

JUVENILE JUSTICE



Introduction

Youth under the age of 18 who are accused of committing a delinquent or criminal act are typically processed through a juvenile justice system. States, however, have the right to set lower age thresholds for processing youth through the adult system. Similar to that of the adult criminal justice system, processes include arrest, detainment, petitions, hearings, adjudications, dispositions, placement, probation, and reentry—the juvenile justice process operates according to the premise that youth are fundamentally different from adults, both in terms of level of responsibility and potential for rehabilitation. The primary goals of the juvenile justice system, in addition to maintaining public safety, are skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth into the community. With this brief introduction, this chapter highlights juvenile justice system in Pakistan.

Children and youth under the age of 25 make up 52.5% of Pakistan's population today.¹ Nevertheless, our laws and justice system were rather geared towards adults and usually did not take in account the special circumstances of children in contact or in conflict with the law until the special child protection laws were enacted at federal as well provincial levels. The full implementation of these laws is still a question mark.

On 19 December 2017, the Lahore High Court inaugurated Pakistan's first specialized court in Lahore to handle all criminal cases involving children as victims, witnesses and/or offenders. According to the Chief Justice (CJ) Syed Mansoor Ali Shah of the LHC, the purpose of establishing the special court is to protect the innocence of children from negative impacts

¹Society for the Protection of the Rights of the Child (SPARC), *The State of Pakistan's Children 2018: Violence against Children* (2018), available at <https://www.sparc.pk.org/images/sopc18/violence.pdf>.

of litigation before traditional courts.² In 2018, Parliament enacted the Juvenile Justice System Act, 2018 (JJSA), to improve the state of juvenile offenders with a focus on their rehabilitation and better access to justice mechanisms. In March 2019, another Child Protection Court was established in Peshawar to handle all cases related to child protection and welfare, particularly legal custody of destitute and neglected children; reunification of destitute and neglected children with their families; welfare of children; trial of criminal cases involving children as victims, witnesses and/or offenders; and protection of moveable and immovable properties of orphan and neglected children and those at risk.³ On 24 June 2019, the National Judicial Policy-Making Committee (NJPMC) decided to establish Juvenile and Child Protection Courts in every district of Pakistan, starting with the provincial headquarters and Islamabad. As of April 2019, the two pilot Child Protection Courts in Lahore and Peshawar have decided 33 out of 79 cases in nine months and 40 out of 100 cases in 45 days respectively. These Child Protection Courts have dual jurisdictions, i.e. working as a child protection under the relevant provincial laws and as Juvenile Courts under the federal law-JJSA.

According to the Law and Justice Commission of Pakistan, in 2018 there were 1,199 juvenile offenders and accused in prisons across Pakistan, including 1,081 juveniles incarcerated awaiting or under trial and 118 convicted juvenile offenders.⁴ Of these, 16 were girls and the rest were boys.⁵ In almost all prisons, juvenile offenders were incarcerated with adult prisoners, exposing them to physical and psychological violence and

²Sana Jamal, *Pakistan's first Child Court launched in Lahore*, GULF NEWS, 21 December 2017, available at <https://gulfnews.com/world/asia/pakistan/pakistans-first-child-court-launched-in-lahore-1.2145135>.

³Waseem Ahmad Shah, *KP gets first child protection court*, DAWN, 17 March 2019, available at <https://www.dawn.com/news/1470119>.

⁴SPARC, *The State of Pakistan's Children 2018: Juvenile Justice* (2018), available at <https://www.sparc.pk.org/images/sopc18/jj.pdf>.

⁵SPARC, *The State of Pakistan's Children 2018: Juvenile Justice* (2018), available at <https://www.sparc.pk.org/images/sopc18/jj.pdf>.

intimidation, sexual abuse, rape, and other extreme forms of abuse.⁶ The JJSA is expected to have a profound impact on the administration of juvenile justice in Pakistan. The following are some of the most significant changes made by the new law, *inter alia*, a) made age determination mandatory in cases involving possible juvenile offenders, b) Provided for disposal of juvenile cases through diversion, c) Enhanced the role of Probation Officer for taking care of the Juvenile while s/he is on probation or parole, d) Called for the formation of Juvenile Justice Committees, f) Mandated the establishment of Observation Home and Juvenile Rehabilitation Centers for the confinement of juveniles.

