

# THE PROSPECT OF PROBATION AS AN ALTERNATIVE TO IMPRISONMENT IN BANGLADESH

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## **ABSTRACT**

The aims of this study are to provide an overview of the prospect and application of the probation system in Bangladesh. It describes the study's scope, including the historical context in which it was done, the study's aims, and the research technique used to finish the research. This study shows the theory of punishment and its relevance with the idea of probation. It also describes the prison system including its necessity, conditions and loopholes focusing probation. This paper delineates the purpose and impact of alternatives to imprisonment mentioning several alternatives. It mainly addresses factors and offences regarding probations, probation officer's activity and its status and applicability in Bangladesh. The discussion of legal framework both nationally and internationally governs probation also the matter of concern of this text. These studies

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outline some difficulties and suggest imperatives to develop the practice and idea of probation. The paper is based on review of documents, Journals and books identifying gaps between the law and practice.

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## INTRODUCTION

In the regular justice system, the convicted person is awarded punishment through jail sentencing or other common ways. The idea of probation awarded punishment not in the regular custody process. It is a recognized fact that an offender faces certain ready problems in his readjustment to the community after release. It is mainly due to the 'stigma' he earns through official punishment. In view of the socio-legal implication of the matter, final disposition of the criminal, it could be said, should neither lie in imprisonment nor in freedom, but in the conditions under which he may seek readjustment with the community after having been free (Sarker, 1989). In our country the practice of probation has been growing up though it is not a well-recognized and established practice. In some petty cases and child related cases the court awards this probation as punishment. However, it is time to establish and practice the probation system in a wide range. Probation paves the way of self-reclamation and reformation. So it is our responsibility to verify suitability of probation on a large scale considering our country's condition.

## LITERATURE REVIEW

We know that literature review means the summary of previous research on a topic. It picks up how much work was done previously on a selected topic. It is an important part of research. Few literature review of my topic given below –

Md. Abdur Rahim & Most. Shahnaj Parvin in their research paper emphasizes alternative sanctions to convicted offenders focusing on parole and probation. They mentioned that although the cardinal purpose of establishment of the criminal justice system is to maintain peace and tranquility in the society by inflicting punishment to offenders there is no apparent sign of gradual decrease of crimes in the society in spite of sentencing a remarkable number of offenders with different punishments by the courts in every year. Again they mentioned that after release from prison it is quite tough for the prisoners to reintegrate themselves in the society and different types of harsh punishments in jails make the prisoners cruel and vindictive (Penal Reform International, 2012). That's why they suggest alternative sanctions and a correctional approach for punishment. Probation is one of them.

Bangladesh Legal Aid and Services Trust (BLAST) and Penal Reform International (PRI) focused on their paper development, background and national and international legal framework. They discussed probation for

women and children and where law permits. In their paper, they point out limited resort to probation creates a burden on the prison system, and contributes to massive prison overcrowding. The administrative process for probation under different laws requires clarification (Penal Reform International & Bangladesh Legal Aid and Services Trust, n.d.). It seems they hardly mentioned its prospect and how probation can be widely applied in grievous and brutal offences.

Abdul Hakim Sarkar described Probation as a correctional programmer in Bangladesh, It means “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 (or other constituted authority) and is subject to supervision by a probation officer” (Sarker, 1989).

Hussain M Fazlul Bari in his writing of an Appraisal of Sentencing in Bangladesh the Code of Criminal Procedure 1898 is the first legislative step to provide for a probation scheme. 5 Probation of Offenders Ordinance 1960 provided for provisions on probation, admonition and discharge of the accused guilty of minor offences. Children Act 1974 also dealt with therapeutic approaches as to how a juvenile delinquent will be treated in a sentencing court. Thus, there is mention of the law relating to it and has given emphasis on alternative ways of punishment (Bari, 2016). The Children Act 2013 is one of the prospective instruments in the field of probation. The 2013 Act gives details of the duties and responsibilities of a Probation Officer including what they must do when any child, either in contact or conflict with the law, is brought or otherwise comes to the police station (The Children Act, 2013). In this act, they mention alternative care and also provision to keep children other than jail or regular custody (The Children Act, 2013). This is a step of going through probation which is significant.

