

10. Define and distinguish parole and probation according to the Anglo-American criminal justice system. How probation is incorporated in Bangladeshi criminal justice system?

Parole:

Parole is a conditional release from prison that allows a person to serve the remainder of their sentence under supervision in the community, rather than in a correctional facility. The parole system is a component of the correctional system that allows for the early release of inmates from prison under specific conditions, based on their behavior and rehabilitation progress.

- The term Parole was Emanated from Military Law. It was granted to a prisoner of war on promise to return.
- Some have pointed out that starting as an informal process parole historically based on the concept of pardon.
- Parole is a conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an Institution, if he satisfactory compiles with all terms and conditions provides in parolee order.
- **According to Donald Taft**, "Parole is a release from prison after part of the sentence has been served, the prisoner still remaining in custody and under stated conditions until discharged and liable to return to the institution for violation of any of these conditions."

Probation:

- The word Probation has been derived from the Latin word "probare" meaning "to test or to prove".
- Probation is a conditional release under supervision to test whether the offender reform or not.
- Probation is a court-ordered period of supervision that allows individuals convicted of a crime to remain in the community under specific conditions, rather than serving time in prison. It is typically used as an alternative to incarceration or as part of a sentence following a prison term.
- The philosophy of probation today rests on the assumption that the typical offender is not a dangerous criminal or a "menace to society," but someone who has made a mistake and has the ability and potential to reform.
- When such offenders are institutionalized instead of being granted community release, the prison community becomes their new reference point, they are forced to interact with hardened criminals which impede their successful rehabilitation and increase the likelihood of recidivism.
- Probation provides offenders with the opportunity to prove themselves, gives them a second chance, and allows them to be closely supervised by trained personnel who can help them reestablish proper forms of behavior in the community.
- Over 4.2 million people are currently on probation in the USA.
- **According to Donal Taft**, Probation is "the postponement of final judgment or sentence in a criminal case, giving the offender an opportunity to improve his conduct and to readjust himself to the community under some coditions imposed by the court."

Difference between parole and probation:

Aspect	Parole	Probation
Timing	Granted after serving part of a prison sentence	Imposed instead of incarceration during sentencing
Eligibility	Determined by a parole board; not all inmates qualify	Decided by the judge at sentencing; often for less severe offenses
Purpose	To allow early release from prison with supervision	To avoid imprisonment while still imposing supervision
Application Stage	Post-sentencing, during incarceration	During the sentencing phase
Decision Authority	Parole board or similar body	Judge
Conditions	Set by the parole board; often includes specific terms	Set by the court; includes conditions tailored to the offense
Supervision	Supervised by a parole officer	Supervised by a probation officer
Revocation	Violations can lead to return to prison to serve the full sentence	Violations can result in incarceration or modified conditions
Nature of Sentence	Involves serving the remainder of the sentence in the community	Avoids incarceration, but under strict supervision
Violation Consequences	Return to prison to complete the original sentence	Possible incarceration, additional conditions, or other sanctions
Eligibility Criteria	Based on behavior, sentence length, and nature of crime	Based on the offender's background, nature of the offense, and other factors
Early Release	Allows for release before completing the full prison term	Avoids incarceration from the start
Post-Incarceration	Parole is a post-incarceration option	Probation is an alternative to incarceration
Focus	Reintegration after a portion of the sentence has been served	Rehabilitation and monitoring without prison time
Risk Assessment	Parole decisions often involve risk assessments and evaluations	Risk assessments are part of the initial sentencing decision

► Without probation, the correctional system would rapidly become even more overcrowded, overly expensive, and unmanageable.

