

Bangladesh Legal Aid and Services Trust (BLAST) and Penal Reform International (PRI)

**SUMMARY REPORT**  
**Roundtable on Probation as an Alternative to Imprisonment:**  
**Legal Framework and Current Practice**

20 December 2013  
Bangladesh Institute of Law and International Affairs (BILIA), Dhaka

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**Introduction**

This roundtable discussion was held in order to review the current law and practice relating to probation and the scope for activating or strengthening this. The discussion involved some 38 participants from the judiciary, academics, lawyers, and representatives of law enforcement agencies and non-governmental organisations working on probation and prisoners’ rights issues. A report titled “The Development and Uses of the Probation System in Bangladesh”, based on research conducted by BLAST, was presented and recommendations received for promoting probation as an alternative to imprisonment in Bangladesh.

The event was chaired by Justice M. Imman Ali, Judge, Appellate Division, Supreme Court of Bangladesh and a member of the Board of Trustees of PRI.

Justice Awlad Ali, Vice Chairperson, Board of Trustees, BLAST, Mr. Nikhil Roy, Programme Development Director, PRI, and other experts were present at the roundtable.

**1. Inaugural Session**

**Ms. Sara Hossain, Honorary Executive Director (HED), BLAST**

BLAST regularly provides legal aid to indigent prisoners, and has in recent years, been doing so through paralegals in particular districts through a pilot project, IRSOP (Improvement of Real Situation of Overcrowding in Prisons) in collaboration with the Ministry of Home Affairs and the Ministry of Law. Over the last year, through research supported by PRI, BLAST has undertaken research on alternatives to imprisonment in Bangladesh. It is hoped that a review of this research today with experts in the field will assist us to assess the laws on probation, and see how far the law is being implemented, what the gaps are and how we can begin to address these or advocate for relevant changes in law, policy and practice.

**Justice Awlad Ali, Member, Board of Trustees, BLAST**

Prisoners should be treated on an equal basis irrespective of their class. There needs to be stronger coordination among the Prisons Department, the Ministry of Home Affairs (MoHA) and Department of Social Services (DSS) for successful implementation of the probation system. In an earlier expert discussion on “[Violence against Children in Police and Pre-trial Detention in Bangladesh](#)” organized by BLAST and PRI, concerns such as limited awareness about the Children Act, 2013, the low numbers of probation officers, and limited coordination among relevant stakeholders have been identified as major challenges. It is critical to ensure implementation and compliance with relevant laws, strong coordination and monitoring by the government. This approach will ensure protection of the rights of children, and women as well as other adult prisoners.

**Mr. Nikhil Roy, Program Development Director, PRI**

This discussion on the use of probation needs to be located within the broader context of alternative sanctions to imprisonment. Alternative sanctions are important as their use helps to address issues such as overcrowding of prisons. They are also important in the general context of human rights, particularly of women and children. Alternative sanctions are a better way of delivering justice, they are helpful in ensuring access to justice for under trial prisoners, they are cheaper and more effective, and protect vulnerable groups including children from damaging effects of imprisonment. Statistics of overcrowding in prisons from all over South Asia, suggest that occupancy levels in prisons in Bangladesh, India, Pakistan are 214.8%, 112.2%, and 177.4% respectively. There are a number of different international standards on the treatment of prisoners (such as the [Tokyo Rules](#) and [Beijing Rules](#)) Alternative sanctions other than probation that are implemented in other jurisdictions include furlough or half-way houses, work or education release, parole, remission and pardon. There are two questions it is useful to address here:

- Is probation the best way to reduce overcrowding and large percentage of pre trial detainees in Bangladesh and, more widely, South Asia?
- Should there be an investment in probation, or should other alternatives to imprisonment be implemented, such as community service orders, mediation, and traditional justice structures?

## 2. Key Note Presentation

### Adv. Tajul Islam, Research Consultant

This presentation is based on the report titled “*The Development and Uses of the Probation System in Bangladesh*”, which draws on research conducted for BLAST with support from PRI.

