LAW OF PROBATION: PROBLEMS & PROSPECTIVE

(WITH SPECIAL REFERENCE TO GWALIOR DIVISION)

SUMMARY SUBMITTED TO THE JIWAJI UNIVERSITY, GWALIOR
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LAW

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SUMMARY

INTRODUCTION

‘Hate the crime not the criminals’. This line by Mahatma Gandhi is the thrust of the reformation of the criminals. Not looking to criminals as inhuman, the probation system puts forward the changing nature of modern society where it presently looks into the fact that probation system aims at rehabilitating the offender to the norms of society i.e. into law abiding member.

In modern age we believe in reformative method of criminal justice system. We know very well criminals are not born but circumstances turns them so many jurist think criminals can make reform and have opinion if criminals find proper treatment without any hard punishment they can improve their attitude towards the society.

Probation System –
The essence of the system is -

1. That the offenders, instead of being find or sentenced to imprisonment or bound over, is placed on probation, that is to say, a probation order is made by the Court and the probationer undertakes to be bound by it by entering into a recognizance, with or without sureties.

2. The order may provide the probationer shall be under the supervision of a probation officer for a special period, and it may stipulate certain conditions to be observed by the probationer, for example, as to residence, abstention from intoxicating liquor, and the like.

3. The order can only produce beneficial results with the voluntary co-operation of the probationer.¹

¹ Russel’s The Magistrate, p. 104.
Probation is based on the following principles:

1. That many offenders are not expert or dangerous criminals but are weak characters who have surrendered to temptation, or through misfortune or improvidence, have been brought within the operations of the police and the Courts.

2. In assigning this type of offender to the care of a probation officer, the Court not only saves him from the stigma and possible contamination of prison, but also encourage his own sense of responsibility for his future: if he co-operates with the probation officer, he will be able to continue his normal life and his record will still be clean.

3. Such a practice not only assists the offender and has a social value to the community but, by relieving the prisons of large numbers of first offenders, short term prisoners, and other classes of quasi-criminal offenders, it results in economy and allows the prison service to apply themselves to their true function that of segregating or providing treatment for the vicious and dangerous criminal.²

The term probation is means to test or to prove. It is a treatment device developed as a non-custodial alternative which is used by magistracy where guilt is established but it is considered that imposing of a prisoner sentence would do no good. Imprisonment decreases his capacity to readjust to the Norman society after the release and association with professional aelinanent often has undesired effects.

The statement that probation is not punishment is misleading however much preferred by delinquents, good probation may involve restrictions upon freedom and be irksome to refrain from disapproved behavior or to perform required acts which may irksome and even painful to the probationer.

--------------------------  D.R.Taft-- ---- Criminology

² Ibid.
Objectives of empirical research :-

1. **To study the refusal to grant probation causing factors among women offenders and another young offenders with reference to bail bond, family Problems.**

2. **To study the dual role performance of probation officers in criminal judicial system.**

3. **To study the social adjustment of offenders who are under the supervision of probation officer.**

4. **To study the problems of offenders during the period of probation.**

5. **To understand about the dual role performance of probation officers to welfare of women offenders in probation period.**

6. **To Study about the adjustment level of offenders in society.**

The Madhya Pradesh High Court favored the grant of probation benefits to an accused in a food adulteration case as the unusual delay in launching the prosecution has resulted in denial of the opportunity to the applicant of his right under Sec. 13(2) of the act, 1958.\(^3\) After the insertion of Sec. 20-AA in the Prevention of food Adulteration Act, 1954 the benefit of this Act can be given to the offenders under eighteen years of age only. In one other case under that Act one accused appeared to be of 19 years of age, the Supreme Court held that this was a fit cases in which the should be dealt with under the Probation of offenders Act, 1958, and further observed:" There are, however, some redeeming features which persuade us to apply the prevision of the Act, 1958 in this particular case. Apart from the young age of appellant No. 2, Papilla. It appear that he mealy happened to be present in the shop accidentally as his father had gone to some other place and he sold the articles. The main person who has in charge of the business was the first appellant.

Secondly, having regard to the young age of Papalal, if we send him back to jail, he is likely to become hardened criminal, and the present policy of penology is to reform criminals rather than punish them. For these reasons, therefore, we would suspend the sentence of Papalal, second appellant. While upholding his conviction we would release him on executing a personal bond of RS. 2,000 to maintain good behavior for a period of two years, failing which he will be called upon to serve the sentence imposed on him.4

**RESEARCH TITLE**

Today many juvenile of under detained in Jail and there is no any chance to release under probation. So researcher faced and concerned this topic in which researcher could solve the problem such prisoner who are under the age of 21 year but they don’t have benefits of a probation system which is provided by the court that’s why their prison life is very ridiculous.

**HYPOTHESIS OF RESEARCH WORK**

In the research work researcher has taken some views as hypothesis for his empirical research :-

1. Many time due to family problems, women offenders and another young offenders do not manage security for bail bond to avail probation benefits in criminal justice system.

2. Probation officers are playing important role to grant probation benefits for accused in Gwalior division.

3. Offenders can adjust properly in society with the supervision of probation officers.

4. During the probation service many offenders are suffering from some social problems.

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5. There is a good adjustment level of offenders in society under the perspective of Gwalior division.

6. In Gwalior division probation law has been functioning properly with high cooperation of courts and chief probation officer.

7. Present probation law is as good as we need and there should no amendments in probation law.

Researcher has used many tools to prove his hypothesis in the research work.

