196 offenders on probation and 99 on parole. In N.W.F.P. 2849 offenders are on probation and 2 on parole whereas in Baluchistan there are 570 offenders on probation and 324 on parole. There are in all 10873 offenders on probation and 432 on parole. Had there been the correct perception of the laws and their utility, the position would have been different. The over crowding of these jails would not have been so serious as apparent form the above figures.

The pathetic situation in Sindh as compared to the other provinces is because of lack of interest of the government which is apparent from the strength of probation officers i.e. 3 who are unable to remain in touch with the criminal courts in order to provide

them assistance in this regard in spite of their efforts. In Karachi there are in all 140 probationers and therefore, constitute major part of probationers. There are 5 offenders on probation in Hyderabad Division and 17 in Sukkur and Larkana Divisions. These figures clearly show that on one hand the Govt. is not taking any interest in the probation work and on the other hand the courts are not conscious of the provisions of the law resulting non-application of important piece of legislature which is one of the causes of over crowding of the jails.

(b) Probation Officers.

As indicated above the thin strength of the probation officers is one of the major factor in the implementation of these provisions. There is no female probation officer working in the Province of Sindh.

The Sindh finance department which was not ready to accept the proposals of the Home Department to create 17 other posts of probation officers as requested in the S.N.E. of 2003-2004 to implement the Chief Executive Directives to enforce the District Government Plan 2000 was ultimately accepted in 2006 and the vacancies were created but the same are still lying vacant on account of lethargic attitude and low priority in respect of the issue

In N.W.F.P. there are in all 16 probation officers but no post of Director Reclamation and Probation has been sanctioned and the Inspector General of Prison is working as Ex-Officio Director.

(c) Bond and sureties.

This is another bottleneck in the implementation of the provisions of important piece of social legislation.

According to the provisions of the Ordinance it is incumbent upon the court that before releasing an offender on probation to ask the offender to enter into a bond with or without surety. The surety must have a fixed place of abode or regular occupation within the area of the jurisdiction of the court. Many offenders who can be released on probation do not get the benefit of the provisions on account of the fact that either they do not have a permanent place of abode at the place of offence or they are not capable to arrange for their sureties. The result, therefore, is that many offenders entitled and qualified to be released on probation remain in jail and although

the courts wish to avoid sentencing them but the imprisonment comes through back door. It has been observed particularly in Karachi where most of the offenders are resident of up-country who are settled here for the earnings of their livelihood and therefore, have no permanent place of abode and when they are involved in petty offences and cannot arrange sureties for the same reasons. They are deprived from the benefit of the provisions of the law. On this account the population of the jails is increasing day by day and the offenders of petty crimes are compelled to complete the sentences with professional and hardened criminals. In other urban areas of the country also where most of the offenders are poor villagers who come to these metropolitans to earn their livelihood and on account of their petty offence they suffer the imprisonment.

Chapter-Thirteen

Achievements of the Probation work in Pakistan and India.

(a) Pakistan.

As mentioned above in spite of number of hurdles and bottlenecks in the implementation of Ordinance a substantial work in this field is being performed. Even with very limited resources, the Directorates of Reclamation and Probation in the four provinces are managing significant number of persons released on probation parole and their number is increasing day by day. For example in Punjab only, the total number of offenders placed on probation in the year 1962-63 was 383 which was 767 in 1966-67. In the year 1970-71 this figure was 752 and reached to 1087 in 1975-76, 1275 in 1980-81

and 1514 in 1983-84 and in 2007 this figour was 6994(Source:- Probation and Parole Guide, Director-ate of Reclamation and Probation Punjab, 1986). All over the country on 31.3.2003 there were 7258 per-sons on probation. Whereas on 31.12.2007 the total no offenders on probation were 7737 which include 6994 in Punjab,190 in Sindh,1545 in NWFP and 8 in Baluchistan. The total no offenders released on pa-role and their bond still subsist was 92 on 31.12. 2007 including 26 in Punjab, %9 in Sindh, 01 in NWFP and 06 in Baluchistan. Reasons for this has been discussed in Chapter Four.

