

THE KHYBER PAKHTUNKHWA PROBATION AND PAROLE ACT,

2021(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2021)

CONTENTS

PREAMBLE

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11.

Short title, extent and commencement.

Definitions.

Jurisdiction of the Courts.

Types of probation.

Power of Court to place the convict on probation.

Conditions for grant of probation.

Community service.

Vocational training.

Failure to observe the condition of probation.

Modification of conditions of probation order.

Order of sureties and bond.

Order of payment of compensation and damages.

Effects of discharge and probation.

Constitution of parole committee.

Constitution of the parole sub-committee.

Powers and functions of the parole sub-committee.

Period of parole.

Period of release to be reckoned as imprisonment for computing period of sentence served.

Form of release on parole.

Failure to observe the conditions of parole.

Pre-sentencing report.

Supervision report.

Constitution of the committees.

Directorate of Reclamation and Probation, Khyber Pakhtunkhwa.

Record keeping.

Delegation.

Indemnity.

Power to make rules.

Overriding effect.

Repeal and savings.

THE KHYBER PAKHTUNKHWA PROBATION AND PAROLE ACT, 2021

(KHYBER PAKHTUNKHWA ACT NO. XIV OF 2021)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 03" February, 2021).

AN
ACT

to provide for the regulation of probation of convicts, their rehabilitation and reintegration and matters relating to parole in the Province of Khyber Pakhtunkhwa.

WHEREAS it is expedient to regulate the probation of convicts, their conditional release from prison before the completion of term of their imprisonment to which they have been sentenced, their rehabilitation and reintegration in order to make their lives purposeful and peaceful in society and for matters connected therewith and ancillary thereto;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

Chapter-I
Preliminary

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Probation and Parole Act, 2021.

(2) It shall extend to the whole of Province of Khyber Pakhtunkhwa.

(3) It shall come into force on such date as Government may notify in the official Gazette.

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

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

(b) "community service" means any unpaid work or service for the

benefit of community, ordered by a Court and carried out by an probationer during a probation period;

(c) "conditional release order" means the conditional release order made under section 19 of this Act;

(d) "Court" means the Court as specified in section 3 of this Act;

(e) "Director" means the Director of the Directorate;

(f) "Directorate" means the Directorate of Reclamation and Probation, Khyber Pakhtunkhwa;

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“entitled victims” mean persons who are entitled to receive compensation of Diyat, Arsh or Daman;

“Government” means the Government of Khyber Pakhtunkhwa;

“minor violation” means the violation of the conditions of probation order by a probationer and includes the following:

(i) failure to observe the directions of the probation officer;

(ii) failure to inform the probation officer about change in residence;

(iii) leaving the district without permission;

(iv) taking intoxicants; and

(v) associating with persons of bad character or leading a dissolute life;

“parole” means a convicted prisoner’s conditional release from prison by the parole committee;

“parole committee” means a parole committee established under section 14 of this Act;

“parolee” means a prisoner, released on parole, under this Act;

“prescribed” means prescribed by rules;

“pre-sentencing report” means the report prepared under section 21 of this Act;

“probationer” means a convict, who has been placed on probation;

“probation” means an opportunity, given to an convict by the Court, subject to such conditions as provided under this Act, before passing the sentence for the purpose of reformation and re-integration of such convict in order to enable him an earning member of the society and law abiding citizen;

“probation officer” means an officer of the Reclamation and Probation, Khyber Pakhtunkhwa;

“probation order” means a probation order issued under section 6 of this Act;

“rules” mean the rules made under this Act; and

“supervision report” means the report prepared under section 22 of this Act.

Chapter-II

Jurisdiction and Powers of the Court

3. Jurisdiction of the Courts.--- Where an accused is found guilty of an offence under any law, all competent and established Courts, including the High Court, or to be established from time to time, shall have jurisdiction under this Act to pass a sentence of probation in a manner as specified under this Act or the rules made thereunder.

