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# An Analysis of the Broad Features of the Probation of Offenders Act, 1958

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## 1. Introduction

The field of criminal science brought radical change in the criminological thinking. Modern penologists reaffirm their faith in the reformative justice but they strongly feel that it should not be stretched too far. It should be limited in the case of juveniles and the first offenders. The criminals under the ideology of rehabilitation are seen as sick persons. The custodial institution virtually have no access to treatment programmes, therefore community based treatment serves as alternative to these institutional programmes. Compensation, releases on admonition, probation, imposition of fines, community service are few such techniques whereby the needs of the community are balanced with the best interests of the accused. Of all these, the probation as an extramural community based treatment method for offenders which has assumed great significance. The probation is that preventive measure which seeks to save the offender from the evil effects of institutional incarceration and affords him an opportunity of reformation. Under the probation system the offender against the penal law, instead of being punished by a sentence, is given an opportunity to reform himself under the supervision subject to conditions imposed by the court, with the end in view that if shows the evidence of being reformed, no penalty for his offence will be imposed. But if he violates the conditions then the probation of the offender would be revoked and the court can impose the sentence on him.[i]

## 2. Historical background

Credit for the introduction of probation system and enacting the first law for placing offenders on probation goes to the state of Massachusetts in USA in 1869. **John Augustus**, the first true probation officer, who is also recognized as **"Father of Probation".**He attended police court to bail out a "common drunkard," the first probationer. The offender was ordered to appear in court three weeks later sentencing. He returned to court a sober man, accompanied by Augustus. To the astonishment of all in attendance, his appearance and demeanor had dramatically changed. Thus began the work of the nation's first probation officers. The U.S. probation system is the progeny of John Augustus, in 1841 altruistically took it upon himself to intervene on behalf of "common drunkards" and petty criminals, rescuing them from squalid houses of correction.[ii] To Augustus, the object of the law was "to reform criminals, and to prevent crime and not to punish maliciously, or from a spirit of revenge."[iii]

In India, the probation system received the statutory recognition for the first time in 1898 through section 562 of the Code of Criminal Procedure, 1898. However, it was used very rarely due to certain defects in the provision itself. Later on fragmented state laws were enacted in various states but with no uniformity. After independence, in 1958, the Government of India decided to have a comprehensive legislation on Probation. To accomplish this objective a bill on the probation was introduced in Lok Sabha on November 11, 1957. As the subject of 'probation' relates to item 2 of List III of the Seventh Schedule of the Indian Constitution, the government of India enacted the Central Probation Legislation after getting the Presidents assent on May 16th 1958 which became **The Probation of Offenders Act, 1958. In addition to this, the provisions under** Criminal Procedure code, 1973 also grant of probation. The Probation of Act, 1958 is an effort to transform the way we think of punishment to the criminal for wrongful acts. With the significant development in the field of sentencing system probation assumed great relevance. It aims at reforming an offender, particularly a youthful offender without giving him a severe punishment and making him a useful member of the society.

## 3. Some important provisions of the Act are:

The Probation of offenders Act, 1958 placed the certain conditions on the court to refuse or to grant the probation in the words "circumstances of the case, nature of the offence and the character of the offender." While applying this principle the court have to come across the various situations such as to find out the motive of the offender, local conditions and his previous record.

The word admonition cannot be equalized with punishment because under section 53 of Indian Penal Code, admonition has nowhere described as a form of punishment. It carries no significance of rehabilitation of offender. Therefore, legislature should reconsider this section and tries to amend it in interest of rehabilitation of offender.

The punishing provisions given under Section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two year, or with fine, or with both, under the Indian Penal Code or any other law indicates the seriousness of the offence. And commission of these offences show a definite reflection in the mind of the offender and in such cases correction cannot be achieved only by the warning by the words of the mouth. So there is need for some provisions for the supervision, guidance, help or at least

surveillance to the knowledge of the offender to avoid them to committee the crime in future.

The court has been left with the absolute discretion to release the first offender after the admonition. The exercise of discretion casts a heavy responsibility on the magistrate. If he fails to exercise this discretion judiciously then there would be a possibility of breeding recidivist tendency in the offender as they will get the expression that crime can be committed with impunity[iv].

