

Perceptions of Probation Officers about Juvenile Justice System in Khyber Pakhtunkhwa, Pakistan

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Abstract

Probation services in the juvenile justice system in Pakistan are explored in this study with emphasis on analyzing the various perceptions of probation officers in Khyber Pakhtunkhwa, Pakistan. A qualitative research design was used and a total of 7 probation officers from 7 administrative divisions were contacted for in-depth interviews, which took place at their offices. Analysis revealed probation officers viewed police, judicial courts, and challenges faced by them were major blocks in helping juvenile offenders. Authors believe lack of effective liaison between Home Department, judicial courts and the police creates hurdles for these officers to work which in turn affects success with juveniles in custody.

Keywords: Diversion, Juvenile Justice, Probation, Pakistan, Reformation, Rehabilitation

Certain deviant behaviours (Macionis, 2014) are disapproved, but other deviant behavior send up breaking the law and are view as criminal in a society. For prohibiting these behaviours, society establishes laws (Funk, 1972). Society expects its members to follow laws and not indulge in “unlawful” activities. Laws define behaviours which are prohibited and sets penalties for them (Hussain, 2009), which include fines, imprisonment and probation (Haag, 1991). Penalties are attempts to reform the criminal and prohibit such behaviors in the future (Alexander, 1922; Hart 1994; Gardner 2007; Tadros, 2016). However, punishing an offender is a complicated process; and may end up with fines, community services, imprisonment, corporal punishment, and the death penalty (Bedau & Kelly, 2017). When it comes to punishment of juvenile offenders, the matter of sentencing becomes even more complicated, it is a matter that involves juvenile protection and criminal justice. Such goals of establishing juvenile welfare and protection of juvenile and ensuring future offending behaviour (Levitt, 1998) are highly important.

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Probation is the fourth essential component of criminal justice system in the world. It suspends sentence with liberty on the conditions of good behaviour under supervision (Abadinsky, 1991) and is defined as the “supervision of offenders in conditions of freedom by designated officers of the court” (Warral, 2009, p. 223). In probation the sentencing court establishes the conditions, supervises, and resentences the offender if conditions are violated. Probation is increasingly being linked with a short sentence to jail, followed by a period of probation, which is used for the rehabilitation of juvenile and adult offenders.

The basic philosophy behind probation is diversion, which “refers to minimizing the extent to which youthful offenders penetrate the juvenile justice system” (Ray & Childs, 2015, p.422). Diversion is based on the belief that if a juvenile is labeled as ‘delinquent’ or ‘bad’ he or she will be permanently stigmatized. To avoid long-term negative such consequences for juveniles, diversion programmes are designed to avoid labeling and work with juveniles to rehabilitate them (Vito & Kunselman, 2012).With continuing emphasis on community-based services, it is recognized that not all adjudicate djuveniles belong in institutions.

The Juvenile Justice and Probation System in Pakistan

Juvenile Justice System in Pakistan was formally established in 2000 through a Presidential Ordinance, Juvenile Justice System Ordinance (JJSO, 2000), by the President of Pakistan Pervaiz Musharraf (Sajid, 2009), and was the first law that dealt with all the components of criminal justice system for juveniles. It provides specific guidelines for juvenile courts, police and prosecutors. Probation officer part of the juvenile courts, play an important role that begins at final sentencing of the juvenile and continues on in the life of juvenile in cooperation with the police (Sajid, 2009). A majority of juvenile sentences in Pakistan lead to probation and are based on the seriousness of the offence and the age of the juvenile offender, more serious crimes lead to imprisonment or in few instances death penalty (Hussain, 2009).At this time more than 70% juveniles in prison are under trials (Need Reference) and need help to move them to probation status (SPARC, 2020: 9).

Thirteen years after independence, the Government of Pakistan enforced legislation on probation, Probation of Offenders Ordinance 1960/Rules 1961 and was largely amended version of the British 1931 Probation Bill (Hussain, 2009, p.12).The rudimentary legal framework (provision) of the probation system currently enforced in Pakistan vests the courts of the country with the power to place suitable categories of juvenile offenders on probation instead of sending them to jail to serve a sentence. Court can award probation to a juvenile on first,

minor, casual, and minor criminal offenses. For female juvenile offenders the court sentences probation over imprisonment except where crimes are punishable by life imprisonment or death. A person discharged on probation order is not treated as a convict for any disqualification.