Criminal law has an important objective to ensure punishment to the wrongdoer. In our country the punishment has been given based on panel code 1860 and there are many theories depending on which punishment is announced to the wrongdoer. Reformatory theory is one of them. According to this theory, the object of punishment should be the reform of the criminal. He may have committed a crime under circumstances which might never occur again. Therefore, an effort should be made to reform him during the period of his incarceration. The object of punishment should be to bring about the moral reform of the offender. So, the reformatory theory is about similar to the goal of probation as its object is to reform the offender.

### **STATEMENT OF THE PROBLEM**

There are several instruments that hold the provisions of probation and give scope to sentence probation while sentencing. But in practice the sentencing of probation is not remarkable. There are gaps between laws and its applicability regarding probation. So it is time to address and take

steps, execute and develop a probation system for the sake of justice and fulfill the need of time.

### **OBJECTIVES**

The long term goal of this research is to highlight the prospects of probation in Bangladesh. The practice of probation is too miserable as the court feels comfort to announce imprisonment in Bangladesh. The object of my study is to provide current status of probation and its future possibilities. Particularly the study has the following objectives –

1. To analyze the present status of probation in Bangladesh.
2. To review the laws and practices relating to probation.
3. To find out the deficit and to give some recommendations.
4. To pick out the prospects of probation and its importance.
5. To present rationale for giving priority to probation as an alternative to imprisonment.

### **RESEARCH QUESTIONS**

Despite having a legal framework for probation, its application in Bangladesh remains limited. This study aims to explore the effectiveness, challenges, and future potential of probation as an alternative to imprisonment. Accordingly, the research is guided by the following questions:

1. To what extent is the probation system effectively implemented in Bangladesh as an alternative to imprisonment, and what are the major legal and institutional barriers to its wider application?
2. How can the probation system in Bangladesh be reformed to ensure it aligns with the principles of rehabilitation and addresses issues like prison overcrowding and recidivism?

### **METHODOLOGY**

The object of this research is to highlight the prospects of probation in Bangladesh where courts are interested in providing imprisonment. In this condition the method of the research is qualitative. Moreover, the main focus of this study is to examine the possibility and applicability of probation as an alternative to jail. For this reason, the study needs to emphasize punishment theory, laws relating to probation and examine how far probation should be applied and its present status.

After that the paper analyses the law and theory regarding this. That's why it is required to work on the library, case, Journal, article and books, the secondary sources relating to Probation and alternative to imprisonment.

In developed human societies there was a shift from retributive and deterrent attitudes to reformatory attitudes, where penal policy started to formulate for bringing about a positive change in wrongdoers through

ethical and religious teaching. They advocate for narrowing down the gap between incarcerated life and free life. This theory favors indeterminate sentences and provides a ground for development of the philosophy of rehabilitation-a modern philosophy of incarceration. As the causes of criminality lie in biological, psychological or social conditions, the offenders should be treated, rather than punished. Social scientists, therefore, began to develop treatment programs for institutionalized inmates (Rahim & Parvin, 2018).

### **BACKGROUND OF PROBATION**

The concept of probation can be traced to English criminal law of the Middle Ages. The term 'probation' is derived from the Latin word 'probo,' 'I prove' which gives an idea of the original intent of the device i.e., it is a measure by which an individual may be given a second chance to prove his worth as a law abiding citizen (Sarker, 1989).

As a modern innovation of justice, probation has deep roots in its evolution from earlier methods of dealing with the offender. In the early days, the court, at times, suspended sentences by permitting convicted offenders to live freely on 'good behavior' or on "keeping the peace." Sometimes, the offenders were compelled to furnish financial guarantee in favor of their pledge taken to project good behavior during the suspended period (Sarker, 1989).

As a modern innovation of justice, probation has deep roots in its evolution from earlier methods of dealing with the offender. The first statutory provision for probation was the Massachusetts Law of 1878. The law authorized the Mayor of Boston to appoint and pay a probation officer by empowering the municipal court to place offenders on probation. The provision for probation in South Asia can be traced back to 1898 under Section 562 of the Code of Criminal Procedure, 1898. This provided that a first offender, convicted of theft, dishonest misappropriation or any other offence under the Penal Code, 1860 punishable with not more than two years' imprisonment, may be released on probation for good conduct at the discretion of the Court. The Probation of Offenders Ordinance, 1960, constituted the major development for the probation. System during the Pakistan period. The Ordinance came into force in the then East Pakistan [now Bangladesh] in 1962. Following independence, the Children Act, 1974 and the Children Rules, 1976 were enacted addressing probation in the context of child offenders. This Act has been recently repealed and replaced by the Children Act, 2013. The Special Privileges for Convicted Women Act, 2006 has extended the scope to release women prisoners conditionally under the supervision of a Probation Officer. As a member state, Bangladesh also has obligations to follow international instruments to promote alternatives to imprisonment including probation (Kais, 2021).