Similarly in the Province of Sindh the work of probation has been seriously declined since 2005 as evident from the figures provided by the Provincial Directorate of Reclamation and Probation which shows in the year 2005 the total no of offenders

were 264

out of which 202 adults and 62 were juvenile. Whereas in the year 2006 this reduced to 200 including 156 adults and 44 juvenile. This figure further reduced in 2007 and came to 161 including 118 adult offenders and 43 juvenile offenders.

As evident from the figures in respect of the persons on probation and paroles in Pakistan on 31-12-2003 which was 11305 out of which 10873 were on probation and the remaining 432 were on parole but the figure declined in 2007 which was 7829, including 7737 on probation and only 92 on parole ,indicates that the work on reclamation of offenders is on decline which is on account of lack of will of the government and the poor infrastructure of the directorates of Reclamation and Probation all over the country

(b) India

The situation in India on the application of the laws on the subject (Probation of Offenders Act 1958) is altogether not different as compared to Pakistan.

As highlighted by Ahmad Siddique in his book "Criminology, problems and perspectives" the scheme has been extended to 182 districts. It will be worthwhile to reproduce the relevant Para of his book as under:-

> *"The five-year statistics show a slight increase in the number of inquiries received from courts or institutions, etc. and the number of proba-tioners under supervision. The inquires in 1968*

were 136 while supervision cases were 54 per probation officer. It is evident that for one probation officer to dispose of 136 inquires and to deal with 54 probationers in one year is quite a stupendous task. Statistical studies reveal that about 85 per cent of the convicts come to Indian jails with terms of less than 6 months. Obviously most of these convicts should provide good human material for probation services but the proportion of those who are released on probation to those sent to prisons is very low. In fact what was said by Chief Justice S.M. Sikri in 1971 reveals the extent to which the probation services have been given a back seat a in the Indian judicial system. He observed:

"As a matter of fact I was shocked to see that in a number of cases which came to the Supreme Court recently, even the existence of the local Probation of Offenders Act was not known or easily ascertainable. No reference to the relevant Probation Act was made in the courts below but the point was for the first time

taken in the grounds for special leave to appeal to the Supreme Court."

If India has to go in for probation programs in a sincere and effective way, it needs many more personnel than it has at present and a better awareness of the probation system shall have to be created."

(c) Any other country.

As compared to Pakistan, India and South Asian countries as well as Afghanistan as mentioned in the foregoing chapters, the work of probation is being carried out in other countries such as Japan and USA in its most effective manner being fully community based. In these countries not only government departments are involved in the program of rehabilitation and treatment of offenders but communities' involvement is of vital importance. In Japan the Japanese probation/parole supervision is operated through the cooperation between 1, 000 probation officers and 50, 000 volunteer probation officers. Without the help of volunteers, it would be impossible

to supervise about 70,000 parolees/probationers, including juveniles, newly placed under supervision every year. In comparison, the United Kingdom (England and Wales), which does not have volunteer probation officers, has about 8, 000 probation officers (Source: Probation Statistics England and Wales 2002) despite the fact that its population is less than half of Japan.

Volunteer probation officers in Japan are often said to be" worthy of being proud of in the world." It is probably because a large number of volunteers, without any monetary compensation, work with enthusiasm and conscience for the rehabilitation and improvement of offenders. They strive to reach out to offenders in order to establish trust with them despite various difficulties, and their selfless efforts are yielding results. In sum, volunteer probation officers are an important social resource in Japan, indispensable for the reintegration of offenders into society.

According to the offenders' rehabilitation law, a VPO is expceted to assist the professional probation officer and make up for inadequacies of the latter's

work under the supervision of the Director of Probation Officer.

Similarly, with regard to the work in U.S.A. a report is available on internet on the website of US Department of Justice, Office of the Justice Program, Bureau of Justice Statistics following facts in which the following figures have been provided:

- Nearly 4.7 million adult men and women were on probation or parole at the end of 2001, an increase of almost 113,791 during the year. Similarly at the end of 2006 this number was over five Million which includes approximately 4,237,000 on probation and 798,200 on parole.