Fig. 1: General Structure of Probation Services in Pakistan

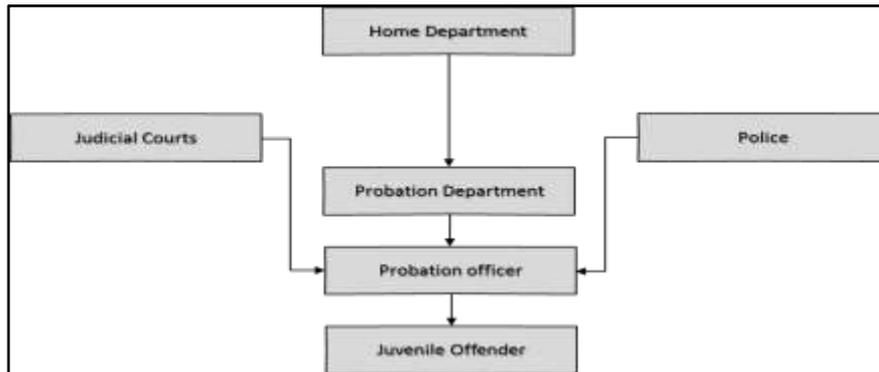


Fig.1 shows a general structural layout of Probation Services working under Home Department and flanked by Judicial Courts and Police serving that direct probation officers in assisting juvenile offenders.

The probation services come under Home Department (see Figure 1) but work in conjunction with the judicial courts and police. The services are provided through a probation officer (male or female) who covers an entire district, like Peshawar, Mardan, Swat, Bannu, Dera Ismail Khan, Kohat and Abbottabad, however more than one probation officers may be appointed in for a district. The probation officer is assisted by other administrative and support staff.

Methodology

This research was based on qualitative method. The researcher employed in-depth interviews (Blaxter, Hughes, & Tight, 2001) to study the role of probation services for juveniles in Pakistan. A total of seven probation officers were interviewed to share their experience with juvenile offenders.

The focus of interviews was placed on role that probation officers play at different stages of the juvenile justice system. Further, the problems they face were also targeted in the interviews. In almost all cases, the location of the interview was the office of the probation officer.

The study was conducted in Khyber Pakhtunkhwa, where probation officers were selected from the districts of Peshawar, Mardan, Kohat, Abbotabad,

Dera Ismail Khan, Swat, and Bannu. Prior to the interview, the respective probation officers were contacted through telephone and informed about the nature of the study. Upon their consent, a date and time was fixed and the data was collected during February to May 2014. The researcher travelled to meet all the probation officers. There was no female probation officer used in the study because they were newly hired in the province of Khyber Pakhtunkhwa and had little experience with the program. All the interviews were audio recorded and transcribed and later translated in English. For reporting purposes all names of the participants are fictitious and aliases appear (Kaiser, 2009, p. 1632).

Results and Discussion

Police and Probation

Probation officers play many roles for juvenile offenders at the juvenile justice system in Pakistan. With the enactment of JJSO in 2000, a special none the less ambiguous role emerged for them at the police stations i.e. “*to obtain... information about the child and other material circumstances which may be of assistance to the juvenile court for making inquiry*”⁴. They also diverted juvenile offenders from the formal criminal justice system at the police station. Probation officers are the protector of the rights of the juvenile offenders on behalf of the state and represent a soft image of the state towards them. The state is not only keeps strong police, but a *caring* probation system. At the same time, the probation officer is to be informed by the police in order to show the caring image of the state to the juvenile.

Police arrests of a juvenile is very harsh because it uses force, the juvenile is frightened and intimidated. Police does not care about his food, health, safety, education, or his future... it is the probation officer who protects of the best interest of the child at the state level (Afsarud Din, alias, all names that follow in the paper are aliases).

There are many reasons for police not to use diversion, however, the most common is negligence where of the police officers

⁴JJSO Section 10(1). When a child is arrested for commission of an offence, the officer in charge of the police station in which the child is detained shall, as soon as may be, inform...

(b) The concerned probation officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile Court for making inquiry.

in their routine work do not even consider using probation system to take care of the juvenile offenders, they in their mind set do not think this step is obligatory by the law.

Look, the Ordinance (JJSO) says that as the police officer calls the parents/guardian upon the arrest of the juvenile, in the same way he must call the probation officer to the police station... Practically, they don't call the probation officers. It is not in practice... It is mandatory that when a child is arrested for a breach of law in a police station, one copy of the FIR must be sent to the concerned probation officer of the district. But this is not practiced by the police (Munawar Shah).

Afsarud Din added that during his entire tenure, he has never been called to a police station for a juvenile offender. When the researcher asked him this question, he replied,

No! never! Not a single call I received during my tenure. We have communicated our officer phone number in 2006 to all the police stations, but not a single call till date (Afsarud Din).

