



# Development and Use of the Probation System in Bangladesh

Bangladesh Legal Aid and Services Trust (BLAST)

Penal Reform International (PRI)



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

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**Bangladesh Legal Aid and Services Trust (BLAST)** is a national legal services and human rights organization, established in 1993. It works with 300 staff and 2500+ pro bono lawyers, and operates district offices and legal aid clinics in 19 districts, uniquely from the frontlines of the justice system to the apex court. It conducts legal rights awareness sessions at community level, provides information and advice and referrals, and conducts mediation and litigation. BLAST undertakes strategic litigation, or public interest litigation, as part of its advocacy for law and policy reforms to ensure effective legal protection of rights.

বাংলাদেশের আইন ব্যবস্থায় প্রবেশনের ধারণা নতুন কোন বিষয় তা' বলা যাবে না। সাম্প্রতিককালে শিশুদের ক্ষেত্রে প্রবেশন প্রদানের উপর গুরুত্ব প্রদানসহ অপরাধীদেরকে প্রবেশনে রাখার বিষয়ে বিগত শতক ধরে প্রবেশনের উল্লেখযোগ্য আইনগত উন্নতি সাধিত হয়েছে। তবে প্রবেশন প্রদানকে ফৌজদারী আদালতসমূহ এখনও তাদের মনোযোগের প্রাথমিক পর্যায়ে রেখেছে। অপরাধীকে শাস্তি প্রদানের কথা ভাবতেই শুধুমাত্র কারা শিকের ভিতরে অপরাধী ব্যক্তির আটকের চিত্র মানসপটে ফুটে উঠে। শাস্তি প্রদানের ক্ষেত্রে শুধুমাত্র কারাদণ্ডদেশ-এর প্রতি অতি-নির্ভরশীলতার কারণে কারাগারে কয়েদির সংখ্যা অস্বাভাবিকভাবে বৃদ্ধি পেয়েছে যার ফলে কারাঅভ্যন্তরে এবং কারাগার হতে মুক্ত হওয়ার পরও কয়েদিদের উপর অনেক নেতিবাচক প্রভাব পড়ে। কারাগারের এধরনের বিরূপ পরিস্থিতি থেকে বের হয়ে আসার জন্য কারাদণ্ডের বিকল্প কোন শাস্তি প্রদানের বিষয় বিবেচনার দাবি রাখে, বিশেষকরে কারাদণ্ডের বিকল্প হিসেবে বিদ্যমান প্রবেশন ব্যবস্থা শক্তিশালী করা। কারাগারগুলোতে ধারণক্ষমতার অতিরিক্ত কয়েদির সংখ্যা কমিয়ে আনতে নির্দিষ্ট কিছু অপরাধে অপরাধীদের প্রবেশন প্রদান একটি ফলপ্রসূ ও সাশ্রয়ী ব্যবস্থা, পাশাপাশি এ ব্যবস্থা অপরাধী ব্যক্তিকে সংশোধন করে একজন সু-নাগরিক হিসেবে সমাজের মূলধারায় ফিরিয়ে আনতে গুরুত্বপূর্ণ ভূমিকা রাখতে পারে।

বাংলাদেশে প্রবেশন ব্যবস্থার ক্রমবিকাশ ও ব্যবহারের একটি রূপরেখা প্রণয়ন এই গবেষণা সমীক্ষার মূল লক্ষ্য। প্রতিবেদনের প্রথম ভাগে গবেষণার পরিধি ও রূপরেখা তুলে ধরা হয়েছে। এভাবে গবেষণা সমীক্ষাটির প্রেক্ষিত, উদ্দেশ্য ও গবেষণা সমীক্ষাটি সম্পন্ন করতে যে পদ্ধতি প্রয়োগ করা হয়েছে তার বিবরণ দেওয়া হয়েছে। গবেষণা সমীক্ষা প্রতিবেদনের দ্বিতীয় ভাগে বাংলাদেশে প্রবেশন ব্যবস্থার ক্রমবিকাশের স্বরূপ প্রদান করা হয়েছে, প্রসঙ্গত ব্রিটিশ ও পাকিস্তান শাসনামল এবং স্বাধীনতাভোর বাংলাদেশে প্রবেশন ব্যবস্থার ক্রমবিকাশের ধারা তুলে ধরা হয়েছে। তৃতীয় ভাগে জাতীয় ও আন্তর্জাতিক আইনি কাঠামোর প্রতি দৃষ্টি রেখে বাংলাদেশে প্রবেশন ব্যবস্থার ব্যবহার তুলে ধরা হয়েছে। প্রবেশন ব্যবস্থা, প্রবেশন মঞ্জুরের পদ্ধতি, সাংগঠনিক রূপরেখা, প্রচলিত প্রবেশন ব্যবস্থা ইত্যাদি বিষয় পৃথকভাবে ও সবিস্তারে বিশ্লেষণ করা হয়েছে। প্রবেশন ব্যবস্থা সক্রিয়করণ ও সংশ্লিষ্ট আইন ও নীতিমালা শক্তিশালীকরণের জন্য বাস্তবভিত্তিক চাহিদা ও বিশ্লেষণের আলোকে প্রাসঙ্গিক মনোযোগের বিষয়গুলো ও সুপারিশসহ উপসংহার প্রতিবেদনের শেষ ভাগে স্থান পেয়েছে।

গবেষণা সমীক্ষাটির উদ্দেশ্য পূরণের লক্ষ্যে আধা-কাঠামোবদ্ধ (Semi-structured) প্রশ্নপত্রের মাধ্যমে মোট ২০ জন মূল তথ্যদাতার সাক্ষাৎকার (KII) গ্রহণ করা হয়েছে। তাছাড়া এ গবেষণা সমীক্ষায় প্রাসঙ্গিক আইন, প্রতিবেদন ও তথ্য-উপাত্ত পর্যালোচনা করা হয়েছে এবং আইন ও আইনের প্রয়োগের মধ্যে যে ফারাক রয়েছে তা চিহ্নিত করার প্রয়াস চালানো হয়েছে। তাছাড়া একটি বিশেষজ্ঞ দল সমীক্ষায় প্রাপ্ত ফলাফল পর্যালোচনা ও প্রতিপ্রদান করেছেন।

ভারতীয় উপমহাদেশে প্রবেশন সম্পর্কিত বিধানের আদি উৎস হচ্ছে ১৮৯৮ সালের ফৌজদারী কার্যবিধির ৫৬২ ধারা। এ ধারায় বলা হয়েছে যেক্ষেত্রে কোন ব্যক্তি প্রথমবারের মতো চুরি, তহবিল তছরূপ অথবা দণ্ডবিধিতে বর্ণিত অন্য যেকোন অপরাধ যার সর্বোচ্চ শাস্তি অনধিক ০২ বছরের কারাদণ্ড; সেসকল অপরাধে সাজাপ্রাপ্ত ব্যক্তির ভাল আচরণের জন্য আদালত নিজ বিবেচনায় উক্ত ব্যক্তিকে প্রবেশন প্রদানের মাধ্যমে মুক্তি দিতে পারেন। ইন্ডিয়ান জেল রিফর্ম কমিটির (১৯১৯-২০) রিপোর্টের পর ভারতের বেশ কয়েকটি প্রাদেশিক সরকার কারাগারে আটক বন্দিদের শর্তাধীনে মুক্তি প্রদানের জন্য উক্ত রিপোর্টের আলোকে আইন প্রণয়ন করেছে। ১৯৩১ সালে 'সর্ব ভারতীয় প্রবেশন বিল' এর খসড়ায় মতামত প্রদানের জন্য ভারতের কেন্দ্রীয় সরকারের পক্ষ থেকে প্রাদেশিক সরকারগুলোকে বিলের খসড়া প্রেরণ করা হয়। 'সর্ব ভারতীয় প্রবেশন বিল' পাসের সম্ভাবনা ক্ষীণ দেখে ভারতের কেন্দ্রীয় সরকার খসড়া বিলের আলোকে প্রাদেশিক সরকারগুলোকে প্রবেশন সংক্রান্ত আইন প্রণয়নের ক্ষমতা অর্পণ করে। এভাবে বিভিন্ন প্রাদেশিক সরকার তাদের নিজ নিজ প্রদেশের জন্য 'প্রবেশন অব অফেন্ডারস্ এ্যাক্ট' প্রণয়ন করে।

পাকিস্তান শাসনামলে প্রবেশন বিষয়ে 'দি প্রবেশন অব অফেন্ডারস্ অর্ডিনেন্স, ১৯৬০' সর্বাধিক গুরুত্বপূর্ণ একটি অগ্রগতি। এই অধ্যাদেশটি তৎকালীন পূর্ব পাকিস্তান [বর্তমানে বাংলাদেশ] এ কার্যকারিতা পায় ১৯৬২ সালে। তদানীন্তন পূর্ব পাকিস্তানে আইনটিকে বাস্তবরূপ দেয়ার লক্ষ্যে ১৯৭১ সালের ২৪ নভেম্বর 'দি প্রবেশন অব অফেন্ডারস্ রুলস্ ১৯৭১' গৃহীত হয়। বাংলাদেশের স্বাধীনতা উত্তর কালেও প্রবেশন সংক্রান্ত এই আইন ও বিধিমালার কার্যকারিতা অব্যাহত রয়েছে।

প্রবেশনের পূর্ণ প্রচলন বা চর্চার জন্য বাংলাদেশে আইনগত কাঠামো রয়েছে। স্বাধীনতা পরবর্তীতে শিশু আইন<sup>১</sup> ১৯৭৪ ও শিশু বিধিমালা<sup>২</sup> ১৯৭৬ প্রণয়নের মাধ্যমে শিশু অপরাধীদের প্রবেশন প্রদানের বিষয়টি নির্ধারিত হয়। কারাগারে আটক সাজাপ্রাপ্ত নারীদের বিশেষ সুবিধা আইন<sup>৩</sup> ২০০৬ এর মাধ্যমে শর্তাধীনে ও প্রবেশন অফিসারের তত্ত্বাবধানে নারী কয়েদিদের মুক্তি প্রদানের বিষয়টি অর্থাৎ প্রবেশন সেবার সুযোগটি আরও সম্প্রসারিত হয়। সাম্প্রতিক প্রণীত শিশু আইন<sup>৪</sup> ২০১৩ এর বিধানানুযায়ী, যেকোন উপায়েই হোক না কেন আইনের সাথে সংঘাতে জড়িত শিশুদের ক্ষেত্রে প্রবেশন মঞ্জুরের এখতিয়ার শিশু আদালতকে প্রদান করা হয়েছে। প্রাপ্তবয়স্কদের জন্য প্রবেশন মঞ্জুরের ক্ষেত্রে ‘দি প্রবেশন অব অফেন্ডারস্ অর্ডিনেন্স, ১৯৬০’ এখনও কার্যকর এবং তা প্রবেশন সম্পর্কিত উদ্দেশ্য অর্জনে সম্পূর্ণরূপে সক্ষম।<sup>৫</sup> জাতিসংঘের সদস্য রাষ্ট্র হিসেবে প্রবেশনসহ কারাদন্ড প্রদানের বিকল্প ব্যবস্থা সংক্রান্ত আন্তর্জাতিক দলিলাদি অনুসরণ করা এবং মেনে চলার ক্ষেত্রে বাংলাদেশের বাধ্যবাধকতা রয়েছে। বিশেষকরে নন-কাস্টডিয়াল পদ্ধতি সংক্রান্ত জাতিসংঘের ন্যূনতম মানদণ্ডের ১.৫ নং বিধিতে সদস্য রাষ্ট্রগুলোর প্রতি নিম্নরূপ বাধ্যবাধকতা আরোপ করা হয়েছে :

“সদস্য রাষ্ট্রসমূহ, মানবাধিকারের প্রতি সম্মান প্রদর্শনের বিষয়টি বিবেচনায় নিয়ে এবং সামাজিক ন্যায়বিচার ও অপরাধীদের পুনর্বাসনের প্রয়োজনে, তাদের আইন ব্যবস্থায় কারাদন্ডের বিকল্প হিসেবে নন-কাস্টডিয়াল পদ্ধতি অর্ন্তভুক্ত করবে, যাতে করে কারাদন্ডপ্রদানের ব্যবহার কমানো এবং ফৌজদারী নীতিমালার যৌক্তিকতা তুলে ধরা যায়।”

ভিন্ন ভিন্ন আইনে প্রবেশনকে অনিয়মিতভাবে একটি ‘শর্ত সাপেক্ষে অব্যাহতির আদেশ’ অথবা ‘অপরাধীকে একজন প্রবেশন কর্মকর্তার তত্ত্বাবধানে রাখার আদেশ’ হিসেবে সংজ্ঞায়িত করা হয়েছে।<sup>৬</sup>

বাংলাদেশে প্রবেশনের উদ্দেশ্য হলো অপরাধ প্রতিরোধ ও অপরাধের পুনরাবৃত্তি রোধ পাশাপাশি অপরাধী ব্যক্তিকে পুনর্বাসন, সমাজের মূল ধারায় ফিরিয়ে আনা ও দোষারোপ না করা। তাছাড়া কিছু কিছু ক্ষেত্রে অপরাধে ক্ষতিগ্রস্ত ব্যক্তিকে পুনরুদ্ধার করাও প্রবেশনের উদ্দেশ্য। প্রবেশন মঞ্জুরের ক্ষেত্রে অপরাধীর বয়স ও লিঙ্গভেদে ভিন্নতা রয়েছে। অপরাধের প্রকৃতি যাই হোক না কেন সকল শিশুই প্রবেশন পাওয়ার অধিকারী। মৃত্যুদণ্ডে দণ্ডিত অপরাধ ব্যতীত অন্য সকল অপরাধে সাজাপ্রাপ্ত একজন নারীকে প্রবেশন মঞ্জুর করা যেতে পারে। তবে প্রবেশন অব অফেন্ডারস্ অর্ডিনেন্স-এ উল্লেখিত সুনির্দিষ্ট কিছু অপরাধের ক্ষেত্রে একজন প্রাপ্তবয়স্ক পুরুষ সাজাপ্রাপ্ত অপরাধীকে প্রবেশন প্রদান করা যেতে পারে। প্রাপ্তবয়স্কদের প্রবেশন প্রদানের ক্ষেত্রে আদালত সাধারণত অপরাধীর বয়স, চরিত্র, অপরাধের পূর্ব ইতিহাস, শারীরিক বা মানসিক অবস্থা ও অপরাধের প্রকৃতি বিবেচনা করেন।

প্রবেশন প্রক্রিয়ার বাস্তবরূপদানের ক্ষেত্রে প্রবেশন অফিসার গুরুত্বপূর্ণ ভূমিকা পালন করে। প্রাপ্তবয়স্ক অপরাধীদের চেয়ে আইনের সাথে সংঘাতে জড়িত শিশুদের প্রতি প্রবেশন অফিসারের অনেক বেশী ভূমিকা রয়েছে। সমাজ সেবা অধিদপ্তরের অধীনে থেকে প্রবেশন অফিসারগণ মূলত প্রবেশন প্রাপ্তদের জিম্মাদার হিসাবে কাজ করেন। এখানে বিশেষভাবে উল্লেখ্য যে, প্রবেশন প্রাপ্ত কোন নারীকে পুরুষ প্রবেশন অফিসারের তত্ত্বাবধানে অর্পণ করা যায় না।<sup>৭</sup> কারাগারে আটক সাজাপ্রাপ্ত নারীদের বিশেষ সুবিধা আইন, ২০০৬ -এর মাধ্যমে কারাভোগের মেয়াদ শেষ হওয়ার আগে সদাচরণের শর্তে মুক্তি প্রাপ্ত নারী কয়েদিদের তত্ত্বাবধান ও দেখাশুনা করার দায়-দায়িত্ব প্রবেশন কর্মকর্তাদের উপর ন্যস্ত করা হয়েছে। যদিও মানসম্পন্ন সংজ্ঞার আলোকে এধরনের মুক্তি প্রদানকে (কারাভোগের মেয়াদ শেষের আগে) প্যারোল হিসেবে চিহ্নিত করা উচিত কিন্তু এই আইনে কারাভোগের মেয়াদ শেষের আগে নারী কয়েদিদের তত্ত্বাবধান করার ক্ষমতা প্রবেশন কর্মকর্তাদেরকে প্রদান করেছে।

<sup>১</sup> বাংলাদেশ আইন কমিশন, প্রতিবেদন নং ৫৪, ৫ জানুয়ারি, ২০০৩ সালে পেশকৃত (সূত্র <http://www.lawcommissionbangladesh.org/reports/54.pdf>)

<sup>২</sup> দি প্রবেশন অব অফেন্ডারস্ অর্ডিনেন্স, ১৯৬০, ধারা ৪-৫

<sup>৩</sup> দি প্রবেশন অব অফেন্ডারস্ অর্ডিনেন্স, ১৯৭১, ক্রম ১১(৩)

