UNIT 2: PROBATION SYSTEM

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2.1 INTRODUCTION

Etymologically probation means “I prove my worth” derived from the Latin word ‘probatus’ meaning ‘tested’ or ‘proved’. Don M. GotFredson observed probation as “a
procedure by which a convicted person is released by the court without imprisonment, subject to conditions imposed by the court. Thus probation is part of the decision-making process of judges at the time of sentencing. The legal concept of probation as a criminal justice system is ‘Conditional suspension of sentence’. It is the modern trend of community-based correctional treatment of offenders. In U.S.A the Advisory Committee on Penal Institutions, Probation and Parole to the national Commission Of Law Observance and Enforcement defines probation as follows :-”

“Probation is a process of treatment, prescribed by the Court for persons convicted of offences against the law, during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court and is subject to supervision by a probation officer. Length of the probation period varies, and is determined by the court.

Devid L. Sills defines probation as a procedure for “release of convicted criminals or adjudicated delinquents on a conditional basis in order to assist them in pursuing a non-criminal life”

Edwin H. Sutherland says, probation is a status of a convicted offender during a period of suspension of the sentence by the court.

In India, the system of probation finds its statutory recognition at present in section 4 (1) of the Probation of Offenders Act, 1958 (20 of 1958) which runs as follows :-

“When any person 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 circumstance 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.”
2.2. OBJECTIVES BEHIND PROBATION

“Probation is a method of penal non-institutional treatment of offenders, developed as an alternative to imprisonment out of a realization that short – term sentences, specially in case of juvenile and youthful offenders, were not only ineffective, but also harmful, as these brought the young offenders in contact with the confirmed criminals in prisons and most of all, removed their fear of the unknown, viz, prisons. Probation is one more step in the progressive realization that the sentence should fit the offender and not the offence.”

“The sole intention of the legislature in passing probation laws is to give persons of a particular type a chance of reformation which they would not get if sent to prisons.”

“The traditional concept of crime and punishment has been radically changed in the twentieth century. The focus has now shifted from the crime to the criminal. Probation has more important social virtue in that it prevents a severance of domestic and family ties and the stigma invariably associated with imprisonment. In sentencing the focus is now on social justice and human rights. Probation system is a technique of individualized treatment of offenders. “Probation came into existence to some selected types of persons from the rigours of punishment even if found guilty by a court of law.” Jails Committee (1919-20) observes that there seems to be no reasonable doubt that the probation system represents a very substantial economy.


“The object of probation, as of all methods of treatment is the ultimate re-establishment of the offender in the community. But probation involves the discipline of submission by the offender, while on liberty, to supervision by probation officer. It thus, seeks both to protect society and to strengthen the probationer’s resources so that he becomes a more responsible person. Unlike custodial treatment, which by removing the offender from his family and community tends to suspend his social and economic obligations to them? Probation exacts from him a contribution within the limits of his capacity, to their well – being.”
The objective of probation in the criminal justice system in India was also largely based on this English pattern.

2.3. PHILOSOPHY BEHIND PROBATION

Criminologists as well as Sociologists differ greatly in their conception of Crime or deviance. None is unquestionably true. All definitions attempt to serve more or less some specific purposes. As this study concerned mainly with reformation of prisoners so we may focus in the criminologists who postulated that an offender can be reformed. The criminologists who believe in the theory of reformation looked crime as deviance, which is frequently defined as rule – breaking. Those who believed that an offender can be reformed and rehabilitated, they gave the definition of deviance in their own ways. Thorsten Sellin holds that, any act that violates the conduct. Norms of the group is deviant. Albert A. Kohen considers that deviance is any act that violates the institutional “expectations which are shared and recognized as legitimate within the social systems. Walter Miller views deviance as any behaviour which goes against in rules of dominant culture. Still another sociologist, Cavan suggests that only those acts which violate in most conventional norms are to be considered deviant. Thus, assumption in each of the se definitions is that we may apply some known commonly accepted standard in determining what is deviant and what is not. To consider the concept of deviance, the sociological school of Criminologists observe the factors like who does the behaviour, how it is done and under what circumstances are taken into account in deciding what is deviant behaviour. The approach of this School of Criminologists in defining deviance looks not at the legal rules but at the way a particular behaviour is reacted to by other. Charles E. Fraizer observed: “Deviance is behaviour that violates the standard of the person performing the act, the perceived standards of some persons or some group that is important to that actor or both.” This is a definition that puts the emphasis on the actor’s own perceptions of the quality of his conduct.
Most theorists of deviance ultimately based their ideas to a consideration of deviance as it forms a stable part of an individual’s action pattern. Our purpose in the consideration of deviant behaviour focuses on two aspects:

I. First, the emergence and abandonment of deviant behaviour patterns.

II. Second, how social forces believed to induce deviance work in the private walls of deviant actors.

Deviance as seen by various theorists proceeds through three phases:

i) Emergence

ii) Patterning

iii) Change.

