ADVANCE SOCIAL SCIENCE ARCHIVE JOURNAL
Available Online: https://assajournal.com
Vol. 05 No. 01. Jan-March 2026.Page# 3633-3648
Print ISSN: 3006-2497 Online ISSN: 3006-2500
Platform & Workflow by: Open Journal Systems
https://doi.org/10.5281/zenodo.20791129

Probation, Parole, and the Unmet Promise of the Tokyo Rules in Pakistan

Sanaullah Saeed
LLM Scholar Abdul Wali Khan University Mardan.
sanaullahsaeed922@gmail.com
Zubair Khan (Corresponding Author)
Prof: Dr Muhammad Zubair, Chairman Department of Law, Abdul wali Khan University Mardan.
mzubair@awkum.edu.pk

ABSTRACT
Pakistan has possessed the statutory tools for non-custodial sentencing for nearly a century, yet its prisons remain overcrowded and its criminal justice system stubbornly punitive. This article examines why probation and parole have failed to take root, reading the country's legal framework against the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). Using a doctrinal and analytical method, we study the Probation of Offenders Ordinance 1960, the Good Conduct Prisoners Probational Release Act 1926, and the Khyber Pakhtunkhwa Probation and Parole Act 2021, alongside the case law that has shaped judicial practice. We argue that the obstacles are not primarily a matter of missing law. The 1960 Ordinance empowers courts to divert offenders from prison, but the word may in Section 5 has turned a potential right into an occasional favour. Two further failures compound this: the near-total absence of Social Inquiry Reports, which leaves judges sentencing without knowing the person before them, and a provincial divergence that makes a citizen's chance of rehabilitation depend on geography rather than circumstance. Judicial conservatism, weak institutional capacity, untrained officers, paper-based administration, and the social stigma we call Thana culture together produce a system that looks reformed on paper and stays retributive in practice. We close with a blueprint: compulsory pre-sentence reports, a single national statute to replace the provincial patchwork, professionalisation of the probation cadre, digitised case management, and a restorative model drawing on both the Tokyo Rules and indigenous Islamic principles of reconciliation.

Keywords: *Probation, Parole, Tokyo Rules, Social Inquiry Reports, Non-Custodial Measures, Criminal Justice Reform, Pakistan*

1. Introduction

The criminal justice system in Pakistan carries a familiar set of complaints. Prisons hold far more people than they were built for, a large share of those released return within a few years, and the institutions meant to turn offenders back into citizens rarely manage to do so. Probation and parole exist precisely to ease these pressures, by keeping low-risk offenders out of custody and supervising their return to ordinary life. In Pakistan, however, these mechanisms are barely used, and the reasons reach into the design of the statutes, the habits of the bench, and the attitudes of society at large. The Tokyo Rules, adopted by the United Nations General Assembly in 1990, offer an international benchmark for this kind of reform, setting out how member states should build non-custodial measures that reduce imprisonment while protecting human dignity and the principle of proportionality (United Nations, 1990; Acsinte, 2011). This article takes those Rules as its yardstick and asks a direct question: why, after decades of having the necessary laws, has Pakistan failed to build a working system of community-based corrections?

It helps to fix terms at the outset. Probation is an order of the court that places a convicted offender under supervision in the community instead of sending that person to prison, subject to conditions the court imposes (Boyd, 1977). Parole, by contrast, is the conditional release of a prisoner before the end of a custodial sentence, allowing the remainder to be served in the community under supervision and on the understanding of good behaviour (Nietzel & Himelein, 1987). Both belong to a wider family of non-custodial measures that the Tokyo Rules treat not as acts of leniency but as a normal and necessary part of a proportionate justice system (Okeke et al., 2024). Pakistan introduced these ideas early. The Good Conduct Prisoners Probational Release Act 1926 and the Probation of Offenders Ordinance 1960 placed alternatives to imprisonment on the statute book long before many comparable jurisdictions (Fasihuddin, 2013). On paper, then, the country was an early adopter. In practice, the law has been left to gather dust.

The gap between the text and the reality is the central concern of this study. Bureaucratic neglect, a shortage of trained personnel, and a public mood that equates justice with punishment have kept these statutes from doing their work. The result is a population of minor and first-time offenders held in custody who, under any reading of the Tokyo Rules, ought to be supervised in the community. Worse, the experience of imprisonment frequently makes them more dangerous rather than less, exposing them to hardened offenders and the routines of criminal life (Penal Reform International, 2013; Nabi et al., 2021). The state spends heavily to house people in conditions that increase the likelihood they will offend again, and then absorbs the cost of that reoffending. This is not a marginal inefficiency. It is a structural failure that touches public safety, public finance, and the constitutional dignity of those caught in the system.

The scale of what the Tokyo Rules ask is considerable. They call for individualised sentencing informed by social inquiry, for community participation in reintegration, for the inclusion of victims, and for supervision aimed at reducing reoffending rather than merely tracking an offender's movements. Pakistan falls short on almost every count: judicial officers are often unaware of or unwilling to use their discretion, probation departments are starved of staff and resources, coordination across the justice sector is poor, and society treats community supervision as a soft option (Bhutta et al., 2014; Khan et al., 2024). Each problem reinforces the others.

