UNIT 3 CORRECTIONAL PROCESSES

Content

3.0 OBJECTIVES

By the end of this unit, you will be able to:

- trace the development of prison reform in India after independence;
- understand the concept of probation and the national law on probation; and
- identify alternatives to imprisonment.

3.1 INTRODUCTION

The oldest penal institution is actually the 'Jail' which is also commonly called a 'prison' in many lands. In the early stage, jail functioned as a place for detaining prisoners awaiting trial and execution of sentence. Getting off to a slow start in the sixteenth century imprisonment as a form of punishment became the major form of punishment of the nineteenth century. From nineteenth century onwards and following in the twentieth century, certain individualized measures of offenders were introduced into prison. Sentences. Thus, began concept of institutional correction.

The idea of correctional imprisonment had been foreshadowed in Europe as in England and on the continent imprisonment as a means of reforming character had sometimes been imposed by religious and secular authorities. The Roman Catholic Church had sometimes released the prisoner upon showing of repentance. In England, the houses of correction was invented to take care of the widespread vagrancy and idleness that arose when great numbers of the rural population were forced to vacate their cottages. The idea of prisons as a correctional and a rehabilitation method was advanced in England in 1778 when parliament authorized the construction of a "Penitentiary", whose purpose as stated in the law was "by sobriety, cleanliness and medical assistance, by a regular series of labour, by solitary confinement during the intervals of work, and by due religious instructions to preserve and amend the health of the unhappy offenders, to injure them to habits of industry, to guard them from pernicious company, and to accustom

them to serious reflection and to teach them both the principles and practice of every Christian and moral duty". John Howard, the prison reformer who fathered this law, declared : " The term penitentiary clearly shows that Parliament had chiefly in view to the reformation and amendment of those to be committed to such places of confinement" (Sutherland and Cressey, P.485).

3.2 DEVELOPMENT OF PRISON REFORM IN INDIA AFTER INDEPENDENCE

After Independence in 1951, the Government of India requested the United Nations, under the Technical Assistance Programme, to lend an expert in Criminology and Correctional Administration for training a batch of jail officers and to advise the Government of India for furthering development of correctional administration in India. Dr. Walter C. Reckless, and expert of the U.N.O., arrived in India on October 21, 1951.

Dr. Reckless's Report have some valuable recommendations, both National and State Level, for improving correctional administration in India, particularly of jail administration, some of which could be summarized as under:

National Level

i) An advisory Bureau of Correctional Administration should be established at the Central Government immediately so that the states could be helped in the development of their correctional programmes;

ii) The Government of India should consider the need for specialized technical assistance in this field;

iii) Fellowships in the correctional field to prepare competent persons to fill higher positions, e.g., Inspector General of Prisons and his Deputies;

iv) The Central Government should encourage the development of Professional conferences of the superior staff members; and

v) An All India conference of persons working in the correctional field, both adults and juveniles.

State Level

i) Establishment of whole time revising boards for selection of prisoners for mature release;

ii) Revision of jail manual, with greater responsibility on the superintendent and staff members for constructive programmes for Prisoners;

iii) Superior staff of a jail to have training for their work;

iv) The larger states should develop integrated departments of correctional administration under one Minister, including Jails, Borstals, Revising Boards, Probation and After Care.

v) Professional individualized services and handling of the prisoners by specialist like Supervisor of Education, Vocational Guide, Recreation Officer, Clinical Psychologists, Therapeutic Psychiatrist, etc.

vi) Special institution for training.

Almost at the same time the Government of India called a Conference (Eighth) of the Inspector General of Prisons at Bombay from 11 to 13 March, 1952. On the recommendations of that Conference, the Government of India asked the Government of Bombay to set-up a Committee and take up the revision of Jail Manual and the Central act relating to prisons. The Committee took its first meeting in June, 1957 at Bombay followed by twelve other sittings and visted to twenty eight correctional institutions. The Committee prepared a Model Prison Manual and its Report which was circulated to all the State Governments, but till 1980 only four States, namely, Andhra Pradesh, Karnataka, Kerala and Maharashtra had revised their jail manuals in accordance with the Model Prison Manual.

The Government of India constituted a Working Group in 1972 to examine measures for streamlining and improving the jail administration and conditions of living in the prisons.

The Group emphasized the need of a national Policy on Prisons. It also suggested the inclusion of prison administration in the Five Year Plan and amendment of the Indian Constitution to include the subject of prisons, and allied institutions in the Concurrent List. The Seventh Finance Commission in its Report in 1978 acknowledged the facts that jails had been neglected far too long.