The main focus in this research is on the Probation as a technique of reformation, its origin, meaning, legal provisions available under Section 360 & Section 361 of Code of Criminal Procedure, 1973 alongwith Section 4 of the Probation of Offenders Act, 1958 and their comparative study with judicial pronouncement.

After the interpretation of findings of empirical research with special reference to Gwalior division, researcher’s hypothesis no. 1, 2, 3, has been proved but hypothesis no. 4, 5, 6,7, could not be proved during the empirical research through collection of data & findings.

EXPLANATION IN CHAPTER WISE

Chapter wise explanation

In the first chapter researcher has introduced preamble of law of probation in India and described all major provisions and their utility in probation of offenders act, 1958.

Lastly researcher has enlightened his view under general observation in the decision of the Supreme Court at this chapter.

In the Second chapter of the thesis, the concept of origin and historical back ground of law of probation have been fully described by the researcher. Researcher has introduced all present provisions and
law relating probation of offenders as well as confliction between theory and practice in probation system especially in Madhya Pradesh.

**In the third chapter of the thesis**, the concept of constitutional provisions & statutory provisions regarding probation law has been fully enumerated with current case law by the researcher. On the second way this briefing research looks at probation in its narrower meaning of releasing an offender under the personal supervision of a probation officer, to undergo some form of rehabilitation.

Researcher has used many tools in the description of law of probation in India i.e. reformatory school act, 1897 and children act, 1908 as well as juvenile justice act, 2000 & criminal procedure code 1973.

**In the fourth chapter of this research work**, Researcher has successfully completed his empirical research and mentioned view on law of probation through prediction tables under the prospective of Gwalior division. At the end of this chapter researcher has analyzed facts of findings under object of hypothesis in this research.

**Part 4.3 of this thesis briefly examines how probation is used in india, Madhya Pradesh especially Gwalior Division.**

**In the next chapter of this research work**, policies of probation benefits & probation philosophy in penal system have been discussed by the researcher. Researcher has focused in the applicability of probation of offenders act, 1958 and how for it is a challenge in probation system at present scenario. Researcher has described full details of probation law & judicial attitude as well as discretion of the courts to grant probation for rehabilitation of the offenders.

**In the sixth chapter of the thesis work**, researcher has described rules and regulations of probation law as well as exceptions and limitations to grant benefits of probation to offenders. In this context many things which are responsible factors to taken decision of probation like
problems of bond & sureties and functions of courts have been fully enlightened by the researcher.

**In the seventh chapter of this research work**, Government policies to grant probation for accused has been described by the researcher. In this context researcher has focused on some important issue like policy of central government and policy of state of Madhya Pradesh including duties of NGO’S & other statutory organizations.

**In the eight chapter of thesis work**, various dimension & overview of supreme court case and case law of Madhya Pradesh high court with special case law on probation system have been discussed by the researcher.

**In the last chapter of ninth**, researcher has given his opinion on probation law and after findings of empirical research many suggestions have been given by the researcher which will be beneficial to the society. And lastly researcher conclude his opinion to maintain this theme in this research i.e. probation is a common sentencing option around the world, although it takes many different forms.

**SOCIETAL ATTITUDE TOWARDS THE LAW OF PROBATION : PROBLEMS & PROSPECTIVES**

We have made a behavior study to assertion views of eminent persons from various work of life. The opinion gathered from there, clearly demonstrate that law of probation should be modified for the betterment of the rehabilitation process to the offenders in society because it is not only based on U.N.O. Rules & international law treaties but it is the constitutional consciousness of the nation as well as.

As noted earlier, the central probation act was enacted in 1958. Before the enactment of 1958, many states had their own probation laws and some of them continue to have them even now.

**While the load in presentence investigation in heaviest in Madhya Pradesh, in supervision it is maximum in Punjab the order**
of release on probation does not, therefore, obliterate the stigma of conviction.

The majority of the respondents are of the view that real and genuine democracy can be brought about by the implementation of law of probation in India.

Some of the respondent, also cautioned against the imposition of law of probation and have agreed with the views that keeping in view the political atmosphere and reformative attitude, the most important consideration is to appraise the risk involved to the society in releasing the offender and whether the risk is worth taking in the context of the offenders' personality and the community at large.

The majority of the advocate respondent in Gwalior Bar association against the amendment of law of probation and they support present law of probation and believe that probation should not be granted in some serious offences which are punishable with death or life imprisonment.

We have interviewed 91 persons and 71 of them have expressed the view that law of probation should not be revised with modern approach of punishment. However, a very few of the respondents totaling 20 in number have in favour of the amendment & implementation of new law of probation with uniformity among all over states of the country.

Among 91 persons interviewed, 34 belong to teaching class, 20 are lawyers, students belonging to legal science (LL.B or LL.M) are 15, research scholars are 7 in numbers and 15 belong to other disciplines including teachers of another field as well. Researcher has used imaginary names of respondents after collection of field data because respondents did not want to make display their names in reserch work directly and researcher had given proper assurance to them not disclose their names in writing on cover letter of questionnrrie.

Thus, sooner it is done, the better for the bringing up a congenial atmosphere in the criminal justice system of the nation. The 67.65% of
the teachers are reviewed that new probation law should be implemented without mojour change, 80% of lawyers, 100% of research scholars 80.67% of students belonging to law and 80% belonging to other disciplines have expressed the opinion that law of probation is a must for the creation of sense of on home in our country.

