CHAPTER - I

HISTORICAL REVIEW OF PROBATION

Humane treatment may raise up one in whom the divine image has long been obscured. It is with the unfortunate, above all, that humane conduct is necessary.

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Introduction:

Social rehabilitation of offenders is an important issue which has received much attention in modern times. While there is no doubt that crime can be controlled through various modes of punishments. Where punishment acts as a deterrent, the development of more humanistic approach towards life and living, has cultivated the issue of social rehabilitations of offenders. It is an important issue which is increasingly catching the attention of social scientists around the world. As the issue of social humanism gains more attention, the idea that one needs to find better modes of controlling crime has gained momentum. As the social order changes, and rationality and social humanism became the foundation of society, social scientists have even begun to question the need to take the life of an offender as a form of punishment.

Emile Durkheim in his scholarly work on the changing order of the society has pointed out that in primitive societies, punishment was harsh as
an offense was considered as harmful to the members of the society. Besides in primitive societies, the onus of proving his innocence was on the offender. Hence in primitive societies, there existed the system of dipping the hand of an offender in hot oil to prove his innocence.

As Durkheim points out, in modern complex societies, as rationality increases, offensive acts become less sacrilegious in character. Similarly, the form of punishment also becomes rational. Such as for instance, the death penalty by hanging is viewed as inhuman and the same is made more acceptable to society through the electric chair or by injecting poison. Society is now debating whether the death penalty itself is needed. This issue is gaining more and more focus. Likewise in modern societies, the onus of proving an offender guilty or otherwise, lies on the society.

Under the context, punishment is becoming more rational and more human, thus engaging the attention of social scientists on issues concerning "open jails," the need for capital punishment, individual freedom, and social rehabilitation of offenders as an alternative forms of punishment to imprisonment. It is under these circumstances that the issue of probation gains momentum.

Probation has become a major and important form of correctional technique since the last five to six decades. It is a non-punitive method of dealing with offenders. It is a form of punishment which is considered as an acceptable substitution for imprisonment.
As J. Guha Roy points out the chief aims of probation are:

1. To prevent further development of the criminal propensities in offenders
2. To provide them with an opportunity to return to their natural setting, instead of exposing them to the harmful atmosphere of prison.

Guha Roy further points out that it is the rehabilitative element in probation that actually may be regarded as the central element of interest. He calls this as the “soul” of probation. As M.A. Subramaniam has pointed out, rehabilitation is “the true antidote for recidivism generally and most of the recidivists are anxious to come back to normal life at some stage or the other ...” It is a known fact that unless compelled by adverse circumstances, a majority of the offenders would not like to resort to criminal activities. Therefore, probation plays a very important role as it is considered a scientific method of rehabilitating an offender, for, it is a form of treatment which does not kill the criminal but attempts to kill his criminal instincts.

Thus, in modern society the policy of crime control emphasises more on the community based corrections. Community based correction is viewed as an alternative to imprisonment. It has attracted the interest of many administrators of criminal justice system because of high rate of recidivism, victims restitution from the offender, high costs of prison management, problems of prison unrest, officer and inmate unionisation, public demand for accountability and a humane approach towards the criminal population.
Harlow, Weber and Wilkins describe community-based correction as "a code word with connotations of 'advanced correctional thinking' and implied value judgments against the 'locking up' and isolation of offenders."\(^5\)

According to the above cited authors, community based correction has three basic advantages:

1. It makes community reintegration easy by not isolating the offender from his family.
2. It allows access to educational, vocational and employment opportunities.
3. It is less expensive than imprisonment.

The word community corrections covers a variety of types of punishment imposed without incarceration and without removal of the offender from his area of residence and employment.

The basic principle of the community based correction is to minimize the offender's contact with institutional incarceration, thereby preventing the offenders from the dehumanising and evil effects of institutionalisation.

Community-based treatment includes mainly Probation, Parole and Juvenile after care.
With the evolution of changing attitudes toward crime and criminal, probation is recognized as an integral part of the criminal justice system. The present study concentrates on the concept of probation in the development of rational, social criminal policy.

In the field of rehabilitation, probation is viewed as a bright hope. Probation according to Carlson and Perles is used as an alternative to imprisonment. It has emerged with an ideology of reform in society's response to the problems of crime and the criminal. It is considered as a replacement for traditional punitive methods.

The word 'probation' is derived from the Latin term 'probatus', which means 'to prove' or 'to test'.