- Form 2000 to 2001 the probation and parole population increased 2.5.% less than the 3.1 % average annual growth rate since 1995. The 1.8% growth in the probation and parole population during 2006 — an increase of 87,852 during the year — was slower than the average annual increase, of 2.2% since 1995.

- On December 31, 2001 approximately 3,932,800 adults were under Federal State, or local jurisdiction probation and about 731,100 were on parole, whereas as mentioned above in 2006 approximately 4,237,000 were on probation and 798,200 on parole.
- Among offenders on probation, slightly more than half (53 percent) had been convicted for committing a felony, 45 percent for a misdemeanor, and 1 percent for the infractions, Seventy-four percent of probationers were being actively supervised at the end of 2001; 11 percent were inactive cases and 10 percent had absconded, whereas at the end of 2006 Among offenders on probation, about half (49 percent) had been convicted for committing a felony, 49% for a misdemeanor, and 2% for other infractions. Nearly three-quarters of probationers were supervised for a non-violent offense, including more than a quarter for drug law violation and a sixth for driving while intoxicated.

Nearly all of the offenders on parole (94%) had been sentenced to incarceration of

more than 1 year. About 4 in 10 parolees had served a sentence for a drug offense.

- In 2001 Women made up about 22% of the nation's probationers and 12% of the parolees where as at the end of 2006. Women made up about 24% of the nation's probationers and 12% of the parolees
- In 2001 approximately 55 % of the adults on probation were white and 31% were black, and 12% were Hispanic. 39 % of parolees were white, 41% black, and 19% were Hispanic whereas at the end of **2006 the white population** was still approximately 55% of the adults on probation, Blacks 29%, and 13% were Hispanic. 41 percent of parolees were white, 39% black, and 18% were Hispanic.
- At the end of last year, more than 652,000 adults, or more than 1 in every 320 adults, were under State Parole supervision, a period of conditional supervision in the community following a prison term.

- By the end of year 2000, 16 States had abolished parole board authority for releasing all offenders, and another 5 States had abolished pa-

role board authority for releasing certain violent offenders.

- State inmates released from prisons as a result of parole board decision dropped from 39% of all releases in 1990 to 24% in 1999, while mandatory releases based on a statutory requirement increased from 29% to 41%.
- 42% of State parole discharges in 1999 successfully completed their term of supervision, relatively unchanged since 1990. 43% were returned to jail or prison, and 10% absconded. Among State parole discharges in 1999, over half of discretionary parolees were successful compared to a third of mandatory parolees. However at the end of 2006 of those adults on parole on January 1, 2006, (665,300) and those released from prison to parole supervision (485,900) during 2006 from the 46 jurisdictions that provided detailed information, about 16% were re-incarcerated. This percentage has remained relatively stable since 1998

Chapter Fourteen

Proposals and Suggestions.

Probation and parole is the main means of non-custodial sentencing in our penal system. However as indicated earlier, its use has remained rather poor. Swelling prisoner population, overcrowding and rising cost of maintaining prisons amply reflect the inadequacy of the present warehousing strategy. It is therefore important to re-align our sentencing policy to increase the ratio of non-custodial sentences to an appropriate level.

The low use of non-custodial sentences seems to result mainly from two problems existing in the current sentencing policy. The first relate to the deficiencies in laws relating to probation and parole[2] while the second relates to hesitation among the judicial officers to resort to non-judicial sentencing. Important legal shortcomings relate to higher discretions of judicial and probationary officers with regard to admission of offenders, cumbersome procedures for accessing services and lack of

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[2] The laws and instructions referred here include the Good Conduct Prisoners Probational Release Act 1926, the Good Conduct Prisoners Probational Release Rules 1927, the Probation of Offenders Ordinance1960, the Probation of Offenders Rules 1961 and the Executive Orders on Parole, 1934.

emphasis on reformation of the released offenders. Hesitation among judicial officers results due to lack of information and training.

