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The Effectiveness of the Indian Law Related to the Probation of Offenders

CHANCHAL RANI
LL.M., UGC- NET
Jawahar Nagar, Patiala Chowk, Jind (Haryana)

ABSTRACT

Probation is a correctional treatment method in criminal law and procedure criminal justice administration focuses on, all though its long history has been on crime. The magnitude and the quantum of the offence determined the length and severity of the punishment awarded. The science of criminology, along the development of other social disciplines, progressed and plunged into the depth of the crimes, knowing the causation of criminal behavior. It left convened that unless the roots of the malady are health with the crime could not on earth. This tuned to be a milestone in the history of criminology. The shift from the crime to the criminal brought a sea change in the field of penology. The criminal does not perpetuate an offence because he is simply wants to do it or he intends to disturb the social order, no does he do for the sake of fun but, the deeper study of criminal brought to surface, he acts under biological, physiological and socioeconomic compulsions and commons. And if the society is to effectively and efficiently and efficiently deal with the crime so as to prevent its reoccurrence, the new enological approach suggests, he criminal should be studied and diagnosed socially, economically, psychologically and even biographically to find out the abnormalities, which encourage and enthuse him to indulge in a criminal life. And for the repeaters of the crime, a more thorough study suggested, in which the treatment meted out to him during and after trail proceeding of his first offence also turns to be part of this study. This new approach under the name of reformation of criminal, where under the trial procedures, Types of punishments and the modes of administering them under major change probation is concept having taken knit from the womb of this reformative approach in penology. Problems of treatment of offenders have, of late, become the subject of wide academic study and field research leading to personal for reforms. Modern correctional method of treatment of offenders such as probation, devices are being extensively used throughout the civilized world who bring about reformation and rehabilitation of offender as a normal member of society the problem is crime is no longer to be treated as an isolated problem but it is an integrated problem directly linked with the social defense and therefore needs to be approached with greater awareness and understanding.

Keywords: Reformation of criminal, Probation, Correctional treatment

INTRODUCTION

The release of offender on probation is a treatment reaction to crime prescribed by the court for persons convicted of offences against the law, during which the probationer lives in community and regulates his own life under condition imposed by the court or at other constituted authority, and it's subject to supervision by a probation officer.

Meaning or Probation:

The term probation is derived from the Latin word' probare 'which means' to test' or 'to prove'. Epistemologically, probation means' I prove my worth'. Probation as a term in its origin, means that a person i.e. the criminal has a worth, which he can prove if permitted to do and in case he is tested and analyzed to find out and wipe out the spot of criminal behavior in his conduct. In the correctional frame of reference, Probation is a way to help people who have broken the law get back on

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their feet. Probation is another step toward understanding that the person, not the act, should determine the sentence. The only reason for passing probation laws is to give certain types of people a chance to change that they wouldn't get if they were sent to jail. It tries to bring about the attitude, behavior, and character change of the contract outside of jails. In the 20th century, the conventional idea of crime and punishment underwent a significant transformation. Now, the attention is on the offender rather than the crime. Probation .Probation has a more significant social culture because it preserves marital and familial bonds and the shame that is inextricably linked to incarceration. Probation is another step toward understanding that the person, not the act, should determine the sentence. The only reason for passing probation laws is to give certain types of people a chance to change that they wouldn't get if they were sent to jail. It tries to bring about the attitude, behavior, and character change of the contract outside of jails. The probationary system includes a conditional suspension of penalty for Prof. Pranjape as well. Without a sentence being handed down in the case, or after one has been handed down, an offender may be placed on probation. In the former's instance, according to Pranjape, the penalty is delayed and the criminal is put on probation, while in the second case, he is put on probation right away without receiving a judgment. Therefore, depending on the court's discretion, either the suspension of punishment as in the first instance or the suspension of the imposition of penalty in the second case. There are some philosophers that see the idea of probation as a method of treating and rehabilitating criminals rather than component of a punishment to stop one another who believes that "probation is a matter of discipline and treatment" is Homer as cunnings. We may do miracles in rehabilitation if probation, "he is of the convicted opinion", are properly selected and supervision work is carried out with knowledge and understanding.

