

Law Relating To Probation : An Overview

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INTRODUCTION

- The term 'Probation' is derived from the Latin word "Probare" which means "To Test" or "To Prove".
- Probation means "I prove my worth"
- Probation of offender has been widely accepted as one of the non-institutional methods of dealing with corrigible offenders, particularly young offenders and first time offenders.
- Probation is a period of supervision over an offender, ordered by the court instead of serving time in prison.
- It can be understood as conditional release of an offender on the promise of good behavior.

Probation : Definition

- According to Don M Gottfriedson- “Probation is a procedure by which a convicted person is released by the court without imprisonment subject to conditions imposed by the court”.
- Thus Probation is part of the decision- making process of a judge at the time of sentencing.

V.R KRISHNA IYER ON PROBATION

- Justice V.R Krishna Iyer, former Judge of the Supreme Court, expressing his view on probation and other correctional services in the National Correctional Conference on the Probation and Allied Measures held in October 1971 at New Delhi observed:

“Twenty-Five years of freedom have not freed our judiciary from the obsolescent British Indian Penology, bearing on suppression of crime. And it is time for our magistracy to bend to the winds of social changes.”

JUVENILE PROBATION

- Juvenile probation is a form of sentencing that allows young offenders to remain in their communities while under the supervision of the court.
- During the probationary period, a Juvenile may be required to follow certain terms and condition.
- Probation can be used of the front end of the Juvenile's sentence instead of confinement for low-risk and first time offenders or it can be used at the end of sentencing for those juveniles incarcerated in a juvenile facility.

- Juvenile probation programs are ideally set up to help young people correct their behaviors without removing them from their communities.
- The offenders are not adults, and they depend on their parents or guardians for place to sleep, food to eat, and clothes to wear.

JUVENILE JUSTICE (CARE AND PROBATION OF CHILDREN) ACT, 2000

- The Juvenile Justice (Care and Protection of Children) Act, 2000 came into force with effect from 30/12/2000.
- It extends to the whole India including state of Jammu and Kashmir after the Jammu and Kashmir Reorganization Act, 2019.
- The Act provides for the release of children who have committed offence, on probation of good conduct and placing them under the care of their parents or guardians or other fit persons executing a bond.
- The bond can be executed with or without sureties
- The period of probation cannot exceed three years.
- Before allowing a child on probation, the Juvenile Justice Board may make suitable enquires.

Scope of Probation U/S 360 of Cr.P.C. vis-a-vis Probation of Offenders Act

- The provisions of section 360 of the Code of Criminal Procedure, permits no discretion whereas there is always a need to investigate in each case whether probation will suit to the requirements of the delinquent or not.
- The probation law in India permits release on probation of even adult offenders who are not recidivists and show potentiality for re-adjustment to normal life in society.

- The Probation of Offenders Act has done away with the distinctions of age or sex. All offenders whether below 21 or above 21 years of age are equally entitled to avail the benefits of release on probation of good conduct.
- Grant of probation is not confined to first time offenders as in case of section 360 of Cr.P.C.
- The scope of the Probation of Offenders Act is far more wider than the provisions of Section 360 of the Code of Criminal Procedure, 1973.

- The Power under the Probation of Offenders Act can be exercised by any Magistrate.
- The Important feature of the Probation Act is the provision regarding placement of the offender under supervision of a Probation Officer. But there is no such provision under section 360 of the Code of Criminal Procedure, 1973.
- Section 360 of Cr.P.C does not provide for any role for probation officer in assisting the courts in relation to supervision and other matter while the Probation of Offenders Act does make such provision.

Masarullah v. State of Tamil Nadu, AIR 1983 SC 654

- The Supreme Court observed that the trial court assessed the convict's age wrongly and there was no examination of the convict between the grant of probation under the Act and the statutory minimum sentence of 7 years under Section 397 IPC.
- Thus, the appellants were allowed the benefit of Section 4 and 6 of the Probation of Offenders Act even when charged under Sections 452 and 379 of the Indian Penal Code.

Ramamurthy vs. State of Karnataka

AIR 1997 SC 1739

- The Supreme Court observed that it really resulted in suspension of sentence, as the person released on probation is required to executed a bond under the provisions of the Probation of Offenders Act, 1958 requiring maintenance of good conduct during the probationary period and failure to do so, finds the person concerned in prison again.
- It must be stated that while disposing of the offender on probation the judges are confronted with the crucial task of striking a balance between the protection of society on the one hand and correction of offender on the other.
- The magistrate cannot afford to dispose of the convict without taking into consideration the nature and gravity of the offence and potentialities for reformation of the criminal.