প্রাপ্তবয়স্ক (নারী ও পুরুষ উভয়) অপরাধী ও আইনের সাথে সংঘাতে জড়িত শিশুদের ক্ষেত্রে প্রবেশন প্রক্রিয়ায় ভিন্নতা রয়েছে। প্রাপ্তবয়স্ক অপরাধীর ক্ষেত্রে কোন রায় ঘোষণার পূর্বে আদালত উপযুক্ত মনে করলে শাস্তিদান পূর্ববর্তী প্রতিবেদন (PSR) চেয়ে সংশ্লিষ্ট প্রবেশন কর্মকর্তাকে নির্দেশ দিতে পারেন। শাস্তিদান পূর্ববর্তী প্রতিবেদন পর্যালোচনার পর, আদালত তাঁর স্বেচ্ছাধীন ক্ষমতাবলে সুনির্দিষ্ট শর্তে কোন প্রাপ্তবয়স্ক অপরাধীর ক্ষেত্রে প্রবেশন মঞ্জুর করতে পারেন। অন্যদিকে শিশুদের ক্ষেত্রে আইনের সাথে সংঘাতে আসার সাথে সাথেই প্রবেশন প্রক্রিয়া শুরু হয়। আইনের সাথে সংঘাতে জড়িত শিশুকে থানায় আনা হলে অথবা অন্য কোনভাবে কোন শিশু থানায় আসলে মূলত শিশু বিষয়ক পুলিশ কর্মকর্তার কর্তব্য হচ্ছে শিশুর আটকের বিষয়টি সংশ্লিষ্ট অভিভাবক ও প্রবেশন কর্মকর্তাকে অবহিত করা।<sup>৪</sup> শিশু আদালতের বিচার চলাকালীন সময়ে সংশ্লিষ্ট প্রবেশন কর্মকর্তার উপস্থিতি বাধ্যতামূলক।<sup>৫</sup> আদালতে শিশুর প্রথম উপস্থিতির সাথে সাথে আদালত সংশ্লিষ্ট প্রবেশন কর্মকর্তাকে নির্ধারিত ফরমে সামাজিক অনুসন্ধান প্রতিবেদন (SIR) প্রেরণ করার জন্য আদেশ দান করে থাকেন।<sup>৬</sup> আইনানুযায়ী শিশু আদালতে কোন শিশুকে প্রথম উপস্থিত করানোর দিন থেকে ২১ দিনের মধ্যে সংশ্লিষ্ট প্রবেশন কর্মকর্তা সামাজিক অনুসন্ধান প্রতিবেদন আদালতে পেশ করতে বাধ্য।<sup>৭</sup> শিশু আদালত আইনের সাথে সংঘাতে জড়িত শিশুকে প্রবেশনে প্রেরণের জন্য আদেশ দান করতে পারেন। প্রবেশনে থাকা শিশুকে দেখাশুনা করা ও মাসিক অগ্রগতি প্রতিবেদন প্রস্তুত ও পেশ করা সংশ্লিষ্ট প্রবেশন কর্মকর্তার দায়িত্ব।

হাইকোর্ট বিভাগ, দায়রা জজ ও জুডিশিয়াল ম্যাজিস্ট্রেট আদালতসহ ফৌজদারী আদালত ও সমাজকল্যাণ মন্ত্রণালয়-এর অধীন সমাজ সেবা অধিদপ্তর বাংলাদেশে প্রবেশন ব্যবস্থার সাথে যুক্ত। সমাজ সেবা অধিদপ্তরের সার্বিক সমাজ সেবা কার্যক্রমের মধ্যে সবচেয়ে ক্ষুদ্র বিভাগ এই ‘প্রবেশন’। প্রশাসনিকভাবে প্রবেশন কর্মকর্তাগণ সমাজ সেবা অধিদপ্তরের পরিচালকের নিকট তাদের কাজের জন্য দায়বদ্ধ। প্রবেশন প্রাপ্ত কোন ব্যক্তিকে দেখাশুনা ও মনিটর করা এবং প্রতিবেদন প্রস্তুত ও পেশ করার ক্ষেত্রে সংশ্লিষ্ট প্রবেশন কর্মকর্তা আদালতের নিকট আইনানুগভাবে দায়বদ্ধ। সমগ্র দেশে জেলা পর্যায়ে সর্বমোট ৪৪ জন প্রবেশন কর্মকর্তার পদ রয়েছে যদিও বাংলাদেশে মোট ৬৪টি জেলা রয়েছে। এ সংখ্যা থেকেই অনুমান করা যায় বাংলাদেশে অনেক জেলা রয়েছে যেখানে দায়িত্বরত কোন প্রবেশন কর্মকর্তা নেই। প্রবেশন অফিসারের অনুপস্থিতিতে জেলা ও উপজেলা পর্যায়ে সমাজসেবা কর্মকর্তাগণ তাদের উপর অর্পিত মূল দায়িত্বের অতিরিক্ত হিসেবে প্রবেশন কর্মকর্তার দায়িত্ব পালন করে থাকেন।

বাংলাদেশ সুপ্রীম কোর্টের আপীল বিভাগের মহামান্য বিচারপতি এম ইমান আলী প্রবেশন ব্যবস্থার বর্তমান অবস্থার সারাংশ নিম্নোক্তভাবে ফুটে তুলেছেন:

“সম্ভবত বিজ্ঞ বিচারকদের শাস্তিপ্রদানমূলক মনোভাবের কারণে আমাদের বিচারিক আদালতগুলোতে প্রবেশনের ব্যবহার অত্যন্ত বিরল এবং এই অবস্থা দেশের সবত্র বিরাজ করছে।”<sup>৮</sup>

তাছাড়াও এই গবেষণা সমীক্ষায় গৃহীত আইনজীবীদের সাক্ষাৎকারে প্রাপ্তবয়স্ক অপরাধীর বিচারে প্রবেশন ব্যবস্থা সম্পর্কে বেশীরভাগ আইনজীবী হয় বিষয়টি সম্পর্কে সচেতন নয় নতুবা বিষয়টিতে তাঁর আগ্রহ নেই। এছাড়া প্রবেশন ব্যবস্থাকে জনপ্রিয় বা উৎসাহিত করার জন্য সমাজ সেবা অধিদপ্তরের প্রশাসনিক ও লজিস্টিক সক্ষমতারও অভাব রয়েছে। যেমন; নারী প্রবেশন কর্মকর্তার অপ্রতুলতার কারণে এবং পুরুষ প্রবেশন কর্মকর্তার অধীনে প্রবেশন প্রাপ্ত নারীর তত্ত্বাবধানে আইনগত বাধা থাকায় নারীদের জন্য প্রবেশন মঞ্জুর হওয়ার সুযোগটিকে সীমিত করে দিচ্ছে। আর শিশুদের ক্ষেত্রে পুলিশ অফিসার কর্তৃক নিকটস্থ প্রবেশন অফিসারের সাথে যোগাযোগ করার মাধ্যমে প্রবেশনের সূচনা করার কথা থাকলেও বাস্তবে পুলিশ অফিসারদের মধ্যে প্রবেশন কর্মকর্তাকে খবর দেয়ার ক্ষেত্রে অনীহা দেখা যায়।

<sup>৪</sup> শিশু আইন, ২০১০, ধারা ১৪ (বি)

<sup>৫</sup> শিশু আইন, ২০১০, ধারা ২২ (২)

<sup>৬</sup> শিশু বিধিমালা, ১৯৭৬, নীতি ৪ (৫)

<sup>৭</sup> শিশু আইন, ২০১০, ধারা ৩১ (১)

<sup>৮</sup> জাস্টিস এম ইমান আলী, *বাংলাদেশে শিশুদের জন্য বিচার ব্যবস্থা* (ঢাকা: ইউনিসেফ, ২০১০) ২১৭

এই বিষয়টি ফাহিমা নাসরীন বনাম বাংলাদেশ সরকার<sup>৯</sup> মামলায় ভালভাবে ফুটে উঠেছে। এ গবেষণা সমীক্ষায় গৃহীত সাক্ষাৎকারে এক প্রবেশন কর্মকর্তা উল্লেখ করেছেন তার ১৩ বছরের চাকরি জীবনে মাত্র দুইবার পুলিশ অফিসারদের কাছ থেকে শিশুদের গ্রহণতার হওয়ার খবর পেয়েছেন। এক্ষেত্রে পুলিশ অফিসারের চাইতে শিশুদের নিয়ে কাজ করে এমন এনজিওদের কাছ থেকে প্রবেশন সেবার সহায়তা চাওয়ার সংখ্যা অনেক বেশী। নিচের ছকটিতে বিগত তিন বছরে মঞ্জুরকৃত প্রবেশনের ক্রমহাসমান সংখ্যার ধারা থেকে প্রবেশনের সার্বিক চিত্র পরিষ্কারভাবে ফুটে উঠেছে<sup>১০</sup>:

বৎসর	মঞ্জুরকৃত প্রবেশন আদেশের সংখ্যা
২০০৮-০৯	৩৭৯
২০০৯-১০	২৬১
২০১০-১১	৪৩
মোট	৬৮৩

### চিন্তা-ভাবনার বিষয়

- বাংলাদেশের অনেক আইনজীবী, প্রসিকিউটর এবং বিচারক অভিযুক্ত ব্যক্তিকে প্রবেশন প্রদানের সুযোগ সম্পর্কে অবহিত নন। অধিকন্তু, এক্ষেত্রে একটি ভুল ধারণা বহুলভাবে প্রচলিত রয়েছে যে, কেবলমাত্র প্রথমবার অপরাধীদের ক্ষেত্রে প্রবেশন প্রযোজ্য এবং অনধিক ২ বছরের কারাদণ্ড দেয়া হয় এমন সব অপরাধে প্রবেশন মঞ্জুর করা যায়। বস্তুত এই ধরনের বিধি-নিষেধ কেবলমাত্র প্রবেশন অধ্যাদেশের ৪ ধারায় বর্ণিত শর্ত সাপেক্ষে মুক্তির ক্ষেত্রে প্রযোজ্য। এই ধরনের ভুল ধারণার ফলে কার্যত প্রবেশনের সংখ্যা এত নগন্য।
- পুলিশ, প্রবেশন অফিসার, বিচারক, আইনজীবী, প্রসিকিউটর ও স্থানীয় সরকার প্রতিষ্ঠান সমূহের মধ্যে সমন্বয়ের প্রকট অভাব পরিলক্ষিত। এদের মধ্যে সু-সমন্বয় ছাড়া প্রবেশন ব্যবস্থা কার্যকর হতে পারে না।
- প্রবেশন ব্যবস্থাপনার চিত্রটিও বেশ ত্রুটিপূর্ণ। প্রবেশন কর্মকর্তাদের অফিস জেলা সমাজসেবা বা জেলা প্রশাসকের কার্যালয়ে অবস্থিত হওয়ায় যে আদালত প্রবেশন মঞ্জুর করেন তার সাথে প্রবেশন কর্মকর্তার সংযুক্তিতার অভাব রয়েছে। নির্বাহী বিভাগ থেকে নিম্ন আদালতের আনুষ্ঠানিক পৃথকীকরণের পর এখন আদালতের সাথে প্রবেশন কর্মকর্তার সংযুক্তি নিশ্চিত করাটা খুবই গুরুত্বপূর্ণ। একই সাথে একজন প্রবেশন কর্মকর্তা কতজন প্রবেশনারকে তত্ত্বাবধান করবেন সে বিষয়টিও অস্পষ্ট। কাজেই একটি সুনির্দিষ্ট নীতিমালা ছাড়া অধিকতর প্রবেশন আদেশ প্রদানকে উৎসাহিত করা হলে তা বাংলাদেশে প্রচলিত প্রবেশন প্রশাসন ও ব্যবস্থাপনার উপর চাপ সৃষ্টি করতে পারে।
- আইনের সাথে সংঘাতে জড়িত শিশু-কিশোরদের গ্রহণতার ক্ষেত্রে প্রবেশন অফিসারদের সাথে যোগাযোগ ও শিশুদের জন্য পৃথক পদ্ধতি অনুসরণ করতে পুলিশ অফিসারগণ বাধ্য। যখন কোন ব্যক্তিকে শিশু হিসাবে চিহ্নিত করতে বয়স প্রমাণের কোন সাক্ষ্য পাওয়া না যায় তখন শিশুরা এই অধিকার থেকে বঞ্চিত হয়। যদিও সাম্প্রতিক বছরগুলোতে জন্ম নিবন্ধনের হার বৃদ্ধি পেয়েছে তথাপি দরিদ্র ও প্রান্তিক জনগোষ্ঠী বিশেষত গৃহহীন শিশুদের ক্ষেত্রে এখনো সীমাবদ্ধতা রয়েছে। ফলে এসব জনগোষ্ঠীর শিশুরা বয়স প্রমাণের অভাবে প্রবেশনের সুযোগ থেকে বঞ্চিত হতে পারে।
- দেশব্যাপী মাত্র ৪৪ জন প্রবেশন কর্মকর্তার পদ রয়েছে। প্রবেশনের মাধ্যমে মুক্তির জন্য যোগ্য বলে বিবেচিত ব্যক্তিকে তত্ত্বাবধান করার ক্ষেত্রে প্রবেশন অফিসারের এ সংখ্যা প্রয়োজনের তুলনায় নিতান্ত নগন্য। জেলা পর্যায়ে কর্মরত একজন প্রবেশন অফিসারের জন্য অন্য কোন জেলা বা দূরবর্তী গ্রামে বসবাসরত কোন প্রবেশনারকে তত্ত্বাবধান করা খুবই কঠিন। প্রবেশন ব্যবস্থার সাংগঠনিক সক্ষমতা বৃদ্ধি ব্যতীত প্রবেশনের

<sup>৯</sup> ৬১ ডিএলআর (হাইকোর্ট বিভাগ)২০৪

<sup>১০</sup> বাংলাদেশ সরকার, সমাজকল্যাণ মন্ত্রণালয়, বার্ষিক প্রতিবেদন ২০০৮-০৯, ২০০৯-১০, ২০১০-১১:৬৬

মাধ্যমে অধিক সংখ্যক সাজাপ্রাপ্ত অপরাধীকে মুক্তি প্রদানের আশা খুবই অবাস্তব হবে। প্রবেশন কর্মকর্তাগণ যে তীব্র আর্থিক ও লজিস্টিক বাধার সম্মুখীন হয় তাও উদ্বেগের একটি বড় কারণ।

- সাম্প্রতিক বছরগুলোতে প্রবেশন মঞ্জুরের প্রবণতা দ্রুত কমে যাওয়ায় প্রবেশন ব্যবস্থাকে শাস্তি প্রদানের কাঠামোভুক্ত করার ক্ষেত্রে সরকারের সদিচ্ছা নিয়ে প্রশ্ন রয়েছে।
- শাস্তি সংক্রান্ত দর্শন-এর প্রাধান্য এখনও প্রতিশোধ ও প্রতিরোধমূলক হওয়ায় বাংলাদেশে আদালত কর্তৃক কারাদন্ডের ব্যবহার অধিকহারে প্রচলিত। সাধারণ জনগণ, প্রসিকিউটর ও আদালত এখনও নন-কাস্টডিয়াল শাস্তি ব্যবস্থার উপর আস্থার অভাব রয়েছে বলে মনে হচ্ছে।
- অতিমাত্রায় রাজনৈতিকীকরণ ও প্রাতিষ্ঠানিক দুর্নীতি যে সমাজে ব্যাপকভাবে প্রচলিত সেখানে তত্ত্বাবধানে থাকা প্রবেশনারকে মনিটর করার জন্য যথাযথ প্রশাসনিক আয়োজন না থাকলে প্রবেশনের অপব্যবহার হওয়ার সম্ভাবনা অত্যন্ত প্রবল।