This article proceeds in stages. We set out the method, then turn to Section 5 of the 1960 Ordinance and the judicial culture around it, including two recent cases that show both the promise and the limits of reform from the bench. We next examine the missing Social Inquiry Report, which we treat as the most consequential procedural failure in Pakistani sentencing, before comparing the older systems of Punjab and Sindh with the rights-based Khyber Pakhtunkhwa Probation and Parole Act 2021. We then map the structural barriers that defeat even good law, from administrative scarcity to prison overcrowding and social stigma, and close with a blueprint for reform built around a unified national statute. Our argument throughout is that Pakistan's problem is less a shortage of law than a refusal to take seriously the law it already has, and that closing the gap requires reform of statute, institution, and attitude together.

2. Method and materials

This study is doctrinal and analytical in character. Rather than gathering new empirical data, it works from legal texts and the existing literature to explain the distance between the law as written and the law as lived. The approach suits the question, because the failure we describe is one of interpretation and implementation rather than of a missing rule, and it becomes visible only in the reading of statutes, the reasoning of judges, and the assessments of policy bodies.

Our primary sources are the governing statutes: the Probation of Offenders Ordinance 1960, the Good Conduct Prisoners Probational Release Act 1926, and the Khyber Pakhtunkhwa Probation and Parole Act 2021, read against the international benchmark of the Tokyo Rules (United Nations, 1990; Melander & Alfredsson, 1997). We treat the Khyber Pakhtunkhwa Act as a deliberate departure from the older model still in force in Punjab and Sindh. For secondary material we draw on assessments by bodies that have studied the system at close range, including Penal Reform International and the Research Society of International Law, alongside scholarship in Pakistani and international journals and commentary in the national press that records how the public and the profession currently regard rehabilitation (Penal Reform International, 2013; Adil, 2021; Hussain, 2013; M. S. Ullah, 2024).

The analytical core is a qualitative reading of case law. We are not counting outcomes but interpreting how judges have used, or declined to use, the powers the statutes give them. Two decisions anchor the discussion: *Bismillah Sanjrani v. The State*, which addresses the availability of probation in narcotics cases where statutory filters have long discouraged it, and *Sughran Bibi v. The State*, which concerns the First Information Report and its grip on the criminal process, with consequences that reach into sentencing. Around these we set a comparative and gap analysis, contrasting the older systems of Punjab and Sindh with the newer model in Khyber Pakhtunkhwa and asking why mandatory instruments such as Social Inquiry Reports remain so little used in practice.

3. Judicial discretion and the architecture of Section 5

When we examine Section 5 of the Probation of Offenders Ordinance 1960, we are not dealing with a dry technicality but with what ought to be the principal gateway to reformative justice in Pakistan (Ali et al., 2023). This is the provision that allows a court to step off the well-worn path of imprisonment and choose supervised liberty instead. Yet the provision is more than sixty years old, and the obvious question is why, with such a tool available for so long, the prisons remain so full. Part of the answer lies in the language and logic of the section itself. A magistrate has the authority under Section 5 to place an offender on probation, but that authority sits inside a framework shaped by colonial caution and judicial wariness. A tool meant for emancipation is rarely picked up, and the reluctance is written into the form of the statute, not only into the practice around it.

Table 1 summarises the main features of the provision.

Table 1. Key provisions of Section 5, Probation of Offenders Ordinance 1960

Aspect	**Description**
Court's power	The court *may* place an offender on probation where it considers such an order expedient, having regard to the nature of the offence and the character of the offender.
Offenders covered	Applies to male offenders convicted of non-serious offences (excluding offences under Chapters VI and VII of the Penal Code or those punishable with death or life imprisonment), and to female offenders convicted of offences not punishable with death.
Probation order	The court may place the offender under supervision for a period of one to three years.
Conditions	The order carries the mandatory conditions in the Schedule, together with any further conditions the court thinks necessary for rehabilitation and the prevention of reoffending (for example residence requirements, abstention from intoxicants, or community service).

Probation officer	The offender is placed under the supervision of a designated probation officer for the duration of the order.
Written bond	The offender must execute a bond undertaking to comply with the conditions of the order.
Recording of reasons	The court must record its reasons in writing when making a probation order.

The most consequential word in Section 5 is *may*, and the legislature's choice of it rather than *shall* changes everything. By using *may*, the drafters turned what could have been a presumptive entitlement of the offender into a matter of judicial grace. Probation becomes the favour of a kindly judge rather than the ordinary course of a rehabilitative system. The default setting of the Pakistani courts remains retributive, because nothing in the statute requires a judge to give reasons for choosing prison over probation. A judge is permitted to be progressive but is never obliged to be. The statutory power therefore exists on paper while being smothered by a conservative judicial culture that still treats the prison cell as the natural home of justice.

