

## **Community Based Rehabilitation of Offenders; an Overview of Probation and Parole System in Pakistan**

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### **Abstract**

Community based rehabilitation of offenders (probation and parole system) has got tremendous significance in criminal justice system as the world has sharply moved away from retributive to rehabilitative justice. The author has tried to explore the gaps between the concept, comparing and contrasting it with “what works” in the situation of probation and parole systems in Pakistan. There are many stipulated rules available in the country for release of offenders on probation and parole. Correctional treatment of offenders being on probation and parole has been assigned to Reclamation and Probation departments in all four provinces of Pakistan which are, unfortunately, facing almost the same problems in legal, financial, professional and technical matters. Above all, probation and parole officers lack professional orientation, conceptual clarity, motivational work environment, innovative correctional skills and training. It reveals the fact that the probation and parole system has been a neglected area of criminal justice system in Pakistan. Research-based suggestions for reinvigorating the probation and parole system in Pakistan are also included.

### **Key words**

Probation and Parole System, Alternative to Prison, Community Based Rehabilitation, Offender's Reintegration, Rehabilitation Justice, Criminal and Community, Criminal Justice and Public Safety.

### **Introduction**

Probation and parole system in Pakistan are governed by provisions that allow the release of offenders on probation and parole under certain terms and conditions. Legally, these provisions are recognized as a fundamental to the Criminal Justice system in Pakistan.

### **Probation**

The Probation of Offenders Ordinance (1960), was promulgated by the President of Pakistan to cater to the needs of first-time offenders who can be rehabilitated under the supervision and proper guidance of the probation officer without being sent to prison.

In the words of Ahuja Ram(1979), probation is the postponement of final judgment or sentence in a criminal case, giving the offender an opportunity to improve his or her conduct, often on conditions imposed by the court and under the guidance and supervision of an officer of the court.<sup>1</sup> Probation can be considered as a formative and flexible program for the first-time offender because it overcomes rigidity of imprisonment.

An analysis of the definition of probation reveals that its basic elements are:

- a postponement of sentence;
- a period of re-socialization for the criminal in the community;
- the criminal's observance of the conditions imposed by the court, and
- the supervision of the criminal by the probation officer.

Correctional and legal scientists like Panakal J.J and Madhava N.R (1984) think that the concept of probation be shifted entirely form that of the suspended sentence so that the corrective and rehabilitative functions of probation will be emphasized.<sup>2</sup>

The original aim of probation, as Srivastava, S. (1970) states, is “to advise, assist and befriend” criminals whom the court decides to release on probation.<sup>3</sup> It has widened greatly to include preparation for economic and social activity. Probation is based on the belief that encouragement must be given to the criminal not only to be a law-abiding citizens but also to contribute to the development of the local community and society.

Instead of indiscriminate imprisonment, the criminal is released for correctional treatment in the community. This community treatment is, in lieu of imprisonment, which is suspended by giving a chance to the criminal, to restrain and re-educate the probationer. Probation, therefore, attaches great value the influence of the home- and social environment.

Probation is correctional treatment aimed at reshaping the personality of a criminal. It, therefore, is helping the criminal to reshape himself. A fully rehabilitated person is capable of effectively evaluating his or her actions. More importantly, one is able to organize one's life, predict future events, and explain one's actions or conjecture about what will happen under various courses of action.

“Probation is a method of correctional process for the guidance and treatment of the criminal and his family, the discovery and correction of the criminal's personality and character and criminogenic environment, with the help of the resources of the community.”<sup>4</sup>

## **Probation Procedures**

*The Probation of Offenders Ordinance (1960), Section 5* empowers Judiciary/courts to place certain offenders on probation not more than 3 years who are eligible for release on probation. After release of offenders on probation, the Reclamation and Probation (R&P) department in the province is to supervise, monitor and rehabilitate them in community. Probation and parole officer plays the key role in the whole process of probation system from release of offenders to successful rehabilitation.

