

Critical analysis of Probation of offender act 1958

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Mahatma Gandhi used to say that 'Hate the offence not the accused.' This makes it clear that the accused person is not an offender by birth. It is the circumstances which makes him offender. Thus, a person can be prevented from becoming an offender. One of the methods of prevention is probation. It is reformatory method. It provides opportunity to accused to reform.

Ramnaresh pandey vs state of M.P (1974 M.P.L.J 186) and Jugal Kishore parsad VS State of Bihar (A.I.R 1972 S.C 2522) .It was decided the main object of probation is to provide an opportunity to accused person to reform and protect juvenile and young person from notorious offender in prison.

Definition of Probation:- The word Probation has not been define in the Probation of offender Act 1958. It is derived from Latin word 'Probare' which means- ' to examine'. Under this accused is examined for good behavior so that he becomes a law abiding citizen and refrain from criminal activities.

Black Law Dictionary:-"Allowing a person convicted of some minor offence to go at large. Under a suspension of sentence during good behavior and generally under the supervision or guardianship of a probation officer.

Donald Taftsays that ' The suspension of sentence or final judgment of the court against a convicted person in a criminal trial is probation.

The conclusion of all the above definition is – " Rather than giving punishment of imprisonment to the convicted person, he shall be provided an opportunity to reform and producing Bail Bond or surety with the condition to maintain peace and good behavior for a fixed or determined time period."

Symptoms:-Above definitions makes out following symptoms of probation:-

- 1 - Benefit of probation should be given to convicted person.
- 2 - Sentence to offender shall be kept suspended.
- 3 - Offender is provided opportunity to reform.

4 - Rather than sending the offender to prison, he is provided opportunity to maintain good behavior by living in society.

5 - Certain conditions can be imposed by while determining the period of limitations like :- Maintaining peace and good behaviour, not to commit the offence again.

6 - Execution of bail bond with or without surety by the accused for probation.

7 - Accused is kept under direction and supervision of probation officer during probation.

8 - Offender can be sentenced to imprisonment again on the breach of condition.

Object:-Main object of probation is to provide opportunity to accused for reformation.

In the case of Baldevraj VS State (A.I.R 1967, 71 Punjab L.R 158)

It was held that main object of probation is to provide opportunity to the accused to reform in free environment rather than sentencing him.

In Ramji Missan VS State of Bihar (A.I.R 1963 SC 1088)

It was held by the Honorable Supreme court that young offenders can be reformed by keeping them away from habitual offenders.

In case of Muskan khan VS State of Maharashtra (A.I.R 1976 SC 2566)

It was held by the Honorable Supreme court that main object of probation is to prevent young offenders from becoming incorrigible offenders.

From said judicial decision it can be conclude that main object of probation is

A - Provide opportunity to offender for reformation.

B - Make him capable for rehabilitation.

C - To keep young offenders away from the incorrigible and notorious criminals.

D - Provide an opportunity for remission of criminal act.

E - To prevent the happening of offense again in future.

Benefits of this Act

A -To offender:-

1 - To get indulge in the life of society.

2 - They can support their family

3 - They remain away from habitual criminals.

4 - They avert social stigma.

5 - They remain away from adopting wrongful psychology.

B - Benefit to society:-

1 - It prevents Jail from overcrowding.

2 - It lessens expenses of Union and State government.

Provisions of probation of offenders Act:-

Probation of offenders Act, 1958 lays down vast provision regarding probation, namely—

Section 3 lays down those offences in which offender can be released on admonition.

Section 4 relates to offenders on probation for good behavior. In it, those offences have been mentioned in which benefits of probation can be provided.

Conditions should be observed to claim the benefit of provision of Section 4:-

When a person is found guilty for certain sort of offences, like offenses under which punishment is not more than 2 years.

Court also goes through other circumstances too.

Court award the probation for a specified time period for keeping good behavior and peace.

When a person is found guilty under the provisions of C.R.P.C 1973:-

Section 235, Section 248, Section 255. So firstly the conviction is necessary in these circumstances and then other conditions become necessary to get benefits of probation can be granted in any offense which is not punishable its death or life imprisonment.

Specified period:-There shall be specified period for awarding him probation.

Maximum time period of probation is 3 years.

Section 5 relates to providing compensation and expenses to victim persons from such released persons.

Power of court to award cost

Compensation

Cost of proceedings

It is the discretionary power of court.

Section 6 provides that offenders under the age of 21 years shall be prohibited from imprisonment.

