



Development and use of the probation system in Bangladesh

EXECUTIVE SUMMARY

Bangladesh Legal Aid and Services Trust (BLAST)

Penal Reform International (PRI)



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Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

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Within the legal system of Bangladesh, the concept of probation is not very new. Having a current focus to grant probation for children, there have been considerable legal developments over the last century to allow offenders to be placed on probation. However, the practice of granting probation by the criminal courts is in its rudimentary stage. The notion of punishment only visualizes the image of a person staying behind the prison bar. The over-reliance of imprisonment as a sentencing option and a corresponding inexorable increase in the prison population ramifies many consequences upon the inmates both inside the prison and after being released. This exacerbating situation of prison demands to seek a way out toward alternatives to imprisonment, particularly strengthening the existing probation system. Probation for selective offenders can be an effective and economical way to reduce prison overcrowding as well as bring the law-violators back to the society as law-abiding citizens through correction.

This study aims to outline the development and use of the probation system in Bangladesh. Part II delineates the development of probation system in Bangladesh covering the periods before (*i.e.* British and Pakistan) and after independence. Part III captures the use of probation system in Bangladesh addressing national and international legal framework. The probation system, process of granting probation, institutional arrangement, and current practice of probation are analyzed separately and in detail. The final Part encapsulates conclusion, concern and recommendations based on the analyses and broader understanding of practical needs in order to activate the probation system and strengthen the relevant legal and policy framework. Twenty key informant interviews (KII) were conducted using semi-structured interviews for attaining the purpose of the study. The study also reviews the relevant laws and documents, and seeks to identify gaps between the law and practice.

The provision for probation in the Indian sub-continent can be traced back to 1898 under section 562 of Code of Criminal Procedure, 1898. It provided that a first offender, convicted of theft, dishonest misappropriation or any other offence under the Penal Code punishable with not more than two years imprisonment, may be released on probation for good conduct at the discretion of the Court. Following the Indian Jail Reforms Committee's Report (1919-20), several provincial governments enacted laws for conditional release of prisoners in light of the Committee's report. In 1931, the draft All India Probation Bill was circulated to all provincial governments for comment. Observing no prospect for passing the Bill, the Central Government allowed the provincial governments to enact suitable laws on the lines of the draft Bill. Thus several provincial governments enacted Probation of Offenders Act for respective provinces.

The Probation of Offenders Ordinance, 1960, was the major development for the probation system in Pakistan regime. The Ordinance came into force in the then East Pakistan [now Bangladesh] in 1962. In order to make the law operational in the East Pakistan [now Bangladesh], the Probation of Offenders Rules, 1971 were adopted on 24 November 1971. These laws and rules regarding probation were continued into effect after the independence of Bangladesh.

Bangladesh has a legal framework for the full exercise of probation. Following independence, the Children Act, 1974 and the Children Rules, 1976 were enacted

addressing probation in the context of child offenders. The Special Privileges for Convicted Women Act, 2006 has extended the scope to release women prisoners conditionally under the supervision of a Probation Officer. Recently enacted the Children Act, 2013 allows the juvenile courts to grant probation to children in conflict with the law irrespective of the offence committed. To grant probation for adults, the Probation of Offenders Ordinance, 1960 is still in effect and fully able to achieve the purpose in relation to probation.¹ As a member state, Bangladesh also has an obligation to follow and maintain international instruments to promote alternatives to imprisonment including probation. Particularly, Rule 1.5 of United Nations Standard Minimum Rules for Non-custodial Measures holds the member states obliged as follows:

“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 requirements of social justice and the rehabilitation needs of the offender.”

The purposes of probation in Bangladesh are the prevention of offences and recidivism as well as fostering rehabilitation, reintegration, non-stigmatization of offenders, and, in some cases, restitution to the victims. There are variations of criteria by age and sex to be granted for probation. All children are entitled to be placed on probation irrespective of the nature of the crime. All convicted female persons can be granted probation other than convicted for an offence punishable with death. However, adult male convicts can be placed on probation in certain types of crime which incur mainly below 2 years of imprisonment. For adults, courts generally consider the age, character, antecedents or physical or mental condition of the offender; and the nature of the offence – in granting probation.

The Probation Officer plays the vital role throughout the probation process. A Probation Officer has more to do for children in conflict with the law than that of adult offenders. Working under the Department of Social Service, a probation officer acts like the custodian of probationer. It is imperative to note that no female offender may be placed in the supervision of any male Probation Officer.²

The probation process is different for adult offenders (both adult men and adult women) and for children in conflict with the law. In the case of adult offenders, before declaring a judgment, if the Court considers it suitable, it may issue a requisition for a Pre-Sentence Report (PSR) directed to a particular Probation Officer. Assessing the PSR, a court can issue a probation order for adult offenders under certain conditions. On the other hand, the probation process for children begins as soon as a child comes into conflict with the law. Principally, it is the responsibility of the police officer in charge of children affairs to inform the Probation Officer as well as the guardian of the child about the arrest of a child in conflict with the law.³ The presence of the concerned Probation Officer is mandatory during trial in a

¹ Bangladesh Law Commission, Report Sl. 54, submitted on 5 January, 2003. Available at: <http://www.lawcommissionbangladesh.org/reports/54.pdf>.

