

GENERAL STUDY ON PROBATION OF OFFENDERS ACT

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ABSTRACT:

Probation is often misconceived by some people as an easy let-off or a form of leniency and not a punishment. But this notion is rather misleading. Probation, whether it is for juveniles or adults, permits a more normal social experience than institutionalisation and makes possible varying degrees of control over delinquents together with the option of sentencing hi to an institution if he violates probation conditions. In other words, probation enables the delinquent to maintain contact with his family and other social agencies. It means a less routinized and more self-directed existence. Unlike imprisonment, it makes the offender independent and leaves him responsible for self-support. It enables the probationer to keep himself away from criminogenic atmosphere.

KEYWORDS: Probation, Suspension, Supervision, Offenders and reformation.

INTRODUCTION:

This research paper deals with how important the probation of offenders act in the reformation and rehabilitation of offenders. The paper also shows the alternative to the concept of punishment such as imprisonment for the first time offenders. Probation is one of the

alternative measures which may be used by courts as an improved form of non custodial alternative in place of incarceration. This correctional device is being increasingly used by magistracy in modern times.

The age old custodial measure and institutional incarceration presents two crucial problems, namely, it increases the dependence of offender and at the same time decreases his capacity to readjust to normal society after release. Conformity with the strict prison discipline is no guarantee that the prisoner has really transformed into a law-abiding citizen. Other inevitable consequences that flow from prisonisation of offender are loss of job, separation from family and contamination due to association with other professional delinquents. This paper aims to bring law-breakers into wilful cooperation with the community of which he is member. To study Offenders Act.

DEFINITION:

The release of offenders on probation is a treatment device prescribed by the court for persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to the supervision by the probation officer.

The term 'probation' is derived from the Latin word 'probare' this means 'to test' or 'to prove'. Etymologically, probation means 'I prove my worth'. ([van Kalmthout and Durnescu 2008](#))

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OBJECT OF PROBATION:

The Supreme Court spelt out the object of the probation of offenders Act 1958 in the following words:

The ultimate purpose of progressive legislation is to reclaim back those young and first offenders to orderly society, who have for certain reasons fallen into bad company or gone astray and landed into criminality. The Act is not meant for hardened and habitual offenders who are beyond redemption and are incorrigible.

PROBATION IN U.S.A

In America John Augustus, a shoe maker of Boston in 1841 volunteered to stand bail for a person charged with drunkenness in a local court. The defendant showed signs of reform. The judge ordered nominal fine and released the offender. Fascinated by this, John Augustus started standing bail for more and more offenders and took upon himself the duty of helping and supervising them during the period of bail. Subsequently, he helped delinquent women and children also in their rehabilitation. Thus, he saved over two thousand persons from the rigours of prisonation. It is from here that the system of probation began. America is the place where the concept of probation originated.

Probation law was formally enacted in Massachusetts State for the first time in 1878 and probation officers were appointed for the city of Boston. The probation programme was subsequently extended to cities in the State of America. In course of time, juvenile were established and the system of probation was extended to these courts also. By the middle of the twentieth century probation became so popular that it began to be extensively used in cases of adults, juveniles and women in most parts of the United States.

Under the American Probation law, the benefit of release on probation extends to following offences:

- Crimes of violence
- Crimes involving use of deadly weapons
- Sexual offences
- Crimes against the Government or treason
- Offences for which specific mandatory punishment is provided and
- Recidivists.

PROBATION IN U.K

In U.K., the system of probation received statutory recognition in 190 with the enactment of Probation of offenders Act in that year. At Birminaham, however, a separate court for the trail of teenage criminals was established earlier in 1905.

The Probation of Offenders Act, 1907 provided that an offender could be discharged on probation either after certain sentence being imposed on him or even before the imposition of the sentence. His release on probation could either be absolute or conditional, depending on his antecedents, character, age, physical and mental condition and the circumstances which prompted him to commit the offence. Probation Officers were separately appointed for adults and children.