Section 4 (2) of the Act requires that the court before releasing the offender on probation of good conduct shall take into consideration the report, if any, of the probation officer. Thus the word if any clearly indicates that the report of the Probation Officer is not mandatory and the court is not bound to call for such a report. Hence, it is not obligatory for the court to call for the report of the Probation Officer before grant of Probation under section 4(2). Whereas the phraseology used in section 6 of the Act, makes it obligatory for the court to call for the pre-sentence investigation Report. Therefore, the comparative study of Section 6(2) and section 4(2) of the Probation of offenders Act, reveals, that it is mandatory to call for a Pre-sentence Report under section 6(2) but under section 4(2) it is in the discretion of the court to call for the report. Though, some ambiguity exists in the wording of the Sections 4 & 6 of the Act with regard to the mandatory or discretionary nature of calling for the report by the courts. However, the judicial interpretation seems to have negative the meaning of the word “if any” to the extent that calling for the pre-sentence report seems to be obligatory on the court in order to release desirable persons on probation.

The statutory provisions of Section 6 of Probation of offender Act, 1958 places an injunction on Court against the imposition of sentence on young offenders. This mandatory injunction got judicial recognition also where the Court observedthat “The requirement of Section 6 of Probation of offender Act for stating reasons opting for a sentence of imprisonment & the consideration of report of Probation Officers are mandatory. [v] After enforcement of the Act, the Court have to give reasons of refusing to extension of the benefit of the Act. [vi] The crucial date for reckoning the age when Section 6 becomes applicable, is the date upon which the trial court had to deal with the offender.[vii]

Section 9 of the Act provides that, if the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith Sentence him for the original offence; or impose upon him a penalty *not exceeding fifty rupees*. If a penalty 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.

The object of the probation can be achieved its final limits only when probationer is not stigmatized. To save the probationers from this condition the legislature had added Section 12 in the Probation of Offenders Act, 1958 which provides that a person found guilty of an offence and admitted to the benefit of release on probation under Section 3 or Section 4 of the Act, shall not suffer disqualification, if any, attached to the conviction of an offence under such law.

The limitation placed by the Act on the grant of probation is given under Section 18 of the Act and on the offenders found guilty of offences punishable with death or imprisonment for life. It was further explained by the Supreme Court in the 1972 by holding that probation cannot be claimed by a person convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for that offence would not take it out of the category of offences punishable with imprisonment for life. Therefore, the statutory restriction of not applying probation on the offences punishable with “death or the imprisonment for life” excludes almost fifty one offences under the Indian Penal Code.[viii]

The last provision of Section 19 of the Act lay down that all other laws dealing with probation especially, section 18 [ix] and section 562 [x] of Criminal Procedure Codes will ceases to apply from the date the probation of Offenders Act, 1958 comes into force in a particular jurisdiction. The Probation of Offenders Act,1958 was there as a complete code of Probation but then also our legislatures with the repeal of the Code of Criminal Procedure,1898, has added in the new Code of Criminal Procedure,1973 the provisions pertaining to grant of probation in section 360 and 361 of the Code of Criminal Procedure, 1973 (“the code”) which makes it abundantly evident that the legislature was aware of the situation where the provisions of both the Act and the code would be in force otherwise there would be no need for them to have enacted section 360 and section 361. This indicates that the legislature intended these provisions to remain parallel to each other. As the code and the Act present entirely different scheme for the release of offenders and in such a state both the provisions exist and it is on the Court to apply the relevant provision on the case depending upon the circumstances of the each case. It is strongly argued that the view that section 360 and section 361 would not be operative in the presence of the Act is not in consonance with the intention of the Legislature.

## 4. Conclusion

In order to know the success of the probation system or the failure of the Act, there requires a lot of empirical research to study the probation service available to the adult and the impact of the probation law on the probationers by examining the extent to which they have been rehabilitated through such services. The success of any system largely depends upon the operators responsible for the implementation of that system. It is therefore, necessary to study the functionaries who implement the probation system and to know their views regarding the Act or the difficulties, if any, faced by them while discharging their duty.

## 5. Suggestions

1) First of all the probation must be based on the thorough investigation into the case-history of the

 

offender and the circumstances associated with his crime. While treating the probationer, his physical traits and psychological conditions must be thoroughly considered.

2) The words that the word 'if any" after the words 'consider the report' in Section 4(2) should be deleted. Further section-4 of the Act,1958 may be amended so as to make it obligatory for the court to **call for reports** from the probation officers and to facilitate the adjournment of the case for certain period so as await reports in appropriate cases.

3) The discretion of the court to release the offender on the production of the surety for obtaining probation should be treated liberally and not rigidly. It is not possible for every offender to produce surety and non production of the same should not work against the objective of the Act.