Emergence refers to the first instances of deviant behaviour.

Patterning refers to the point when any particular form of deviance becomes a normal part of individual behaviour tendency.

Change or abandonment of deviant behaviour.

Patterns refers to the point the actor discontinues the deviant behaviour.

The thrust area of this work deals with how deviant behaviour changes in real world cases and particularly in the Prison. The Central thesis of this theoretical approach is that deviance is a result of negative social control and that deviant behaviour can be changed by socializing process.

2.4 ORIGIN AND DEVELOPMENT OF PROBATION SYSTEM

Historical Antecedents in U.S.A. and England.

Although probation system has its statutory recognition in last century yet it has some historical antecedents.

Pardons
In 12th Century in the criminal justice system, ‘Pardon’ was one aspect of “King’s authority to determine the punishment to be imposed for various offences. The pardon includes the power to commute or remit prescribed penalty”

Suspension of Sentences:
It is said that probation evolved from the common law procedure of suspended sentence. At common law the courts have an inherent power to temporarily suspend sentences. In the United States “the courts could indefinitely suspend a sentence as a Common Law practice. “The suspension of sentence, nevertheless, was the early stage of what was known today as formal probation.” By this system the defendant was allowed to appeal to the crown for a pardon.

Benefit of Clergy
Historically the probation system has some similarity with the English system of Benefit of Clergy in the sense that both reflect a criminal justice method for lessening punishment. Most writers in the field accepted benefit of clergy as “a primary historical influence in the rise of probation”

Recognizance and Bail
In the 14th Century the practice of recognizance (recall to mind) evolved. In recognizance the offender has to keep peace and to recall minding that he was subsequently to appear in court. It is still in vogue in Irish Probation system. Bail at that time involved placing the offender under custody of another. So, some relation lies between probation and recognizance and bail.

Filing of Cases
In 19th Century in U.S.A. a practice was in vogue which was called filing of case where “aim was to lessen the sentence or to recognize extenuating circumstances”. Filing required consent of both parties and the court may take further action at any time upon a motion of either party. Thus the two conditions, (1) suspension of sentence, and (2) imposed conditions, make filing of causes one of the forerunners of contemporary probation.

Historical Forerunners of Probation
According to Newman probation both in conception and development is America’s distinctive contribution to progressive penology.

But there is a controversy. Though John Augustus of U.S.A. is called the Father of Probation yet an Englishman Mathew Davanport Hill is also acclaimed for the same, and incidentally, the pioneering activities of both the men took place in the same year. 1841.

John Augustus.
The first probation officer in this world is said to be John Augustus, a Boston Cobbler, who in 1841 volunteered to assist offenders if the court would release them to his care. Augustus wrote, “I was in court one morning in which the man was charged with ‘being common drunkard’. He told me that if he could be saved from the house of correction, he would never taste intoxicating liquors. I bailed him, by permission of the Court”. They began the work of the first probation officer – a volunteer. After his death in 1859 his friends were credited with providing voluntary supervision service to the released offenders for over 2000 Persons with very few failures.

Mathew Davanport Hill
In Britain it is claimed that the practice of voluntary supervision in ‘suspended sentence’ cases occurred well before the work of John Augustus by Hill. In 1820 onwards an unusual practice of sentencing process was going on in the Warwickshire Quarter Sessions. The young offenders were given one day token sentence with the condition that they be placed under supervision of a parent or guardian.

It thus introduced two elements of probation: (i) Lessening of punishment, and (ii) supervision. When Hill became magistrate in 1841 he suspended even one day jail sentence and used to consider the prior status of the offender. But probation in its’ pure’ form had not yet get legal foundation.

2.5 LEGAL FOUNDATIONS OF PROBATION IN USA & U.K.

In America
In U.S.A. the voluntary services first became legal functions when a 1869 law of Massachusetts required the Board of charities.
“visiting agent” to investigate and be present when a child was being tried in court. In 1873 a Michigan law also authorized country agent to investigate, place out and visit delinquent children. In 1878 the first probation statute was enacted. Massachusetts law provided employment of a probation officer by the Mayor of Boston from the Police force to save any offender considered reform able without punishment. These were the forerunners of probation regulations in U.S.A.