The Courts empowered to release offenders on probation;

- High Court
- Sessions Court

- Judicial Magistrate 1st class
- Any other Magistrate specially empowered in this regard
- Determination of offender's suitability for release on probation entirely rests with the judiciary

### **Social Investigation Report (SIR)**

After hearing the arguments of the prosecution and the defence, if the Court feels the case fit for probation, then it orders the Probation Officer to submit SIR that includes the following information about the offender likely to be released on probation

- Character
- Antecedents
- Commission and nature of offence
- Home surroundings and other circumstances

### **Functions of the Probation Officer**

The Probation of Offenders Ordinance (1960), Section 10 describes the duties of Probation Officer after release of offender on probation:

- Explain to every probationer placed under his charge, the terms and conditions of the Probation order made in respect of such probationer, and if so deemed necessary, by warnings, endeavour to ensure their observance by the probationer;
- In the first two months of probation of every probationer under his charge, meet the probationer at least once in a fortnight, and thereafter, subject to the provisions of the Officer in Charge, keep in close touch with the probationer, meet him frequently, make enquiries into his conduct, mode of life and environments, and wherever practicable, visit his home from time to time;
- If any probationer under his charge be out of employment, endeavour to find suitable employment for him and assist, befriend, advise and strive to improve his conduct and general conditions of living;
- Encourage every probationer placed under his supervision to make use of any recognized agency, statutory or voluntary, which might contribute towards his welfare and general well-being, and to take advantage of the social, recreational and educational facilities which such agencies might provide;
- Where a probationer under his supervision, who has executed a bond, with sureties under section 5, is found to have committed any breach of the terms of his bond, or to have otherwise misconducted himself, to bring such breach or misconduct to the notice of his sureties;

Maintain the books and registers and submit reports prescribed under these rules; and

Subject to the provisions of these rules; carry out the instructions of the Court in regard to any probationer placed by the Court under his supervision.

## **Parole**

Parole refers to the early release of good conduct prisoners or offenders who have completed mandatory period of substantive sentence as required under the good conduct Prisoner's Probation release Act, 1926 and Rules 1927 that provide for release of good prisoners on conditions imposed by the government. This is commonly known as conditional release or Parole release.

## **Parole Procedures**

Good Conduct Prisoners' Probation Release Act, (1926) empowers the Executive (Home Secretary) of the province to release certain offenders on parole who are eligible to be released on parole. This is commonly known as conditional release on parole. This act provides the release of chance offenders with good antecedents and prison record with a view to remove them from the society of hardened criminals in jails. They are to be engaged in suitable environments under the supervision of Parole officer of the R&P department in their respective province. The parolees are employed with approved employers of R&P department on fixed wages and under specific terms and conditions.

## **Selection of Prisoners eligible for Parole Release**

The cases of prisoners who are likely to be released on parole may be taken up by the Assistant Director R&P department in the following ways

On application of the prisoner

On application of the relative or friend of the prisoner

On recommendation of the Superintendent of jail

The Assistant Director and Parole Officer visit jail for selection of prisoner suitability to be released on parole

## **Functions of the Parole Officer**

Supervision and rehabilitation of offenders placed on Parole

Visit jails and arranges interview of good conduct prisoners with the Assistant Director R&P department

Consult history tickets, remission sheets, warrants etc of prisoners

- Assists Prison administration in preparation of rolls of selected prisoners for parole release
- Receive prisoners on parole, finds their suitable employment, solve problems
- Periodically pay visits to parolees, collect wages and submit reports to the Assistant Director R&P about parole work and process any complaint
- the duties of Parole officers are assigned to Probation officers in many districts of Pakistan as there is shortage of Parole staff in R&P department of each province

### **Background of Probation and Parole System**

In primitive times, each individual dealt with wrongs, done to him, as he perceived appropriate. In taking personal revenge, the retaliation, being unrestrained, frequently went for beyond the original wrong. Later, attempts were made to limit the retaliation to the extent of injury. This was the intent of the ancient Judaic of 'eye for an eye and a tooth for a tooth'. It was an injunction against inflicting another more injury than one had received. Fitzgerald, P.J. (1998) says that as a part of deterrent theory of crime prevention, prison houses were made to keep the criminal away from the society.<sup>5</sup> Aulakh, Abdul Majeed (1987) states that the Romans also used dungeons and basements to confine Under-Trial prisoners accused of crime.<sup>6</sup> These Prison houses in U.S.A., Brittan and European countries during 17<sup>th</sup> to late 19<sup>th</sup> centuries remained Penitentiaries; the places to penitiate by professing before God to attain spiritual rehabilitation.<sup>7</sup> The purpose of imprisonment, prior to 20<sup>th</sup> century was to punish the criminals on the basis of retributive, deterrent or punitive Justice System. Whether the criminal was reformed or not during the time in prison was not the issue; what was important was that the offender could not commit crimes again.