### **PRISON SYSTEM OF BANGLADESH**

The word prison is a synonym for the words jail, goal, or penitentiary, and it is described as a facility that is appropriately organized and prepared to

receive people who are committed to it by legal process for safe confinement while awaiting trial or punishment (Prison System in Bangladesh, n.d.). Prison is an important and integral part of the criminal justice system in every country.<sup>1</sup> Used appropriately it plays a crucial role in upholding the rule of law by helping to ensure that alleged offenders are brought to justice and by providing a sanction for serious wrongdoing.

In our country, prison cells are overcrowded.<sup>2</sup> In these jails, about 50,000 inmates are housed. In actuality, over a lakh inmates are housed in prison cells. All of the detainees are innocent. However, the vast majority is being investigated. Aside from jails, our country has a plethora of correctional facilities, and many children and women are sent there. In most jails, there are three types of hostages. The convicted fall into the first group, judicial trial falls into the second, and safe custody falls into the third (Ahmed, 2019). How these people are dealt in jail and how they are treated by the jail authorities are the subjects under study. In Bangladesh's overcrowded jails, where every two people must share facilities meant for one, detainees rarely receive sufficient medical care. The issue is clear from the jail authorities' own records, which reveal that 29 out of 141 positions for jail physicians are vacant, as well as half of the positions for nurses and pharmacists.

Prisoners in pre-trial imprisonment or on remand (pre-trial detainees) are persons who have been deprived of their liberty through judicial or other legal processes in connection with an alleged offence or offences, but have not been officially punished.

### **LAWS RELATING TO THE PRISONERS IN BANGLADESH**

There are basically three Acts which states the rights, obligations of the prisoners, and authorities of the prison-

- The Bengal Jail Code 1864(now amended as The Prisons Act 1894)
- The Prisoners Act 1900
- The Constitution of Bangladesh

It's worth noting that jails still follow antiquated British colonial rulers' statute books from the nineteenth century. The primary goal of the prison system was to contain and keep convicts secure using punitive and suppressive means. Sections 4, 7, 13, 27, and 39 of this Act place a specific emphasis on providing adequate facilities for detainees. This Act covers the basic needs of inmates, such as separate rooms for different types of inmates, work opportunities for inmates, and medical facilities, among other things. This Act is primarily concerned with the rights of mentally ill inmates. If the government has reasonable grounds to believe that any person detained or imprisoned pursuant to any court order or sentence is of unsound mind or lunatic, the government may order his removal to a lunatic asylum or other safe custody facility within Bangladesh, where he will be held until the government directs otherwise (Hossain, 2020).<sup>4</sup> The enumerated Articles in Part III of the Constitution are the fundamental rights for a human being.<sup>5</sup> Article 35(2) states, No

person shall be punished twice for any offence for which he has already been convicted and be punished. The accused also not to be subjected to a penalty greater than or different from accept mentioned in the law in force at the time of the Commission of the offence.<sup>6</sup> Article 35(3) states that persons accused of any criminal offence shall have the right to get a speedy and fair trial by a legally authorized body, a court. Article 35(5) states, "No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment (Constitution of the People's Republic of Bangladesh, n.d.).

### **LOOPHOLES OF PRISON SYSTEM**

Bangladesh's prison administration system is rudimentary. The state administers prison, which is used to imprison convicted offenders for significantly longer lengths of time. Other parts of criminal justice, such as courts, law enforcement, and crime labs, are all part of the greater penal System (Discuss the Prison Administration System of Bangladesh, n.d.). Overcrowding, delays in legal hearings, living conditions in jail, the operating environment and management of prisons, and infrastructure and amenities are all problems with Bangladesh's prison administration system.

The loopholes that Bangladesh prison system has:

- The Prisons are overcrowding and lack of space<sup>7</sup>
- There are lots of convicted in the prison cell having pretrial stages.
- The environment for women and children is not satisfactory.
- Inadequate medical facilities inside prisons.<sup>8</sup>
- Lack of monitoring of prisons.
- Lack of welfare measures and reform programmed.
- Corruption in tendering contracts and interviews.
- Inadequate attention to women and child prisoners.
- Inadequate vocational training facilities.