The former Chief of Police, Captin E.H.. Sagave was the first statutory probation officer in the world who had a forerunner Lt. Henry C. Hemmingway who served only 4 months. In 1880 legislation was passed in Massachusetts for appointment of Pos. in all Municipalities in the state. In 1898 all superior courts were authorized to appoint Pos. However, the comprehensive law on probation system was introduced in U.S.A by the Act of March 4, 1925 to provide for the establishment of a Probation system in all U.S. Courts except in the district of Columbia. This law was subsequently amended in 1933, 1948 and 1958. By 1956 probation laws were made applicable in every States of U.S.A.

In England
The first British statute on Probation was enacted in 1879, amended in 1887 but contained no supervision rule. The comprehensive law on the subject was enacted in 1970 providing state assistance and supervision by stipendiary PO and also utilization of agents of voluntary organizations. Though this Act was amended from time to time yet it remained the basis of the practice of probation in United Kingdom until 1948 when it was superseded by the Criminal Justice Act, 1948 which remedied some ambiguities of the Act of 1907.

Other Countries
Laws on Probation system were also enacted in Norway in 1807, Belgium in 1888 and France in 1891. But the employment of Probation Officer was less rapidly accepted in the European countries and it is said to have first occurred on the continent at Switzerland in 1891. But this practice did not prevail in most of Western Europe until after World War I, and it spread even more slowly in Eastern Europe. Probation of offenders was also introduced into most of the British colonies in Asia including India and Africa early in the twentieth century and was then adopted in some of the adjacent countries. The introduction of probation system into Latin America started with the establishment of
Juvenile Courts there in the 1920s and 1930s, but it was not accepted wholly in most Latin American courts for adults until much later.

### 2.6 HISTORY AND DEVELOPMENT OF PROBATION IN INDIA.

**Ancient Period**

Dr. P.K. Sen in his Tagore Law Lecture on ‘Penology old and new’ and rightly pointed out that the idea of releasing an offender after due admonition (i.e. the basic idea of probation system) is not borrowed in India from U.S.A. or England. The Hindu Law givers laid down that punishment must be regulated by consideration of the motive and nature of the offence, the time and place, the strength, age, conduct, learning and economic position of the offender and above all, by the fact whether the offence was repeated. These ideas were envisaged by the Smriti writers as early as 300 B.C. The Smriti writers were aware of the complexities of human nature and they paid due attention to individuality of an offender in criminology. Their foresight was remarkable. Though in their writings there was no direct reference of release of offenders on probation yet their views seem to support the modern concept of probation.

In Manusmriti we found the modern idea of releasing an offender after gentle admonition. Manu also told that after scientifically considering the tendencies of repeated inclination in the offender, his antecedents and capacity the punishment should be awarded. (Manusmriti, Vol. VIII, Sloka -129). About 2000 years.

Ago Brahastapi in his ‘Dandabheda Vyavastha’ referred to admonition as punishment. “According to Brahastapi a gentle admonition should be administered to a man for light offence”. The ideas revealed in Brahastapi Samhita clearly shows that modern idea of individualization of punishment was thought in those days too. The caste and social status of the offender, his knowledge and education, his pecuniary and other circumstances and all that went to make up his individuality were duly considered in awarding punishment.

Brihaspati suggested that a king should punish elders, domestic priests and persons commanding respect with gentle admonition only.

In Bridharit Smriti also we found the punishment of admonition.
Narada remarked that the nature of the offence, its times and place should be carefully considered and ability and motive of the offender should be thoroughly examined before inflicting punishment. Yajnavalkya also laid down that having ascertained the guilt, the place and time, as also the capacity, the age and means of the offender, punishment should be given to those deserving it.

Kautilya in this Arthashastra advised the king to award punishment which should neither be mild nor severe. Narada prescribed a lesser punishment for the first offender found guilty of cut-purse.

Vishnu said that the king should pardon no one for having offended twice. Apashtamba said that a spiritual teacher, a priest and a prince may protect a criminal from punishment by their intercession in case of grave offence. Thus the Smriti writers were aware of the principle that a reformation or correction of offender was one of the important objects of punishments for the offence. They also prescribed punishment of expiation for petty offences. Thus we found that the philosophy of probation is not entirely new in Indian Criminal Law and views of our ancient law-givers had support for the modern probation system.

In Brahmabaibarta Purana Lord Mahadev told to Brahma that if people commit offence it is the duty of pious man to forgive him.

Maurya rulers were in favour of mild punishment. One of the edicts of the Emperor Ashok contains provision for remission of punishment. He advised his officers to examine and reduce punishment awarded to prisoners and consideration of circumstances which substantially coincide with those mentioned by Smriti writers.