4. Types of probation.---The Court may sentence a convict,-

(a) by keeping him under the supervision of a probation officer, subject to the conditions provided in section 6, for the purposes of his rehabilitation and reformation;

(b) by performing community service, without any compensation; provided that the nature of community service be determined by the probation officer, subject to conditions as specified under section 7 of this Act and rules made thereunder; and

(c) in any case in which a person is convicted of any offence carrying a maximum punishment of two years, the Court, before which he is so convicted, may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the convict and to the trivial nature of the offence or any extenuating circumstances under which offence was committed, instead of sentencing him to any fine or imprisonment, release him after due admonition;

(d) where it deems appropriate, sentence a convict to imprisonment, fine, or both, and then release him through the suspension of that sentence; provided that the convict does not commit any other offence during the period of suspended sentence. If the convict is convicted of another offence during the period of suspended sentence, he shall be sentenced for the new offence, in addition to which, his suspended sentence shall be activated; and

(e) by sending him for drug treatment in accordance with clause (c) of sub-section (3) of section 6 of this Act.

5. Power of Court to place the convict on probation.---(1) The Court may, for reasons to be recorded in writing, place a convict on probation, in accordance with sentencing guidelines, if any, in addition to the conditions specified under this Act or rules.

(2) The conditions, provided for in the probation order, may apply to the whole of probation period or a part thereof, as the Court may deem fit.

(3) An order, under sub-section (1), may be made by the Court on its own motion or upon an application made by the convict or probation officer.

(4) A probationer shall be placed under the supervision of probation officer for such period as may be specified in the probation order to enable his rehabilitation and reintegration into mainstream society and to prevent him from recidivism.

(5) The Court, in case of conviction under section 367 of the Code, before making a sentencing order under this section, shall direct the probation officer to submit a pre-sentencing report.

(6) Subject to the provision of sub-section (1) of section 10, the duration of probation period may not be in any case less than six months and not more than three years; provided that no repeat convict shall be sentenced to probation.

6. Conditions for grant of probation.---(1) The Court may pass a probation order, in accordance with the sentencing guidelines, if any, after considering-

(a) the age and gender of the convict;

(b) the psychological and physical condition of the convict;

(c) the place of temporary or permanent residence or area of domicile of the convict;

(d) the pre-sentencing report submitted to the Court by the probation officer, after conviction and before sentencing;

(e) the nature of the offence committed; and

(f) any other matter connected or ancillary to above mentioned factors, including any past conviction of the convict.

(2) Upon issuing the probation order, the Court shall impose the following mandatory conditions on the probationer:

(a) the probationer shall enter into a bond, with or without sureties, to commit no offence and to keep the peace and be of good behavior during the probation period and to appear and receive sentence if called upon to do so during that period;

(b) the probationer shall be placed under supervision of the probation officer; and

(c) biometric registration of the probationer shall be conducted at the time of rendering him for probation.

(3) While issuing a probation order, the Court after considering the recommendations of the pre-sentencing report, may, in addition to the conditions in sub-section (2), impose the following conditions:

(a) subject to section 7, the probationer be required to perform a specified number of hours of community service;

(b) subject to section 8, that the probationer is to undergo a course of vocational training in a specified field;

(c) in case the probationer is a drug addict, to complete a drug rehabilitation program at any drug rehabilitation facility, operated by Government or any registered non-governmental organization; provided that the service is able to secure a place for the

probationer at a drug rehabilitation facility;

(d) if the probationer is pursuing academic studies or training, he must maintain a certain specified level of attendance, to be verified by probation officer with the institution concerned; and

(e) any other condition that the Court may determine.

(4) Before making a probation order, the Court shall explain to the convict, in a language understood by him, the effect of the proposed order and bond and the consequences of breaching the condition or conditions, as the case may be, mentioned therein during the probation period.

(5) A convict shall not be released on probation in a community where they face a threat to life.

(6) The Court shall send a copy of a probation order to the concerned probation officer free of cost and the officer shall acknowledge receipt.

7. Community service.---(1) Community service shall not be imposed unless the Court, after considering the recommendations of the probation officer, is satisfied that-

(a) the probationer is capable of performing community service;
(b) such community service shall prove beneficial to the probationer's rehabilitation and reintegration into mainstream society and to the

community; and

(c) the probationer consents regarding the feasibility of community service.