### **ALTERNATIVE TO IMPRISONMENT**

Alternatives to imprisonment are a relatively new approach globally in corrections. Alternatives to incarceration are sorts of punishment or therapy that a person who has been convicted of a crime can receive instead of prison time. Alternative sanctions are also referred to as some of these. Fines, restorative justice, transformational justice, or no penalty at all are examples of alternatives. Capital punishment, physical punishment, and electronic monitoring are also alternatives to jail, but because they are cerebral in character, they are not championed by modern prison reform organizations for declaration. There are different alternatives to imprisonment that the court may order in the criminal justice system. Court can impose those alternatives to imprisonment considering the circumstances and statute regarding this. So, the alternatives are given below.

#### Community Services

When the court determines that a person's offense is serious and that he or she is capable of compensating through meaningful unpaid community service, the court may adopt this option. Community service should be physically and emotionally challenging for the offender since it restricts their freedom, requires self-discipline and respect for others, and places them in work or situations that test their attitude, experience, and aptitude (Parole and Probation, 2018).

#### Periodic Detention

Periodic detention is a sort of custodial punishment in which the offender is confined in prison on a regular basis, such as every Friday and Sunday evening, but is free at other times. Periodic detention was promoted by prison reformers as an alternative to imprisonment since it allowed convicts to keep working, retain family relationships, and avoid mixing with more dangerous criminals in traditional institutions. It was also a lot less expensive to implement.

#### Correctional supervision

It's a sentence that's served in the community rather than in prison. A probationer is a person who is serving a sentence of correctional supervision. The goal of correctional supervision is to provide a community-based means of rehabilitation, keeping the offender's crucial ties to his or her family and community. The offender is allowed or encouraged to work while under correctional supervision. While imprisonment leads to the loss of employment and the inability of the offender to maintain his or her dependents, it also adds to the State's costs. Offenders can make decisions and accept responsibility for their lives because they are in the community. Offenders are also urged to participate in rehabilitation programs as a means of changing their criminal behavior.

#### House Arrest

Home detention is an alternative to imprisonment that tries to reduce reoffending while simultaneously dealing with rising prison populations and expenditures. It permits qualified criminals to keep or pursue employment, preserve family relationships and obligations, and participate in rehabilitation programs that help them address the root causes of their criminal behavior.

Although the conditions of house arrest vary, offenders are rarely confined to their homes 24 hours a day. Employed offenders are usually allowed to continue working and are simply detained during non-working hours. They are permitted to leave their houses for particular, prearranged reasons, such as visits to the probation officer or police station, religious exceptions, or medical appointments.

#### Probation

Probation is another option to prison. Probation, like a suspended sentence, allows a criminal to return to society, but he or she does not have



the same level of freedom as a regular citizen. Probation is usually granted to first-time or low-risk offenders. While statutes dictate when probation is permissible, it is up to the sentencing judge to decide whether or not probation should be granted. Probation comes with rules that limit the probationer's behavior, and if the probationer breaks one of those rules, the court may revoke or amend the probation. When it comes to establishing probation conditions, the courts have a lot of leeway (Alternative Sentences, 2023).

#### Parole

After an offender has fulfilled a portion of his or her jail sentence, he or she is given parole. As a result, parole varies from probation in that it is not an alternative sentence, but rather a privilege offered to select criminals after serving a portion of their term. While on parole, parolees must adhere to various terms and conditions (Parole and Probation, 2018). living within state or county lines, meeting with a parole officer on a regular basis, submitting to drug and alcohol testing, and presenting documentation of domicile and work are among the conditions. If a parolee violates the terms of his or her release, his or her release will be revoked, and he or she will be re-incarcerated.

### **EFFECTIVENESS OF ALTERNATIVES IN CRIMINAL JUSTICE**

Imprisonment is said to serve a variety of social goals. It puts those suspected of committing a crime in a safe environment until a court determines their guilt. The truth is that most of the goals of jail may be achieved more successfully through other means (United Nations Office on Drugs and Crime, 2007). Alternatives may be less expensive while also infringing less on the human rights of those who would otherwise be held. When weighed against the costs of human rights protection and the cost of jail, the case for not using it as a last resort is compelling.