Historical background of probation system:

In the earlier period of history of mankind punishments were most irrational. The primitive homogeneous societies believed that every offender is an enemy to the group or the tribe and hence he must be annihilated by being put to death or exile. The emergence of heterogeneous societies called 'gens' or 'clans brought about a radical change in reaction to crime. Frequent feuds between the clans too often resulted in assaults, murders and the like. Private vengeance therefore became the normal mode of punishment. The old modes of punishment were more or less based on the primitive reaction to crime which emphasized on the purposive infliction of pain on the offender. Punishment was considered to be an expression of the instinct of vengeance Deterrence and retribution were therefore the twin object of Justice in early societies. Until the eighteenth century it was generally believed that infliction of painful punish is necessary for every undesirable act. The doctrine was carried further by the exponents of classical school of criminology to which Beccaria, Rousseau, Montesquieu and Voltaire made substantial contributions during the latter half of the eighteenth century. The arguments in support of tortuous punishment were that an individual before committing a criminal act, calculates the pleasure which he is likely to derive it and the possible pain involved in case he is punished. Beccaria's free will theory and equality of punishments beside painful punishment, the advocates of classical view also supported equality of punishments irrespective of age sex mental condition and social environment of the offender because of their hedonistic approach is matter of punishment Bentham even want to extend or formulating Mathematical laws for the infliction of punishment. The period that followed witnessed a wave against classical thinking regarding "free will theory "and equality of punishment. The Neo-classical school which emerged as a reaction of two classical view emphasized that certain persons such as children lunatics and mentally retarded criminals are unable to appreciate the good or bad consequences of their act and hence deserve to be treated leniently. in other words, harsh and equal punishment in this case would hardly save the ends of justice in view of their mitigating circumstances thus the major contribution of new classics to the field of phenology was that they invited attention of phenology used to be needed for individualization of punishment rejecting the purely punitive reaction to crime. The focus shifted from 'crime' to 'criminal' at the behest of humanists near the end of the eighteenth century, and humanism gradually started to have an effect on the field of penology neoclassical thinkers. With the result tortuous and harsh punishments were gradually abhorred and sentences were considerably reduced in deserving cases depending upon mitigating circumstances. In early twentieth century criminological researches undertaken by the advocates of positive school firmly established

the futility of harsh and irrational punishment and emphasised the need for new approach to the problem of crime and criminals discarding completely the punitive reaction to crime, the positivists stressed on societal reaction and humanizing penal justice. The offender, in their view, should rather be treated than punished. This change in attitude towards offenders subsequently found expression in the modem correctional services which are in vogue for treatment of offenders. Thus, rehabilitation of offenders through correctional measures is the cardinal principle of modem penology. That is to say in other words, reformation is the object of punishment while individualization, the method of it.

Reformative Era of Penal Justice:

With the evolution of reformative trends in penal justice it is being increasingly felt that greater reliance be placed on minimum security arrangements while the use of traditional custodial measures such as institutional Incarceration be reduced to a minimum The reason for this in the towards the, offenders being that prisonization decreases the cap of the to normal society after release. That apart, prisonization carries with it certain unpleasant consequences, such as contamination of offenders due to association with hardened criminals, disruption of family life due to loss of job or separation of the spouse and so on. The correctional measure such as probation, parole and open air camp, on the other hand, serve a useful purpose in rehabilitating the offenders to normal society. It is for this reason that probation as a measure of correctional service is being extensively used for dealing with the offenders in modern times.

Origin of Probation:

The origin of probation is to be traced back to medieval practices such as Benefit of Clergy or judicial reprieve. The 'Benefit of Clergy' enabled certain offenders in England to escape the severity of criminal law. The execution of their sentence was suspended temporarily subject ft good behavior. Subsequently the courts began to suspend sentences indefinitely as long as delinquents behaved will. Gradually it became customary that some volunteers began to take care of offenders whose sentences were by the court subject to their good conduct.