(2) When the Court imposes community service on any probationer, it shall explain to him, in a language that he understands-

(a) the purpose of the community service;

(b) the consequences of a breach of the terms and condition of such community service; and

(c) that the Court can set aside, modify or review any community service so imposed, on the recommendation of the probation officer.

(3) Subject to sub-section (1) of section 10, a probationer shall perform his community service during his probation period.

(4) A probationer shall not be required to perform any community service which conflicts with his religious beliefs.

(5) The probation officer shall seek to arrange the community service so that it does not interfere with the probationer's employment or education.

(6) A probationer who fails to abide by the terms of the community service shall be deemed to have failed to observe the condition of his probation as per provisions of this section.

(7) The Court may, for reasons to be recorded in writing, order a convict to community service under its own supervision, instead of sending him into the supervision of a probation officer.

8. Vocational training.---(1) Vocational training condition under sub-section (3) of section 6, shall not be imposed unless the Court, after considering the recommendations of the probation officer, is satisfied that —

(a) arrangements are in place which shall enable the probationers to perform such training that suits their age, gender, culture, and disability if any;

(b) the probationer is suited to undergo such training; and

(c) such vocational training shall prove beneficial to the probation, rehabilitation and reintegration into mainstream society and to the community; provided that where the vocational training condition is imposed, the probation period may be reduced to six months.

(2) Without prejudice to the generality of sub-section (3) of section 6, before a Court imposes a vocational training condition, on any probationer, it shall explain to him, in a language that he understands—

(a) the purpose of the vocational training that he is to receive;

(b) the benefit to the probationer of such vocational training condition;

(c) the consequences of breach of the vocational training — condition; and

(d) the Court can set aside, modify or review any vocational training condition.

(3) The duration of the vocational training condition shall not be more than the duration of probation period.

(4) A probationer, who fails to abide by the terms of the vocational training condition, shall be deemed to have failed to observe the conditions of his probation as per provisions of this section.

9. Failure to observe the condition of probation.---(1) If, on the application or report of the concerned probation officer, the Court, granting the probation order, and after giving an opportunity to the probationer to be heard, has reason to believe that a grave breach or violation of the conditions of probation have occurred, it shall revoke such order and sentence the probationer for the punishment of the original offence.

(2) All applications, under sub-section (1), shall be made through the probation officer, who shall provide all material and evidence to the Court to establish the suspected breach or violation.

(3) Upon such application or report, if the Court has reason to believe that the probationer has violated the conditions of probation, it shall issue warrant for his arrest and summon his sureties, where applicable.

(4) Where the Court is of the opinion that violation of conditions are minor in nature, it shall issue such probationer with a warning upon the first violation. In case of second instance for minor violation of any conditions of probation, the sureties of such probationers shall be called personally, and they shall be warned about the consequences, arising out of third violation, as specified in sub-section (5).

(5) In the third instance of violation of any condition of probation, the probation officer shall recommend to the Court for the cancellation of probation order and sentencing of original punishment provided for the offence.

(6) In addition to the cancellation of probation order under sub-section (5), the probation officer may recommend to the Court a fine of rupees, not exceeding ten thousand, to be imposed upon the probationer in case of violation of any condition at third instance.

10. Modification of conditions of probation order.---(1) The conditions of probation may be modified by the Court that made it, on its own motion or on the application of the probation officer concerned or upon the application of the probationer, as the case may be:

Provided that if the Court modifies the conditions of the probation order against the findings of the supervision report, it shall record its reasons in writing.

(2) Prior to modifying the conditions of probation, the Court shall summon the convict and give him a reasonable opportunity to show cause why the conditions should not be varied:

Provided that where the bond is with surety or sureties, no modification shall be made without the consent of surety or sureties and if such surety does not consent to modification, the Court shall require the convict to execute a fresh bond.

11. Order of sureties and bond.---The provisions of sections 122, 406-A, 514, 514-A and 515 of the Code shall, as nearly as may be practicable, apply in the case of execution of surety and bonds under this Act.

12. Order of payment of compensation and damages.---(1) While making a probation order, the Court may, subject to the relevant law, order the probationer to pay to the victim the compensation for personal injury or the loss or damage of any property in such amount as the Court considers reasonable.

