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Probation and Its Purpose: Bangladesh Context

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Abstract: In the year 1884, probation has been accredited internationally by rehabilitating a drunken in Boston. Though probation is not much familiar in Bangladesh. The main purposes of probation are to prevent the repetition of the same offense and to establish criminals as honest and law-abiding people in society. The Children Act, 2013, declared taking necessary steps to protect children in case of conflict with the law. For probation of a child, the age must be 18 years as mentioned in the Children Act, 2013. According to the 1960 Ordinance, for probation, women were given priority. A probation officer plays a vital role in probation. Probation Officer appointed by the Ministry. With the separation of the judiciary in November 2007, the issue of appointing probation officers to the district court premises became more urgent or necessary. The purpose of punishment is not retribution, but to facilitate the path of reformation for minor offenses, so that, the convicted has the opportunity to present himself as a good citizen in the society and state. In 2021 and 2022, some criminals were released in different courts in Bangladesh following the probation policy. I think probation will play an effective role in resolving criminal cases in the judiciary of Bangladesh by allowing the accused to enter the court of law for the opportunity to correction of the accused of minor offenses in the applicable case if the allegation is proved.

Keywords: Purpose, Child Welfare, Social Services, clinical support, legislation.

Introduction

A "probation order" or "an order requiring [the offender] to be placed under the supervision of a probation officer" are two distinct ways that probation is defined under different legislation. The 1960 Ordinance states that the goal of probation is "to rehabilitate the criminal as a conscientious, diligent, and law-abiding citizen" and "to prevent the offender from repeating the same act or from committing additional offenses."

The High Court further explains the aim of probation:

> *"Bangladesh's criminal law is essentially reformed and non-retributive. The Probation Services Ordinance is a prime example of such a policy. Suspension limits should be more deterrent and rehabilitative, and responsive to the legislator's intent.".*[1]

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[1] *Abdul Khaleque v Hazera Begum and another*, 58 DLR (2006) 322.

In particular, the Children's Act 2013 empowers the National Child Welfare Board to formulate policies, strategies, and implementation plans for the reintegration of children that conflict with the law. It also protects against being stigmatized as having convicted a person on probation by stipulating that probation "should not be treated as a conviction," especially if you are under 18. The probation system also allows a court of competent jurisdiction to "order a probationer offender to pay compensation or damages for loss or injury suffered by a person as a result of the crime".[2] In sum, the purpose of probation in Bangladesh is to prevent crime and recidivism, as well as to facilitate offenders' rehabilitation, stigmatization, and in some cases, compensation for victims.

Offenses for which Probation can be Granted

In theory, probation is a form of sentencing for criminals convicted of crimes (usually not serious). Originally, Sections 562 to 564 of the CrPC dealt with first-time offenders and allowed certain penalties to apply. However, these provisions were repealed by Section 16 of the Probation Order 1960. As criminal law theory has become more liberalized, probation has been extended further for certain offenders based on gender and age, i.e. women and children.

Adult men convicted of the following offenses are not entitled to be released on probation:

- Crimes are punishable through demise or existence imprisonment.
- Crimes towards the State (Chapter VI of the Penal Code).
- Offenses regarding the Army, Navy, and Air Force (Chapter VII of the Penal Code).
- Harboring a theft or thief (Section 216A of the Penal Code).
- Crimes of causing harm with poison, etc. for the cause of committing a crime (Article 328 of the Penal Code).
- Theft after making arrangements to reason arrest for demise, physical harm, or theft (Section 382 of the Penal Code).
- Extortion through causing demise or critical harm to someone (Article 386 of the Penal Code).
- Threatening someone to the demise or critical harm to be able to dedicate coercion (Article 387 of the Penal Code).
- Extortion through the risk of punishment together with demise or imprisonment (Sections 388 to 389 of the Penal Code).
- Robbery (Section 392 of the Penal Code).
- Attempted theft (Section 393 of the Penal Code).
- Robbery or fraud meant to reason demise or critical physical harm (Section 397 of the Penal Code).
- Attempting to dedicate theft or fraud armed with a weapon (Article 398 of the Penal Code).
- Preparing to commit dacoity (section 399 of the Penal Code);
- Penalty for belonging to a gang of thieves (Section 401 of the Penal Code).
- Assemblies intended to commit dacoity (Section 402 of the Penal Code).
- Concealment, trespassing, or robbery to prepare for injury, assault, or unjust detention (Section 455 of the Penal Code). And
- Sneak, trespass, or robbery at night after preparing for an injury, assault, or unlawful restraint (Section 458 of the Penal Code).