Why do the police officers not call the probation officers? One analysis (similar to said above) is police, or its officers are not aware probation officers or the probation system. This analysis is rejected on the basis that almost all the investigation officers and *moharrirs, madad moharris* of Khyber Pakhtunkhwa did receive training in the juvenile justice during past 13 years (since 2000).⁵ Time and again they have been informed about the probation officers and their legal standing; even the contact numbers of probation officers that are routinely shared with all the police stations.

Another analysis suggests police would not like to inform the probation officers because if they did they would be party to police corruption bounty. The police deceitfully do not let others enter their network.

⁵ Pakistan Society of Criminology arranged such trainings during 2009-10 for all the investigation officers of the police stations along with the Moharrirs and Madad Moharris of all the police stations of the Khyber Pakhtunkhwa province. The researcher remained part of the team of trainers in those trainings. Therefore, he has the firsthand knowledge regarding police awareness on probation etc.

Actually, the police department is extremely corrupt. And you can do more corruption when you have very little number of stakeholders in your network. So, they don't let the probation officer enter the system because when he enters the system, the police won't be able to make deals with the offenders in this way or that way. You know, suppose they arrest a child in a crime, drugs, theft, pick pocketing, wine etc. they release the child without informing the probation officer by taking bribe from him/or his family (مکاکر لئے بھیس کا). If the probation officer is in the network, then they cannot do this (نہیں). Therefore, they don't contact the probation officer (ZiaurRehman).

Previous studies revealed that it was the police who complained that the probation officers do not visit the police station (Sajid, Asad, & Ashiq, 2020). In our study, we find it is the probation officers that complain that police stations do not call them.

Courts and Probation

Courts play an important role in the probation system. It is the courts that decide whether the penalty should lead to imprisonment or probation. For probation, the court is aware of its roles and responsibilities, and what it means for institutional treatment and rehabilitation of the offenders through probation. A cursory look at the probation system reveals the fact that it was the justice of the courts who gave recognition to the probation system in history (Vito & Kunselman, 2012, p.228-29). In Pakistan, the situation is a little different, here, court judges are seldom aware of probation system or are not really interested in it, which has created numerous problems for the probation department.

Actually, our courts are mostly unaware of probation laws. In Bachelor of Laws(LLB), they don't teach probation law, or even JJSO isn't there in the course. For this reason, they don't know whether probation is something or not (Irfanullah).

Above and beyond, there is no coordination between a juvenile court and probation office. Probation officers have yet to gain their due worth and dignity in the eyes of the court.

There is mistrust between courts and probation. There is no coordination. The basic purpose of Criminal Justice Coordination Committee (CJCC) was to bring coordination in all the components of criminal justice system. But we lack it. Courts don't give due worth or due respect to the probation officers. Probation officers don't have their own offices. They are at the mercy of the session judge. At any time on a very short notice, the session judge can vacate their offices. This situation prevails throughout Pakistan. In this situation, how do you expect the courts to take probation officers on equal terms (سوال کی کیا ہے ہوتا) (InaamUllah).

It is easy to infer that the probation department has a very petite hefting the criminal justice system in Pakistan. The lack of awareness of the courts about the probation system is evident from the fact that a juvenile court is required to request a probation officer for a Social Investigation Report (SIR) of a juvenile accused of an offence. Unfortunately, the courts very rarely ask for an SIR of an accused juvenile.

*No, I never received such an order from any court till date....
Court never consulted us in any juvenile case (Afsarud Din).*

One must take into account the fact that the Probation Department in Pakistan is not under the Courts. The Probation Department is under the Home Department, which is not a part of the judicial courts rather it remains an ignored department struggling for its recognition. There is no recognition or ownership of the probation system by the courts or the police in the criminal justice system in Pakistan.

Probation Services

Where police and courts are less inclined to engage probation services and are less cooperative with probation officers to help juvenile offenders; other problems may originate with probation officers themselves who are reluctant to go the distance to gather information and present SIR. The reason for this reluctance is lack of funding for such visits and result is probation officers concoct Social Investigation Reports (SIRs).

They can produce a fabricated one. But usually probation officers don't do it. The reasons are manifold. For SIR, the probation officer has to go to the community of the child, to

his school, meet his friends and others etc. He needs travelling and other budgets. For example, my office is here in judicial complex and a case of juvenile comes from Nahaqai police station. Now to go to the village Nahaqai and produce the SIR, it needs some funding et c(Irfanullah).

Another reason includes cultural sensitivity; in Khyber Pakhtunkhwa, Pukhtuns are very sensitive about family matters. They do not welcome strangers into their family affairs and are offensive if someone enquires about the conduct of a family member.

There is lack of trust. When we go to a village, for example I went to a village, Ismaela in Swabi district, those people were extremely astonished (حیران دے) that why is this person asking regarding that child from the people? So exact and true information is very rarely given to you by the community because our society is a closed society (Zia Ullah).

