

PROBATION AN ARM IN REHABILITATION OF CRIMINAL

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Abstract:-

The probation is that preventive measure which seeks to save the offender from the evil effects of institutional incarceration and affords him an opportunity of reformation. Under the probation system of the offender against the penal law, instead of being punished by sentence, is given an opportunity to reform himself under the supervision and subject to the conditions imposed by the court, with the end in view that if shows the evidence of being reformed, no penalty for his offence will be imposed. The offenders are outcome and by product of the society. Therefore society shall play role in reforming the said offenders. In western countries the community based programmes are found more successful. Therefore, in order to rehabilitate and reform the criminals the community has to play vital part. It is responsibility of the members of the community that they shall help, guide or assist to the offender's for their reformation and rehabilitation.

Key Words:- Reformation, Rehabilitation, Releasing, Eliminate the Crime, Good conduct,

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Introduction:-

Probation is found successful for the first offenders and young offender's and juvenile in conflict with the law. But the habitual offenders, harder criminals would not be reformed by probation and they shall be treated by the deterrent theory of punishment. The traditional methods of punishment were based on theory of deterrence and retribution. The objective of punishment was punitive and repressive. These methods were meant to eliminate or disable offenders so that they would not able to make any nuisance in society again. These methods mainly consist of corporal punishment (flogging branding and mutilation), death and banishment or transportation.

Criminologists started their research in new way where they can avoid the problem of overcrowding of prison and also make the criminal law abiding citizen. No doubt that from the very ancient times, the mode of punishment has been used by the authorities to protect the society from the criminals so that in future they could not do the same act. On the other hand, it is also required that such punishment should fit to the criminal and aid him in his reformation. This means that we need to eliminate crime and not the criminals. According to them, there are many factors responsible for the commission of crime such as social, economic, due to erosion of moral values, stress of circumstances or doing a criminal activity in the spur of heat of moment.¹ Therefore, modern penological approach has ushered in new forms of sentencing where by the needs of the community or balanced with the best interests of the accused. Compensation, release on admonition, probation, imposition of fines, community serves are few such technologies used of all these probation as an extramural community based treatment method for offenders which has assumed great significance. Thus, the probation is the "postponement of final sentence in a criminal case and giving the offender an opportunity to improve his conduct and readjust himself to the community, often on the condition imposed by the court and under the supervision of an officer of the court."²

The organization of a probation programme involves practically the same principles as are involved in a person rehabilitation program where it differs the difference is in degree. The aim is the same, namely, rehabilitation. Its success in achieving that aim, is more nearly assured since the probationer, unlike the prison inmate, bears little or no stigma, and has not been subjected to

those processes of personal disorganization, which are the inevitable resultant of prison experience.

The credit for the rehabilitation of a probationer goes to the probation officer. The court at the sentencing stage of the criminal trial, of considers about releasing the convicted person on probation, an investigation report is called from the probation officer, which guides the court in grant or refusal of probation to the offender. If the court thinks fit, then in addition to the probation order the court may pass a supervision order, directing that the offender shall remain under the supervision of probation officer named in the order during such period, not being less than one year, an may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender. Thus, probation officer may be classified in to five groups on the basis of the type of the report they submit to the court

The probation officer may be classified in to five groups:-

1. Constable type – who is more concerned with the offence committed, then the conduct/background;
2. Lawyer- type- who is good deal of legal language;
3. Sociologist – type – who focuses more on presenting facts about social environment in which the accused person is found living
4. Psychiatrist type - Probation officer, who attempts to analyse personality traits without having the scientific knowledge of psychiatry, e.g. extrovent, emotional, risk-taking etc.
5. Journalist type- probation officer who is more interested in using decorative language and phrases in the report than presenting actual facts.³

Under the Indian legislation, the provision relating to their duties, functions and their powers are given in the probation of offender Act, 1958 under section 13 to section 16 and also under different state rules. “According to the Act, the probation officer” (A) shall be a person appointed to be a probation officer by the state government or recognized as such by the state government, (b) a person provided for the purpose by a society recognized in the behalf by the state government; (c) or in any exception case, any other person who in the opinion of the court, is fit to act as a probation officer in the special circumstances of the case.⁴ Probation officer constitute the community corrections arm of the criminal justice system.