[2] The Probation of Offenders Ordinance, 1960, Section 6(1).

For non-fatal offenses, probation may be granted to female offenders under Section 5(1)(b) of the 1960 Rules, which are given below:

> "*All convicted female persons can be granted probation other than convicted for anoffense punishable with death*."

Minors may be given a suspended sentence for any offense at the discretion of the juvenile court. In incredible circumstances, children who come into conflict with the ordinance may be sentenced to prison terms (convalescence, casual care, safeguarding, etc.) or institutional correction.

Factors Associated with Granting Probation

The cause for probation is to facilitate social reintegration. In thinking about whether or not to furnish probation, courts generally take into account the subsequent elements whilst granting probation:[3]

- The offender's age, personality, medical history, or physical or mental condition.
- Mitigating circumstances associated with the nature of the crime or the commission of the crime.

However, the court found that the offender or one of his sureties (if any) had permanent residence or regular employment within the boundaries of the jurisdiction and was likely to be between them.

When adjudicating a child, the court will consider the following factors:

a) Age and Gender;
b) her/his physical and mental condition;
c) her/his educational background;
d) her/his social, cultural, and ethnic identity.
e) her/his financial situation
f) her/his lifestyle and that of her family;
g) Reason for committing the offense, information about the association, general condition, and background.
h) her/his opinion;
i) social research report;[4]

The Probation Officer

Probation officers are employed by the Department of Social Services. He/she has the authority to conduct social research, monitor probation officers, and report on probation officers' status both to the court and to her DSS.

A probation officer must meet the following eligibility criteria:[5]

[3] The Probation of Offenders Ordinance, 1960, Section4(1).
[4] The Children Act, 2013, Section 30.
[5] The Probation of Offenders Rules, 1971, Rule 3.

a) Must be at least 20 years old but less than 30 years old at the time of his first appointment as a probation officer;
b) Has an honors degree in social work or master's degree in social work from an accredited university.
c) Must be of good character and in good physical and mental health.
d) Must be a Bangladeshi Citizen and Permanent Resident or Bangladeshi Resident.

The Children Act 2013 provides for the appointment of probation officers for each district, and metropolitan area. Probation officers are appointed in many districts and metropolitan areas, but few in districts (subdistricts). For example, there are only 44 probation officer positions in Bangladesh. Bangladesh has 64 districts, so not all districts have probation officers. If there is no probation officer, the district or district director of social services takes over. As such, social service leaders are appointed at the district level to perform the duties of probation officers. Across the country, there were over 400 Upazila social workers.[6] Recently, the government made arrangements to designate a separate room in the responsible Deputy Commissioner's Office (at the district level) for the placement of probation officers. However, after separation from the judiciary in November 2007, it would be more justified to house probation officers on the grounds of the District Court.

Probation officials are appointed with the aid of using the authorities below numerous laws (which include the Convicted Women Special Privileges Act 2006 and the Children Act 2013), however, in exercise, they're in general recruited with the aid of using the DSS. The Special Privileges for Convicted Women Act of 2006 stipulates those women prisoners are to be launched best after finishing a special jail term.

There are currently no documents indicating whether the female inmate was released under the Special Privileges for Convicted Women Act of 2006.

