



Probation System in India: A Theoretical Framework with Socio-Legal Aspects

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Abstract: *The paper try to cover all the aspects especially the social- legal and being able to quantify the perception of probationers regarding probationers is not subject to any logical classification. The description itself is sequential. The paper makes an effort to carefully analyse probationers, a type of non-institutional form of correction. Probationers becomes significant because it has always been one of the primary criminology-based techniques of correction. It is a type of non-custodial sentencing that is utilised as an alternative to incarceration because to the way it is carried out. Probationers system is a conditional release for reform and rehabilitation of offenders. The probationers system tries to prevent the individuals from becoming a hardened criminal*

Keywords: *Reformation, rehabilitation, releasing, conditional, supervision, perception.*

INTRODUCTION

With advancing civilization developed the recognition of acts done with selfish motives which were harmful or unfair to co-individuals and /or society as a whole. History recognized such acts as crime and developed a code identifying them, defining them and defining the negative incentives that could be awarded to those who broke this code.

With further development punishment became less and less stringent. It became less and less probable for being punished with reason. 'A thousand criminals may go free rather than one innocent is punished', became the guiding principles of law. Attributes of kindness and concern for fellow human beings became more and more applicable to persons convicted for crime. Punishments became more homogenous and well-defined law became more liberal. An outstanding example of liberalisation of the legal process is the probation Probation according to one of the definitions is a process in which persons convicted for crime of a non-heinous nature are released under observation and are allowed to pass their sentence outside jail. It provides them a chance to return to normal life and prevent them from becoming hardened criminals.

On 15th August, 1947, as India awoke to freedom, the face of one of the morning walkers in Ahmedabad was splashed with dirt when a bicycle rider jealously but carelessly rode through muddy water within splashing distance to this gentleman. On being reprimanded the bicycle rider put up the plea "Haven't we become free?" The reply of the sufferer of this newly found freedom states the basic principle of all the laws of the world. "Your freedom ends said he, "where my nose begins."

Controlled behaviour is thus the price that individuals must pay for the joy of collective living in society. The control is the law and its abatement crime. Over the centuries, there have been more negative than positive incentives to prevent or punish crime. But with the passage of time the punishment has become more liberal and less deterrent. The probability of being punished is low and even then the punishment is not so brutal. This has naturally lead to decreasing the deterrent teeth of law and making the law easier to break. But this price of civilization, the framers of law have agreed to pay because of the liberal principle where a thousand criminals may go free but one innocent should not be punished. The framers of law have gone still further where the law gives the chance to even those criminals whose crime has been proved, to return to the normal law abiding pattern of life. Relying on the ability of human beings to learn from there experience it tries to prevent this individual from becoming a hardened criminal and the best part is that it does succeed in the large percent of cases. This is the genesis of probation.

Probation is universally accepted as an effective and scientific method for prevention of crime and delinquency. The age old idea was that offender should be confined to the prison and kept away from the community as long as possible. But, in course of time, it has been realized that the protection of society is better ensured if the offender is corrected and reformed through individualized treatments.



However, it has been perceived that all human beings do not respond in the same manner to a given stimuli. Two individuals may commit the same crime but each act differs from the other in its social, economic, psychological and environmental ramification. This basic understanding has led to the innovation of a number of treatment method for offenders.

Prison or correctional institutions are no longer regarded as custodial institution only but also as treatment and training centres for those who fall foul with laws. But, in due course it was realized that prisons do not serve the purpose of training and rehabilitation of all categories of offenders. Therefore, in course of time, various non-institutional methods of treatment for offenders have been introduced eg. probation, parole, premature release, half-way houses etc. These are all community based non institutional treatment methods.

Thus, probation is a non-institutional treatment method designed to facilitate the social re-adjustment of offenders. It developed as an alternative to imprisonment. Probation is a method of dealing with specially selected offenders and consists by the conditional suspension of punishment while the offender is placed under the personal supervision of the probation officer and is given individualized treatment.

The length of the probation varies and is determined by the court. Moreover, probation is the application of modern scientific casework to individuals, outside institution with the authority of the law behind it. It calls for the careful study of the individual and intensive supervision by the competent trained probation officers.

The object of probation is the ultimate re-establishment of the offenders in the community. The law helps him to help himself to erase the stigma of conviction and gives him the guidance of the probation officer.

It refers to a system of Criminal Justice under which a law violator is released before being sent to jail on the condition of displaying good conduct in the community of which he/she has been a part.

The rationale behind this system of community based correction has been that when correction is basically the task of building or rebuilding the solid ties between the offender and the community, walled correctional institutions cannot serve the purpose and thus unfit for achieving the above mentioned goal.

The probation system has emerged as a major breakthrough in the modern liberal trend to reform in the penological practices.

According to an U.N. Report, "Probation is an essentially modern method for the treatment of offenders, and as such, it is rooted in the broader social and cultural trends in the modern era."

"An eye for an eye will make the whole world blind" - Mahatma Gandhi

Mahatma Gandhi, a famous political sage and our Father of the Nation, is widely credited with this piece of wisdom. The proverb states that if we continue to punish people we see to be cruel, we will be no better than the bad ourselves. The criminal justice system is slowly advancing from being retributive to reformative.