Section 5 also directs the court to weigh the age, character, and antecedents of the offender along with the circumstances of the crime. This looks holistic, but in practice it conceals a trap. In the courtroom, the circumstances of an offence are almost always read through the First Information Report lodged by the police. The FIR is a document built to establish guilt, not to explain human suffering (Batool et al., 2024). It rarely records that an offender stole to eat or was in the grip of a mental health crisis. By anchoring their decisions in what was done rather than why it was done, judges strip Section 5 of its restorative potential. A genuine inquiry into character would require a Social Inquiry Report prepared by a trained probation officer, yet Section 5 does not make such a report a precondition of sentencing. We are, in effect, asking judges to perform social surgery without a diagnosis.

There is a further difficulty in the offence filter built into the section, which excludes those convicted of offences punishable with death or life imprisonment. The concern for public safety behind this exclusion is not unreasonable, but the rigid line ignores what is now known about the capacity of many offenders to change, and it keeps in prison a large number of lower-level offenders who might safely have been supervised in the community. The statute was written for a different era. In 2024, Pakistan still governs this field with a 1960 instrument that says nothing of electronic monitoring, paid community work, or the other non-custodial tools that modern systems take for granted (Khadam et al., 2025). An old engine is being asked to pull a modern train.

The probation bond deserves a second look as well. It is in substance a contract between state and offender, resting on mutual obligation: the offender promises good behaviour, but the bargain holds only if the state delivers the supervision and guidance it assumes. In most jurisdictions the probation department is poorly funded and treated as an afterthought, so that an order under Section 5 often amounts to empty probation. The statutory power then becomes a legal fiction, and when the state cannot provide the oversight the bond promises, Section 5 endangers public safety rather than serving it.

Set against the Tokyo Rules, the limits of Section 5 come into focus. Rule 1.5 expects member states to develop non-custodial measures precisely in order to reduce the use of imprisonment (Melander & Alfredsson, 1997). Section 5 is Pakistan's attempt to meet that expectation, but it satisfies the letter while missing the substance. The Rules stress the dignity of the offender and the principle of minimum intervention; Section 5, as applied, leaves the state in firm control and the offender at the mercy of judicial mood. The remedy is a shift in the burden. The law should

be amended so that a judge must justify why probation is *not* appropriate, with non-custodial options tried first in all non-violent cases. Until the culture moves from permission to obligation, Section 5 will remain a sleeping giant and the prisons will go on serving as warehouses for the poor.

3.1 Reluctance and activism on the bench

The use of probation in Pakistan is not only a question of statutory interpretation; it is also a contest within the mind of the judiciary. The 1960 Ordinance confers the power, but whether that power is exercised depends on whether a judge leans toward reluctance or toward activism, and for decades the dominant tendency has been reluctance. This is not usually a matter of indifference to reform. It reflects a system that rewards the safety of tradition and treats innovation as a risk. When a judge sends an offender to a cell rather than to a probation officer, that choice expresses a culture of caution which regards the prison wall as the only reliable guarantee of public safety. The reasoning is flawed, because in Pakistan prisons often function as schools of crime where minor offenders are hardened by their surroundings. Breaking that cycle requires more than new statutes; it requires a change in judicial philosophy of the kind the Tokyo Rules envisage, one oriented toward reintegration rather than retribution (Unguru & Sandu, 2014).

The reluctance follows a path of least resistance. A magistrate who grants probation takes a personal and professional risk: if the probationer offends again, the judge faces scrutiny, whereas sending the same person to an overcrowded prison attracts no such criticism because it conforms to the conventional expectation of punishment. The structural incentive therefore runs against non-custodial measures, in tension with the Tokyo Rules' treatment of imprisonment as a last resort, and the bench has in effect sidelined the 1960 Ordinance through routine custodial sentencing without ever repealing it. Correcting this calls for a measured judicial activism, kept within constitutional limits but directed at rehabilitative outcomes, in which judges see themselves not only as punishers but as actors capable of repairing the relationship between offender and community (Boyd, 1977).

3.2 Bismillah Sanjrani v. The State: probation in narcotics cases

The *Bismillah Sanjrani* decision matters because it addresses an area where probation had long seemed impossible. For years the Control of Narcotic Substances Act was read as an absolute barrier to the 1960 Ordinance in drug cases, on the view that any involvement with narcotics, however minor, demanded the severest response. The *Sanjrani* court broke with that fear-driven approach. It held that the offence filter should not be applied mechanically, drawing a line between the courier or the addict and the trafficker, and affirming that the law exists to correct and reduce social harm rather than to bury it behind prison walls (High Court of Sindh, 2021).

The progressive force of the ruling lies in how it connects strict drug legislation to the reformative spirit of the Tokyo Rules. Rule 2.3 expects criminal justice systems to offer a range of non-custodial options adaptable to the circumstances of the individual offender (Melander & Alfredsson, 1997), and that is exactly the flexibility *Sanjrani* introduces. The decision presses the system to look past the label of the offence to the person behind it, and to recognise that real firmness lies in applying the law with judgement rather than in reflexive severity. It is an example of judicial activism that joins legal reasoning to a measured empathy, protecting both the individual's capacity for change and the social interest in reducing reoffending.