Expansion of Probation in various countries:(i) India

According to Manu, the offender's proclivities and history should be taken into account while determining an appropriate penalty. Yajriyawalkya and Kautilya agreed with this point of view. According to Vijaneshwar, a penalty should be given after taking into account whether the perpetrator behaved knowingly or accidentally. It should also be taken into account whether the perpetrator is a first-time or recurrent offender. Prior to imposing punishment, Mimansa said that the circumstances of the offence should also be taken into account. However, there was no mention of the "Probation" doctrine in the writings of the ancient law givers. Despite that probation was first mentioned in Section 562 of the Cr.P.C., 1898, India did not have a clear probation legislation until 1936. In 1923, there was a significant revision to the section. If the criminal met the qualifications for history, maturity, character, and mitigating and extenuating circumstances, courts had the authority to release first-time offenders on probation. The notion of probation was introduced by this clause for the first time in India. This marked In 1918, the Chief Presidency Magistrate of Bombay proposed the establishment of a Police Court, also known as the Metropolitan Magistrate's Court, to handle minor offenses and facilitate release under Section 562. This marked the initiation of the implementation of "Probation" within the Criminal Procedure Code, requiring the execution of a bond good behaviour. A Social Service Institution interviewed the criminal prior to the trial. This agency's duties included investigating the offender's troubles, determining surety in case it was needed, bringing to light mitigating factors related to the offence, and lastly keeping track of offenders who had been released on a bond of good behavior. These criminals are being watched after in a manner that prevents issues and temptation from arising. If the criminal takes the incorrect path, a report is also sent to the magistrate. This work is not entrusted to the police because it affects adversely and will prove as an instrument of oppression. In 1923, Section 562 was substantially amended. Section provides:

1. Release of first offenders after due admonition.
2. Extension of probation period from 1to 3 years.
3. Expansion of application in the context of male offenders aged 21 years and above.
4. Offence All offenses, save those punished by death or life in prison, apply to people of any gender and age, whether they are male or female life .

However, element of 'supervision' process was absent in the scheme.

Jail Reforms Committee observed that some of the offenders are unnecessarily sent to jail, otherwise they would have been dealt with under the 'Probation System. In 1931, Government of India considered and introduced enactment of a central legislation after the successful operation of Section 562, Cr.P.C. and successful programmes in U.K. and U.S.A.A draught of the Probation of Offenders Bill was developed by the Government of India in 1931 and sent to the provincial governments for comment. However, for a variety of reasons, a central P Act could not be implemented at that time. States include Bombay, Madras, the U.P., C.P., and Berar, among others passed their own local Probation of Offenders Act in operation. Though most of the States had local Acts on probation, they provided hardly enough agencies to ensure their effective enforcement. Till the year of 1963, the following State enactments were in force:

1. ***Madras :*** Madras Probation of Offenders Act, 1936.
2. ***A.P.:*** Madras Probation of Offenders Act, 1936.
3. ***Punjab:*** Good Conduct—Prisoners Probational Release Act, 1926.
4. ***West Bengal:*** West Bengal Offenders Release on Admonition and Probation Act, 1954.
5. ***U.P.***: U.P. First Offenders Act, 1938.

Difference between Probation, Parole and Suspended Sentence:

Before we analyze the various elements involved in the concept of Probation it may be desirable for the purpose of clarity to distinguish it from other allied rehabilitation methods of dealing with the offenders viz., parole and suspended sentence. Parole generally speaking is conditional release, in this context, is the release of some guilty individuals before the end of their jail terms. This means the individual in issue remains in the care of the state or its agent and is subject to further disciplinary action, including possible incarceration. It's a rehabilitative strategy that helps offenders adjust to society outside of the strict confines of prison Probation in that the later is incretion and the offender is decision to grant it is to be n released after serving his sente result of any judicial decision li body. So far as the other di concerned it has subtle different living. Parole is distinguished from the court as an alternative to send to jail after being found guilty and the by the court. In parole the convict is for some time and the release is not the on account of decisions by administration namely, suspended sentence is from Probation. For this, a sentence of imprisonment is pronounced but the execution of it is suspended for a period. The difference between a "probation and the one under suspended sentence is that while former does know that what punishment The offender with a suspended sentence understands what kind and how much punishment he would face if he violated the rules of his probation.