## সুপারিশমালা:

### সরকারের জন্য

- দশবিধির ৫৩ ধারার সংশোধন বিবেচনা করে কারাদন্ড প্রদানের বিকল্প গ্রহণ করা যেতে পারে। এ ধারা অনুযায়ী বর্তমানে কেবলমাত্র পাঁচ প্রকারের শাস্তির ব্যবহার প্রচলিত : (ক) মৃত্যুদন্ড (খ) যাবজ্জীবন কারাদন্ড (গ) বিনাশ্রম কারাদন্ড (ঘ) সশ্রম কারাদন্ড ও (ঙ) জরিমানা। অর্থাৎ জরিমানা ছাড়া কারাদন্ডাদেশের বিকল্প গ্রহণের কোন সুযোগ নেই।
- নিম্নোক্ত বিষয় সমূহ বিবেচনায় নিয়ে দি প্রবেশন অব অফেন্ডারস্ অর্ডিনেন্স, ১৯৬০ (১৯৬৪ সালে সংশোধিত) এবং দি প্রবেশন অব অফেন্ডারস্ রুলস্ ১৯৭১ এর সংশোধন করা:
- অধ্যাদেশের ৪ ও ৫ ধারায় যথাক্রমে ‘শর্তযুক্ত অব্যাহতি’ এবং ‘প্রবেশন আদেশ’ প্রদান আদালতের স্ব-উদ্যোগে মঞ্জুর করার বিধান করা;
- প্রবেশন সংক্রান্ত বিধিমালা সুস্পষ্ট করা যেমন; প্রবেশন কর্মকর্তাদের প্রশাসনিক দায়বদ্ধতা সমাজসেবা অধিদপ্তরের আওতায় না আদালতের আওতায় তা সুনির্দিষ্ট করা।
- প্রবেশন ছাড়াও কমিউনিটি সার্ভিস বা কারাদন্ড রহিতকরণ বা জরিমানা অথবা বিকল্প বিরোধ নিষ্পত্তির মত পর্যাপ্ত বিকল্প ব্যবস্থা সুনির্দিষ্ট করে নীতিমালা ও নির্দেশিকা গ্রহণ করা। কারাদন্ডের কার্যকর বিকল্প কোন ব্যবস্থা শাস্তি প্রদান হিসেবে অন্তর্ভুক্ত করা যেতে পারে। এক্ষেত্রে শিশু ও নারীদের জন্য পৃথক ব্যবস্থা থাকা উচিত।
- বাংলাদেশে ৬৪টি জেলা থাকলেও প্রবেশন কর্মকর্তার পদের সংখ্যা মাত্র ৪৪টি। বাংলাদেশের কোন উপজেলা, এমনকি অনেক জেলায়ও কোন প্রবেশন অফিসার নেই। তাই উপজেলা ও মেট্রোপলিটন এলাকায় যথাযথ ব্যবস্থাসহ সকল জেলায় প্রবেশনকে বিস্তৃত করার জন্য পর্যাপ্ত মানবসম্পদ এবং লজিস্টিক সহযোগিতা নিশ্চিত করা প্রয়োজন।
- বর্তমানে প্রবেশন সার্ভিসের জন্য পৃথক কোন বাজেট বরাদ্দ নেই। সমাজসেবা অধিদপ্তরের আওতায় যে বাজেট রয়েছে তা খুবই অপ্রতুল। এজন্য প্রবেশন সার্ভিসের পৃথক ও পর্যাপ্ত বাজেট বরাদ্দ প্রয়োজন। তাছাড়া, শিশু ও প্রাপ্তবয়স্ক প্রবেশনারদের তত্ত্বাবধানের ক্ষেত্রে প্রবেশন কর্মকর্তাদের বিশেষ দক্ষতা বৃদ্ধির জন্যও অতিরিক্ত সম্পদের ব্যবস্থা করা প্রয়োজন।
- সংশ্লিষ্ট মন্ত্রণালয় ও আদালত কর্তৃক প্রবেশন ব্যবস্থার সাথে জড়িত ব্যক্তি বা প্রতিষ্ঠানসমূহ, যেমন: সমাজসেবা অধিদপ্তর, জেলা প্রবেশন কর্মকর্তা, শিশু উন্নয়ন কেন্দ্র ও উপজেলা সমাজসেবা অফিস-এ মনিটরিং ও তত্ত্বাবধান বৃদ্ধি করা।
- নতুন পাসকৃত শিশু আইন ২০১৩-এর সুষ্ঠু প্রয়োগের জন্য বিকল্পপস্থা (Diversion) ও কারাদন্ডের বিকল্প (Alternative to Imprisonment)-এর মত নন-কাস্টডিয়াল ব্যবস্থার নতুন ধারণাগুলোকে দ্রুত বাস্তবায়নের জন্য সমন্বিত বিধিমালা তৈরী ও গ্রহণ করা প্রয়োজন।

- প্রবেশন ব্যবস্থার সাথে জড়িত স্টেকহোল্ডার যেমন; বিচারক, প্রবেশন কর্মকর্তা, পুলিশ অফিসার, কারা কর্মকর্তা, আইনজীবী এবং সমাজ সেবা কর্মকর্তাদের জন্য প্রশিক্ষণ, সেমিনার, ওয়ার্কশপ ইত্যাদি দক্ষতা বৃদ্ধিমূলক কার্যক্রম নিয়মিত গ্রহণ করা।
- এ গবেষণা সমীক্ষার প্রাপ্ত ফলাফলে দেখা গেছে, প্রবেশনারদের তত্ত্বাবধান এবং মনিটর করার ক্ষেত্রে প্রবেশন কর্মকর্তাগণ অনেকক্ষেত্রে স্থানীয় সরকার প্রতিনিধির উপর নির্ভর করে থাকেন। এজন্য প্রবেশন ও পুনর্বাসন প্রক্রিয়ায় স্থানীয় সরকার প্রতিনিধিদের আনুষ্ঠানিকভাবে অন্তর্ভুক্ত করা যেতে পারে।
- আইনের সাথে সংঘাতে জড়িত শিশু ও প্রাপ্তবয়স্ক প্রবেশনারদের উপর ভিত্তি করে প্রবেশন কর্মকর্তাদের পৃথকভাবে শ্রেণীবদ্ধ করা প্রয়োজন। অন্যভাবে বলা যায়, কেবলমাত্র শিশুদের তত্ত্বাবধান করার জন্য কিছু প্রবেশন কর্মকর্তাকে দায়িত্ব দেয়া যেতে পারে যাদেরকে শিশু প্রবেশনার তত্ত্বাবধানের জন্য বিশেষায়িত প্রশিক্ষণ প্রদান করা হবে।
- প্রবেশন, বিকল্পপন্থা (Diversion), কমিউনিটিতে সাজা ভোগ (Community Sentencing) সহ সকল নন-কাস্টডিয়াল ব্যবস্থা ও কারাদন্ডের বিকল্প চিহ্নিত করা এবং এগুলোর প্রাতিষ্ঠানিক রূপ দেয়ার জন্য পৃথক অধিদপ্তর বা পৃথক সংস্থা তৈরী করা প্রয়োজন। প্রাতিষ্ঠানিক সংশোধন (যেমন: কারাগার, শিশু উন্নয়ন কেন্দ্র) এবং নন-কাস্টডিয়াল ব্যবস্থা (যেমন: প্রবেশন, প্যারোল, কমিউনিটিতে সাজা ভোগ) নিয়ে কাজ করার জন্য 'সংশোধন অধিদপ্তর' নামে একটি পৃথক অধিদপ্তর প্রতিষ্ঠা করা যেতে পারে।
- সমাজসেবা বা জেলা প্রশাসকের কার্যালয় থেকে প্রবেশন অফিসারদের বর্তমান কার্যালয় সরিয়ে নিয়ে আদালত ভবনে স্থানান্তর করা।
- আইনজীবীদের পেশাগত বিভিন্ন প্রশিক্ষণ কর্মসূচিতে প্রবেশন সংক্রান্ত বিধি-বিধান অন্তর্ভুক্ত করা প্রয়োজন যেমন; বাংলাদেশ বার কাউন্সিল কর্তৃক আয়োজিত বিভিন্ন প্রশিক্ষণ কর্মসূচি।
- প্রবেশন সম্পর্কিত বিভিন্ন বিষয় আলোচনার জন্য জেলা আইনগত সহায়তা কমিটি (ডিল্যাক) কে উপযুক্ত ফোরাম হিসেবে ব্যবহার করা যেতে পারে। জেলা ও দায়রা জজ, আইনজীবী সমিতির সভাপতি ও সাধারণ সম্পাদক, জেলা সমাজসেবা কর্মকর্তা, জেলা সুপার প্রভৃতি কর্তৃপক্ষের মধ্যে প্রবেশন বিষয়ে সমন্বয় বৃদ্ধির জন্যও আইনগত সহায়তা কমিটি (ডিল্যাক) উপযুক্ত ফোরাম হতে পারে।
- দোষী ও সাজাপ্রাপ্ত কয়েদী এবং বিচারপূর্ব আটক বন্দীদের মানবাধিকার প্রতিষ্ঠার জন্য 'কারাদন্ডের বিকল্প ব্যবস্থা' কে জাতীয় মানবাধিকার কমিশন অগ্রাধিকার বিষয় হিসেবে অন্তর্ভুক্ত করতে পারে। সরকারী ও বেসরকারী বিভিন্ন সংস্থার সাথে সমন্বয় করে জাতীয় মানবাধিকার কমিশন প্রবেশনসহ কারাদন্ডের বিকল্প ব্যবস্থা হিসেবে অন্যান্য ব্যবস্থা সম্পর্কে একটি ভবিষ্যৎ কর্মপরিকল্পনা তৈরী করতে পারে; বিশেষকরে সাধারণ জনগণ ও সম্ভাব্য যারা প্রবেশনে মুক্তি পেতে পারে তাদের মাঝে সচেতনতা বৃদ্ধি নিশ্চিত করার জন্য কর্মপরিকল্পনা হাতে নিতে পারে।
- ধর্মীয় পরিচিতি যা এক্ষেত্রে তৎপর্যহীন তা বাদ দেয়া ও জেডার নিরপেক্ষতা নিশ্চিত করার জন্য 'দি প্রবেশন অব অফেন্ডারস্ রুলস্ ১৯৭১' এ উল্লেখিত ফরম ও রেজিস্টারসমূহ সংশোধন করা।

### সিভিল সোসাইটির জন্য

- অধিকাংশ মানবাধিকার সংগঠনসমূহ অভিযুক্ত ও ভিকটিমের অধিকার ও যথাযথ আইনগত প্রক্রিয়ার উপর জোর দিয়ে থাকলেও কয়েদিরা, বিশেষকরে সাজাপ্রাপ্ত কয়েদিরা, এর বাইরে থেকে যায়। কিছু উন্নয়ন সংস্থা কর্তৃক গৃহীত সীমিত পদক্ষেপ ছাড়া সাজাপ্রাপ্তদের সংশোধন ও পুনর্বাসনের জন্য কোন বিনিয়োগ নেই বললেই চলে। বাংলাদেশের জেলখানাগুলোতে ধারণক্ষমতার অতিরিক্ত কয়েদির সংখ্যা কমিয়ে আনতে এবং অধিকতর আর্থিক সাশ্রয়ে মানবিক শান্তি প্রদানে কারাদন্ডের বিকল্প হিসেবে প্রবেশনকে উৎসাহিত করতে মানবাধিকার নিয়ে কাজ করে এমন সিভিল সোসাইটি সংগঠনসমূহ সংলাপ শুরু করা সহ বিভিন্ন কর্মসূচী গ্রহণ করা উচিত।
- সাজাপ্রাপ্ত কয়েদিদের মধ্য একটি সার্ভে পরিচালনা করা যাতে সম্ভাব্য কতজনকে কারাদন্ডের বিকল্প অন্য কোন ব্যবস্থা প্রদান করা যেতে পারে তা নির্ধারণ করা যায়। এই সার্ভে বেইজলাইন তথ্য প্রদান করবে এবং কারাদন্ডের বিকল্প ব্যবস্থা সম্পর্কিত কাজকে সহযোগিতা করবে।



- মানবাধিকার সংগঠনগুলো কর্তৃক অধিকারভোগী (অভিযুক্ত এবং ভিকটিম) এবং দায়িত্ব-বাহক (আইনজীবী, পুলিশ অফিসার, প্রসিকিউটর এবং বিচারক) উভয়ের জন্য প্রবেশন, বিকল্পপন্থা, শর্তসাপেক্ষে মুক্তি এবং সাজার মেয়াদ পূর্ণের পূর্বে মুক্তিসহ অন্যান্য নন-কাস্টডিয়াল ব্যবস্থা প্রয়োগের সুযোগ সংক্রান্ত বিষয়ে সচেতনতা বৃদ্ধি করা প্রয়োজন। বিচার ব্যবস্থায় জড়িত ব্যক্তিবর্গ ও জনগণের সচেতনতা ও আত্মবিশ্বাস বৃদ্ধি প্রবেশন ব্যবস্থাকে জনপ্রিয় করে তুলতে পারে।
- ফৌজদারী বিচার ব্যবস্থার সংস্কার নিয়ে কাজ করে এমন বিশেষায়িত সংগঠনসমূহ অপরাধীদের তত্ত্বাবধান, সংস্কার, পুনর্বাসন ও সংশোধন সংক্রান্ত পরীক্ষামূলক প্রকল্প গ্রহণ করতে পারে যা পরবর্তীতে সরকারি কর্মসূচীতে প্রতিফলন ঘটানো যায়। ছোট-খাট ফৌজদারী অপরাধের ক্ষেত্রে সিভিল সোসাইটি সংস্থা মিডিয়েশান ও বিকল্প বিরোধ নিষ্পত্তি সংক্রান্ত যে সেবা প্রদান করে থাকে তাও অন্তর্ভুক্ত করা যেতে পারে। বিচার পূর্ব আটকের বিকল্প প্রদানের উদ্দেশ্যে যে সকল সংস্থা প্যারালিগ্যাল সেবা দিয়ে থাকে, প্যারোল ও সাজার মেয়াদ শেষ হওয়ার পূর্বে মুক্তি সংক্রান্ত বিষয় অনুসন্ধানের জন্য তারও সম্ভাব্যতা পরীক্ষা করা উচিত।
- আইনজীবী, প্রবেশন কর্মকর্তা এবং বিচারকদের দক্ষতা বৃদ্ধির জন্য ফৌজদারী বিচার ব্যবস্থার সংস্কার নিয়ে কাজ করে এমন বিশেষায়িত সংগঠনসমূহ কর্মসূচী গ্রহণ করতে পারে। প্রবেশনের ইতিবাচক দিক তুলে ধরার জন্য ফৌজদারী বিচার ব্যবস্থা নিয়ে গবেষণা করে এমন বিশেষায়িত সংগঠনসমূহ কারাদন্ডের বিকল্প বিষয়ে ব্যাপক গবেষণাসহ নীতি নির্ধারনী পর্যায়ে এ্যাডভোকেসীর উদ্যোগ গ্রহণ করতে পারে।

#### আন্তর্জাতিক সম্প্রদায়ের জন্য

- অপরাধীদের ক্ষেত্রে নন-কাস্টডিয়াল ব্যবস্থা সংক্রান্ত যেসকল আন্তর্জাতিক নীতিমালা ও দিকনির্দেশনা রয়েছে তা গ্রহণে উৎসাহিত করার জন্য সরকারের সাথে গঠনমূলক আলোচনা করা।
- আইনের সাথে সংঘাতে জড়িত শিশু বা নারী কয়েদিদের ক্ষেত্রে নন-কাস্টডিয়াল ব্যবস্থা গ্রহণের সুযোগ সম্পর্কে সচেতনতা সৃষ্টির জন্য সরকার ও বিশেষায়িত সংস্থাসমূহের সহযোগিতায় পরীক্ষামূলক প্রকল্প পরিচালনায় সহায়তা প্রদান করা যেতে পারে।
- প্রবেশন কর্মকর্তা, ফৌজদারী বিচার ব্যবস্থার গবেষক, জুডিশিয়াল অফিসার ও সমাজসেবা অধিদপ্তরের ব্যবস্থাপনা কর্মকর্তাদের জন্য নন-কাস্টডিয়াল ব্যবস্থা সংক্রান্ত বেস্ট প্রাকটিস অনুধাবন এবং শিক্ষাগ্রহণের জন্য আঞ্চলিক ও আন্তর্জাতিক পর্যায়ে অভিজ্ঞতা বিনিময় কার্যক্রম ও পরিদর্শনের আয়োজন করা যেতে পারে।

## EXECUTIVE SUMMARY

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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. 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.

This study aims to outline the development and use of the probation system in Bangladesh. Part I outlines the scope of the study, laying down the background within which the study was conducted, stating its objectives and describing the research methodology undertaken to complete the study. Part II delineates the development of the probation system in Bangladesh covering the periods under colonial rule (*i.e.* in the British and Pakistan periods) and after independence. Part III outlines the use of probation system in Bangladesh addressing the national and international legal frameworks. The probation system, process of granting probation, institutional arrangement, and current practice of probation are analyzed separately and in detail. The final part sets out the conclusion, including concerns and recommendations, based on a broader understanding of practical needs required to activate the probation system and strengthen the relevant legal and policy framework.

The study was based on review of documents, and the findings of twenty key informant interviews (KII) conducted using semi-structured interviews to identify gaps between the law and practice. Study findings were reviewed and validated with a group of experts.

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. 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 the respective provinces.

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. In order to make the law operational in 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 in 1971.

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. This Act has been recently repealed and replaced by the Children Act, 2013. It allows the juvenile courts to grant probation to children in conflict with the law irrespective of the offence committed. The Special Privileges for Convicted Women Act, 2006 has extended the scope to release women prisoners conditionally under the supervision of a Probation Officer. With respect to probation for adult men, the Probation of Offenders Ordinance, 1960 is still in effect.<sup>11</sup> As a member state, Bangladesh also has obligations to follow international instruments to promote alternatives to imprisonment including probation. In this respect, Rule 1.5 of United Nations Standard Minimum Rules for Non-custodial Measures states 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.”*

Probation is variably defined under different laws as an “order for conditional discharge” or “an order requiring [the offender] to be under the supervision of Probation Officer”.<sup>12</sup>

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 may be granted probation other than those convicted for an offence punishable with death. However, adult male convicts may be placed on probation only in respect of certain types of crimes prescribed in the Probation of Offenders Ordinance, 1960. 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.