Chandreshwar Sharma vs State of Bihar (2000) 9 SCC 245

- Conviction u/s 379 IPC
- Mandatory duty is cast on the Court to record in its judgment specific reasons for not granting benefit of Sec. 360 Cr.P.C., to an accused where it could have been dealt with the accused thereunder.
- Supreme Court directed appellant to be released on probation of good conduct with condition to enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year.

Om Prakash & oths. vs State of Haryana (2001) 10 SCC 477

- Conviction under Sections 323, 325 r/w 148/149 IPC
- Offence took place 11 years ago. Appellants did not indulge in misbehaviour or mischief while in jail.
- Fit case for appellate Court to invoke Sec. 360 Cr. P.C.

CONDITION OF PROBATION

The **Probation of Offenders Act, 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 other offenders in lieu of sentence, subject to certain conditions. These include:—

- (1) Release after admonition;
- (2) 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 courts 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;
- (3) 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 reasons to the contrary in writing; and
- (4) The person released on probation does not suffer a disqualification attached to a conviction under any other law.

Public Prosecutor v. N.S. Murthy

1973 Cri LJ 1238(AP)

- The accused was tried for committing murder of his wife but he was convicted under Section 323 of IPC as the injury caused by him was simple in nature. He was released on Probation by the trial court but the High Court sentenced him to six months R.I. It was held that the conduct of the accused immediately after the occurrence as well as the trial was one of the relevant and material factors to be taken into account before exercising powers under Section 4(1) of the Probation of Offenders Act 1958. In regard to the conduct of accused the court made the following observation:
- “In the present case, the accused did not admit his guilt at any stage. The conduct of the accused is not that of a man of good character. Admittedly he ran away after the incident. He was kept in custody of P.W 3 and was handed over to the police on the day following the date of offense at the inquest. He never repented for what had happened to his wife either immediately after the occurrence or at any time subsequent thereto. His statement under Section 342 CrPC makes it abundantly clear that he is not entitled to have the benefit of Section 4(1) of the Act.

Provisions of Probation of Offenders Act,1958 normally cannot be applied to the following offenses:

- Section 409, 467 and 471 of the Indian Penal Code – these Sections deal with breach of trust by public servants, forgery of valuable security and will and documents used as a genuine forgery. In **Rev vs By Adv. Sri P.K.Ravisankar and State Of Gujarat vs V.A. Chauhan**, on 3 February 1983, the court did not grant release of the offenders on the basis of Section 3 and Section 4 of the Probation of the Offenders Act,1958.
- Probation of the Offenders Act,1958 does not grant the release on the grounds of kidnap or abduction. In the case of **Smt. Devki v. State of Haryana, AIR 1979 SC 1948** it was observed that Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forcing her to sexual submission with a commercial motive.

- The Act refrains from providing release of habitual offenders. In the case of ***Kamroonissa v. the State of Maharashtra, AIR 1974 SC 2117***, the appellant was charged with the theft of gold. She was punished by rigorous imprisonment. She was under 21 years of age. The probation officer thus requested the court to grant her the release under Sections 3 and 4 of the probation of the offender's Act. The court refused the claim by addressing that the appellant had been engaging in various crimes before and was arrested in 1971.
- Section 325 of the Indian Penal Code – This Section speaks about the violence that causes grievous hurt. Thus, the Probation of the Offender Act does not provide a release on this basis.

- ***State of Sikkim v. Dorjee Sherpa And Ors* 1998 Cri.LJ 2685**– In some cases, the Court does not take technical views and should take into account certain considerations, such as the risk of work losses, to invoke the provisions of the Probation of Offenders Act even in serious offences. This was also argued that the Court would also take into account that convicts belonging to middle-class families with no criminal record frequently become victims of situations due to the unwelcome business and other negative forces available to these young generations.

NO BENEFITS OF PROBATION IN SEXUAL OFFENCES.

- The benefits of release on probation is specifically denied to cases involving sex perversity.

Case Law:

**Krishna Chandra v. Harbans Singh (1967) Raj
LW 101.**

The accused, an educated young man was found guilty of having committed house-trespass in his neighbor's house and committed rape on the said neighbor's wife. The court held that the offender cannot be admitted to the benefit of probation keeping in view the nature of the offence and depravity of the offender.