**Medieval Period**

During the Muslim reign in India up to advent of British rulers the administration of criminal justice was based on Islamic criminal law which did not recognize principles of correctional method or admonition. But during Maratha rule and Peshwa period we get traces of principles of probation if we take the concept of probation in a very broad sense so as to include cases where an offender was not at once awarded punishment but given a chance to improve himself. The cases are:

i) Case of Vishwanath Bhatt Patankar
In 1775-76 one Vishwanath Bhatt Patankar of Mouje Khed, was arrested for committing thefts. As he was unable to furnish security, the district officer sent him to Huzur, Janardan Bhatta Bhide stood surety for him promising that he would not again commit theft or any other offence.

(ii) Case of Janki Lagadin

In 1785-86, one Janki Lagain was imprisoned at Fort Visapur for adultery. Her father Shivaji Gaikwad prayed for her release. The prayer was granted on his standing as surety for her future good conduct. [These can be said to be the earliest cases of probation in India.]

Modern Period

Before Independence

Though the probation system almost rooted in ancient Indian criminology but found its legal recognition for the first time in 1898 by section 562 of the Cr. P.C. (Act XX of 1898). The said section was actually taken from the English Probation of First Offenders Act, 1887. this S.562 was amended by the amendment of Cr. P.c. in 1923 which radically changed the law of Probation in India. The of S.562 did not contain any specific provision empowering an appellate court or a High Court as a court of Revision in matters of probation which was provided in new section. The period of Probation under old section of 1898 was not to exceed one year. Moreover under the new Section 562 of 1923Amended Cr.P.C. a court may grant probation in case of offender not under age of 21 years for offences punishable with not more than 7 years and in case of offender below 21 years as a woman for offences punishable with death or imprisonment for life. In the year 1973 the new Cr. P. C. provides almost the same provision in section 360.

Thereafter in 1931 the Government of India circulated a proposed draft of Probation of Offender Bills to the then local governments for their views. However, owing to preoccupation with other important matters the Bill could not be proceeded with an in 1934 the Government of India informed the Provincial governments that as there was no immediate prospect of central legislation on the subject, so there would no objection if the provinces undertake such legislation themselves. In pursuance of the above suggestion some provinces enacted their own probation laws. The enactments are : The C.P. & Berar Probation of offenders Act, 1937, the Bombay Probation of Offenders Act, 1938, the U.P.

**The National law on Probation**

After independence the Joint Committee on the Bill to provide for release of offenders on probation was presented to Lok Sabha on the 25th February 1958. Mr. Hukum Singh was the Chairman of that joint Committee. The descent views on the Bill were expressed by Rajendra Pratap Singh, Jagdish Awasthi, Yadav Narayan Jadhav, Abdur Rezzak Khan, Sushila Nayar and Y.S. Parmar. Thus new era in the field of probation started in India by enactment of the Probation of Offenders Act, 1958 (Act 20 of 1958) by the Parliament of India on 16th May, 1958. The Act provides for different dates for different states and different parts of the states to apply the Act (except Jammu and Kashmir) so that they will have an opportunity to create the necessary infrastructure before the Act is applied.

### 2.7 RELEASE OF OFFENDERS ON ADMONITION

The word admonition comes from the old French word ‘admonere’. ‘ad’ means ‘to’ and ‘moner’ means ‘warn’. The scale of admonition varies from mild warn to harsh reprieve. Though in India we got the word admonition in the Code of Criminal Procedure, 1898, yet the concept of admonition was deeply rooted in ancient Indian Penology. P.V. Kane in his History of Dharmashastra observed: “Manu VIII.129, Yaj I 367, and Br. (S.B.E. 33, p. 387 Verse 5) Vriddhabarita (7.195) speak of four methods of punishment (danda) viz, gentle admonition, by severe reproof, by fine and by corporal punishment and declare that these punishments may be inflicted separately or together according to the nature of offence. The first takes the form of saying ‘you have not done a proper thing’, the second
'fic upon you who are a wrongdoer and guilty of adharma'. Br. Lays down that preceptors, purohitas and sons should be sentenced to the punishment of wordy admonition, other persons who engaged in disputes should be punished with reproof or fines and those guilty of mahapatakas should be punished with corporal punishment. That admonition and reproof were two modes of punishment shows that ancient. Writers were alive to the notion that among very sensitive persons or in a very sensitive society verbal condemnation would be enough to achieve the main purposes of punishment.”

**Release on Admonition under the PO Act**

Thus from the above references we may say that an idea analogous to the modern concept of admonition was upheld by the ancient law – givers in India as one of the kind of punishments that could be imposed on offenders. At present, the system of releasing an offender after due admonition has been recognized in Probation of Offenders Act, 1958 as well as in Criminal Procedure Code, 1973. Thus under section 3 of the PO Act the power is given to the court to release certain offender after due admonition. It provides –

“ When any person is found guilty of having committed an offence punishable. Under section 379 or section 380 or section 404 of the Indian Penal Code 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, and no previous conviction is proved against him 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 so to do, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.”