Prisons are considered to be factories of crime. High prison population numbers, as Garland (2001) states, bring with them poorer conditions of hygiene, poorer sanitation arrangements, less time for outdoor exercise, insufficient bedding and clothing, insufficient nutrition and health care, more tension, more violence between prisoners, more violence against staff and more suicides.<sup>9</sup> According to UNAFEI, Tokyo report (2003), high and growing prison population sizes lead to overcrowding. Overcrowded prisons are a breach of United Nations and other international standards, which require that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings, which includes being accorded a reasonable amount of space.<sup>9</sup>

In the USA (1994), 79 percent of a national sample shows the statement that society would be better served if non-violent offenders were not jailed but were put

to work and made to repay their victims, over the assertion that violent criminals must be kept in jail because allowing them out represents too great a risk to society.<sup>10</sup>

In another survey, 64 percent of the respondents indicated that most violent offenders could be rehabilitated if given the right rehabilitation program.<sup>12</sup>

One of the major transformations in the European Criminal Justice systems from the 70s onwards has been the growth of the rehabilitation justice movement and the increased interest in informal conflict resolution schemes, such as victim offender mediation and community based reformation of offender (Probation and parole system). This change has global dimensions, well known to Asian and African countries.

### **Conceptual Framework**

The concept of offender treatment in community maintains that if the offender is to change, a comprehensive effort must be made to address the individual and his or her family and the influences directed toward that family. The probationer/parolees must be linked to a range of services involved in the community and tied to the family. The goal is to strengthen the individual, the family, and the community. Communities must be stable and offer a decent and dignified existence as the fruits of respectable and cooperative behavior.

Probation/Parole rests on the philosophy that punishment certainly does not correct criminals or protect the community. It therefore offers an effective strategy for achieving the expected aim of justice. Bokil, M.K. (1969) states that "If the aim of criminal justice was to protect the community that aim is best achieved by a constructive community correctional programme."<sup>12</sup>

According to Gullen F. and K. Gilbert (1982) rehabilitation is the only justification of punishment that obligates the state to care for an offender's needs.<sup>13</sup>

### **Rehabilitation**

The term rehabilitation is widely used in the literature. In the discipline of sociology, criminology and criminal justice, it refers to the process, which read just an individual and takes him up to the level of normalcy. This process takes place when the normal functioning of an individual is disrupted due to some natural or social episodes. For example, suppose a person commits crime, subsequently, he is detected, apprehended, convicted and imprisoned. He can no more function in the society during the course of his imprisonment and temporarily cuts off from the society; he is bound to live in a peculiar environment (in the prison), which is quite different from the society. At this juncture, he needs some agency that could help him to readjust in the society. In this way, he can function normally in the society. This process may be called rehabilitation.

The rehabilitative process takes place in the societal context of a welfare state, focuses on the offender, provides treatment to him or her, seeks conforming behavior

“The rehabilitation system is based on the concept of trusting people who unfortunately have committed crimes”<sup>14</sup> The Rehabilitation Bureau of Japan announced in a public statement. By not trusting criminals, the Bureau implies, the prison isolates them from the curative powers of normal community relationships.

In Asylums, Goffman (1961) points out that while on probation, the offender is to undergo a transformative experience that causes a radical shift in the offender's moral career. This radical shift of self is the essence of rehabilitation.<sup>15</sup>

Rehabilitation of offenders in community is supported in order to cut criminal justice system cost, to promote the concept of human dignity, to maintain the integrity of the profession, and to support reform in the criminal justice system. Rehabilitation is cheaper than imprisonment. Aulakh, Abdul Majeed (1987) states that Probation is fifty times less expensive than prison but that it is a hundred times more effective in rehabilitating offenders in community.<sup>16</sup>

Applegate, Cullen, and Fisher (1997) report that although the public wants to see the offender punished, however, the public is not interested in punishment alone; most of the public support the rehabilitation of offenders. In reviewing 27 studies that asked respondents to rate, rank, and choose rehabilitation in comparison to other options, Applegate, Cullen, and Fisher found rehabilitation was considered important in 20 out of 27 studies.<sup>17</sup>

### **The Purposes of Community-Based Alternatives to Prison (Probation and Parole System)**

United Nation institute for crime prevention (UNAFEI) has clearly stated the purposes of community-based alternatives among which are:<sup>18</sup>

- To reduce overcrowding in prisons and prevent escalation of detention costs;
- To ensure public safety and security through effective supervision and control over offenders who serve their sentences in the community;
- To prevent or reduce offender stigmatization;
- To enhance rehabilitation and reintegration of offenders into the community in order to strengthen their ability to live peacefully with other in the community setting;
- To permit the offender to contribute towards his or her family in particular and to society by working instead of being confined in prison or jail;

- To avoid the risks of family break-up due to separation during incarceration;
- To avoid an escalation in deviant behaviour when new offenders are mixed with hardened criminals;
- To monitor and supervise offenders in order to ensure compliance with court-ordered conditions and programme requirements.