3.3 Sughran Bibi v. The State: the FIR and the sentencing ripple

If *Sanjrani* speaks to outcomes, *Sughran Bibi v. The State* speaks to procedure, and to the procedural chains that have long constrained activism. The First Information Report has occupied a commanding place in the Pakistani legal imagination, setting the narrative of a case and

frequently shaping the severity of the sentence before trial has even begun (Alnuzaili et al., n.d.). The *Sughran Bibi* decision was significant for curbing the practice of multiple FIRs and supplementary statements through which the record could be distorted. For our purposes the important point is the ripple effect of that holding on sentencing. When the FIR dominates the trial, the judge is often prejudiced against probation from the outset; if the report paints the accused as a monster, the court is unlikely to undertake the inquiry into character and antecedents that Section 5 requires before a probation order can be made (Adil, 2018).

There is a deeper lesson here. A system that remains FIR-centric can never become rehabilitation-centric. *Sughran Bibi* was the activism needed to clear the procedural fog at the start of a case, but no comparable correction has yet been made at the other end, in the sentencing phase. We have worked to ensure that the police cannot lie at the beginning, while still not requiring the court to inquire into the offender's social background at the end. What is needed is a form of sentencing proceduralism: just as *Sughran Bibi* limited the power of the police to shape the FIR, a further reform is required to limit the power of the court to sentence without a compulsory Social Inquiry Report. Without such a report, the judge is effectively sentencing in the dark (Adil, 2018). Taken together, the two cases point a way forward, one supplying the will to reform and the other the procedural honesty to support it, but the principles announced in the higher courts have yet to reach the daily work of the magistracy, where reluctance persists for want of the administrative support that activism requires.

4. The missing Social Inquiry Report

To understand why the probation system in Pakistan is so often described as a ghost in the machine, we have to look at the most important missing element of the sentencing process: the Social Inquiry Report (White, 1972). Under Rule 7 of the Tokyo Rules, the use of such reports is treated as basic to informed and individualised sentencing. The Rule provides that, where the possibility of a non-custodial measure exists, the judicial authority should have before it a report by a competent officer containing social information about the offender. Pakistani magistrates are entitled to call for such reports under the 1960 Ordinance, but they seldom do, and the result is a diagnostic vacuum in which life-changing decisions are made on legal technicalities rather than social facts. We treat this not merely as an administrative shortcoming but as a question of fair trial, because a sentencing process that does not know the person being sentenced cannot claim to be fair (United Nations, 1990).

The root of the problem is the institutional distance between the judiciary and the probation department. In a functioning system the probation officer serves as the court's eyes and ears in the community, but in Pakistan the relationship is one of neglect. Most judges regard the probation officer as a junior administrative clerk rather than as a professional social investigator, and in declining to call for a report they signal that social truth matters less than police truth. The signal is mistaken. The FIR tells the court what the offender did on a particular afternoon; the Social Inquiry Report would tell the court who the offender has been over many years. By disregarding Rule 7, the courts adopt a flat, two-dimensional picture of conduct in place of a fuller account of a human life, and it is this shallowness that sends so many first-time offenders to prison for acts plainly rooted in poverty or the absence of any guidance.

It is worth confronting the resource argument usually offered to explain the absence of these reports: that Pakistan cannot afford a detailed report for every offender given the volume of cases and the shortage of officers. Probation departments are indeed underfunded, but the argument is circular, since they are not funded because they are not used and not used because they are not funded. The cost of omitting the report is in fact greater. When a judge imprisons an offender without a social assessment, the state assumes the expense of housing and guarding

that person, and society pays again when the same individual returns hardened by the experience. Read through the logic of the Tokyo Rules, the report is a cost-saving device, and its neglect is an economic failure as much as a legal one.

There is also a psychological barrier on the bench concerning what these reports contain. Many judges treat attention to social factors such as poverty or family circumstance as a weakness, or as a kind of judicial populism, believing the law should be socially blind. This misunderstands equality. Real equality before the law requires that the court treat unequal cases differently. The wealthy man who steals out of greed is not in the same position as the starving man who steals to live, and Rule 7 of the Tokyo Rules exists precisely to supply the social context that allows the distinction to be drawn (United Nations, 1990). Where the court sentences without that context it engages in blind sentencing, which is the opposite of impartial justice, and the practical effect is a class bias in the prison population, since those least able to afford counsel to explain their circumstances are the least likely to receive probation.

Even the few reports produced reveal a quality gap. Where a magistrate does call for one, it tends to be brief, handwritten, and devoid of any real psychological assessment, treated as a formality rather than a professional evaluation. The cause is that probation officers are rarely trained in modern social work or criminology, and are too often accidental bureaucrats without the tools to examine an offender's life in depth. This produces a cycle of disrespect: the judge distrusts the report for its poor quality, while the officer sees no reason to invest in a document the judge will not read (Hussain, 2009). Breaking the cycle requires professionalising the report into a properly evidenced assessment that uses structured instruments to gauge the risk of reoffending, in line with the standard the Tokyo Rules set.

5. Provincial divergence and the Khyber Pakhtunkhwa model

Probation and parole in Pakistan are fractured along provincial lines. The federal Ordinance of 1960 supplies a baseline, but implementation differs so sharply between provinces that an offender's chance of receiving rehabilitative help often depends on where the offence took place rather than on who the offender is or what capacity for change they possess. Punjab and Sindh continue to operate the older colonial framework, poorly applied and rarely invoked. Khyber Pakhtunkhwa, by contrast, enacted its own probation legislation in 2021 and has begun, however unevenly, to implement it (Hussain, 2013).