Therefore, a wide discretionary power is given under this section to the court to release some offenders after due admonition. It lays down certain conditions upon which that discretion is to be exercised. These conditions are as stated below:
(i) That the offender must not have been previously convicted, i.e., the accused is a first offender.

(ii) That the court while using the discretionary power of releasing an offender after due admonition should regard to the circumstances of the case including:

(iii) the nature of the Offence;

(iv) the character of the offender; and

(v) that the offence must be one of the following descriptions:

(a) Theft (Section 379 I.P.C);

(b) Theft in a dwelling house (Section 380 I.P.C);

(c) Theft in a dwelling house (Section 380 I.P.C);

(d) Dishonest misappropriation of property (Section 404 I.P.C);

(e) Cheating (Section 420 I.P.C); or

(f) 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 for the time being in force.

Now we may mention here that section 360 (3) of the Code of Criminal Procedure, 1973, has a similar provision for release of an offender after due admonition for an offence prescribed in I.P.D. The section runs as follows:

“In any case in which a person is convicted of theft, theft in a building, dishonest, misappropriation, cheating or any offence under the I.P.C., punishable with not more than two years imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment.

Let us now examine the attitude of the Indian judiciary in application of either Sec. 360 Cr. P.C. or Sec. 3 of the Probation of Offenders Act. In Keshav Sitaram Sail V. State of Maharashtra (AIR 1983 SC 291) the accused was an employee of Railway. He was convicted of offence of abetment of commission of theft of coal worth Rs. 8 from
railway goods wagon. The learned Magistrate acquitted the appellant. On Appeal High Court convicted the appellant under Sec. 379 read with Sec. 109 I.P.C. and impose fine of Rs. 500. Setting aside the decision of the High Court the Supreme Court observed – “Having regard to the special circumstances of this case and the character and antecedents of the appellant we are of the view that this was an eminently fit case in which the High Court should have extended the benefit of either Sec. 360 Cr. P.C. or Sections. 3 and 4 of the Probation of Offenders Act to the appellant instead of imposing a sentence of fine on him.” However, in the following types of offences the courts in India refused to grant benefit of admonition, such as where a soldier assaulted h is colonel, a policeman assaulting h is Superintendent, or a student beating his teacher, omit offences which cannot be determined merely by the actual injury suffered by the officer or the teacher, for the assault would be wholly subversive of discipline. Similarly, the purloining of electricity, or offence of stealing a cow and taking to the slaughter house or theft by servant of his master’s property couples with imputation of unchastity of master’s wife, or a deliberate evasion of the food regulations in time of war cannot be properly described as trivial offence.

In Bisi Kisan Suna V. State of Orissa(AIR1967 Orissa 4) the High Court very rightly formulated certain principles to exercise the discretionary power under Sec. 3 of the Act. The court observed that. “The section is generally made applicable where a youthful first offender succumbs to sudden temptation or uncontrollable impulses or does a thoughtless act or acts under the influence of others. The Section is not to be applied to cases where the offence was an act of daring and reprehensible nature, or the commission of the offence implied previous preparation or deliberate effort on the part of the accused, or where the conduct shows a design or a general character of craft and deceit.” However, in Ippili Trinaha Rao V. State of A.P. (1984 Cri.L.J.1254 Andhra) it was held by the Andhra Pradesh High Court in 1984 that ” character of the offender is not only but one of the circumstances that can be taken into consideration.”

2.8 RELEASE OF OFFENDERS ON PROBATION
Section 4 of the P O Act provides conditions to be considered to extend the benefit of probation to any convicted offenders. If we analyze Section 4 of the PO Act we will get the following objective criteria provided to the Court for releasing an offender on Probation. These are:

(i) Nature of Offence,
(ii) Circumstances of the Case,
(iii) Character of the Offender,
(iv) Age of the Offender.

(i)

Nature of Offence

Offences are generally divided into two groups:

(i) indictable offence, and
(ii) non-indictable offence or pity offence.

However, Kenny observed: “it is not easy to discover on what principle the separation has been made between the crimes …… It cannot depend upon the degree of dignity of the tribunal before which the offender is to be tried. Nor again, can it depend upon the amount of evil actually caused by the offence. Nor thirdly, can it depend upon the gravity of the punishment.” Therefore, we can not generalized what types of offences probation can be granted rather look into various case decided by the Courts in India. N Saradhakar Sahu V. State of Orissa (1985 Cri. L.J. 1891 (Orissa) the accused convicted under Section 324 I.P.C. for voluntarily causing hurt by dangerous weapons which was an outcome of acting on the spur was released on probation. Similarly, where an accused girl aged 19 years was convicted for criminal trespass (S. 4471 I.P.C.) as she was standing on a strip of land in between a temple and residence of another person without reasonable cause the accused was released on Probation and the High court of Kerala observed that taking cognizance of the offence the Magistrate acted mechanically without applying his mind to the allegations in his petty offences.