The Brooklyn Plan which recommended deferred prosecution for delinquents provided that a juvenile offender charged with an offence is to be admitted to probation without being convicted. Probation of offenders has been considered as an effective method of easing pressure on prisons. The courts are provided with an improved range of non-custodial alternatives to avoid unnecessary incarceration of offenders.

PROBATION IN EUROPEAN COUNTRIES

Probation as a measure of treatment of delinquents is practised in several other countries of the world in different forms. It is being extensively used as an effective after care remedy for the treatment of juvenile offenders. In France, Germany and Russia, probation has been adopted as a measure of social defence. In Austria, probational remedies are mandatory for offenders under eighteen years of age. Greece accepted probation as a correctional measure in 1951. Similar system is adopted in Ireland, Israel, Switzerland, Netherland, and other countries of European Union. ([van Kalmthout and Durnescu 2008](#); [Braithwaite 2001](#))

HISTORICAL PERSPECTIVE OF PROBATION LAW IN INDIA:

In India, probation received statutory recognition for the first time in 1898 through section 562 of the code of criminal Procedure, 1898. Under the provision of this section, the first offender convicted of theft, dishonest mis-appropriation or any other offence under the Indian Penal Code punishable with not more than two years imprisonment could be released on

probation of good conduct at the discretion of the Court. Later, the Children act, 1908, also empowered the court to release certain offenders on probation of good conduct.

The central government appointed a committee in 1916 to consider the provision of criminal procedure code. Particularly, it suggested revision of section 562 and extension of its provisions to other case also.

The scope of probation law was extended further by the legislation in 1923. Consequent to Indian Jail Reforms Committee's Report (1919-20), the first offenders were to be treated more liberally and could even be released unconditionally after admonition. The first offenders were classified under two categories, namely:-

- Male adult offenders over twenty- one years of age: and
- Young male adult offenders under twenty- one years of age and female offenders of any age.

The release of offenders on probation could be extended not only to offences under the Indian Penal code but also to offences falling under special enactments. To cope up with the extended probation, a number of Remand Homes, Rescue Homes, Certified Schools and Industrial Schools were established in Bombay, Madras and Calcutta.

The Government of India prepared a draft of Probation of Offenders Bill and circulated it to the then Provincial Government for their views. However, the Bill could not be proceeded further due to pre-occupation of the Provincial Governments. Later the Government of India in 1934, informed the local governments that there were no prospects of a central legislation being enacted on probation and they were free to enact suitable laws on the lines of the draft Bill.

THE PROBATION OF OFFENDERS ACT, 1958

The probation of offenders Act (Act No.28 of 1958) contains elaborate provisions relating to probation of offenders, which are made applicable throughout the country. The Act provides four different modes of dealing with youthful and offenders in lieu of sentence, subject to certain conditions. These include:-

Release after admonitio

Release on entering a bond on probation of good conduct with or without supervision, and on payment by the offender the compensation and costs to the victim if so ordered, the court

being empowered to vary the conditions of the bond and to sentence and impose a fine if he failed to observe the conditions of the bond:

Persons under twenty one years of age are not to be sentenced to imprisonment unless the court calls for a report from the probation officer or records reason to the contrary in writing; and

The person released on probation does not suffer a disqualification attached to a conviction under any other law.

It must be stated that the provisions of the Probation of Offenders Act are not confined to juveniles alone, but extended to adults also. Again, provisions of the act are not only confined to offences committed under Indian Penal Code but they extend to offences under other special laws such as Prevention Of Corruption Act,1947: the Prevention Of Food Adulteration Act:1954 etc

Section 11 of the Probation of Offenders Act, 1958 widens the scope of probation by adding an enabling provision regarding the competence of the courts to make order under the act in appeal and revision and powers of the appellate and revisional courts in this regard. The higher have been empowered have been empowered to grant probation in appropriate cases, which was denied to the accused by the lower court. They may also cancel probation granted by the trial court, where it is expedient in order to prevent the misuse of probation.