Presently, authority for parole related decisions rests with the Home Department. This is not a good arrangement as it comes in conflict with the Department's supervisory role. In addition, other preoccupations of the Department tend to dilute focus on this function. For these reasons it may be appropriate to transfer this function to an independent statutory authority. Further more there should be representation of all the stakeholder in the parole committees.

Strengthening of Probation and Parole Service

It is quite obvious that the efficacy of non-custodial sentences is critically linked to the capacity of probation services which are weak. Major deficiencies in this regard pertain to following areas:

(1) Acute shortage of staff, financial and material resources;
(2) Poor training regimen and professional standards;

(3) Weaknesses in the law and governance arrangements;

(4) Absence of detailed working procedures; and

(5) Poor performance monitoring and evaluation regimen.

Strengthening of probation services will require wider reforms and on sustainable basis. Apart from steady investments, the success of reforms will depend upon political will and ownership of the reform process at all levels.

Suggestions:-

1. The public at large may be apprised through Seminars, Workshops and Electronic Media about the provisions of the law and the benefits of the same.

2. The provisions of Section 5 with regard to condition that either the offender or his surety must

be having a fixed place of abode or regular occupation within the local limits of jurisdiction of the court ordering the probation may be amended to make it more effective keeping in view the fact that in metropolis most of the offenders come from up countries for earning of their livelihood and have no permanent abode or sureties.

3. The condition to call for report from the probation officers may be dispensed with in respect of the areas where the probation officers are not posted, in that case similar report from any revenue officer like Mukhtiarkar can make such requirement, and therefore such amendment may be made in this regard in the Probation of Offenders Ordinance 1969 and the Rules.

4. The Directorate of Reclamation and Probation may also be established in Northern area and Azad Jammu and Kashmir.

5. Similar provisions may be inserted in Criminal Procedure Code on the pattern of Section 361 in the Indian Criminal Procedure Code 1973t *which*

requires special reasons to be given by the court for not granting probation under the Code, Probation of Offenders Act, 1958 and the Juvenile Act.

6. Each High Court should monitor the application of the provisions of the Probation of Offenders Ordinance 1960 in the relevant cases in the subordinate courts and call for the reasons from these courts in which the Ordinance could be invoked but no order was passed.

7. Special refresher courses be conducted for the Judicial Officers all over the country to abreast the provisions so that they may invoke these provisions without hesitation.

8. Female Probation Officer may be appointed in sufficient number in each province in order to give the benefit of the law to the female offenders

9. Voluntary Probation Officers may be appointed to strengthen a bond between an offender and community. For this purpose

10 In service training be made compulsory for the Probation and parole officers and their working be closely monitored.

11. Probation of Offenders Rules be amended to include after care program for the probationers completed their probation

The End.

BIBLIOGRAPHY

1. Durkheim, Emile Rules of Sociological Method 1950)

2. Fox, Lionel. W The English Prison and Brostal System (1952)

3 Dr. Abdul Majeed Awlakh Criminal Justice-Sytem in Islamic Republic of Pakistan

4. Sanford H. Kadish Encyclopedia of Crime and Justice.

5. 5. Ahmad Siddique Criminology, Problems and Perspectives

6. Henry Cambell Black Black's Law Dictionary, VII Edition

By Bryan A Garner

7.R. Deb Criminal Justice.

8.Rohinton Metha Crime and Criminology

9.Micheal Tonry The Handbook of Crimeand Punishment

10. P. Louis Craney Probation and Parole: Legal and social dimensions (1970).

11. Kenji Teramura Community involvement in the rehabilitation and treatment of criminal offenders (a paper read in Philippines , UNAFEI Joint Seminar at Manila, Philippines on 5-8 December 2001.