In Ammini, State of Kerala (1981 Cri. L.J. 1170 (Kerala) the accused was a woman convicted under S.55 (g) of Abgari Act but she had no distillery
operated by her and only selling liquor as sole bread winner of large family having chronically sick husband in home. Held that the accused should have been released under Section 4 of the PO Act. In this way offenders convicted for committing following offences the Courts in India released them under Sec. 4 of the PO Act. Such offences are:-

(i) Offences under Excise Act,

(ii) Offence of hurt or grievous hurt,

(iii) Offence of wrongful restraint.

From the various decided cases it is revealed that though there are more than 300 I.P.C. offences where probation can be granted yet the Courts in India granted probation in cases of theft, criminal trespass, cheating, excise offences, assault, receiving stolen property etc. of about 16 types of offences only.

(ii) Circumstances of the Case.

The PO Act does not envisage of letting off every offender committed minor offences regardless of circumstances in which offence was committed. Therefore, the expression “having regard to circumstances of the case” means having regard to both. Aggravating and mitigating circumstances of the Case and the Court should exercise its discretionary power accordingly. In view of the Courts in India granted probation in the following circumstances of the case.

In Keshav Sitaram Sali V. State of Maharashtra (AIR 1983 SC 291) an employee of Railway alleged to have abetted commission of theft of coal worth Rs.8 and the Supreme Court considering his antecedents directed his release on probation.

In Ishwer Das v. The State of Punjab, (AIR 1972 SC 1295) the accused was convicted under Section 7 read with S. 16 (1) (a) (i) of the Prevention of Food Adulteration Act. The Supreme Court released the accused on probation on furnishing a Bond considering the fact that the offender is below 21 years of age and in repentant mood.

In Ved Prakash V. State of Haryana, (AIR 1981 SC 643) the Supreme Court while releasing the offender observed that “the social background, and the personal factors of the Crime doer are very relevant although in practice criminal courts have hardly paid attention to the social milieu of the personal circumstances of the offender.”
Again, in Hari Kishan (Singh) and State of Haryana v. Sukbir Singh and others. (AIR 1988 SC 2127) The accused convicted under Ss.323, 325 read with Ss. 148,149 I.P.C. but the occurrence was outcome of sudden flare up and there was no previous enmity between parties. The Supreme Court held that the accused is entitled to benefit of probation.

However, the Supreme Court refused to grant probation in the following cases where the accused connected for offences of—

(i) Food Adulteration Act
(ii) Smuggling of Gold.
(iii) Offences under Defence of India Act, 1962
(iv) Abduction of a teenager girl
(v) Offence relating to insult of member of Lower Caste, etc

(iii) Character of the Offender.

In the words of Erskine “Character is the slow – spreading influence of opinion, arising from a man’s department in society, and extending itself in one circle beyond another till it unites in one general opinion” On the contrary, Lord Ellenborough observed that “for the present conditions of busy life in crowded cities often render it impossible for a man’s conduct to have been under the continuous observation of many persons for so long a time as would enable any general opinion about it grow up. Even neighbours and customers of his know nothing about him beyond their personal experience.”

Thus, Courts in India naturally not giving much weightage on character of the offenders. Gauhati High Court in Bhadreswar Loying v. State of Assam ( 1989 Cri L J 151 Gauhati ) considered character of the offenders for releasing them under probation. However, in Ippili Trinacha Rao v. State of Andhra Pradesh (1984 Cri LJ 1254,Andhra) the Andhra Pradesh High Court observed that “Character of the offender is not the only but one of the circumstances, that can be taken into consideration. The convict was sentenced to undergo the sentence for 7 continuous working days by sitting during entire working hours in the Court of Judicial Magistrate.”

(iv) Age of the Offender.
In the PO Act there is no minimum or maximum age limit to grant probation to a convicted offender. But tender the age more is likelihood of amenability to correction. Therefore, it has been provided in Section 6 of the Act that:

“When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him the imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.”

