



ORIGINAL RESEARCH PAPER

Law

THE PROBATION SYSTEM: A CRITICAL ANALYSIS

KEY WORDS:

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INTRODUCTION

The traditional criminal jurisprudence has witnessed an obvious and automatic change in recent times. The new approach in relation to applicability of criminal law on the aspect of prevention of crime, procedure of crime, procedure of criminal trials and concept of punishment or treatment of offenders seeks to undergo radical changes. The new democratic order in the society the world over paved the way for retrospection and add new concepts, ideas, considerations and new order intends to give a complete go by to the idea of punishment therefore embodies in itself not the retribution or punitive approach but seeks to bring the offender into a social fold where while interacting with the society and surrounding, the offender may refine his/her habits, thinking and approach to life and settle and rehabilitate in normal life congenial to society at large, this is what probation aims at.

DEFINITION OF PROBATION

“Probo” is a Latin word, the meaning of which is “I prove my worth”. “Probatio” means “test on approval”. The origin of these terms such as “Probo” or “Probatio” may give us an idea that how the term “Probation” tends to proceed to any length in terms of legislative intent or various sanctions available to courts. Though the society may take it in any way, yet the idea or concept is of great significance especially for those doers of crime on whom under the given circumstances the courts to prove their worth with 100% chances of reformation and live in free society without breaking law.

According to the Oxford dictionary, probation in law means, “a system that allow a person, who was committed a crime not to go to prison if they behave well and see an officer (called a Probation Officer) regularly for a fixed period of time”.

The Cambridge International dictionary defines probation to be a period of time during which you must behave well or do good work.

According to the New Lexicon Webster’s Dictionary Probation is, “suspension of the sentence of the convicted offender, allowing him freedom subject to regular supervision by a Probation Officer.”

SALIENT PROVISIONS OF THE PROBATION OF OFFENDERS ACT, 1958

The Probation of Offenders Act was passed by the Parliament in 1959 in order to give emphasis on the concept of reformation and rehabilitation of offenders. This Act is applicable to whole of India except the State of Jammu and Kashmir

The main provisions of the Act are as follows :

- (i) Section 3 of the Act postulates the release of certain offenders after admonition.
- (ii) Section 4 of the Act provides that the Court has a power to release person on probation found guilty of having committed an offence except an offence punishable with death or life imprisonment, when consider it expedient to release on probation in view of the nature of offence and character of the offender, on furnishing bond for a period not more than three years to keep peace and good behaviour and while doing so it is provided that the court shall consider the report of probation officer. Further it provides for supervision of the offender so released by a probation officer or imposition of

conditions to prevent repetition of crime. Order of supervision orders may be with or without sureties.

- (iii) Section 5 of the Act says that the Court has power to require the released offenders to pay compensation and costs to the aggrieved person or party. Section 6 of the Act imposes restrictions on imprisonment of offenders under twenty-one years of age and further fastens duty on the court to record reasons that why such offenders could not be dealt under section 3 and 4 of the Act.
- (iv) Section 7 says that the inquiry report of the offender which is prepared by the probation officer under section 4(2) of the Act should be kept confidential.
- (v) Section 11 provides for the provisions of appeal and revision and the powers of the Courts in appeal and revision.
- (vi) Section 13 and Section 14 describes about the Probation Officers (who is the epicenter of the Probation system) and their duties respectively.

OBJECT OF THE ACT

The object of the Act of 1958 is to prevent the first and young offenders from going into jails so that they may not come in contact with hardened and habitual criminals. The object further extends itself to the reformation and rehabilitation of such offenders who are released on probation.

BENEFITS OF PROBATION

There are some benefits of probation which can be described from the definition of probation can be. These are as follows :

- (1) As the accused relieved from the burden of prison and be saved from the stigma of imprisonment.
- (2) After releasing on probation, the offender gets a chance to reform himself and the desired results so achieved by this way, may ultimately contribute to the social development of the country.
- (3) The most important benefit of probation goes to the young, specially the offenders below the age of 21 years and first offenders on whom much emphasis has been laid under the Act, to be released on probation instead of sending them to prison.
- (4) The expenditure on probation is very less as compare to the expenses done on maintaining prison and providing basic things to the prisoners. So the probation decreases the burden of expenditure from the public exchequer and may come as the most economical method for the correction of offenders.
- (5) The offender goes to home after his release on probation so the family bond will not break up and not come to an end. The offender can earn money for his family or continues with his occupation/education etc
- (6) The offender remains in his family and social environment which save him from the ill-effects of jail life such as mental and psychological sufferings.
- (7) Probation is helpful in curtailing recidivism because the probation officer supervises the probationer during the whole period of probation and the probationer, while under the procedure of getting probation, fills a bond in which some conditions are mentioned. If the probationer breaks any of the condition, he has to face the punishment for that, so by the fear of punishment, the offender/probationer averts himself from doing any offence.

CRITICISM

As it has been discussed earlier that the first and foremost object of

probation is to reform and rehabilitate the offenders in general and the first and young offenders in particular, so that they can become useful members of the society. But the Act has some deficiencies in it. These are as follows:

- (1) Under Section 3 of the Act, the accused is released by the Court only after due admonition. There is no provision in the Section for the calling of the report of the Probation Officer. Also there is no provision for supervision by the probation officer and in the absence of the same mechanism the offender takes the same for granted and therefore such release does not seem to go in the direction of reformation as has been postulated to be achieved under the Act.
- (2) Section 4(2) provides for the calling of the report by the Probation Officer but the word "if any" indicates that calling of the report is not mandatory, it is the discretion of the Court to call for it or not. It is mandatory only in section 6(2) of the Act therefore it may preclude the court to arrive at right conclusion while passing order under section 3 and 4 of the Act.
- (3) Section 4(3) provides for the supervision orders but the order of supervision is not mandatory. The supervision of the offender for the period of probation by a probation officer is the key tool to achieve the desired goal of reformation, rehabilitation as well as prevention of recidivism of offenders which goes to the root of the cause in terms of realisation in the mind of offender so released that he is being supervised and can be sent behind bars for not keeping good behaviour or violation of conditions. Moreover the methods required to be adopted for correction of his behaviour as enumerated under the Act are only possible when there is order for release on probation with supervision. In the absence of order of release on probation with supervision it is generally taken as method of leniency by the all concerned and such practice may vitiate the very purpose of reformation as has been intended by the legislature.

SUGGESTIONS :

The Probation of Offenders Act, 1958 is a good step for the reformation of the offenders. Though the Act has some deficiencies in it so there are some suggestions by which the object of the Act be achieved more efficiently :

- (1) The calling of the report by the probation officer should be made mandatory on the part of courts on one hand and obligatory on the part of probation officers on the other hand.
- (2) The provisions for supervision orders should be made mandatory.
- (3) There are many other social welfare tasks which are assigned to the probation officers by which they can't give proper attention to the Act. So the function of District probation officers should be curtailed to some extent.
- (4) The number of probation officers should be increased as there is only one probation officer for one District.
- (5) There should be Adequate training programmes for probation officers and availability of sufficient staff and infrastructure to achieve the desired goal.
- (6) There should be time to time meetings of probation officers of the area with the Judicial Officers.
- (7) There should be awareness camps for the people about the aim and object of The Probation of Offenders Act.
- (8) The State governments must make provision in the budget for the reformation of offenders.

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