The divergence is a gap not just between rules but between underlying purposes. Khyber Pakhtunkhwa is moving, at least in design, toward a rights-based system that tracks the Tokyo Rules' emphasis on rehabilitation and individualised justice, while Punjab and Sindh remain within a discretionary system in which probation is a secondary administrative option rather than a primary instrument of reform. The contrast is philosophical as much as legislative. In Punjab and Sindh the picture is one of institutional stagnation: these are the most populous provinces with the highest levels of overcrowding, yet their use of probation is minimal. The reclamation and probation departments sit deep within the Home Department, lacking both funds and political backing, and the unreformed 1960 Ordinance imposes no requirement of community service or vocational reintegration. The probation officer's role is frequently reduced to that of a signature collector, confirming only that an offender has not left the district. The system is underused not for want of eligible offenders but because the administrative machinery has never modernised its idea of what probation is for, treating it as a way to empty cells rather than to build citizens (Ali et al., 2023).

The Khyber Pakhtunkhwa Probation and Parole Act 2021 takes a different course, and it is worth examining in some detail because it represents the most serious attempt yet to translate the principles of the Tokyo Rules into Pakistani law (H. Ullah et al., 2024).

5.1 Community service and vocational training as statutory rights

The Act's most important innovations sit in its treatment of community service and vocational training, which it converts from vague possibilities into structured statutory provisions. Where the 1960 Ordinance treated probation as a passive measure, a suspended sentence that merely kept the offender out of prison, the 2021 Act introduces an active model of rehabilitation built around reintegration (Khyber Pakhtunkhwa Probation and Parole Act, 2021).

Section 7 introduces community service as a non-custodial measure and, in doing so, reworks the Pakistani idea of a debt to society. The older retributive model held that the debt was paid through suffering or isolation; the Act recasts it as a form of restitution, aligning with Rule 8.2 of the Tokyo Rules, which favours measures that increase an offender's responsibility toward the community harmed (United Nations, 1990). Community service does two things at once. It deters, because it costs the offender time and effort, and it repairs, because it allows the offender to contribute something of value, whether by maintaining public spaces, assisting in municipal offices, or supporting local hospitals. The provision requires care in its application, however. Rule 3.11 of the Tokyo Rules forbids any measure that amounts to cruel, inhuman, or degrading treatment, and in the Pakistani social setting the line between restorative work and public shaming is thin. Community service carried out in a way that humiliates the offender risks deepening resentment and feeding reoffending; the strength of the Act lies in its capacity to support dignified restitution, in which the offender takes pride in the contribution rather than being shamed by the conviction.

Section 8 may be the most practically significant innovation in the Act, because it addresses the economic roots of much offending. A close look at the Pakistani prison population shows that most inmates are unskilled, semi-literate, and poor (Sheikh et al., 2021). For such people crime is frequently a response to economic exclusion, and the 1960 model ignored this entirely, returning offenders to the same deprivation that had led to their arrest. By making vocational training a structured part of the probation experience, Section 8 interrupts that cycle and turns the probation officer from a monitor into something closer to a careers adviser, which is the individualised approach Rule 13.1 of the Tokyo Rules calls for (United Nations, 1990). Offering marketable skills, from technical trades to digital literacy, gives the offender a route out of the criminal economy. The logic is pre-emptive: a person able to earn a decent living is far less likely to reoffend, and a short vocational course costs a fraction of a long custodial sentence.

Underlying both provisions is a shift from a charity-based to a rights-based understanding of reform. Under the 1960 Ordinance, probation was widely regarded as an act of mercy, a gift of the judge dispensed at discretion. By offering reform programmes in a structured statutory form, the 2021 Act creates expectations that qualified offenders can hold the state to, bringing Pakistan closer to the standards of both the Tokyo Rules and the Mandela Rules (Khan & Bashir, 2023). The qualification is that a rights-based approach is only as strong as its delivery. Sections 7 and 8 are firmly drafted, but they do not yet specify the individualised case management that Rule 12.1 contemplates; the Act provides the instruments without a manual for fitting them to the particular profile of each offender (United Nations, 1990).

5.2 From bureaucratic discretion to professional governance

The 2021 Act also replaces a single-official model of decision-making with a multi-tiered structure (Ibrahim et al., 2025). Under the colonial arrangement, one officer of the Home Department could grant or refuse parole, often behind closed doors, creating a bottleneck in which candidates ready for reintegration were left waiting or turned down. The Act decentralises this through a Provincial Parole Committee under Section 14, and the change is more than

administrative: it recognises that reintegration is a social process requiring several kinds of expertise rather than the will of one person.