The probation system was developed in the colonial period, in British India, and then strengthened in the Pakistan period, and this has continued through to post-independence Bangladesh. Despite the existence of legal provisions on probation, it is rarely implemented in Bangladesh. In Bangladesh, the laws governing probation are the Probation of Offenders Ordinance, 1960 (the Probation Ordinance), the Children Act, 2013 and the *Karagore Atok Narider Bishesh Shubidha Ain*, 2006 [Special Provisions for Women in Prisons Act, 2006].

Section 2 (e) of the Probation Ordinance states that a “probation order” means an order made under Section 5. Section 5 defines a probation order as “an order requiring [the offender] to be under the supervision of Probation Officer”.<sup>1</sup> Its stated purpose is to “prevent a repetition of the same offence or a commission of other offences by the offender and for rehabilitating him as an honest, industrious and law-abiding citizen”.<sup>2</sup>

The nature of probation, and the terms and conditions on which it may be granted, and the procedures applicable vary depending on whether the offender is an adult man or woman, or a child. Probation orders made in respect of children are not made under the Probation Ordinance but are governed by provisions of the Children Act, 2013. All children are entitled to be placed on probation irrespective of the nature of the crime. All convicted women prisoners can be granted probation other than those convicted for an offence punishable with death. For adults, courts generally consider the age, character, antecedents or physical or mental condition of the offender, as well as the nature of the offence in granting probation.

### **Key recommendations arising out of the report are as follows:**

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,

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<sup>1</sup> The Probation of Offenders Ordinance of 1960, § 5.

<sup>2</sup> The Probation of Offenders Ordinance of 1960, § 5(2).

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 Bangladesh 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 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 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 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 alternatives 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 categorised and classified separately depending on whether they deal with adult probationers or children in conflict with the law and children in contact with the law. Alternatively, certain Probation Officers could be designated to deal with children only. Such officers should be provided with specialised training and qualification to deal with children.
- An umbrella/separate department/organisation needs to be set up in order to institutionalise and address all non-custodial measures and alternatives to imprisonment including probation, diversion, and community sentences. A separate “Department of Corrections” may be set up to deal with institutional corrections (such as in prisons, or CDCs) and non-custodial correctional measures (such as probation, parole, community sanctions).
- Offices of Probation Officers must be dedicated to the Courts which pass the probation orders and their premises 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 of them 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 paralegal initiatives, which aim to provide alternatives to pre-trial detention, should also be explored to review possibilities of parole and early release. In this regard, District Judges could initiate data collection of potential probationers through panel lawyers of legal aid organisations as well as the DLACs.
- 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 specialised 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.

### **3. RESPONSES TO KEYNOTE**

**Ms. Masuma Aktar, Deputy Director (Institution), Department of Social Services (DSS)**

It is the prime responsibility of the DSS to ensure implementation of probation, but in fact probation is rarely practiced. The Children Act and the Probation Ordinance both confer several functions on Probation Officers, but it remains challenging for a Probation Officer to perform his/her tasks. Major challenges include the lack of designated seating for Probation Officers in Courts, their remaining attached to the District Court’s office, and their lack of support staff. Even when Police Officers inform Probation Officers about an accused who may be entitled to probation, Probation Officers are unable to provide support due to these limitations. In order for the probation system to be successful in Bangladesh, the Government may consider increasing recruitment of Probation Officers and provide infrastructural support in the form of transport allowances and offices, while Courts could more actively grant orders of probation in appropriate cases.

**Mr. Md. Shawkat Ali Hyder, Probation Officer, Chief Metropolitan Magistrate’s Court, Dhaka**

According to the Children Act 2013, if any child is brought to the police, the Probation Officers shall assess why the child has been brought there. The instances of the police giving information to Probation Officers about children in such situations have increased over the years. In addition, the activities of Probation Officers are also supported by GOs and some NGOs such as BNWLA and Aparajeyo Bangladesh. Probation Officers have a list of NGOs to contact in case legal aid is required. Probation Officers also assess the possibility of release of any person on bail. When a child accused of an offence is presented before a Court, Probation Officers remain with the child through the process of submission of the Social Investigation Report. In case an order for probation is given, Probation Officers submit periodic reports to the Court on the status of the child offender.