### **Benefits**

There are many advantages of Community-based Alternatives to Prison (Probation and Parole System):

- To achieve the reformative and preventive aim of sentencing as a form of soft punishment
- To avoid offender stigmatization
- To reduce prison overcrowding(180% in Pakistan) and prevent escalation of detention costs
- To allow the offender to contribute to his/her family in particular and society instead of being confined in prison
- To avoid the break-up of family institution as a result of being in jail
- To retain their employment and contribute to the economic mainstream of the country
- To avoid the raw/chance offenders from the company of hardened criminal in prison
- To enhance rehabilitation and reintegration of offenders into community

### **Legislative Provisions**

Before the partition of the Indian Sub-Continent in 1947, the Government of the Punjab passed the Good Conduct Prisoners probation Released Act (1926). It provided protection as well as guidance to the prisoner for his readjustment and rehabilitation in free life. This system worked well and was adopted by the Government of West Pakistan in 1957.

After independence, Pakistan tried to incorporate the concept of probation for juveniles in the Punjab Children Act 1952, the Punjab Youthful Offenders Act 1952 and the Sind Children Act 1955. The first two were never enforced and the latter was implemented in two Divisions only after a gap on 19 years.

Pakistan has following enactments for operation of probation and parole institutions as well as regulation of non-institutional treatment of young offenders under Reclamation Manual:

- Reformatory Schools Act 1897
- The Criminal Procedure Code(CrPC), 1898
- Punjab Borstal Act 1926;
- Good Conduct Prisoners' Probation Release Act, 1926
- Punjab Youthful Offenders' Ordinance, 1983
- Sind Children Act, 1955;
- Probation of Offenders Ordinance, 1960
- Juvenile Justice System Ordinance, 2000, Law, Justice and Human Rights division Islamabad. The 1st July. 2000

Table: 1 Province-wise Situation of Probation and Parole Pakistan

Province	Probation Office			Parole Officers			Probationers					Parolee					
	Male	Female	Total	Male	Female	Total	Male	Female	Juveniles		Total	Male	Female	Juveniles		Total	
									Male	Female				Male	Female		
Punjab	35	1	36	8	2	10	20774	225	217	0	21216	0	0	0	0	0	99
Khyber Pakhtunkhwa (former NWFP)	16	6	22	2	0	2	1607	17	43	2	1669	0	0	0	0	0	5
Sindh	1	0	1	1	0	1	277	0	33	0	310	0	0	0	0	0	7
Balochistan	6	0	6	2	2	4	2	0	0	0	2	0	0	0	0	0	80
Pakistan	58	7	65	13	4	17	22660	242	293	2	23197	0	0	0	0	0	191

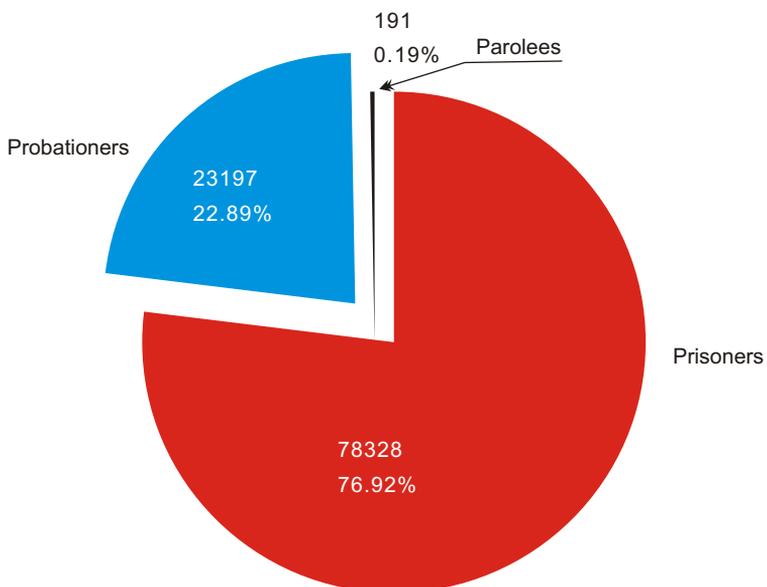
*Dated 30 March, 2010, National Academy for Prison Administration, (NAPA) Lahore Pakistan (former CJSTI)*

