

Law of Probation in India

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Abstract: The importance of probation as a non-custodial measure is recognized by the international community as evidenced by formulation of the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) in 1988, of and their subsequent adoption by the Eighth (8th) UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990. The purpose of probation is reform of the offender by means that are alternative to punishment such as admonition, constructive treatment, conditions of good conduct, and supervision rather than punishment and incarceration, by which, offenders, instead of being sent to jail, are put under the care of a Probation Officer by the Court, thus saving them from stigma and influence of hardened criminals.

Keywords: Law of Probation, India

I. INTRODUCTION

While infliction of punishment has as its objective i.e. the suffering of the offender; probation is intended at reformation and re-socialisation in line with the reform of the penal system. It is guided by the belief that many offenders are not dangerous criminals but have acted in misfortune, providence, misguidance, and have landed in conflict with law. It is an alternative to imprisonment, and is considered the most viable sentencing option for juveniles, young offenders, first time and petty offenders.¹ In India the criminal justice system is characterized by long detentions in the pre-trial and trial stage. The large majority of the total prison population are remand prisoners awaiting trial or on trial. As a result, prisons remain massively overcrowded, with 2, 93,058 more prisoners than the authorized capacity². In India, in spite of the shift in penal philosophy from deterrence to reformation with the passing of the Probation of the Offenders Act by the Indian Legislature in 1958, and amendment of Cr.P.C. provision Section 562 into Section 360; large numbers of young, first time and petty offenders continue to form the main bulk of overcrowding figures in prison population of the country. The effective use of probation can prevent the unending wait of many offenders who could otherwise avail the benefits of non-custodial treatment. The provisions under the Probation of Offenders Act are premised on the philosophical presupposition that the release of offender on probation under supervision will result in a probable reduction of crime and reformation of the offender. The framework within which this supervision based reform and reintegration is carried out is referred to as probation. This Act applies to offenders of all

age groups including repeat offenders not charged with life imprisonment.

II. WHAT IS PROBATION?

The black's Law Dictionary defines the term Probation³ as A court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison further probation in which the offender agrees to certain conditions or restrictions and reports only to the sentencing judge rather than a probation officer. However, the word probation is derived from a Latin word probatum, which means "the act of proving." Probation is an alternative to imprisonment which allows a convicted defendant to go free with a suspended sentence for a specified duration on executing a bond with or without sureties for maintaining good behaviour and keeping peace. Probation is the period during which a person, "the probationer," may be placed under the supervision of a probation officer and must fulfill certain conditions.

III. LAW OF PROBATION IN INDIA

The Probation Services in India are being regulated by Probation of Offenders Act (1958) and Section 360 of Code of Criminal Procedure (Cr.P.C.) 1973 which allows release of the offender on probation on fulfilling certain conditions in lieu of his/her stay in prison on conviction.⁴ Section 562 of the Cr.P.C (1898) was the earlier provision which dealt with probation. However after the amendment in 1974 it became the Section 360 which states that when any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman

¹ M. Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 86 (2006)

² NCRB, *Prison Statistics India*, xiii (Ministry of Home Affairs Government of India, 2016)

³ Baryan A Garner, *Black's Law Dictionary*, 3804, (8th edition, 2004)

⁴ Draft National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research and Development, Ministry of Home Affairs, 100 – 101 (2007)

is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behavior. However, under Section 360 of the Cr.P.C., benefits of probation can only be given to the first time offenders while the Section 4 of the Probation of Offenders Act allows the benefits for probation to repeat and petty offenders as well. In addition, the Section 361 of the Cr.P.C. further specifies the duty of the judge such as declaring and recording the reasons why the benefits of probation have not been provided to a young offender. Clearly these provisions strengthen the probation

Concept and call for its application to all the suitable cases. In 1934, the Government of India informed the Provincial Governments to enact their own legislations on Probation. The State of Madras was the first to adopt Probation after the enactment of the Madras Probation of Offenders Act in 1936 which was the first Probation of Offenders Act in India.²⁵ Later this was replaced by the Central Act known as the Probation of Offenders Act 1958, Central Act (IX of 1958)⁵ The Act introduced comprehensive measures regarding probation to be implemented and applicable to the whole country. The Act calls for a social investigation report by courts from the probation officers in respect of all offenders below 21 years of age. It also imposes restrictions on the imprisonment of offenders below 21 years of age and if such offender deserves, in the eyes of the judge, to be sent to prison, reasons for doing so have to be recorded by the judge.⁶

In 1958 the Legislature enacted the Probation of Offenders Act which brought to the fore the significance and importance of non-custodial measures such as probation in the field of criminal law. The Act presents consolidated provisions and information regarding probation where it can be applied and who can benefit from it. It is the only legal document in India that deals specifically with the concept of probation and how it ought to be implemented. It states that first time, young and repeat offenders who have not committed any crime punishable with death or imprisonment for life are entitled to benefit from the Act and ought to be released either after admonition, or on probation without supervision or under the supervision of Probation Officer. Additionally, the Act outlines the roles of the Probation Officer and the Magistrate

who are entrusted with the responsibility of ensuring the implementation of probation work when an offender is given the benefit of the Act. The Probation of Offenders Act, 1958, provides for care, protection, treatment and rehabilitation of delinquent and neglected juveniles and 'makes the juvenile justice system more responsive to the developmental needs of the juvenile'. With the coming into force of the Juvenile Justice Act in 2000, the care and custody of juveniles is interpreted under the more substantive rules of the JJ Act under which, too, the Probation Officers are mandated a supervisory role.

