

# **Disposal of Selected Cases through Application of Probation Laws**

By

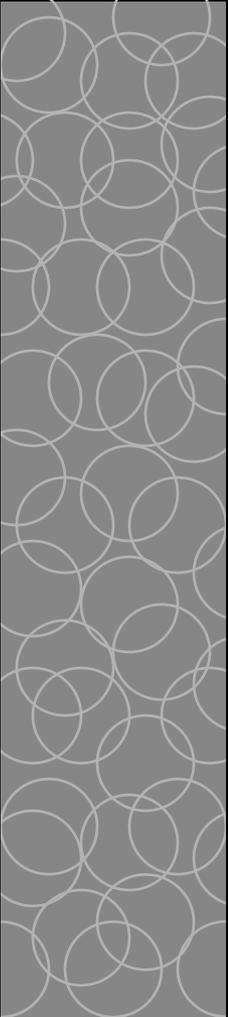
**Muhammad Adil Khan**

District & Sessions Judge, Charsadda



# Definition

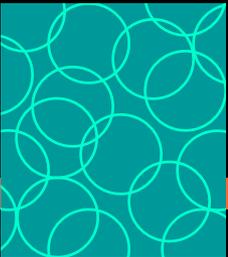
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## Probation

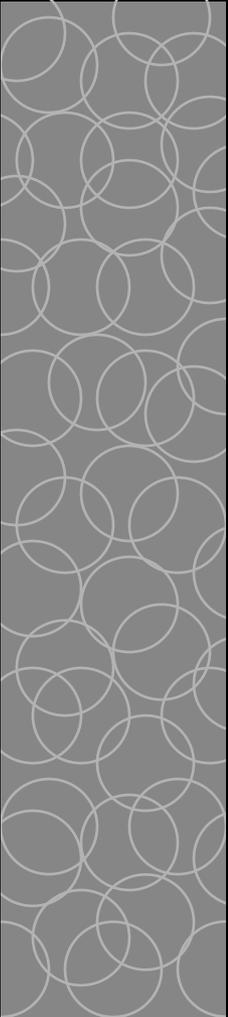
(Black's Law)

A Court-imposed criminal sentence, that subject to stated conditions, releases a convicted person into the community instead of sending the criminal to Jail or prison.



# Definition

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## Probation

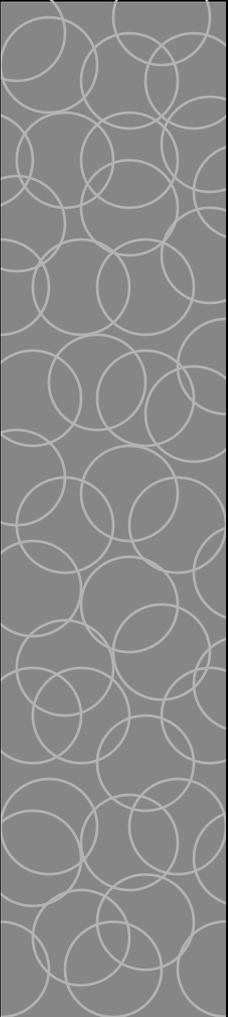
(Oxford)

A system that allows a person who has committed a crime not to go to prison, if they behave well and if they see an official (called a probation officer) regularly for a fix period of time.



# Judicial Discretion

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Probation is a Judicial discretion and an inexpensive alternative to detention or imprisonment for first time offenders.

# Probation of Offenders Ordinance 1960

## Courts Empowered Under the Ordinance (Section 3)

- (a) A High Court
- (b) A Court of Magistrate
- (c) A District Magistrate
- (d) A Sub-Divisional Magistrate
- (e) A Magistrate of the 1<sup>st</sup> Class; and
- (f) Any other Magistrate Specially Empowered in this behalf.

# Conditional Discharge etc

## (Section 4)

1. A person convicted for an offence punishable with an imprisonment for not more than two years, having regard to:
  - a) the age, character, antecedents or physical condition of the offender, and
  - b) the nature of the offence or any extenuating circumstances attending the commission of the offence,
    - i) the Court may, after recording its reason in writing, make an order discharging him after it admonition; or
    - ii) discharge him subject to condition to enter in a bond, with or without sureties, for one year from the date of order
2. Order & Period:-
  - i) discharging a person is called, "an order for condition discharge"
  - ii) the period specified in the order is called "the period of conditional discharge.



