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# Aimless Sentencing Through Probation in Pakistan: Time to Revisit Statutory and Administrative Practices

\_\_\_\_\_ Aisha Tariq

===== Muhammad Mumtaz Ali Khan

*Probation as a form of sentencing aims to focus on the rehabilitative requirements of the offender, the protection of the society and the interests of the victim. The probation orders, in Pakistan, generally fall short of these three elements. This paper maintains that there are several statutory and administrative factors responsible for the failure of probation as a non-custodial sentencing mechanism in Pakistan. The original reformation centric sentencing system of probation will remain aimless if substantial statutory and administrative amendments and improvements would not be made. This is the time to revisit the structure of policy relating to the system of punishment through probation.*

**Key Words:** Pakistan; Non-custodial Mechanisms; Probation of Offenders Ordinance, 1960; Reformation

## INTRODUCTION

The overcrowded incarceration system of Pakistan needs to keep the offenders out of prison as much as possible through the utilization of non-custodial or alternative sentencing methods. Probation is one of the several alternative sentencing methods which are often overlooked by the courts in Pakistan. This form of punishment has existed in Pakistani law since 1960 through the Probation of Offenders Ordinance and courts have since been prompted to use it as much as possible. Yet in practice, it seems it is applied very occasionally and aimlessly without properly appreciating the several positive aspects attached to this method of punishment. For instance, with offender's point of view, it is not disruptive for his family and/or professional life thus it is economically better for low profile/less harmful usually first time offenders that ultimately through helping to promote their various constitutional rights. And with administrative point of view, this method of punishment controls the problems of over-crowdedness; proves less expensive for the exchequer.

According to international standards, while awarding the sentence through employing a non-custodial measure, such as probation, the judge remains obliged to fulfill the needs of justice in compliance with the ‘triangular threshold checks’ given under Rule 8.1 of the United Nations Standard Minimum Rules for Non-custodial Measures, 1990 (the Tokyo Rules). This Rule requires from the authority to keep under consideration the rehabilitative requirements of the offender, the protection of the society and the interests of the victim. It is contended in this paper that, in Pakistan, generally the probation based decisions discuss the ‘rehabilitation aspect of the offender’ in strange and irrational terms and the aspects of ‘protection of society’ and ‘interests of the victim’ usually remain unvoiced in the judgments. There are a number of reasons operating behind this judicial behavior. These reasons are discussed in their particular statutory and administrative scenario in this paper.

The paper analyses various statutory and administrative lacunas existing as a cause of the weak system of probation in the country. It is discussed in this section that the law of probation in Pakistan was first promulgated in 1960. From then on until this day, the world has made tremendous progress in the field, but the probation related statutes of Pakistan have not been amended in accordance with international standards. ‘Reformation of offender’ which is the fundamental *raison d’être* of non-custodial sentencing system is not incorporated as mandatory objective in the relevant statutes. The surveillance and supervision mechanisms placed against the offender, which can essentially become the reason of converting probation from a simple penal strategy into a reformatory sentencing measure do not comply with the aforementioned ‘triangular threshold checks.’ This disrupts the judicial reliance on these mechanisms. The system of probation has very little economic support by the respective governments. The poverty of Department of Reclamation & Probation (R&PD hereinafter) is distressing for the working potential of its employees. The under-resourced and under-staffed department eventually fails to execute (even the properly defined) judgments.

This paper will analyze above-mentioned reasons of the problems in probation and will suggest some legislative, administrative and judicial amendments in the system of probation in Pakistan.

## **1- THE STATUTORY ASPECT OF PROBATION IN PAKISTAN**

An internationally well acknowledged and trendy sentencing system of probation has not been able to flourish in Pakistan. It has proven unpopular in terms of public perception perhaps because the populace in Pakistan is still focused on sentences being purely punitive and do not take the time to consider what is to become of prisoners upon their release. Numerous factors speak in favor of probation and against this public perception which has developed over the years. Firstly, the probation may be imposed for minor or less harmful crimes which are usually petty and inconsequential in nature and the persons receiving the punishment are first time offenders who nonetheless have the potential for rehabilitation and reform (which is the main target of this form of punishment). Secondly, in probation, instead of having to go into prison for a couple of years for a petty offence and having to lose whatever employment the offender might have, the employment status remains the same and the offender does not lose the dignity to earn livelihood for his family. And thirdly, at the end of the sentence, the person usually emerges more rehabilitated and less institutionalized (in prison) with generally fewer chances to reoffend as compared to a situation in which he would have been subjected to a normal custodial sentence.<sup>1</sup>