Main Function of a Probation officer:-**Inquiry**

The probation officer shall inquire in accordance with the direction of court into the circumstances or home surrounding of any person of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court.⁵ Probation officer has to collect the materials reflecting the personality of the offender: probation officer shall conduct the said inquiry in order to help the court to deal with the matter for sentence. The inquiry of the probation officer should be based on factual aspects. A probation officer must bear in mind that his principal object is to elicit information as to the probationer and his circumstances which may be assistance to the court in deciding whether, on finding guilt, the prisoner should or should not be placed on probation.

Supervision:-

Supervision means placing an offender under guidance of the probation officer, so as to offender abide by the conditions imposed on him by the court for a period ranging from one to three years. During the period, the probation officer is supposed to mould his character towards pro-social behavior. The supervision order may be with or without sureties and in addition to general condition mentioned. In the order, certain specific conditions may be imposed with respect to residence, abstention from intoxicants or any other matters as the court deems fit, to prevent a repetition of the same offence or a commission of other offences.

Section 4(5) of the act states that the court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forth with furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Another significant aspect of the supervision responsibility of the probation officer is for them to be able to make recommendation for the discontinuation, reduction or extension of the supervision order, based on the assessment of the probation officer regarding the conduct and behavior of the probationer during the suspension period. There must also be complaint

mechanism provided for a probation regarding a decision concerning this aspect made by the implementing authority, or in case of failure to take such decision.

If the court has passed the supervision order, the probation officer has to supervise the said offender for the particular period as prescribed in the order and make his endeavour to find him suitable employment.⁶ Said the supervision should be active participant of the probation officer. He has to supervise the conduct of the offender. He has to make the periodical reports of the said supervision to the court. The supervision should not considered as the watch on the offender, it includes the assistance and advice and help for the better life of offender. The supervision shall benefited for the offender to rehabilitated himself.

Assistances:-

Probation officer shall provide the assistance to the offender for the offender for implementation or for the payment of compensation or costs ordered by the court.⁷

Where there is a probation officer attached to the court, it may be possible to invite him to exercise supervision over persons ordered to pay a fine within a certain time and for convenience of the offender to assist by taking installments and handing them to the collecting officer.⁸

Advise:-

It is the duty of probation officer to advise the offender for the compliance of the condition imposed by the court. He has to advise the offender for betterment of his life.⁹

As regards the probation officer, his primary duty is to supervise and to advise, assist and be friend the offender entrusted to his care under the terms o the order made by the magistrate.

The probation officer designated to investigate and supervise the probationer must be properly equipped and experienced, so that he can gather all the data necessary to find out the factors responsible for the commission of crime and to help the probationer in his rehabilitation. The trained and scientifically minded person will approach his problem with the definite hypotheses

which helps in performing his duty more efficiently. Hence, a probation rehabilitation program must involve a dual type of procedure, namely

- (a) Diagnoses – As a part of Investigation
- (b) Treatment: As a part of Supervision

These two principles must be made fundamental in any working program.

Diagnoses: The probation officer should consider the following factors during investigation of an offender. It includes case history and community data.

A. Case History: The Secret of adequate treatment lies here. The probation officer must “Know his man.” Hence, there is need for a careful and detailed “case history” such case history will embrace criminal history and social history.

(1) Criminal History:

- (A) Criminal Record: A detailed report of past offenses or such social conducts which have brought him to the attention of law enforcement officer in the past.
- (B) Current offense: A digest of the offense and record of events leading up to the act, for which the probationer has been arraigned in the court.
- (C) Elements in trial: A report setting forth whatever mitigating circumstances are involved in the offense and what factors determined the judge to designate probation rather than prison such case history will also include.

Social History: The social history should cover all the significant elements and conditioning factors. Which have entered into the making of the probationer’s life. The purpose of this is to discover, if possible, the major crime determinants.

An adequate case history should cover the following contents.

(1) Family Data: The nature of home in which probationer was reared, the number of siblings and significant material concerning them, the relationship of parents of each other and to children. It should make clear the economic and social level of the family and the reputation it has built up within the communities in which residence has been established. It is important to know whether the family has been transient or stable in its economic and social relationship.

It will also be a matter of importance to have recorded the history of the family in connection with the law enforcement and social welfare agencies. The social habits and activities of the members the family group should not be overlooked. It as important as the personal history of the probationer. The family record is not an incidental matter. A painstaking compilation of the data involved in the succeeding categories of his social history is vital significance

(2) Educational History:-

This may be determined by proper inquiry relating to schooling and educational record of the convict, with special emphasis on any achievement, if made, during studies etc.

