



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – 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.

Probation of Offenders – An Analysis

Sumer Singh Bhati^a

^aJai Narain Vyas University, Jodhpur, India

Received 16 January 2023; *Accepted* 30 January 2023; *Published* 03 February 2023

By reading this article one can get to know what probation means and what is its origin, scope, and history. The article contains provisions of the law of probation existing in India and its scope and also provides details of where the law of probation does not apply. Probation can be said as a flashing torch of the reformatory and corrective theory. Its origin and acceptance by society with the changing time. Probation is a discretionary step of courts towards the betterment of the social life of unhabitual and juvenile offenders. Probation is a promotion of rehabilitative, reformatory, or corrective theory. Probation is a reward for good behaviour to offenders. In the context of Indian laws relating to probation. Its origin is in India through section 562 of CrPC 1898.¹ And contemporary laws existing in India. Some provisions show that the laws of probation do not apply to the same.

Keywords: *probation, probation of offenders, central probation act, the law of probation.*

INTRODUCTION

You should despise the crime, not the culprit. It has probably been said a million times by now. It indicates that we must eradicate crime, which does not call for the repatriation of offenders. Criminal law in India places more emphasis on rehabilitation than on the punishment of offenders. Preventive and reformatory theory is the greatest way for dealing with criminals in

¹ Code of Criminal Procedure 1898, s 562

current social environments since it corrects criminal conduct through diplomatic, compassionate, and warm treatment and caring. By imposing new governing mechanisms that result in a drastic shift in the deviant's attitude, the correctional treatment and reformatory approach are seen to be the primary tools for bringing the nonconformist into line. Whether a criminal is incarcerated or on probation, the correctional system plays a crucial role in helping to rehabilitate and correct them. By imposing new governing mechanisms that result in a drastic shift in the deviant's attitude, the correctional treatment and reformatory approach are seen to be the primary tools for bringing the nonconformist into line. Whether a criminal is incarcerated or on probation, the correctional system plays a crucial role in helping to rehabilitate and correct them.

The Government of India Independence passed the central legislation for the introduction of the Probation of Offenders Act, 1958² which embodied the modern humanitarian approach to freedom. It enables the court to treat leniently to offenders guilty of not serious offences to reform themselves and give them a chance to leave the path of criminality. The theory of reformation is based on the two principles of treatment. (i) Institutionalized treatment (ii) Non-Institutionalized treatment. The non-institutionalized treatment comes under Probation Services. Shortly Probation is defined as a “method of non-institutional treatment of the offenders which involves the conditional suspension of the imposition of sentences on the offenders by giving permission to remain in the society” during the probation period and the final sentence for the offence committed by him is imposed only on his committing breach of the conditions set forth by the court. With these principles, the Probation of Offenders Act 1958 came into force in the Criminal Justice system in India.³

DEFINITION

- The Lexico (Oxford) dictionary defines probation as, “The release of an offender from detention, subject to a period of good behaviour under supervision.”

² Probation of Offenders Act 1958

³ *Ibid*

- Cambridge dictionary defines probation as, “a period when a criminal must behave well and not commit any more crimes to avoid being sent to prison.”
- Black’s law dictionary defines ‘probation’ as ‘allowing a person convicted of some minor offence (particularly juvenile offenders) to go at large, under a suspension of sentence, during good behaviour, and generally under the supervision or guardianship of a ‘probation officer’.

The Latin term *probate*, which means to try or prove, is the root of the English word probation. When a criminal is freed from custody but is maintained under the watchful eye of probation officials while living in the community, this is known as probation. Probationers are those who have been placed on probation. They are often appointed by the court and are responsible for ensuring that their probationer respects the guidelines. There are two different meanings of probation exists.

- The release of an offender from detention or keeping under surveillance instead of putting into jail, subject to a period of good behaviour under supervision;
- A procedure for evaluating or watching someone new to a role or job to see how they behave or how they perform

BACKGROUND & OBJECTIVE

Probation represents a turning point for the contemporary liberal reform movement in the study of criminology. It is a by-product of the idea that criminal law prioritises rehabilitation of the offender over punishment. The juvenile justice system's "positivism," which evolved from the principles of the criminal justice system, has an impact on probation. Since the early 1800s, probation has made an effort to transform prisoners into morally upright, law-abiding individuals.

OBJECT OF PROBATION

The main aim of probation is to permanently change offenders. Transforming bad behaviours into constructive ones requires rehabilitation and reformation. The intention is to provide the

antisocial individual with a chance to engage with society voluntarily. He will also have social safety and security as a result of this. It serves as an alternative to imprisonment. In *Jugal Kishore Prasad v State of Bihar*⁴, the Supreme Court explained the rationale of the provision: “*The object of the provision is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail.*”

HISTORY OF PROBATION

Criminal activity has always been a problem in society, regardless of its stage of development. It is unavoidable, ubiquitous, and inseparable that crime exists in society. Punishment is a tool used to manage and prevent crime to ensure safety and security in society. In contemporary law, the idea of punishment is frequently connected to the criminal code. The four types of theories of punishment listed by the criminologist are (i) retributive (ii) deterrent (iii) preventive (iv) reformative. Since the early 1800s, probation has made an effort to transform prisoners into morally upright, law-abiding individuals.