History of probation in the USA:

- * Early U.S. courts continued the practice of indefinitely suspending sentences of criminals who seemed deserving of a second chance, but it was John Augustus of Boston who is usually credited with originating the modern probation concept.
- * As a private citizen, Augustus began in 1841 to supervise offenders released to his custody by a Boston judge. Over an 18-year period, Augustus supervised close to 2,000 probationers and helped them get jobs and establish themselves in the community.
- * Augustus had an amazingly high success rate, and few of his charges became involved in crime again.
- * In 1878, Augustus's work inspired the Massachusetts legislature to pass a law authorizing the appointment of a paid probation officer for the city of Boston.
- * In 1880 probation was extended to other jurisdictions in Massachusetts, and by 1898 the probation movement had spread to the superior (felony) courts.
- * In 1925, the federal government established a probation system for the U.S. district courts. The probation concept soon became the most widely used correctional mechanism in the United States.

Probation Law in Bangladesh:

- ✓ Sections 562, 563 and 564 of the CrPC embodied the laws of probation.
- ✓ later on the Children Act, 1908 was passed and empowered the court to release certain juveniles on probation of good conduct.
- ✓ In 1916 a committee was appointed to review section 562 of CrPC to extend the application of probation. It was extended in 1923 by an enactment.
- ✓ In 1931 Central Government of India prepared a bill on probation and sent it to provincial government.
- ✓ Sections 562, 563 and 564 of the CrPC were replaced by the Probation of Offenders Ordinance, 1960. Then Probation of Offenders Rules 1971.
- ✓ From then the Probation of Offenders Ordinance, 1960 and the Probation of Offenders Rules 1971 regulate the system of probation in Bangladesh.
- ✓ The High Court Division has further elucidated the underlying objective of probation in the case of **Abdul Khaleque vs. Hazera Begum and Another [58 DLR 322 (2006)]**, asserting that Bangladesh's penal system fundamentally leans towards reform and rehabilitation rather than retribution.
- ✓ If a person is convicted of an offence punishable with imprisonment for not more than two years, a court can consider the age, character, antecedents or physical or mental condition of the offender and the nature of offence or any extenuating circumstances attending the commission of offence. After considering these factors, a court has two options:
- ✓ Firstly, Make an order to discharge the offender after due admonition
- ✓ Secondly, a court may make an order to discharge the convicted person on the conditions of good behavior which may be defined as non-custodial sanction.

- Legal provisions for non-custodial sanctions-
 - I. Bail: at the Pre/during trial stage
 - II. Probation/fines: at the sentencing stage -
 - III. Parole: Post sentencing (during imprisonment)
- ✓ * Recent legislative developments have taken into account particular matters concerning the probation of female offenders by enacting The Special Privileges for Convicted Women Act, 2006.
- ✓ Furthermore, specific sections of the Children Act, 2013 such as Section 22(4), 31(1), 31(2), 34(7), and 34(8), delineate various formalities integral to the process of probation for children.
- Probation serves a multifaceted purpose aimed at preventing recurring offenses by the same individual or the commission of new offenses, while also focusing on the rehabilitation of the offender into an upright, productive, and law-abiding member of society.

How probation to be make:

- **According to Section 3 of the ordinance. (1)** The following courts shall be the courts empowered to exercise powers under this Ordinance, namely:-
 - (a) (the High Court Division];
 - (b) A Court of Sessions;
 - (c) a District Magistrate;
 - (e) a Magistrate of the 1st Class; and
 - (f) any other magistrate especially empowered in this behalf.
- (2) A Court may exercise powers under this Ordinance, whether the case comes before it for original hearing or on appeal or in revision.

Probation process

- ✓ Offender appears in Court
- ✓ * Judge directs PO to prepare SIR
- ✓ * SIR prepared and presented in Court
- ✓ * probation orders issued/ Probation denied
- ✓ * Released on probation: original sentence suspended or postponed
- ✓ * Back to community supervised by PO for 1 to 3 year
- ✓ * Successful completion: Original sentence no more applicable
- ✓ * No satisfactory change/PO violated - Prison

Who will be awarded with probation:

- **According to Ordinance 5(1),** the Power of court to make a probation order in certain cases
 - (a) any male person is convicted of an offence not being an offence under Chapter VI or Chapter VII of the Penal Code, or under sections 216A, 328, 382, 386, 387, 388, 389, 392, 393, 397, 398, 399, 401, 402, 455, or 458 of that Code, or an offence punishable with death or imprisonment for life, or
 - (b) any female person is convicted of any offence other than an offence punishable with death,

Appointment of probation officers

* **Section 12. (1)** Any person may be appointed as a probation officer by the Officer-in-charge.