In terms of actualizing the probation process, the Probation Officer plays a vital role throughout the process. A Probation Officer has more to do for children in conflict with the law than for adult offenders. Working under the Department of Social Services, a Probation Officer acts as the custodian of the probationer. However, it is to be noted that no female offender may be placed in the supervision of any male Probation Officer.<sup>13</sup>

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<sup>11</sup> Bangladesh Law Commission, Report Sl. 54, submitted on 5 January, 2003. Available at: <http://www.lawcommissionbangladesh.org/reports/54.pdf>.

<sup>12</sup> The Probation of Offenders Ordinance of 1960, § 4-5.

<sup>13</sup> The Probation Rules of 1971, Rule 11(3).

The Special Privileges for Convicted Women Act, 2006 has extended the responsibilities of Probation Officers to supervise or monitor women prisoners being selectively released early on condition of good conduct. Though, by any standard definition, this type of early release should be treated as parole, the law authorises Probation Officers to supervise women's early release from prison.

The probation process is different for adult offenders (both men and women) and for children in conflict with the law. In case of adult offenders, if the Court considers it suitable it may issue a requisition for a Pre-Sentence Report (PSR) directed to a particular Probation Officer before declaring judgment. 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.<sup>14</sup> The presence of the concerned Probation Officer is mandatory during trial in a Children's Court.<sup>15</sup> At the initial appearance of the child, the Court issues an order requiring a Probation Officer to make enquiries and to produce a Social Inquiry Report (SIR) in the prescribed form.<sup>16</sup> 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.<sup>17</sup> 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 Criminal Courts, including the High Court Division, the Court of Sessions and Court of the Judicial Magistrate 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, since there are 64 districts in Bangladesh. Social welfare officers at the district level and the upazila level are responsible for carrying out the 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:

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<sup>14</sup> The Children Act of 2013, § 14(b).

<sup>15</sup> The Children Act of 2013, § 22(2).

<sup>16</sup> The Children Rules of 1976, Rule 4(5).

<sup>17</sup> The Children Act of 2013, § 31(1).

*“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.”<sup>18</sup>*

In addition, most lawyers interviewed for this study were neither aware of nor interested in the law concerning probation of adults. There is 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 was well illustrated in the case of *Fahima Nasrin Vs. Government of Bangladesh*.<sup>19</sup> 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.<sup>20</sup>

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

## Concerns:

- Many lawyers, including prosecutors and defense counsel, and judges in Bangladesh remain unaware about the scope for granting probation to prisoners. Moreover, there is also a widespread misconception that probation applies only to first time offenders and where the offence is punishable with imprisonment for not more than two years. In fact, these restrictions are applicable only to the provision in section 4 of the Ordinance relating to conditional discharge, etc. 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.

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<sup>18</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh* (Dhaka: UNICEF, 2010) 217.

<sup>19</sup> 61 DLR (HCD) 234.

<sup>20</sup> Government of Bangladesh, Ministry of Social Welfare, *Annual Report 2008-09, 2009-10, 2010-2011*: 66.

- 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. Now that the subordinate judiciary is formally separated 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.
- Currently, there is no separate budgetary allocation for probation services and the allocated budget with the district DSS Office is very limited.

## **Recommendations:**

### **For Government**

- Amendment of Section 53 of the Penal Code, 1860 may be considered and adopted to allow alternatives to imprisonment. This currently lists only five forms of punishments, namely death sentence, life imprisonment, simple imprisonment;

rigorous imprisonment, and 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 Probation of Offenders Rules, 1971 would be required to address the following issues:
  - 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;
  - 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 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 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.
- 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 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 and children in contract 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/organization needs to be set up in order to institutionalize 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 need to be shifted to court buildings from their current location at DSS offices and/or DC’s offices. Probation Officers must be linked with the Courts which pass the probation orders.
- The provisions on probation need to be incorporated in professional training programmes for lawyers such as those organised by the Bangladesh Bar Council.
- 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.
- NHRC may include ‘alternatives to imprisonment’ in its priority mandate to uphold the human rights of pre-trial detainees and convicted prisoners. A future action plan can also be developed to explore alternatives to imprisonment including probation, by NHRC in coordination with GOs and NGOs, particularly to try to ensure greater awareness among the public and those affected of the potential of obtaining release on probation.
- 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 of the offender which are immaterial.

### For Civil Society

- Most human rights organizations 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 organizations, 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.



- 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 may 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.
- Specialized 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 may 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.

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## ACRONYMS

ADR	Alternative Dispute Resolution
BLAST	Bangladesh Legal Aid and Services Trust
CDC	Child Development Centre
CrPC	Code of Criminal Procedure, 1898
DC	Deputy Commissioner
DLAC	District Legal Aid Committee
DSS	Department of Social Services
LGI	Local Government Institution
MLSS	Member of Lower Subordinate Staff
NCWB	National Children Welfare Board
NGO	Non-Government Organization
PO	Probation Officer
PRI	Penal Reform International
PSR	Pre-Sentence Report
SI	Sub-Inspector
SIR	Social Inquiry Report
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNICRI	United Nations Inter-regional Crime Research Institute
UNSMRNCM	United Nations Standard Minimum Rules for Non-custodial Measures

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# **Part I**

## **About the Study**

## Chapter 1: Background and Objectives

### Background

In Bangladesh, courts usually impose imprisonment as a sentence upon convicted offenders. From 2009-2010, in contrast to the 18,144 convicted prisoners who remained imprisoned in Bangladesh,<sup>21</sup> only 261 persons were placed on probation.<sup>22</sup> There is increasing recognition of the negative impact, not only on the individual concerned but also on society, of such easy resort to imprisonment, including stigma, psychological harm, problems in social reintegration, and hardship for the prisoner's family, and the need to develop effective alternatives including probation. Nevertheless, the practice of probation or parole remains extremely rare in Bangladesh.<sup>23</sup>

The Bangladeshi penal system is regulated by the Penal Code, 1860, the Prison Act, 1894, and the Prisoners Act, 1900, all of which were enacted during the British colonial period. There are no sentencing guidelines in place. In practice sentencing involves imprisonment of two kinds, either rigorous or simple.<sup>24</sup> The Probation of Offenders Ordinance, 1960, also enacted pre-Independence, in the Pakistan period, is the principal law governing the issue of probation. Post-independence, this was supplemented by the Children Act, 1974, very recently replaced by the Children Act, 2013, which focuses particularly on child offenders, and also by the Special Privileges for Convicted Women Act, 2006.

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,<sup>25</sup> 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,<sup>27</sup> laying down some directions for parole and probation.<sup>28</sup> Subsequently, some legal and administrative reforms were undertaken to institutionalize the system of probation.<sup>29</sup>

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<sup>21</sup> Ain O Salish Kendra, *Human Rights Bangladesh Report 2010*, (2011) 129.

<sup>22</sup> Government of Bangladesh, Ministry of Social Welfare, *Annual Report 2008-09, 2009-10, 2010-2011*: 66.

<sup>23</sup> Ministry of Home Affairs, Memo no. MoH (Jail-2), miscellaneous – 16/2007/77 (dated 22 September 2007).

<sup>24</sup> The Penal Code, 1860, § 53.

<sup>25</sup> Main recommendations were for work reform, prison administration, separation of prison for men and women.

<sup>26</sup> Emphasis on disease control, sanitation, food, clothing and bathing facilities.

<sup>27</sup> Another suggestion was that prisoners should not stay together if their crimes are of a very different nature.

<sup>28</sup> Mitchel P Roth, *Prisons and Prison Systems: A Global Encyclopedia*, (USA: Greenwood Press, 2006) 25.

<sup>29</sup> The Jail Reform Commission, 1978, chaired by Justice F.K.M. Abdul Munim recommended 180 recommendations and based on these some legal and administrative reforms were undertaken.

This study outlines the development and use of the probation system in Bangladesh. It reviews the relevant laws, and seeks to identify gaps between the law and practice, as well as key concerns and challenges in implementing the law on probation. Finally, it sets out a number of recommendations for activating the practice of probation, and strengthening the relevant legal and policy framework.

## Objectives

The general objective of this study is to identify and analyze the development and use of the probation system within the framework of administration of justice in Bangladesh. Specifically it aims:

- a) to analyze the development of the probation system in Bangladesh;
- b) to review the existing laws (both substantive and procedural) that mandate probation in Bangladesh;
- c) to examine the use of probation in practice in Bangladesh;
- d) to analyze the gaps between the law and practice of probation in Bangladesh; and
- e) to propose effective policy recommendations as well as programmatic interventions suggesting ways of implementing alternatives to imprisonment in Bangladesh, with a particular focus on probation.



## Chapter 2: Research Methodology

This study used qualitative research approaches. The methodology combined both primary and secondary data sources. Primary data were preferred along with secondary sources (laws, judgments, books, journals and review articles on the issue) to track the origins and development of the practice of probation in Bangladesh. Primary sources (interviews and discussions) were used to identify the present use of probation in Bangladesh. Finally, secondary sources were triangulated and validated in finalizing the study results. An analysis was also performed based on the gaps between law and practice to propose recommendations.

### Area selection and sampling

The study represents the whole of Bangladesh. Since Bangladesh maintains a uniform administration of formal justice over the whole country (with some exceptions in the Chittagong Hill Tracts, which were not addressed in this study) purposive selection met the purpose of the study. Therefore, the nature of the study satisfies the given objectives through purposive sampling of particular key respondents. Both male and female respondents (20) were selected purposively from relevant stakeholders connected to probation services in Bangladesh. The respondents comprised Probation Officers (from the Department of Social Work), police officers, judicial magistrates presiding over Juvenile Courts, retired Justices of the Supreme Court, social activists, lawyers, legal experts, and other relevant stakeholders.

### Data Collection Techniques

#### Key Informant Interviews (KII)

Semi-structured interviews were held with 20 key informants based on a sample questionnaire developed by the researcher. In the process of developing the semi-structured questionnaire, the researcher reviewed studies on probation conducted by PRI on several other countries and finally, incorporated comments received from BLAST's expert team. All interviews were recorded subject to obtaining prior informed consent of the respondents and then transcribed.

#### Review of existing secondary sources

Secondary sources such as laws, policies, research reports, and journal articles on the development and use of probation in Bangladesh were reviewed.

## **Part II**

# **Development of a Probation System in Bangladesh**

## Chapter 3: Development of the Probation System in Bangladesh

### 3.1. British Colonial Period

During the British colonial period, punitive approaches (e.g. retribution and deterrence) dominated both sentencing and penal interventions. Section 562 of the Code of Criminal Procedure, 1898 (CrPC) was the earliest legal provision to address probation. 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. This provision related to 156 separate offences.<sup>30</sup> The same provision empowered all Magistrates to release, after due admonition, first offenders convicted of certain offences, when such a course appeared advisable in view of the age, character, antecedents or physical or mental condition of the offender and the trivial nature of the offence or other extenuating circumstances.<sup>31</sup>

A Central Government appointed Joint Committee, established in 1916, reviewed the CrPC, and suggested revision of section 562 and extension of its scope to other cases of non-grievous offences. The Indian Jail Reforms Committee's Report (1919-20) recommended that first offenders be treated more liberally and even be released after admonition. The Committee highlighted the probation objectives in the context of criminal justice administration, particularly the conditions prevailing in the prison administration.<sup>32</sup>

To address the demand resulting from the extension of probation, a number of Remand Homes, Rescue Homes, Certified Schools and Industrial Schools were established in Bombay, Madras and Calcutta primarily to accommodate young offenders.<sup>33</sup> Several provincial governments also enacted laws for conditional release in light of the Committee's report. For instance, the Good Conduct Prisoner's Probationary Release Act, 1926 (Punjab Act 10 of 1926)<sup>34</sup> was enacted followed by the Good Conduct Prisoner's Probationary Release Rules, 1926. This Act referred to the previous sanction of the Governor General, obtained under sub-section 3 of section 80-A of the Government of India Act, 1919 that enabled the Governor General to release prisoners for good conduct.<sup>35</sup> In 1927, establishment of the Reclamation and Probation Departments (RPD) was the subsequent result of this Act. While such release of prisoners may more easily be termed as parole, it can also be considered as a step towards the development of the probation system in South Asia.

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<sup>30</sup> N.V. Paranjape, *Criminology and Penology*, (Allahabad: Central Law Publications, 2005) 447.

<sup>31</sup> Indian High Courts Rules and Orders, Vol. III, Chapter 21 (First Offenders).

<sup>32</sup> K.D. Gangrade, *Social Legislation in India, Volume I*, (New Delhi: Concept Publishing Company Pvt. Ltd. 1978) 204.

<sup>33</sup> P. K. Sen, *Penology: Old and New*, (London: Longmans, Green, 1943) 169.

<sup>34</sup> Punjab Gazette, 27 August, 1926.

<sup>35</sup> The Good Conduct Prisoner's Probationary Release Act, 1926, Preamble.

In 1931, the draft All India Probation Bill was circulated to all provincial governments for comment.<sup>36</sup> However, the Bill could not proceed further due to other priority matters before the Provincial Governments, as well as the continuing foment over independence.<sup>37</sup> In 1934, the Central Government informed Provincial Governments that there was no prospect of the central legislation being enacted and they were free to enact suitable laws on the lines of the draft Bill. Some of the Provinces then enacted probation laws<sup>38</sup> which assumed considerable importance because they introduced for the first time provisions regarding a pre-sentence enquiry report by the Probation Officer, supervision by paid and voluntary Probation Officers and compensation (restitution) for injury caused to a person by the offender's harmful acts.

Several state laws on probation, with differing provisions and regimes, and section 562 of the CrPC continued to govern the issue of probation until the partition of India.<sup>39</sup>

### 3.2. Probation System in the Pakistan Period

The Probation of Offenders Ordinance, 1960, ('the Ordinance') was enacted after the independence of Pakistan. This was largely an amended version of the 1931 Probation Bill.<sup>40</sup> It mandated the establishment of a Probation Wing of the Labour and Social Welfare Departments, and appointment of Probation Officers for offenders on trial before the courts. It also repealed sections 562 to 564 of the CrPC.<sup>41</sup>

The Ordinance came into force in the then East Pakistan on 14 February 1962.<sup>42</sup> It was further amended by the Probation of Offenders (East Pakistan Amendment) Act, 1964.<sup>43</sup> Almost a decade after the Act, the Probation of Offenders Rules, 1971 were adopted on 24 November 1971.<sup>44</sup>

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<sup>36</sup> B. Hussain, *Social Reintegration of Offenders: The Role of the Probation Service in North West Frontier Province*, (Department of Social Sciences, The University of Hull, 2009) 4.

<sup>37</sup> R. A. Kulkarni, *Probation of Offenders in India*, (New Delhi: Sangli Law Publication, 1971) 5.

<sup>38</sup> The C.P. and Berar Probation of Offenders Act, 1936; the Madras Probation of Offenders Act, 1937; the Bombay Probation of Offenders Act, 1938; the United Provinces First Offenders Probation Act, 1938 and the Mysore Probation of Offenders Act, 1943.

<sup>39</sup> <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=79145> (visited on 18 September, 2013).

<sup>40</sup> Penal Reform International and DOST Foundation, *Probation and Parole System in Pakistan: Assessment and Recommendations for Reform*, (PRI & DOST Foundation, 2013) 4.

<sup>41</sup> The Probation of Offenders Ordinance, 1960, § 16.

<sup>42</sup> See Gazette Notification by the Government of Pakistan in exercise of its powers under section 3(3) of the Ordinance, "Gazette of Pakistan, Extraordinary," dated 14 February, 1962, 99.

<sup>43</sup> East Pakistan Act No. X of 1964; passed by the East Pakistan Assembly on 28 January, 1964, and first published with the Assent of the Governor in the "Dacca Gazette, Extraordinary," dated 22 February, 1964.

<sup>44</sup> Government of East Pakistan, Labour and Social Welfare Department, Notification NO.S-IV/2R-7/71/470-24 November 1971.

The Government of Pakistan undertook two projects in 1962 under the second Five Year Plan regarding correctional activities, namely the Probation of Offenders Project, and the After Care Service Project.<sup>45</sup> Initially, these were carried out separately in ten different areas in 1965. At the time, probation services were located within the Department of Labour and Social Welfare under the Ministry of Labour and Social Welfare.

### 3.3. Probation System after Liberation

Most laws in force before the independence of Bangladesh continued to remain in force subsequently, pursuant to the Bangladesh (Adaptation of Existing Laws) Order, 1972.<sup>46</sup> The Probation of Offenders Ordinance, 1960, as amended by the Probation of Offenders (East Pakistan Amendment) Act, 1964, and the accompanying Rules, being “existing law” immediately before the date of coming into force of the Constitution of Bangladesh on 16 December, 1972 thus remained in force in Bangladesh.