² The Probation Rules of 1971, Rule 11(3).

³ The Children Act of 2013, § 14(b).

Children Court.⁴ At the initial appearance of the child, the Court issues an order requiring a Probation Officer to make enquiries (i.e. Social Inquiry Report) in the prescribed form.⁵ A Probation Officer is bound by law to produce and submit the SIR within 21 days from the first day a child is brought before the Children Court.⁶ The Children Court may issue an order to send the child in conflict with the law on probation. The Probation Officer is responsible for supervising the probationer assigned under him/her and to prepare monthly progress reports.

The probation system in Bangladesh involves the Courts and the Department of Social Services under the Ministry of Social Welfare. The Probation service is one of the smallest divisions of the Department of Social Services (DSS) under the Ministry of Social Welfare. Administratively, Probation Officers are accountable to the Director of the DSS. They are legally accountable to perform monitoring, supervisory and reporting duties as directed by the Court regarding any particular probationer. There are 44 positions for Probation Officers nationwide at the district level. The number implies that there are many districts where there are no Probation Officers at district level, since there are 64 districts in Bangladesh. Social welfare officers both at the district level and the upazila level also bear duties of Probation Officers in addition to their regular duties in the absence of Probation Officers.

The current practice of probation has been pithily described by Justice M Imman Ali of the Appellate Division of the Supreme Court of Bangladesh:

“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.”⁷

In addition, most lawyers interviewed for this study were neither aware of nor interested in the law concerning probation of adults. There is also a lack of administrative and logistic capacity within the DSS to provide appropriate support to promote the probation system. For instance, the acute shortage of female Probation Officers restricts the possibility of probation for female offenders as the law forbids supervision of female probationers by male Probation Officers. The probation process for children is supposed to be initiated by police officers through contacting the nearest available Probation Officer. In practice however, police officers appear reluctant to inform Probation Officers. This is well illustrated in the case of *Fahima Nasrin Vs. Government of Bangladesh*.⁸ A Probation Officer interviewed for this study noted that he had received only two calls from police officers regarding the arrest of children in the last thirteen years of his service. In many cases, Probation Officers are informed of the need for their services by NGOs working with children, rather than by the police. The overall situation of probation may be clearly seen in the plummeting figures marking the trend of granting probation orders over a three year period.⁹

⁴ The Children Act of 2013, § 22(2).

⁵ The Children Rules of 1976, Rule 4(5).

⁶ The Children Act of 2013, § 31(1).

⁷ Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh* (Dhaka: UNICEF, 2010) 217.

⁸ 61 DLR (HCD) 234.

⁹ Government of Bangladesh, Ministry of Social Welfare, *Annual Report 2008-09, 2009-10, 2010-2011*: 66.

Year	Number of probation orders granted
2008-09	379
2009-10	261
2010-11	43
Total	683

Concerns:

- Many lawyers, prosecutors and judges in Bangladesh remain unaware about the scope for granting probation to prisoners. Moreover, there is a widespread misconception that probation applies only to first time offenders. These misconceptions contribute to the dismal number of probations in practice.
- There is acute lack of coordination among police, Probation Officers, judges, lawyers, prosecutors and local government institutions. Without coordination among these bodies, the probation system cannot be functional.
- Management of probation also appears problematic. Probation Officers are not attached to Courts which grant probation orders. Their offices are located at the District Social Services office or at the DC's office. After the formal separation of the subordinate judiciary from the executive, it is important to ensure that Probation Officers are linked to the Courts. At the same time, it is unclear how many probationers would be supervised by a single Probation Officer. Without a clear policy, granting more probation orders will merely create pressure on the existing management and administration of the probation system in Bangladesh.
- In case of arresting juvenile (children) offenders, police officers are obliged to contact Probation Officers and follow separate proceedings to deal with children. Children are denied this right when there is no evidence of age to recognise a person as a child. Though the rate of birth registration has been increasing in recent years, it remains limited among poor and excluded communities, particularly the homeless. In some cases, children from these communities may lose the chance of probation due to the difficulties of verifying their ages.
- The number of Probation Officers is grossly inadequate for the purpose of supervising all persons eligible to be released on probation. There are only 44 posts of Probation Officers across the country. It is extremely difficult for a Probation Officer based at district level to supervise a probationer living in another district or in a remote village. Without strengthening the institutional capacity of the probation system, it will be highly impractical to expect more convicts to be released on probation. Extreme financial and logistic constraints experienced by Probation Officers are also major concerns.

- 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.
- Retribution and deterrence remain the dominant penal philosophy governing sentencing outcomes in Bangladesh. It seems that the public, the prosecution and the Courts still lack confidence on non-custodial penal interventions.
- In a society where there are 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.