The JJSA, from the theoretical stand point, is reformative in nature. It focuses on rehabilitation and social reintegration of the juvenile and deviates from the historical primitive punitive theory. In primitive times, each individual dealt with wrongs, done to him/her, as s/he perceived appropriate. In taking personal revenge, the retaliation, being unrestrained, frequently went for beyond the original wrong. Later, attempts were made to limit the retaliation to the extent of injury. This was the intent of the ancient Judaic of 'eye for an eye and a tooth for a tooth'. It was an injunction against inflicting another more injury than one had received. Fitzgerald, P.J. (1998) says that as a part of deterrent theory of crime prevention, prison houses were made to keep the criminal away from the society.⁷ Aulakh, Abdul Majeed (1987) states that the Romans also used dungeons and basements to confine Under-Trial prisoners accused of crime.⁸ These Prison houses in U.S.A, Britain and European countries during 17th to late 19th centuries remained penitentiaries; the places to penetrate by professing before God to attain spiritual rehabilitation.⁹ The purpose of the imprisonment, prior to 20th century was

⁶SPARC, *The State of Pakistan's Children 2018: Juvenile Justice* (2018), available at

<https://www.sparcpk.org/images/sopc18/jj.pdf>

⁷ Home Office (1960) *the Probation Service, its Objectives and its Organization*, London.

⁸ Fitzgerald, P.J. *The aging of the suburbs*. New York: Cambridge University press. p.67.

⁹Aulakh, Abdul Majeed, A.M. (1986). *Criminal Justice: Crime, Punishment and Treatment in Pakistan*. Lahore: Muslim Academy Urdu bazaar. p.124.

to punish the criminals on the basis of retributive, deterrent or punitive justice system. Whether the criminal was reformed or not during the time in prison was not the issue; prime consideration was that the offender could not commit crimes again.

Prisons are considered to be factories of crime. High prison population numbers, as Garland (2001) states, bring with them poorer conditions of hygiene, poorer sanitation arrangements, less time for outdoor exercise, insufficient bedding and clothing, insufficient nutrition and health care, more tension, more violence between prisoners, more violence against staff and more suicides.¹⁰ According to UNAFEI, Tokyo report (2003), high and growing prison population sizes lead to overcrowding. Overcrowded prisons are a breach of United Nations and other international standards, which require that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings.¹¹

In recent decades, the retributive model of punishment is losing ground to the more humane models of community rehabilitation and restorative justice, which are often more effective at reducing reoffending, and enhancing the importance of non-custodial sanctions that serve the best interest of the offender and the victim. Evidence suggests that successful community reintegration of an offender also benefits the community in terms of safeguarding them from the negative impacts of crimes as well as giving better value of taxpayers' money in comparison to public expenditure on an offender in prison.

The Objective of Probation and Parole

Parole and probation are procedures for release of convicted offenders or adjudicated delinquents on a conditional basis in order to assist them in pursuing a non-criminal life, with the provision that they may be committed or returned to a correctional institution if their behavior after

¹⁰ "New Encyclopaedia Britannica" (2002) Ed: 30 vol.: Encyclopaedia Britannica Inc: William Benton Pub. :, Chicago 2003). p.21.

¹¹Peterson, David and Charles W., Thomas. (1975). Corrections: Problem and Prospects. New Jersey USA, p.17.

release fails to meet standards of the releasing authority. If granted by an administrative agency to someone who already has served part of a term of confinement this release is usually called parole in the United States and license in Britain. If granted by a court as an alternative to incarcerations this release is generally called probation. These provisions were primarily promulgated for the benefit of ‘first time’ offenders who were capable of leading a useful and productive life so as to minimize their chances of becoming hardened criminals due to the effects of imprisonment. Greatest virtue of the law was its flexibility and 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.¹²