One of the difficulties authorities face in expanding the use of alternatives to jail as a means of decreasing the prison population is ensuring that alternatives are not defined too narrowly conceptually. Alternatives are an important aspect of the criminal justice system at all levels and phases in order to maintain the spirit of justice

Many crimes can be punished with alternative sentences that don't include jail or prison time. Sentences for a criminal conviction can take many forms, and a conviction doesn't always mean a trip to jail or prison. Alternative sentences are sometimes offered and include different combinations of it. And those alternatives provide scope to the judges to think out of the box and logically take care of criminals of their socialization.

## **PROBATION AS AN ALTERNATIVE OF PUNISHMENT**

Probation is a highly efficacious legal approach to offenders to correct and rehabilitate them from committing crimes. The idea of probation awarded punishment not in the regular custody process. Probation is a sentence handed down to criminal offenders that allows them to remain out of jail, under supervision, as long as certain specific guidelines are followed. When an offender is sentenced to probation, he must meet with an assigned probation officer on a regular basis, and must obey the conditions specified by the court.

The practice of probation has been aphoristically described by honorable Justice Imman Ali. In his words: “The use of probation by our Trial Courts is very rare, possibly due to the punitive attitude of the learned Judges which appears to be prevalent across the country.

The criminal justice system is based on the principle of punishment, and from the outset has put limited or no emphasis on rehabilitation of released prisoners, as shown by a review of the reports of the Jail Inquiry Commission 1836 and the various jail reform commissions of 1862, 1877, 1889, and 1892.<sup>26</sup> Considering the difficulties faced by prisoners including on their release, the Jail Commission of 1919 for the first time introduced a somewhat more reform-oriented framework, laying down some directions for parole and probation. Subsequently, some legal and administrative reforms were undertaken to institutionalize the system of probation.

Probation as a correctional programme, in Bangladesh, came into existence through the promulgation of the probation of Offenders Ordinance in 1960. During the Second 5-Year Plan period, two projects: Probation of Offenders project and After Care Service Project were initiated (in 1962). At the beginning, these programs were started separately in ten places in the country. Later in 1965, these two projects were merged into an integrated one and since then 21 units have been in operation in 21 district headquarters (mainly old) under the management of the Social Service Department, Government of Bangladesh. It may be mentioned that the Probation of Offenders Ordinance 1960 primarily indicated, by definition, that there would remain a ‘Probation Department’ responsible for the administration of the Ordinance. The probation officer, who would be working for the purpose, was to be appointed by the said probation department and whose qualifications would also be prescribed by the rules under the ordinance. After an amendment by the erstwhile East Pakistan Assembly in 1964 the Ordinance was turned into an Act, called Probation of offenders Act, 1964. By this amendment, the responsibility of administering probation service rests with the Directorate of Social Welfare (now Social Service Department of the Government of Bangladesh) (Rahim & Parvin, 2018). To fulfill the purposes of this Act Bangladesh Probation of Offender Rules 1971 was passed inserting detailed applications of probation. The Children Act-2013 stipulates the provision of probation for Juvenile delinquents and the Special Privileges

for Convicted Women Act-2006 provides for appointment of probation officers (Penal Reform International, 2012).

### **PROBATION IN BANGLADESH**

Bangladesh has an obligation to introduce and promote alternatives to imprisonment, particularly probation. There are specific provisions in the laws of Bangladesh to grant probation to both adults and children who are in conflict with the law. As discussed above, the major laws governing the probation process are the Probation of Offenders Ordinance, 1960; the East Pakistan Probation of Offenders Rules, 1971; the Children Act, 2013 (previously the Children Act, 1974) and the Children Rules 1976.

On examining these laws, it is apparent that two separate probation processes exist in Bangladesh, one for adults and another for children. The adult probation process follows the Probation of Offenders Ordinance, 1960 as subsequently amended, and its Rules. As the Children Act, 1974 was enacted to address probation issues particularly for children, after 1974 the Probation of Offenders Ordinance, 1960 no longer applied to deal with children in conflict with the law. Currently, the child probation process follows the Children Act, 2013 (previously the Children Act, 1974). No new Rules have been formulated under the newly enacted Children Act, 2013 as yet.

### **PROBATION IN SOUTH ASIA**

While the rate of imprisonment in India is comparatively low by global standards at 30 per 100,000, the rate of pre-trial detention is particularly high with 67% of detainees awaiting trial. The same is true of pre-trial detention in Pakistan with pre-trial detainees making up 69% of the prison population and in Bangladesh 73.8%.