(2) An amount ordered to be paid by probationer, under sub-section (1) above, may be recovered as fine in accordance with the provisions of section 386 and section 387 of the Code.

(3) In any subsequent civil suit or proceeding, related to the same offence, the Court hearing such suit or proceeding shall take into account any sum paid or recovered under this section while awarding compensation or damages.

13. Effects of discharge and probation.---(1) A probationer, who is discharged conditionally or who is placed on probation, as the case may be, shall be disregarded for the purposes of any law which imposes any disqualification or disability upon convict persons or authorizes or requires the imposition of any such disqualification or disability upon the completion of his sentence of probation, community service or vocational

training as the case may be.

(2) The provision of sub-section (1) shall not affect-

(a) any right of any such probationer to appeal against his conviction or to rely thereon in bar of any subsequent proceedings for the same offences; and

(b) the re-vesting or restoration of any property in consequence of the conviction of any such probationer.

Chapter- II

Parole

14. Constitution of parole committee.---(1) There shall be constituted a parole committee at the Provincial level comprising of an Additional Secretary, Home and Tribal Affairs Department, the Inspector General of Prisons, the Director and two persons from civil society, nominated by Government.

(2) The parole committee shall convene once a month to decide upon the recommendations of the parole sub-committee. The parole committee shall, in cases where the recommendations of the parole sub-committee are not accepted, shall record its reasons for doing so in writing.

(3) The parole committee shall also have the power to take cases for parole upon their knowledge.

15. Constitution of the parole sub-committee.---There shall be a parole sub-committee constituted at each prison, consisting of-

(a) Superintendent of the respective prison;

(b) concerned probation and parole officer in a district;

(c) a Public Prosecutor in a district;

(d) a police officer in a district; and

(e) two persons, one male and one female, from civil society, to be nominated by Home and Tribal Affairs Department of Government.

16. Powers and functions of the parole sub-committee.---(1) Notwithstanding

anything contained in section 401 of the Code, where a person is confined in prison under a sentence of imprisonment, and it appears to the parole sub-committee from his antecedents or his conduct in the prison that he is likely to abstain from crime and lead a useful and industrious life, if he is released from prison. The parole sub-committee may recommend his release to the parole committee on conditions that they be placed under the supervision of a parole officer.

Explanation.---The expression 'sentence of imprisonment' in this section shall include imprisonment in default of payment of fine and imprisonment for failure to furnish security under Chapter VIII of the Code.

(2) The parole sub-committee shall immediately upon the completion of the minimum term of sentence of imprisonment convene to recommend parole to convicts, eligible for parole. In case where parole is deferred, the parole sub-committee shall

specify the reason of such deferral in writing, and specify the time period after which it shall convene to reconsider his parole. The parole sub-committee shall submit its recommendations for the release of convicts to the parole committee.

(3) The parole sub-committee shall have the power to recommend the revocation of a prisoner's conditional release to the parole committee. An order of revocation from the parole committee shall specify the reasons of revocation, the date with effect from which the conditional release shall cease to be in force and shall be served upon the parolee in the manner as may be prescribed;

(4) An additional function of the parole sub-committee shall be to arrange for the payment of compensation of Diyat, Arsh or Daman, to the entitled victims of prisoners who have completed their terms of imprisonment.

17. Period of parole.---(1) A prisoner shall be entitled to parole on his undergoing the minimum period of imprisonment as prescribed by the Code, in accordance with the sentencing guidelines if any.

(2) The conditional release of the convict on parole shall be in force until the date on which the person released would, in the execution of the order, or warrant authorizing his imprisonment, have been discharged from prison had he not been released on parole, or until the parole is revoked whichever is sooner.

18. Period of release to be reckoned as imprisonment for computing period of sentence served.---The period, spent by a parolee on parole, shall be reckoned as a part of the period of imprisonment to which he was sentenced, for the purpose of computing the period of the sentence and for the purpose of computing the amount of remission of his sentence which might be awarded to him under any rules in force relating to such remission.

