A critical study of Probation of Offenders Act, 1958

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Abstract
Probation of Offenders Act, 1958 is an Act which aims to provide release of offenders after due admonition in all the suitable cases where an offender is not found guilty of an offence not punishable with death or imprisonment for life. This Act has been enacted in order to give an opportunity to the offender to prove that he can improve his conduct in society and live in the same society without doing anything that can harm the society. This Act has given the researchers a plethora of opportunities to research and it is now one of the interesting area to research. One of the main problems that lie in the Act is that there are certain conditions in which the offender will be still imprisoned rather than having a chance to improvise him and this leads to the overcrowding of prisons in India. Through this research paper, I will try to look out the problem that rests in the Act so that the youthful offenders who commit the crime for the first time under the environmental influence, can reform themselves.

Keywords: Admonition, Probation of Offenders Act, 1958, Overcrowding of prisons, Improvise, Society

1. Introduction
“Mahatma Gandhi once said, "Hate the crime not the criminal". This means that we need to eliminate crime and eliminating criminals is not the way to do it. While it is true that punishment gives a sense of satisfaction to the victims and to the society in general, it has been observed that in most of the cases punishment, especially imprisonment, does not actually reform the criminal. In most cases, once a person comes out of a prison, he gets back to his old ways of being in conflict with the law. This is true even more with young criminals, whose minds are not fully mature. They get influenced in the wrong way because of their interaction with hardened criminals in jails.

One way to counter this problem is to provide opportunities and guidance to young and first time offenders instead of committing them to jails. The idea behind such treatment is that, normally, human beings do not resort to crime unless they are forced due exceptional circumstances. If we want to reduce crime, we should make sure that chance criminals are given an opportunity to get reformed instead of turning into hardened criminals. This is the aim behind Probation of Offenders' Act, 1958. It allows the court to take into account the nature of the crime, the age of the offender, and the circumstances of the crime, and instead of committing the offender to jail, release him under supervision and guidance of a probation officer. This ensures that the offender is integrated back into the society. The Act is based on the reformatory approach, which is adopted in many countries of the world. For example, in USA, almost 60% of the offenders are released on probation.

The object of probation h

imprisonment may have the very opposite effect to that for which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve.

It must, however, be kept in mind that reformation does not always work. Some crimes are so abhorrent and some criminals are so unrepentant that it is best to punish them so that the price of committing the crime keeps them from committing it again. For some of them, there is no hope for reform, and it is best to protect the society from them by locking them away for life [3].

1.1 About the Act
“This is a simply Act to understand but is very important Act. For easy understanding and remembering the provisions of the Act, firstly, we have to divide the provisions into six (6) categories (i). Sections 1 deals with short, title, extent and commencement of the Act whereas section 2 deals with definition [4]; (ii). Sections 3 to 12 of the Act are very important inasmuch as these provisions deal with ‘Role of Court’ for the application of provisions of the Act; (iii). Section 13 to 16 deal with ‘Role of Probation Officer’ (IV). Section 17 deals with power of Government to make rules; (v) section 18 deals with saving of operation of certain enactments; and (VI). Section 19 says as to application of this Act to certain States. Out of these six categories, section 3 to 12 of the Act need some discussion whereas elaborate discussion as to other categories is not necessary because one can easily understand those by reading them. Therefore, this article gives succinct information mostly with regard to section 3 to 12 of the Act. To avoid confusion, section 3 to 12 of the Act will be discussed under the heading of ‘Role of Courts’.

1.2 Short title, extent and commencement: (1) This Act may be called the Probation of Offenders Act, 1958. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force in a State on such date
as the State Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different parts of the State. Section 2 of the Act deals with Definitions. - In this Act, unless the context otherwise requires (a) “Code” means the Code of Criminal Procedure, 1898 (5 of 1898) [Now see Code of Criminal Procedure, 1973 (2 of 1974)]; (b) “probation officer” means an officer appointed to be a probation officer or recognised as such under section 13; (c) “prescribed” means prescribed by rules made under this Act; (d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (5 of 1898) [Now see Code of Criminal Procedure, 1973 (2 of 1974)], shall have the meanings respectively assigned to them in that Code.

The benefit of section 3 or section 4 of the Probation of Offenders Act is subject to the limitation laid down in these provisions. The word ‘may’ in section 4 does not mean ‘must’. This was observed in Ram Prakash v. State of Himachal Pradesh, AIR 1973 SC 780.