Conclusions:

The probation is a concept of modern origin, however, the traces thereof can be found in the ancient past of Indian Judicial System, when the criminal jurisprudence noted a twist from the focus on crime to that on the criminal. Under this new approach of Penology, it was accepted that deterrence and retribution, as the approaches asking for measuring the sentences and their quantum along the magnitude and the measurements of the offences, are not the true alternatives leading us to the accomplishment of the goal of the criminal justice administration *i.e.* existence of a crime free society. The criminal, this approach advocated, does not always commit the crime with rational calculations and with a guilty mind. Nor is he an incorrigible and an irreparable person, which should be the subject of hatred from the society for his entire life. Nor is he a devil of which those around him should be afraid of, close their door to avert his entry in the social life. The criminal, this new Penological-thinking advance, is a human being and is one of the normal members of the society. Many a times such a member gets infested to attract a malady. The social, economic and even psychological or physiological germs cause the ailment of criminal tendencies. Certain allurement and temptation may have pulled him to criminal life. There may have been certain push-factors too in his surroundings encouraging the criminal behavior. Therefore, the evil and not the evildoer should be dealt with and destroyed. Under this crime to criminal shift, accepting offender as a diseased person, the reformation and rehabilitation of the criminal came as the catch- words. And this approach inter alia gave birth to the concept of probation. Probation, therefore, was accepted a correctional approach in criminal jurisprudence. The seeds were sown by the social activists, the judiciary encouraged and accepted this initiative and the legislative efforts brought this concept on the statute books of the world. Probation comes as a movement embracing nearly the judicial administration

system of all the countries on the globe. In the recent past, a twist in this approach has been noticed, there under the mixing of punishments with the probation in the U.S.A and the compensation to the victim blended with probation for the offender have been accepted in India. The identical approach in this twist is, however, mixing retribution and reformation in the concept of probation. The nuclear point I the success of probation and its conceptual growth is the judiciary. The court is given the discretionary power to make a choice between ordinary sentences and the corrective remedy of probation. The statute *i.e.* Certain aspects of probation are outlined in the Probation of Offenders Act of 1958 officers are supposed to go about their duties discretionary power in the hands of the judiciary. The Probation has been provided to be a normal rule at feast for the first convicts and those below the age of 21 years. However, the app provides the proportion even for those above 21 years of age, some offenders have been specifically saved from the benefit of provision.

Suggestions:

1. Probation with supervision alone, to make it a treatment Method and to help the rehabilitation of the youth offenders, Be provided. Accordingly, section 4 of the Probation of Offenders Act 1958 be amended to delete the probation simpliciter.
2. Admonition, under section 3 of the P Act does not fit in the Scheme and philosophy of probation. It should, therefore, be Removed from the Act.
3. The probation law has been made to overwrite the provisions Of other laws but the statutes enacted after this act, Particularly dealing with the socio-economic offences Prescribing minimum punishment, have made the position Probation ambiguous. It is, therefore, submitted that section 18 of the act may be re-drafted to make the things clear.

– The probation officers report should be made mandatory to Be invited and consulted by the trial court before awarding Or refusing probation. Accordingly section 4 should be Amended and superfluous word if any be removed from Section 6.
– Section 5 of the act says that the victim can get money from the government further catch the eye of the judiciary and to Make its greater use to satisfy the angle of victim also which Will make probation possible in a very larger degree of cases, Its reference should be made in section 4 and 6.
– Disqualifications resulting from a conviction may be Expunged in accordance with Section 12 of the Act of an Offence. Since the objective of the law is to help rehabilitation of the offender. The technical interpretation in the hands of The Supreme Court has declared that an employee offender Shall not be entitled to be reinstated on his job. This being In contradiction to the philosophy of probation, it is Submitted that section 12 should be amended to make the Things clear that such employee-offenders shall have no effect of conviction and shall be reinstated. For other too, it Should be unambiguously spelt out that stigma of conviction Is wiped off after probation is awarded.

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