The committee's chief virtue is its diversity, bringing judges, police, and social workers together so that checks and balances are built into the process. The old model was dominated by a police perspective that bred reluctance to grant parole; including social workers gives the prisoner's rehabilitative progress equal weight alongside the assessment of risk, reflecting Rule 1.3 of the Tokyo Rules and its search for equilibrium among victim, offender, and public safety (United Nations, 1990). For this to work, the committee needs genuine independence and its own budget rather than the status of a rubber stamp. Section 16 adds district-level sub-committees, recognising that rehabilitation happens within a community, and Section 15 strengthens transparency through formal minutes, though it stops short of giving offenders a right to be heard in person. The shift to committee decisions also disperses the blame that once fell on a single official, making bolder reform easier to attempt.

5.3 The implementation gap

For all its ambition, the Khyber Pakhtunkhwa Act is judged by its effect, and here an implementation gap has opened that threatens to swallow the reform. Two problems stand out. The first is a notification gap: the Act permits magistrates to order community service and vocational training, but it does not set out the operational detail, leaving magistrates without an approved list of partner organisations or a monitoring system through which such sentences could actually be served (Mair & Canton, 2013). The Act tells a court what it may do without telling it how, and an offender can therefore be placed into a programme that lacks supervision, reporting, and accountability. This sits awkwardly with Rule 2.2 of the Tokyo Rules, which requires non-custodial measures to be credible, and credibility depends on institutional infrastructure that has not yet been built (United Nations, 1990). Faced with crowded dockets and unsupported alternatives, judges drift back toward the custodial sentence, so that prison remains the first resort and overcrowding persists even under a statute designed to reduce it.

The second problem is the bar on repeat offenders. Section 4 of the Act, echoing its 1960 predecessor, tends to treat those with previous convictions as unworthy of rehabilitation, which is at odds with the very idea of reformative justice. If the aim is to change behaviour, then those who have failed before are precisely the people who need the most intensive intervention, and denying them probation and parole consigns them to a cycle of reoffending. The blanket exclusion is hard to reconcile with the Tokyo Rules' emphasis on non-discrimination and on a diversity of measures matched to individual need, particularly in a setting where many repeat offences are crimes of survival or the product of absent post-release support. A better approach would replace the categorical bar with a risk-needs-responsivity model, under which the parole committee uses structured assessment to gauge the level of risk an offender presents and the specific needs, whether in drug rehabilitation, education, or employment, that must be addressed to reduce it (Harris & Lo, 2002). Intensive supervision, rather than outright exclusion, would allow the state to work with its highest-risk citizens instead of abandoning them.

5.4 The forgotten victim

There is one further imbalance in the Khyber Pakhtunkhwa model that any honest account must record. The Act is attentive to the offender and to public safety, but it gives the victim little voice. Rule 18.1 of the Tokyo Rules expects victims to be informed and to participate in non-custodial decisions, yet in the current system parole is largely paperwork between the offender, the parole board, and the Home Department, with no requirement of a victim impact statement after sentencing or parole (Miller, 2011). When the voice of the victim disappears, the community is left with unresolved anger and fear, and genuine reintegration becomes far harder to achieve. A

related gap concerns restorative mediation. Pakistan's Qisas and Diyat provisions already allow some offences to be settled outside formal proceedings, though they can be coercive or unequal in practice (Jamal, 2025), and the Act could establish a regulated, state-supervised mediation channel for probationable offences in which trained officers facilitate an apology and an agreed reparation. We therefore suggest that the conventional risk-needs-responsivity framework be widened into a risk-needs-victim model, one that asks not only what danger the offender poses and what the offender needs to change, but also what the victim needs by way of closure, restitution, and safety. Such a model would bring the Act much closer to the balance of rights the Tokyo Rules require.

6. The structural barriers

Even a well-drafted statute fails without the human and administrative infrastructure to carry it, and it is here that the Pakistani system is at its weakest (Edetalehn et al., 2023; Nabi et al., 2021). The shortage is not a simple budgeting oversight but a priority deficit in the state's idea of security: vast sums are spent on the hardware of justice, on police weaponry, vehicles, and prison walls, while the software of reform, the probation officers and the tools of social inquiry, is left to decay. A weak system is in some ways more damaging than an openly punitive one, because it offers the appearance of rehabilitation while delivering neglect.

The clearest sign of weakness is the caseload (Ali & Gul, 2024). In the larger districts of Punjab and Khyber Pakhtunkhwa a single officer may be responsible for hundreds of probationers, a number that changes the nature of the job. Rule 10.1 of the Tokyo Rules expects supervision to aim at reintegration, which means home visits, attention to the offender's family and finances, and sustained contact. An officer carrying five hundred files cannot do any of this and is reduced to a checklist, with contact compressed into a brief monthly signature in a register. The 1960 Ordinance and the 2021 Act both assume the probationer is being mentored, while the lack of resources ensures only that the probationer is being tracked (Ali et al., n.d.). High caseloads also force a triage in which overstretched officers concentrate on the easiest, lowest-risk cases, so that the offenders who most need intensive help are the ones the system is least able to assist.

Training is the second fault line. Rule 15.1 of the Tokyo Rules ties recruitment and training to reasonable standards and to the varied needs of offenders, but in Pakistan probation work is treated as a general administrative posting rather than as a specialism in social science, criminology, or psychology (Hussain, 2009). Officers enter the field without the skills the work demands, untrained in risk assessment, in motivational interviewing, or in trauma-informed practice, and their reports are correspondingly thin and formulaic. The state ends up sentencing by template, reporting the what of an offence because its officers cannot examine the why, and the innovations of the 2021 Act risk becoming orphaned provisions, alive on paper but without skilled practitioners to deliver them (Khyber Pakhtunkhwa Probation and Parole Act, 2021).