The jurisprudence developed over the years in Pakistan provides that a child in ordinary course would be released on bail or placed under custody of a Probation Officer and no punishment of death would be awarded to him and he would not be handcuffed, put in fetters or given any corporeal punishment.¹³ Purpose of trial of a juvenile was not punitive or retributive, but it was reformatory. Juvenile must learn lesson certainly the hard way and reform himself to become a useful and responsible member of the society. Entire Judicial System and enforcing State mechanism must be directed in that direction. General principle of criminal jurisprudence was that all the statutes would be interpreted in favour of offender and if any discretionary powers were vested in Court, same would not be withheld.¹⁴

Defining Probation

Probation refers to a period of time before a person is actually sent to prison or jail. When accused person receives probation, instead of pronouncing the sentence and sending him/her straight to prison or jail, the judge gives him/her an opportunity to show that s/he wants to rehabilitate himself/herself. In this case, either the party is given

¹²2007 PCr.LJ 306

¹³2002 MLD 1817

¹⁴2012 PCr.LJ 142

probation without a pre-determined sentence, or the judge may find the defendant guilty, and temporarily suspend the sentence while the accused person is on probation. If the accused person does everything the judge instructs them to do, then s/he may not be sent to prison to finish his/her sentence or given a new sentence based on the probation violation and initial crime.

Scope of the Probation in Pakistan

The concept of Probation is not stretched out to a wide range of offenses in Pakistan. The personal characteristic, the needs of the offender and the type of offense are taken into consideration while issuing a court probation order thus depriving the first-time offenders in heinous crimes to benefit from probation. All things considered, an exhaustive danger evaluation should be given prime significance while choosing the cases fit for probation and not simply the idea of an offense.

The probation law is relevant to both male and female wrongdoers. However, the law is more permissive towards female guilty parties. Notwithstanding, the offenses deserving of death or life detainment, the probation law is not relevant to male guilty parties indicted for offenses of terrible nature, heinous or shocking to public morality as portrayed in the Pakistan Penal Code of 1860. In contrast, female offenders are eligible for a probation order in all offences except offences punishable by death penalty. Further, children under the age of 18 years who come in conflict with law may also be dealt with the provision of Juvenile Justice System Act 2018 regarding probation. Child offenders who at the time of commission of an offence has not attained the age of eighteen years can benefit from the above provision.

Offender placed on probation by virtue of Section 11(2) of Probation of Offenders Ordinance, 1960, would be deemed to be discharged for purposes of any law imposing any disqualification or disability upon him/her. Such provision of law removed such disqualification and respondent could contest election.¹⁵ It is encouraging that releases on

¹⁵2002 CLC 1925.

probation have increased in recent years, particularly in cases of child offenders. However, practice shows in most of the cases release orders are issued in cases where the state is the party e.g. narcotics offences. Cases in which a private party is a victim, the courts exercise considerable restraint to the extent that even in appropriate cases the courts do not pass orders for release on probation due to the apprehension that the victim may take the law into its own hands and resort to revenge outside the court. The overriding influences of special laws like the Anti-terrorism Act further limit the practice of non-custodial sentencing. Courts after exhaustively exercising jurisdiction indeed become *functus officio* to exercise the authority.¹⁶ High Courts are competent to release offender on probation of good conduct.¹⁷

Defining Parole

Parole refers to the period of time after a defendant is released from prison. A defendant on parole will face many of the same controls or safeguards as probation. Conditions of parole may include requiring a defendant to stay in a halfway house and continuing with payments on fines and other financial obligations. It is the early release of good conduct prisoners or offenders who have completed mandatory period of substantive sentence as required under the Good Conduct Prisoner's Probation Release Act, 1926 and Rules 1927 that provide for release of good prisoners on conditions imposed by the government. This is commonly known as conditional release or Parole release.

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

¹⁶1992 PCr.LJ 119.

¹⁷PLD 1976 Lahore 373

Scope of Parole System in Pakistan

The parole system is primarily based on The Good Conduct Prisoners Probationary Release Act, 1926 and its Rules, 1927; and executive orders for implementation. Some of the provisions/executive orders limit its scope and need addressing. Parolees must be employed a minimum of 45 miles away from their immediate families and can meet their families by taking casual leave with the approval of the relevant parole officer. The parolee becomes eligible for casual leave after completion of the first six months of the parole period. The Assistant Director and parole officer are also authorized to visit the jails to select suitable prisoners for release on parole. The evidence shows these visits are not frequently carried out due to a low number of parole officers and weak coordination between prison management and the parole officers. In most of the districts, the probation officers have been assigned additional duties of a parole officer to cover the issue of understaffing. Other responsibilities and functions of the parole officer after the release of prisoners on parole include supervision and rehabilitation of offenders, periodic visits to parolees, collecting wages and submitting reports to his/her supervising officer and to process any complaints.