The Encyclopedia of Social Work in India considers probation as a selective approach towards the treatment of offenders. Probation techniques attempt to reform the offenders in non-institutional settings under the supervision of qualified and competent officers.

American Correctional Association's Manual of Correctional Standards observes probation as "a sentence, an organization and as a process." This definition brings out some of the important characters of probation: (1) It is an organization because it performs the operation of probation. (2) It is considered as a process because it involves the preparation of the
pre-sentence report of the offender and supervision. (3) It is a sentence because the judiciary puts conditions at the time of granting probation.

Many authors have viewed probation as a rehabilitative device oriented to overcome the mental conflicts through reintegrating the offenders into the community. According to Howard Abadinsky probation is conditional mercy by the judge. He states that probation is an alternative to incarceration, therefore the man under probation is not free.8

Elmer H. Johnson considers probation as a method of saving the offender from the stigma and pains of imprisonment, as it is oriented toward overcoming mental conflicts through reintegration of the offender into the community.9

Discussing the rational change in the traditional type of punishment, Tomasic and Dobison Ian express their view on probation as a method evolved as a byproduct of the ideological and socio-economic pressures in the society.10

The special task force on corrections appointed by the President’s Commission on law enforcement and administration of justice, defines probation as “A legal status granted by a court whereby a convicted person is permitted to remain in the community subject to conditions specified by the court.”11
The National Council on Crime and Delinquency (NCCD) standards consider probation as a procedure under which an offender found guilty of a crime upon verdict or plea, is released by the court, subject to the conditions imposed by the court and subject to the supervision of the probation officer service.

The American Bar Association project on standards for criminal justice considers probation as “a sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions of the sentence or to resentence the offender if he violates the conditions.”

The International Encyclopedia of Social Sciences explains probation as an alternative system to incarceration granted by a court. According to the Encyclopedia of Crime and Justice, probation is only a part of the decision-making process of judges at the time of sentencing.

E.H.Sutherland describes probation as a conditional liberty given to convicted offender on his good behaviour. Taft and England view probation as a process of treatment for convicted persons.

Thus from the above discussion we may conclude that probation is a judicial action. It is used as an alternative sentence to imprisonment. It is a release in the community of an offender on some conditions. During his
release, the supervision of the offender is provided to assist him to modify his behaviour. There is a provision of revoking the probation in case of the violation of the conditions by the offender.

Some explanations regarding probation in the Indian contexts may also be reviewed at this stage.

The Central Bureau of Correctional Services (now called the National Institute of Social Defence) interprets the meaning of probation as the conditional suspension of imposition of sentence by the court in selected cases, especially of young offenders, who are not sent to prison but are released on probation, on agreeing to abide by certain conditions.\(^{17}\)

J.J.Pankal and R.G.Dighe, while reviewing the papers and discussions presented at the seminar on probation work (1958), have argued that the purpose of probation is to prevent the contamination of the institution, ensuring protection of the society, rehabilitating the offender back into the society as its useful member, helping the judge in socialising criminal justice and individualising the treatment.\(^{18}\)

According to Jyotsana Shah probation is "a method of dealing with selected offenders and consists of the conditional suspension of punishment while the offender is placed under personal supervision and is given individualised treatment."\(^{19}\)
When examining these definitions of probation, one finds certain difference in the opinions among social scientists. Probation is suspension of imposition of the sentence. It is applicable to selected cases especially young offenders. Probation is the outcome of a progressive realisation that the sentence should fit the offender. It prevents the contamination of the institutionalised punishment.

The National probation Association of united States of America has given an elaborate definition of probation. It is more clear than other definitions. It defines probation as “a procedure of social investigation and supervisory treatment used by the court for selected individuals convicted of law violations. During the period of probation the offenders lives a normal life in the community and regulates his conduct under the conditions imposed by the court and subject to the supervision and guidance of a probation officer.”

Modern penologists lean more towards the non-institutionalised form of punishment. They accept probation as a rational penal policy. This is made very clear by the U.N.Report on probation and related measures. It has identified probation as a modern method of treatment of offenders. It is rooted in the broader social and cultural trends. It is a movement against the traditional punitive and repressive approach. It is method of preventing crime by the improvement of social conditions and social services. It is a social rehabilitation of the offender through the criminal policy. Thus it is a shift from the traditional goal of retribution to the modern goal of treating the offender to find a suitable alternative to traditional punishments.
Historical Perspective of Probation

Probation has its origin in 'Pardons', 'Benefit of clergy', Judicial reprieve and the 'Recognizance'.