# Conditional Discharge etc (Section 4)

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3. The Court shall explain, before conditional discharge, to the offender that he will be liable to be sentenced for the original offence, if
    - i) Commits an offence,
    - ii) Does not remain of good behaviour,  
*during the period of conditional discharge*
  4. Conditionally discharged person, if sentenced for the offence, the order shall cease to have effect.



# Grave Offences not Entitled to Probation

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1. Penalty of Death,
  2. Transportation for Life,
  3. Under Section 216-A (penalty for harboring robbers or dacoits),
  4. Under Section 311 (for a thug),
  5. Under Section 328 (theft after preparation made for causing death, hurt or restraint in order to the committing of the theft),
  6. Under Section 386-389 (putting a person in fear of injury or death in order to commit extortion, etc),
  7. Under Section 392-402 (commitment of robbery, dacoity or belonging to gang of thieves),
  8. Under Section 413 (habitual dealing in stolen property),
  9. Under Section 455 (lurking house-trespass or house-breaking after preparation for hurt or assault, etc),
  10. Under Section 460 (all person jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them),
  11. Serious offences under Chapters VI (Offences against the State) and VII (Offences relating to the Army, Navy and Air Force)

# Power of Court to Make Probation Order in Certain Cases

## (Section 5)

1. Except the cases as highlighted in the previous slide;
  - a) the Court convicted any male person for an offence, in his opinion, having regard to the circumstances, including nature of offence and character of the offender for reason to be recorded in writing, instead of sentencing the person at once make a probation order for a period not less than one year or more than three years

### FEMALE:

- b) no restriction is made with regard to offenses other than an offense punishable with death for availing the benefits under the Ordinance

# Power of Court to Make Probation Order in Certain Cases

## (Section 5)

No probation order shall be passed unless the offender enters into a bond, with or without sureties:-

- i. to commit no offence
- ii. to keep peace and
- iii. be of good behaviour,
- iv. to appear and receive sentence if called upon to do,
- v. the offender or one of his surety, if any has a fixed place of abode or
- vi. regular occupation within the jurisdiction of the Court and
- vii. continue in such place of abode or such occupation during the period of bond

# Power of Court to Make Probation Order in Certain Cases

## (Section 5)

2.
  - i. the Court may also direct that the bond shall contain necessary condition for securing supervision of the offender by the Probation Officer; and
  - ii. such additional condition with respect to residence, environment, abstention from intoxicants and any other matter, considering necessary for preventing a repetition of the same offence or commission of other offences, and
  - iii. for the rehabilitation him as an honest, industrious and law-abiding citizen.
3. On sentencing the offender, the probation order shall cease to have effect.

# Order for Payment of Costs and Compensation

## (Section 6)

1. .
  - i. the Court directing the discharge of an offender or probation order may order the offender to pay compensation of damages for lost or injury caused to the person as well as cost of the proceeding;
  - ii. the amount of compensation, damages and costs shall not exceed the amount of fine.
2. The amount of compensation, damages of costs shall be taken into account in any subsequent civil suit or proceeding relating to the same offence while awarding compensation or damages.
3. The amount of compensation or damages may be recovered as fine according to the provision of Section-386 and 387 Cr.P.C.

# Failure to Observe Conditions of the Bond

## (Section 7)

1. The Court on its satisfaction that the offender has failed to observe any of the condition of his bond;
  - i. may issue a warrant of arrest, or
  - ii. issue summon to the offender and his sureties
2. On appearance or brought of offender
  - i. either remand him to judicial custody until the case is heard, or
  - ii. admitted to bail with or without sureties, to appear on the date of hearing.
3. The Court after hearing the case, on satisfaction for breach of condition of bond, may
  - a) sentence him for the original offence or without prejudice to the bond, imposed upon him a fine not exceeding Rs.1000/-, by taking into account the amount of compensation, damages or costs are to be paid
4. On failure to pay the fine within the fixed period, the Court may sentence the offender for the original offence.