Recommendations:

For Government

- Amendment of Section 53 of the Penal Code may be considered and adopted to allow alternatives to imprisonment. This currently lists only five forms of punishments, namely (a) death sentence, (b) life imprisonment, (c) simple imprisonment; (d) rigorous imprisonment, and (e) fines, and no scope for imposing any alternatives to imprisonment other than fines.
- Amendment of the Probation of Offenders Ordinance, 1960 (earlier amended in 1964) and the East Pakistan Probation of Offenders Rules, 1971 would be required to address the following issues:
 - i. Enabling grants of 'conditional discharge' and 'probation order' to be made 'on the Court's own motion' under sections 4 and 5 respectively of the Ordinance;
 - ii. Clarification of rules regarding probation, to among others a) clearly delineate the administrative accountability of Probation Officers whether to the DSS or the Court.
- Adopting policies and guidelines which specify the available alternatives to imprisonment for example, community service, suspended sentences, or fines, or even Alternative Dispute Resolution (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.
- There are 64 districts in Bangladesh, but only 44 posts of Probation Officers. There is no Probation Officer in many districts, and none at Upazila level. There is a need for sufficient human resources and logistic support for extending probation services in all Districts with proper coverage in Upazilas and Metropolitan areas.
- Currently, there is no separate budgetary allocation for probation services and the allocated budget with the district DSS Office is very limited. It is essential to allocate separate and sufficient budget for probation services. In addition, additional

resources need to be channeled to ensure the capacity development of Probation Officers with regard to adult and child probationers respectively.

- Increased monitoring and supervision by the concerned Ministry and respective Court is required for existing organisations involved in the probation system, including for the DSS, District Probation Officer, Child Development Centre and Upazila Social Welfare Offices.
- 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.
- Continuous capacity building activities (training, seminars and workshops) must be conducted for stakeholders engaged in probation such as judges, Probation Officers, police officers, prison officials, lawyers and Social Welfare Officers.
- Findings show that Probation Officers, to a great extent, rely on local government representatives to monitor and rehabilitate probationers. It is recommended that local government officials should be engaged formally (by law) in the process of probation and rehabilitation.
- Probation Officers should be categorized and classified separately depending on whether they deal with adult probationers or children in conflict with the law. Alternatively, certain Probation Officers could be designated to deal with children only. Such officers should be provided with specialized training and qualification to deal with children.
- An umbrella/separate department/organisation needs to be set up in order to institutionalize and address all non-custodial measures and alternatives to imprisonment including probation, diversion, and community sentencing. A separate “Department of Corrections” may be set up to deal with institutional corrections (such as in prisons, or Child Development Centres (CDCs)) and non-custodial correctional measures (such as probation, parole, community sanctions).
- Offices of Probation Officers need to be shifted to court buildings from their current location at DSS offices and/or DC’s offices.
- The forms and registers provided in the Probation of Offenders Rules 1971 need to be revised to ensure gender neutrality and eliminate references to religion which are immaterial.

For Civil Society

- Most human rights organisations focus on due process and rights of the accused as well as victims. However, they do not generally focus on prisoners, and particularly on those convicted. With the exception of some limited initiatives by some development organisations, there are almost no investments for correction (reintegration and rehabilitation) of convicts. Civil society organisations, in particular those focused on human rights, should initiate dialogues and programmes to

promote the probation system in Bangladesh as an alternative to imprisonment, in order to reduce prison overcrowding and humanise the penal interventions in a more economical way.

- A survey of sentenced prisoners should be carried out to establish how many are potential candidates for alternatives to imprisonment. This would provide a baseline and data to support alternatives to imprisonment work.
- Human rights organisations need to raise the awareness of both duty-bearers (lawyers, police officers, prosecutors, and judges) and right-holders (accused, defence) about the provisions available for probation, and also about the scope for applying non-custodial measures including probation, diversion, conditional release and early release. Building awareness and confidence about probation can popularise it as a process among both justice system actors and the public.
- Specialised organisations working on criminal justice reform can undertake pilot programmes on supervision, reformation, reintegration and rehabilitation of offenders that can then be replicated in government programmes. This may also include expanding mediation and alternative dispute resolution services offered by civil society organisations in petty criminal cases. Links with organisations providing para-legal initiatives, which aim to provide alternatives to pre-trial detention, should also be explored to review possibilities of parole and early release.
- Specialised organisations working with the criminal justice system can undertake capacity development programmes for judges, lawyers and Probation Officers. To provide evidence on the positive aspects of probation, organisations involved in criminal justice research can also conduct extensive research on alternatives to imprisonment and undertake policy advocacy

For the International Community

- Support could be provided for pilot projects, to be run in collaboration with the government and specialized organisations, to increase awareness of the scope for using non-custodial measures, for example in relation to juveniles in conflict with the law, or women in prisons.
- Constructive dialogue could be undertaken with the Government to encourage adoption of international principles and guidelines regarding non-custodial measures for offenders.
- Exposure visits and exchange programmes may be organized at regional and international levels for Probation Officers, criminal justice researchers, judicial officers, and DSS management staff to study and internalise best practices regarding non-custodial models.