The pardons concept developed in 12th century which gave the king the power of commuting or remitting the prescribed penalty in some individual cases.

Benefit of clergy was practiced in England and other parts during 13th century. Benefit of clergy was a pious regard in which the Christian church, held by the heads of the state, was lenient towards the clerical defendants who were charged with serious crimes punishable with death. This leniency was later extended to non-clerics who were able to express a passage from 'psalm miserere me ' (Have a mercy on me). To get this benefit of clergy even the illiterates begin to memorize the passage. Thus the practice of benefit of clergy lost its importance. It was officially abolished in 1827 in England. It was in practice in American colonies even after 1827.

Judicial reprieve was a temporary suspension of sentence practiced in English courts. This involved a temporary suspension of sentence to allow the accused to appeal to the Crown for a pardon. In later times this practice developed into a system where sentence were often never imposed.
The Recognizance was a legal device found in English Law. This originated as a measure of preventive justice, through which minor offenders were released on their own recognizance with or without sureties.

In one or the other respect the early practices of law were similar to the present practice of probation. One may thus examine the modern perspective of probation.

Modern Probation: Probation is often identified with John Augustus, a Bostan Cobbler in America. John Augustus is credited for his unique contribution in popularising the idea of probation. John Augustus was born in Woburn Massachusetts in 1785. He was the owner of a shoe business in Boston. John Augustus neglected his business as he was more pre-occupied with helping men, women and children in rehabilitating them after they committed crimes. He wrote in a report "I was in court one morning... in which the man was charged with being a common drunkard. He told me that if he could be saved from house of corrections, he could never again taste intoxicating liquors." John Augustus from that day onwards would appear in court and would offer bail to the defendants. Augustus would then take charge of the defendants with the permission of the judge. He would then assist the offenders in finding them a job or a residence. After the improvement of the defendant, Augustus would report to the judge about his progress in rehabilitation. He would request the judge to release the offender.
Despite strong opposition, misunderstanding and physical abuse from the public, Augustus continued his work from 1814 to his death in 1859. According to the records he had maintained, he had bailed 1,946 persons. Out of these 1,152 were male and 794 were women and girls. He supervised over 2,000 persons. He undertook the responsibility of improving the general conduct, school career and employment of the offender. Thus he played the role of First probation officer in the world.\textsuperscript{24}

Later the work of John Augustus received support and appreciation from the judges and mass media. John Augustus would thoroughly interview and observe the offenders, taking into account their previous nature of character, age and habits.

As a mark of respect to John Augustus, the United States of America, in 1869 through the law of Massachusetts State provided for a visiting agent of the Board of Charities to investigate and be present at the time of a child’s trial in court. Then in 1873, the law of Michigan state authorised a court agent to investigate, place out and visit delinquent children.\textsuperscript{25}

The practice of suspended sentence which was in England was adopted in many states in USA for adults over 16 years of age. This practice of suspended sentence with conditions became the basis for probation regulation in United States of America.
The First probation Law was passed in Massachusetts in 1878. This law authorised the Mayor of Boston to appoint or hire a probation officer who would be supervised by the Superintendent of Police. As a result, Captain E.H. Sagave, the former chief of police became the first statutory probation officer in the world. In 1880, the law was passed in Massachusetts for the appointment of probation officer in the states.26

Then the complete law on probation was introduced in United States of America (USA) by the Act of March 4, 1925. This law provided for establishment of probation systems in all American courts except in the district of Columbia. Amendments were later made in the law of probation in the years 1933, 1943 and 1958. By 1956 the probation laws for adults were provided in all the states of United States of America.