Duties of a probation officer

Section 13: Duties of a Probation Officer

- (a) visit or receive visits from the offender at such reasonable intervals as may be specified in the probation order or, subject thereto, as the Officer-in-charge may think fit;
- (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 endeavour to find him suitable employment; and
- (e) perform any other duty which may be prescribed by the rules made under this

Rule-4: Duties of a Probation Officer

- 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 warning, endeavour to ensure the observance thereof by the probationer;
- in the first two months of probation, meet the probationer at least once in a fortnight, and thereafter, subject to the probation order or any general or special order of the Director keep in close touch with the probationer, meet him frequently, make enquiries into his conduct, mode of life and environment, 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 and advise him and strive to improve his conduct and general condition 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 breach of the terms of his bond or to have otherwise misconducted himself, bring such breach or misconduct to the notice of the Court and the probationer's 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.
- **Rule-5:** Every probation officer shall maintain a Register of probationers.(Other responsibilities related to preserving documents and information)

Duties and Responsibilities of a Probation Officer (appointment, sec-5)

➤ **According to section-6 of the children act, 2013,**

(a) When a child in conflict with the law is brought to or arrives at the police station:

1. **Be Informed of the Reason for Arrival:** Understand the reason for the child's arrival at the police station.
2. **Meet with the Child:** Meet with the child and reassure them about providing all possible assistance.
3. **Coordinate with Police:** Identify the relevant complaint or case and coordinate with the police.
4. **Locate the Parents:** Find and assist in contacting the child's parents with the help of the police.
5. **Assess Bail Possibility:** Consult with the juvenile officer to assess the possibility of bail or, if applicable, evaluate alternative measures based on the case's context.
6. **Arrange Safe Placement:** If bail or alternative measures are not feasible, arrange for the child to be placed in a safe location before the initial court appearance through the juvenile officer.
7. **Perform Other Duties:** Carry out any other duties as prescribed by the regulations.

(b) When a child in conflict with the law appears in a juvenile court:

1. **Presence in Court:** Be present at the court during hearings and provide support to the child whenever needed.
2. **Prepare Social Investigation Report:** Conduct a social investigation and prepare a report on the child and their surroundings, submitting it to the court.
3. **Provide Legal Assistance:** Ensure the child receives legal assistance through the District Legal Aid Committee, and if necessary, secure legal representation for the child.
4. **Coordinate with Legal Aid Organizations:** To ensure justice for the child, without undermining the purpose of the legal assistance mentioned in (3), communicate with non-governmental legal aid organizations to secure legal representation for the child.
5. **Perform Other Duties:** Carry out any other duties as prescribed by the regulations.

(c) When sending a child in conflict with the law to a juvenile development center or a certified institution:

1. **Prepare and Maintain Records:** Prepare and maintain separate records for each child.
2. **Follow Procedures and Ensure Proper Care:** Follow the procedures described in Section 84 and ensure proper care.
3. **Regular Meetings:** Meet with the child regularly or provide meetings according to the child's wishes.
4. **Monitor Guardians:** Observe or monitor whether the child's parents, extended family, or legal guardians are fulfilling their supervisory obligations properly.
5. **Monitor Education:** Ensure that the child is receiving appropriate formal and vocational education through on-site monitoring.
6. **Inform the Court:** Regularly update the court about the child's behavior and the appropriateness of the measures taken, and submit reports as required by the court.
7. **Provide Guidance and Support:** Offer moral guidance to the child, maintain a friendly demeanor, and provide comprehensive support.