In Pakistan, probation is primarily operated through the Probation of Offenders Ordinance, 1960 (the Ordinance hereinafter)<sup>2</sup> and West Pakistan Probation of Offenders Rules, 1961(the Rules hereinafter). A few supplementary provisions to probation, specifically applicable in the cases of juvenile offenders have been incorporated under Juvenile Justice System Act, 2018 (JJSA hereinafter).<sup>3</sup> Nevertheless the Ordinance and the Rules are used as parent guiding law in matters falling under the ambit of the JJSO too. This research will consider probation as it may apply in general terms. Section 4 and 5 of the Ordinance provides three methods to grant non-custodial sentences. The first method is discussed in Section 4 where the court can make an ‘order of discharge’ for the offender after only due admonition, without inflicting any kind of punishment.<sup>4</sup> Such an offender however should have not been previously convicted and is now convicted for an offence punishable with imprisonment of not more than two years. While issuing such an order, the court should take into consideration the age, previous character, antecedents or physical or mental condition of the offender, the nature of the offence and any other extenuating circumstances attending to the commission of the offence.<sup>5</sup>

Whereas in the second case, which is also discussed under Section 4, the court may similarly make an order of discharge of the offender subject to the condition that he enters into a bond, with or without sureties, for committing no offence and maintaining good behavior during the period mentioned by the court not exceeding from one year.<sup>6</sup> In case of breach of these conditions, the discharge can be cancelled by the court and can result in incarceration.<sup>7</sup>

In third case, under section 5, the court, after considering circumstances of the offence and the character of the offender,<sup>8</sup>(except if the offender falls under the exclusion category)<sup>9</sup>instead awarding him custodial sentence may make an order of probational release. Such an order will require him to remain under the supervision of a probation officer for the length of this order which must not be less than one year or more than three years. The probationer stands bound by a conditional bond, with or without sureties during the continuity of this bond.<sup>10</sup>The court may also attach a few more conditions with the order at its discretion which it considers necessary for preventing the repetition of the same offence or other offences by the offender and for rehabilitating him as an honest, industrious and law-abiding citizen.<sup>11</sup>Such conditions may be varied, altered or super-added on the application of the probationer, or of the probation officer or at court's own motion.<sup>12</sup>As a matter of principle, these monitoring/supervision mechanisms, i.e. supervision by a probation officer, conditional probation-bond and superadded surety requirement with conditional probation-bond should jointly support the smooth completion of a sentence of probation. However these measures carry such deficiencies that affect the whole sentencing system of probation.

### **A- The Supervision of Probationer by the Probation Officer**

The probation officer is appointed as principle supervisor of the probationer substantially to maintain a system of directions. He performs his duties under the province-wise domain of R&PD which is an attached body of the Home Department. He becomes a bridge between the department, the probationers and the court/prison authorities as the case may be. He is responsible for multiple pre-sentencing and post-sentencing tasks. For example, at pre-sentencing stage, during the trial, he may be assigned the duty to prepare a preliminary inquiry regarding the character, antecedents, home surroundings and other matters of like nature of the offender. The court has the discretion to postpone the pronouncement of its final orders until the submission of this report by the probation officer. However it is not mandatory for the court to depend upon or make this report a part of its

final orders.<sup>13</sup> In many prominent foreign jurisdictions including the UK,<sup>14</sup> Australia<sup>15</sup> and South Africa, the pre-sentencing input forms the backbone of a non-custodial sentence. Such pre-sentencing input reports are prepared by the probation service basically to assist the judicial decision making at the sentencing stage.<sup>16</sup> It enables the court to rely on the expertise of the probation department in determining the risk that offender poses to the community and delineate the terms of the probationary sentence accordingly.<sup>17</sup> This report is not only helpful to gather information with regards to making decisions on whether to put an offender on probation or not, but it has also been found helpful where the court is considering whether any other form of sentence might divert the offender from the crime. The report may also be helpful for the court's assessment of culpability of the offender. However this is a routine matter for the courts in Pakistan that they do not either order or wait for the preparation of these important preliminary inquiries. There are various reasons for this. As a practical requirement, such report must contain recommendations from the probation officer regarding the duration of probation and specific conditions that ought to be imposed on the probationer for his/her betterment. Since no such substantive data is required under the law, therefore the courts do not wait for submission of these reports by the probation officers. Secondly, the relevant R&PDs are gravely deficient in the required human resource and other facilities to make such reports efficiently and on prompt bases. Thus the courts by and large try to avoid giving instructions for such presentations.

