



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Movement in the Direction of Reformatory Approach towards Prison System in India

Pragya Sharma

Student BA LLB (Hons.), Fifth Year, Law College Dehradun, Uttarakhand University

ABSTRACT

The goal of the criminal justice system is to reform the offender while also protecting society and its citizens' security by taking action against the offender. As a result, it is a corrective measure. This purpose is not only served by incarceration; alternative measures such as admonition with a fine and probation serve the same purpose just as well. The benefit of probation can also be useful in cases where people attempt to end their own lives due to family discord, destitution, the loss of close relatives, or other similar reasons. Its goal is to reform the offender and guide him down the right path. As previously stated, this can be accomplished not only through legislative action, but also through the administration's sincerity. It is being implemented in the right spirit in some parts of the country. Its best examples are Kerala and Andhra Pradesh. The success of probation is entirely in the hands of the state government, which allocates resources to the programmes. Resources are required to hire trained probation officers to set up homes for those on probation as well as for their training, among other things.

In latest years, all civilized countries, especially socialist and democratic countries, have enacted a range of methods and statutory enactments to implement the correctional method of punishment. Contemporary criminologists all over the world support that rather than punishing a law breaker, the correct way to deal with him is to reform him. According to contemporary criminal law, no one is born a deviant. Man becomes a delinquent by force of sort of situation, such as extreme poverty and other socio - environmental factors, rather than by choice. As a consequence, the Reformatory Theory of Punishment is better suited to a civilised society. The discharge of the offender on probation is one a kind of reformatory process in which the needs of the community are balanced with the best interests of the offender.

Keywords: Prison System, Probation Laws

Introduction

Probation Laws

Probation is extremely beneficial to the criminal's rehabilitation. Probation is available to first-time offenders under the age of 21. Probation can be granted either before or after the passing order of sentence is made. During the probation period, the criminal is released into society and given the opportunity to adjust to his new surroundings. The probation officer's report is considered when the probation officer issues the order of probation. If the probation officer's report is favourable to the probation order, only the court will grant the probation; otherwise, it will be denied. In this study, various illustrators are explained, demonstrating that the court has the authority to grant probation if it is satisfied.

The probation laws result from a combination of the enactment of Section 562 in the Criminal Procedure Code, 1898, and when the Code was recast and re-enacted as the Criminal Procedure Code, 1973, this provision was dealt with in Section 360. In accordance with an international agreement, the Indian Parliament passed the Probation of Offenders Act, 1958, in 1958. Prior to the passage of this Act in 1958, the only Central Law on Probation was

contained in Section 562 of the Criminal Procedure Code of 1898, which no longer applied after the passage of the Probation of Offenders Act of 1958. Furthermore, the Juvenile Justice (Care and Protection of Children) Act of 2000 allows children on probation to be released if they behave well. Positioning under the Prior to the passage of the Probation of Offenders Act in 1958, the only Central Law on Probation was Section 562 of the Criminal Procedure Code of 1898, which is no longer in effect due to the passage of the Probation of Offenders Act. For a period of no more than three years, any parent, guardian, or other fit person may take care of the child.

Object of Probation Laws

The purpose of the Probation of Offenders Act of 1958 is to prevent young offenders from maturing into dangerous criminals if they are sentenced to substantive imprisonment in jail. The preceding object is consistent with the current trend in the field of Penology, which holds that rather than resorting to retributive justice, efforts should be made to bring about correction and reformation of individual offenders. The Code of Criminal Procedure, however, made no provision for this type of reform, rehabilitation, or supervision. The passage of the Probation of Offenders Act demonstrates that more than simply releasing a person was required to reform and rehabilitate him.

The primary goal of probation is to permanently reform lawbreakers. It entails rehabilitating and reforming habits to make them more constructive. The goal is to give the anti-social person a chance to willingly cooperate with society. The primary goal of probation is to permanently reform lawbreakers. It entails rehabilitating and reforming habits to make them more constructive. The goal is to give the anti-social person a chance to willingly cooperate with society. This will also provide him with social security and protection. It is a substitute for incarceration. Imprisonment does not always serve the goal of reducing crime. The goal of Probation Law is to reform the offender rather than to punish him. This is referred to as Probation. Simply put, it is the conditional release of an offender on the promise of good behaviour.

The goal of this Section was to reform the young offender who may have committed the crime due to bad company or ignorance. The goal is to reshape them and save them from hardened criminals who might divert them from the path of crime. This Section also assists mature-age individuals who may have committed a crime while under the influence of alcohol or drugs. They are expected to be good country citizens.