# Variation of Conditions of Probation

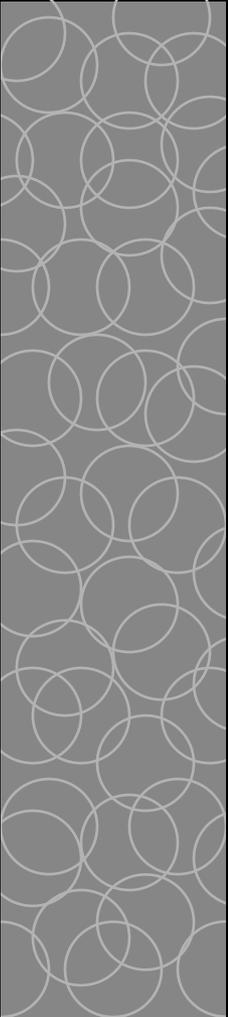
## (Section 10)

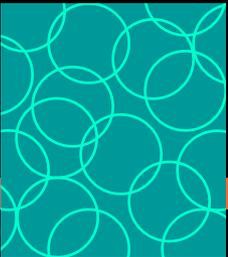
1. The Court, passed probation order, may vary the bond after due notice for a term of one year and upto three years
  - i. on the application of offender, or
  - ii. probation Officer, or
  - iii. of its own motion
  - iv. if there is surety, variation shall be with the consent of the surety/sureties
  - v. if the surety does not consent, fresh bond shall be executed with or without surety
2. The Court may discharge the probation order and the bond, if the conduct of the probationer is found satisfactory;
  - i. on the application of probationer, or
  - ii. probation Officer, or
  - iii. of its own motion



# Effects of Discharge and Probation

## (Section 11)

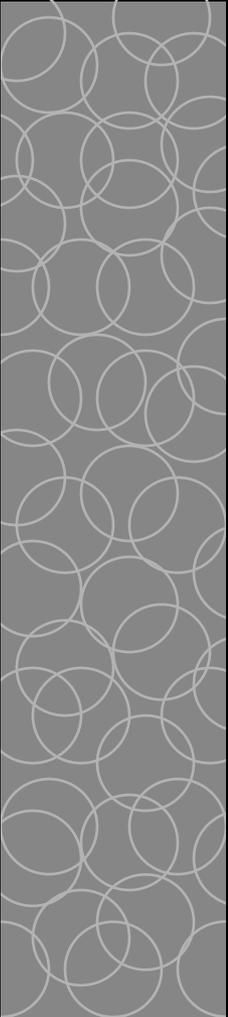
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1. The conviction of an offence either by the order of conditionally discharge or on probation shall not be deemed to be a conviction;
    - i. except for the purpose of proceeding in which order is made and
    - ii. of any subsequent proceeding, may be taken against the offender under the ordinance but
    - iii. if subsequently sentenced for the offence, the offender being not less than 18 years of age at the time of his conviction, the provision of this section shall cease to apply
  2. The conviction of an offender shall in any event be dis-regarded for the purpose of any law,
    - i. imposing any dis-qualification or dis-ability upon the convicted person; or
    - ii. authorizing or requires the imposition of any dis-qualification or dis-ability
  3. Sub-Section 2 shall not affect:
    - i. any right of the offender to appeal against his conviction or
    - ii. to rely thereon in bar of any sub-sequent proceeding for the offence under Section-6 for the restoration of any property in consequence of his conviction.



# Probation for Children under the Juvenile Justice System Ordinance, 2000

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## Section-11 J.J.S.O



Where on conclusion of any inquiry or trial, the juvenile Court finds that a child has committed an offence, then not withstanding anything to the contrary contained in any law for the time being in force, the juvenile Court may, if it thinks fit-

- a) Direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the Court may require, for the good behaviour and well being of the child for any period not exceeding the period of imprisonment awarded to such child;  
Provided that the child released on probation be produced before the juvenile Court periodically on such dates and time as it may direct.
- b) Make an order directing child offender to be sent to a borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.
- c) Reduce the period of imprisonment or probation in the case where the Court is satisfied that further imprisonment or probation shall be unnecessary.