People are strongly connected to each other in social ties and common lineage. In a typical village, an in-coming stranger is immediately identified and questioned about. Questioning sisters or mother or other members about the juvenile offender is a taboo and frowned upon.

When I ask how many brothers he has, how many sisters he has, what do they do, what is their education, what is the father's occupation, whether the mother is educated or not, what is the name of the mother? Now in Pukhtun society, asking for the mother's name is considered an extreme insult (Irfanullah).

Juvenile Counseling

Probation services play a significant role in rehabilitation of juvenile offenders. Upon receiving probation orders from the court, the juvenile offender is taken to the office of the probation officer which, in most cases, is within the premises of the courts. There, the juvenile signs a bond with the probation officer for a specified duration (in most cases, three years).

One of the major roles of the probation officer is to act as a counselor, where counseling, "deals with wellness, personal growth, career, and pathological concerns" (Casey, 1996, p.176) of the individual. Probation officer provides moral and religious counseling in order to help the juvenile offenders reflect on their

wrong doings and goads them towards wellness, personal growth, career development, and life problems.

I provide counseling to the probationers, adult and juvenile offenders. I have 17 juvenile probationers under my supervision right now. Probationers visit my office on monthly basis. The counseling session usually lasts for 30 to 35 minutes. During this session, I focus on observing the progress of the probationer. By progress I mean whether he is improving: his behaviour, his way of talking, his dressing is improving. I also try to determine whether he is using any drugs and whether he has left the bad company (Rizwan).

Another probation officer, said:

I try to teach good manners to my probationers. I mean how to dress properly. A probationer comes on his monthly visit and his shirt buttons are open, then I tell him and show him to dress in a gentleman's way. I further inquire about whether he prays five times a day. You know how it is in our society. A boy who prays five times a day is categorized as a 'good boy (Jamal).

It was noted, counseling of probation officers was limited to personal growth which included religiosity, physical appearance, and talking behaviour and did not focus on pathological concerns however, in some of the cases, the probation officers did deal with family problems.

When I was in Swabi, about 40 cases were referred for probation, mostly juveniles. You know, in one case a father was complaining about his son (باپ بیٹے کے تگ ست), that he comes late at night, he is loafer and doesn't go to school, is spendthrift, smokes and sometimes takes chars (Hasheesh). That father came to police and asked them to put his child in jail for a few days. Police accepts such a request very happily because they need cases to show their progress. The child was from village Manery (his name was Tahir). His father was working in an NGO in Islamabad. When police caught him, they charged him with 80KG of chars and he was arrested in 9CNSA case. His case moved forward. On every hearing in the court, his father also used to visit frequently.

He was finally awarded probation. What do you expect a probation officer can do in such a case?(Rizwan).

Probation officers are challenged with the trust of probationers and their guardians during counseling and work in an environment (courts) that is less conducive for counseling.

You know, probation officer's office is within the premises of courts and the people are usually scared of the courts. I bring the probationers to my office and try to obtain their trust. But mostly I fail. They wouldn't become ready to trust me. They would think that we are the people of courts, and we can't be trusted. I tried to create an environment of intimacy, but that wouldn't work. So, one misperception of probationers is that they consider us as court officials, as magistrates. This creates a hindrance in rehabilitation (Naveed).

Conclusion

This article discussed the perceptions of probation officers about probation services, judicial courts, and police in Khyber Pakhtunkhwa. Based on the reflection of probation officers we conclude juvenile offenders reach probation officers rarely by the police for it reduces their chances of sharing their corruption. Courts are generally unaware of Probation Laws and do not give due worth to the probation officers for the work they do; they rarely ask them for SIRs. Probation officers work at court offices where counseling cannot be carried out effectively, in addition, time to meet the offenders is short (only 15 to 20 minutes) which is not long enough to carry out an effective counseling session.

Probation officers do not visit the probationers at their place of residences because they lack the essential facilities (transportation for visits, long distance travel etc.) to render effective services for home or Borstal to keep the child in safe custody. In addition, probation officers are not perceived well by the offenders, their guardians and family members, which make it difficult to work with them.

Authors believe the Probation Services need to look at challenges the program faces and the challenges probation officers face in developing their casework for juveniles, this includes funding to reach family members, neighbors and other people in their geographical locale, which is important to get information so that needy SIRs are presented, these reports are a good starting point for helping the juveniles get back on track, leave their criminal life, and make them open for counseling and therapy. The Home Department and the

Probation Services should sit down with the judicial courts and the police to make them aware of the need of these probation officers, who can work as go-between them and facilitate help to juvenile offenders.

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