19. Form of release on parole.---A prisoners' conditional release on parole shall be in such form and shall contain such conditions as the parole committee may, by general or special order or by rules, made in this behalf, directs.

20. Failure to observe the conditions of parole.---(1) If any person, released on parole, breaches the conditions imposed upon him, the probation and parole officer shall be authorized to return him to the prison where he was detained to serve the remaining portion of his sentence.

(2) In case a parolee absconds from the parole officer, he shall be declared absconder by the parole committee and shall be liable to imprisonment of up to two years, in addition to his original sentence.

(3) The additional sentence shall be imposed by the Court after due process.

Chapter-IV Miscellaneous

21. Pre-sentencing report.---(1) The probation officer shall formulate a pre-sentencing report which shall be placed on judicial file for consideration of the Court.

(2) The pre-sentencing report shall provide the Court with a complete profile of the probationer including psychological, sociological, family, employment and other relevant information:

Provided that if the Court makes a decision against the findings provided in the pre-sentencing report, it shall record its reasons for doing so in writing.

22. Supervision report.---(1) The probation officer shall periodically prepare supervision reports of each probationer, placed under his supervision to the Court if required.

(2) The report shall include-

(a) conduct of the probationer;

(b) performance during community service or vocational trainings conditions, as the case may be;

(c) progress towards and conduct during rehabilitation;

(d) physical and mental condition of probationer;

(e) any update on the probationer's compliance with the conditions of the probation order; and

(f) any other matter connected or ancillary to the purpose of this Act.

(3) The supervision reports shall be placed in the personal record of the probationer and shall be monitored by the Directorate.

(4) The concerned probation officer shall, in case of any violation of conditions of probation, immediately initiate the process under section 9 of this Act.

23. Constitution of the committees.---For the purpose of this Act, Government shall constitute such committees, which shall exercise such powers and perform such functions as it may be assigned, not inconsistent with the provisions of this Act and rules.

24. Directorate of Reclamation and Probation, Khyber Pakhtunkhwa.---(1) The Directorate established by Government shall be responsible for effective implementation of this Act and the rules made thereunder.

(2) The Directorate shall be headed by a Director, who shall be assisted by such number of officers and members of the staff as may be determined by Government for performance and discharge of functions under this Act.

(3) The Director shall perform his functions and discharge his duties under the general supervision of the Home and Tribal Affairs Department of Government.

25. Record keeping.---(1) The Directorate, shall keep and maintain the record of all probationers, which include a copy of probation order, pre-sentencing report, supervision reports, community service and vocational training conditions, etc.

(2) A probationer's record shall be confidential and shall only be made available to any concerned officer by the order of the Court.

(3) The Directorate, shall take all reasonable steps to ensure that privacy and dignity of all probationers, especially that of women and juvenile, is protected.

26. Delegation.---The Director may, by general or special order, delegate to the committees, constituted under section 23 of this Act, or an officer of the Directorate, any

of his powers and duties or functions under this Act or the rules, subject to such conditions as he may deem fit.

27. **Indemnity.**---No suit, prosecution or any other legal proceedings shall lie against the officers and staff of the Directorate in respect of anything done or intended to be done in good faith in performance of their official duties under this Act.

28. **Power to make rules.**---Government may make rules for carrying out the purposes of this Act.

29. **Overriding effect.**---Notwithstanding anything to the contrary contained in any other law, the provisions of this Act shall have an overriding effect and the provisions of any such law to the extent of such inconsistency to this Act shall cease to have effect.

30. **Repeal and savings.**---(1) The Probation of Offender Ordinance, 1960 (Ord. No. XLV of 1960), the Good Conduct Prisoners Probational Release Act, 1926 (Act No. X of 1926), are hereby repealed to the extent of the Province of Khyber Pakhtunkhwa.

(2) All orders made, acts done, and powers exercised before the commencement of this Act, under the Probation of Offenders Ordinance, 1960 (Ord. No. XLV of 1960), the Good Conduct Prisoners Probational Release Act, 1926 (Act No. X of 1926) and the Probation of Offender Rules, 1961, shall, if not inconsistent with the provisions of this Act and the rules or regulations made thereunder, be deemed to have been done, exercised or incurred under this Act.