PROCEDURE:

The appropriate stage at which probation order may be made by a court is at the time of pronouncement of judgement. The Judge may make such an order straightway without calling for a report from the probation officer or he may prefer to call for a report. However, it is always advisable to call for a report from the probation officer because at times, material available on record in course of trial is hardly sufficient for the presiding Judge to make up his mind on the point whether the accused should be admitted to the benefit of release on probation or not. The court must record a clear finding about the age of the offender after weighing the necessary evidence.

With a view to avoiding delay in the disposal of the case, it would be proper for the court to obtain the probation report before the trial is completed. In warrant cases, the probation officer

is directed to prepare probation report of the offender right at the time the 'charge' is framed.[\(Cluley 2009\)](#)

The Supreme Court in *Municipal Corporation Delhi Vs State of Delhi* and another held that the High court before extending the benefit of Probation of Offenders Act to the accused did not call for a report from the authorities to check upon the conduct of the accused as required by section 4 of Probation of Offenders Act therefore, his release on probation without such a report is wholly illegal. Moreover, the accused had also concealed the fact that he was convicted on earlier occasion as well.

In the instant case, the accused was a builder who has committed large scale irregularities and unauthorised construction of eleven shops at ground floor in Delhi and was convicted under section 332 and 461 of the Delhi Municipal Act for six months and a fine of Rs.5000/-. His appeal was dismissed by the High court. Then he filed a criminal revision wherein he stated that he did not wish to challenge the conviction on merits but prayed for benefit of release on probation as he had already faced trial for 12 long years in lower courts and also remained in jail for three days. The High court held that the accused deserved to be released on probation in view of the agony of trail lasting for 12 years suffered by him. The Delhi Municipal Cooperation went in appeal this order of the High court to Supreme court.

The Apex Court referred to its earlier decision in *Ram Singh Vs State of Haryana*, wherein it was held that Sections 4 and 6 of Probation of Offenders Act indicate that the procedure requiring the Court to call for a report from the probation officer and consider it. As per Section 4(1) of the act, such report is mandatory. The Court therefore, set aside the order of High Court and remitted the matter to it for fresh disposal strictly in accordance with the law.

CONCLUSION

The role of courts in bringing about rehabilitation of offenders need not to be over emphasized. The final verdict as to whether an offender deserves to be admitted to be the benefit of release on probation or not, lies with the court. Obviously, the decision as regards the release of an offender on probation is to be taken only after his guilt is proved. Probationary disposition being a post-conviction process, depends largely upon the probability of the offender to reform himself. Therefore, the Judge has to use his discretion in the matter most judiciously.

Socio-legal researchers on probation reveal that the factors which influence judicial sentencing, by and large, include age, sex or maturity of the offender, his family and educational background, nature of crime and the circumstances under which offence is committed and previous criminal record of the offender, if any. Experience has shown that youth, unblemished previous record, immaturity, etc. are generally good grounds for leniency while recidivism, violence, sex-perversiveness, etc. are sufficient to warrant severe punishment. These are, however, mere generalisations and do not in any way fetter judicial discretion in sentencing the offender. The Judge while considering the punishment can hardly afford to overlook the modern correctional trends in the field of penology. His decision, therefore, plays a vital role in deciding the future of the offender.

RECOMMENDATIONS

- Probation must be based on thorough investigation into case-history
- Excessive control and supervision on delinquent tends to make him hostile towards the probation personal
- Recidivist have often proved a failure in probation
- Probation involves discriminatory processes and therefore, violates the constitutional provisions under article 15 and 21
- It would be useful to organise probation on natural level under state tutelage.
- The quality of probation service must be improved by making the service conditions of the probation staff more lucrative.
- A nation-wide uniform scheme of training for probation personnel with emphasis on social-work and rehabilitative techniques would serve a useful purpose to improve the efficacy of probation service in India.
- The Court should make extensive use of this provision in view of the emerging trends in victimology and it should be made obligatory for the court to record special reasons for not passing order for victim's compensation.

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