

**A TREND ANALYSIS TO REPORTED CASES ON GRANTING
PROBATION BY SUPREME COURT**

¹S.BALA KRISHNAN

¹Student ,5th Year,BA., LLB (Hons), Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences, Saveetha University, Chennai.77,Tamilnadu,India.

²DR .A.SREE LATHA

²Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences, Saveetha University, Chennai.77,Tamilnadu,India.

¹bala8754504754@gmail.com , ²annamanenisreeelatha.ssl@saveetha.com

ABSTRACT

This study examines the impact of probation on the criminal activities of offenders In comparison , the number of offenders self-reporting criminal activity declined, as did the rate of offending among those who continued to offend. Investigations of the different crime types revealed that the crime reduction effect of probation was mainly a result of its effect on property and dealing crimes. In recent times, the emphasis is on the reformation and rehabilitation of the offender as a self-sufficient and useful member of the society, without subjecting him to the deleterious effects of jail life.

Keyword: Criminal activity, reform, self sufficient, rehabilitate

RESEARCH PROBLEM

Whether granting probation helps to reform criminals?

To study the necessity for the release of the offender in probation and the role of probation officer.

OBJECTIVES

1. To examine the ground on which probation is granted to offenders.
2. To analyse whether granting probation reform offenders.
3. To study whether it gives an opportunity to offenders to rehabilitate.
4. To analyse granting probation deters criminals in commission of crime.
5. To study on what grounds probation can be avoided by court.

HYPOTHESIS**NEGATIVE HYPOTHESIS**

Granting probation does not help in reforming the criminal.

ALTERNATIVE HYPOTHESIS

Granting probation helps in reforming the criminals.

RESEARCH METHODOLOGY

The methodology used in this study is Doctrinal. It is based on the information and data collected from secondary source. They include publication research ,journals, historical information of both past and present. When a research is concerned with legal problem, issue or question, it is referred to as doctrinal, theoretical or pure legal research. Doctrinal research is a theoretical study where mostly secondary sources of data are used to seek to answer one or two legal propositions or questions or doctrines. Its scope is very narrow and there is no such need of field work.

INTRODUCTION

The aim of Criminal law system is to reform the criminals rather to punish them. Probation is an alternative of keeping an accused in prison with hardened criminals, Court can order personal freedom of criminals on promise of good behavior, and can also order a period of supervision over an offender. This is termed as 'Probation'. Simply, it can be explained as 'the conditional release of an offender on the promise of good behavior'. An accused person should be given an opportunity of reformation which he would lose in case he is kept in prison and associate him with hardened criminals.

The term "Probare" is the latin term from which the word probation is derived. The term probare means to test or to prove. It is a treatment, developed as a non-custodial alternative which is used by the magistracy where guilt is established but it is considered that imposing of a prison sentence would do no good. Imprisonment decreases his capacity to readjust to live under the normal circumstances after the release and association with criminals often has no desirable effects.

According to the United Nations, Department of Social Affairs, The court releases the offenders convicted of an offence on probation against the order, during which the probationer lives in the society under the normal circumstances and he is under the direct supervision of the probationer and regulates his own life under conditions imposed by the court. The release of offender in probation serves the purpose of deterrence and reformation. The release of probationer provides an opportunity to the offender to reform and live in the society and it acts as a deterrent in the society.

The concept of probation is based on reformatory theory. It is a scientific and rational approach which prevent young offenders from becoming habitual criminals by putting them into the jail and having contacts with the hardened criminals. The probation officer makes a detailed study about the offender and tries to sort out his problem and takes necessary step to make the offender offender becomes useful to the society.

PROCEDURE FOR PROBATION

According to section 4(2) and section 6(2) of Probation of Offenders Act judge will consider the report of the probation officer to decide whether to grant probation. The presentence report which is given by the probation officer will have an appraisal about the character of the offender his antecedents and the background of the offender behind committing the offence. This report helps the court to ascertain about the character of the offender and the court will come to a conclusion whether there is a chance of rehabilitation on release on probation.³

According to the Juvenile Justice Act 2000 the report of the probation officer must be considered before deciding whether to grant probation. The magistrate will be appointed as the member of the board must know about the psychology of the child. The rehabilitation and social integration of the child takes place in the observation and special homes set up by state government. The Probation officer appointed under Probation of Offender Act would act as a supervisory role in granting probation.