Prisons in all three countries are severely overcrowded. India's prison system is operating at 117% of its capacity, Bangladesh at 201% and Pakistan at 171%, according to the latest figures from the World Prison brief (Penal Reform International, 2012). The Human Rights Commission in Pakistan reported in 2014, for example, that in some prisons 'a few convicts had to stand while the others slept or prisoners could not access the washroom in the night because sleeping prisoners covered the entire barrack floor'.

While there is a trend towards rehabilitative models of justice, non-custodial alternatives are still rarely applied and there are huge challenges to implementation.

Among the alternatives, probation has a great impact on the correctional programme of the justice system. Though probation is not deeply rooted, it worked from my own position. In the region of south Asia including Bangladesh the status of probation as an alternative is vulnerable. The Condition of probation should be improved and need to give enough space to ensure correctional programmes are fruitful. Chapter Six: Existing Legal Framework of Probation

### INTERNATIONAL FRAMEWORK

Only imprisonment is addressed in the United Nations Standard Minimum Rules for the Treatment of Prisoners. Standard Minimum Rules for Non-Custodial Measures were established by the United Nations. The Tokyo Rules were originally examined and adopted by the United Nations General Assembly at the Seventh Congress on Crime Prevention and Criminal Justice. The primary goal of the Tokyo Rules is to limit the use of incarceration. Probation as an element of the criminal justice system and as an alternative to incarceration is outlined in various guidelines for member states.

This UN recognition has aided in bringing non-custodial measures and probation into the Criminal Justice System to the attention of the world community. At a time when there was no clear understanding of what probation entailed, numerous countries experimented with the probation system and came up with some beneficial ideas as a result. Probation is not an external solution to internal problems of criminal justice, penology, or governance, according to the guide, but a conceivable framework into which locally practical and desired answers may be fitted (United Nations Office on Drugs and Crime, 2007).

In Tokyo Rules there are just lay out regarding probation system as like-

- The probation system should be legislated and efficient so that effectively implemented
- The law and implementation process should be clearly defined.
- There must be justified criteria by which probation services can be selected with judicial discretion
- The offender right must be protected and it should be reviewed in legal way
- The roles of all organs called legislative, executive, judiciary, police and others should be defined clearly.

Considering some Tokyo rules, it shows some action and criteria regarding Non- Custodial Measures and notably probation. Rule 2.3 promotes considerable flexibility in the development and use of non-custodial measures based on the following four criteria: the nature and gravity of the offence; the personality and background of the offender; the protection of society; and avoiding unnecessary use of imprisonment. Article 7 shaped the social inquiry reports as like-

In specialist areas, considerable attention has been given to probation and other forms of alternatives to imprisonment for:

- Juveniles: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985(the Beijing Rules);
- Drug Users: the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations 1998;
- The Mentally Ill: the United Nations Principles for the Protection of Persons with Mental Illness (General Assembly Resolution, 17 December 1991); and
- Women: United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for women.

### **LEGAL FRAMEWORK IN BANGLADESH**

As a member of the United Nations, Bangladesh has an obligation to promote and maintain alternatives to imprisonment, specifically probation, as stated in Rule 1.5 of the United Nations Standard Minimum Rules for Non-custodial Measures: "Member States shall develop non- custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requisition of the United Nations, and the requisition." (United Nations, 1990)

#### **The Probation of Offenders Ordinance 1960**

In the Bangladeshi law there are also some provisions to promote, grant and provide the order of probation. The Probation of Offenders Ordinance-1960 is the significant legal deed for the probation reformation in Bangladesh. From 1965 these two projects were merged into an integrated one and since then 21 units have been in operation in district headquarters under the supervision and management of the Social Service Department of the Government of Bangladesh. It is mentionable here that Probation of Offenders Ordinance-1960 provides for the central Probation Department to manage and administer probation countrywide (Probation of Offenders Ordinance, 1960). After an amendment by the former East Pakistan Assembly in 1964 the Ordinance turned into Act. By this amendment probation service was entrusted to the Directorate of Social Welfare though it is to be established. Now the Social Service Department has been administering the program of probation along with its manifold general services. To fulfill the purposes of this Act Bangladesh Probation of Offender Rules 1971 was passed inserting detailed applications of probation (The Probation of Offenders Rules, 1971).

#### **The Children Act-2013**

The Children Act-2013 stipulates the provision of probation for juvenile delinquents. The Children Act, 2013 empowers the National Child Welfare Board to devise a policy, strategy and implementation plan for integration and rehabilitation of children in conflict with the law. It also provides a safeguard against any person on probation being stigmatized as convicted by providing that probation is to be "deemed not to be a conviction", especially for those who are less than eighteen years of age (The Children Act, 2013).

