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THE PROBATION OF OFFENDERS ORDINANCE, 1960

ORDINANCE NO. XLV OF 1960

[1st November, 1960]

An Ordinance to provide for the release on probation of offenders in certain cases.*

WHEREAS it is expedient to provide for the release on probation of offenders in certain cases and for matters incidental thereto;

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

Short title,
extent and
commencement

1. (1) This Ordinance may be called the Probation of Offenders Ordinance, 1960.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date or dates as the Government may, by notification in the *official Gazette*, appoint, and different dates may be appointed for different areas.

Definitions

2. In this Ordinance, unless there is anything repugnant in the subject or context:-

(a) "Code" means the Code of Criminal Procedure, 1898;

(b) "Court" means a court empowered to exercise powers under this Ordinance;

¹[(c) "Director General" means the Director General of the Department of Social Services or any other officer appointed to carry on his functions;]

* Throughout this Ordinance, the words "Bangladesh" and "Government" were substituted respectively for the words "Pakistan" and "Provincial Government" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973).

- (d) “probation officer” means a person appointed as such under section 12;
- (e) “probation order” means an order made under section 5;
- (f) “Probation Department” means the department responsible for the administration of this Ordinance;
- (g) all other words and expressions used but not defined in this Ordinance and defined in the Code shall have the same meaning as assigned to them in the Code.

3. (1) The following courts shall be the courts empowered to exercise powers under this Ordinance, namely:-

- (a) ²[the High Court Division];
- (b) A Court of Sessions;
- (c) a District Magistrate;
- ³[* * *]
- (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.

(3) Where any offender is convicted by a Magistrate not empowered to exercise powers under this Ordinance, and such Magistrate is of opinion that the powers conferred by section 4 or section 5 should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the 1st

¹ Clause (c) was substituted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words “the High Court Division” were substituted for the words “a High Court” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ Clause (d) was omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Class ¹[* * *] forwarding the offender to him, or taking bail for appearance before him, and such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Conditional discharges, etc.

4. (1) Where a Court by which a person, not proved to have been previously convicted, is convicted of an offence punishable with imprisonment for not more than two years is of opinion, having regard to:-

- (a) the age, character, antecedents or physical or mental condition of the offender, and
- (b) the nature of the offence or any extenuating circumstances attending the commission of the offence,

that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may, after recording its reasons in writing, make an order discharging him after its admonition, or, if the court thinks fit, it may likewise make an order discharging him subject to the condition that he enters into a bond, with or without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order as may be specified therein.

(2) An order discharging a person subject to such condition as aforesaid is hereafter in this Ordinance referred to as “an order for conditional discharge”, and the period specified in any such order as “the period of conditional discharge”.

(3) Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits any offence or does not remain of good behaviour during the period of conditional discharge he will be liable to be sentenced for the original offence.

¹ The words “or a Sub-Divisional Magistrate” were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(4) Where a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

5. (1) Where a Court by which-

- (a) any male person is convicted of an offence not being an offence under Chapter VI or Chapter VII of the ¹[* * *] 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 ²[imprisonment for life], or
- (b) any female person is convicted of any offence other than an offence punishable with death,

Power of Court to make a probation order in certain cases

is of opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to do so, the court may, for reasons to be recorded in writing, instead of sentencing the person at once, make a probation order, that is to say, an order requiring him or her to be under the supervision of a probation officer for such period, not being less than one year or more than three years, as may be specified in the order:

Provided that the court shall not pass a probation order unless the offender enters into a bond, with or without sureties, to commit no offence and to keep the peace and be of good behaviour during the period of the bond and to appear and receive sentence if called upon to do so during that period:

Provided further that the court shall not pass a probation order under this section unless it is satisfied that the offender or one of his sureties, if any, has a fixed place of abode or a regular occupation within the local limits of its jurisdiction and is likely to continue in such place of abode or such occupation, during the period of the bond.

¹ The word "Pakistan" was omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

² The words "imprisonment for life" were substituted for the words "or transportation for life" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(2) While making a probation order, the court may also direct that the bond shall contain such conditions as in the opinion of the court may be necessary for securing supervision of the offender by the probation officer and also such additional conditions with respect to residence, environment, abstention from intoxicants and any other matter which the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or a commission of other offences by the offender and for rehabilitating him as an honest, industrious and law-abiding citizen.

(3) When an offender is sentenced for the offence in respect of which a probation order was made, that probation order shall cease to have effect.

Order for
payment of
costs and
compensation

6. (1) A court directing the discharge of an offender under section 4 or making a probation order under section 5 may order the offender to pay such compensation or damages for loss or injury caused to any person by the offence and such costs of the proceedings as the court thinks reasonable:

Provided that the amount of compensation, damages and costs so awarded shall in no case exceed the amount of fine which the court might have imposed in respect of the offence.

(2) At the time of awarding compensation or damages in any subsequent civil suit or proceeding relating to the same offence, the court hearing such suit or proceeding shall take into account any sum paid or recovered as compensation, damages or costs under sub-section (1).