That the Courts in India generally give much attention about the age of the offender can be ascertain from the fact that on an average 20% of the Probationers are belonging to the age group 12-30 years. The Supreme Court in Musakhen & others v. State of Maharashtra, (AIR 1976 SC 2566) Observed that the PO Act is primarily meant to reform Juvenile Offenders so as to prevent them from becoming hardened criminals. In Daulat Ram V. State of Haryana, (AIR 1974 SC 2434) the Supreme Court held that Probation of Offenders Act “should be liberally construed so that its operation may be effective and beneficial to the young offenders who are proved more easily to be led astray by the influence of bad company.”

2.9 OTHER ASPECTS OF THE PO ACT

Preamble

The basic purpose of the PO Act was stipulated in the Preamble of the Act with the words: “An Act to provide for the release of Offenders on probation after due admonition and for matters connected therewith”. This preamble is too short to presume any specific object of the Act. However, Dr. N.L. Mitra has described the phenomenon of Probation as adopted in India in the following words, “Here the young offender, specially the first offenders charged with minor offences, are released and live with their families while they...
are under the supervision of the Probation Officer for their upkeep and necessary correction”.

**Extent and Commencement**

Section 1 of the PO Act provides that the Act may be called the Probation of Offenders Act and it extends to the whole of India. Except the State of Jammu and Kashmir. It also provides that the Act will come into force in a State on such date as the State Government may by notification in the Official Gazette appoint different dates for different parts of the State. Therefore, the PO Act does not provide any unified date of enforcement but envisaged that proper steps be taken by the state Governments to develop infrastructural needs before the Act is brought into force.

**Definitional Discourse**

Section 2 of the Act though defined ‘Probation Officer’ but not defined probation or other related words. However, Section 2 (d) Provides that the words and expression used but not defined criminal Procedure, 1898 (now Cr.P.C., 1973) shall have

**Offenders to Pay Compensation and Costs**

In view of victims perspectives the PO Act provides in section 5 that the Court may direct the released probationers to pay compensation and costs to the injured person. The section runs as follows:

“The Court directing the release of an offender under Section 3 or Section 4 may, if it thinks fit, make at the same time further order directing him to pay –

(a) such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as Court thinks reasonable.”

However, from the reported cases as well as for my own field survey it is revealed that in very few cases this section was applied by the Courts in India. In *Bhagawan and another v. State of Haryana* (1986 Cr. LJ 1869 P&H) the High Court held that while releasing the offender on probation, Court can order him to pay compensation to the injured complainant.

**Removal of Disqualification Attaching to a Conviction**
Considering the scope of rehabilitation of the offender the PO Act also provided in Section 12 that—

"Notwithstanding anything contained in any other law a person found guilty of an offence and dealt with under the Provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law”.

The Supreme Court in number of cases held that conviction not to affect the service of the accused. In Rajbuir V. State of Haryana(AIR 1985 SC 1278) and in Prafulla Bora & Others v. State of Assam (1988 Cri.LJ 428 Assam) the Supreme Court while releasing the offender on Probation observed that conviction should not affect offender’s service. In Shankar Dass v. Union of India (Air 1985 SC 1278), V.V. Chandrachud, the then chief Justice of India, observed that “Surely the Constitution does not contemplate that a Government servant who is convicted for parking his Scooter in a ‘no – parking’ area should be dismissed from service”. But unfortunately the Supreme Court in Trikkha Ram v V.K. Seth and Another(Air 1988 SC 285 B) overruled its above earlier decisions and held that when a Government Servant convicted of criminal offence and released on probation can be removed instead of ‘dismissal’ by the disciplinary authority. But to this author the decision is against the intention of the legislature and needs review by the Court in future.

The PO Act in Section 11 empowered the Appellate Courts to release offenders on Probation either on its own motion or on Application of a Probation Officer. But this section in very rare occasions applied by the Courts.

The Control and Supervision of the Probation Officers appointed by the Government under Section 13 of the PO Act shall be subjected to the Control of the District Magistrate of the District in which the offender for the time being resides. This provision of executive control has been criticized by many researchers in the field. The probation Officers may also be appointed by the Recognized Society or by District Magistrate but that is not in practice.

As regards duties of the Probation Officers, Section 14 of the Act provides the basic principles and desired to have more details by the Rules to be framed by the state Government under section 17 (6) of the Act. Section 14 says that—

A Probation Officer shall—
a) inquire, in accordance with any direction of a court about the particulars of any person accused of an offence and submit a report generally known as pre-Sentence Investigation Report;
b) Supervise probationers and endeavour to find them suitable employment;
c) advise and assist offender in the payment of compensation or costs ordered by the Court;
d) Advise and assist persons who have been released under section 4; and
e) perform such other duties as may be prescribed.