Probation in India dependent on the policies of the State and not based on uniform Central Policy. In Karnataka a State level Probation Advisory Committee constituted with High Court Judge as Chairman with official and non-officials as members. A District level Probation Advisory Committee has been constituted in each district consisting of the District and Sessions Judge as Chairman with official and non-officials as members. After Care Programmes have been set up to improve the lives of those released on probation.

BENEFITS OF PROBATION IN INDIA

Probation serves the needs of the society in the following manner

Probation helps the criminals away from the criminal world. Further, the fear of punishment in case of violation of probation law has a psychological effect on the offender. It

³ 1.Criminology and penology – Dr. N.V. Paranjpe, pg. 332, Chapter XXI etd. 2000

deters him from law breaking during the period of probation. Thus probation indirectly prevents an offender from adopting a revengeful attitude towards the society. Moreover, sentencing an offender to a term of imprisonment carries with it a stigma, which makes his rehabilitation in society difficult. The release of the offender on probation saves him from stigmatization and thus prepares him for an upright living. The shame of going through a trial process would have sufficiently chastised him. According to the labeling theory, a stigmatizing label once applied, is very likely to cause further deviance or create the deviance. People tend to conform to the label even when they didn't set out that way.

Probation seeks to socialize the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The Probation Officer would guide the offender to rehabilitate himself and also try and wean him away from such criminal tendencies.⁴

Before the implementation of probation law, the courts were often confronted with the problem of disposing of the cases of persons who were charged with neglect of their family. In such cases there was no alternative but to send them to prison, which was an unnecessary burden on the State exchequer. With the introduction of probation as a method of reformative justice, the courts can now admit such offenders to probation where they are handled by the competent probation officers who impress upon them the need to work industriously and avoid shirking their family responsibilities.

An analysis of crime statistics would show that a large segment of offenders consists of the poor, the illiterate and the unskilled. Such offenders are seen to be victimized twice: once, when they are denied of their basic human needs in open society and forced to live in a sub-culture of social marginality, and, again, when they are grinded in the mill of criminal justice for having infringed

⁴ Gillin J.L. : Criminology and penology (3rd Ed.) pg. 321

the law. Probation would thus be an effective means to deliver justice to them, they would not be incarcerated and also they would be trained which would improve their life later.

The society is also served. The object of society that all its members playing a positive role by seeking their self-rehabilitation is achieved by the probation system, it is indeed an effective method of preserving social solidarity by keeping the law-breakers well under control. Also, during the probation period, the offender is sent to various educational, vocational and industrial institutions where he is trained for a profession which may help him in securing a livelihood for himself after he is finally released and thus lead an absolutely upright life.⁵ And whatever work an offender is doing as a probationer, he is contributing to the national economy. Thus, he no longer remains a burden on the society.

Probation helps the offenders away from indulging in criminal activities. the fear of punishment acts as a deterrent in case of violation of probation law has a psychological effect on the offender. It prevents him from law breaking during the probation period. Thus probation indirectly prevents an offender from adopting a revengeful attitude towards the society. when an offender is punished for the commission of crime it has stigmatic effect which makes difficult to rehabilitate in the society. Releasing the offender in probation helps him to live upright in the society. The offender would consider undergoing the imprisonment as a shame and it would incarcate a label in the society and it sometimes outrages his his self respect which in turn creates deviance in his behaviour.⁶

Probation helps criminal to socialise by indulging in various activities like earning activity and help them choose a life habits and train them and inculcate self control, self sufficiency which are essential attributes of a freeman and make them a law abiding citizens. The probation officer will supervise the offender and gives him guidance which prevents him from further commission of criminal activities.