They have expressed their views that it will check the feeling of separate legislation to the rehabilitation of the offenders and help in promoting the reformatory theory of punishment and natural justice towards the offender after releasing on probation law. Researcher has used both method like questionnarie method and interview method specially with detained prisoner or released offenders on probation for collection of consolidate data.

As we know that any law or statute consist two aspects itself like strong will power of state to Implementation in practically and behavioral approach of society in theoritically, researcher has focused his empirical research both sides where researcher has made questionnarie and put it directly or indirectly without any conversation about probation law with the respondents who has expressed their own views after understanding of sample questions in the prescribed questionnarie.

On the second hand researcher used interview method with detained prisoner in Gwalior division who could not avail the probation services due to lack knowledge of probation in Madhya Pradesh and also met with those were released offenders on probation for collection of their views in practically Gwl.

As we know researcher has taken personal interview with some judicial officers, probation officers, research scholars, society members like advocates, teachers, students for findings of actual view towards the probation law specially Madhya Pradesh, it has come to light that neither judicial officers feel it desirable to get report from the probation officers,
nor the probation officers feel it obligatory on their part to submit their reports in the courts unwarranted.

In the beginning of research, researcher had taken some objectives for empirical research i.e. to study the refusal to grant probation causing factors among women offenders and another young offenders with reference to bail bond, family problems.

Researcher has taken this view as the hypothesis number 1 for his empirical research.

Hypothesis number 1

Many time due to family problems, women offenders and another young offenders do not manage security for bail bond to avail probation benefits in criminal justice system.

Findings: During the research work, researcher has used two tools for findings of data i.e. questionnaire method and interview method. In questionnaire method researcher has selected 91 respondents for opinion poll and 27 questions consistent in questionniare with object of hypothesis number 1. In this context findings of question number 1 of questionnaire where hypothesis has used then hypothesis numbr 1 not proved, but hypothesis number 3 proved.

Hypothesis number 2

Probation officers are playing important role to grant probation benefits for acused in Gwalior division.

Findings: Findings of question number 2 of questionnaire is supporting hypothesis number 7 in this research work and findings of question number 5 is supporting hypothesis number 2 and findings of question number 9, findings of question number 14, 15, 16, 17, 18, 22, 23, 26, 27 are supporting well in this hypothesis. Morever hypothesis number 2 proved through findings of questionnaire and in interview method hypothesis number 2 proved.
**Hypothesis number 3**

**Offenders can adjust properly in society with the supervision of probation officer.**

**Findings:** Findings of question number 3, 11, 17, 18, 25, 26 are supporting hypothesis number 3 and in interview hypothesis number 3 is not supporting any table. Thus, hypothesis number 3 proved due to frequency of proved findings.

**Hypothesis number 4**

**During the probation service many offenders are suffering from some social problems**

**Findings:** After the findings of question number 23 in questionnaire in table number 1.2, 1.3, 1.5 are supporting this hypothesis. Then hypothesis number 4 proved.

**Hypothesis number 5**

**There is a good adjustment level of offenders in society under the perspective of Gwalior division.**

**Findings:** Findings of question number 3, 4, 6, 10, 12, 17, 18, 21, 25, 26, 27 are supporting this hypothesis in questionnaire but in interview method table number 1.3 not supporting this hypothesis. Yet frequency of positive view is greater than negative view. Hence hypothesis number 5 proved.

**Hypothesis number 6**

**In Gwalior division probation law has been functioning properly with high cooperation of courts and chief probation officers (Superintendent of Jail).**

**Findings:** Findings of question number 6, 9, 14, 16, 17, 18, 22, 25, 26, 27 are supporting this hypothesis and table 1.1, 1.4 is also supporting hypothesis number 6. But as the result of question number 5, 13, 20, 23 and table number 1.2 and 1.3 those are not basically supporting this hypothesis by and larze positive view for this hypothesis is more hence hypothesis number 6 proved.
Hypothesis number 7

Result probation law is as good as we need and there should no amendments in probation law.

Findings: Findings of question number 6, 14, 16, 17, 18, 22, 25, 26, 27 we find that these results are supporting this hypothesis but question number 8 and table number 1.3, 1.4, 1.5 in interview method are not supporting this hypothesis. After the assessment we find that frequency of positive view with this statement is more hence hypothesis number 7 proved.

LIMITATIONS IN EXERCISE OF POWER UNDER THE SECTION –

The only limitation for releasing any offender under Sec. 3 is that the offences committed must be certain specified offences under the Indian Penal code or any other 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, that no previous conviction is proved against him and the Court thinks it expedient to take action under the Probation of Offenders Act, 1958.³

The Probation of offenders (Madhya Pradesh) Rules, 1964

According to the Madhya Pradesh Release of Prisoners on Probation Act, 1954 and the Madhya Pradesh Release of Prisoners on Probation Rules, 1964, there is a provision to release eligible prisoners on probation under the supervision of qualified caretakers.

Procedure:

The prisoner eligible for probation makes an application under the prescribed Form ‘A’ to the Superintendent of the Central Jail where he is lodged, along with the proposed name of a surety/caretaker, which is forwarded to the District Magistrate along with the Superintendent’s comments. The DM has to take his decision keeping in view parameters such as the cause of offence, his behaviour in the jail, eligibility of the

proposed surety etc. The DM invariably forwards the case to the Superintendent of Police who in turn sends it to the police station under whose jurisdiction the prisoner resides. On receiving the police report, the DM decides and intimates the Inspector General Of Prisons who puts up the matter before the State Probation Board along with the report of the Probation Officer. The Board passes the file to the state government through the jail department with its recommendation. The state government then passes appropriate orders.