As regards procedural aspects of the probation system the PO Act under Section 17 delegated powers to the State Governments to frame Rules necessary for implementation of the Act. But some procedural matters also enshrined in the PO Act itself. Thus Section 17 provided that the Report of a Probation Officer as referred in Section 4(2) or 6(2) shall be treated as confidential and the court may communicate the substance of the report to the offender and. May give him an opportunity to rebut any allegation by producing further evidence. Section 8 empowered the Court to vary conditions of the bond entered into by the offender in the public interest after giving an opportunity of being heard. But if the surety or the offender refused to give consent to variation of Bond the court may sentence the offender for the offence for which he was found guilty. Again Section 9 of the Po Act provides detail procedure in case of offender failing to observe conditions of Bond and how the Court will sentence him for the original offence Moreover, Section 10 of the Act says that the provisions of Criminal Procedure Code will be followed in case of Bonds and Sureties given under this Act. Section 15 of the Act declared that every Probation Officer appointed in pursuance of this Act shall be deemed to be a’ public servant’ as defined in the Indian Penal Code. Section 16 on the other hand protected the acts of the probation officers in respect of anything done in “good faith”. Section 18 provided a saving clause and stated that nothing of this Act shall affect provisions of Reformatory Schools Act, 1897, Prevention of Corruption Act, 1947, or any law in force relation to Juvenile offenders or Borstal school. Lastly, Section 19 specifically mentioned that where the PO Act will be brought into force there the provisions of Cr. P.C. relating to probation (now Sec. 360 of the Code of 1973) shall cease to apply.
2.9 A SUMMARY

Probation is a procedure by which a convicted person is released by the court on certain conditions while his or her sentence remain suspended. In criminal justice system it is popularly known as conditional suspension of sentence. John Augustus of USA is called the ‘Father of Probation’. However Mathew Devanport Hill, a Magistrate in England is also practiced suspended sentence during 1820 onwards. In India we get the seeds of admonition and probation in ancient classical literature such as- Manu Smriti, Brahaspati, Narada, Kautilya’s Arthashastra, etc.

The legislative development of Probation system was started in USA through a law of Massachusetts in 1869 but the Federal Probation Act of USA was passed in 1925. The first British law on probation was enacted in 1879 but a comprehensive legislation on probation was enacted in 1907. Laws on Probation were also enacted in other countries after USA and U.K. In India the legal foundation of Probation was given in Section 562 of Code of Criminal Procedure, 1898. The comprehensive law on probation system in India was introduced by the Parliament by passing Probation of Offenders Act, 1958.

The Probation of Offenders Act provides certain criteria to release an offender on admonition under section 3 of the Act. The conditions to release an offender under probation of good conduct are provided in section 4 of the Act. Section 5 conferred power to the Court releasing an offender on probation to order payment of compensation to the victims of crime whereas section 6 imposed an obligation on the court to give reason when a convict below 21 years of age is not dealt with either section 3 or 4 of the Act.
2.10 TERMINAL QUESTIONS

1. Q. 1. What do you understand by Probation System in the administration of criminal justice? What are its objectives?
2. Write a note on historical forerunners of probation system. Who may be considered as Father of Probation System?
3. What is admonition? What are the criteria to release an offender on admonition under the Probation of Offenders Act, 1958? Discuss with reference to decided cases.
4. What are the considerations prescribed in section 4 of the Probation of Offenders Act, 1958 to release a convict on probation of good conduct by the Court? Illustrate few circumstances where Courts in India had released offenders on probation.
5. Write a note on the provision of removal of disqualification attaching to a conviction of an offence as provided in section 12 of the Probation of Offenders Act, 1958.

2.11 ANSWER HINTS

Q.1. Explain etimological meaning and the legal definition or concept of Probation – refer U.S. concept – various definitions attempted - what and why probation?

Q.2. Give reference to works and contribution of John Augustus of Boston, USA and Devanport Hill of England - refer some analogous sub-system prevalent in England and India which resemble todays probation system.

Q.3. Discuss with reference to section 3 of the P O Act the criteria prescribed in the Act for the Court to be observed before releasing an offender on admonition - such as first offender, circumstances of the case, nature of the offence, character of the offender etc. - refer case laws.
Q4. Analyse section 4 of the PO Act and explain the criteria provided to release an offender on probation such as- nature of the offence, circumstances of the case, character of the offender, status of offender, age of the offender, fixed place of abode of the offender etc. –Refer decided cases.

Q5. Discuss section 12 of the PO Act and analyse the conflicting cases on the section by the Supreme Court and give your comment

2.12 REFERENCES AND SUGGESTED READINGS

1. Abadinsky, Howard: Probation and Parole
2. Chakrabarti N.K.: Probation System in the Administration of Criminal Justice
3. Das, Shukla: Crime and Punishment in Ancient India
4. Kane, P.V. History of Dharmashastra