At the post-sentencing stage, the probation officer performs the duties, such as, conducting frequent and scheduled 'visits' to/from the probationer essentially to carry out the reformatory needs of the offender.<sup>18</sup> He is required to work towards improving the character of the probationer through exercising the mandate to advise, assist and befriend him and instigate him to improve his conduct during these visits.<sup>19</sup> He is also tasked to advance the offender's general living conditions through finding him suitable employment.<sup>20</sup> Probation officer should also encourage him to take help of any recognized agency for his welfare and general well-being and to take advantage of the social, recreational and educational facilities which such agencies might provide.

Principally these 'visits' should be utilized as an effective tool of reformation and a purposeful mean to curb the recidivist phenomena of the offender nevertheless they are usually taken as not more than a formality by the probation officer and the probationer. The sessions carried out upon every visit are meant only for general counseling and advice which are

entirely governed by the discretion and personal assessment of the probation officer; he himself decides about his behavior to be maintained during such visits and the method to advise, assist and befriend the offender in question.<sup>21</sup> This happens because the (provincial) R&PDs generally arrange no expert training programs to educate the probation officer and the probationer regarding the fundamentals executable between them throughout the meetings. The training received by the probation officers can be employed only to guarantee the observance of conditions of probation-bond by the probationer; other than this they have no qualified skills to make arrangements and plans for post-sentence rehabilitation and reintegration of the probationer.<sup>22</sup>

The dearth of training courses results in producing probation officers who are professionally non-proficient. Untrained officers cannot perform well according to their profile and position solely with theoretical knowledge extracted from formal education.<sup>23</sup> International standards also require that, “before entering the duty, staff should be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.”<sup>24</sup> However such training requirement has not been incorporated by the relevant statutes to enhance and improve the skills of the probation officer. Moreover the R&P Departments also lack their own systemic and specialized training arrangements for their staff. Brief sessions on initial understanding of duties of probation officers are though held at the National Academy for Prison Administration (NAPA), Lahore, however this Academy is fundamentally responsible for training of prison personnel.<sup>25</sup> The probation staff and prison staff have altogether different, rather conflicting duties, therefore these beginner sessions lay disconcerting affects on the probation officers.

The particular non-perceptiveness of probation officer and the probationer to carry out the technical requirements of law becomes another critical point with regard to execution of a probation bond. For instance, the probation officer is duty bound to explain the terms and conditions of the probation order to the probationer, and to look into the requirement that he observes the conditions and if he deems necessary, he issues warnings to ensure the adherence of conditions by the probationer.<sup>26</sup> However practically neither the probation officer nor the probationers usually have knowledge about the importance of such conditions which are placed as a supervisory mechanism in the probation order; this is because these conditions (approximately in all the cases) remain the same with no substantial change with relevance to the individual apt supervision of the probationer.

Human and technical resource management is another area of great concern and needs to be according to the understanding of responsibilities of the probation officers. The previous few years, because of the directives issued from the forum of the National Judicial Policy, 2009, there was an increase in the number of probationers yet this amplification of figures is hard to sustain due to shortage of corresponding human and technical resources on the part of R&PDs.<sup>27</sup>

For example, currently there are total 97 officers working at R&PD, Punjab. They include 1 Director, 5 Deputy Directors, 14 Assistant Directors, 55 male probation officers, 2 female probation officers, 15 male parole officers and 5 female parole officers.<sup>28</sup> In Sindh, there are 645 probationers with 25 male and 1 female probation officers to supervise them.<sup>29</sup> In Balochistan, there are 70 probationers with 2 probation officers.<sup>30</sup> Whereas in KPK, 28 officers are working in R&PD including 1 Director, 1 Superintendent, 24 probation officers (with 6 female probation officers) (with 1 more seat to be filled) and 2 parole officer (with 1 more seat to be filled).<sup>31</sup> In all four provinces, the number of probation officers is exceptionally low in comparison to the probationers. This situation creates doubts about the supply of requisite treatment to every individual probationer by his supervising probation officer. No matter how dedicated the relevant probation officer is, he cannot perform nicely with an excessive load of work.