AMMINII V. STATE OF KERALA

(1981) Cri.L..J.1170 (Kerala)

- The accused was a women convicted under S.55(g) of Abkari Act but she had no distillery operated by her and was only selling liquor as sole bread winner of a large family, and having a chronically sick husband in home.
- Held that the accused should have been released under Section 4 of the PO Act.

Power is discretionary

- While granting the benefit under the Act the court shall take into consideration the nature of the offense. If the offense is not trivial in nature, the court should not be lenient in granting such a benefit. **State of Karnataka v. Mohamed Nazeer (2003) SCC(Cri)610.**
- Power to release on probation is discretionary and has to be exercised in appropriate cases.

Probation on good conduct

Section 4 of the Probation of the Offenders Act, 1958 talks about the release of the offender on the basis of good conduct. It is a very important Section of the Act. The important points that must be remembered for the application of this Section are:

- Section 4 of the Act is not applicable if the offender is found guilty of an offence with death or imprisonment for life.
- The Court has to consider the circumstances of the case including the nature of the offence and the character of the offender.
- The court may pass a supervision order to release the offender on probation of good conduct. The supervisory period is not to be shorter than one year. The probation officer must supervise the individual for such a span in such a situation. In the supervisory order, the name of the probation officer should be listed.

- The Court can direct the offender to execute a bond, with or without sureties, to appear and receive sentence when called upon during such period which should not exceed a period of three years. The court may release the offender on good behaviour. The Court may put appropriate conditions in the supervision order and the court making a supervision order explain to the offender the terms and conditions of the order. Such supervision order should forthwith be furnished to the offender.
- Probation officer's report is not compulsory to enforce this rule, but if the information is required on record, the Court shall take into account the probation officer's information before granting a probation order for good behaviour.

Case laws

- ***Smt. Devki v. The State of Haryana, AIR 1979 SC 1948*** – In this case, it was observed that Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forcing her to sexual submission with a commercial motive.

- ***Phul Singh v. the State of Haryana, AIR 1980 SC 249***– In this case, the court held that the provision of Section 4 should not be mistaken and applied easily in undeserving cases where a person in early twenties commits rape. The court, thus, refused the application of probation on such heinous nature of crime and convicted the person.
- ***Dalbir Singh v. The State of Haryana, AIR 2000 SC 1677***– In this case, the court took the opinion that it is appropriate for the defendant to be placed on probation for his good conduct, given that the facts of the situation are needed to be taken into account. One of the circumstances informing the aforementioned opinion which cannot be omitted is “the essence of the offence.” Thus, Section 4 can be redressed where the court recognizes the circumstances of the situation, in particular the “character of the crime,” when the court decides whether it is reasonable and necessary for the execution of a defined reason that the defendant should be released on the grounds of good conduct.

Cost and compensation

Section 5 of the Probation of the Offenders Act, 1958 says that if any person is released under Section 3 or Section 4 of this Act, even then the court might order:

- The offender to pay compensation to the victim for the loss or the injury occurred to him. Or
- Cost of the proceeding as the court may think reasonable

Rajeshwari Prasad v. Ram Babu Gupta, AIR 1961 Pat 19 – The amount of compensation is purely on the discretion of the court to grant if it thinks it is reasonable in the case. Thus, deciding the amount of compensation, it is solely the court's discretion to require payment and costs where it finds.

Rehabilitative and Reformative utility of the conditions of Probation

- Section 12 of the Act removes a disqualification attaching to a conviction. The whole scheme of the Act, as well as its main purpose, namely the reformation and rehabilitation of the offender as a useful and self-reliant member of the society would remain incomplete without such a provision.
- The offender is saved not only from the deleterious effects of jail life but is also assured by this provision that he shall not suffer any disqualification attaching to a conviction of an offence.
- This benefit is given to all offenders released on admonition or on probation of good conduct under this Act, notwithstanding anything contained in any other law.
- But nothing in this section shall apply to a person who, after release under section 4, is subsequently sentenced for the original sentence. Section 13 and 14 deals with appointment and functions of Probation officer.
- Probation officers employed in correctional services play a crucial role in bringing about the rehabilitation and reformation of the offenders and making them useful to the society