IV. POWER AND OBLIGATION OF PROBATION OFFICER

Section 14 of the Probation of Offenders Act, 1958 indicates the following duties of the Probation Officer:-

- a) Inquire in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submitting reports to the court.
- b) Supervise probationers and other persons placed under his supervision, and where necessary endeavor to find them suitable employment.
- c) Advise and assist offenders in the payment of compensation or costs ordered by the court.
- d) Advise and assist in such cases and in such manner as may be prescribed, persons who have been released under section 4.
- e) Perform such other duties as may be prescribed

V. PREPARING A PRE-SENTENCE REPORT

One of the most important duties of a PO entrusted in the section 14 (a) of the Act is the preparation of a pre-sentence report for the guidance of the Court whether to grant the benefit of probation to the accused or not.

- For the purpose of Section 14 (a) of the Act, the PO shall after making inquiries regarding the offender's character, his social conditions, financial bation to the accused or not and other circumstances of his family will put down relevant facts, information in the report as required by the Court.
- The summary of the case shall include a statement of facts along with the PO's assessment of the case to help the court determine the most suitable method of dealing with offender after he has been found guilty.
- The report shall be treated as 'confidential' and delivered to the Court on the date specified by it; it must be enclosed in a sealed cover if delivered to the Court a day prior of the judgment.

⁵ Probation Branch, Tamil Nadu Prison Department available at <http://www.prisons.tn.nic.in/probation.htm>

⁶ Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 4 – 5 (1970)

- If the PO considers the probationer has made sufficient progress and further supervision is not needed he shall make an application to the Court in consultation with the District Probation Officer under intimation of the Chief Probation Superintendent for discharging the bond under sub-section 3 of the Section 8 of the Act.

VI. VISITING AND CHECKING ON PROBATIONERS

The PO may, subject to any provisions of the supervision order, require the probationer to report to him at the stated intervals and meet him frequently to ensure that the stipulations of the rules of the order are followed.

- The PO shall visit the probationer periodically in his home surroundings or his occupational environment in order to assess the progress made by him and difficulties he/she faced during such probation period.
- Additionally, the PO has to keep a track of the juvenile and maintain a follow up action even after the completion of the supervision period.
- Ultimately, the PO strives to bring a change to the behavior of the offender and motivate him/her to make a progress towards his/her successful rehabilitation in the community.

VII. THE JUVENILE JUSTICE ACT, 2000

In addition to the above discussed provisions, The Juvenile Justice Act, 2000 empowers the PO to assist the Juvenile Justice Board (JJB) whilst making decisions or passing orders with regards to the juvenile, and advise him during the probation period so that he fulfills his promise not to re-offend again.⁷

- Under Section 12 of the Juvenile Justice Act, the PO's report is sought by the Juvenile Justice Board whilst entertaining a bail application and also at the time of final disposal of the case. The purpose of the report is to examine the juvenile's background and identify the reasons for committing the offence. Though the PO's report has only recommendatory value, the JJB takes this report into consideration prior to taking any decision in respect of the judgment of the juvenile
- Furthermore, the PO has to do a follow up on juveniles after their release to continue providing guidance to them and visiting their residence.
- Under the JJA, the duties of a PO are not as comprehensive as in the Probation of Offenders Act but there are certain similarities such as investigation and preparation of offender's profile that is subject to release on probation.

The Juvenile Justice Act empowers the Probation Officer with the following roles: -

- a) Obtaining information regarding the juvenile's family background of the juvenile and other material circumstances to assist the Board in preparing a social investigation report on the juvenile and preparing further report regarding the necessity, nature and period of after-care.
- b) Supervising a juvenile either pending inquiry by the Board or on a final order passed by the Board on finding that the juvenile has committed an offence or after the juvenile is discharged from the Special Home

VIII. CONCLUSION

It is important that the various agencies of the criminal justice system come together to make probation an effective practice of non-custodial treatment in all appropriate cases where a restorative principle of justice needs to be applied. As part of preparing a restorative community justice system, a probation program must consider the concerns of the victim, strengthen and promote community bonds, target and respond to the first time/young/petty offenders' as well as repeat offenders' 'problem' behaviour in ways that advance competencies. Government departments need to step up to this task that demands training, sensitization and inter-agency co-ordination. Probation can take a proactive role in implementing restorative principles through the pre-sentence investigation report, which is submitted to the court at the time of offender's sentencing. There should be at least one probation officer attached to every sub-divisional court so that he/she would not have to cover long distances to reach the courts or the client. It is necessary to Increase budgetary allocation for appointments of more numbers of suitable probation officers.

⁷ M. Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 84 (Child line India Foundation, Mumbai, 2006)