



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Does probation fulfill the purpose of the criminal justice system?

Isha Anand<sup>a</sup>

<sup>a</sup>Central University of South Bihar, Gaya, India

Received 21 November 2022; Accepted 02 December 2022; Published 13 December 2022

---

*Punishment always entails some form of suffering, which may include physical pain as well as mental anguish. It may also involve the loss of freedom, of one's reputation, of one's possessions, or both. It also affects the offender's mentality. The older penological approach believed that the only effective means of deterring crime were incarceration and other forms of custodial punishment. The best interests of the offender have balanced with the demands of the community thanks to new sentencing standards introduced by the modern criminological approach. Probation is one way to deal with offenders. It is a probationary suspension of punishment. The criminals are put under the Probation Officers' supervision during this procedure. The original punishment will still apply to the offender if he violates the probationary requirements, as the original offence is still punished during the probationary period. In reality, the imposition of these limitations is done so in an effort to aid in the offender's reformation and rehabilitation. Therefore, people who were troubled, ready to change, and not exceptionally criminal may benefit from the normal Probation curriculum of the "therapy age." In this article, the topic of probation in Indian law is discussed, along with the question of whether or not probation serves the criminal justice system's purposes.*

**Keywords:** *probation, criminal justice system, punishment, probation officer, offender, crime.*

---

## INTRODUCTION

Crime has been a complex issue ever since human civilization first emerged. Hardly any culture does not battle the problem of crime. Crime and social structure are related concepts. A person's interests are best protected when they are a part of the community. Each person has duties to his fellow citizens in society. Every person is entitled to certain freedoms and rights that are the responsibility of other people in the community. This attitude of mutual respect and faith in one another's rights shapes how society members act. Nevertheless, some people in society unexpectedly go off course and develop unpleasant traits. As a result, the state is obligated to maintain social order through its criminal justice system. The basic objective of every civil state is to punish violators. The occurrence of crime and its resolution have long piqued the human mind's interest. However, due to a temporary change in social values and public views, the punishment process and general conceptions surrounding it have undergone significant adjustments over time. Today, the most crucial question is whether a wrongdoer should be viewed as a nuisance by society, an enemy that must be eliminated, a patient that needs care, or a rebellious child who requires correction. Or he should be punished for showing others that acting in an antisocial way eventually serves no one.<sup>1</sup> The concept of probation emerged as a result of a shift in the public's perception of crime and punishment. The question of whether probation serves the goals of the criminal justice system arises because probation is a fundamentally different concept from punishment, which postpones the sentence of a wrongdoer.

## CRIMINAL JUSTICE SYSTEM, PUNISHMENT, AND PROBATION

A criminal justice system (CJS) can be described as a set of legal and social organisations which are responsible to implement criminal law according to the set law and procedures. This system has to guard the society against culprits by punishing them according to the current law. Therefore, punishment has always been used as a mode to reduce crime by either inhibiting the

---

<sup>1</sup> Dr N. V. Paranjape, *Criminology & Penology with Victimology* (17th edn, Central Law Publications 2017) 293

possible offenders or by incapacitating and deterring them from committing the offence or improving them.<sup>2</sup>

**The CJS carries with it some purposes to fulfill, they are:**

**Punish the criminals:** The CJS is a conglomerate of legal and social organisations that emphasise the proper implementation of rules and regulations. Whenever a crime is committed, the system is always prepared to assist. It penalises the guilty according to the established laws. The goal of punishment is to show the victim that they are still taken into consideration by the criminal justice system. It is a way to deal with crime in a proper way and mend fences between the victim and the criminal. It is, in some ways, a proactive response to crimes and a development for the criminal justice system.<sup>3</sup>

**Deter the offenders from committing any criminal act in the future:** Criminals are deterred from repeating their crimes or committing new ones by the threat of punishment. Additionally, it discourages members of society from committing any crimes. The better good of the largest number of people in the community requires that the particular criminal be punished in order to discourage others effectively.<sup>4</sup>

**Rehabilitate the criminals:** The purpose of sentencing criminals is to help them come to terms with their actions and the harm they have caused. As a result, the court punishes offenders in accordance with the nature of the crime in order to aid in their rehabilitation and help them emerge as different people. The punishment must be appropriate, just, and in line with the seriousness and nature of the offence. While imposing the punishment, it is also necessary to consider the circumstances of the accused, as one goal of the criminal justice system is to rehabilitate offenders and transgressors.