The understaffed R&PDs are also under-equipped and under-resourced in all four provinces. The essential facilities to continue the supervision of a probationer, such as, sufficient ways of transportation for probation officers to visit probationers, computer systems to systemize the relevant data of the offenders, the provision of latest surveillance devices and requisite training skills to handle them, installation of telephone facility, internet, photocopy and fax in the field offices, suitable office accommodation and field offices for director are yet to be resourced.<sup>32</sup> It is also not viable to maintain the register, diary, book, order or entries on regular bases without the provision of required resources. The probation officers have limited wherewithal to keep checks on the probationer for the observance of conditions of the bond or for drafting and submitting the report of a probationer (as one officer usually deals with hundreds of probationers simultaneously under his supervision<sup>33</sup>). Such few means of training and equipment are certainly enough to defeat the surveillance capabilities of a probation officer.

Releasing an offender (though convicted with a minor offense), without placing him under some type of treatment to reform and rehabilitate him, seems irrational. This is certainly an essential measure to curb his recidivist

tendencies and is equally important for his reintegration in to the society and definitely crucial to complete the process of probation. Research shows that supervision alone does not help offenders to change, nor the personal and social skills needed to persuade the people to change their behavior be readily engineered. However, supervision along with good reformation programs might perform these tasks.<sup>34</sup> Nevertheless in Pakistani scenario such specialized treatment procedures are also unavailable.

## **B- The Conditions Attached to the Probation Bond**

Offenders sentenced to probation are required to adhere to certain conditions of supervision. If they violate these conditions, even without committing a new crime, they can suffer revocation of the probation and face a subsequent term in prison. Such violations are called ‘technical violations’. A higher percentage of probationers failing to complete sentencing through probation is that who commits technical violations. Similar to other regimes, in Pakistani law too, the breach of probation conditions by the probationer is taken very seriously.<sup>35</sup> It can lead to supply of summons to the probationer and his sureties at the first step and in more severe cases, warrants of arrest may also be issued by the court. These violations increasingly contribute to the growth in prison time served.<sup>36</sup>

Section 4 and 5 of the Ordinance discuss these conditions as second monitoring method placed against the probationer. In this regard, Form B and C annexed to the Rules bring up conditions to be observed by the probationer. The three conditions of ‘Form B’ bind the probationer to keep peace and good behavior during the continuation of probation-bond; whereas ‘Form C’ supplies an extensive list of conditions to be observed by the probationer as part of his particular probation-bond. The court can modify the conditions specifically provided by Form C under Section 10. In addition to these conditions, the court can also place supplementary conditions at its own discretion under Section 5(2) which is supported by Rule 21(2).

However, the courts usually do not bother to change the formatted conditions. They generally remain basic in nature and identical in character for every probationer without the transportation of any substantive alteration. Prima facie the principle that these conditions should hit the inner criminal inclination and instinct of the subject is neglected by the courts; this neglect substantially damages the aspects of reformation of character of the probationer through the choice of right direction of treatment.<sup>37</sup> Similar to the other complexities (discussed in the previous portion), the absence of pre-sentence input proves one of the biggest

impediments for courts in the placement of match-able conditions to the culpability of the offender, his given circumstances, aptitude and the nature of the offense.<sup>38</sup>

The responsibility of interpretation of ‘breach’ and ‘method of execution’ of a particular condition is fundamentally upon the probation officer who decides it according to his own perceptive and without any clear directives. Mostly overburdened, untrained and unfamiliar (with their professional requirements) probation officers are also unacquainted with the principle that consequence of breach of condition must be distinctive in accordance to seriousness of violation. And that the distinction should be made between ‘re-offending’ and ‘technical violation of a conditions’. For example, if many probationers are sent to prison because they are violating conditions, rather than for re-offending, in that case it is understandable that the conditions need reconsideration.<sup>39</sup> Various reasons for breach of a condition also need to be taken into account such as, incorrect targeting (here targeting refers to careful selection of offenders eligible for non-custodial sentence) or excessively strict or soft or complicated conditions applied against a probationer.