In England the first probation law was enacted in 1879. Mathew Hill claimed that probation-like work started in England well before the work of John Augustus through a practice of voluntary supervision in suspended sentence cases. In 1841 “one day jail” was suspended by judge Mathew Hill, taking into consideration the prior status of the offender even in the absence of legal statues. England enacted the comprehensive law on probation in 1907, providing states assistance and supervision by stipendary probation officer and services of voluntary organisation. Probation law of 1907 was superseded by Act of Criminal Justice 1948.27
Probation has made considerable progress in America and England after the Second World War. The United Nations organised a seminar in England on probation in 1952. Many issues pertaining to probation, like probation case work, probation personnel and rehabilitation were discussed. The European consultative group on the prevention of crime and treatment of offenders discussed practical results and financial aspects of probation in coordination with the United Nations Secretariat.28

The social commission in 1955 at its tenth session requested the secretariat to undertake further research on methods applied by probation officers and courts in selection of offenders.29

A seminar was organised in Tokyo in 1957. The main item on the agenda of the seminar was on probation system in the treatment of juvenile offenders.30 Different opinions emphasizing of probation have been expressed by experts. Probation is considered as a method of filling the gap between the legal-traditional punishments and modern community based punishment trends. It is felt that the criminal should not be allowed to suffer confinement unless the nature of crime is serious enough to demand it. He should be extended all help and assistance to correct his behaviour. The prison has no utility in the use of short term sentence. It is said that “the association of the hardened criminals have an underworld influence, or criminal contra-culture effect on short term offenders. This will breed a class of persons who launch themselves into a career of crime.”31
In India, no separate arrangement exists in prison to segregate the short term young offenders from the long term offenders. Under these conditions probation has its own utility.

When we review the literature on probation, we are convinced that there are many studies on this subject. These studies have taken into consideration various aspects of probation. They have concentrated on various issues and aspects of probation such as the status of probationers, probation officer, their job stress, the pre-sentence report, cost saving, discretionary power of the judiciary and effect of probation on recidivism. Many studies have specially concentrated on the organisational and administrative set up of probation and its place in the criminal justice system.

A study in United States of America which was conducted in 1980 by the Institute for Research in Social Science to investigate the use of financial restitution as a condition of probation in the criminal justice system, and also to know the effects of restitution on probationers rehabilitation. This study was based on 18,555 probationers. Among them restitution was ordered in 44 per cent of the total number. The study revealed “that use of financial restitution as a condition affected the court’s decision to impose restitution and its arrival at a monetary amount.”

Another study by Roundtree, George and others was made to determine the personal characteristics of the probationers to aid in the selection of
successful future probationers. This study selected a sample (N-100) both from revoked (14%) and successfully completed (86%). The findings showed that there exists a positive relationship between recidivism and school grade, prior to criminal record, and age and length of probation. However, it was also discovered that factors like race, sex, age, marital status and employment at the time of offense were not significantly related.\(^{33}\)

To know the job stress of probation parole officers, a study was undertaken by Whitehead \textit{et al.} It was found in this study that organisational factors had a significant impact on officers perceptions. "It was suggested that the intervention strategies are to be provided at organisational and job sources of stress to reduce stress on probation officer."\(^{34}\)

Anson, Richard H. have studied the effect of intensive probation programme on alcohol offenders. It was found that criminal behaviour was significantly reduced after the intensive probation programmes.\(^{35}\)

Evaluating the long term effectiveness of probation on the reduction of recidivism derived under the influence of alcohol cases, Wells, Parker, \textit{et al} observe that probation has little significance in reducing long term recidivism. The authors feel that probation does not significantly reduce alcoholism.\(^{36}\)

Many studies have concentrated on the utility of the pre-sentence report by the probation officer. In a study by Spencer J. William, the process
of conducting pre-sentencing investigation by probation officers are seen to confront three major tasks: "Eliciting, interpreting and utilising information." This observation was based on in-depth interviews and tape-recorded interviews between probation officers and defendants.

Cohn suggests that the probation officers' reports should also include a few prognostic statements to avoid the recommendation acceptance to enable the court to make prediction of probationer.

John Rosccrance, has analysed data drawn from 15 years of probation experience and one year of qualitative interviewing of court personnel. This analysis reveals that officers often use pre-sentence reports to advance their personal careers and impose individual perspectives. This tendency of officers has lead to the questioning the utility of the pre-sentence investigation as well as the willingness of the probation bureaucracy to provide an environment conducive to objective reporting.