# Duties of a Probation Officer

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## Section-13

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- a) Visit or receive visits from the offender at such reasonable intervals as may be specified in the probation order.
  - b) See that the offender observes the conditions of the bond executed under section 5;
  - c) Report to the Officer-in-charge as to the behaviour of the offender;
  - d) Advise, assist and befriend the offender and when necessary endeavor to find him suitable employment; and
  - e) Perform any other duty, which may be prescribed by the rules made under this Ordinance.

# Duties of a Probation Officer

## Rule-10

- a) 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 endeavor to ensure their observance by the probationer;
- b) In the first two month 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 probation order and any general or special orders of the officer-in-charge, keep n close touch with the probationer meet him frequently, make enquires into his conduct, mode of life and environments and wherever practicable, visit his home from time to time;
- c) If any probationer under his charge be out of employment endeavor to find suitable employment for him and assist, be friend, advise and strive to improve his conduct and general conditions of living;
- d) 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;
- e) 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 other wise misconduct himself, to bring such breach or misconduct to the notice of his sureties;
- f) Maintain the books and registers and submit reports prescribed under these rules; and
- g) Subject to the provisions of these rules; carry out the instructions of the Court in regard to any probationer placed by the Count under his Supervision.

# Registered etc to be Maintained

## Rule-13

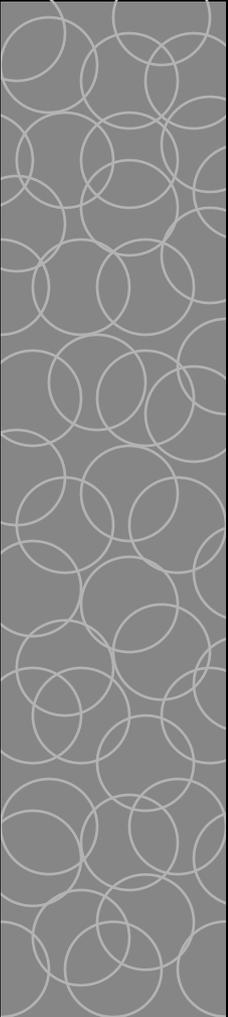
- a) A register of probationers in Form A, which shall be kept in his office under his custody;
- b) A diary on yearly basis, in which shall be recorded from day to day such matters as his visits to and meeting with, the probationers under his supervision and their sureties, the work done by him for the betterment of the probationers and his observations with regard to their conduct and employment;
- c) A book in which separate pages shall be allotted to each probationer under his supervision wherein he shall from time to time make entries regarding the progress or otherwise made by the probationers under his charge; and
- d) Such other records as the Government or the Officer-in-Charge may direct.
  1. The records, that are required to be maintained under this rule, shall be preserved for a period of ten years from the date of the last entry borne thereon.
  2. Entries in the registers prescribed under clause (a) of sub-rule (1) shall be initiated by the presiding officer of the Court passing the Probation order;



# Notice to Probation Officer

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## Rule-22

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- (1) where a court decides to place an offender on probation under section 5, it shall entrust the offender to the charge of the Probation officer.
  - (2) If the Probation Officer be not present in the Court when and order of probation is made by the court, the Court shall issue a notice to probation officer t attend the court on a specified date and take charge of the offender, and in the meanwhile, the court may either direct the offender to be kept in custody or may grant him bail, with or with out sureties and in such amount as the court, in the circumstances of the case, may deem fit.
  - (3) No female offender shall be placed under the supervision of a male Probation Officer.



# Report of Probation Officer

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## Rule-23



A court passing a probation order may require the probation officer to submit reports to it from time to time on the conduct and mode of life of the probationer and the probation officer shall comply with such order.

# Probation Date of Khyber Pakhtunkhwa Upto 09-06-2014

Adult Male	1763
Adult Female	43
Juvenile Male	73
Juvenile Female	4
<b>Total</b>	<b>1883</b>