Section 7,8,9,10 relates to secrecy of report of probation officer, procedure to be followed on breach of conditions of bail bond by the offender, modification in

conditions of probation and sureties’.

Section 11 provides for appeal and revision.

Section 12 removes disqualification related to conviction.

Once a person is awarded the benefit of admonition and probation no disqualification would be there because of it. It should be read with Section 24 of Juvenile justice Act 2015.

Section 13,14, and 15 provides for appointment of probation officer, their duties and of being public servant.

Section 16 provides protection to probation officer for proceedings done in good faith.

Section 17 provides powers of state government to make rules.

Benefit and Admonition of probation :-

Section 4 of probation of offenders Act, 1958 mentions those offences and situation when an offender is given the benefit of probation.

Those offences in which benefits of probation is given- In section 4 of the Act, benefit of probation can be given in all matters which are not punishable.

With death or, With imprisonment of life

Means the provision of probation is extremely liberal. The benefit of probation is provided in all types of offenses except two offenses.

But, it is not an absolute rule, Actually various points are considered while giving the benefit of probation should be given in general matters.

Lekhram Vs State (A.I.R 1960 Punjab 482)- It was said that ' Although the system of probation is extremely liberal but it doesnot mean that the benefit of probation will be granted in those matters of severe nature in which a danger to public interest may occur.'

The benefit of probation should be provided in following matters -

Greivous Hurt under Section 325 of I.P.C 1860 (Hansa Vs State of Punjab, A.I.R 1977, SC , 1991)

Conviction under part 2 of section 506 of I.P.C (Ramnaresh panday Vs State of M.P, A.I.R 1974, SC 35)

Case of section 10 (C.R.P.F Commandant, 20 B.N.J.I.B Police Vs Sanjay Binjoy, A.I.R 2001, S.C 2058)

Situation when benefit of probation shall be provided:- There are number of

matters in which benefit of probation has been given to Offenders. In all matters, following principles be behind providing the benefit of probation.

No previous conviction against accused.

Previous behaviour of accused is good.

Case should not be of grave and deadly nature.

Trial was conducted for long time.

Accused was below the age of 21 years.

Accused was not habitual offender.

Dispute or fight aroused by sudden provocation.

Accused is extremely poor.

Section 4 of the Act also mention those situations which could be considered by providing probation.

These situations are following :-

Nature of offence :- It means a less serious offence or not having any reason for doing such offense, condition prevailing at the time of commission of that particular offense.

Character of Offenders :- It means age of Offender, accademic record of the Offender. Hence after going this step the Honorable Judge would give his/ her final verdict regarding it.

Court can release the Offender without sentencing

Judge can provide the benefit of admonition and probation to the accused.

When a person is found guilty :-

When an accused is found guilty under any sections of the code of Criminal procedure, 1973 :-

Sec 235

Sec 248

Sec 255

Hence in these sort of circumstances, after that the the other conditions are also necessary to be fulfilled.

Certain offences :-

Under certain offences of I .P.C and any other law benefit of admonition can be requested by the accused in criminal trial.

These are the following offenses under I.P.C :-

Section 379 of I.P.C :-

It describes about the punishment of theft.

Section 380 of I.P.C :-

It describes theft in dwelling house, etc

Section 381:-

It describes theft by clerk/servant of property of master.

Section 404 of I.P.C :-

It describes dishonest misappropriation of property of deceased.

Section 420 of I.P.C :-

It describes cheating and dishonestly inducing delivery of property.

Offence punishable with imprisonment upto 2 years or fine or both. For eg :-

Mischief under I.P.C

Drawback of the Act :-

It create conflict of interest.

It lack practical.

It requires constant supervision.

It impose excessive conditions.

In case of Arvind Mohan Vs Awlya kumar (A.I.R 1974)

In this case it was held that:-

Object of this act is to reclaim amateur offender who can be rehabilitate.

This act recognize the importance of environmental influence in the commission of crime and prescribed a remedy by which offender can be reformed.

Where this act is not applicable:-

Prevention of food and adulteration act: Under Section 20 AA: - If the accused is more than 18 years.

Narcotics drugs and psychotropic substance Act 1985:-

Under Section 33 of this act.

Exception:-

Accused is below the 18 years of age.

Accused is convicted for the offense under Section 26 or 27 N.D.P.S Act

Schedule cast and Schedule tribes (prevention of atrocities) Act,1989.

Under section 19,when the accused is below the 18 years of age.

4) Defense of India Act 1962 under section 43.

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