Probation extends back to English common law when the court could postpone an execution while a condemned criminal petitioned the queen for a pardon. When a Boston cobbler called John Augustus persuaded a judge in the Boston Police Court to release a convicted offender to his care for a brief period to bring the offender rehabilitated to the court in time for punishment, probation was born in the United States. The United Nations recommends the adoption and extension of the probation system by all the countries as a major instrument of policy in the field of prevention of crime and the treatment of the offenders. In this paper, the focus is on the legislative and administrative aspects of probation, and how probation may be made more effective in India. Shortly Probation is defined as a “method of non-institutional treatment of the offenders which involves the conditional suspension of the imposition of sentences on the offenders by permitting to remain in the society” Only if he violates the court-imposed limitations during his probationary period will the court impose a definitive sentence for the

⁴ *Jugal Kishore Prasad v State of Bihar* (1972) AIR 2522

crime he committed. Probation of Offenders Act 1958 entered into force in India's Criminal Justice System based on these principles.

LAW OF PROBATION IN INDIA

In India, The Central Probation Act, passed in 1958, established the probation system. However, Section 562 of the Criminal Procedure Code of 1898(now Section 360 of the Code of Criminal Procedure, 1973) only enables the release of first-time offenders and juvenile offenders on probation i.e; anyone under the age of twenty-one who has not been convicted of an offence punishable by imprisonment for up to seven years or by death or life imprisonment can be released on probation for some time for good conduct.

There was no mechanism for monitoring, and the only magistrates with the power to award probation were first-class magistrates. In 1934, when the British were in charge, the British government allowed the provincial governments to enact their laws for probation. Such an Act was passed in 1936 by the governments of Madras and Madhya Pradesh. They were followed by the governments of Bombay and Uttar Pradesh in 1938, the governments of Hyderabad in 1953, and the governments of West Bengal in 1954 in developing rules about probation. A better option for incarceration is probation. The court decides to suspend a wrongdoer's sentence and release him under strict guidelines so that he can live in the community with or without a probation officer's control or supervision. Bypassing the Central Probation Act, the probation system was implemented in India in 1958.

SCOPE OF LAWS REGARDING PROBATION

- **First Time Offenders**

First-time offenders are those who have committed the specific offence and have no prior convictions on their record. Additionally, the crime he committed for the first time had to be one of those listed in section 360 of the CrPC. First-time offenders under this section are subject to leniency based on their age, character, or history, as well as the circumstances surrounding the offence.

- **Leniency based on their age**

Anyone under the age of twenty-one who is found guilty of a crime faces either a seven-year prison term or a fine. Any person under the age of twenty-one who is found guilty of a crime is not sentenced to life in prison or the death penalty, and the offender's criminal history is not revealed.

- **Probation for the Good Conduct**

If the criminal appears in court, regardless of the circumstances surrounding his offence, the judge may release him on the promise of good behaviour. Section 4 of the Offenders Probation Act 1958 concerns the release of offenders based on good conduct. This is an important part of the law. The following key factors should be considered when applying this section: Section 4 of the Act⁵ does not apply if the perpetrator is found guilty of capital punishment or life imprisonment. Courts must assess the facts of the case, including the nature of the crime and the character of the offender. Courts can issue surveillance orders that allow offenders to be released on probation for good behaviour.⁶

The supervision period must last at least a year. the probation officer must supervise the person for such an extended period. The supervision order must include the probation officer's name. The court has the power to order the defendant to sign a bond, with or without a bond, promising to appear and be judged if called within three years. Perpetrators will be released if they behave decently.

- **Release After Admonition**

360 Section (3)⁷- The court may, after convicting the accused individual, release him after proper warning, taking into account his age, character, antecedents, physical condition, or mental state, as well as the minority of the offence or any mitigating circumstances surrounding its

⁵ Probation of Offenders Act 1958, s 4

⁶ *Ibid*

⁷ Code of Criminal Procedure 1973, s 360(3)

commission. Only if the following conditions are met is such a release permitted: There is no proven criminal record against the defendant.

If the crime he was charged with was theft, theft from within a building, or fraudulent embezzlement, under the IPC he would be punishable only with imprisonment of up to two years or a fine. Only those IPC offences that are punishable by a maximum sentence of two years in prison, as well as the offences listed in subsection (3), are covered by this clause. Under this sub-section, the court has got the discretion to release the offender after admonition instead of sentencing him to any punishment. In **Keshav Sitaram Sali v The State of Maharashtra**, 1983⁸ The Supreme Court declared that in cases of petty thefts, the High Court should grant the advantage of Section 3⁹ or Section 4 of the Probation of Offenders Act, 1958, or Section 360 of the Code of Criminal Procedure, 1973

THE LAW OF PROBATION DOES NOT APPLY TO

In some situations, the Probation of the Offender Act does not apply. Typically, the Offender Probation Act does not apply to:

- The Indian Penal Code's Sections 409, 467, and 471 address documents used as actual forgeries, the fabrication of important assets and wills, and the breach of trust by public officials.
- Kidnapping or abduction will not be grounds for probation.
- It also doesn't allow the release of habitual offenders.
- The probation will not be released due to the violence that caused grievous hurt.

CONCLUSION

In conclusion, it can be said that the administration and the judiciary must cooperate if the legislature's intended reformative action is to be successful. For a nation like India, where prison overcrowding is one of the main causes of poor prison facilities, the Probation of Offenders Act

⁸ *Keshav Sitaram Sali v The State of Maharashtra* AIR 1983 SC 291

⁹ Probation of Offenders Act 1958, s 3

is ideal. Every person seeks the chance to become better, and this Act provides just that. The reform and recovery process must be carried out in the context of the current social environment to achieve the ultimate goal of reclaiming all criminals back into organised society.