

## AN OVERVIEW ON PROBATION

Written by *Kabita Krishna Soren*

*3rd Year BA LLB Student, National Law University Odisha*

### **ABSTRACT**

This article mainly talks about the importance of probation for the first-time offenders as to will it actually worsen the situation or will it make it better off. The novice offenders should be given at least a second chance to improvise and should not let them get trapped in the prison with other offenders, when there's a way for rehabilitation. The relevance of the Juvenile Justice board in case of minor offenders along with the discretion exercised by the judges of the court is also discussed.

**Keywords-** Probation - good conduct – admonition – Juvenile Justice Act 1986 – Code of Criminal Procedure – s.360 – s.361 – Probation of Offenders, Act 1958 – Probation Officer

## **INTRODUCTION**

***“Hate the crime, not the criminal.”***

*-Mahatma Gandhi*

The goal is that we have to eliminate crime and elimination of criminals is not the best approach to do it. While the reality of the matter is that punishment gives a feeling of contentment to the victims and to the general public by and large, also it has been watched that in the greater part of the cases discipline, exceptionally detainment, does not really change the criminal. Probation is a treatment device, developed as a non-custodial alternative that is used by the magistracy where guilt is established but it is considered that imposing of a prison sentence would do no good.

“Imprisonment decreases the convict’s capacity to readjust to the normal society after the release and association with professional delinquents often has undesired effects.”<sup>1</sup> Sending the novice offenders directly to the jail have the potential to aggravate the nature of the offender than what was expected of him and henceforth defeating the purpose for which he was sent to the jail. Probation is a conditional sentence, meaning that if an offender does not comply with the conditions of probation, probation may be revoked, and the suspended jail sentence and/or fines will be reinstituted. Section 562 of the Code of Criminal Procedure, 1898, was the earliest provision to have dealt with probation. After amendment in 1974 it stands as S.360 of The Code of Criminal Procedure, 1974.”

“Generally, probation allows a convict to go free with a suspended sentence for a specified duration during good behavior. Probationers are placed under the supervision of a probation officer and must fulfill certain conditions. If the probationer violates a condition of probation, the court may place additional restrictions on the probationer or order the probationer to serve a term of imprisonment.”

---

<sup>1</sup> Amrita Malik, *Probation of Offenders Act*, ACADEMIKE (2014).

## **HISTORICAL BACKGROUND**

“In India probation received statutory recognition for the first time in 1898 through section 562 of the Code of Criminal Procedure, 1898. Under the provision of this section, the first offender convicted of theft, dishonest misappropriation or any other offence under the IPC punishable with not more than two years imprisonment could be released on probation of good conduct at the discretion of the court. Later, the Children Act, 1908, also empowered the court to release certain offenders on probation of good conduct. Similar provisions existed in the Children Act, 1960 which were repealed consequent to passing of the juvenile Justice Act, 1986. This Act was further substituted by the Juvenile Justice Act, 1986. This Act was further substituted by the Juvenile Justice (Care & Protection of Children) Act, 2000.”<sup>2</sup>

“The Central Government appointed a committee in 1916 to consider the provision of the Criminal Procedure Code and particularly it suggested revision of section 562 and extension of its provisions to other cases also. The scope of probation law was extended further by the legislation in 1923. Consequent to Indian Jail Reforms committee’s report (1919-20), the first offenders were to be treated more liberally and could even be released unconditionally after admonition. The first Offenders were classified under two categories, namely.

- i) Male adult offenders over twenty one years of age and
- ii) Young male adult offenders under twenty one years of age and female offenders of any age.

The release of offenders on probation could be extended not only to offences under IPC but also to offences falling under special enactments.

## **ELEMENT OF DISCRETION**

There has been an increasing emphasis on the reformation and rehabilitation of the offenders as a usual and self-reliant member of society without subjecting him to the deleterious effects of jail life. On the other hand, there are occasions when an offender is so antisocial that his

---

<sup>2</sup> *Code of Criminal Procedure, 1973*, Cyber Advocate, <http://cyberadvocate.in/mod/page/view.php?id=758>.

immediate and sometimes prolonged confinement is the best assurance of society's protection. In such cases the consideration of rehabilitation has to give way, because of the paramount need for the protection of society and in such cases the application of principle of probation is negative by the imperatives of social defence and moral proselytisation. "The probation system has certain advantages over the prison system. These are: no stigma is attached to the offender released on probation; there is no break in the probationer's economic life; his family does not suffer; the offender does not feel frustrated; and economically it is less expensive. The disadvantages are that the offender is put in the same environment in which he committed the crime; there is no fear of punishment; and no individual attention is paid to probationers. However, these criticisms are not logical."<sup>3</sup>

Section 360 of the Crpc provides for the conditions on which an offender may be released on probation of good conduct and admonition. Sub-section (1) of section 360 of Crpc gives discretion to the court to release an offender on probation of good conduct provided the offender is- i) a woman, ii) a person below the age of 21 or iii) a male person of 21 years of age or above who is not guilty of an offence punishable with more than seven years of imprisonment. This section however seeks to reform the criminals by treating them leniently and that too only in those cases where there is no serious danger or threat to the protection of society.