MEANING AND DEFINITION OF PROBATION-

The term Probation is derived from the latin word 'probare' which means to 'test' or to 'prove'. It is a treatment device, developed as a non-custodial alternative which is used by the magistrate where guilt is established but it is considered that imposing a prison sentence would do no good. Imprisonment decreases the capacity to readjust to the normal society after the release and it is often noticed that association with professional delinquents often has undesired effects.

Probation seeks to socialize the criminal, by training him to take upon earning activity and thus enabling him to pick up those life habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control, and self-confidence in that person, which are undoubtedly the essential attributes of a free life. The Probation officer would guide the offender to rehabilitate himself and also try and ween him away from such criminal tendencies.



According to Diana-

Legal Outlook and Angle-

According to Diana "Probation is defined as a suspension of sentence by court. Since sentence is not imposed the offender remains in the community till the length of sentence has expired".

Probation as a Measure of Leniency-

"Probation is a device for letting off the offenders whose acts are treated as an unfortunate step and therefore there is no need of treatment whether it is punitive preventive or corrective in nature.

Probation as a Punitive Measure-

"Probation is defined as a form of punishment which permits the offender to escape from penal action but impose other demands the non-fulfillment of which subjects the offender to receive same type of punishment as other offenders get."

Probation as an Administrative Process-

"Probation is the execution of concrete measures aimed at helping the offender stay out of trouble. It is understood that these measures deter the offender from committing further crime".

American Bar Association defined-

"Probation" as a sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions or sentence or to re-sentence the offender if he violates the conditions.

Sol Rubin defined probation as a

"Procedure under which a dependent found guilty of crime upon a verdict or plea is released by the court without imprisonment, subject to the provision imposed by the court and subject to the supervision of the probation service."

These definitions clearly establishes that probation has been used in four ways i.e. disposition, a status, a system and a process.

BIRTH OF PROBATION-

As the first real probation officer, John Augustus, also known as the "Father of Probation," was a wealthy bootmaker who was born in Woburn, Massachusetts. He certainly ended up in the Boston courts as a result of his membership in the Washington complete Abstinence group. Washingtonians abstained from alcohol themselves and believed that rather than conviction and jail time, alcohol abusers might be healed through compassion, empathy, and persistent moral persuasion.

1958'S PROBATION OF OFFENDERS ACT

The 1958 Probation of Criminals Act is centred on treating convicts as individuals and treating juvenile offenders amicably. Probation is seen to be an effective way to prevent juvenile offenders from developing a criminal habit. The statute intends to cover all issues related to an offender's release on probation or after proper reprimand. Except for the State of Jammu & Kashmir, it covers the entirety of India and is divided into 19 divisions. The act seeks to give offenders with a reformatory framework of reform so that they can become helpful and law-abiding citizens of the nation.

1. The Probation of Offenders Act, 1958, was passed with the intention of creating a system that would allow amateur and first-time offenders to reform while being protected from the harmful impact of prisons and experienced criminals.
2. The Act allows for the release of first-time offenders upon proper admonition for persons convicted of crimes punishable by two years in jail, a fine, or both under sections 379, 380, 381, 404, and 420 of the Code of Criminal Procedure.
3. The Act permits the release of criminals on probation based on good behaviour as long as the alleged crime they committed is not punishable by a life sentence or the death penalty.
4. The Act shields those criminals under the age of 21 from a jail term.
5. The Act gave the courts the authority to specify the terms of a probationary release's bond and to prolong the probationary period by a maximum of three years from the date of the initial decision.
 - a. According to the Act, probation officers are responsible for supervising the assigned probationers and assisting them with rehabilitation and employment.



Roles of probation officers include:

A probation officer's responsibilities are covered in Section 14. These obligations are governed by the limitations and criteria outlined by the court in particular orders:

1. Obtain information about the probationer's home's appropriate conditions and surroundings and report your findings to the court.
2. oversee the probationers assigned to him and assist them in locating jobs.
3. Give the offenders advice and help them with the cost and reparation payments.
4. Give section 4 released criminals advice and assistance.
5. carry out the specified tasks.

The probation system is a highly successful procedure despite all its limitations. It achieves a lot with relatively limited inputs and an enlightened execution machinery. As result many limitations of the probation machinery have come to the fore in the light of which the following suggestions are being given :

1. The benefit of probation should be extended to a larger number of convicts.
2. The judge should judge more liberally the crime committed by the convicts, recognize their intrinsic correct ability exercise their full discretion and give them a chance to reform by probation more often.
3. The probation officers and their staff should be more adequately trained.
4. A follow up system of rehabilitation of probationers should be evolved to monitor their progress, to help them with vocational and socio-cultural rehabilitation and to provide a system of feed-back so that the whole probation process can be modified from time to time cost-effectively.

In this way probation is a method of dealing with offenders. It is conditional suspension of punishment.

The probation system, therefore is a kind of social experiment which has gone on the line and has proved itself to be very successful.

Well said – “Hate a crime and not a criminal.”

This suggests that crime must be eliminated, even though doing so does not call for the expulsion of offenders.

To sum up, it should be reiterated that the administration and judiciary must work together for the legislative reformation to be successful. For a nation like India, where prison congestion is one of the main causes of poor prison facilities, the Probation of Offenders Act is ideal. Every person want the chance to become better, and this Act provides just that.

Thus, probation as a theoretical concept is and will always remain a jewel in the crown of justice, a sign of humanity, kindness and civilization that goes with modern philosophy of criminal justice and a powerful attempt to correct and rehabilitate the violator of Law.

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