It is important to consider increasing the number of Probation Officers, allotting separate offices to Probation Officers, increasing the human resources available, urgently increasing the available logistic support and ensuring quarterly, biannual and annual evaluation. In addition, judges, lawyers and police officers should be involved in capacity building exercises and be informed and made aware about probation.

**Adv. Syed Ziaul Hasan, National Coordinator, Rule of Law, GIZ**

Alternatives to imprisonment are necessary for rehabilitation and reintegration of prisoners into society. Even though probation is the primary alternative to imprisonment, lawyers, police officers and even many judges are not aware about the law and procedures relating to probation and have little knowledge about for example, the Probation Ordinance. Consequently, awareness among the relevant stakeholders needs to be increased drastically. In the criminal justice system of Bangladesh, prosecution and defence lawyers do not always follow their responsibilities to assist the state and the Court. In addition, the prosecution does not seem aware in many cases that their sole function is not to ensure punishment i.e. secure imprisonment of an accused. The legal presumption of innocence is also overlooked in many cases, or seems secondary to the viewpoint that a person who is accused of an offence must necessarily be guilty. In this context, probation allows for the possibility that a person who has been accused or convicted may nevertheless begin to start reintegrating slowly into society under the supervision of the Probation Officer before final release.



For effective implementation of probation, the offender needs to have a fixed address. In places such as Dhaka, there is a huge migrant population who are very vulnerable as they don't have a fixed place of residence. This needs to be taken into account by the DSS while implementing probation. The District Legal Aid Committee, where the President and Secretary of the District Bar Association are present along with the District Judge and officials of DSS, is a forum that could be utilised to discuss the issue of probation in order to implement it effectively. The District Bar Associations should also encourage young lawyers by giving them training on probation, legal aid and alternative dispute resolution. Reforms of prisons alone are not sufficient, as prisons are the last point in the criminal justice system. The authorities at the front lines of the criminal justice system have to be part of the process of reform.

**Mr. SM Rezaul Karim, Legal Advisor, BLAST, and former Chief Judicial Magistrate**

After arrest, when an accused is produced, the Court is always ready to grant probation. However, the problem arises as judges do not get the necessary cooperation from Probation Officers. They also face problems if they do give orders for probation, due to practical problems such as lack of availability or time of Probation Officers. The judgment in *Abdul Khaleque v Hazera Begum*, reported in 58 DLR (2006), 322, related to probation should be disseminated to all judges, lawyers, police authorities and Probation Officers.

**Ms. Mahbuba Akhter, Assistant Director, Media & Advocacy, BLAST**

BLAST has been working with the Judicial Administration Training Institute (JATI) on a number of issues. The issue of probation may also be taken up there for raising responsiveness among the judges. Further, BLAST can discuss this issue at training and awareness sessions with its network of 2500 panel lawyers all over the country to raise awareness. BLAST also has a working relationship with all district bars, and the scope for training of young lawyers on the laws on probation can be brought to their notice.

**Mr. Md. Abdul Jalil, Assistant Inspector General of Prisons, Bangladesh**

Bangladeshi prisons are extremely overcrowded, with convicts and under-trial prisoners in large numbers beyond the actual capacities. To reduce overcrowding in prisons, alternative sanctions to imprisonment are crucial. Several malpractices, such as wrongful determination of age of children which results in their being documented as adults and imprisoned, contribute to this overcrowding. Due to shortage of probation officers, prison officials often

have to carry out the duties of social workers. Prison authorities do not have the power to grant probation but they may assist others in implementing alternatives to imprisonment. Juveniles and young adults are always more vulnerable in prison as there is a higher probability of their being victimised by other adult prisoners or becoming hardened criminals due to proximity with other criminals or recidivism.