**Compensate the victims as far as possible:** The victim is not abandoned during the administration of justice, as required by the law. The Victim Compensation Scheme, which offers compensation to crime victims, is described in Section 375A of the CrPC. It is necessary to

---

<sup>2</sup> Dr. N. V. Paranjape (n 1)

<sup>3</sup> *Hari Kishan & Anr v Sukhbir Singh & Ors* (1988) SC 2127

<sup>4</sup> *Narinder Singh & Ors v State Of Punjab & Anr* (2014) 6 SCC 466

approach the criminal justice system from the perspective of a systematic victim support service in order to combat the rising crime rate and secure the protection and preservation of human rights.<sup>5</sup>

**Prevent the occurrence of crime:** As already mentioned above, every crime has a suitably specified punishment, thus the right application of the law and administration of justice assists in the prevention of crime. By imposing the proper penalty, the goal should be to safeguard society and discourage criminals from achieving the stated goal of the law. The sentencing process must be strict where it needs to be in order for the courts to operate it in a way that imposes sentences that represent the moral conscience of society.<sup>6</sup>

**Maintain law and order:** As was previously established, the institution operating under the Criminal Justice System follows the law as mandated to uphold peace and order in society.

Imprisonment is the most standard form of punishment for offenders. It has proven to be an effective method for deterring criminals and potential criminals and temporarily keeping them away from society. But over time with the increasing population and crime, overcrowding became a major problem. There are several reasons behind this and some of the major reasons were highlighted by Honourable Former Chief Justice of India N.V. Ramana, at a meeting held in Jaipur, Rajasthan of the National Legal Services Authority (NALSA), on 16<sup>th</sup> of July, 2022. He stated, *"In our criminal justice system, the process is the punishment. From hasty indiscriminate arrests to difficulty in obtaining bail, the process leading to the prolonged incarceration of undertrials needs urgent attention."*<sup>7</sup> The practice of locking up offenders has drawn heavy criticism due to a number of issues with prison administration and conditions. As alternatives to incarceration, open prisons, parole, and probation all have their own restrictions and requirements, and they are not all available for all types of offences.

---

<sup>5</sup> *Suo Moto v State of Rajasthan* RLW 2005 (2) Raj 1385

<sup>6</sup> *Union of India v Kuldeep Singh* (2004) 2 SCC 519

<sup>7</sup> Sukanya Shantha, 'Over 6 Lakhs in Spaces Meant for 4 Lakhs: Indian Prisons Are Seeing Unprecedented Overcrowding' (*The Wire*, 18 July 2022) <<https://thewire.in/rights/indian-prisons-congested-overcrowded>> accessed 11 November 2022

Probation is an alternative to imprisonment for young criminals and criminals who have not committed grave offences are let out on probation on the basis of the presentence investigation report of the concerned probation officer.<sup>8</sup> In India, probation is utilised as an institutional treatment. Institutional treatment via probation aims at rectifying the outcomes of the factors of criminality in a restricted surrounding of probationary observation, discovering the conducive factors in the offender's personality, family situation, attitude, etc.

### PROVISIONS ON PROBATION

In India, probation is managed under Section 360 of the Code of Criminal Procedure, 1973, and The Probation of Offenders Act, 1958. Probation of Juveniles is maintained by The Juvenile Justice (Care and Protection of Children) Act of 2015 and The Children Act of 1960. Section 360 provides that the offender can be released on either of the two grounds, which are, good conduct or after the admonition. That can be any person:

- An individual who is sentenced for a crime for which the only penalty is a fine or imprisonment for a term of 7 years or less must be at least 21 years old.<sup>9</sup>
- An Individual who is less than 21 years or any woman who is sentenced for an offence the punishment for which is not life imprisonment or death and has also not been sentenced for any prior offence, can be released on probation of good conduct after undertaking a bond, to appear and receive sentence, with or without sureties, when called midst the probationary period. The period shall not exceed 3 years or as Court decides, meanwhile maintaining tranquility and good conduct.<sup>10</sup>
- An individual who is guilty of theft, theft in a building, dishonest misappropriation, cheating, or any other breach under the Indian Penal Code 1860, the punishment for which is imprisonment, not exceeding 2 years, or any breach the punishment for which

---

<sup>8</sup> R. Thilagaraj, 'Criminal Justice System in India' <<https://globcci.org/wp-content/uploads/2021/07/Criminal-Justice-System-in-India-2013.pdf>> accessed 05 November 2022

<sup>9</sup> Code of Criminal Procedure 1973, s 360(1)

<sup>10</sup> *Ibid*

is only fine and has also not been sentenced for any prior offence, can be released after due admonition by the Court.<sup>11</sup>

In the Probation of Offenders Act, 1958, Section(s) 3, 4, and 6 provide grounds for releasing offenders on probation on the following grounds:

- An individual who is found guilty of an offence the punishment for which is provided under Section(s) 379, 380, 381, 404, or 420 of the Indian Penal Code, 1860, or of an offence the punishment for which is imprisonment not exceeding 2 years, or fine, or both and has also not been sentenced for any prior offence, can be released after due admonition.<sup>12</sup>
- An individual who is found guilty of an offence the punishment of which is life imprisonment or death can be ordered to be released based on good conduct by the court that decided the guilt of that person when it thinks that it is reasonable to release him on probation, considering the report of the concerned probation officer. After undertaking a bond, to appear and receive sentence, with or without sureties, when called midst the probationary period. The period shall not exceed 3 years or as Court decides, meanwhile maintaining tranquility and good conduct.<sup>13</sup>
- An individual who is less than 21 years and is guilty of an offence the punishment for which is imprisonment (but not life imprisonment), can be ordered to be released on probation by the court that decided the guilt of that person, after considering the report of the concerned probation officer and any further information about the nature and bodily and psychological state of the offender and thinks that it won't be right to deal the offender's case under Section(s) 3 or 4. But if he is sentenced to imprisonment, then reasons should be recorded.<sup>14</sup>