Reformative and Rehabilitative Services: Therapy, Treatments & Programs

- The reformative and rehabilitative correctional services basically concerned with the reduction of the risk that the offender poses to the society but not to improve the offender's life. Of course the two goals are not incompatible; if more offenders can be taught to walk the straight, the risk community members being victimized by them is reduced proportionately. Even though the programs are typically run on the financial shoestring, prison officials like it because it keeps the inmates busy and out of trouble. Inmates also like it because it gives them something to do outside of their cells and looks good on their parole board records. The identification of various types of defaults in the correctional services gave way to a more advanced and criminal based rehabilitative and reformative treatment and care programs

Reformatory Theory of Punishment In India

- Mahatma Gandhi once stated that an eye for an eye will make the whole world blind. He advocated the gospel of non-violence and forgiveness. These were the principles on which India won its independence. Similar principles have also been incorporated in the legal system of India.
- The courts of the country have time and again highlighted the importance of reformatory theory of punishment. In the case of **Gulab Singh v. Yuvraj Singh 1995 Supp (4) SCC 623** the Supreme Court refused to enhance the punishment of the offender taking into account the aim of reform of the Indian Penal System.

Methods Of Achieving Reformation

There are a variety of methods which can be used to achieve reformation. These include-

- Advertisement
- Education
- Therapy
- Training
- Parole and Probation

Parole

- Parole means the release of an offender temporarily or permanently on the basis of good behavior of the offender. It is thus, a tool for the prison's social rehabilitation. In the case of **Budhi v. State of Rajasthan RLW 2006 (1) Raj 118** it was held that parole serves the following three purposes-
- It serves as a motivation for the offenders to mend their ways and be released early.
- It ensures that the family relations of the offender remain intact.
- It assists the offender to assimilate into the society and adapt to its folds.

Probation

- Probation means allowing a prisoner of some minor offence to go at large during good behavior. The person released is placed under the supervision or guardianship of a probation officer. The duty of such probation officer is to supervise the probationers assigned to him and to help him secure employment and to help him reform

Pardon

- The Constitution of India, 1950 empowers the President of India under Article 72 to grant pardon to an offender. Similar power has been given to the Governor under Article 161.
- Article 72(1) not only empowers the President to grant pardon but also to reprieve, respite or remit sentence of the offender. The power can be exercised by the President where the sentence is passed by Court Martial, under Union Laws or the sentence of death is passed.
- Similarly, Article 161 empowers the Governor to pass an order to pardon, reprieve, respite, commute or remit the sentence of an offender.

PROBATION IN ADMINISTRATION JUSTICE

The word 'Probation' is derived from a Latin word '*Probo*' which means "I prove my worth" and '*Probatio*' which means "Test of approval" to examine whether a person can live in the society without breaking the law. Thus, probation means the act of proving the worth and building a character worthy to be released. The primary objective of the criminal justice system is to reform the criminals rather than punish them and to provide a socialized penal device for supporting this principle of reformation. probation means discharging a convict, subject to the regularity of conduct and good behaviour by imposing conditions upon his release. probation means discharging a convict, subject to the regularity of conduct and good behaviour by imposing conditions upon his release.

- The Probation of Offenders Act, 1958 is enacted with an aim to yield a mechanism where the amateur and first-time offenders are able to reform and are kept away from the negative influence of the jails and hardened criminals.
- The Act provides for the release of first-time offenders after due admonition for convicts punishable under Section 379, Section 380, Section 381, Section 404 and Section 420 of Code of Criminal Procedure and also to those who are punishable for imprisonment of 2 years or with fine or both.
- The Act authorizes the release of offenders on probation based on good conduct, provided the offence alleged to have been committed by the offenders is not punishable with life imprisonment or the death penalty.
- The Act empowers the Court to give orders for payment of a reasonable sum to the victim for the injury caused to him and the cost of the proceedings by the offender.

- The Act protects those offenders who are below the age of 21 years from the sentence of imprisonment. However, this rule does not apply to those who are offenders punishable with life imprisonment.
- The Act empowers the Courts to set the conditions in the bond for a person released on probation and to extend the period of probation not exceeding 3 years from the original order.
- The Act entrusts the probation officers to supervise the probationers assigned to him and help them in reformation and employment.

Ways of Promoting Probation

- Three equally important ways of promoting probation as an effective and efficient non-custodial sentencing option were identified as:
 - (i) involving the community (public at large, NGOs, religious communities, etc.);
 - (ii) ensuring political commitment; and
 - (iii) improving co-operation, collaboration and co-ordination among all the involved agencies and organisations (probation service, police, court, prosecution, social welfare, school, NGOs, etc.).

Thank You!!!