12. M. Hamiduzzafar Burewala:- Correction without tears.

13. The Probation of Offenders Ordinance, 1960.

14.The Probation of Offenders Act, 1958 (India)

15. The AIR Manual Civil and Criminal 5th Edition.

16. Words and Phrases by West Publishing Company Volume 34.

17. Probation and Parole Guide , Directorate of Reclamation and Parole, Govt. of Punjab.

18. Website of US Department of Justice, Office of Justice Program, Bureau of Justice Statistics.

19. Aquinas, Thomas. (1988). *On Law, Morality and Politics*. 2nd edition. Indianapolis: Hackett Publishing Co. ISBN 0-87220-663-7

Attenborough, F. L. (ed. and trans.) (1922). *The Laws of the Earliest English Kings*. Cambridge: Cambridge University Press. Reprint March 2006. The Lawbook Exchange, Ltd. ISBN 1-58477-583-1

20. Blackstone, William. (1765-1769). *Commentaries on the Law of England: A Facsimile of the First Edition of 1765-*

1769, Vol. 1. (1979). Chicago: The University of Chicago Press. ISBN 0-226-05538-8

21. Blythe, James M. (1992). *Ideal Government and the Mixed Constitution in the Middle Ages.* Princeton: Princeton University Press. ISBN 0-691-03167-3

22. Cohen, Stanley (1985). Visions of Social Control: Crime, Punishment, and Classification. Polity Press. ISBN 0745600212

23. Daube, David. (1969). *Roman Law: Linguistic, Social and Philosophical Aspects.* Edinburgh: Edinburgh University Press. ISBN 0-85224-051-1

24. Driver, G. R. & Mills, John C. (1952-55). *The Babylonian Laws.* 2 Vols. Oxford: Oxford University Press. ISBN 0-19-825110-6

25. Dworkin, Ronald. (2005). *Taking Rights Seriously.* Harvard University Press. ISBN 0-674-86711-4

26. Foucault, Michel (1975). *Discipline and Punish: the Birth of the Prison*, New York: Random House.

27. Gagarin, Michael. (1986). *Early Greek Law.* Reprint edition (1989). Berkeley: University of California Press. ISBN 0-520-06602-2

28. Garner, Richard. (1987). *Law and Society in Classical Athens.* London: Palgrave Macmillan. ISBN 0-312-008562

29. Garoupa, Nuno & Klerman, Daniel. (2002). "Optimal Law Enforcement with a Rent-Seeking Government".

American Law and Economics Review Vol. 4, No. 1. pp116-140.

30. Guterman, Simeon L. (1990). The Principle of the Personality of Law in the Germanic Kingdoms of Western Europe from the Fifth to the Eleventh Century. New York: P. Lang. ISBN 0-8204-0731-3

31. Hart, H.L.A. (1961). *The Concept of Law*. 2nd revised edition (1997). Oxford: Oxford University Press. ISBN 0-19-876123-6

32. Hart, H.L.A. (1972). *Law, Liberty and Morality*. Stanford: Stanford University Press. ISBN 0-8047-0154-7

33. Kern, Fritz. (1948). *Kingship and Law in the Middle Ages*. Reprint edition (1985), Westport, Conn.: Greenwood Press.

34. Kramer, Samuel Noah. (1971). *The Sumerians: Their History, Culture, and Character*. Chicago: University of Chicago. ISBN 0-226-45238-7

35. Maine, Henry Sumner. (1861). *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas*. Reprint edition (1986). Tucson: University of Arizona Press. ISBN 0-8165-1006-7

36. Oppenheim, A. Leo (and Reiner, Erica as editor). (1964). *Ancient Mesopotamia: Portrait of a Dead Civilization*. Revised edition (September 15, 1977). Chicago: University of Chicago Press. ISBN 0-226-63187-7

37. Pennington, Kenneth. (1993). The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition. Berkeley: University of California Press.

38. Polinsky, A. Mitchell. (1980). "Private versus Public Enforcement of Fines". *The Journal of Legal Studies*, Vol. IX, No. 1, (January), pp105-127.

39. Polinsky, A. Mitchell & Shavell, Steven. (1997). *On the Disutility and Discounting of Imprisonment and the Theory of Deterrence*, NBER Working Papers 6259, National Bureau of Economic Research, Inc.