**Following classes of prisoners are not released on probation:**
- Prisoners convicted for vagrancy, habitual offending, criminal conspiracy [Chapter V-A, Indian Penal Code (IPC)], offences against the state [Chapter VI, IPC], offences relating to the army, navy, air force [Chapter VII, IPC], harbouring robbers and dacoits [Section 216-A, IPC], resistance or obstruction to lawful apprehension [if it is a case of an escape from jail], [Sections 224, 225, IPC], counterfeiting coin [Sections 231, 232, IPC], murder by life-convict, [Section 303, IPC], thuggery, [Section 311, IPC], causing hurt by means of poison, etc. with intent to commit an offence, kidnapping or abducting in order to murder, rape, theft after preparation made for causing death, hurt or restraint in order to commit theft, extortion [Sections 386 – 389, IPC], robbery and dacoity [Sections 392 – 402, IPC], lurking house trespass, grievous hurt caused whilst committing lurking house-trespass or house breaking,[ Section 460, IPC], counterfeiting currency notes or bank notes [Section 489-A, IPC]
- Those convicted for having violated the conditions in their earlier license for release on probation and,
- Habitual offenders
Supreme Court has provided new dimension of probation law and has developed new guidelines for the application on probation of offenders act, 1958. and questioned, varied high irregularities in proceedings of lower courts and given direction strongly to adopt recent guidelines during any disposal of probation of offenders petition in courts.

Supreme court has observed main issue and given very sharp judgments related to probation of offenders act, 1958. some quotation/citations have been described on above mentioned cases and some refined lines of that cases have been selected by the researcher which has given under the following:-

In Sunil Kumar V/S State of Haryana ..., the supreme court had not accepted petitioner on the ground of unnecessary delay to file appeal and overviewed that Delay condoned. but in the another special leave petition of SHYAM LAL VERMA V/S CENTRAL BUREAU OF INVESTIGATION, Supreme court admitted his appeal and leave granted after having this view that By the impugned order, the High Court allowed the appeal of the CBI and sentenced him for a period of one year under Sections 477-A IPC and under Section 13(1)(c) read with Section 13(2) for a further period of one year. Both the sentences were directed to run concurrently. Questioning the order of the High Court sentencing him, as stated above, the accused preferred the present appeal by way of special leave. Heard learned senior counsel appearing on behalf of the appellant and learned counsel appearing on behalf of the respondent-CBI. The only point for consideration in this appeal is, whether the Probation of Offenders Act is applicable to prevention of correction act

In the Bala Baine Linga Raju ... V/S State of A.P. ...

Supreme Court observed that the learned Trial Judge has not heard the appellant on the question of sentence as is provided for under Sub-section (2) of Section 235 of the Code of Criminal Procedure. Although the learned counsel is correct, but keeping in view the fact that
the conviction of the appellant was under Section 304 Part I of the Indian Penal Code, we are of the opinion that even otherwise the sentence imposed on him is just and proper. We, therefore, have no hesitation in holding that the High Court was not correct in invoking the provisions of the Act. While setting aside that part of the judgment of the High Court, we restore the judgment of conviction and sentence passed by the learned Trial Judge. The appeal is disposed of with the aforementioned directions.

IN SARJU @ RAMU ... V/S STATE OF U.P. ..., The Supreme Court observed and admitted petitioner SLP, LEAVE GRANTED. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. The appellant is in custody. He is directed to be set at liberty forthwith unless wanted in any other case.

**Supreme Court’s view**

A distinction however has been drawn by the Apex Court (between such cases under the enactments already in force when the Probation of Offenders Act, 1958 came into force and those under the enactments enacted afterwards. Both the Secs. 3 and 4 of this Act providing the benefit of probation to the offenders containment-obstante clauses and thus override the provisions of any law laying down minimum sentence for any offence and thereby restricting the application of these sections. The views expressed as above therefore, appear to be legally sound and correct so far as the minimum sentence is concerned. The non-obstante clauses in Secs. 3 and 4 will however, not apply to offences under the enactments passed after the enforcement of Probation of Offenders Act, 1958.

This matter earlier came up for consideration before the Supreme Court in Superintendent, Central Excise, **Bangalore v. Bahubali**,

\[5 A.I.R. 1979 S.C. 1271.\]
case under **Defence of India Act, 1962** and it was held therein that in cases where a specific enactment, enacted after the Probation of Offenders Act prescribes a minimum sentence of imprisonment, the provision of Probation of Offenders Act cannot be invoked if the Special Act contains any provision to enforce the same without reference to any other Act containing a provision, in derogation of the special enactment, there is no scope for extending the benefit of Probation of Offenders Act to the accused. Relying on the said decision the Apex Court in a recent case of State **through S.P., New Delhi v. Ratan Lal Arora,** ⁶ has held that unlike the provisions contained in Sec. 5(2) of the old Prevention of Corruption Act of 1947 providing for imposition of a sentence lesser than the minimum sentence of one year therein for any "special reasons" to be recorded in writing, the present Act of 1988 did not carry any such power to enable the Court concerned to show any leniency below the minimum sentence stipulated.