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

is certainly a positive development in strengthening the parole system by involving members from a range of relevant agencies.¹⁸

Statistics

There are approximately 90,000 people incarcerated in the prisons of Pakistan, including men, women, juveniles, minors with their mothers and so on. All provinces are faced with the problem of overcrowded prisons. In Punjab, for example, with a capacity to house 21,527 inmates, there were 51,133 prison inmates, including 745 juveniles, by the end of September 2015. A staggering 34,860 or 70 per cent of these inmates were under trial. The staff strength of the Prisons Department is around 17,795, with a total sanctioned budget of Rs7.5 billion for the financial year 2014-15. In addition, there were 23,395 probationers in the province, including 22,974 male, 300 female and 105 juveniles, as well as 575 male and one female parolee. The Probation and Reclamation Department in Punjab has 95 officers, including one director, five deputy directors, 14 assistant directors, 55 male probation officers, two female probation officers, 15 male parole officers and five female parole officers. The sanctioned budget for the department was Rs116.078 million for financial year 2015-16. This shows that with only 1.54 per cent budget as compared to the Prisons Department; the Probation Department is taking care of 45.75 per cent of the prison population of the province.¹⁹

Similarly, in Khyber-Pakhtunkhwa (KP) around 10,000 prison inmates occupy the space for 8,285 prisoners with almost 70 per cent under trial, including 274 women and 395 juveniles. The staff strength of the Prisons Department in KP is 4,049, with an annual budget of Rs1, 268 million for 2014. The total non-salary expenditure during the year was Rs599.62 million. There are approximately 2,000 probationers and 25 parolees at the K-P Probation and Reclamation Department, which had an annual budget of only Rs31.67 million for 2013-14. Balochistan and Sindh are no different either. In Sindh, the prison population in December 2015 was

¹⁸ Probation and Parole System in Pakistan: Assessment and Recommendations for Reform by written by ZakirShuaib

¹⁹Published in *The Express Tribune*, February 10th, 2016.

19,372 with 3,276 convicted, including 40 females and 10 juveniles. Around 465 were under the death sentence, including two females, while under-trials numbered 15,351, including 150 females and 211 juveniles. With 25 male and one female probation officer, Sindh has 645 probationers.

Shortfalls in Probation and Payroll System

Probation and Parole system in Pakistan is facing various problems at different levels of administration of justice:

- (a) The existing Parole and Probation system of Pakistan does not have strong physical presence and up-to-date means of communication which are the basic requirements for any institution mandated for multi-agency and community rehabilitation work.
- (b) Allocation of funds is another issue facing by the existing Parole and Probation system of Pakistan. Appropriate funds provision will resolve infrastructure issues at the districts level and will contribute to strengthening of the probation services.
- (c) At present, no transportation facilities are provided to probation and parole staff to carry out their field work. It is highly recommended that civil society organizations through effective advocacy and media campaigns influence the decision makers to prioritize provision of office accommodation and equipment (telephone, fax, computer printers) to make the probation and parole officers accountable and able to play their due role in the rehabilitation and community reintegration of offenders.
- (d) Having up to date infrastructure and equipment is important but also needs skilled and knowledgeable staff to ensure its effectiveness. Investment in human capital is necessary in order to yield the desired results.
- (e) Low salaries, unattractive service structure, slow career progression of prison staff, high caseloads and over-worked staff are issues persistent in the current probation and parole system.
- (f) Ignorance of Probation and Parole Officers regarding the needs of offenders and subsequently absence of standardized models of

Rehabilitation for offenders released on Probation and Parole in the country is another important issue to be addressed.