Following independence, a new law was enacted addressing probation in the context of child offenders. The Children Act, 1974 effectively incorporated the beneficial and rehabilitative provisions of the Probation of Offenders Ordinance, making them less restrictive and more favourable to child offenders. For the welfare of children in conflict with the law, the Children Act, 1974 not only abolished the death sentence for children but also addressed imprisonment as a last resort. According to Justice M Imman Ali, of the Appellate Division of the Supreme Court of Bangladesh, under section 53 of the Children Act, 1974, “the provision for discharge with warning and release on probation may be applied in the case of conviction of any youthful offender, who is found guilty of any offence”.<sup>47</sup> But care must be taken in exercising the discretion, particularly where the offence alleged is serious in nature. The sentence must be proportional to the offence. The Children Rules, 1976,<sup>48</sup> drafted by the Labour and Social Welfare Division of the then Ministry of Health, Population Control and Labour came into force with effect from 11 March, 1976.

The Probation Services were moved from the Department of Labour and Social Welfare to the newly formed Department of Social Services after the independence of Bangladesh. Probation Officers appointed under the Department of Social Services pursuant to the Probation of Offenders Ordinance, also had responsibilities under the Children Act, and were thus responsible for supervising both adult and child probationers.

Various prison reform initiatives over the years sought to address the issue of probation. For example, the Jail Reform Commission, 1978, chaired by Justice F.K.M. Abdul Munim proposed as follows:

“necessary measures including legislative may be taken to introduce some alternative to imprisonment such as bail, conditional discharge, suspension of

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<sup>45</sup> Ministry of Social Welfare, Department of Social Services, Probation Act and Rehabilitation Activities, 2008: 1.

<sup>46</sup> President's Order No. 48, 1972.

<sup>47</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, (Dhaka: UNICEF, 2010) 216.

<sup>48</sup> No. S.R.O. 103-L/76. Conferred by section 77 of the Children Act, 1974 (XXXIX of 1974).

sentence, probation, binding-over, fines, community service order, compensation, restitution, etc. Clear and detailed schemes outlining the powers and functions of the agencies involved should be drawn".<sup>49</sup>

Referring to this recommendation, the Bangladesh Law Commission, then chaired by Justice A.T.M. Afzal, noted that the Probation of Offenders Ordinance, 1960 is fully able to achieve the purpose of the Munim Commission recommendations in relation to probation.<sup>50</sup> But the Commission considered that the Ordinance was not sufficient and recommended amendments. At the same time, the Law Commission also emphasized the importance of probation as an alternative to imprisonment and the need to sensitize criminal justice officials in this regard.

Recent legislation has addressed specific issues relating to probation of women offenders. The Special Privileges for Convicted Women Act, 2006 has extended the responsibilities of Probation Officers to supervise or monitor women prisoners being selectively released early on condition of good conduct. Though, by any standard definition, this type of early release should be treated as parole, the law authorizes Probation Officers to supervise women's early release from prison.

The two projects introduced in the Pakistan period – the Probation of Offenders Project, and the After Care Service Project -- are still continuing. Activities under this project are being carried out all over Bangladesh through 67 units including 64 at district level and three in Child Development Centers.<sup>51</sup> However, whether these projects truly address the issue of 'probation of offenders' or 'after care service' requires closer assessment of project activities.

Most recently, further law reform has addressed the issue of child offenders. The Children Act, 2013 has been enacted, following several years of advocacy by children's rights and human rights organisations, with a view to protecting children in conflict with the law or in contact with the law. Under this law, institutional corrections (e.g. Child Development Centers) for child offenders are provided as a measure of last resort. Probation may be provided to child offenders irrespective of the offence committed, subject to the discretion of the judge of the juvenile courts.

Today, there are specific provisions in Bangladesh to grant probation to adult offenders and children in conflict with the law. It is evident that community sanctions (e.g. probation and parole) are more cost-effective to rehabilitate offenders and to reduce recidivism.<sup>52</sup> For

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<sup>49</sup> Bangladesh Law Commission, Report SI. 54, submitted on 5 January, 2003, available at: (<http://www.lawcommissionbangladesh.org/reports/54.pdf>).

<sup>50</sup> *Supra*, Note 28.

<sup>51</sup> Government of Bangladesh, Ministry of Social Welfare, *Annual Report 2008-09, 2009-10, 2010-2011*: 66.

<sup>52</sup> In Canada (Correctional Service of Canada 1993), research done on the probation system indicated that it costs approximately \$10,951 per year to keep an individual under supervision while costs of incarceration averaged \$52,953 per year. See: Jon F. Klaus, *Handbook for Probation Services*, (UNICRI & Commonwealth Secretariat, 1998). Available at: [http://www.unicri.it/services/library\\_documentation/publications/unicri\\_series/Probation\\_handbook.pdf](http://www.unicri.it/services/library_documentation/publications/unicri_series/Probation_handbook.pdf).

example, the Ugandan government estimated that the 6,350 community service orders imposed in 2008–9 led to savings of £337,000 for the Government and £75,000 for the placement providers.<sup>53</sup> In practice however, the current system of probation remains in its rudimentary form, and is principally used in practice for children in conflict with the law. Notably, the administration of the probation system is not fully capacitated to enable more prisoners to be released on probation, even if the competent courts increase the practice of granting probation.

**Table 1: Development of Probation in Bangladesh: At a Glance**

Year	Event/Development
1898	Under section 562-564 of CrPC, 1898, first offenders and convicts punishable with not more than two years imprisonment could be released on probation for good conduct.
1916	The Central Government appointed a committee that suggested a revision of section 562 of CrPC, and extension of its scope to all non-grievous offences.
1919-20	The Indian Jail Reforms Committee's Report suggested that very minor offences be treated more liberally and that offenders in such cases be released after admonition.
1923	To cope with the extended scope, a number of Remand Homes, Rescue Homes, Certified Schools and Industrial Schools were established in Bombay, Madras and Calcutta.
1931	An All India Probation Bill was drafted followed by circulation to all the provincial governments for their comments.
1934	The Central Government informed provincial governments that they were free to enact suitable laws on the lines of the draft Bill.
1960	The Probation of Offenders Ordinance, 1960 was promulgated.
1961	The Probation of Offenders Rules were adopted for West Pakistan.
1962	The 1960 Ordinance came into force in the then East Pakistan in 1962 vide issuance of a notification by the Government of Pakistan. The 2 <sup>nd</sup> Five Year Plan devised and implemented two projects regarding correctional activities, namely (1) Probation of Offenders Project and (2) After Care Service Project.
1964	The 1960 Ordinance was adapted for the then East Pakistan and certain amendments were made by the Probation of Offenders (East Pakistan Amendment) Act, 1964.
1971	The Probation of Offenders Rules, 1971 were adopted on 25 November, 1971 for East Pakistan (now Bangladesh).
1972	Laws before independence (including probation laws) were adopted in Bangladesh by the Bangladesh (Adaptation of Existing Laws) Order, 1972.
1974	The Children Act, 1974 was passed allowing nearly all children offenders to be released under probation.

<sup>53</sup> Penal Reform International, *Alternatives to Imprisonment in East Africa: Trends and Challenges* (PRI, 2012) 15.

1976	The Children Rules, 1976 were enacted to make the Children Act operational.
1978	The Jail Reform Commission proposed “necessary measures to introduce some alternative to imprisonment including probation and conditional discharge”.
1990	The United Nations Standard Minimum Rules for Non-Custodial Measures were adopted, under which Bangladesh, as a member state, has an obligation to develop non-custodial measures within the legal system to provide other options including probation.
2006	The Special Privileges for Convicted Women Act, 2006 extended Probation Officers’ responsibilities to supervise released women prisoners under this Act.
2013	The Children Act, 2013 was enacted with a comprehensive provision to allow all children in conflict with the law to be released under probation.



**Part III**

**Use of the Probation System in  
Bangladesh**

## Chapter 4: Existing Legal Framework for Using Probation

### 4.1. International Legal Framework

The United Nations Standard Minimum Rules for the Treatment of Prisoners deal only with imprisonment.<sup>54</sup> In order to set standards for convicts placed under non-custodial settings, the United Nations Standard Minimum Rules for Non-Custodial Measures (“UNSMRNCM” or the Tokyo Rules) were first discussed at the Seventh Congress on Crime Prevention and Criminal Justice and were later adopted by the United Nations General Assembly.<sup>55</sup> The fundamental aim of the Tokyo Rules is reduction of the use of imprisonment.<sup>56</sup> These Rules provide a general guideline for member states to include probation as a part of their criminal system and as an alternative to imprisonment. The Tokyo Rules also inspired a *Handbook on Probation Services*, published by the UN Interregional Crime and Justice Research Institute.

The international focus on non-custodial measures is driven by the recognition that the “ultimate goal of the criminal justice system is the reintegration of the offender into society”.<sup>57</sup> While there is no unified notion of what probation constitutes, several states have experimented with various forms of probation which have yielded positive results. As the *Handbook* suggests, “Probation is not an external solution to internal problems of criminal justice, penology or governance, but a possible framework into which locally feasible and desirable solutions may be fitted”.<sup>58</sup>

The Tokyo Rules outline the bare minimum that must be legislated in order to implement an effective and cost-efficient probation system. To create and maintain applicable probation services, the law must clearly define these services and how they are to be implemented. Furthermore, there must be established criteria by which probation services can be selected with judicial discretion. There must also be procedures for the probation services to be reviewed, and for the offenders’ rights to be protected via legal means. Finally, the role of the executive and the legislative branch, the judiciary, the police, and all relevant social service agencies should be clearly defined.

At the operational level, for courts to be able to select from a range of alternatives, they need a considerable amount of information. To this end, the Tokyo Rules provide specifically for “social inquiry reports” to be made available. The Rules contemplate formal official reports from a “competent authorized official or agency”. Rule 7 stipulates that such reports should contain both information about the offender and “recommendations that are relevant to the sentencing procedure”.

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<sup>54</sup> Resolution 663C (XXIV), 31 July 1957 U.N. Doc. E/3048 (1957) and 2076(LXII) (1957).

<sup>55</sup> Resolution 45/110, 14 December, 1990.

<sup>56</sup> The Tokyo Rules, 1990, Article 1.5.

<sup>57</sup> United Nations Standard Minimum Rules for Non-Custodial Measures, 1990.

<sup>58</sup> Jon F. Klaus, *Handbook for Probation Services*, (UNICRI & Commonwealth Secretariat, 1998) 10.

The Probation Officer is to include background information about the offender obtained from:

*“the offender, his or her family, the community, the police, schools, social service agencies, etc. It also addresses the employment situation and history, education, personal situation, family history, marital status, health and medical issues, interests, the circumstances of the crime, violence used, effect on the victim(s), victim impact statement(s), attitude to the offence, attitude and cooperation with the arresting officer, previous criminal history, mitigating factors, as well as highlighting those criminogenic factors that, unless addressed, are likely to lead to a repeat of the behavior”.*<sup>59</sup>

These will allow the judge to gain a comprehensive view of the potential effect of his or her sentencing decision.

While emphasizing the importance of “consistent sentencing”, 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.

After the sentence has been delivered, an authorized agency should continue to work with the offender in order to monitor and ensure their rehabilitation. A Post-Sentence Report should be prepared at the request of the court, the offender or the receiving penal institution.

Supervision and treatment are key components in probation. The Tokyo Rules mandate that the offenders be provided with psychological, social and material assistance, if needed.<sup>60</sup> They also recommend that the conditions to be observed by the offender should be practical, precise and as few as possible.<sup>61</sup> Under supervision, the offender may be helped with accommodation, budgeting, employment and resolving marital disputes. As a deterrence function, supervision may use methods such as abstinence, curfew, reporting change of residence and home visits. Should an offender breach these conditions, s/he may be returned to court and face a more severe sentence. The UNICRI *Handbook* recommends a series of issues to be addressed when the criminal justice system establishes the supervision procedures.<sup>62</sup> The core principles are that the probationers’ conditions must be clearly defined and communicated to them in written form, and that all contacts between probationers and Probation Officers must be recorded. For offenders who breach their

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<sup>59</sup> Jon F. Klaus, *Handbook for Probation Services*, (UNICRI & Commonwealth Secretariat: 1998) 32.

<sup>60</sup> The Tokyo Rules, 1990, Article 10.4.

<sup>61</sup> The Tokyo Rules, 1990, Article 12.2.

<sup>62</sup> Jon F. Klaus, *Handbook for Probation Services*, (UNICRI & Commonwealth Secretariat: 1998) 40-42.

probation conditions, the breach must be recorded accurately in written form and the offender should have the right to make comments in an interview concerning minor transgressions.

In addition to the Tokyo Rules, United Nations instruments directly applicable to alternatives to imprisonment including probation include:

- the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;<sup>63</sup> and
- the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.<sup>64</sup>

In specialist areas, considerable attention has been given to probation and other forms of alternatives to imprisonment for:<sup>65</sup>

- *Juveniles*: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985(the Beijing Rules);<sup>66</sup>
- *Drug Users*: the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations 1998;<sup>67</sup>
- *The Mentally Ill*: the United Nations Principles for the Protection of Persons with Mental Illness (General Assembly Resolution, 17 December 1991);<sup>68</sup> and
- *Women*: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010 (the Bangkok Rules).<sup>69</sup>

## 4.2. Existing Legal Framework in Bangladesh

Bangladesh has an obligation to introduce and promote alternatives to imprisonment, particularly probation, under Rule 1.5 of 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 requirements of social justice and the rehabilitation needs of the offender”.*

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<sup>63</sup> United Nations Doc. A/RES/40/34.

<sup>64</sup> Adopted by the United Nations Economic and Social Council on 24 July, 2002, United Nations Doc. E/2002/99.

<sup>65</sup> Handbook of basic principles and promising practices on alternatives to imprisonment, New York: UNODC, 2007, 12.

<sup>66</sup> United Nations Doc. A/RES/40/33.

<sup>67</sup> United Nations Doc. A/RES/S-20/3.

<sup>68</sup> United Nations Doc. A/RES/46/119.

<sup>69</sup> United Nations Doc. A/RES/65/229.

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.

Existing laws also address concerns regarding probation to women and children. The 1960 Ordinance emphasizes particular characteristics to be taken into consideration in granting probation, such as “the age, character, antecedents or physical or mental condition of the offender; and the nature of the offence or any extenuating circumstances attending the commission of the offence”.<sup>70</sup> However, probation is rarely available in practice to adult offenders. For instance, in 2009-10, a mere 261 persons (including adults and children) were granted probation across the country, while this figure fell drastically in 2010-2011 to 43.<sup>71</sup>

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<sup>70</sup> The Probation of Offenders Ordinance, 1960, § 4(1) (a) & (b).

<sup>71</sup> Government of Bangladesh, *Ministry of Social Welfare, Annual Report 2008-09, 2009-10, 2010-2011*: 66.

## Chapter 5: The Probation System in Bangladesh

### 5.1. Probation and its purpose in the Bangladeshi context

Probation is variably defined under different laws as an “order for conditional discharge” or “an order requiring [the offender] to be under the supervision of Probation Officer”.<sup>72</sup> The 1960 Ordinance states that the purpose of probation 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>73</sup> The High Court Division has also articulated the purpose of probation as follows;

*“... the penal system of Bangladesh is essentially reformatory in character as opposed to retributive. The Probation of Offenders Ordinance is a prime example of such a policy. If a sentence of probation is imposed for a period of time, then it is likely to be more of a deterrent and will have a rehabilitating effect which will fulfill the intention of the legislature”.*<sup>74</sup>

Notably, the Children Act, 2013, empowers the National Child Welfare Board to devise a policy, strategy and implementation plan for reintegration 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 probation system also allows the competent court to “order the offender conditionally discharged to pay compensation or damages for loss or injury caused to any person by the offence”.<sup>75</sup> In short, 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.

### 5.2. Offences for which probation can be granted

In theory, probation is a form of sentencing applicable to offenders who are found guilty of offences (usually non-grievous). Initially sections 562 to 564 of the CrPC dealt with first offenders, and enabled special provision for sentencing was applied. But these sections have been repealed by section 16 of the Probation of Offenders Ordinance, 1960. Progressively, with increasing liberalization of penal theory, probation has been further extended for particular offenders based on their gender and age, in other words for women and children.

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<sup>72</sup> The Probation of Offenders Ordinance, 1960, § 4 & 5.

<sup>73</sup> The Probation of Offenders Ordinance, 1960, § 5(2).

<sup>74</sup> *Abdul Khaleque v Hazera Begum and another*, 58 DLR (2006) 322.

<sup>75</sup> The Probation of Offenders Ordinance, 1960, § 6(1).

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

- Offences punishable with death or imprisonment for life;
- Offences against the State (Chapter VI of the Penal Code);
- Offences relating to the Army, Navy and Air Force (Chapter VII of the Penal Code);
- Offence of harbouring robbers or dacoits (section 216A of the Penal Code);
- Offence of causing hurt by means of poison, etc, with intent to commit an offence (section 328 of the Penal Code);
- Theft after preparation made for causing death, hurt or restraint, in order to commit theft (section 382 of the Penal Code);
- Extortion by putting a person in fear of death or grievous hurt (section 386 of the Penal Code);
- Putting person in fear of death or of grievous hurt, in order to commit extortion (section 387 of the Penal Code);
- Extortion by threat of accusation of an offence punishable with death or imprisonment, etc. (sections 388-389 of the Penal Code);
- Robbery (section 392 of the Penal Code);
- Attempt to commit robbery (section 393 of the Penal Code);
- Robbery or dacoity, with attempt to cause death or grievous hurt (section 397 of the Penal Code);
- Attempt to commit robbery or dacoity when armed with deadly weapon (section 398 of the Penal Code);
- Making preparation to commit dacoity (section 399 of the Penal Code);
- Punishment for belonging to gang of thieves (section 401 of the Penal Code);
- Assembling for purpose of committing dacoity (section 402 of the Penal Code);
- Lurking, house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint (section 455 of the Penal Code); and
- Lurking, house-trespass or house-breaking by night, after preparation for hurt, assault or wrongful restraint (section 458 of the Penal Code).