Duties and Responsibilities of a Probation Officer

Under section 13 of the 1960 Regulations, the duties of a probation officer are:

i. to go to or acquire visits from the wrongdoer at such affordable periods as can be specific withinside the probation order or, situation thereto, because the authorities might imagine fit;
ii. to peer that the wrongdoer observes the situations of the order of probation;
iii. to document to the equipped authority as to the conduct of the wrongdoer;
iv. to advise, help and befriend the wrongdoer, and while vital undertaking to discover him or her appropriate employment; and
v. to carry out every other obligation this will be prescribed via way of means of the Rules made below this Ordinance.

Each probation officer must work "in such area or in connection with the case or class of probation officer as determined by the Director of Social Services.".[7]

The Probation of Offenders Rules, 1971 further imposes those precise obligations upon each Probation Officer:[8]

[6] Ministry of Social Welfare, Department of Social Services, Probation Act and Rehabilitation Activities, 2008: 2.
[7] The Probation of Offenders Rules, 1971, Rule 4(a).

i. Inform each subject of the terms of the probation rules and, where appropriate, endeavor to ensure that subjects comply with the notices;
ii. Meet with the Probationary Person at least every two weeks during the first two months of the Probationary Period, and thereafter work closely with the Probationary Person under the Probationary Period Rules or the General or Specific Regulations of the Director. Keep in touch and meet regularly, find out about his/her behavior, lifestyle, and occupation in the area, and visit your home as often as possible;
iii. To ensure that, under supervision, each person has access to approved statutory or voluntary facilities that can contribute to his or her well-being and the general well-being, and the social, recreational, and educational facilities available in those facilities;
iv. If a Supervised Person entering into a Guaranteed (or Conditional), Guarantee is found to have breached the terms of the Guarantee or otherwise engaged in wrongdoing, no such breach or wrongdoing will be claimed.
v. Keep books and records and file reports following the regulations and
vi. Carry out court orders concerning subjects under court supervision.

The Probation Process

The 1960 Ordinance does not explicitly state that it applies only to adult offenders, so it applies to all offenders regardless of age or sex. Regulations are not strictly followed. The provisions of the Ordinance apply in addition to the Children's Act and do not apply to the Children's Act. Therefore, the probation process for adult offenders (both adult men and adult women) and juvenile offenders is different.

Probation Procedures for Adult Offenders (Adult Men and Adult Women)

The probation process for adult offenders begins before sentencing. At this point, if the court determines that the offender could benefit from probation if convicted, the court will request a bias report (PSR) from the designated probation officer. Courts may impose bail of one to three years from conviction or bail under the PSR if they believe the convicted person will maintain good conduct.[9]

After the probation order is served, the probationer is assigned to a designated probation officer. It is important to note that female offenders are not cared for by male probation officers. If parole is granted, the probation officer must supervise the probationer and report to the court and department on the current situation. The court determines how often the probation officer will inform the court about the probationer's current status. Follow the individual offender's risk assessment with her every 14 days, monthly, etc. Probation officers must maintain a list of probationers on Form "A". Probation officers are also required to keep a diary to keep an annual record of meetings and visits with persons on probation and their guarantors. Keeping records of these probation matters helps probation officers and courts to assess risks and plan better oversight. This file contains a list of all contacts, the exact dates of interviews with the data subject, and other persons involved in the incident, as well as copies of all communications and reports relating to the incident. If the court becomes aware, through the probation officer's report

[8] The Probation of Offenders Rules, 1971, Rule 4(b).
[9] The Probation of Offenders Ordinance, 1960, Section 5.

or other means, of a violation of the agreed bail during probation, it may order a suspension of probation and the original violation. or maybe convicted of original sin. Continuation of obligations subject to the imposition of fines. A convicted person may appeal or request reconsideration of a parole order issued under Section 5 of the Rules. A court of appeals or an appeals court can reverse or amend a probation order.

Child Probation Methods in Conflict with the Law

As soon as a youngster violates the law, a probation officer's responsibilities begin. In other words, the probationary period for the youngster starts the moment they are brought to the police station. The Children's Act of 2013 encourages the establishment of sub-inspectors to handle children's concerns (if they are available at specific police station).