As was held in Dasappa vs. State of Mysore, AIR 1965 Mys 224, the release of probationer on bond with or without sureties on probation of good conduct is, in nature, a preventive measure which seeks to save the offender from the evil effects of institutional incarceration and affords him an opportunity of reformation within the community itself. It is a discretionary remedy rather than a mandatory one.

The benefit of Probation of Offenders Act cannot be given to an accused convicted of an offence punishable with imprisonment for life. This was held that State of Gujarat v. A. Chauhan, AIR 1983 SC 359.

1.3 Role of courts
Sections 3 to 12 say the procedure to the Court to release the offender either on admonition or on probation of good conduct. There are five (5) important aspects which need to be discussed for better application of these provisions. Other aspects do not need much discussion because those are very easy to understand. The Five aspects are 1. Admonition; 2. Probation of Good Conduct; 3. Compensation and Costs; 4. Offenders under 21 years of age; 5. Report of Probation Officer.

2. Admonition (Section 3)
Admonition means reprimand. Section 3 of the Act says about the procedure how an offender can be benefitted on the ground of admonition. The Court has to power to release offenders after admonition under section 3 of the Act after satisfying the following conditions:
1. For the offences punishable under section 379, or 380 or 381 or 404 or 420 of Indian Penal Code,1860 or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law; 2. Offender should not previously be convicted for the same offence. 3. The Court considers the nature of the offence and the character of the offender. 4. The Court may release the offender on probation of good conduct applying section 4 of the Act, instead of sentencing him. And 5. The Court may release the offender after due admonition, instead of sentencing him.

3. Probation of good conduct: Section 4 of the Act is very important provision. The following important points are to be remembered to apply this provision.
1. Section 4 of the Act is not applicable if the offender is found guilty for offence with death or imprisonment for life.
2. Section 4 of the Act applies to all offences except for offences punishable with death or imprisonment for life. It was observed in Smt. Devki v. State of Haryana, AIR 1979 SC 1948 that Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forced her to sexual submission with commercial motive. (3) The Court has to consider the circumstances of the case including the nature of the offence and the character of the offender. (4) under this section, without sentencing the offender to any punishment, the Court may release the offender on probation of good conduct. The Court may give direction to the offender to execute bond, with or without sureties, to appear and receive sentence when called upon during such period which should not exceed period of three years. The Court may direct the offender to maintain keep the peace and be of good behavior. (5) Report of Probation officer is not mandatory to apply this provision but if report is available on the record, the Court shall take into consideration the report of probation officer before making an order of probation of good conduct. (6) In addition to passing the order of release the offender on probation of good conduct, the court may pass supervision order. The period of supervision should not be less than one year. In such a case, Probation officer will supervise the offender for such a period. The name of Probation officer should be mentioned in the supervision order. The Court may put appropriate conditions in the supervision order and the court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order. Such supervision order should forthwith be furnished to the offender.

4. Compensation and costs
If an offender is released under section 3 or 4 of the Act, the Court may further direct the offender to pay compensation and costs to the victim for loss or injury to the victim (section 5 of the Act). It was observed in Rajeshwari Prasad v. Ram Babu Gupta, AIR 1961 Pat 19, while assessing the quantum of compensation, it is purely in the discretion of the court to allow compensation and costs if it thinks reasonable in the case.

5. Offenders under 21 years of age
Although there is some restrictions under section 3 of the Act to release the accused on admonition or probation of good conduct, section 6 can be applied to all offence except an offence punishable with death or imprisonment for life. This provision says offenders who are under 21 years of age are not sent to prison which offence is not so serious as to warrant imprisonment for life. Age of offender has to be reckoned on the date of commission of the offence as was considered in AIR 1977 SC 698. In all cases where accused is below 21 years of age, the Court shall call for the report of Probation Officer. If the Court opines that it would not be...
desirable with offender either on the ground of admonition (section 3) or on the ground of release on probation of good conduct (section 4), the Court can pass sentence of imprisonment on the offender who is under 21 of years ago but the Court cannot sentence him without recording reasons for doing so. The Court has an obligation to see whether section 3 or 4 of the Act applies or not. For this purpose, the Court must call for the report of Probation Officer. Therefore, report of Probation Officer is mandatory when the offender is under 21 years of age. Further, the Court also considers the fact and circumstances of the case including the nature of the offence and the character, physical and mental condition of the offender. Unless the Court considers the report of Probation Officer, it is difficult to the court to come to conclusion whether section 3 or 4 of applies or not. Therefore, report of Probation Officer is mandatory under section 6 of the Act. On receiving report, the Court peruses it and decides whether the offender can be released on admonition or probation of good conduct or not. After perusal of report, if the court opines that offender shall not be released applying section 3 or section 4 of the Act, the Court can pass sentence on the offender recording reasons for doing so.