Women offenders may be granted probation in case of any offence, other than those punishable by death, pursuant to section 5(1) (b) of the 1960 Ordinance, which provides as follows:

*“All convicted female persons can be granted probation other than convicted for an offence punishable with death.”*

As for children, probation may be granted in respect of all offences subject to the discretion of the Juvenile Court. In exceptional cases, children in conflict with law may be sentenced to alternatives to imprisonment (e.g. diversion, alternative care, safe custody), or institutional correction.

### 5.3. Factors associated with granting probation

The rationale for probation is to facilitate social reintegration. In considering whether to grant probation, Courts generally consider the following factors in granting probation:<sup>76</sup>

- the age, character, antecedents or physical or mental condition of the offender; and
- the nature of the offence or any extenuating circumstances attending the commission of the offence.

However, the Court will only pass a probation order under the 1960 Ordinance on being satisfied that the offender or one of her/his sureties (if any) has a fixed place of abode or a regular occupation within the local limits of its jurisdiction and is likely to continue in such place of abode or such occupation during the period of probation.

In passing sentence on a child, the Court takes into account the following factors:

- (a) her/his age and sex;
- (b) her/his physical and mental condition;
- (c) her/his educational qualifications;
- (d) her/his social, cultural and ethnic identity;
- (e) her/his financial condition;
- (f) her/his lifestyle and that of their family;
- (g) reasons behind the commission of the offence, information on association, overall condition and context;
- (h) her/his opinion;
- (i) social inquiry report; and
- (j) consideration of issues necessary for correction of the child or for her/his best interest.<sup>77</sup>

### 5.4. The Probation Officer

A Probation Officer is recruited by the DSS under the Ministry of Social Welfare. S/he is authorized to conduct social inquiry, to monitor probationers, and to report the status of the probationer to the Court as well as to the DSS. A Probation Officer must meet the following eligibility criteria:<sup>78</sup>

- (a) s/he must be aged more than 20 years and less than 30 years at the time of first appointment as Probation Officer;
- (b) s/he must be an Honours graduate in Social Welfare or Social Work or hold an M.A. degree in Social Welfare or Social Work from a recognised University;
- (c) s/he must possess a good character and be in good mental and physical health; and

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<sup>76</sup> The Probation of Offenders Ordinance, 1960, § 4(1).

<sup>77</sup> The Children Act, 2013, § 30.

<sup>78</sup> The Probation of Offenders Rules, 1971, Rule 3.



- (d) s/he must be a citizen of Bangladesh and a permanent resident of Bangladesh, or domiciled therein.

The Children Act, 2013 provides for Probation Officers to be appointed for each District, Upazila and Metropolitan area. Though Probation Officers have been appointed for many Districts and Metropolitan areas, hardly any have been designated for Upazilas (sub district). For instance, there are only 44 posts of Probation Officers in Bangladesh. Since Bangladesh has 64 administrative districts, every district does not have a Probation Officer. Where there is no Probation Officer available, Social Welfare Officers at district or Upazila level perform their functions. Thus at the Upazila level, Social Welfare Officers are designated to perform the duties of Probation Officers. There are over 400 Upazila Social Welfare Officers around the country.<sup>79</sup> Recently, the Government has made arrangements to designate a separate room in the office of the relevant Deputy Commissioner (at district level) for use by Probation Officers. But after the separation of judiciary in November 2007, it would be more justified to place the Probation Officers in the premises of the District Courts.

Though Probation Officers may be appointed by the Government under different laws (including the Special Privileges for Convicted Women Act, 2006<sup>80</sup> and the Children Act, 2013), in practice they are recruited primarily by the DSS. Since the Special Privileges for Convicted Women Act, 2006 provides that women prisoners may be released only after they serve specified terms of imprisonment, Probation Officers operating under this law should logically be termed Parole Officers. There is no document available to demonstrate whether any woman prisoner has been released to date under the Special Privileges for Convicted Women Act, 2006.

## 5.5. Duties and Responsibilities of a Probation Officer

According to section 13 of the 1960 Ordinance, the duties of a Probation Officer are as follows:

- (a) to visit or receive visits from the offender at such reasonable intervals as may be specified in the probation order or, subject thereto, as the government may think fit;
- (b) to see that the offender observes the conditions of the order of probation;
- (c) to report to the competent authority as to the behaviour of the offender;
- (d) to advise, assist and befriend the offender, and when necessary endeavour to find her or him suitable employment; and
- (e) to perform any other duty this may be prescribed by the Rules made under this Ordinance.

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<sup>79</sup> Ministry of Social Welfare, Department of Social Services, Probation Act and Rehabilitation Activities, 2008: 2.

<sup>80</sup> This Act is applicable only for convicted women prisoners and the special treatments it envisages include conditional release, income generating training and after care services.

Each Probation Officer is required to operate “within such local area or in respect of such cases or class of cases of probationers as may be specified by the Director of Social Welfare”.<sup>81</sup>

The Probation of Offenders Rules, 1971 further imposes these specific duties upon every Probation Officer.<sup>82</sup>

- (i) explain to every probationer placed under her/his charge, the terms and conditions of the probation order made in respect of such probationer, and if so deemed necessary, by warning, endeavour to ensure the observance thereof by the probationer;
- (ii) in the first two months of probation, meet the probationer at least once in a fortnight, and thereafter, subject to the probation order or any general or special order of the Director keep in close touch with the probationer, meet her/him frequently, make enquiries into her/his conduct, mode of life and environment, and wherever practicable, visit her/his home from time to time;
- (iii) if any probationer under her/his charge be out of employment, endeavour to find suitable employment for her/him and assist, befriend and advise her/him and strive to improve her/his conduct and general condition of living;
- (iv) encourage every probationer placed under her/his supervision to make use of any recognized agency, statutory or voluntary, which might contribute towards her/his welfare and general well-being and to take advantage of the social, recreational and educational facilities which such agencies might provide;
- (v) where a probationer under her/his supervision, who has executed a bond with sureties (or with conditions), is found to have committed breach of the terms of the bond or to have otherwise misconducted her/himself, bring such breach or misconduct to the notice of the Court and the probationer’s sureties;
- (vi) maintain the books and registers and submit reports prescribed by the rules; and
- (vii) carry out the instructions of the Court in regard to any probationer placed by the Court under her/his supervision.

## 5.6. The Probation Process

The 1960 Ordinance applies to all offenders irrespective of their age and sex as it does not specifically state that it is applicable only to adult offenders. However, the probation scheme applied to children does not strictly follow the Probation of Offenders Ordinance. The provisions of the Ordinance are in addition to and not in derogation of the Children Act.<sup>83</sup> Therefore, the probation process is different for adult offenders (both adult men and adult women) and for children in conflict with law.

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<sup>81</sup> The Probation of Offenders Rules, 1971, Rule 4(a).

<sup>82</sup> The Probation of Offenders Rules, 1971, Rule 4(b).

<sup>83</sup> The Probation of Offenders Ordinance, 1960, § 17.

### 5.6.1. Probation process for adult offenders (adult men and adult women)

The process of granting probation to an adult offender begins before declaring the judgment or passing sentence. At this point, if the Court considers that on conviction, an offender might profit by being released under probation, it will issue a requisition for a Pre-Sentence Report (PSR) directed to a particular Probation Officer (see Annex A). The Probation Officer will then be asked to submit the PSR within a given timeline. Based on the PSR, if the Court is convinced that the convict will maintain good conduct, it may issue a probation order through taking of a bond from the convict or her/his sureties for a period of between one to three years.<sup>84</sup>

Following issuance of the probation order, a Probation Officer will be attached to a particular probationer. It is imperative to note that no female offender may be placed in the supervision of any male Probation Officer.<sup>85</sup> Once probation is granted, it is the Probation Officer's duty to supervise the probationer and report on her/his updated status to the Court as well as to the department. The Court decides how often the Probation Officer will report to it about the updated status of the probationer e.g. fortnightly, monthly, etc. subject to risk assessment of the individual offender. The Probation Officer is required to maintain a register of probationers in Form 'A' (see Annex E). The Probation Officer is also required to keep a diary to maintain yearly records regarding the visits to and meetings with the probationers under her/his supervision and their sureties. Maintenance of these records regarding matters relating to probationers helps the Probation Officer and also the Court to assess the risks and plan better supervision. The record also contains an accurate and dated list of all contacts and interviews with the probationer and other persons related to the case and copies of all correspondence and reports related to the case. If the Court becomes aware of any breach of the conditions agreed on the bond issued during granting probation either through the report of the Probation Officer or by any other means, it may issue an order to revoke probation and may sentence him/her for the original offence or continue the bond upon imposing a fine. The convicted person may appeal or apply for revision against the Probation Order made under section 5 of the Ordinance. The appellate court or the court sitting in revision may set aside or amend the Probation Order.<sup>86</sup>

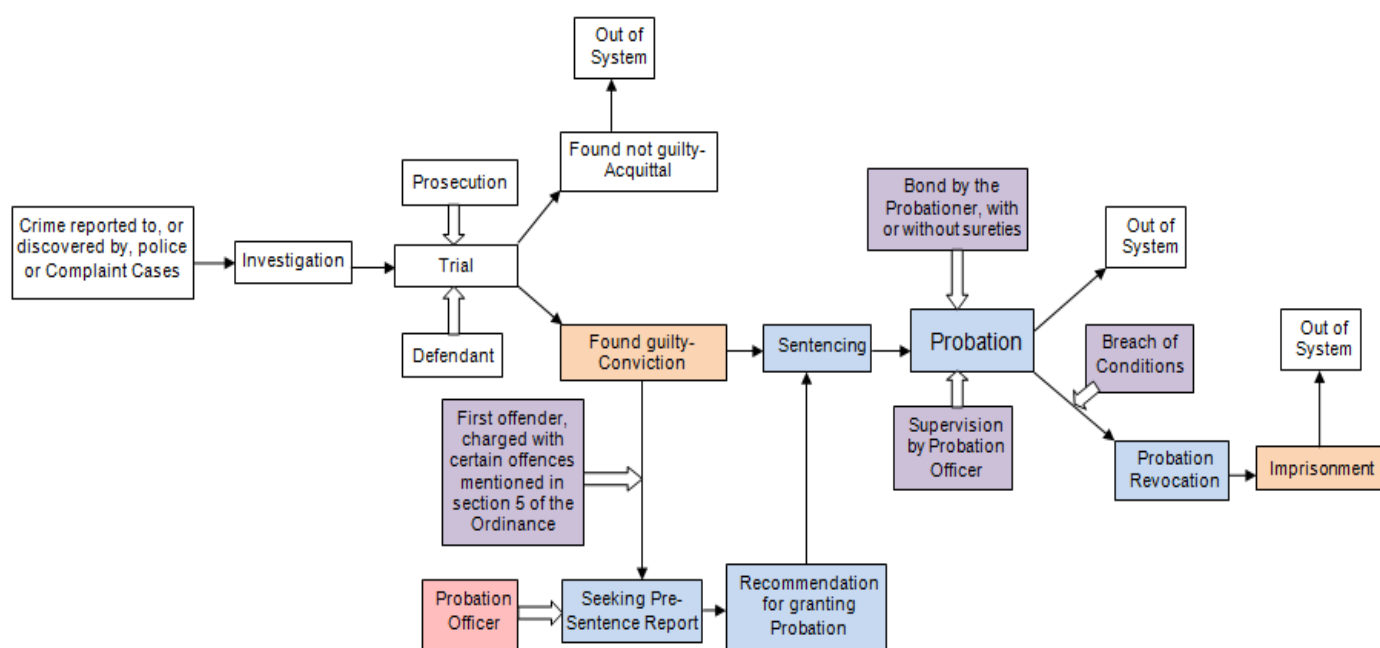
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<sup>84</sup> The Probation of Offenders Ordinance, 1960, § 5.

<sup>85</sup> The Probation of Offenders Rules, 1971, Rule 11(3).

<sup>86</sup> The Probation of Offenders Ordinance, 1960, § 8.

**Figure 1: Probation Process for Adult Offenders**



### 5.6.2. Probation process for children in conflict with the law

A Probation Officer's duties begin as soon as a child comes in conflict with the law. In other words, the probation process in respect of a child begins as soon as a child is brought to the police station by the police. The Children Act, 2013 encourages the appointment of a female Sub-Inspector (if available at a particular police station) to deal with children's affairs.<sup>87</sup>

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.<sup>88</sup> The Police officer is also responsible for providing psychological and medical support (if needed), and to take care of the basic needs of the child, ensuring her/his best interest. For this purpose, the police officer for children's affairs is required to determine the age of the person brought to the police station through review of the birth registration certificate of the children or reviewing related authentic documents.<sup>89</sup>

As soon as a Probation Officer comes to know that a child is in police custody, s/he has to perform the following responsibilities under the law:<sup>90</sup>

<sup>87</sup> The Children Act, 2013, § 13(1).

<sup>88</sup> The Children Act, 2013, § 14(b).

<sup>89</sup> The Children Act, 2013, § 14(c).

<sup>90</sup> The Children Act, 2013, § 6(1).

- (a) identify the reason the child has been brought into the police station;
- (b) meet the child and assure her/him that all necessary support will be provided;
- (c) coordinate and communicate with the police to identify the allegations if any brought against the child;
- (d) look for the parents of the child and help the police to contact the child's parents;
- (e) assess the merit or possibility of granting bail, and if possible on assessment, initiate diversion immediately; and
- (f) take necessary actions to send the child to safe custody, with the help of the police officer for children affairs, before producing her/him in Court.

The Children Act, 2013 mandates the government to establish at least one Children Court in each District and Metropolitan area.<sup>91</sup> The Children Court for children in conflict with the law is completely separate from Courts for adults, although the trial may be held in the same building or even same room, but not at the same time or together with any adult.<sup>92</sup> Prior to initiating proceedings before the Children Court, the Court needs to confirm the age of the child (or person) in conflict with the law. The decision regarding the determination of age made by the Court will be considered final.<sup>93</sup> The nature of the proceedings and activities are also quite different. The law prohibits the trial of a child with an adult accused. The Court must maintain the highest level of confidentiality and child-friendly processes ensuring the best interests of children. The Children Act, 2013 further mandates the Court to take action against police officers and Probation Officers, if they are found to be negligent in the conduct of their duties.<sup>94</sup>

The presence of the concerned Probation Officer is mandatory during trial in a Children Court.<sup>95</sup> Probation Officers are required to perform the following duties at the trial stage:<sup>96</sup>

- (a) attend Court during the trial and, if required, provide company to the child as long as possible;
- (b) prepare the Social Inquiry Report based on empirical investigation and consideration of surrounding circumstances, and submit the report to the Court;
- (c) ensure legal representation for the child, if necessary, through the assistance of the DLAC;
- (d) communicate with non-governmental legal aid organizations to ensure legal representation for a child in conflict with the law, if necessary.

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<sup>91</sup> The Children Act, 2013, § 16(1).

<sup>92</sup> The Children Act, 2013, § 17 & 19.

<sup>93</sup> The Children Act, 2013, § 21.

<sup>94</sup> The Children Act, 2013, § 22(5).

<sup>95</sup> The Children Act, 2013, § 22(2).

<sup>96</sup> The Children Act, 2013, § 6(2).

At the initial appearance of the child, the Court issues an order requiring a Probation Officer to make enquiries in the prescribed form (see Annex F).<sup>97</sup> The SIR is prepared through empirical investigation of the familial, social, cultural, psychological, ethnic, and educational background of the child in conflict with the law. It also describes the child's living environment and the context of the alleged commission of the offence.<sup>98</sup> All reports regarding children, including the SIR, are treated confidentially in the best interests of the children. 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.<sup>99</sup> The Probation Officer is also required to send a copy of the SIR to the DSS and the nearest Child Welfare Board. The SIR forms the basis for a recommendation regarding the granting of a probation order by the Court.

The Children Court may issue an order to send the child in conflict with the law either on probation under the supervision of a Probation Officer for not more than three years or to the CDC if found guilty,<sup>100</sup> after assessing the SIR and hearing from the parties involved in the trial. It is the responsibility of the respective lawyer or Probation Officer to explain the probation order including the 'Dos' and 'Don'ts' to the child probationer in ordinary language so that it is easy for the child to comply with the order.<sup>101</sup> While granting probation, the Court issues a supervision order that authorises a particular Probation Officer to supervise a probationer (see Annex G)<sup>102</sup> obliging the Probation Officer to prepare a monthly progress report (see Annex H)<sup>103</sup> on the development of the child/ren under her/his supervision. This monthly progress report is also required for the child to be sent to a CDC. Through regular evaluation of the reports, if the Court is satisfied that the child is observing good behaviour and may be released on probation, it may release her/him from the CDC on probation into the community.