Infrastructure compounds the difficulty. Many probation offices still run on paper, and the absence of a national database means an offender's history is lost the moment they move between districts, in tension with the Tokyo Rules' expectation of systematic monitoring under Rule 2.4. The digital divide also raises a practical barrier to compliance, since probationers in rural areas must travel long distances to a central office at a cost they often cannot meet, which sets them up to fail and then punishes the failure (Fasihuddin, 2013). Behind all of this lies the morale of the officers themselves: heavy caseloads, low status relative to the police, and limited advancement breed a quiet cynicism, and a burned-out officer reaches for the path of least resistance rather than the careful work reintegration requires (Zaheer et al., 2025).

6.1 Restorative and indigenous traditions

A more humane system cannot be built without engaging the cultural and religious setting in which it must operate. The Tokyo Rules offer a secular framework, but their successful application in Pakistan depends on connecting modern probation principles to indigenous and Islamic restorative traditions (Chaudhary et al., 2024). The concepts of *Afw* (forgiveness), *Diyat* (compensation), and *Sulh* (reconciliation) shift the focus from harm to the state toward harm to the victim, and they map closely onto the rehabilitative aims of international law. *Afw* can serve as a community act of forgiveness that allows a magistrate to grant probation, consistent with the balance Rule 1.4 seeks to strike (Baidhawy, 2013). *Diyat*, historically reserved for serious offences, can operate as a form of productive restitution alongside the community service and vocational provisions of the 2021 Act, turning a debt into direct repair. *Sulh*, or mediated reconciliation, casts the probation officer as a facilitator of social settlement, in keeping with the community participation that Rule 17.1 encourages (United Nations, 1990).

The difficulty is that Pakistani courts tend to compartmentalise these traditions, keeping Sharia principles and the Code of Criminal Procedure in separate boxes (Wasti, 2009). Judges fear that admitting customary practice will diminish the majesty of the law, when the real majesty of a court lies in its capacity to resolve a conflict rather than merely to process a case. There is also a legitimate worry about coerced forgiveness, that the powerful might use *Diyat* or *Afw* to escape accountability while the poor are pressed to forgive, and it is precisely a regulated probation system that could guard against this by keeping reconciliation voluntary and supervised (Amanullah, 2004). What Pakistan needs is a model of restorative probation that educates judges in restorative criminology, gives statutory recognition to the officer's role in facilitating *Sulh*, and uses community sub-committees to legitimise reconciliation within a human rights frame (Waqas et al., 2022).

6.2 Overcrowding and the Mandela Rules

The underuse of probation and parole has a direct and visible consequence in the overcrowding of prisons, which in turn breaches the Nelson Mandela Rules on the treatment of prisoners. In Punjab and Sindh, prisons frequently run at 150 to 200 per cent of capacity, and most of those held are first-time or non-violent offenders, the very people the 2021 Act was meant to divert (Ali & Ali, n.d.). The Mandela Rules require that prisoners be treated with inherent dignity (McCall-Smith, 2016), but overcrowding makes compliance impossible: accommodation and privacy collapse, sanitation is overwhelmed, and health care is reduced to a form of triage that produces preventable suffering. The deeper damage is to reform itself, since there is no space to deliver the vocational training the Act promises, and minor offenders confined alongside hardened ones serve an unintended apprenticeship in crime, so that the prison manufactures more dangerous people (Smit, 2023). The pattern is hard to defend even on its own economic terms, since it costs far more to hold and guard a prisoner than to supervise that person on parole, and a modest expansion in the release of eligible prisoners would improve compliance with the Mandela Rules while easing the fiscal burden (Petersilia, 2003).

6.3 Thana culture and social stigma

The final barrier is social. Even with better law and better resources, the probation system runs into a public attitude we describe as *Thana* culture, in which justice is felt to be done only when someone is locked up (Anjum & Rehman, 2022). On this view the release of an offender on probation or parole looks like a failure of the system, or like the product of a bribe, which makes community service and local supervision harder to implement and leaves the offender's reparative work regarded with suspicion rather than support. The stigma is also a driver of reoffending. Those processed through the system are marked in a way that follows them afterward, closing off employment, straining family ties, and inviting continued harassment, so

that the legitimate routes back into society narrow and the criminal networks remain open. Vocational skills cannot by themselves overcome a blackened character certificate (Khyber Pakhtunkhwa Probation and Parole Act, 2021). Overcoming this requires reframing reform as responsibility rather than mercy, presenting supervised community service as a demanding form of restitution, and using the community participation that Rule 17 envisages to enlist local, religious, and educational leaders in changing public expectations. The stigma is, at bottom, a design problem, because a process that is administrative and invisible breeds fear; making rehabilitation visible and crediting its successes is part of how a *Thana* culture can give way to a culture of reintegration.