⁵ .Divisional Personal Officer v. T.R.Challapan AIR 1975 SC2216

⁶ Abadinsky, H. (2005). Probation and parole: Theory and practice (7th ed.). Upper Saddle River, NJ: Prentice Hall.

the offenders who were indulging in criminal activities were the persons who were being neglected by their family. Before the probation law, it was a burden on the part of the court to rehabilitate the offenders and the only options left with them were to send the offenders to prison and it was an unnecessary burden on the part of the state. After the enactment of Probation of Offenders Act the court leaves the offenders under the supervision of the probation officer and it shifts the burden of the court and it is an effective tool in reforming the criminals.

The statistical analysis of the offenders committing offences reports that majority of the offenders belongs to lower class, illiterate, poor and those who are not able to sustain a living. Such offenders are victimized twice when the basic needs of the society is being denied to them and when they are socially marginalized and when they are being punished under the penal system when they violate the criminal law system.

The aim of criminal justice system is to preserve the social solidarity and all members of the society must take positive role in self rehabilitation is achieved by probation system and the law breakers are kept in control in probation system. The offenders are sent to various vocational courses, educational institutions and industrial institutions which helps him to secure a livelihood and helps him to live upright after he is released from the prison. He serves the society and contributes to the national economy and he is no longer a burden to the society. Further, the probation officer has to keep closer contact with the offender which helps him to analyse the real cause of the crime and suggest him remedies.⁷

PRACTICAL IMPLEMENTATION OF PROBATION

According to section 6 of Probation of Offenders Act any person who makes an offence below the age of 21 years will get the benefit of probation. It does not look into the mental attitude, personality and character of the offender. This may result in recidivism as many do not respond favourably to this reformatory treatment and it is difficult to ascertain whether he is a first time offender or not.

⁷ Champion, D. J. (1998). Probation, parole, and community corrections (3rd ed.). Upper Saddle River, NJ: Prentice Hall

Section 4(2) and section 6(2) lays down that the report of the probation officer must be considered before awarding probation. But the court does not give much importance to the report of the probation officer and it shows the lack of faith in trustworthiness and trust of probation officer and the accused may be subjected to undue influence of the probation officer and there is chances of their exploitation. This may jeopardize the interest of the accused which would be contrary to the object envisaged under the Act.

SUGGESTIONS

These suggestions have to be implemented in the legislative and administrative level which makes probation effective in India. More importance must be given to the report given by the probation officer in deciding the probation. Probation must be given after proper investigation made by the probation officer. The case history of the offender and the circumstances that lead him to the commission of offence must be taken into consideration. In the process of Probation recidivists have been proved to be a failure. probation must be confined only to the case of juveniles, first offender and women offenders. The benefit of probation must be give if they are below 21 year and the necessary amendment must be incorporated

CONCLUSION

The object of the criminal justice system is to reform the offenders, and to confirm the society its security, and therefore the security of its society by taking steps against the offenders. it's so a punitive live. This purpose isn't consummated solely by confinement, alternative different measures like parole, admonition with fine and probation fulfill the aim equally well.

The aim behind probation may also be usefully applied to cases wherever persons on account of family discord, poverty, loss of close to relatives, or alternative causes of like nature, commit offences.

Its aim is to reform the criminal and to create him see the proper path. this may be achieved as has been same antecedently, not solely by legislative action however conjointly by sincerity on the a part of the administration. In some components of the country it's being enforced within the right spirit. the instance of Kerala and province are delineate within the project.

The success of probation is entirely in the hands of the probation officer and therefore the resources have to be allotted to train probation officers, and start up homes for those on probation and conjointly for his or her coaching besides others. Probation would be effective only if there's a sincere try created to implement it.

To conclude, it can be said that the measure of alternative punishment i.e., probation and the objective of theory of reformatory punishment would be achieved only if the judiciary and the administration work together. It would be of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person.

Probation is an affirmation of the human inside every being and it must be given importance. The reform and rehabilitation process have to be worked out in context of existing social conditions to achieve the ultimate objective to reclaim back those offenders to orderly society.

SUGGESTIONS

- The report of the probation officer plays a crucial role in granting probation to the probation officer must be cautious in preparing probation report.
- The government must use the discretionary power in granting probation.

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