#### **4. OPEN DISCUSSIONS**

Participants, including Adv. Khurshid Alam Khan, Advocate, Supreme Court, Mr. Anurag Chakma, Lecturer, University of Dhaka, Mr. Pankaj Kumar Kundu, Advocate Supreme Court, and Ms. Fahmida Akhtar, Assistant Program Manager (Legal), BNWLA raised a number of issues in the open discussions:

- The lawyers present noted that they had never applied for probation for their clients nor come across cases of others doing so.
- Probation could assist in reducing government expenditure on prisons.
- Actors within the criminal justice system should adopt a rehabilitative not retributive perspective.
- The Special Privileges for Convicted Women Act, 2006 is not known to most lawyers and does not appear to have been used in practice.

They recommended that:

- Separate Probation Officers should be appointed for children under the Children’s Act 2013 and for adults under the Probation Offenders Ordinance, 1960.
- Implementation of probation should be made mandatory.
- It is essential to recruit greater numbers of probation officers and to select appropriate candidates (from relevant subjects such as law social services or criminology).
- A set of rules or guidelines for implementing probation in practice should be developed.

#### **5. CONCLUDING REMARKS**

##### **Ms Aroma Dutta, Member, National Human Rights Commission**

Women in general are marginalized, and their condition in prisons is more vulnerable than that of men. As women prisoners are in a minority, their concerns and needs are often overlooked. Probation and other alternatives to imprisonment are especially important for

women prisoners. The NHRC will explore the scope for including the issue of probation within its mandate, particularly to try to ensure greater awareness among the public and those affected of the potential of obtaining release on probation, and reach out to BLAST to co-operate on this issue.

**Mr Justice M. Imman Ali, Appellate Division, Supreme Court of Bangladesh**

Courts have the power to make probation orders as a matter of obligation.. The language of the law indicates that Courts have a discretionary power in this regard. Alternatives to imprisonment are extremely significant for two reasons. First, they can reduce overcrowding in prisons; currently over 42,000 under trial prisoners are in prison in clear violation of the legal principle that a person is presumed to be innocent until proven guilty. Second, they reduce government expenditure on prisons.

The main purpose of the criminal justice system should be corrective and this means increased use of alternatives to imprisonment, such as community service. Community service has been implemented in other developing countries, for example parts of Africa and the Caribbean, very successfully. Alternatives to imprisonment have social benefits too.

It is important to remember that probation in case of children and adults is absolutely different. In case of adults, probation is part of a sentence and effectively involves postponement of the sentencing. On the other hand, children can be granted probation as part of the sentencing. The Probation of Offenders Ordinance, 1960 does not apply to children. Probation for children is solely governed by the Children Act, 2013.

**5. RECOMMENDATIONS**

In terms of further recommendations for promoting probation and alternative sanctions to imprisonment, the following points may be considered:

- a) Awareness about probation among the relevant officials especially judges, lawyer must be increased.
- b) Lawyers must remind judges in appropriate cases about the legal provisions on probation.
- c) Police officers must be provided training on human rights and child rights.
- d) The number of probation officers in every district must be increased.
- e) Human resources support must be increased for Probation Officers.

- f) Probation Officers should be given transport services to be able to collect information regarding accused to prepare pre-sentence reports indispensable for courts to grant probation
- g) Courts should be encouraged to grant more probation orders.
- h) Judges, lawyers and police officers should be involved in capacity building exercises.
- i) Increase public awareness of probation should be promoted through wider dissemination through the media.
- j) DLACs could be used as a forum for discussing issues regarding probation and increasing coordination between various stakeholders as the District Judge, President and Secretary of the Bar Association and the DSS officer.
- k) Bar Associations should encourage young lawyers by giving them training on probation/legal aid/ADR.
- l) Reforms of prisons alone is sufficient as prisons are the last point in the criminal justice system, the authorities at the front lines of the criminal justice system must be involved in the process of reform.
- m) A set of rules should be developed for implementing probation.
- n) A new department of corrections should be established that can take care of all matters of alternatives to imprisonment including probation

## **Annex 1: List of Participants**