## **DOES IT SUCCESSFULLY FULFIL THE PURPOSE OF THE CRIMINAL JUSTICE SYSTEM?**

The Probation of Offenders Act is a significant development in the area of criminology's modern liberal reform movement. It is the final result of the doctrine being acknowledged, according to

---

<sup>11</sup> Code of Criminal Procedure 1973, s 360(3)

<sup>12</sup> Probation of Offenders Act 1958, s 3

<sup>13</sup> Probation of Offenders Act 1958, s 4

<sup>14</sup> Probation of Offenders Act 1958, s 6

which the goal of criminal law is primarily rehabilitation rather than punishment of the offender.<sup>15</sup> The Probation of Offenders Act was passed in 1958 to cover problems related to the release of offenders from specified groups on probation or following proper reprimand. The Act's goal is to prevent juvenile offenders from becoming stubborn criminals as a consequence of their interactions with seasoned criminals if they are given a jail sentence.<sup>16</sup> Probation primarily aids the accused in rehabilitation by encouraging them to modify their criminal behaviour. When they are given probation, it helps them consider the benefits and drawbacks of changing their behaviour, which boosts their self-confidence and enables them to make healthier changes in their lives.<sup>17</sup>

The probation officer keeps the offender on probation under full supervision. The process of supervision implies that the administrative body concentrates on the supervision of offenders. The position and movement of the offender are controlled by the probation officer, to prevent crime or breach of the rules of probation. The probation officers, at the same time, do not intrude in the life of the offender but the offender is legally bound to inform the probation officer about his location and present situation routinely.<sup>18</sup> However, any breach of the conditions set forward by the court or of any probation regulations will land the probationer in jail.<sup>19</sup> The person who is released on probation must undertake a bond under The Probation of Offenders Act, 1958, and has to maintain good behaviour during the probation period and non-fulfillment of these conditions will land the person in jail.<sup>20</sup>

The probation officer helps the offender to get over the possibility which led him to commit the crime, he routinely visits the probationer and helps him to get a job if needed. To get him engaged with his work, he also takes help from the probationer's family and asks them to equally support him. The family members and society play a major role in rehabilitating the probationer. This prevents the offender from doing any crime again or any new crime. Thus, concluding that

---

<sup>15</sup> *Rattan Lal v State of Punjab* (1964) SCR (7) 676

<sup>16</sup> *Jugal Kishore Prasad v State of Bihar* (1973) SCR (1) 875

<sup>17</sup> *Jagsir Singh v The State of Punjab* (2013) P&H 2132

<sup>18</sup> Palekar Pankaj Balajirao, 'An empirical study on probation' (*Shodhganga*, 2013)

<<http://hdl.handle.net/10603/217820>> accessed 05 November 2022

<sup>19</sup> *Ramamurthy v State of Karnataka* (1997) 2 SCC 642, 654

<sup>20</sup> Dr N. V. Paranjape (n 1)

it punishes the offender in some way that deters him from doing any new crime or repeating the same crime again and at the same time rehabilitates the person.

Section 5(1) of the Probation of Offender Act, 1958, provides for compensatory redressal of victims of crime. It explains that the court which will direct the release of the offender under Section(s) 3 or 4, may, direct him to:

- Recompense for loss or injury suffered by any person as a consequence of the offence and the compensation shall be decided by the court; and
- Reimburse the cost of the proceeding, the court will decide the appropriate charge.<sup>21</sup>

Thus, concluding that probation compensates the victim.

## CONCLUSION

The management of society's unjust components by the probation system is crucial for maintaining social stability and peace, as may be inferred from the discussion above. The accused can obtain benefits from probation that make it easier for him to live his life. However, probation is occasionally misunderstood as being compassionate or as a "Let-off". This misunderstanding is a result of a punitive strategy that gives the impression that the probationer has avoided the penalty for their offence. Such myths about probation are supported by misuse of the probation system and insufficient use of its crucial safeguards. However, while the penalty is suspended under probation, it is entirely waived during a let-off. So, it may be claimed that probation serves the criminal justice system's objectives. A definitive yes or no can't be given to the question of whether probation advances the goals of the criminal justice system because retaining some criminals in society poses risks to everyone –including the offender. Although various Acts stipulate stringent guidelines to be followed throughout the probationary term, neither improvement nor a lack of further criminal activity may be guaranteed. So, everything has both advantages and disadvantages, as we can see.

---

<sup>21</sup> Probation of Offenders Act 1958, s 5(1)