With this background and large scale criticism of the prison administration due to inhuman treatment of the prison personnel and unsatisfactory living conditions and prolonged detention of undertrial prisoners the Government of India appointed an All India Committee on J ail Reforms in 1980 with Mr. Justice (Retired) A.N. Mulla as Chairman. The Committee in 1983 submitted a 511 pages report to the Government of India. With a strong recommendation of a national Policy in Prisons. Meanwhile, the Eighth Finance Commission submitted its Report in 1984 which recommended support central assistance for improvement of existing infrastructure of the prisons.

Thereafter, the national Human Rights Commission (NHRC) after acquainted with problem of prisoners in the prisons in India in general took initiation to formulate a national prison law by consolidation the existing prisons law framed during British period more than two hundred years back. A draft Bill (INDIAN PRISONS BILL, 1995 proposed) was circulated to all the State Governments in India during February, 1999 regarding formulation of comprehensive law in Prisons. The NHRC had submitted its recommended bill for adoption by the Government of India which is still under consideration of the Law Ministry.

Check Your Progress I

Note: Use the space provided for your answers.

1) What is penitentiary?

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2) Enlist the recommendations of Dr. Reckless's Report?

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3.3 PROBATION

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."

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 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.[1] Jails Committee (1919-20) observes that there seems to be no reasonable doubt that the probation system represents a very substantial economy.

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 thirst 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.

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 has 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. at Massachusetts 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 wither party. Thus, the two conditions, (1) suspension of sentence, and (2) imposed conditions, make filing of causes one of the forerunners of contemporary probation.

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. Brahaspati in his 'Dandabheda Vyavastha' referred to admonition as punishment. "According to Brashaspati a gentle admonition should be administered to a man for light offence". The ideas revealed in *Brahaspati 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 had support for the modern probation system.

In *Brahmabaibarta Purana* Lord *Mahadev* told to *Brahmba* 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 upto 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 Lagadin 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 Section 562 was amended by the amendment of Cr. P.c. in 1923 which radically changed the law of Probation in India. Section 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 1923 amended 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. 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. First Offenders' Probation Act, 1938, The West Bengal First Offenders Probation Act,1954.

3.4 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.

Release of Offenders on Probation

Section 4 of the Propation of Offenders Act, 1958 (PO Act) provides conditions to be considered to extend the benefit of probation to any convicted offender. If we analyze Section 4 of the PO Act we will get the following 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.

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.

3.5 ALTERNATIVES TO IMPRISONMENT

The major form of punishment in the modern era is imprisonment. Beginning in the nineteenth century and following into the twentieth century certain individualizing measures were introduced into penal servitude and prison sentences and there by certain substitutes for imprisonment use developed. The modern attitude to punishment is that it is an individualized treatment process and a sure response to carry individual events of crime. The question, what punishment is, cannot be distinguished from who is the offender and what are his offending phenomena. The modern criminologists and penologists have a tendency of a micro – approach to study the person and phenomena of offence situation. They are prone to analyze not only the bio-socio-politico cultural phenomena but also the psycho pathological and genetic phenomena of the offender. According to Jackson Toby whether punishment is or is not necessary rests ultimately on the following empirical questions.

i) The extent to which identification with the victim occurs;

ii) The extent to which non-conformity is prevented by the anticipation of punishment;

iii) What are the consequences for the morale of conformists of punishing the deviant or of treating his imputed pathology; and

iv) The compatibility between punishment and rehabilitation.

Thus, the use of discretion of the court in the sentencing process gradually recognized some alternatives of imprisonment as a process of correction of the convict in the criminal justice process.

Conceptual Evolution of Alternatives to Imprisonment

The impact of political economic and social changes at the end of the 18th century had much to do with the reforms of penal code, the system of punishment and the lamentable conditions of the existing penal institutions. The writings of philosophers and criminologists like Cesare Becearia, John Howard, Jeremy Bentham and William Eden focused attention on much needed revisions in the penal code, the system of punishment and the lamentable conditions of the penal institutions. One is apt to be satisfied with the explanation that changes in the penal system have emanated from the social and political forces that fought about a decline in the security of punishment, especially corporal and capital punishment, and a substitution of imprisonment.

The American Correctional Association in 1960 promulgated. Declaration of principles to promote improved practices in the treatment of juvenile offenders. This Declaration contained 33 principles of which following definitely suggests for alternatives to imprisonment such as:

Principle II: The forces for the prevention and control of crime and delinquency ultimately must find their strength from the qualities of the society itself. The properly functioning basis of institutions such as family, the school and the church, as well as the economic and political institutions and a society united in the pursuit of worthwhile goals are the best guarantees against crime and delinquency. The willingness of the society to maintain a rationally organized and properly financed system of corrections, directed towards the reclamation of criminals and juvenile delinquents, is a prerequisite of effective control.