*Consequently the High Court committed a grave error in extending the benefit of Probation of the Offender who had committed the offences under Secs. 7 and 13(2) of the Prevention of Corruption Act, 1988 punishable with the minimum sentence of imprisonment for six months and one year respectively.*

After the verdict of the Supreme Court the law now seems to be well-settled that the provisions of Probation of Offenders Act, 1958 cannot be invoked in the cases under an enactment prescribing minimum sentence of imprisonment where it was enacted after the enforcement of the Probation of Offenders Act, 1958 but there is not such bar to extend the benefit of probation in the cases covered under the earlier enactments.

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Overview of High Court of Madhya Pradesh

Ramesh Kumar @ Heeralal vs The State Of M.P. on 8 May, 2012
entitled to be given the benefit of Probation of the Offenders Act and
prayed to extend such benefit ... either for extending the acquittal or
benefit of Probation of the Offenders Act to the applicant and prayed for
dismissal in Madhya Pradesh High Court

The State Of M.P. vs Amarnath on 26 June, 2012
benefit of provisions of Section 3 of Probation of Offenders Act. 11. Consequently, appeal filed
by the State is hereby ... released on probation under Section 3 of
Probation of Offenders Act after giving due admonition. 6 Criminal
Appeal No.1887  in Madhya Pradesh High Court

The State Of M.P. vs Jagbandhu & Ors. on 29 June, 2012 alias
Balram on probation under Section 3 of Probation of Offenders Act. 14.
Under such circumstances, since respondents ... after giving due
admonition under Section 3 of Probation of Offenders Act. 15. Presence
of the respondents is no more  in Madhya Pradesh High Court

Rameshwari Malviya vs Sushila Dhruve on 26 July, 2012
wherein it has been held that benefit of Probation of Offenders Act (for short 'the
Act')to the accused ... well as Section 12 of the Probation of Offenders Act,
in the opinion of this court, it would be just  in Madhya Pradesh High Court

Sushila Dhurvey vs The State Of Madhya Pradesh on 26 July, 2012
wherein it has been held that benefit of Probation of Offenders Act (for
short 'the Act')to the accused ... well as Section 12 of the Probation of
Offenders Act, in the opinion of this court, it would be just  in Madhya
Pradesh High Court

Jakir Khan vs The State Of Madhya Pradesh on 28 February, 2012
applicant may be enlarged on probation under the Probation of
Offenders Act. 7. At present there is no basis ... applicant is enlarged on
probation under the Probation of Offenders Act then due to that
conviction he may not lose  in Madhya Pradesh High Court.
**Boocha @ Daulat Singh & Ors. vs The State Of M.P. on 21 February, 2012**

view, the benefit of section 4 of the *Probation of Offender* Act be extended to them. He further said that ... appellants or for extending the benefit of *Probation of Offenders* Act to them or in any case to reduce in Madhya Pradesh High Court.

**Deepak Kumar & Anr. vs The State Of M.P. on 25 January, 2012**

submission firstly for extending the benefit of the *Probation of the Offenders* Act to the appellants on the background that ... extending the acquittal or extending the benefit of *Probation of the Offenders* Act or in any case, for reducing at Madhya Pradesh High Court.

**INTERPRETATION OF FACTS AFTER FINDINGS**

The advocates of probation system assert that this correctional method of treatment of criminals being compatible with the advances in social and medical science, is the only scientific approach and hence the concept of punishment must be modified, if not dissipated. This logic really destroys the very basis of our present sentencing justice. Keeping in view the basis of our present sentencing justice.

Admitting all young offenders and first offenders to probation regardless of their attendants, personality and mental attitude, might lead to recidivism because many of them may not respond favorably to this reformative mode of treatment. Section 3 of the Probation of Offenders Act, 1958 provides that the court at its direction, can order unsupervised release of the offender after due admonition in offences such as theft, cheating etc. This section does not require the Court to call for a pre-sentence report from the probation officer and, therefore, the court does not possess necessary information regarding character and antecedents of the offender. Consequently, there is possibility of dangerous offenders being released under this provision which may defeat the very purpose of corrective justice.
In many cases it is difficult to ascertain whether the delinquent is a first offender or a recidivist. Therefore, there is a possibility that an offender, who is otherwise a recidivist, might be admitted to probation and he may not react favorably to this correctional technique.

Section 4 of the Probation of Offenders Act, which is a key section of the Act, does not make supervision of a person released on probation mandatory when the court-orders release of a person on probation on his entering into a bond with or without sureties. This is not in accordance with the probation philosophy which considers supervision essential in the interests of the offender.

Though Section 6 of the Act requires the court to take into consideration the probation officer's report when decision to grant or refuse probation to an offender who is below 21 years is to be taken, but many a times courts do take decision without such report. This is again, against the spirit of the philosophy enshrined in the Probation Act.

The lack of enthusiasm for social service and inadequate resources for implementation of probation programme are perhaps the two main causes of slow progress of probation service in Gwalior division.

**FINDINGS AND CONCLUSION**

**Find Consolidate Data and Interpretation of Facts**

After the completion of research work, researcher has to summarize some suggestions, facts, data which will be beneficial to the society and more useful to the government.

The object of this empirical research was to collect actual position of the probation system in Madhya Pradesh especially Gwalior division when researcher had started his research work and taken some interview through questionnaire and directly taken interview he founds wonderful facts and desparity in probation law from another state. Now researcher has been given some valuable suggestions, facts after the interpretation of findings, consolidate data of probation law which are given the under the following headings:
1. The Government of Madhya Pradesh should plan new policy to
grant probation those offenders who are women, another young
offenders and they are able to submit surety bond before the court
due to family poor economic condition.