40. Skaist, Aaron Jacob. (1994). *The Old Babylonian Loan Contract: Its History and Geography*. Ramat Gan, Israel: Bar-Ilan University Press. ISBN 965-226-161-0

41. Tierney, Brian. (1979). *Church Law and Constitutional Thought in the Middle Ages*. London: Variorum Reprints. ISBN 0-86078-036-8

42. Tierney, Brian. (1964). *The Crisis of Church and State, 1050–1300*. Reprint edition (1988). Toronto: University of Toronto Press. ISBN 0-8020-6701-8

43. Vinogradoff, Paul. (1909). *Roman Law in Medieval Europe*. Reprint edition (2004). Kessinger Publishing Co. ISBN 1-4179-4909

References

44. "Prisons". *Catholic Encyclopedia*. (1913). New York: Robert Appleton Company.

45. Smith et al, 2002

46. Andrews and Bonta, 2003

47. Smith et al, 2002

48. Andrews and Bonta, 2003

49. Andrews and Bonta, 2003

50. e.g.Moffit T E, Caspi A, Harrington H and Milne B J (2002) Males on the life-course persistent and adolescence-limited pathways: Follow-up at age 26, Development and Psychopathology, 14: 179 - 207

51. Andrews and Bonta, 2003

52. Andrews and Bonta, 2003

53. Andrews and Bonta, 2003

54. Andrews et al, 1990

55. Andrews and Bonta, 2003

56. Walmsley, Roy (October 2006). World Prison Population List (Seventh Edition). Retrieved on 2007-12-15.

57. Harrison, Paige M., Allen J. Beck (June 2006). Prison and Jail Inmates at Midyear 2005. Bureau of Justice Statistics.

58. One in100: Behind Bars in America 2008. Pew Charitable Trusts (2008-02-28). Retrieved on 2008-02-29.

59. Prison population statistics. Retrieved on 2007-10-04.

60. World Prison Population List (Seventh Edition). Retrieved on 2007-03-23.

61. Statistics - August 2007 (pdf) (Polish). Prison Service, Poland (Służba Więzienna) (August 2007). Retrieved on 2007-10-07.

62. This value includes 501 prisoners per 100,000 in prisons (US Bureau of Justice Statistics, Prisons (2005). Retrieved on 2007-12-15.) and 256 prisoners per 100,000 in jails (US Bureau of Justice Statistics, Jails (June 2006). Retrieved on 2007-12-15.).

63. Official Prison Statistics of Germany (from the German statistics office)

64. Prison Archive (from the University of Bremen)

65. http://www.cili.in/article/viewFile/1380/98

66. Corrections Department NZ - Facts and statistics

67. Statistics - June 2006 (pdf) (Polish). Prison Service, Poland (Służba Więzienna) (June 2006). Retrieved on 2007-10-07.

68. Arizona Inmates Back on the Net. Wired News (2002). Retrieved on 2008-01-26.

69. Prisoners' Rights – Legal Correspondence. FindLaw. Retrieved on 2008-01-26.

Reorted Cases

1. Musa Khan Vs. The State 1977 SCC(Crl) 70. 164

2. Ratan Lal Vs. The State AIR 1965 S.C. 444

3. Bishnu Deu Vs. The State AIR 1979 S.C. 964

4. Ishar Das Vs. The State of AIR1972S.C.1 295 Punjab.

5. Sarfraz Khan Vs. The State 1985 P.Cr.L.J. 167

6 .Abdul Qayum Vs. The State of Behar (1972) 1 SCC 10

7. Muhammad Jamil Vs. The State 1970P.Cr.L.J.251

8. Jogi Nayak Vs. The State AIR 1965 Ori-106.

9. The State Vs. Fazli Khaliq PLD 1967 (Pesh)51

10. J.K. Parshad Vs. The State (1972) 2 SSC 633

11. Uttam Singh Vs. The State (1974) 4 SCC 590

12. Dilbar Singh Vs. The State AIR 2000 SC 1673

13. Akhtar Munir Vs. Emperor AIR 1937(Pesh) 51

14. Atmacoori Vs. The State AIR 1967 Ori-54

15. Ahmad Vs. The State AIR 1967 Raj 190

16. Devki alias Kala Vs. The. State of Haryana1979 SCC (Crl) 861

17. Bipan Behari Vs. The 1986 Cr.L.J. 406 State Ori.