Principle VII: The correctional facilities comprising both institutional and non institutional treatment viz. probation and parole should be planned and organized as an integrated system under a central authority responsible by guiding, controlling unifying and utilizing the whole.

Principle VIII: The variety of treatment programmes corresponding to the different needs of the offenders suggests a diversification of correctional institutions resulting in a system of specialized institutions so classified and coordinated and so organized in staff and program so as to meet the needs of those offenders who present specific problems. The spirit of continued experimentation with new types of institutions and agencies which show promise of more effective results should be encouraged and supported.

Principle IX: Repeated short sentences imposed for recessing misdemeanors or petty offenses are ineffective, both as means of correction and as a punitive deterrent. These sentences often are a contributing factor in the career of the petty recidivist. An integrated system of control by means of special institutional facilities and community supervision is essential for the solution of this problem. Further research and experimentation with agencies and institutions other than the conventional type (Jail) offer the greatest promise.

Principle XIV: The sentence determining the treatment for the offender should be based on a full consideration of the social and personality factors of the particular individual. In many jurisdictions, these investigations may be made at different levels, so that the essential information is available to the court or treatment authority at the time of making crucial case decisions.

Principle XXIV: Some of the Criminal law violators who are found by the courts to be criminally responsible, but who are abnormal from the point of view

of modern disciplines of psychiatry and psychology, are in need of psychotherapy. Diagnostic and treatment facilities for such mentally abnormal offenders should be further developed at the appropriate stages of the correctional process.

Principle XXVII. Probation has came to be accepted as the most efficient and economical method of treatment for a great number of offenders.

Principle XXXIII. The Correctional process has as its aim the reincorporation of the offender into the society as a normal citizen. In the course of non institutional treatment the offender continues as a member of the conventional community. In the course of his institutional stay constructive community contacts should be encouraged. The success of the correctional process in all its stages can be greatly enhanced by energetic, resourceful and organized citizen participation.

Among all the alternatives of imprisonment probation is said to be the best one. It involves conditional suspension of punishment. *Probation system* has developed in U.S.A. and British Commonwealth originally from power of the court to *suspend sentence*. Consequently, the forerunners of probation, prior to definite legislative provisions, are found to be- '*Benefit of Clergy, judicial reprieve, giving surety/bond* to the court that peace will be kept and release on *bail* without recognizance. Moreover, in the common law practice there was a system of filing of cases after finding of guilt by laying them aside without imposing sentence but with the understanding that the court may take action at any time in future.

The practice of substitution of fines for short sentences have been developed in many countries. England's Criminal Justice Administration Act,1914 introduced a provision whereby time to be given for payment of fines and the Money Payment (Justices Procedure) Act,1935 provided for inquiries to be made into the offender's financial status and for his supervision on probation before commitment to prison was imposed. The system was also in practice in Germany. Germany passed laws between 1923 and 1924 allowing fines to substitute short sentences under three months and attempted to keep the commutation of fines to imprisonment at a minimum by using a system of installment payment of fines. In the United States, there was also a system of installment payment of fines. In some cases, offenders have been placed on probation during the period of payment of installment fine. A practice was also developed by Magistrates to surmount imprisonment for non-payment of fines in certain cases, such as weekend sentence.

3.6 PRESENT LAW AND PRACTICES IN INDIA

The legal provisions in India regarding use of alternatives to imprisonment are provided :

First – In Indian Penal Code in various sections the court has the option either to award sentence of imprisonment or fine.

Secondly – The Section 360 of Criminal Procedure Code on Order to release on probation of good conduct or after admonition.

Thirdly – Under section 320 on Compounding of Offences

Fourthly – Under sections 265A to 265L on Plea Bargaining as provided by Criminal Law Amendment Act, 2005 w.e.f., 5.7.2006.

Check Your Progress II

Note: Use the space provided for your answers.

1) Define probation. Discuss the objectives and philosophy behind probation?

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2) Trace the origin and development of the Probation System.

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3.7 LET US SUM UP

The modern attitude to punishment is that it is an individualized treatment process and a sure response to every individual events of crime. With that end in view the discretionary power of the Court gradually recognized some alternatives of imprisonment. There are few penologists who argued that due to socio-economic factors imprisonment was used increasingly. But the condition of prison as institutional treatment of offenders gradually being replaced by other alternatives like – probation, admonition, fines etc.

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