6. Report of probation officer

Inasmuch as the character, physical and mental condition of the offender is essential factor for consideration, the report of the Probation Officer is very important. Section 4 says before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case. The word ‘if any’ has some meaning. It can be easily understood that no report of Probation officer is mandatory to release the offender on probation of good conduct. However, if such report is available on the record, the Court shall not ignore it and that the Court shall take the report in consideration. No Probation Officer’s report is necessary to apply section 4 of the PO Act but such report is must under section 6 of PO Act if the offender is under 21 years of year Now, let me allow to consider the section 6(2) of PO Act. The words ‘the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender’ have some meaning. One can understand that the Court shall call for the report of Probation Officer under this provision. It is the duty of the Court. As was observed in AIR 1983 SC 654, Section 6 lays down an injunction on the Court not to impose a sentence on persons who are below the age of 21 years for the offences punishable with imprisonment but not with imprisonment for life. It is now pertinent to see the words in section 6(2) of the Act ‘and consider the report, if any’. The word ‘if any’ is found in section 6(2) of the Act like in section 4(2) of the Act. As already observed supra, the Court shall call for report. Now, the question is that if report of Probation Officer is not called and there is no material available on the record as to character, physical and mental condition of the offender, what the court has to do. It was noticed in Dasappa v. State of Mysore, AIR 1965 Mys 224, where the fact as to the age of the offender was never brought to the notice of the court nor was there any evidence as regards his character, the section did not prohibit the passing of an order of imprisonment against accused found guilty of an offence though he is under twenty-one years of age. As per this ruling, although there is no evidence as to character and age of the offender, the court has power to order imprisonment against accused” [2],

7. Overcrowding of Prisons

“Prison overcrowding is one of the key contributing factors to poor prison conditions around the world. It is also arguably the biggest single problem facing prison systems and its consequences can at worst be life-threatening at best prevent prisons from fulfilling their proper function.

Data suggests that the number of prisoners exceeds official prison capacity in at least 115 countries. Overcrowding is a consequence of criminal justice policy not of rising crime rates, and undermines the ability of prison systems to meet basic human needs, such as healthcare, food, and accommodation. It also compromises the provision and effectiveness of rehabilitation programmes, educational and vocational training, and recreational activities.

Overcrowding, as well as related problems such as lack of privacy, can also cause or exacerbate mental health problems, and increase rates of violence, self-harm and suicide.

We have developed a 10-point Plan to Reduce Prison Overcrowding to provide guidance to policy-makers on how to address prison overcrowding and mitigate its harmful consequences. This includes, for example:

- Investing in non-custodial alternatives to detention both pre-trial and post sentencing
- Diverting minor cases out of the criminal justice system altogether
- Investing in long-term strategies for crime prevention and reduction
- Reducing high rates of pre-trial detention by improving access to justice
- Making special or alternative arrangements for vulnerable groups, such as children, mothers with dependent children and people with mental health issues.

8. Key facts

1. 22 national prison systems hold more than double their capacity, with a further 28 countries operating at between 150% and 200% capacity.

2. The highest rate of overcrowding in the Americas is 310% (El Salvador), in Africa 363% (Benin), in Asia 316% (Philippines), in Oceania 217% (French Polynesia), in the MENA region 186% (Lebanon), and in Europe 136% (Macedonia). As individual countries themselves determine the capacity of particular prisons, it is likely that data may underestimate the extent of the problem.

3. In most prison systems, prisoners do not have the minimum space requirements recommended by international standards, spending up to 23 hours of the day, if not all day, in overcrowded cells. Overcrowding can be so severe that prisoners sleep in shifts, on top of
each other, share beds or tie themselves to window bars so that they can sleep while standing.
4. In some countries only periodic amnesties and pardons relieve overcrowding. While these provide short-term relief, they do not offer a sustainable solution and can erode public confidence in the criminal justice system. In others, costly prison-building programmes are undertaken to meet the growing demand for prison places.
5. Some groups are particularly adversely affected by prison overcrowding. For example, the needs of women and children in detention – already often given little attention – tend to be even more neglected in overcrowded and overstretched prison systems” [3].