Table 2: Province-Wise Prison Population and Authorized Capacity

S. No.	Name of Province	No. of Prisons	Authorised Capacity	Prison Population
1	Punjab	32	21,527	52,318
2	Sindh	22	10,285	14,422
3	Khyber Pakhtunkhwa	23	7,982	7,549
4	Balochistan	11	2,173	2,946
5	Azad Kashmir	06	530	663
6	Gilgit Baltistan	05	173	430
	<b>Total</b>	<b>99</b>	<b>42,670</b>	<b>78,328</b>

*Dated 30 Dec., 2009, National Academy for Prison Administration, (NAPA) Lahore Pakistan (former CJSTI)*

### Situation of Prisoners, Probationers and Parolees in Pakistan



## **Discussion**

Table 1 shows that there were 65 probation officers including 7 female probation officers in Pakistan. From the total male probation officers 35 were in Punjab, 16 in KP, 6 in Balochistan and 1 in Sindh. Out of total female officers, six were in Khyber Pakhtunkhwa (KP) and only one was in Punjab whereas Sindh and Balochistan had no female probation officers.

Under Rule 22(3) of the Probation Rules, a female offender should not be placed under the supervision of a male probation officer. However, a husband and wife may be jointly placed under the supervision of a male probation officer. Because of Rule 22(3) and since a few female probation officers were present in Pakistan except one in Punjab and six in KP, it should not thus be surprising that only 242 women prisoners were released on probation in Pakistan by March 2010.

Women and children are usually first-time offenders and are more likely to get released on probation if the system could be properly utilized and if more female probation officers were present.

By late 2009, there were no female Probation officers in KP province. Home Departments in Sindh and Punjab had also advertised 16 and 20 Probation and Parole Officers' posts respectively. It is hoped that there will be some reserved seats for female probation officers.

The figure in table 1 shows that a large number of offenders had benefited from the probation system but not many among them were juveniles and women.

Out of total probationers (23191), 242 were reported as female, majority 225, of which were from Punjab and 17 were from KP, whereas there were no female probationers in Sindh and Balochistan. From the total 295 juvenile probationers, only two were female. Majority of juveniles 217, were released on probation in Punjab then 45 and 33 in KP and Sindh. There were no juveniles on probation in Balochistan.

Out of total 17 parole officers in Pakistan, there were 4 female Parole Officers, two in Punjab and two in Balochistan. Sindh and KP had no female Parole Officers. Among Male Parole Officers 8 were in Punjab, 2 in KP, 2 in Balochistan and 1 in Sindh. This clearly shows that Parole system has been on the low priority in all provinces of Pakistan as table 2 indicates that out of total prison population in Pakistan (78328), only 191 offenders (male) have got release on parole; the majority (99) of them in Punjab. Although there were four female parole officers in Punjab and Balochistan but unfortunately there were no women on parole in the country. Similarly, there were no juveniles taken on parole.

The above given diagram shows the numbers and percentage of prisoners, probationers and parolees in Pakistan

## **Challenges/Problems**

Probation/Parole system in Pakistan is facing various problems at different levels:

### **Justice Administration**

Conceptual ambivalence in Rehabilitation Justice approaches to properly address the issues and problems of Probationers and Parolees

Lack of coordination between Law Enforcement Agencies and regarding Prisoners, Prison and the Probation and Parole system

Ignorance of Probation and Parole Officers regarding the needs of offenders and subsequently absence of standardized models of Rehabilitation for offenders released on Probation and Parole in the country

Non-availability of criminal experts, criminologists and social workers on the penal of R&P departments in the provinces

Absence of Research and Development wings in R&P departments and Home Ministries of the Provinces

No organized and client-focused efforts by the R&P departments to ensure active participation and engagement of family, friends and community of the offenders released on Probation or Parole