Probation Law Principles and Practices

In India, the key sections of the Act deal with probation. Section 3 of the Act addresses the court's authority to release certain offenders after they have been admonished. This section applies only to first-time offenders and is completely discretionary. The facts of the case, including the nature of the offences and the personalities of the offenders, must be considered by the court. Section 4 of the Act addresses the court's authority to release certain offenders on probation in exchange for good behaviour. If an individual under the age of 21 is convicted of an offence that is not punishable by life imprisonment, he shall not be sentenced to imprisonment unless the reasons able to justify such a course are presented.

The pre-sentence report's purpose is to inform the court about the accused's character, to show his surroundings and antecedents, to shed light on the background that prompted him to commit the offence, and to provide data about the offender's general conduct and chances of rehabilitation while on probation.

Before deciding whether the accused should be granted the benefit of Probation Laws, the court must consider three factors: the facts of the case, the nature of the offence, and the character of the offender. A designed safeguard is provided in Section 6 sub-section (2), which states that when the court considers the third aspect, i.e. the accused's character, it must obtain a report from a Probation Officer or obtain any other information available relating to the offender before forming an opinion adverse to the offender in that regard.

Before passing a sentence, the Juvenile Justice (Care and Protection of Children) Act of 2000 requires that the report of Probation Officers or recognised voluntary organisations be considered. A Magistrate appointed to the Board established by this Act must be knowledgeable in child psychology. The Board has the authority to impose sanctions on minors. The Act empowers the State Government to establish Observations and Special Homes for Juveniles. The children's rehabilitation and social integration would take place here. Based on the Probation Officer's report, it also includes a provision for an aftercare programme, which would look after the delinquent child after he was released from these homes. Probation Officers appointed under the Probation of Offenders Act would also be able to exercise their duties under the ephemeral Justice (Care and Protection of Children) Act.

Criticism against the Concept of Probation

If offenders are not punished appropriately, the public's faith and confidence in the criminal justice system will erode, and the tendency to obey the law will gradually decline, both of which will be detrimental to society. However, if offenders are punished in accordance with the gravity of the offence, people will be hesitant to commit the offences again; instead, they will strictly enforce the law, and the convicted person will be hesitant to commit it again. This should be taken into account before enforcing Probation Laws. Some of the criticisms are listed below:

- a) People have the impression and feeling that the Probation Law is an easy way out for the wrongdoer, and that it is more of a form of leniency shown to the offender than a punishment. The public's opinion is confirmed when the offender is released after being admonished. When a court released an offender on admonition under Section 562 of the Criminal Procedure Code, 1898, it imposed a statutory obligation on the offender to correct himself. However, in this era of Modernization, Globalization, Industrialization, and the rapid expansion of Cities and Metropolises with the rapid expansion of population, it is difficult to argue that releasing an offender after admonition would serve any useful purpose or achieve the law's goal of offender reformation. Except for a few entries in the Magistrate's records tucked away in a dusty corner, no agency outside the court keeps track of how many people are released after being admonished under Section 3 of the Act. No one has bothered to inquire, ascertain, and bring to the court's attention the subsequent behaviour and attitude of the offenders who were released after the court's admonition. In reality, the reprimand has no impact on the offender's life or activities.
- b) Section 3 of the Act is now a dead law in the statute book, having outlived its usefulness as a result of changing societal patterns and new socioeconomic dimensions. It is widely held that the law must evolve in response to shifting social forces. This Act, which was passed around 150 years ago, may be incapable of meeting the needs of today's society. Theft and cheating, for example, are usually premeditated rather than impulsive. These are economic offences that cannot be treated leniently in light of the fact that theft and cheating are on the rise and are

detrimental to society's protection, primarily because mere release with admonition does not instil such fear in the offender's mind that he will not commit the offence again.

- c) Despite the statutory provisions for awarding compensation to the victim who has suffered humiliation, indignity, loss of reputation, loss and damage to his property, and injury, both physical and mental, and even loss of life as a result of the offender's actions, the court only awards compensation to the victim on very rare occasions. The offenders are released with no restitution to the victims. In extremely rare cases, the State should also be considered a victim or aggrieved party. If the state is wronged, it is the responsibility of the state to punish the wrongdoers while also protecting the victim by adequately compensating him for his loss and damage. It is the responsibility of the state in a Welfare State to reform lawbreakers by enforcing reformative laws such as Probation Laws, but the need to adequately compensate the victim of the crime cannot be overstated.
- d) It is not only a matter of experience, but also of human feeling and sentiment, that the aggrieved party who has suffered loss and injury to his person and property is never satisfied with the court's admonition of the accused, but is always concerned with the grant of compensation in some form or another. So, in an era of criminal reform and new sentencing policy, the practise of releasing the offender after admonition under Section 3 of the Act without compensating the victims would not serve the purpose of the law and would have no reformative impact on the offender or society.
- e) Actually, Section 3 of the Act applies to first-time offenders as well, and it is discretionary in nature. The court must consider "the facts of the case, including the nature of the offence and the character of the offender." The most intriguing aspect of this section is that it does not require the court to request a report from the Probation Officer.
- f) Unfortunately, Section 3 of the Act makes no provision for requesting a report from the Probation Officer or taking the reports into account when dealing with offenders, leaving a significant gap in the Act. Even if the purpose of Section 3 appears to be noteworthy, lawbreakers can avoid punishment by invoking Section 3 of the Act in the absence of built-in safeguards.
- g) Despite the fact that Section 12 of the Probation of Offenders Act states that offenders released on probation are not disqualified from employment because of a conviction, it has been revealed that this provision is not followed in the private sector and even in some government organisations.
- h) Judicial Officers are perplexed by the fact that both the Code of Criminal Procedure and the Probation of Offenders Act can be applied concurrently. The preference of the Trial Courts for Section 360 of the Code appears to be the root cause. The Trial Courts appear to have ruled that the provisions of Section 360 of the Code can be used instead of the Act's provisions. They find it simpler, easier, and possibly less cumbersome and time-consuming than the provisions of the Acts, and as a result, there is a strong tendency to rely more and more on the provisions of Section 360 of the Code. Section 360 of the Code is inapplicable in states or parts of states where this Act is in effect. As a result, where the Probation of Offenders Act applies, the use of Section 360 of the 1973 Code is prohibited.