The court has full discretion to pass sentence on the convicted person or to release him under section 360 of Crpc or the Probation of Offenders, Act, 1958. "The court must consider the age, character and antecedents of the offender and the circumstances in which the act was committed while."<sup>4</sup>

In the case of *B. Titus, re*<sup>5</sup>, the court said that it is not intended that this section should be applied to experienced men of the world who deliberately flout the law and commit offences. Probation of Offenders Act, 1958 is very much similar to section 360 of the Crpc. The object of the Probation of Offenders Act, 1958 was identified as to attempt their possible reformation instead of inflicting on them normal punishment for their crime. Section 361 of the Crpc has narrowed

---

<sup>3</sup> Smruti Sikha, LAW REGARDING PROBATION IN INDIA, <http://www.yourarticlelibrary.com/law/law-regarding-probation-in-india/43992/>.

<sup>4</sup> Mohd. Hanif v. Emperor, (1942)43 Cri LJ 754 AIR 1942.

<sup>5</sup> (1942)43 Cri LJ 3.

down the discretion of courts to sentence a convicted person to any punishment authorised by law.

“Section 6 of the Probation of Offenders, Act, 1958 restricts the discretion on the courts to prevent the sentence of young offenders to imprisonment. The objective of this restriction is to prevent the consequences of the young offenders turning into hardcore criminals by living with the hardened criminals. However, section 361 goes little even beyond that placing strict restrictions on the discretion of courts and asking them to record reasons even for imposing fines on the offenders. Judicially the court obligates the magistrates to hear the accused first and then pass a sentence. However, a wide discretionary jurisdiction has been conferred on the courts to release the convicts not involved in very heinous offences, on probation instead of incarcerating them to prison.”<sup>6</sup>

The main object of awarding punishment is the prevention of crime and reformation of the offender. The provision of section 4 vests in the court discretion to release a person found guilty of having committed an offence not punishable with death or imprisonment for life. It is really for the court, by which the person is found guilty, to determine having regard to the circumstances of the case including the nature of the offence and the character of the offender, whether or not it will be expedient to release him on probation of good conduct. It is only when the court forms an opinion that in a given case the offender should be released on probation of good conduct the court acts as provided in section 4 of probation of Offenders, Act, 1958.

In *Dasappa v. State of Mysore*<sup>7</sup> it is laid down as follows: “It is only when the court forms an opinion that the offender in a given case should be released on probation of good conduct that it has to act as provided by Section 4 of the Act. It was for the accused to have placed all the necessary material before the court which could have enabled it to consider that the first accused was an offender to whom the benefit of section 4 would be extended.”

---

<sup>6</sup> R. V. KELKAR, CRIMINAL PROCEDURE (6<sup>th</sup> ed, 2014).

<sup>7</sup> (1964) 2 Mys LJ 342 ; AIR 1965 Mys 224.

**OBJECTIVES OF PROBATION-**

The object of probation is to bring law breakers and anti-social persons into willing cooperation with the community of which he is a member, thus giving him security which he needs and society protection against his attacks on person or property. The function of probation is to effect improvement in character of the offender and permanent rehabilitation and reformation of the offender. Probation involves moulding of the individual's habits in more constructive way. It's a substitute to imprisonment as punishment will not serve the purpose in all cases of offenders.

The sole objective being that an accused person who is convicted of a crime should be given a chance of reformation which he would lose by being incarcerated by prison.

**INSIGHT INTO PROBATION OF OFFENDERS, ACT, 1958-**

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:

- Release after admonition;
- 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;
- 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;
- The person released on probation does not suffer a disqualification attached to a conviction under any other law.

It must be stated that the provisions of the Probation of Offenders Act are not confined to juveniles alone, but extend to adults also. Again, provisions of the Act are not only confined to offences committed under the Indian Penal Code but they extend to offences under other special

laws such as the Prevention of Corruption Act, 1947; the Prevention of Food Adulteration Act, 1954; the Customs Act, 1962; the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980; the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, Narcotic Drugs & Psychotropic Substances Act, 1985 etc.

#### **SCOPE OF SECTION (4) OF PROBATION OF OFFENDERS, ACT, 1958-**

**Section 4** of the Act deals with the power of court to release certain offenders on probation of good conduct.

As per **Section 4**, if any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, 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 behaviour.

The section further requires that the offender or his surety has a fixed place of residence or regular occupation in a place where the court exercises jurisdiction. Also, before making any such order, the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case. However, it is not necessary that the court has to act on probation officers report. It can also gather information from other source and on its own analysis.

The non-obstante clause in section 4 of the Act is a clear manifestation of the intention of the legislatures that the provisions of the Act would have effected notwithstanding any other law for the time being in force. It is a general section under which the benefit is extended to the offenders under 21 years of age and also offenders who are above 21 years of age. Discretion is exercised by the court while giving the benefit of probation to the offenders above 21 years of age. No reasons are to be recorded when the benefit of probation is granted to the offenders



above 21 years of age. Section 4 laid down that the court shall consider the report of the Probation Officer if any. It is not obligatory on the court to call for and consider the report of the Probation Officer. in terms of section 4(2)

An order of release on probation came into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the court that he is guilty cannot be washed out at all because that is the sine quo non for the order of release on probation of the offender. The order of release on probation of the offender is merely in substitution of the sentence to be imposed by the court. This has been made permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals.

## **CONCLUSION**

To conclude, it can be said that the measure of alternative punishment i.e., probation is based on the theory of reformatory punishment. The provision of Section 4 vests in the court discretion to release a person found guilty of having committed an offence not punishable with death or imprisonment for life. It is really for the court, by which the person is found guilty, to determine, having regard to the circumstances of the case including the nature of the offence and the character of the offender, whether or not it will be expedient to release him on probation of good conduct. It is only when the court forms an opinion that in a given case the offender should be released on probation of good conduct.