In the majority of cases, the offenders commit technical violations which prove severe. There is little reason to believe that offenders who receive probation commit more crimes, let alone more technical violations. The unusual control over offenders which does not match with their offense related instinct increases the probability of technical violations. This is, most likely, a reason for the increase in the proportion of offenders admitted to prison as probation violators.

### **C- The Surety Requirement Attached to the Probation Bond**

The surety is a back-up security measure in addition to supervision by the probation officer and conditions attached to the probation bond. This mechanism ensures the future obligation of probationer to abide by the conditions and that the probationer will stay peaceful under the supervision of the probation officer. And in case of any kind of neglect, the sureties remain responsible. Section 122, 406-A, 514, 514-A, 514-B and 515 of the Code of Criminal Procedure, 1898,<sup>40</sup>(the CrPC hereinafter) so far as may be, apply in the case of sureties and bonds taken under the Ordinance.<sup>41</sup> These provisions deal with, the precautions to be taken before accepting a particular person as surety and the situations, where the surety bond might be forfeited or the procedures in case of death or insolvency of the surety. That means the court should be vigilant in case of requiring a surety bond for the issuance of probation orders and in case of default of the surety in

any given manner, The court must ask for the replacement on urgent bases as a backup surveillance measure.

## **2- CONCLUSION AND SUGGESTIVE MEASURES**

Placement of a few raw conditions and engagement with formality of the supervision by a probation officer cannot mechanically transform an offender and accomplish the required objectives. This is an incomplete and underdone legal/judicial solution employed on the name of non-custodial sentence. It strongly entails complimentary procedures attached to such conditions and supervision. The conditions of the probation bond should be customized in every case alongwith stipulating some community works by keeping the particular needs and interests of the probationer in mind whereas the probation officer should thus assist him.

First of all, there must be some arrangement of apposite training programs for all concerned i.e. the judicial officers responsible to issue such orders, probation officers in order to make them aware of those methods and strategies which can positively influence the probationer towards the reformation and rehabilitation and for the probationers to understand the genuine strength of a non-custodial community sentence.

For this purpose the research proposes substantive alterations in the Probation Ordinance and its complimentary Rules. Some suggestions have targeted the administrative departments responsible to run the institution of probation. These proposals are significantly based on the Tokyo Rules.

### **A- PROPOSALS FOR STATUTORY ALTERATIONS**

- 1- The definitions as discussed under section 1 of the Ordinance and rule 2 of the Rules must incorporate the word ‘Community Sentence’. It is recommended to rename the ‘Probation Orders’ as ‘Community (Service) Rehabilitation Order’ to make it more specific and clear for all segments of the society and particularly for the stake-holders.
- 2- The ‘Conditional Discharge’ discussed under section 4 (b) must incorporate the requirement of attendance of a rehabilitative program suggested by the court for the dischargee to restrain his criminal intents.
- 3- The conditions as discussed for the issuance for probation order under first proviso of section 5 (b) must be left in the hands of the court issuing the particular orders. This part of provision should be amended to make the court responsible to address the particular

nature of offence committed by the potential probationer. This amendment will also assist the court to define the suitable rehabilitation program for the probationer and the determination of particular area of community service where he is ordered to serve during the probation period.

- 4- Section 7 must differentiate between 'technical violation of condition' and the 'commission of new offence during the probation period' with reference to consequences. A technical violation of condition of trivial nature must not change the nature of sentencing, that is, to convert it from non-custodial sentence to custodial sentence. The consequence of serious breach of condition should also be left at the discretion of the court exercisable in the light of recommendations given by the probation officer. However a new offense might lead to imprisonment.
- 5- The duties of the probation officer need to be revisited in the light of necessity of rehabilitation and reformation of the offender. The term 'visit' as discussed under section 7 (a) must give an elaborated meaning of 'visit' to the probation officer by the probationer. Section 7 (d) should incorporate the words 'for reformation'. Rule 10 must also be amended with the particular spirit of requirement of reformation and rehabilitation joined to a non-custodial community based sentence.
- 6- The probationer must also be able to report a complaint against the probation officer. Such complaint procedures may be incorporated under rule 17 as an added responsibility of the 'Case Committee'.
- 7- The requirement of 'preliminary enquiries', given under rule 18 must be carried out by the court compulsorily and subsequently the probationer might, on priority bases, be given under the supervision of the same probation officer who conducted such enquiry in to the matter.
- 8- The 'community service orders', must be discussed as an integral part of the probation order, under a separate newly added provision discussing the issuance and execution procedure of such order in detail.