9. Salient features of probation of offenders act
“`The 10 Most Important Salient Features of the Probation of Offenders Act, 1958 are listed below:
1. The Probation of Offenders Act, 1958 is intended to reform the amateur offenders by rehabilitate in society and to prevent the conversion of youthful offenders into obdurate criminals under environmental influence by keeping them in jails along with hardened criminals.
2. It aims to release first offenders, after due admonition or warning with advice who are alleged to have committed an offence punishable under Sections 379, 380, 381, 404 or Section 420 of the Indian Penal Code and also in case of any offence punishable with imprisonment for not more than two years, or with fine, or with both.
3. This Act empowers the Court to release certain offenders on probation of good conduct if the offence alleged to have been committed must not be punishable with death or life imprisonment. However, he should be kept under supervision.
4. The Act insists that the Court may order for payment by the offender such compensation and a cost of the proceedings as it thinks reasonable for loss or injury caused to the victim.
5. The Act provides special protection to persons under twenty-one years of age not to sentence him to imprisonment. However, this provision is not available to a person found guilty of an offence punishable with life imprisonment.
6. The Act provides the freedom to Court to vary the conditions of bond when an offender is released on probation of good conduct and to extend the period of probation not to exceed three years from the date of original order.
7. The Act empowers the Court to issue a warrant of arrest or summons to him and his sureties requiring them to attend the Court on the date and time specified in the summons if an offender released on probation of good conduct fails to observe the conditions of bond.
8. The Act empowers the Court to try and sentence the offender to imprisonment under the provisions of this Act. Such order may also be made by the High Court or any other Court when the case comes before it on appeal or in revision.
9. The Act provides an important role to the probation officers to help the Court and to supervise the probationers put under him and to advise and assist them to get suitable employment.
10. The Act extends to the whole of India except the State of Jammu and Kashmir. This Act comes into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint. It also provides liberty to State Governments to bring the Act into force on different dates in different parts of that State” [4].

10. Criticisms against the Concept of Probation and Their Counter
“There are some critics who look at probation as a form of leniency towards the offenders. To quote Dr. Walter Reckless, probation like parole, seems to the average laymen a sap thrown to the criminal and a slap at society. Probation is still generally perceived as a lenient approach rather than a selective device for the treatment of offenders who are no threat to public safety. Probation system lays greater emphasis on the offender and in the zeal of reformation the interests of the victim of the delinquents are completely lost sight of. This obviously is against the basic norms of justice. Keeping in view the increasing crime rate and its frightening dimensions, it is assumed that undue emphasis on individual offender at the cost of societal insecurity can hardly be appreciated as a sound penal policy. Some criticize probation because it involves undue interference of non-legal agencies in the judicial work which hampers the cause of justice. Further, when non-custodial correctional measures are used arbitrarily, without being resorted to on objective grounds, there is danger of men of means taking undue advantage and abusing the system as against those who would really deserve but have no advocacy or support, and of the whole approach becoming counter-productive and coming into public disrepute. The answers to these criticisms would lie in the fact that the aim of the criminal justice system is to correct the offender and for some offences this would be best done outside the prison. Further, laying down strict guidelines to determine when probation should be awarded would defeat the very purpose of the concept. The broad parameters laid down age of the offender, surrounding circumstances, nature of the offence, etc. provide a broad framework for the judge to apply his discretion. It would also defeat the purpose if probation has to be granted when certain conditions are satisfied, if for example the facts on record show clear premeditation to do a wrongful act. Responding to the other criticism, it is essential that non-legal agencies, namely probation officers, interference is only meant for smooth functioning, and also it is not mandatory for the judge to consider using the probation officer always. He may not ask for a pre-sentence report, may not put the offender under supervision” [5].

11. Suggestions and Conclusions
“The object of the criminal justice system is to reform the offender, and to ensure the society its security, and the security of its people by taking steps against the offender. It is
thus a correctional measure. This purpose is not fulfilled only by incarceration; other alternative measures like parole, admonition with fine and probation fulfill the purpose equally well.

The benefit of Probation can also be usefully applied to cases where persons on account of family discord, destitution, loss of near relatives, or other causes of like nature, attempt to put an end to their own lives. Its aim is to reform the offender and to make him see the right path. This can be achieved as has been said previously, not only by legislative action but also by sincerity on the part of the administration. In some parts of the country it is being implemented in the right spirit. The examples of Kerala and Andhra Pradesh have been described in the project. The success of probation is entirely in the hands of the State Government and the resources it allots to the programmes. Resources are needed to employ trained probation officers, to set up homes for that on probation and also for their training besides others. Thus while concluding it can be said that the concept of Probation would be effective only where the judiciary and the administration work together there must be a common understanding between the Magistrate (or) Judge and the Probation Officer. Probation would be effective only when there is a sincere attempt made to implement it. It would be of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person. Probation is an affirmation of the human inside every being and it must be given due importance” [6].

12. References
6. Id.