#### **The Penal Code 1860**

The Penal Code-1860 provides different types of punishments without any reference of probation. The Code of Criminal Procedure -1898 incorporated provision of probation under sections 562, 563 and 564 with a view to embracing correctional philosophy in penal policy in the Indian Sub-continent (The Code of Criminal Procedure, 1898).

Existing laws also address women's and children's concerns about probation. The 1960 Ordinance highlights several qualities to be considered when giving probation, including "the offender's age, character, antecedents, or bodily or mental condition; and the nature of the offense or any extenuating circumstances attending the commission of the offence.

### **Prospects of Probation System in Bangladesh**

Probation, as a modern justice innovation, has profound origins in the evolution of older techniques of dealing with offenders. Methods such as gaining sanctuary, clerical rights, judicial reprieve, and technical circumvention of statutes were once used to lessen the punitive reaction. Under the common law of crimes, a judge can temporarily postpone a sentence for a variety of reasons. In the early days, the court, at times, suspended sentences by permitting convicted offenders to live freely on good behaviour or on "keeping the peace." In Bangladesh there is also the growing practice of probation in court but it's not remarkable

The Criminal Courts, including the High Court Division, the Court of Sessions, and the Court of the Judicial Magistrate, as well as the Department of Social Services under the Ministry of Social Welfare, are all involved in Bangladesh's probation system. The Probation Service is one of the smallest sections of the Ministry of Social Welfare's Department of Social Services (DSS). Probation Officers report to the Director of the Department of Social Services (DSS). They are legally obligated to carry out monitoring, supervisory, and reporting responsibilities as directed by the Court for each probationer. At the district level, there are 44 Probation Officer posts available. Because there are 64 districts in Bangladesh, the number implies that there are many districts where there are no Probation Officers (Kais, 2021). In the absence of Probation Officials, social welfare officers at the district and upazila levels are responsible for carrying out the tasks of Probation Officers in addition to their regular duties.

In the thirteen years of his service, a Probation Officer questioned for this study stated that he had only received two calls from police officers involving the arrest of juveniles. Probation Officers are frequently notified of the need for their services by non-governmental organizations (NGOs) that work with children, rather than by the police. The general state of probation can be seen in the declining data indicating a three-year trend in the granting of probation orders.

Within the legal system of Bangladesh, the concept of probation is not very new. There have been legal developments over the last century to allow offenders to be placed on probation, with new laws strengthening the scheme for probation for women and children. However, the practice of granting probation by the criminal courts is in its rudimentary stage. The notion of punishment generally gives rise to the image of a person staying behind prison bars. The over-reliance on imprisonment as a sentencing option and a corresponding increase in the prison population

results in many adverse consequences for inmates both inside the prison and after being released. The situation inside the prisons demands a need to find alternatives to imprisonment, and activating and strengthening the existing probation system appears to be an obvious means for this (Penal Reform International & Bangladesh Legal Aid and Services Trust, n.d.). Probation for selective offenders can be an effective and economical way to reduce prison overcrowding as well as to enable rehabilitation and reintegration of prisoners through correction.

### **DIFFICULTIES OF ESTABLISHING PROBATION**

In the process of probation and executing it there are lots of difficulties and impediments. It is necessary to find out these difficulties and also figure out its Imperatives. It will be helpful for the proper execution of the probation system and smooth practice of it in and out of court.

- The idea and knowledge of probation is not common where the other practice of criminal justice is common to all.
- Ignorance about probation among many lawyers, prosecutors and judges in Bangladesh and remains unaware about the scope for granting probation to offenders found guilty. Moreover, there is also a widespread misconception about the application of probation.
- The coordination among police, Probation Officers, judges, lawyers, prosecutors and local government institutions is not well bonded. Without coordination among these bodies, the probation system cannot function well.
- It is an admitted fact that for proper implementation of any Act there should be rules spelling out the whole work process and functions to be carried out. In the case of the Probation Act no such rules are made by the Government.
- Probation is a highly professionally skilled service. Therefore, the personnel who would remain associated with this service must have adequate knowledge, skills and expertise about probation. But, the Social Service Department has no definite policy to recruit personnel for this specialized job. Persons of diverse academic background are now in charge of probation yielding an inconsistent contribution to it.
- The supervision and rehabilitation of the accused on probation is a great challenge in our social and administrative context. The Probation Officer is appointed and deputed under the Social Welfare Department. At the District level, there are a few probation officers. Most of the posts are vacant for a long time. The Upazila Social Welfare Officer is generally in-charge of the probation officer of the concerned Upazila.
- The trend of granting probation has plummeted sharply in recent years, which raises questions regarding the government's willingness to incorporate the probation system within the framework of penal interventions.
- In a society where there are relatively high levels of politicization and corruption within institutions, there is a real risk of misuse of probation if

there are inadequate administrative arrangements to monitor probationers under supervision.