Jenny Roberts, et al have analysed the provision of social enquiry reports and the various sentencing outcomes in magistrate's courts and differences in the level of resources in 34 English and Welsh probation areas. The conclusion of the authors is that "the level of report provision is strongly associated with the use of probation service administered disposals (i.e. probation and community orders), but has a little effect on the use of custodial disposals."
The cost saving from volunteer services within a probation agency has been studied by Lucas. He observes in this context: that savings would be in excess of $1,45,000 which is equal to the cost of an average of 6.33 full-time employees. "41

In Los Angeles and Alameda in California, a study was conducted by Joan Petersilila on probationers. This study showed that 66 per cent of probationers were rearrested during a 40-month follow up period. The author concludes that the criminal justice system needs an alternative form of punishment intermediate between prison and probation and which incorporates intensive surveillance with community service and restitution. 42

It is clear from this study that probation working sometime suffers from many angles. In this study we find that probation is not effective as there could be more recidivism among probationers. The lacunas in the success of probation may be as seen from the above mentioned studies, like job stress on probation officer, confronting pre-sentence investigation by probation officer, lack of intensive probation, lack of proper selection of probationer, non-clarity between the recommendation of the pre-sentence report and the sentence. Such problems as also in evidence not only in United States of America but also in Canada. This has been clearly identified by Parizeau in a study conducted by her in Quebec. 43
These deficiencies in probation have led to general opinion that an alternative form of punishment which is an intermediate between prison and probation may be more successful in the rehabilitation of the offenders.

In India, the work on probation is slowly gaining importance. In 1963 Ramachandran and Shastree covered the structural and functional aspects of probation service in India in their reports (mimeographed). The reports are based on observation on the data collected from the official resources.

Mukherjee and Pankal (1981) have prepared reports (mimeographed) concentrating on the evaluation of probation. Mukherjee has made an evaluation of probation in West Bengal to identify the lacunas and deficiencies in the probation system. The report has brought into light some demerits and deficiencies which have come in the way of development of probation.

Pankal made an evaluative study of structural and functional aspects of probation services for juvenile and adult offenders in India. This report was also based on the data collected from official resources.

In 1981 Government of Karnataka constituted the State Level Probation Advisory Committee with the object of finding suitable ways and means for effective implementation of the provisions of the probation of offenders Act. The committee prepared a questionnaire to collect the public
opinion in this regard. The committee collected the information and suggestions from the members of the judiciary, advocates, social workers, police officials, prosecuting agencies, administrators, academic men and members of the public.45

On the basis of the information gathered the committee made 24 recommendations. The recommendations made by this committee included a wide range of subjects like, need for more strength of probation officers, modified rules regarding cadre and recruitment of probation officer, qualification of probation officer, training for probation officer, facilities to the probation officer, provision for non-probation officer and proforma for probation officer report etc.

Some of the other recommendations include requesting the High Court to issue appropriate instructions to all subordinate courts to give the benefit of P.O. Act to offenders blow 21 years and of making the date of birth entry compulsory in every charge sheet, provision to provide access to probation officer to records of criminal cases, establishment of probation hostel, self employment to probationers and strengthening the coordination between the concerned departments of criminal justice system.

Dr. S.P. Srivastava in a research project sponsored by Ministry of Social Welfare, Government of India, has examined the theoretical perspective and organisational administrative issues of the probation system, coming in the way of effective performance of probation.46
This study was based on both primary and secondary data. On the basis of his findings Srivastava has made the following recommendations:

Reviewing the organisational and administrative structure of probation service, unification of all community based programme, need for probation manual, service to probationers and involvement of judiciary into probation work etc.

Certain Doctoral Thesis have been submitted on various aspects of probation by scholars in Indian universities such as Agarwal (1963), Kumar (1966), Kakkur (1967), Choudhary (1969), S.K.Bhattascharya (1984). Snehalata Tandon (1986) have concentrated mainly on structure, administration, psycho-social study and role of probation in the treatment of juvenile delinquents.47

The Ph.D. thesis by Nirmal Kanti Chakroborthi (1990) has concentrated on the place of probation in the Administration of Criminal Justice. He has tried to identify the various internal factors like structural limbs and human resources and external factors like response of the society, Government policy and legislative principles. His analysis is entirely based upon man to man observation, survey data and case analysis. Through this study he has exposed that the probation system has some shortcomings and deficiencies, such as opinion on probation by the judiciary may vary from case to case. In other words he has tried to understand the system deficiencies and reasons for its diminishing acceptability.48
The present study has highlighted the problems of the main components of the probation system. More so it has also dealt more about the socio-economic aspects of the probationers (Main respondents) of the study which will play very important role in the decision making by the judges at the time of releasing the offenders on probation. Further this study after identifying the probation system deficiencies has made the concrete suggestions regarding, providing the material help to the probationers, involvement of community and community resources in the management of the probation; pre-sentence report, probation period and complete involvement of judiciary in the system of probation.
References

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