Generally, it is the responsibility of the child police officer to notify the child's probation officer and guardian.[10] Police officials also are liable for offering mental and clinical support (if needed) and assembly simple wishes to make sure the fitness of children. For this purpose, the child police officer is obliged to determine the age of the person brought in by examining the child's birth certificate or by examining relevant certificates.[11]

If a probation officer learns that your child is in police custody, he/she must:[12]

i. Determine why the child was taken to the police station.
ii. Meet the child and reassure them that all necessary support will be provided.
iii. Coordinate and liaise with the police to investigate allegations against children.
iv. Find the child's parents and help the police to contact the child's parents.
v. Investigate the value or potential of the security deposit granted and, if possible, begin diversion immediately. And
vi. Before you bring your child to justice, take the necessary steps to secure your child's custody with the help of a child affairs police officer.

Each district and metropolitan region must have at least one children's court, according to the Children's Act of 2013. Although hearings may occur in the same space or time as adult hearings, child crime courts are wholly distinct from adult courts. Before starting a case in children's court, the court must confirm the age of the offending kid (or person). The court's determinations of age are conclusive. The techniques and activities themselves differ substantially in character as well. The legislation forbids trials of minors by adult defendants, even if hearings in child criminal courts may take place in adult courts. To guarantee the best interests of the child, courts must uphold the strictest standards of confidentiality and use kid-friendly practices. Police officers and probation officials must appear in court under the Children's Act 2013 if it is shown that they were careless in the performance of their duty.[13]

The presence of the relevant probation officer is required during proceedings in children's court.

i. Be present in court during the trial and, if necessary, be with your child whenever possible.
ii. Prepare a social research report based on empirical research and submit it to the court

[10] The Children Act, 2013, Section 14(b).
[11] The Children Act, 2013, Section 14(c).
[12] The Children Act, 2013, Section 6(1).
[13] The Children Act, 2013, Section 22(5).

considering the surrounding circumstances.

iii. Secure legal representation for your child as needed through the assistance of the District Legal Aid Committee.
iv. Liaise with non-governmental legal aid organizations to provide legal representation for children in conflict with the law, as appropriate.

The court will instruct the probation officer to assess a specific way when the youngster first appears (see Appendix F). The SIR is created by empirical study on the family, social, cultural, psychological, racial, and educational circumstances of kids with legal problems. It also discusses the child's living situation and the history of the alleged crime. To the child's best benefit, all reports involving children, including SIRs, will be kept private. Following the legislation, a probation officer must create and submit a social screening report within 21 days after the child's initial appearance in children's court.[14] The local child protection agency and DSS must both receive copies of the SIR from the probation officer. The SIR serves as the foundation for the judge's suggestion to impose a suspended sentence.

Children's courts can also enforce orders to extradite a child in question to the CDC for a period not exceeding three years under the supervision of a probation officer, or upon conviction process. The responsibility of the relevant crime expert or probation officer is to provide the rationale for a probation order for a child on probation. This is a common language of "do's" and "don't" so that children can easily commit crimes. Please understand so as not to delay the order. During the grant of probation, courts may interfere with supervision orders that allow designated probation officers to supervise probation officers (see Appendix G) and may require probation officers to make monthly amendment files. (See Appendix H) for children's development under her/his supervision. This monthly improvement file is also required for the child to be sent to her CDC. If through periodic evaluation of reports, the court determines that the child is behaving appropriately and is eligible for parole, the court may release the child from her CDC to the community for probation.

The court must close all cases involving children within 360 consecutive days after the case began. Trial technology can be extended for an additional 60 days. Therefore, it is anticipated that probation orders will be granted not later than 420 business days after the trial's start date. However, if the child is charged with a small offense and the matter does not get settled in 420 business days, the child will be declared innocent.
The responsibility of probation officers for minors placed on probation in the community is described in the Handbook for Probation Officers published by the Canadian International Development Agency (CIDA (2008):[15]

i. Inform your child on probation of the terms of the probation order and ensure that your child complies with the order.
ii. See the child's guardian or other relatives frequently.
iii. Attend your child's work or school regularly.
iv. Encourage your child to take advantage of offers from social services.