The Court is required to complete the proceedings of any case involving children within 360 consecutive working days from the inception of the proceeding. The trial process may be extended for a period of an additional 60 days.<sup>104</sup> Thus, a probation order may be expected to be issued within a maximum of 420 working days from the first day of beginning of trial. However, if the charges brought against a child are minor in nature, and if the proceeding of the trial is not completed within 420 working days, the accused child will be acquitted from the charge(s) brought against him/her.

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<sup>97</sup> The Children Rules, 1976, Rule 4(5).

<sup>98</sup> The Children Act, 2013, § 31(2).

<sup>99</sup> The Children Act, 2013, § 31(1).

<sup>100</sup> CDC is an institutional setting where children are sent for correction rather than being placed in prison.

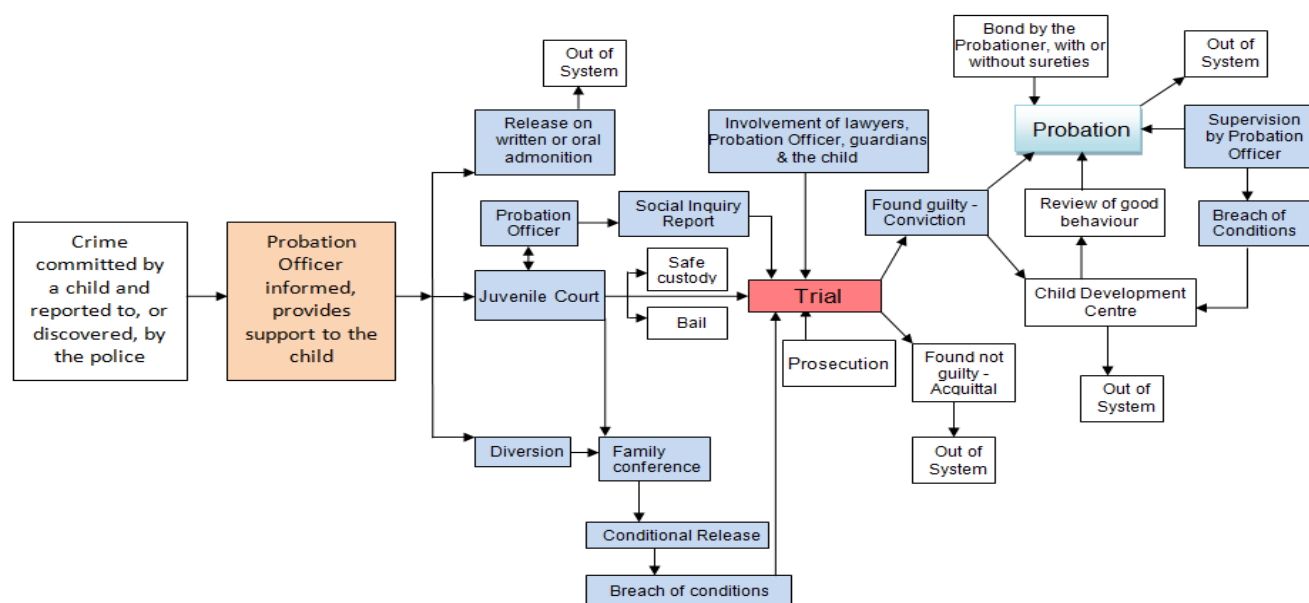
<sup>101</sup> The Children Act, 2013, § 22(4).

<sup>102</sup> The Children Rules, 1976, Rule 7(4).

<sup>103</sup> The Children Rules, 1976, Rule 21(f).

<sup>104</sup> The Children Act, 2013, § 32.

**Figure 2: Probation Process for Children in Conflict with the Law**



A manual developed for Probation Officers by the Canadian International Development Agency (CIDA (2008)) describes the role of Probation Officers in relation to a child being placed in the community on probation as follows:<sup>105</sup>

- explain to every child placed under their charge the terms and conditions of the probation order and ensure the child's compliance with the order;
- meet the guardian and other relatives of the child frequently;
- regularly visit the place of employment or school attended by the child;
- encourage the child to take opportunities offered by social welfare organizations;
- try to improve his or her conduct and conditions of life;
- check with police stations regarding children's cases;
- meet with the magistrates, judges, lawyers as necessary and visit the child in jail, JDC or custody placement as required; and
- endeavour to find suitable employment for the child if reasonable and strive to improve his or her conduct and general living conditions.

During the tenure of probation, if a child does not comply with the condition of probation, the Probation Officer must duly report to the Court about the breach of conditions. Before filing a formal breach report to the Court, a Probation Officer is supposed to warn the child on probation and the child's parents about the consequences of breaching the conditions of probation. Upon the breach report, the Court may revoke the probation. As a means of probation revocation, the child may be sent to Child Development Centre.<sup>106</sup> On the other

<sup>105</sup> Ministry of Social Welfare, *Juvenile Justice Probation Officer Best Practices and Procedures Manual, Bangladesh Legal Reform Project-Part B*, (Prepared by DSS with Canadian Juvenile Justice Specialist, 2008) 10.

<sup>106</sup> The Children Act, 2013, § 34 (8).

hand, on successful completion of probation in conformity with probation conditions, the child will be deemed not to be in conflict with the law anymore and may be released.

## **Chapter 6: Institutional Arrangement for Probation System in Bangladesh**

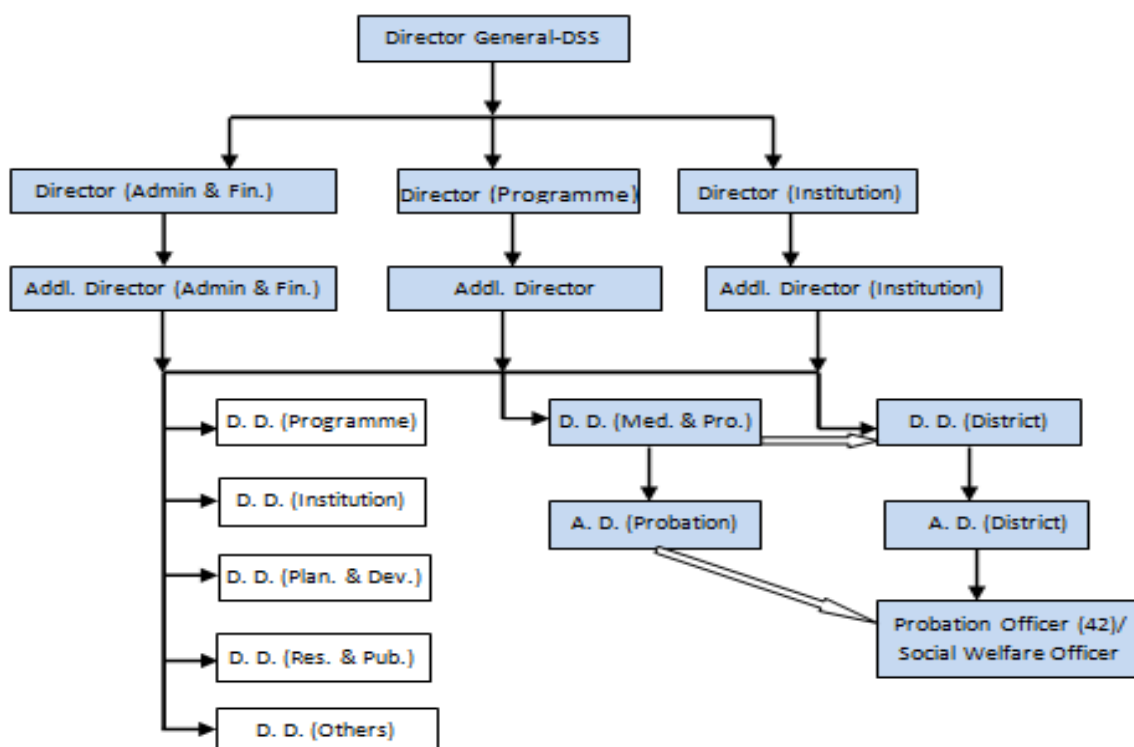
The probation system in Bangladesh involves the Courts and the DSS under the Ministry of Social Welfare. The Court may at its discretion consider whether an offender may be granted probation. In some cases, the lawyer concerned may formally make a submission or prayer in this regard. In making an order granting probation, the Court will rely greatly upon the report (PSR for adult offenders and SIR for children in conflict with the law) filed by the concerned Probation Officer. 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.

The Probation Service is one of the smallest divisions of the DSS, under the Ministry of Social Welfare. The Department is more involved in operating various social safety net programmes. Functionally, probation services are administered by the Assistant Director (Probation) under the Deputy Director (Medical and Probation), who is accountable to the Director and the Additional Director of Programme, DSS. There are 44 positions for Probation Officers nationwide at the district level. In other words, there are many districts lacking any designated Probation Officers, given there are 64 districts in Bangladesh. There are also three Probation Officers, each attached respectively to one of the three CDCs.

Each Probation Officer is assigned one MLSS (Member of Lower Subordinate Staff) for carrying out official tasks. Social Welfare Officers both at the district level and the upazila level are also responsible for discharging the duties and responsibilities of Probation Officers in addition to their regular duties in the absence of Probation Officers. Another problem with this arrangement is that Social Welfare Officers administratively are not supervised directly by the Assistant Director (Probation), unlike Probation Officers.



**Figure 3: Administration of the Probation System in Bangladesh under the DSS**



## Chapter 7: Status of Current Practice of Probation in Bangladesh

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”.*<sup>107</sup>

As we found in the course of this study, lawyers were generally neither aware of nor interested in the law concerning probation of adults. In this context, individuals who may otherwise be released on probation are sent to prison, with the result that very few convicts are found in the probation system in Bangladesh. 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

<sup>107</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, (Dhaka: UNICEF, 2010) 217.

of probation for female offenders as the law forbids supervision of female probationers by male Probation Officers.

The district of Jessore was identified by several of the study respondents as a model district in terms of maintenance and promotion of the probation system. However, statistics on the subject from Jessore do not appear to reflect this confidence, as shown below.

**Table 2: Number of probation orders granted by the Court (Jessore District)**

Number of probation orders granted by the Court (Jessore district)				
Year	Adult Male	Adult Female	Children	Total
2011	12	3	5	20
2012	9	2	3	14
Total of 2 years	21	5	8	34

The budget allotted to probation services in Jessore district was Taka seven lakhs (@ USD 9,033) and Taka 7.2 lakhs (@USD 9,290 in 2011 and 2012 respectively. This was mainly spent against the salaries of officials and office maintenance. There was hardly any funding for training or operations in the field.

A 2008 study on 144 inmates in prisons and correctional homes including 116 males and 28 females in Dhaka found that:

*“...in such a big ...sample population[s], no probation was found to have been granted by the court (it could not be ascertained whether any prayer for release on probation was filed to the court.) No inmate stated that any Probation Officer from the Department of Social Services made contact with any inmates for release under the Probation of Offenders Act, 1964”<sup>108</sup>*

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 v Government of Bangladesh*:

*“The petitioner pointed out that it is evident from the charge sheet that the accused was at that time only 14 years of age, and yet the police did not consider his bail as required by section 48 of the Act (the Children Act, 1974). They also*

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<sup>108</sup> Dr. M. Enamul Hoque, *Under-Aged Prison Inmates in Bangladesh: A Sample Situation of Youthful Offenders in Greater Dhaka*, (Dhaka: Action Aid and Retired Police Officers Welfare Association Bangladesh (RPOWAB)), 2008) 1.

failed to inform the child's parents, as required by section 13 and did not inform any Probation Officer, which is a violation of the mandatory requirement of section 50 of the Act. By referring to the order sheet of the trial Court, the petitioner pointed out that the learned trial Judge only mentioned that the trial would be held in accordance with the provisions of the Children Act, 1974 declaring his Court to be a Juvenile Court. But there is nothing on record to show that [R]'s parents/guardians were ever informed or that a Probation Officer was ever appointed during the course of the trial. It is also patently apparent that [R] was kept in jail custody from the time of his arrest on 25-11-03 till 4-3-2004 when he was enlarged on bail.<sup>109</sup> (emphasis added)

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. Though the Children Act, 2013 mandates the appointment of a police officer to be responsible for child-related issues at each police station, and also provides for setting up of a child affairs desk, most police stations in Bangladesh lack either of these measures.

Though the Annual Report 2008-11 of the Ministry of Social Welfare envisages improvements in the current state of the probation service by devising a national probation and after care strategy in the near future, 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.

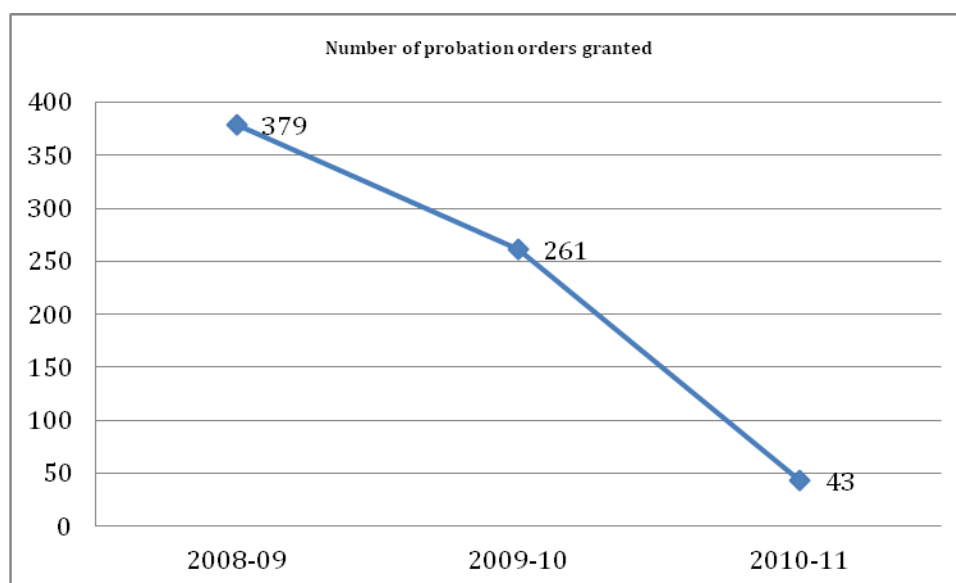
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<sup>109</sup> *Fahima Nasrin V Government of Bangladesh*, 61 DLR (HCD) 232.

**Table 3: Number of probation orders granted<sup>110</sup>**

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

**Figure 4: Number of probation orders granted in Bangladesh**



The number of Probation Officers does not reflect the actual number of prisoners and is grossly inadequate for supervision. The DSS has the sole authority to recruit Probation Officers and employ them wherever it thinks fit. Probation Officers do not receive proper training on probation services. They only undergo a foundation course mainly provided by the National Academy of Social Work regarding the general duties of the DSS. As stated earlier, there are currently only 44 Probation Officers around the country, with an MLSS attached to each Probation Officer. However, it is very difficult for Officers to carry out their duties and follow court orders with only one support staff. Thus, Probation Officers are mostly engaged with administrative work rather than supervising probationers as directed by the Court.

Probation Officers in many cases face difficulties in getting access even in public spheres because of the term 'probation' itself. In both the public and private sectors, the term 'probation' refers to the training period of a new employee. Thus, Probation Officers are sometimes understood by their colleagues and others to be 'trainee officer' whose jobs have

<sup>110</sup> Government of Bangladesh, *Ministry of Social Welfare, Annual Report 2008-09, 2009-10, 2010-2011*: 66.

yet to be permanent, due to the familiar use of the word 'probation' in their designation. Since the office of the Probation Officer is not located in or near to the Court building, concerned people are generally not aware about their existence or functions.

Probation Officers are not differentiated based on the probationers they supervise, such as adult or child probationers. When the law lays great emphasis on not treating children on the same basis as adults, it is not clear why the same Probation Officers supervise both adult and child probationers. It is recommended that child probationers require supervision by a Probation Officer trained to deal with children having learning in child behaviour/psychology.

At the stage of implementation of probation, local government institutions (LGIs) are informally involved in supervision and social reintegration of the probationer. In practice, Probation Officers consult local elected representatives while preparing the monthly progress report. Local elected representatives are also entitled to observe the day-to-day conduct of a person on probation and inform the Probation Officer if any anomaly or breach of conditions of probation is found. The reality is that very few Probation Officers maintain contact with probationers on their personal initiative based on the relationship that they build with the probationer during the tenure of probation. At the same time, lawyers play an indirect but working role in the system. For instance, lawyers may draw the attention of any concerned judge to evaluate the possibility of issuing probation against a particular charge(s).