## **B- PROPOSALS FOR ADMINISTRATIVE AND JUDICIAL ALTERATIONS**

- 1- An 'information management system' must be devised to keep the records and data of probationers with relevant probation officer and R&PD.

- 2- The budgets of provincial R&PDs must be enhanced to meet the necessities with regard to improvement of human resource (especially with regard to increasing the positions of probation officers; a cap on the number of probationers per probation officer should be instituted. Once the cap crosses that number, automatic recruitment of a new Probation Officer should be done) and infrastructure. This is a mandatory pre-requisite to strengthen the surveillance mechanisms with relation to probation.
- 3- The said departments should request to increase their personnel in a structured way by dividing the duties amongst persons of various official profiles to make the institutions efficient. The new portfolios which may be introduced can be assessment officer, case management officer, reporting officers, compliance and surveillance officer, intelligence service, support staff, court related staff and program staff.
- 4- The probation officers must get professional trainings immediately after their induction and must also be engaged in refresher courses on periodical bases.
- 5- The respective R&PDs should be responsible to arrange variety of programs such as, probationers' awareness programs about the probation order and community sentence, probationers' reformation and rehabilitation programs and community awareness programs on community oriented sentences, etc.
- 6- Community involvement is essential for the successful supervision (because community contacts are a good source of important information on offenders which helps the supervision process) and accomplishment of community sentence. Therefore the community sensitization is essential.
- 7- And as foremost requirement, the judges must be trained to issue non-custodial orders thus they can exactly touch the aims of such orders.

The above point over to strengthen probation as a non-custodial sentencing mean primarily to save maximum prisoners from the curse of imprisonment. For this purpose, the system should be more clear and understandable for the court, the probationer and the probation officer.

## End Notes and Bibliography

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<sup>1</sup> Henry Rossouw. *Alternatives to Traditional Sentencing Methods- The Efficacy and Constitutionality of Periodic Imprisonment in South Africa*. (9<sup>th</sup> ed) (Ireland: COLR, 2010) 10-26; See also, SS Terblanche. *The Guide to Sentencing in South Africa*. (Durban: Butterworths, 1999) 179.

<sup>2</sup> Probation of Offenders Ordinance, 1960 (Ordinance No. XLV of 1960).

<sup>3</sup> JJSO: Section 11.

<sup>4</sup> The Ordinance: Section 4 (1).

<sup>5</sup> *Ibid.*

<sup>6</sup> The Ordinance: Section 4 (1) (b).

<sup>7</sup> The Ordinance: Section 4 (3).

<sup>8</sup> The cases, now dealt under section 5 of the Ordinance, were previously handled through the application of section 562 of CrPC. The said section had been repealed after the promulgation of Ordinance.

<sup>9</sup> The exclusion category has been discussed under section 5 (1) of the Ordinance. It says, “Where a Court by which-

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

(b) any female person is convicted of any offence other than an offence punishable with death.”

The offences listed down under Section 5(1)(a) include, Chapter VI - offences against the state, Chapter VII - offences relating to the Army, Navy and Air Force, offence of *Zina* Ordinance 1979- offences of rape, adultery and fornication Offence of *Qazf* Ordinance 1979 - offence of false accusation of *zina* (rape)216-A- Penalty for harboring robbers or dacoits, 328- Exposure and abandonment of child under twelve years by parent or person having care of it, 382 - theft after preparation made for causing death, hurt or restraint in order to commit the theft, 387 - 389 -Provisions relating to extortion 392-402 Provisions relating to robbery and dacoity or belonging to a gang of thieves, 455 - house-trespass or house-breaking after preparation for hurt or assault, 458- house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.”

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<sup>10</sup> The Ordinance: Section 5 (1) (b).