2. Government should draw proper attention the dual role
performance of probation officers and make welfare policies to the
probation officers in which they could submit their duties properly
under the probation of offenders rule.

3. State Government must separate this department from the prison
department, it is a very ridiculous position in Gwalior division
because all the process and proceedings are being continue to
taken a probation from Central Jail Gwalior.

4. It is not possible to one man who is Chief Probation Officer
(Central Jail Superintendent) could be attention properly to his
subordinate thats why government should make new department
in social welfare scheme.

5. During the period of probation, offenders who are released on bail/
bond with or without surity. It is compulsory to them they should
report regularly to probation officer and manage their behaviour
towards the society for achieving this some NGO/societies must
come with clean hand to provide a new era for the betterment of
the offenders to their rehabilitation in society.

6. Today it is a need of time that society should change his mind sect
towards the offenders because everybody knows criminals are not
born but circumstances terms to offenders. If we will give them
proper attention, protection, affection in society definitely one day
their negative attitude towards the society will be changed and
they can easily join main extreme of the society from prison life.

7. In Gwalior division probation law has not been functioning much
properly with cooperation of court and chief probation officer. After
this findings we can say if we want to make fruitful result in
probation system in Madhya Pradesh firstly we should go for the opening of psychological clinics as well as counseling centers.

8. In Madhya Pradesh, there is no proper system to handle probation application out of court, it is very regrettable to us that we can't provide new direction for the reformation of those who are not adult and they committed any offence on first time. Therefore, State Government should manage this department as like as police department and government should plan to appoint probation officers in each and every Tehsil level or Magistrate level and maintain rehabilitation center to look after them who are released under probation services.

9. After the findings of all the statements, we know it is very difficult to each state to make new legislation or statute for itself, but Central Government should interference among the states to the matter of probation of offenders and made new legislation in parliament and ensured each state would be implemented these new probation legislation for the rehabilitation of offenders to the society, in which the crowd of prison automatically will be controlled and administration will be enthusiastic in state level.

10. During the research period, researcher faced and solved many problems of prisoners who were under the age of 21 years but they didn't had benefits of probation system which is provided by the court that's why their prison life was very ridiculous.

11. The success of probation is entirely in the hand of the State Government and the resources it allots to the programs. Resources are needed to employ trained probation officers, psychologists, to set up homes for that on probation and also for their training besides others.

12. In this empirical research, where researcher had met some offenders in prison that about 65% of the convicts come to juvenile jail with terms of less than six months. Obviously most of these
convicts showed provide good human material for probation services, but the probation of those who were released on probation to those sent to prison is very low.

13. Through empirical research, researcher faced reality of probation system where people did not know about the existence of the probation rules and they were not familiar, how to avail probation services by the courts/governments.

14. In modern reformative atmosphere the prisoner should have been treated as a reformative thereby in stead of retributive because of how it has proved without any dispute that any person is not born criminal but circumstances terms to him as offenders.

    **However, with a view to making the system more effective and efficient, the following suggestions may serve a useful purpose:**

1. Probation must be based on through investigation into the case-history of the offender and the circumstances associated with his crime. While treating the probationer, his physical traits and psychological conditions must be thoroughly considered. It must be remembered that individualized method of treatment of offenders according to their individual needs and personality. This is an important factor in the process of probation.

2. The merger of juvenile courts with those of family courts seems to be an expedient policy because both of them perform functions which are quasi-parental in nature.

3. The success or failure of probation in case of juvenile delinquent largely depends on his home conditions and family surroundings. Experience has shown that juveniles from broken homes show scant regard for rehabilitative processes while those having good family background respond favorably to the correctional methods of treatment under probation.
4. It would be useful to organize probation on national level under state tutelage. International conferences and seminars or probation and its related aspects may help in popularizing this reformative method of treating the delinquents. The co-operative of different social agencies such as the schools, the family, the religious institutions and other voluntary organizations including Scout-Guides, Girl-Guides, Salvation Army, Welfare boards, Mahila Ashrams, Nari-Niketans etc should be solicited so that rehabilitation of offenders may be possible within the society itself.

5. Excessive control and supervision on delinquent tends to make him hostile towards the probation personnel and he may adopt an attitude of indifference and non-co-operation towards them. Obviously, no one likes to be kept under constant surveillance. Conversely, slackness in supervision may also lead to equally fatal consequences which might retard the progress of delinquent under probation. Therefore, a sturdy policy of mutual trust and non-interference with natural processes of growth of the probationer appears to be the best policy so far treatment of offenders under probation programme is concerned. This will enable the probationer to develop the qualities of self-help, self-respect and self-confidence in him. Supporting this contention Donald Taft rightly suggests that probation should utilize a balance of watchful control and constructive aid adapted to the individual needs of the offender.

6. Recidivists have often proved a failure in the process of probation. It has, therefore, been generally accepted that probation should only be confined to the cases of juveniles, first offenders and women offenders. Women delinquents have shown better propensity for rehabilitation and adjustment as compared to their male counter-parts. It is equally desirable to draw a distinction between a casual or incidental offender and a professional criminal for this purpose. Probation is best suited in the case of the former while ill-suited for the later.
7. It is generally argued that the system of probation involves discriminatory processes and therefore violates the constitutional provisions contaminated in Articles 15 and 21 of the Constitution of India. to obviate this charge, it is suggested that a minimum and maximum limit of sentence may be prescribed under the law and release of delinquent on probation should be in between these two extreme limits, depending on his corrigibility and response to correctional treatment.