7. A blueprint for reform

The findings above describe a rehabilitative deadlock, in which a legislature that drafts reforms confronts a judiciary that holds to retributive habit, producing law that lives on paper but not in the courts (Khan & Qadri, 2023). Two forces sustain the deadlock. The first is legal stagnation: progressive statutes such as the 2021 Act are passed with fanfare and then starved of the rules of business, funding, and administrative structure needed to bring them to life, so that provisions for community service and vocational training remain inactive (Khyber Pakhtunkhwa Probation and Parole Act, 2021). The second is judicial conservatism, a defensive sentencing in which judges are praised for severity and criticised for leniency, and therefore avoid the non-custodial options the law allows (Gillani & Anjum, 2024). The two forces feed each other, because under-use keeps the probation department poor, and a poor department justifies further reluctance. Breaking the cycle requires reform on several fronts at once.

The first reform is to make the Social Inquiry Report compulsory. The largest procedural weakness in Pakistani sentencing is the discretionary character of the report under both the 1960 Ordinance and the 2021 Act, and the remedy is a mandatory procedural trigger (Khan et al., 2025). The Code of Criminal Procedure and any future national statute should require a Social Inquiry Report, prepared by a qualified officer, before a custodial sentence is passed on a first-time offender or for an offence carrying seven years or less. Compelling the court to engage with the offender's circumstances before choosing imprisonment turns the report from an option into an obligation, in line with Rule 7.1 of the Tokyo Rules, and it disarms judicial conservatism by supplying the evidence judges need to feel secure in ordering a non-custodial measure.

The second reform is structural and, in our view, decisive: the repeal of the 1960 Ordinance and the provincial patchwork in favour of a single national statute (Haider, 2024). The present fragmentation is hard to square with the principle that all citizens are equal before the law, since the same conduct can attract very different consequences depending on whether it occurs in Mardan or Lahore (Haider et al., 2023). A unified national probation and parole framework should establish a national digital registry tracking everyone under supervision, set statutory caseload limits with an automatic budget review when those limits are exceeded, build indigenous reconciliation principles such as *Afw* and *Sulh* into the regulatory scheme, and provide for automatic parole review once a prisoner has served half a sentence. Such a framework would close the inter-provincial gaps and give the progressive ideas tested in Khyber Pakhtunkhwa a national footing.

The third reform addresses the people who run the system. No statute can outperform the administration that carries it, and the national framework should therefore create a professional probation and parole service, recruited on the basis of specialist degrees in criminology, sociology, or psychology, with status, pay, and training comparable to the police or the judiciary. A training mandate requiring annual certification in risk-needs-responsivity models and trauma-

informed practice would close the amateurism that now hollows out the Social Inquiry Report and would satisfy the competence standard of Rule 15 (Drakulevski, 2017).

The fourth reform is institutional and technological, since even the best statute will stall without modern administration. An integrated case management system should link police, courts, prisons, and probation in real time, replacing the dusty registers in which eligibility for parole is currently buried. With automatic eligibility triggers, parole would become a matter of review by right rather than application by favour, and a dashboard showing the real success rates of non-custodial measures in each jurisdiction would replace a risk-averse instinct with evidence, in line with Rule 16.1 (Gillani & Anjum, 2024); the same data would flag probationers who need more intensive supervision. Oversight, too, should be made independent. The probation and reclamation departments now sit under the Home Department, exposed to political interference, and an independent commission of rehabilitative services would offer an ombudsman for probationers, audit mandatory reports to ensure they are genuinely prepared, and publish an annual report on prison occupancy, parole use, and vocational training, imposing a reputational cost on failure (Ahmad & Hussain, 2025; United Nations, 1990).

8. Conclusion

The reform of probation and parole in Pakistan is not, at bottom, a technical adjustment of policy but a question of human rights and constitutional fidelity. Article 14 of the Constitution declares the dignity of the individual inviolable, and a system that warehouses minor offenders in conditions that breach the Mandela Rules, while declining to use the non-custodial tools the law already provides, sets that guarantee at naught. The journey from the 1960 Ordinance to the Khyber Pakhtunkhwa Act of 2021 shows that the state knows what reform looks like; what it has lacked is the will to fund, staff, and apply it. The statutes are in place, the international benchmarks are clear, and the case law has begun to point the way, yet the prisons remain full because the culture of the bench and the neglect of the probation service have kept the law asleep.

We have argued that the obstacles form a connected system. A permissive Section 5 invites judicial reluctance; reluctance starves the probation department; a starved department produces no credible Social Inquiry Reports; and without those reports judges return to the prison as their default, which keeps the prisons overcrowded and the public attached to a punitive idea of justice. Each failure justifies the next. Cutting through it requires action on all of them together: a compulsory Social Inquiry Report to humanise sentencing, a unified national statute to end the lottery of provincial difference, a professional cadre to give supervision substance, digitised administration and independent oversight to make the system credible, and a restorative model that draws on Pakistan's own traditions of reconciliation as well as on the Tokyo Rules. None of this treats the offender as beyond the reach of the law's protection. A society, in the end, is measured less by the severity of its punishments than by its capacity to repair, and a Pakistani justice system that learns to restore rather than only to confine would be both safer and more faithful to its own constitution.

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