- (g) Non-availability of criminal law experts, criminologists and social workers on the penal of R&P departments in the province needs attention.
- (h) Absence of Research and Development wings in R&P departments and Home Ministries of the Provinces.
- (i) There is lack of concerted and organized client-focused efforts by the R&P departments to ensure active participation and engagement of family, friends and community of the offenders released on Probation or Parole.
- (j) Neglect of R&P departments within Criminal Justice system of Pakistan Administrative Level. Under-staffing: Shortage of professional Probation/Parole officers.
- (k) Lack of proper training, motivation, problem solving skills and modern innovative techniques among Probation/Parole officers.
- (l) The District Criminal Justice Coordination Committees provide a more effective forum for joint working. Currently, with the exception of few districts, the representation of probation officers in the coordination meetings at the district level is not effective or absent all together.
- (m) There is lack of systematic and study empirical data about the workings of the parole and probationer system in Pakistan.
- (n) Releases of prisoners on parole are comparatively lower than releases of offenders on probation. Obvious reasons include the low number and less exposure of parole staff to prison settings.

Recommendations

- As the arrest and detention rate for juvenile offenders has increased over the years, many children have suffered from violations of basic rights while in detention, including violence, abuse, poor health services, adequate food supplies, exposure to the risk of HIV/AIDS and/or other sexually transmitted diseases. This area relating to Juveniles needs to be addressed with greater care and responsibility. Relevant portion of laws relating to

detention must be revised to align them with the normative criminal juvenile justice.

- Multi sector training on juvenile justice are required to strengthen collaboration and coordination among the key pillars of justice including civil society.
- Role of Reclamation and Probation Department must be assigned in prevention of crimes; for example working with groups or individuals at high risk of committing an offence for the first time.
- The R&P department requires capacity boost in terms of skilled human resource and logistics to meet the requirements for the effective community reintegration of offenders.
- Increased attention is needed to address the specific needs of girl offenders. Monitoring systems are needed to evaluate and assess the impact of pilot initiatives in juvenile justice and to support advocacy for legislative reforms.²⁰
- There are no provisions given in the existing probation and parole legislations to work with the victims of crime, enforcing fines or to compensate the victims of crime thus limiting its scope in addressing the needs of the victim. However, it will be too early to add the component of restorative justice to the role of probation or parole departments as the system is going through a rapid transition stage at the moment. Additional measures need to be taken to address the issue of overcrowding in prisons.
- The Reclamation and Probation departments lack a systemic training programme for their staff. On initial induction staff usually receives short term training at the National Institute for Prison Administration (NAPA) Lahore that is primarily

²⁰<http://www.sparcpk.org/Other-Publications/Probation-DALR.pdf>

responsible for training prison personnel. Capacity building of the staff is the most important area that needs immediate attention.

- The R&P Directorates should make monthly visits of parole officers compulsory in their respective yearly activity planner supported by regular supervision meetings on part of the R&P senior management. It also puts an obligation on prison management to make best use of parole services in order to reduce overcrowding in prisons.
- Amendments are required in the current probation of offender ordinance to widen its scope to include community service as part of community sentencing. At present the law is silent about any such provisions, particularly in the existing situation of Pakistan where there is no framework for formal rehabilitation of offenders outside the prison. Evidence suggests that voluntary work under the supervision of probation officers does help to improve an offender's self-image and increases his/her acceptability by community members leaving a long lasting effect in breaking the crime cycle.
- Exposures visits and exchange programmes should be arranged at regional and international level for R&P management and staff to study the successful non-custodial models in practice and to learn from each other's field experiences. Civil society organizations in Pakistan should come forward to design projects that target attitudinal change through training and skills.
- The capacity building component can best be achieved through involvement of civil society organization to design public private partnerships. Such interventions will pave the way for more sustainable system change. Sensitization trainings are also required for the bar association as most of the legal community is not aware of how the probation system works.

- Chapters on probation and parole system should be added to the training curriculum of judicial academy, police training academies and to update the syllabus of the National Academy for Prison Administration. Multi-agency focused trainings are required to empower the key players in criminal justice system to offer their services in a more holistic and integrated manner. This will also help to bridge the communication gap between the judiciary, police and probation and prison departments.
- In the government hierarchical service structure, probation and parole officers stand as a universal constant, hired and retired in the same grade most of the time. The R&P service shall be made equally attractive for others to join and problems of promotions must be vanished.