8. Though probation as a punitive reaction to crime is extensively being used in India, yet there is an urgent need to extend the system to rural courts where there is general lack of social agencies to undertake the task of rehabilitation of offenders. There are reasons to believe that rural delinquents shall be more responsive to this correctional method of treatment than the urban offenders because of their relatively simple life-style.

9. The quality of probation service must be improved by making the service conditions of the probation staff more lucrative. This will attract well-qualified and competent persons to the profession. The probation personnel ought to be specially trained so that they can discharge their duty as probation officer competently.

10. A nation wide uniform scheme of training for probation personnel with emphasis on social-work and rehabilitative techniques would serve a useful purpose to improve the efficacy of probation service in India. The probation officers should possess legal qualifications so that they are well conversant with technicalities of law and procedure involved in the process of release of offenders on probation. Since the probation work is quasi-judicial in nature, the encumbants to probation service must be duly qualified in legal and social welfare work.

11. At present the work of probation is assigned to different department in different States. In some States probation service is
placed under the Social Welfare Department while in others it functions under the Panchayat Department or the Home Department. It is advisable to have an independent Department of Correctional Services on the pattern of the State of Gujarat at the national level to exclusively deal with rehabilitation of offenders, of which probation is one of the techniques.

**FOR THE JUDICIARY**

- Magistrates should use section 6 of the P.O. Act, which makes it mandatory on their part to call for reports from probation officers, in cases where the accused is less than 21 years of age.
- Magistrates could call for reports of the probation officer in advance and kept sealed so that if the case ends up in conviction, they could consider the case for release on probation. There is already a circular issued by the High Court to this effect.
- Reasonable time should be given for the probation officers to file their reports. Ideally speaking, P.O. should get at least two weeks time to file a social investigation report.
- NGOs visiting prisons should refer cases to magistrates when they come across any case which they feel is suitable for release on probation.
- If magistrates refer cases to probation officers fit for giving the benefit of probation, work could proceed more efficiently.
- There should be liaison between the prison authorities, court and the probation department for better implementation of the P.O. Act.
- In the co-text of the increasing crime rate and over load of cases in courts, the use of section 13. of appointing any fit person as voluntary probation officers by the court, must be taken in to consideration. This would help spread the concept of probation - employers, senior citizens, voluntary organizations and social workers could be appointed by the courts as voluntary probation officers in this section of the Act.
• The use of the Bombay Borstal Schools Act could be tried in cases where the magistrate may feel that the person cannot be given the benefit of the probation but may be considered for being sent to the Borstal School for reformative purposes.

• There should be regular workshops for magistrates and probation officers at district level to increase awareness among the judiciary about the P.O. Act.

**FOR VOLUNTARY ORGANISATIONS**

• Voluntary organizations working in prisons should network with the probation department at the district level to refer cases for release on probation under the Act.

• Voluntary organization should make regular presentations before the judiciary to increase awareness about their presence in prisons, towards implementation of the Act.

• Voluntary organizations should attend the District IDC Sub-Committee-meetings chaired by the district judge and present problems faced by prisoners in the meetings.

• Voluntary organizations should work towards getting recognized under the P.O. Act State rules to improve the implementation of the Act and provide aftercare services to released prisoners and probationers.

• Voluntary organizations should come forward as sureties for those accused who are otherwise eligible for release on probation, but miss out due to lack of local sureties. In addition, the probation service has been subjected to considerable change in the past ten years or so. If this continues, with, for example, changes in probation officer training, and the introduction of curfew orders with electronic monitoring, the results of this survey may become outdated quickly. These warnings are not meant in any way to diminish the results of the survey; as the first national exercise of this kind the results are important in themselves.
There is no doubt that probation supervision and probation officers are seen in a very positive light by offenders. Previous studies have found this to be the case – albeit for different reasons – and this survey provides confirmation of earlier findings. Such a finding may not please those who desire probation to be more punitive. However, offenders who see probation in a positive light are more likely to turn up for meetings with their probation officers, more willing to listen, and more likely to try to put into practice what is suggested to them. If probation were to be seen negatively offenders would be more likely to fail to appear for supervision. This would lead to increased breach action and – ultimately – increases in the custodial population.

**FINDINGS AND INTERPRETATION OF FACTS**

The main problems faced in releasing the prisoner as pointed out by the participants during the meeting are as follows:

- Eligible guardians are hard to find, especially for women prisoners.
- Since the Probation Act does not prescribe any criteria to decide the eligibility of the surety/guardian, names proposed by prisoners are sometimes rejected by District Magistrates without any valid reason. It then becomes very hard for the prisoner to find another eligible guardian.
- Sometimes the parents or other immediate relatives could be physically and economically incapable of maintaining the prisoner upon release or exercising supervision over him.
- Enmity also sometimes jeopardizes the security of the prisoner and makes it difficult to order his release.
- In cases, where the opposite party is very influential, nobody except the immediate relatives is willing to accept the responsibility of a convicted person.
- The Superintendent of the jail has to forward a certified copy of the judgment of the convicting Sessions Court with the prisoner’s
application for release to the DM. Sometimes this is not available with the prison superintendent and an application for it takes many years to materialize.

- The police do not want to take the risk of the prisoner escaping and hence in 99% of the cases advise against the release of prisoners without giving any specific and valid reasons. The DMs tend to follow the advice given by the police.
- In some places there are standing orders to the policemen to send back negative reports thus preempting the final decision of releasing the prisoner.
- Sometimes the decisions received from the DM or SP’s office, are not clear forcing the prison staff to send the files back adding to the general delay.