(3) Medical and psychiatric history:-

This involve not only a record of the probationer's history but also of present status. It should point out pathological problems and recommend treatments. Some standard intelligence test should be conducted in this connection and it should in indicate psycho-neurotic findings with the recommendations for treatment whatever needed. If probationer is a psychopathic personality, the report should be specific, concerning the manifestations and episodes.

(4) Occupational history and vocational skills:-

Since it is necessary for complete rehabilitation that the probationer shall persue a gainful occupation in which he might be content and successful, it will be necessary to know what he has done and what he is capable of doing. It will be well, therefore, to have a report from previous employers setting forth the experience. Skill, work and personal habits of the probationer. The report should indicate what technical trade training he has had and to what extent he is further trainable. Vocational aptitudes should also be tested. These will serve as invaluable guides to the selection of an occupation for the probationer. Placement in such occupation should depend largely upon results of this record and tests.

Community Data:-

Since community life is a factor in delinquency, it is important to have pertinent facts concerning the community where the probationer must live and work. This community data should cover economic and social analysis.

Treatment:-

The word treatment used for the probation refers to the efforts of the probation officer to guide, supervise and assist the probationer in regaining, reclaiming and reforming the probationer. The probation officer acts as a preacher, teacher, guide, friend, psychologist, pathologist, doctor's administrator and supervisor for the probationer. The goal of this treatment should be a proper integration of the probationer into the life of the community. This involves a procedure that will tend to remove all obstacles within the situation that might prevent that proper normal integration. It must be concerned with the probationer's personality problems as well as the economic hazards, which imperil him. These problems should not be taken lightly.

Rehabilitation depends much upon one's ability to maintain one's self respect if a man can led to recover his self-respect and achieve a higher status, everything else being equal, his chances for making good on probation increases. The social and economic status plays a significant part in this. It will be necessary to secure the proper type of occupation in which the probationer can maintain himself at a normal economic level, where he will not "lose face" with himself and his associates.

The re-training and re-educational program then should envisage much more than, the formalities of an educational system. It should involve cultural training and the development of higher concepts of the responsibilities and ideals of citizenship.

The gap between the offenders and the society should be narrowed down by the active participation in the field of probation. As the probation is a community based correctional treatment, hence the involment of the public community is necessary. All the efforts of the probation officer will be no use, unless the community members i.e. the family members, friend's associates, relatives and neighbours and colleague will not help the probationer in his rehabilitation.¹⁰

Conclusion:-

The success of the probation programme, largely depends on the quality of probation shall deployed to handle the offenders who are released on probation. The probation agents should not

only be well trained and skilled but they should also have adequate time to devote probationers. The probation officer is to rehabilitate the offenders whom the courts have conditionally released to the community on probation or parole. The probation officer is to ensure that the person previously convicted of crime has chosen a law-abiding lifestyle, rather than further criminal behavior. Thus the success of probation system mainly depends upon the efficient working of the probation officer. But as most probation officer heavily loaded with the number of cases, they may not be able to provide sufficient time to every case. Therefore, their workload should be reduced, so that they can fully justify their job by giving sufficient time to each case during the investigation and supervision. It is also necessary that the probation personnel should be will qualified and efficient. Thus the probation officers employed in correctional services play a vital role in bringing about the rehabilitation and reformation of offenders and making them useful members of society.

Foot Notes:-

1. Criminal Justice- India series 46, West Bengal Vol-I, Allied publisher pvt ltd, New Delhi Vol-I-2001.
2. Taft Donald and Ralph W England, Jr. Criminology 35.
3. Ahuja Ram Criminology 337 (Rawat Publication jaipur-2010).
4. Section 13 Probation of offence on Act 1958.
5. Section 14(a) of the probation of offender Act 1958.
6. Section 14(b) of the probation of offender Act 1958.
7. Section 14(c) of the probation of offender Act 1958.
8. Sharma.G.S. The probation of offender Act 2nd edi. All law publisher India, Pvt. Ltd. 2010 page 277.
9. Section 14(c) of the probation of offender Act 1958.
10. Raina, SC probation: philosophy, law and practice 20-21. Regency publication, New Delhi-2016