<sup>11</sup> The Ordinance: Section 5 (2).

<sup>12</sup> The Ordinance: Section 10.

<sup>13</sup> Rule 18(1) talks about this preliminary enquiry conduct-able by the probation officer but the Ordinance does not mandate or require such input from the probation department.

<sup>14</sup> See Criminal Justice Act, 2003 (UK): Section 156

<sup>15</sup> See Community Service Orders Act, 1979 (NSW): Section 6(2)

<sup>16</sup> Fasihuddin, Jianhong Liu.Susyan Jou. Bill Heberton ed. *Criminology and Criminal Justice System in Pakistan, Handbook of Asian criminology* (New York: Springer Publishers 2013), 247-282.

<sup>17</sup> AITBAAR, “Effecting Change in Khyber-Pakhtunkhwa’s Probation Regime,” *Research Society of International Law, Pakistan* (2015):75-76. (AITBAAR, “Effecting Change in Khyber-Pakhtunkhwa’s Probation Regime” hereinafter).

<sup>18</sup> The Ordinance: Section 13(a); the Rules: Rule 10 (a).

<sup>19</sup> The Ordinance: Section 13(d); The Rules: Rule 10 (c) (d).

<sup>20</sup> Ibid.

<sup>21</sup>The fact was revealed by several serving probation officers in their interviews conducted by the author during March 20 to April 17, 2019.

<sup>22</sup> Ibid, March 12, 2019.

<sup>23</sup> This is a requirement under Rule 7 of the Rules.

<sup>24</sup> The Tokyo Rules: Rule 16.2.

<sup>25</sup> International Crisis Group, “Reforming Pakistan’s Prison System,” *Asia Report NO, 212, 12 October 2011*(Islamabad, 2011): 5.

<sup>26</sup> The Ordinance: Section 13(b); The Rules: Rule 10 (a).

<sup>27</sup> There were 38,219 offenders released by invoking the provisions of the Ordinance, 1960 by the courts only in the financial year 2011-12. In the year 2013-14, this number of probationers decreased and reached at 23,379 including 22,974 male, 300 female, 105 juvenile. (A province-wise data collected from R&P Departments of Pakistan through telephonic interviews during June to July 2019.)

<sup>28</sup> R&PD, Punjab. (May 4, 2020).

<sup>29</sup> R&PD, Sindh. (May 8, 2020).

<sup>30</sup> R&PD, Balochistan. (April 17, 2020).

<sup>31</sup> R&PD, KPK. (April 1, 2020).

<sup>32</sup> AITBAAR, "Effecting Change in Khyber-Pakhtunkhwa's Probation Regime, 38-40.

<sup>33</sup> Editorial, "One probation officer for 347 released by courts," *The News* (Lahore), September 16, 2011. Available online at, <https://www.thenews.com.pk/archive/print/321784-one-probation-officer-for-347-released-by-courts> (last accessed: September 08, 2016).

<sup>34</sup> Ofori-Dua, K. and others, *Prison without Walls: Perception about Community Service as an Alternative to Imprisonment in Kumasi Metropolis Ashanti Region, Ghana*, *International Journal of Social Science Studies* 3(2015). (Hereinafter *Prison without Walls* by Kwadwo).

<sup>35</sup> The Ordinance, section 7.

<sup>36</sup> Doris Layton Mackenzie. (July 2001). Sentencing and Corrections in the 21st Century: Setting the Stage for the Future, *Department of Criminology and Criminal Justice, University of Maryland College Park, MD*: 26-27. The authors used Federal funds provided by the U.S. Department of Justice and prepared the final report. This report has not been published. To provide better customer service, 'National Criminal Justice Reference Service' has made this federally funded grant final report available electronically in addition to traditional paper copies.

<sup>37</sup> Idea taken by *Prison without Walls* by Kwadwo.

<sup>38</sup> J. E. Hall Williams, "Report of the Interdepartmental Committee on the Business of the Criminal courts," *The Modern Law Review* 24 (1961): 360-365.

<sup>39</sup> *Prison without Walls* by Kwadwo: 137.

<sup>40</sup> The Code of Criminal Procedure, 1898 as amended by Act 2 of 1997.

<sup>41</sup> The Ordinance: Section 9.