



Reformative Theory of punishment and Principles and Practices for

Probation Laws : A Review

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Abstract : Reformative Theory of punishment has achieved worldwide support in recent years and all civilized nations and more particularly socialistic and the democratic countries of the world have adopted various measures and statutory enactments, to apply correctional method of punishment. Reform the criminal and not punish him, is the consensus of the opinion of the modern Criminologists all over the world these days. The modern criminal jurisprudence has emphasized that no one is a born criminal. Man turns into a criminal by force of the circumstances like abject poverty and the other circumstantial and environmental conditions, and not by choice. Thus, Reformative Theory of Punishment is more applicable to a civilized society. Release the offender on probation is one kind of Reformative process – whereby the needs of the community are balanced with the best interests of the offender.

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Probation Laws :

The probation laws that appears to be the enactment of Section 562 in the Criminal Procedure Code, 1898 and when, in 1974, Code was recast and freshly enacted as the Criminal Procedure Code, 1973, this provision is dealt in Section 360. In 1958, in pursuance of International Agreement, Indian Parliament enacted the comprehensive law – Probation of Offenders Act, 1958. Before passing of this Act of 1958, the only Central Law on Probation was contained in the Section 562 of Criminal Procedure Code, 1898, which ceased to apply after the passing of Probation of Offenders Act, 1958.

Besides, the Juvenile Justice (Care and Protection of Children) Act, 2000 also provides for the release of children, who have committed offences, to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or fit person executing a bond, with or without surety or any fit institution as the Board may require for the good behavior and well being of the juvenile for any period not exceeding three years.



Object of Probation Laws

The object of the Probation of Offenders Act, 1958 is to prevent the conversion of the youthful offenders into the dangerous criminals of matured age, in case they are sentenced to undergo substantive imprisonment in jail. The above object is in consequence with the present trend in the field of Penology, according to which the efforts should be made to bring about correction and reformation of the individual offenders not to resort to retributive justice. But, there was not any provision for this reform, rehabilitation and supervision in the Code of Criminal Procedure. Passing of Probation of Offenders Act indicates that something more was required than just letting a person off, in order to reform and rehabilitate him.

Principles and Practices for Probation Laws

Are the key sections of the Act to deal with probation in India. Section 3 of the Act, what deals with the power of the court to release certain offenders after the admonition. This section is applicable to the first offenders and it is discretionary in nature. The court has to consider the circumstances of the case, that includes the nature of the offences and the characters of the offenders. Section 4 of the Act, what deals with power of the court to release certain offenders on probation of good conduct. According to this section in the case of a person, who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life, he shall not be sentenced to imprisonment unless there present the reasons, which justify such a course.

The object of the pre-sentence report is to appraise the court about the character of the offender, exhibit his surroundings and antecedent and throw light on the background, which prompted him to commit the offence and give information about the offender's conduct in general and chances of his rehabilitation on being reason on probation.

Before deciding by the court whether the accused should be granted benefit of Probation Laws, three aspects are to be kept in mind – circumstances of the case, nature of the offence and character of the offender. An inbuilt safeguard is provided in the sub-section (2) of the Section 6 that when the court is considering the third aspect, i.e. character of offender, then before the court forms its opinion adverse to the offender in that regards it must seek a report from a Probation Officer or get any other information that is available relating to the character and physical and mental condition of the offender.



The Juvenile Justice (Care and Protection of Children) Act, in 2000, also provides for the report of the Probation Officers or recognized voluntary organizations to be considered before passing a sentence. A Magistrate who is appointed as a Member of the Board constituted under this Act must know something of child psychology. The Board can pass orders against the youngsters. The Act provides for the setting up of the Observations and Special Homes by the State Government where the juvenile could be placed. Here, the rehabilitations and social integration of the children would take place. It also provides for an aftercare programme, which would take care of the delinquent child after he has been discharged from these homes, that was based on the report of the Probation Officer. The Probation Officers have been appointed under the Probation of Offenders Act, would also function under the ephemeral Justice (Care and Protection of Children) Act.

Suggestions for Effective Probation Laws

There is lack of subordinate judicial willingness and awareness in India due to which probation laws have not gained the momentum which was expected by legislatures. Lower judicial officers are reluctant to adopt the provisions of probation of offenders act. Here are few suggestions listed herewith , which may be implemented at the legislative and administrative level, for more effective probation laws in India:

- The exception to Section 4 of the Act mentions that for availing benefit of probation regular place of living or occupation is required from offenders or their surety. Due to poverty and illiteracy it is not possible for large section of society to fulfill these conditions. So there is need to amend this mandatory condition. The provisions of probation of offenders act be amended so that probation can be given easily on the lines of section 360 of criminal procedure code.
- More deeply the provisions of the Probation of Offenders Act and the Code of Criminal Procedure could be amended to make them simpler and detailed like the Juvenile Justice (Care and Protection of Children) Act 2000, which mentions various reformatory techniques for example shelter homes, setting up of the observation homes etc.



- The work of probation officer is not taken seriously in India. there is lack of probation officers in almost every state, sometimes these duties are allotted additionally to other government officer .there is urgent need of recruiting sufficient officers so that more officers are available for supervision of offenders.
- There is provision of ordering compensation from offender to victim in probation laws but these has become a bookish rule only as judicial officers are reluctant to adopt this provision. This is need of our that awarding the compensation must be made practice.
- A thorough national and state level training curriculum for the staff related to probation must be made which should stress upon rehabilitations and reforms in prison administration. These trainings programs much include the Guidelines mentioned by various international covenants. As the Prison managements are most of the theoretical appraisal methods for the prison system. But the modern perspective for the prison system what may be most significant for prison staff as well as prisoners. For this an innovative techniques have been developed for the prison system. This technique would be most appraisals as per the modern perspectives. So in the next section we would study about the innovative techniques for the prison system.

Conclusion :

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References :

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2. http://delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/ History “Petty Offences”, according to the writ 681/99 of the Delhi High Court means (i)



minor offences where gravity of the offence is less and the punishment is not going to be very severe; or (ii) the offences in which the prisoners involved, being first offenders, may be entitled to benefit of probation; or (iii) may be let off by the courts on payment of fine only

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