[14] The Children Act, 2013, Section31(1).
[15] Ministry of Social Welfare, *Juvenile Justice Probation Officer Best Practices and Procedures Manual, Bangladesh Legal Reform Project-Part B,* (Prepared by DSS with Canadian Juvenile Justice Specialist, 2008) 10.

v. Try to improve his behavior and living conditions.
vi. Check with the police station about the incident involving children.
vii. Meet with magistrates, judges, and lawyers as appropriate and visit children in prison, JDC or detention as appropriate. Where necessary, will seek to find suitable employment for children and to improve their behavior and general living conditions.

If a child fails to meet probation requirements during the probation period, the probation officer must formally report the violation to the court. Before a formal violation report is filed with the court, the probation officer must warn the child's parents about the child on probation and the consequences of violating the terms of probation. After reporting a violation, the court can revoke probation. As a temporary measure, your child may be sent to a child development center.[16] On the alternative hand, on a successful final touch of probation in conformity with probation conditions, the children could be deemed now no longer to be at war with the regulation anymore and can be released.

Recommendations
For Government

- A proposed amendment to Article 53 of the Penal Code may be considered to adopt an alternative to imprisonment.

- Only five types of his sentences are currently listed: (a) the death penalty, (b) life imprisonment, and (c) simple imprisonment. (d) Heavy penalties. (e) fines and no alternatives to imprisonment other than fines;

- Probation offerings ought to be made mandatory. To accomplish this, we want to broaden a fixed of rules and recommendations for implementing the probation policy.

- Amendments to the Offenders Probation Ordinance 1960 (previously amended in 1964) and the Offenders Probation Regulations 1971 would be necessary to address the following issues:

    - Allows "conditional release" and "probation orders" issued "at the request of the court" under Rules 4 and 5;
    - Clarification of probation rules, which include clean motives of probation officers' administrative responsibilities (to DSS or the courts).

- Adopt policies and guidelines specifying available alternatives to imprisonment.

Community Services beyond Parole, Probation, Fines, and Even ADR
Effective alternatives to imprisonment can be incorporated into criminal justice interventions. Women with young children need special consideration.

- Bangladesh has 64 districts but only 44 probation officer posts. Many districts do not have probation officers at or county level. Adequate human and logistical support are required to extend probation services to all districts with sufficient coverage in the Upazila and metropolitan areas. Even if a judge issues a parole order, the lack of resources limits the ability to issue such an order.

[16] The Children Act, 2013, Section 34 (8).

- More probation officers should be hired, preferably with a legal, social, or criminology background.

- Currently, there may be no separate financial allocation for probation offerings and DSS district workplace finances allocations are very limited. Separate and suitable finances have to be furnished for probation assistance. Additionally, extra sources want to be invested to make sure the ability to construct grownup and baby probation officers.

- Existing agencies involved in the probation system. DSS, District probation officers, child development centers, and county social services should increase oversight and oversight by relevant departments and courts.

- To speed up the implementation of the recently passed Children's Act 2013, provide comprehensive guidelines that urgently address new ideas of non-custodial measures, including alternatives to recovery and jail.

- Conduct regular capacity-building exercises (training, seminars, and workshops) for probation stakeholders, including judges, probation officers, police officers, prison officials, attorneys, and social workers.

- Survey results show that probation officers rely heavily on local government officials to monitor and rehabilitate probation officers. By law, local government officials are encouraged to be formally involved in the probation and reintegration process.

- Probation officials need to be classified and categorized one at a time primarily based totally on whether or not they're managing personal probation officials or infant offenders and infant offenders. Alternatively, a selected probation officer may only be appointed to appear after the kid. These officials should be in particular skilled and certified to paint with children.

- A desire to construct umbrella companies, sole proprietorships, branches, or legal entities to institutionalize and oversee all detention facilities and non-custodial punishments, including probation, diversionary, and network sentencing. To handle institutional corrections (including CDC or prison) and non-custodial corrections, a distinct "Corrections Division" could be created (consisting of probation, parole, and network sanctions).