There are a few 'after care' programmes for incarcerated prisoners available in Bangladesh, but they do not really fit the definition of after care. In practice, the programmes available exclusively deal with convicted prisoners *before* their release and include general education, religious education, and for example, training on tailoring, weaving and packaging. However, even these services are diminishing (after care services were provided to 3244, 2523, and 1797 convicts prisoners in the years 2008-09, 2009-10, 2010-11 respectively).<sup>111</sup>

In reality, 'after care services' for probationers are hardly available and functional in Bangladesh. There are very limited numbers of associations for rehabilitation of probationers as well as released prisoners in the 64 districts. In 2010-11, there was a fiscal allocation of BDT 3,000,000 (USD 38,710)<sup>112</sup> for the 'Society for the Correction and Rehabilitation of Offenders' spread across Bangladesh, 64 of which are spread across the country.<sup>113</sup> This small fund is channeled through the National Social Welfare Council. Notably, these rehabilitation projects also include support for Child Development Centres, Shelter Centres, and Safe Homes. The lack of after care services is not conducive for rehabilitation or reducing recidivism.

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<sup>111</sup> Government of Bangladesh, *Ministry of Social Welfare, Annual Report 2008-09, 2009-10, 2010-2011*: 66.

<sup>112</sup> This amount (3 million taka) is 4% of the total funds distributed through the National Social Welfare Council.

<sup>113</sup> Government of Bangladesh, *Ministry of Social Welfare, Annual Report 2008-09, 2009-10, 2010-2011*: 106.

**Part V**  
**Conclusion, Concerns and**  
**Recommendations**

## Chapter 8: Conclusion, Concerns and Recommendations

### 8.1. Conclusion

The earliest proposals for alternatives to imprisonment can be traced back to the late 1800s to the recommendations of several Jail Commissions and the CrPC, 1898. Taking the Probation of Offenders Ordinance, 1960 as the starting point for establishing the probation system in Bangladesh, it would be right to conclude that probation has a long history within the legal framework spanning over 50 years. However, probation is still not widely practiced due to the understanding prevalent among many criminal justice officials that imprisonment is intended solely for punitive or deterrent purposes, and not for rehabilitation.

The legal framework allows offenders charged with a wide range of minor offences (non-grievous) to be placed on probation. The probation processes for adult accused and children in conflict with the law are separated to ensure the best interest of children. The 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. In addition, the DSS has acute logistic and operational shortcomings resulting in obstacles to ensuring probation and meetings its rehabilitative purposes. Lack of coordination among different agencies involved in probation (such as the police, court, lawyers, Probation Officers, Ministry of Home Affairs, Prisons Department and the DSS) is also evident.

### 8.2. Concerns

- Many lawyers, prosecutors and judges in Bangladesh remain unaware about the scope for granting probation to offenders found guilty. Moreover, there is also a widespread misconception that probation applies only to first time offenders and where the offence is punishable with imprisonment for not more than two years. In fact, these restrictions are applicable only to the provision in section 4 of the Ordinance relating to conditional discharge, etc. 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. This over-reliance on punitive punishment has a negative impact on the individual offender and society as a whole, including stigmatization, psychological harm, hardship for the prisoner's family, problems in social reintegration, massive prison overcrowding and an increased risk of recidivism. It seems that the public, the prosecution and the Courts still lack confidence in non-custodial penal interventions. The main purpose of the criminal justice system should be corrective, which means increased use of alternatives to imprisonment.
- 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.
- There is limited public demand to introduce a probation system, given that the public tends to expect retributive and punitive treatment for offenders.

### 8.3. 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.



- The implementation of probation should be made mandatory. A set of policies and guidelines for implementing probation policy should be developed to achieve this.
- Amendment of the Probation of Offenders Ordinance, 1960 (earlier amended in 1964) and the 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; and
  - 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. Where there is willingness on the part of judges to give probation orders, insufficient resources limit the capacity of judges to make such orders.
- Greater numbers of Probation Officers should be recruited, preferably with backgrounds in law, social services, or criminology.
- 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 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 and children in contract 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, or separate, department or organization needs to be set up in order to institutionalize 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 need to be moved to court buildings from their current location at DSS offices and/or DC’s offices. If this is not possible, Probation Officers should be afforded a transport allowance to facilitate regular attendance at court. 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.
- 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.
- The provisions on probation need to be incorporated in professional training programmes for lawyers such as those organised by the Bangladesh Bar Council. Lawyers should be proactive in court and remind judges in appropriate cases about the legal provisions for probation.
- The District Bar Association should encourage young lawyers by educating them about probation, legal aid and ADR.
- 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.
- NHRC can include ‘alternative to imprisonment’ in its priority mandate to uphold the human rights of the pre trial detainees and convicted prisoners. A future action plan can also be developed to explore alternative to imprisonment including probation by NHRC in coordination with GOs and NGOs, particularly to try to ensure greater awareness among the public and those affected of the potential of obtaining release on probation.
- 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 organizations 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 organizations, 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.

- 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 on-custodial measures including probation, diversion, conditional release and early release. Building awareness and confidence about probation can popularize 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 ADR 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.
- Specialized 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.
- A survey of sentenced prisoners should be carried out to establish the number of potential candidates for alternatives to imprisonment. This would provide a baseline and data to support alternatives to imprisonment work.

### 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.

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## Annex A: REQUISITION FOR PRE-SENTENCE REPORT

### REQUISITION FOR PRE-SENTENCE REPORT

**(Rule 16 of the Bangladesh Probation of Offenders Rules, 1963)<sup>114</sup>**

In the Court of .....  
THE STATE versus .....

WHEREAS ....., son of ..... religion  
..... resident of ..... Police  
Station ..... District ..... who  
appears to the Court to be .....years of age has  
been found guilty of an offence (describe) .....  
under section .....of ..... the  
Court is the opinion, due to the following circumstances .....  
..... that this  
offender might profit for his rehabilitation by submitting to the conditions of a Probation  
Order, under the Probation of Offenders Ordinance, 1960.

The Probation Officer attached to this Court is, therefore requested to submit the Court, not  
later than ..... a Pre-Sentence Report  
which should include the results of enquiries as regards the character, antecedents, home  
surroundings and other matters of like nature.

Should the delay given above not be sufficient for the completion of these enquiries, a formal  
request for the extension of the above period may be submitted to this Court. In order to  
facilitate his task, the Probation Officer may avail himself of the privilege granted by Rule 13  
of the [Bangladesh] Probation of Offenders Rules, 1963, after taking permission of this  
Court.

Dated this .....day of .....  
[Signature of the Judge or Magistrate]

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<sup>114</sup> The content included in Annexes A-E is taken from a booklet, published by the DSS of the Ministry of Social Welfare of Bangladesh, containing the provisions of the Probation of Offenders Act, 1964, and the Probation of Offenders Ordinance, 1960, and the application of those laws in practice.

## Annex B: BOND BY A PROBATIONER TO KEEP THE PEACE AND TO BE OF GOOD BEHAVIOUR

### BOND BY A PROBATIONER TO KEEP THE PEACE AND TO BE OF GOOD BEHAVIOUR

(Rule 17 of the Bangladesh Probation of Offenders Rules, 1963)

**WHEREAS I** (Name) .....

son of ..... religion .....

inhabitant of (place) ..... District .....

have been ordered to be released under section 4 of the Probation of Offenders Ordinance, 1960, by the Court of ..... on the condition of my entering into a bond to appear and receive sentence when called upon during a period of ..... hereinafter referred to as the said period.

I hereby bind myself –

- (1) to appear and receive sentence when called upon to do so during the said period,
- (2) not to commit any breach of the peace or do any act that may occasion a breach of the peace, and
- (3) to be of good behaviour in all respects during the said period. In case of my making default therein, I, hereby, bind myself to pay to the Government of Bangladesh the sum of [taka] .....

Dated this .....day of .....

Signature .....

## Annex C: PROBATION ORDER

### PROBATION ORDER

(Rule 18 of the Bangladesh Probation of Offenders Rules, 1963)

In the Court of .....

The State versus, .....Accused

Whereas ..... son of .....  
religion ..... resident of .....  
police station ..... District .....  
who appears to the Court to be of ..... years of age,  
has been found guilty of an offence (describe) .....  
under section ..... of ..... and the  
Court is satisfied that it is expedient to deal with the offender under section 5 of the  
Probation of Offenders Ordinance (XLV of 1960).

And, whereas, the said offender has entered into a bond for [taka]  
.....sureties for a period of  
..... years to the period of the bond,  
and to appear and receive sentence if called upon to do so during that period.

It is hereby ordered that the said offender be placed on probation and kept under the  
supervision of a probation order for a period of .....  
expiring of the .....the ..... day of  
....., subject to the following conditions, namely:--

- (a) that the said offender shall abide by the conditions of the bond executed by him;  
and
- (b) that he shall reside within the limits as specified in the bond, and shall not leave  
such limits without the permission of the Probation Officer; and
- (c) \*\*

Dated this ..... day of .....

[Signature of the Judge or Magistrate]

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\*\* Here the Court may enter any other condition which it may consider fit to, for example imposing a condition for preventing repetition of the same offence or the commission of any other offence by the offender.

## Annex D: BOND BY A PROBATIONER TO OBSERVE THE CONDITIONS OF PROBATION ORDER

BOND BY A PROBATIONER TO OBSERVE THE CONDITIONS OF PROBATION ORDER  
(Rule 17 of the Bangladesh Probation of Offenders Rules, 1963)

Whereas I (name) .....son of  
..... religion .....  
inhabitant of ..... Police Station  
..... District ..... have  
been ordered to be released by the Court of ..... on  
the condition of my entering into a bond to observe the conditions specified in the  
probation order made in respect of me by the Court, during a period of  
..... hereinafter referred to as the said period;

I hereby bind myself as follows: -

- (a) that I shall truthfully fulfill the said conditions;
- (b) that I shall during the said period –
  - (1) submit myself to the supervision of the Probation Officer appointed by the Court in this behalf;
  - (2) keep the Probation Officer informed of my place of residence and means of livelihood;
  - (3) live honestly and peacefully and endeavour to earn an honest livelihood;
  - (4) abstain from taking intoxicants;
  - (5) appear and receive sentence wherever called upon to do so;
  - (6) be of good behaviour; and
  - (7) carry out all such directions as may, from time to time be given by the Probation Officer, either verbally or in writing, for the due observance of the conditions mentioned above;
- (c) that I shall not during the said period –
  - (1) leave the District of ..... of the area specified in the Probation Order without the written permission of the Probation Officer or of any other officer appointed by the Court in this behalf;
  - (2) associate with bad characters or lead a dissolute life;
  - (3) commit any offence punishable by any law in force in [Bangladesh];
  - (4) commit any breach of the peace or do any act that may occasion a breach of the peace.

In case of my making default in any of the above conditions, I hereby bind myself to forfeit to the Government of Bangladesh, the sum of [taka] .....in addition to any other sentence as may be ordered by the Court.

Dated this ..... day of .....

Signature .....



## Annex E: PROBATION REGISTER

### PROBATION REGISTER

(Rule 5 of the Bangladesh Probation of Offenders Rules, 1971)

(Card) Case no. P/ .....

Probation Officer ..... Probation Area .....

Probationer ..... son of .....

Permanent address .....

Current Address .....

Religion ..... Age ..... Relatives .....

Charged with ..... on ..... wife .....

Place ..... Children .....

Probation Order issued on ..... Period .....

Conditions of Bond .....

Names and Address of Sureties .....

.....

Date of expiry of Probation Order ..... Final Report .....

Date of Probation Order invalidated ..... Reason and Authority

.....

Sentence: Date ..... Penalty ..... Institution .....

.....

## Annex F: ORDER FOR SOCIAL INQUIRY REPORT

Order requiring a Probation Officer to make enquiries.

(Rule- 4(5) of the Children Rules, 1976)

To

Probation Officer

.....

Whereas

(1) a report / complaint under section ..... of the Children Act, 1974, has been received from ..... in respect of .....

(Name of the child)

..... residing at .....

or,

(2) ..... son of / daughter of .....

(Name of the child)

..... residing at ..... has been produced before the Court under sub-section (10 of section 32 the Children Act, 1974;

Now, therefore, you are hereby directed to inquire into the character and social antecedents of the said child and submit your report social enquiries on or before ..... or within such further time as may be allowed to you by the Court.

Date this ..... day of .....19 .....

SEAL

Signature

.....Juvenile Court

## Annex G: SUPERVISION ORDER

Supervision order

(Rule 7(4) of the Children Rules, 1976)

Case No. .... of ..... 19 .....

Whereas ..... has this day been found to have committed child .....  
under section of the Children Act, 1974, and has been placed under the care of  
(Name)..... address ..... on executing a bond by the said  
.....,

And whereas the Court is satisfied that it is expedient to deal with the said child by making  
an order placing him under supervision:

Now, therefore, it is hereby ordered that the said child be placed under the supervision of  
....., a Probation Officer for period of ..... subject to the following  
conditions, namely :-

- (1) that the child along with copies of the order and the bond executed by the said  
..... will be produced before the Probation Officer named therein;
- (2) that the child will be submitted to the supervision of the Probation Officer;
- (3) that the child will reside at ..... for a period of ..... ;
- (4) that the child will not be allowed to quit the jurisdiction of ..... without the  
written permission of the Probation Officer;
- (5) that the child will not be allowed to associate with any bad character;
- (6) that the child will live honestly and peacefully;
- (7) that the person under whose care the child is placed will arrange for the proper care,  
education and welfare of the child;
- (8) that preventive measures will be taken by the person under whose care the child is  
placed to see that the child does not commit any offence punishable by law in force in  
Bangladesh.
- (9) that the child will be prevented from taking intoxicants;
- (10) -----
- (11) -----
- (12) that the directions given by the Probation Officer from time to time, for the due  
observance of the conditions mentioned above will be carried out.

Dated .....day of .....19 .....

Juvenile Court

## Annex H: MONTHLY PROGRESS REPORT

Monthly Report of Progress

(Rule 21(f) of the Children Rules, 1976)

### PART I

Name of Probation Officer

Name of the month

Register No.

Name of the Juvenile Court

Case No.

Name of the child

Date of supervision order

Address of the child

Period of supervision

### PART II

Places of interview

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1. Where the child is residing
2. Progress made, if any, in education/ training course
3. What work he is doing and his monthly average earning, if employed
4. Savings kept in the Post Office Saving Bank Account in his name.
5. Health of the child
6. Remarks on his general conduct and progress
7. Whether properly cared for

### PART III

8. Any proceeding before the Court for-

(a) variation of condition of bond

(b) other matters

9. Period of supervision completed on

10. Result of supervision with remarks (if any)

11. Name and address of the parent or guardian or fit person under whose care the child is to live after the supervision period is over Date of Report.

Signature of the Probation Officer.

## Annex J: LIST OF KII RESPONDENTS

Sl #	Name and Designation	Sl #	Name and Designation
1	Mr. Justice Awlad Ali (Retired) Former Justice of the High Court Division of the Supreme Court of Bangladesh Board Member, BLAST, Dhaka	2	Dr. Sumaiya Khair Professor of Law University of Dhaka, Dhaka
3	Ms. Ayesha Siddika Addl. Deputy Police Commissioner (Gulshan) Dhaka Metropolitan Police, Dhaka	4	Ms U M Habibunessa Advocate, Supreme Court of Bangladesh Member, Naripokkho [For Women] Dhanmondi, Dhaka
5	Ms. Masuma Akter Deputy Director (Institution) Department of Social Services (DSS) Agargaon, Dhaka	6	Mr. Md. Siddikur Rahman Probation Officer Chief Metropolitan Magistrate's Court Dhaka
7	Mr. Md. Shawkat Ali Hyder Probation Officer Chief Metropolitan Magistrate's Court, Dhaka	8	Mr. Azizur Rahman Probation Officer Department of Social Services (DSS) Agargaon, Dhaka
9	Mr. Sk. Mofizur Rahman Chief Judicial Magistrate, Court of Judicial Magistrate, Jessore and Special Magistrate, Juvenile Court, Jessore	10	Ms. Munni Akter Police Inspector Chittagong Metropolitan Police, Chittagong
11	Mr. M. Moniruzzaman Titu Metropolitan Magistrate Court of Metropolitan Magistrate Dhaka	12	Mr. Rashedul Islam Advocate, Supreme Court of Bangladesh Staff Lawyer BLAST, Dhaka
13	Mr. Md. Rezaul Haque District Probation Officer, Magura (Ex. Assistant Director, Child Development Centre (CDC), Jessore)	14	Ms. Mominunessa Shikha Victim Support Specialist Police Reform Program (PRP) UNDP Bangladesh, Dhaka
15	Mr. Syed Ziaul Hasan National Coordinator-Rule of Law GIZ Bangladesh, Dhaka	16	Ms. Seema Zahur Advocate, Supreme Court of Bangladesh Vice President, Bangladesh National Women Lawyers' Association (BNWLA), Dhaka
17	Ms. Abantee Nurul Lawyer Ain O Salish Kendra (ASK) Dhaka	18	Mr. Anwarul Karim Superintendent Child Development Centre (CDC) Tongi, Gazipur
19	Mr. Rafiqul Islam Advocate District Court, Jessore	20	Mr. Md. Bellal Hossain Upazila Social Welfare Officer Mithamoin, Kishoregonj