### **SUGGESTIONS FOR ESTABLISHING PROBATION**

To strengthen the practice and institutionalization of probation in Bangladesh, several reforms are necessary. These suggestions aim to address the existing structural, legal, and operational gaps, and promote probation as an effective alternative to imprisonment within the criminal justice system.

1. The implementation of probation should be made mandatory. A set of policies and guidelines for implementing probation policy should be developed to achieve this.
2. Adopting policies and guidelines which specify the available alternatives to imprisonment for example, community service, suspended sentences, or fines, or even ADR, beyond the use of probation. Effective alternatives to imprisonment can be incorporated within penal interventions. There should be separate considerations for women with young children.
3. There is a lack of manpower in the field of probation. The manpower should be increased in this regard, appointing more officers and appointing them in all districts.
4. In the existing structure, a deliberate attempt should be taken to develop a working relationship among the departments e.g. judiciary, administrative, law-enforcement and social service by mutually recognizing one another's role in probation. Without mutual coherent effort, a service like probation can hardly attain success.
5. The provisions on probation need to be incorporated in professional training programmes for lawyers such as those organized by the Bangladesh Bar Council. Lawyers should be proactive in court and remind judges in appropriate cases about the legal provisions for probation.
6. Probation Officers must be linked with the Courts which pass the probation orders. Additionally, more designated seating should be given to Probation Officers in all courts.
7. Specialized organizations working on criminal justice reform can undertake pilot programs on supervision, reformation, reintegration and rehabilitation of offenders that can then be replicated in government programs. This may also include expanding mediation and ADR services offered by civil society organizations in petty criminal cases. Links with organizations providing paralegal initiatives, which aim to provide alternatives to pre-trial detention, should also be explored to review possibilities of parole and early release.
8. Constructive dialogue could be undertaken with the Government to encourage adoption of international principles and guidelines regarding non-custodial measures for offenders.



9. Comprehensive rules need to be framed and adopted to urgently address the new concepts of non-custodial measures, including diversion and alternative to imprisonment for smooth implementation of the newly enacted Children Act, 2013.
10. For professional development of probation there should be an adequate provision for advanced training for the probation officer in and outside the country.
11. Finally, it may be suggested that there should be a Training and Research-cum-Evaluation Unit in the structural design of the proposed Board so that training may be offered to the relevant personnel of the concerned departments on a regular basis. Data obtained from the fields and periodical studies concerning the status of the programmer may substantially contribute to the development of indigenous training materials for the profession.

### CONCLUSION

The concept of probation is not entirely new in Bangladesh's legal system. Over the last century, there have been legislative advances that have allowed offenders to be placed on probation, with new rules enhancing the probation plan for women and children. However, the practice of criminal courts providing probation is still in its infancy. When we think of punishment, we usually think of someone who is locked up in a cell. But it's time to pay heed to probation and its ambition to meet up the challenges of crime and punishment. Probation is not a well-known phenomenon among stakeholders and players in Bangladesh, particularly lawyers, who are unfamiliar with this privilege that might be granted to a convicted offender. The purpose of punishment, according to reformatory theory, should be the criminal's reform. He could have committed a crime under unusual circumstances that will never happen again. As a result, while his incarceration; an effort should be made to reform him. The goal of punishment should be to motivate the offender to change his or her ways. As a result, the reformatory theory's purpose is comparable to that of probation, which is to reform the criminal. It appears that the concept of probation has evolved to some extent from the reformatory paradigm. However, in order to introduce probation to the general public, it must be made recognizable to all. It is time to implement probation on a more widespread basis, which necessitates some legal changes and enforcement. The government, attorneys, police, and others in the public sector should all work together to ensure that probation is practiced throughout the country. Finally, the assessment shows that the prospect of probation is slow compared to the alternative of incarceration, which requires more active law enforcement, authority, and implementation.

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