- A probation officer's office wants to move from a modern setting of DSS workstations and/or DC workstations to a courtroom apartment. If this is not always possible, you should offer probation officers a flat rate shipping fee to facilitate regular court attendance. Probation officers must work with courts to circumvent probation orders. Moreover, probation officers should be given a special seat in every court.

- Probation officials must accept shipping offerings to acquire statistics concerning the accused to put together pre-sentence reviews imperative for courts to furnish probation.

- Provision for a probationary period must be included in professional training programs for lawyers such as those organized by the Bangladesh Bar Association. Lawyers should take action in court and remind judges of probation laws when necessary.

- District bar associations have to inspire younger legal professionals by teaching them about probation, felony resource, and ADR. DLAC may be used as a discussion board to talk about probation problems and enhance coordination amongst numerous stakeholders consisting of district courtroom docket judges, bar presidents and secretaries, and DSS officers.

- The NHRC can include the "possibility of detention" in its priority mandate to protect the human rights of pretrial detainees and convicted prisoners. In addition, the NHRC, in partnership with GOs and NGOs, will be used to identify mass probation opportunities and to gain more recognition, especially from the general public and those who have impacted their ability to obtain parole, in the future.

- The bureaucracy and registers set out in the Probation of Offenders Rules, 1971 will be revised to ensure gender neutrality and to remove references to beliefs that may not be material.

For Civil Society

- Most human rights companies recognize on due method and rights of the accused in addition to the victims. However, they do now no longer normally recognition on prisoners, in particular, the ones convicted. Except for a few constrained projects through a few improvement companies, there are nearly no investments withinside the correction (reintegration and rehabilitation) of convicts. Civil society companies, especially the ones targeted on human rights, must provoke dialogues and packages to sell the probation machine in Bangladesh as an opportunity for imprisonment, lessen jail overcrowding and humanize the penal interventions greater economically.
- Human rights groups use probation clauses and non-custodial measures such as probation for duty bearers (lawyers, police officers, prosecutors, judges) and rights holders (defendants, defense counsel). You must be notified of the possibility of doing so. Diversion, conditional release, early release, and building awareness and trust in probation services can facilitate probation as a process for both justice system stakeholders and the general public.

- Professional organizations working on criminal justice reform can conduct pilot programs to monitor, correct, reintegrate and rehabilitate offenders, and incorporate them into government programs. This can also encompass the improvement of mediation and opportunity dispute decision offerings furnished via way of means of civil society businesses about administrative offenses. Partnerships with organizations offering paralegal initiatives aimed at providing alternatives to pretrial detention should also be considered to explore parole and parole opportunities.

- Specialized corporations operating with the crook justice machine can adopt capability improvement applications for judges, lawyers, and Probation Officers. To offer proof of

the wonderful elements of probation, corporations concerned in crook justice studies also can behavior widespread studies on options for imprisonment and adopt coverage advocacy.

- A survey of sentenced prisoners ought to be finished to set up the number of capacity applicants for options for imprisonment. This could offer a baseline and statistics to help options for imprisonment work.

Conclusion

The earliest proposals for options for imprisonment may be traced to numerous pointers through the Prison Commission and the CrPC from 1898 to the past due nineteenth century. The introduction of probation system in Bangladesh has a history of more than 50 years of probation within the legal framework, starting with the criminal protection order in 1960. However, probation is not yet widespread, and the common consensus among many criminal justice professionals is that jail serves solely punitive or deterrent functions and not the aim of rehabilitation. The legal system permits probation releases for criminals accused of a variety of (lesser-serious) offenses. To protect the best interests of the child, adult suspects who conflict with the law and the child's probation procedure will be kept apart. The jail system is strained by limited access to probation, which also adds to overpopulation in huge institutions. It would be beneficial to clarify the administrative processes for probation under various statutes. Furthermore, DSS suffers from major operational and logistical issues that limit its capacity to secure parole and accomplish rehabilitative objectives. It is also clear that there is a lack of coordination among the several organizations involved in probation (police, courts, attorneys, probation officers, Home Office, prison administration, DSS, etc.).

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