4) The release on probation of good conduct without **supervision** of probation officer is unjustified and undesirable for it defies the very definition of probation according to which it means conditional suspension of sentence. The violation of conditions of probation leads to its revocation and imposition of the suspended sentence. It implies that there must be someone to watch and ensure the compliance of the conditions by the probationers. When there is no one to enforce these conditions, practically it means there is no condition.

5) As It is in the light of the interpretation of the word "to deal with" means the date on which the courts had to pronounce the order, ending into conviction or acquittal of the accused Section 6 gives an additional command which impose restriction to a Magistrate that an offender under 21 years of age shall not be sent to imprisonment if he is found guilty of an offence not punishable with imprisonment for life unless the Court records its reason for not extending to him the benefit under Section 3 & 4.The object of the section 6 is to ensure that the juvenile offenders are not sent to jail for the offences which are not so serious as to warrant imprisonment for life, with a view to prevent them from contamination due to contract with hardened criminals of the jail. The **crucial date** for reckoning the age when Section 6 becomes applicable, is the date upon which the trial court had to deal with the offender. [xi] Although this crucial date was interpretation by the Supreme Court in *RamjiMissar v. State of Bihar*[xii]in the year 1963 but it has not been added in the Act explicitly. So the act should be amended to make the necessary changes in it.

6) As given under Section 9, the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may, the court may Sentence him for the original offence; or impose upon him a penalty ***not exceeding fifty rupees*** the penalty fixed under the Act is of less amount as its not always necessary that every offender is economically weak. Thus, for the probationers, who are rich enough to pay this amount can intentionally avoid to observe the conditions of the bond.

7) In order to select better persons to the posts of Probation Officers, it is suggested that the recruitment should be made through the competitive exam open to all.

As it is already mentioned under Section 12 in the Probation of Offenders Act, 1958 that a person found guilty of an offence and admitted to the benefit of release on probation under Section 3 or Section 4 of the Act, shall not suffer disqualification, if any, attached to the conviction of an offence under such law. To overcome these suffering more community awareness should be created through different propagandas about the benefit of the probation programme and the role of the community in the rehabilitation of offender and in the success of probation programme.

8) The provision contained in section5 of the Act which provides for the compensation by the probationer to the victim for his crime is kept in suspended animation. The court should make the extensive use of this provision and it should be made obligatory for the court to record the special reason for not passing the order of compensation.

9) The quality of the probation service can be improved by making the service condition of the Probation personnel more lucrative. This will attract well qualified and competent to this profession.

10) After submitting the report to the court, the probation officer remains only a passive observer in trial proceeding when he ought to be very active because of his knowledge of offender's background. Therefore, the probation officer should consider his first duty toget the offender released on probation in the case where after thorough investigation he feels that the offender needs to be released on probation.

11) 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 efficiency of probation service.

12) The probation officers should possess the legal qualifications so that they are well conversant with technicalities of law and procedure involved in the process of release of offenders on probation. Since the probation work is quasi-judicial in nature therefore the probation staff should be duly qualified in legal and social welfare work.

13) At present the work of probation is assigned to the different department in different States. In some states it is placed under the social welfare department like Delhi while in other States it functions under the Panchayat department or Home department. But it is advisable to have an independent dept. of Correctional Service which exclusively deals with the rehabilitation of offenders, of which probation is one of the techniques.

 

14) It would be useful to have the international level conferences and seminars on probation and its related aspects which help in popularizing the reformatory method of treating the delinquents.

**End Notes and References**

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[iii] *Id*.17

[iv]. S.C Raina, Probatio*, Philosophy, Law and Practice* 22,(Regency Publication, New Delhi,1996)

[v] *Rattan Lal v State of Punjab*, (AIR 1965 SC 444)

[vi] *Ram Naresh Sharma v. State of Bihar, (2*009) Cr.L.J. 1840 (Pat.).

[vii] Ibid. The decision was reaffirmed in *State of Kerala v. Parameswaran Nair Radhakrishan Nair* (1994) Cr. L.J. 237 (ker).

[viii] *Jugal Kishore Prasad v Stateof Bihar* (AIR 1972 SC 2522) ,1973 Cr.L.J.23

[ix] Now see CrPC,1973, Section 16 &17

[x] Now see CrPC,1973, Section 360

[xi] *State of Kerala v. Parameswaran Nair Radhakrishan Nair,* 1994 Cr LJ. (Noc) 237 (ker).

[xii] *RamjiMisser v. State of Bihar* AIR.1963 SC 1088

 