(3) The amount ordered to be paid under sub-section (1) may be recovered as fine in accordance with the provisions of section 386 and 387 of the Code.

Failure to
observe
conditions of
the bond

7. (1) If the court by which an offender is bound by a bond under section 5 has reason to believe that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his arrest or may, if it thinks fit, issue summons to the offender and his sureties, if any, requiring them to appear before it at such time as may be specified in the summons.

(2) The court before which an offender is brought or appears under sub-section (1) may either remand him to judicial custody until the case is heard or admit him to bail, with or without sureties, to appear on the date of hearing.

(3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of his bond, including any conditions which may have been imposed under sub-section (2) of section 5, it may forthwith-

- (a) sentence him for the original offence, or
- (b) without prejudice to the continuance in force of the bond, impose upon him a fine not exceeding one thousand¹[taka]:

Provided that the court imposing the fine shall take into account the amount of compensation, damages or costs ordered to be paid under section 6.

(4) If a fine imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.

8. Where an appeal or application for revision is made against conviction of an offence for which an order is made under section 4 or section 5 discharging the offender absolutely or conditionally or placing him on probation the appellate court or the court sitting in revision may pass such order as it could have passed under the Code, or may set aside or amend the order made under section 4 or section 5 and in lieu thereof pass sentence authorised by law:

Powers of court
in appeal and
revision

Provided that the appellate court or the court sitting in revision shall not impose a greater punishment than the punishment which might have been imposed by the court by which the offender was convicted.

¹ The word "taka" was substituted for the word "rupees" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Provisions of the Code to apply to sureties and bond

9. The provisions of sections 122, 406A, 514, 514A, 514B and 515 of the Code shall, so far as may be, apply in the case of sureties and bonds taken under this Ordinance.

Variation of conditions of probation

10. (1) The court by which a probation order is made under section 5 may at any time, on the application of the person under probation or of the probation officer or of its own motion, if it thinks it expedient to vary the bond taken under that section, summon the person under probation to appear before it, and, after giving him a reasonable opportunity of showing cause why the bond should not be varied, vary the bond by extending or reducing the duration thereof or by altering any other of its terms and conditions or by inserting additional conditions therein:

Provided that in no case shall the duration of the bond be less than one year or more than three years from the date of the original order:

Provided further that where the bond is with surety or sureties, no variation shall be made in the bond without the consent of the surety or sureties; and if the surety or sureties do not consent to the variation, the court shall require the person under probation to execute a fresh bond, with or without sureties.

(2) Any such court as aforesaid may, on the application of any person under probation or of the probation officer or of its own motion, if satisfied that the conduct of the person under probation has been satisfactory as to render it unnecessary to keep him under supervision, discharge the probation order and the bond.

Effects of discharge and probation

11. (1) A conviction of an offence, for which an order is made under section 4 or section 5 for discharging the offender after the due admonition or conditionally or placing him on probation, shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Ordinance:

Provided that where an offender, being not less than eighteen years of age at the time of his conviction of an offence for which an order discharging him conditionally or placing him on probation is made, is subsequently sentenced under this Ordinance for that offence, the provisions of this sub-section shall cease to apply to the conviction.

(2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is discharged after due admonition or conditionally, or who is placed on probation, shall in any event be disregarded for the purposes of any law which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.

(3) The foregoing provisions of this section shall not affect-

- (a) any right of any such offender to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;
- (b) the reversion or restoration of any property in consequence of the conviction of any such offender.

12. (1) A probation officer referred to in a probation order may be any person appointed to be probation officer by the Officer-in-charge.

Appointment of probation officers

(2) A probation officer referred to in sub-section (1) shall be a person who shall possess such qualifications as may be prescribed by rules made in this behalf under this Ordinance.

(3) A probation officer, in the exercise of his duties under any probation order, shall be subject to the control of the Officer-in-charge.

13. A probation officer shall, subject to the rules made under this Ordinance,-

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 Ordinance.

Power to make rules

14. (1) The Government may, by notification in the *official Gazette*, make rules for the purpose of carrying into effect the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing provision, the Government may make rules-

- (a) regulating the appointment, resignation and removal of probation officers and prescribing the qualification of such officers;
- (b) prescribing and regulating the duties of probation officers; and
- (c) regulating the remuneration payable to probation officers.

15. [*Delegation of powers to Government.- Omitted by Article 2 and Schedule of the Adaptation of Central Laws Order, 1964 (President's Order No. 1 of 1964).*]

Repeal of sections 380 and 562-564 of the Code

16. Sections 380, 562, 563 and 564 of the Code are hereby repealed.

Provisions of this Ordinance to be in addition to and not in derogation of certain laws

¹[**17.** The provisions of this Ordinance shall be in addition to and not in derogation of the Children Act, 1974 (Act No. XXXIX of 1974) and the Borstal Schools Act, 1928 (Ben. Act I of 1928).]

¹ Section 17 was substituted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).