Neglect of R&P departments within Criminal Justice system of Pakistan

### **Administrative Level**

Under-staffing: Shortage of professional Probation/Parole officers

Lack of proper training, motivation, problem-solving skills and modern innovative techniques among Probation/Parole officers

Low salaries and low morale; unattractive service structure and slow career progression of prison staff

High caseloads and over-worked staff

Lack of proper infrastructure: official accommodation; transport facility; provision of extra allowance for travelling

No empirical data has been collected about the workings of the parole and probationer system in Pakistan

No use of Information and Communication Technology in R&P Departments in the Provinces

Dearth of evaluation reports about the functioning/performance in R&P departments on the basis of formal, systematic and standardized principles of Performance

### **Legal Level**

Complicated and vague procedure to release offender on Probation/parole

Lack of cooperation and coordination among Criminal Justice Organizations i.e. Judiciary, Home ministry, Prosecution, Prison management and R&P Professionals

Lack of Legal Conferences, Seminars and Professional training for officials dealing with Probation and Parole System

Ineffective Role of District Criminal Justice Coordination Committee (DCJCC) in every districts of Pakistan under Police Order 2002 regarding the probation and parole system

Lack of appropriate human resource development Programmes and professional training particularly for judicial officers who has to decide the fate of the offenders to be released on probation

Majority of the Lawyers in Pakistan are not aware of the Probation and Parole system as Bar Associations have been overlooking the issue of community rehabilitation

### **Rehabilitative Justice, Community and the Media**

Rehabilitation Justice requires close coordination and cooperation of the family and community of probationers and parolees, social welfare organizations including NGOs, Probation and Reclamation departments and employment agencies and above all, the political elite of the country. So, there is dire need to attract media attention to this issue for disseminating information, changing public opinion and transforming stereotypes regarding crime and criminals. Community-based rehabilitation of offenders in Pakistan has not got attention of the public at large and therefore, the concept of reformation of offenders in community needs promotional campaigns, dialogue, conferences, seminars and symposiums so that the dream of correcting the offenders in community could achieve its realization.

### **Current Development Regarding Probation / Parole Under National Judicial Policy**

The Chief Justice of Pakistan chaired the Committee (6th June 2009) that also considered the issue of release of convicts and offenders on parole or probation and observed that the benefits of parole and probation laws are not extended to the deserving convicts and offenders. The Committee after deliberation resolved that judges, lawyers and other stakeholders should be sensitized about the parole and probation laws to reduce the load on prison and provide opportunities for rehabilitation. The Committee asked the Provincial Governments to strengthen the

Provincial Directorates Reclamation and Probation in term of manpower and necessary infrastructure, transport and office accommodation. The Committee asked the Provincial Government to consider appointments of Probation and Parole Officers on transfer basis from other departments. The Committee also asked the High Courts to issue directions to the judges for invoking provinces of Probation of Offenders Ordinance, 1960 to extend the benefits to good conduct and deserving offenders involved in minor offences and asking the District & Sessions Judges to convene frequent meetings of the District Criminal Justice Coordination Committees for discussing the issues relating to Parole/Probation.

### **Suggestions**

A large number of cases that are under trial in criminal courts and come under the purview of the probation laws.

There is need to improve mechanism and mode of official coordination between judicial officers and the executive and P&R department for release of offenders on probation and parole.

District Criminal Justice Coordination Committee should make all efforts to ensure the release of convicts on probation as it is the highly effective body at district level of Pakistan to run probation system efficiently.

The Probation and Parole officer alone is unable to rehabilitate. Government, social welfare department and other human rights organizations should join hands together for the over all improvement of their economic, social and psychological conditions.

The probation and Parole officer should be given the required facilities to visit the home of probationers and parolees and to cultivate relations with the family, community and other stakeholders in the rehabilitation process.

There is a strong need to attract the attention and cooperation of non-governmental organizations. Some programs for community mobilization, participation and engagement should be planed to effectively support the rehabilitative process

The prisoners who qualify for probation or parole should be released on probation. It may be helpful in reducing the cost of detention and other problems in jails

For improving professional competency and establishing sympathetic attitude towards the adjustment of probationers and parolees, probation and parole officers should be given proper training and professional orientation.

Volunteers should be invited by the R&P departments to assist the offenders in community in the process of their rehabilitation as is currently the case in Japan.

Some psychologists and psychiatrists must be placed on the panel of R&P departments in order to consider the mental health needs of probationers and parolees.

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