Despite police reforms, officers in the Criminal Justice System are still unaware of correctional laws and the goal of the probation system. Because most have little faith in the probation system, they harass probationers by arresting suspects. They even threaten the probationer with a negative report if they do not comply with their demands.

Suggestions for Effective Probation Laws

In India, there is a lack of subordinate judicial willingness and awareness, which has prevented probation laws from gaining the traction that legislators had hoped for. Lower-level judicial officers are hesitant to implement the provisions of the Offender Probation Act. Here are a few ideas for more effective probation laws in India that could be put in place at the legislative and administrative levels:

- The exception to Section 4 of the Act states that offenders or their sureties must have a regular place of residence or occupation in order to benefit from probation. A large portion of society is unable to meet these requirements due to poverty and illiteracy. As a result, this mandatory condition must be modified.
- More fundamentally, the provisions of the Probation of Offenders Act and the Code of Criminal Procedure could be amended to make them simpler and more detailed, similar to the Juvenile Justice (Care and Protection of Children) Act 2000, which mentions a variety of reformative methodologies such as shelter homes, the establishment of observation homes, and so on.
- The job of a probation officer is not taken seriously in India. Almost every state has a shortage of probation officers; these responsibilities are sometimes delegated to other government employees. There is an urgent need to recruit more officers so that there are enough officers to supervise offenders.
- There is a provision in probation laws for ordering compensation from the offender to the victim, but this is only a bookish rule because judicial officers are hesitant to adopt this provision. It is a requirement of ours that compensation be practised.
- A comprehensive national and state level training curriculum for probation staff is required, with a focus on rehabilitation and prison administration reforms. The guidelines mentioned in various international treaties must be included in these training programmes.
- Prison administrations employ the vast majority of theoretical appraisal methods for the prison system. The modern perspective for the prison system, on the other hand, may be the most important for both prison staff and inmates. Emerging technologies for the prison system have been developed to help with this. According to current thinking, this technique would be used in the vast majority of appraisals.

Challenges for the future

The rapid economic restructuring required to transform Singapore into a knowledge-intensive economy has begun to alter labour patterns. Rising structural unemployment, particularly among less-educated workers, will pose a significant challenge for those working in rehabilitation. The challenge is to ensure that rehabilitation aims to prepare offenders for gainful employment and meaningful participation in society. To better prepare probationers to carve out job niches for themselves and reduce re-offending due to economic reasons, the Service will need to continue to leverage 22. (1976) 3 SCC 190; national policy on continuous learning and easy access to information technology. Partners for collaborative research, exchange of executive programmes, and other partnerships with both local and international counterparts to continue to inject dynamism in the management, implementation, and evaluation of the Service at both the programme and system levels will remain central concerns in order to stay abreast of current knowledge and know-how.

Identification of risk assessment and management tools, as well as data management systems that will allow us to achieve better results with fewer

resources. Expanding the use of probation would invariably mean having to meet and deal with more complex needs of individuals and families, as well as more support for the many helping hands we engage in the rehabilitation of offenders. If we are to continue our drive toward a more progressive treatment of offenders, these issues must be adequately addressed at appropriate levels.

A Pre-Sentence Report is usually requested by the Court before placing an offender on probation. A Probation Officer prepares this Report, which includes a thorough social investigation of the offender. The Report contains information about the offender's home, his or her character, behaviour, and the circumstances that led to the offences. Pre-sentence Report will almost always be requested for offenders under the age of 16 at the time of the guilty plea or when found guilty by the Juvenile Court. A pre-sentence report is only provided to offenders 16 years of age and older when requested by the Courts.