**VIEWS OF AND ATTITUDES TOWARDS PROBATION AND PROBATION OFFICERS:-**

Offenders were asked why they thought they had been given a probation/combination order rather than another sentence. The most common response (27%) was that the court had wanted the offender to benefit from the services available while on probation. No-one mentioned that they had been given their current sentence to stop them re-offending. The most frequently given ‘good point’ about being on probation (mentioned by more than half) was that it gave offenders access to someone independent to talk to about problems. A third of respondents mentioned getting practical help or advice with specific problems, and about 20 per cent mentioned being helped to keep out of trouble and avoid offending.

More than half the sample did not mention any bad points at all. Ninety percent of 91 respondents thought that their current probation order was either fairly or very useful. Women and older offenders were more likely to see their orders as very useful.
Respondents were shown a series of statements about probation and probation officers. More than a third agreed strongly that being on probation would help them to stop offending altogether, while a further 20 per cent agreed slightly. However, fewer than half agreed strongly that being on probation kept them out of trouble. More than 60 per cent agreed strongly with two general statements about probation officers being able to help people.

There were high levels of agreement with the positive statements about Probation officers and high levels of disagreement with the negative statements. Only one in twenty percent respondents said anything negative about their probation officer. Three-quarters of the sample felt that they could always talk to their probation officer if they were worried about something, and nearly as many said that they felt they could be completely honest and frank. More than three-quarters of the sample said that there was nothing that they would be unwilling or embarrassed to talk about with their officer.

Nearly three-quarters of respondents said that being on probation had helped them understand their offending behavior, and almost two-thirds said that they thought being on probation would help them stay out of trouble in the future.

According to researcher opinion, the following suggestions may serve a useful purpose:

1. Probation must be based on thorough investigation into the case-history of the offender and the circumstances associated with his crime. While treating the probationer, his physical traits and psychological conditions must be thoroughly considered. It must be remembered that individualized method of treatment of offenders according to their individual needs and personality. This is an important factor in the process of probation.

2. The prediction Tables of research should be compiled and used for planning probation strategies. Such tables may help in anticipating
the probable result of correctional treatment on different offenders. Prediction Tables are being extensively used in the treatment of probationers in Madhya Pradesh and they have proved immensely helpful in estimation of offender’s personality for individualized treatment.

3. The merger of juvenile courts with those of family courts seems to be an expedient policy because both of them perform functions which are quasi-parental in nature.

4. The success or failure of probation in case of juvenile delinquent largely depends on his home conditions and family surroundings. Experience has shown that juveniles from broken homes show scant regard for rehabilitative processes while those having good family background respond favorably to the correctional methods of treatment under probation.

5. It would be useful to organize probation on national level under state tutelage. International conferences and seminars on probation and its related aspects may help in popularizing this reformative method of treating the delinquents. The co-operative of different social agencies such as the schools, the family, the religious institutions and other voluntary organizations including Scout-Guides, Girl-Guides, Salvation Army, Welfare boards, Mahila Ashrams, Nari-Niketans etc should be solicited so that rehabilitation of offenders may be possible within the society itself.

6. Excessive control and supervision on delinquent tends to make him hostile towards the probation personnel and he may adopt an attitude of indifference and non-co-operation towards them. Obviously, no one likes to be kept under constant surveillance. Conversely, slackness in supervision may also lead to equally fatal consequences which might retard the progress of delinquent under probation. Therefore, a sturdy policy of mutual trust and non-
interference with natural processes of growth of the probationer appears to be the best policy so far treatment of offenders under probation programmed is concerned. This will enable the probationer to develop the qualities of self-help, self-respect and self-confidence in him. Supporting this contention Donald Taft rightly suggests that probation should utilise a balance of watchful control and constructive aid adapted to the individual needs of the offender.

7. Recidivists have often proved a failure in the process of probation. It has, therefore, been generally accepted that probation should only be confined to the cases of juveniles, first offenders and women offenders. Women delinquents have shown better propensity for rehabilitation and adjustment as compared to their male counter-parts. It is equally desirable to draw a distinction between a casual or incidental offender and a professional criminal for this purpose. Probation is best suited in the case of the former while ill-suited for the later.

8. It is generally argued that the system of probation involves discriminatory processes and therefore violates the constitutional provisions contaminated in Articles 15 and 21 of the Constitution of India. to obviate this charge, it is suggested that a minimum and maximum limit of sentence may be prescribed under the law and release of delinquent on probation should be in between these two extreme limits, depending on his corrigibility and response to correctional treatment.

9. Though probation as a punitive reaction to crime is extensively being used in India, yet there is an urgent need to extend the system to rural courts where there is general lack of social agencies to undertake the task of rehabilitation of offenders. There are reasons to believe that rural delinquents shall be more
responsive to this correctional method of treatment than the urban offenders because of their relatively simple life-style.

10. The quality of probation service must be improved by making the service conditions of the probation staff more lucrative. This will attract well-qualified and competent persons to the profession. The probation personnel ought to be specially trained so that they can discharge their duty as probation officer competently.

11. A nationwide uniform scheme of training for probation personnel with emphasis on social-work and rehabilitative techniques would serve a useful purpose to improve the efficacy of probation service in India. The probation officers should possess legal qualifications so that they are well conversant with technicalities of law and procedure involved in the process of release of offenders on probation. Since the probation work is quasi-judicial in nature, the incumbents to probation service must be duly qualified in legal and social welfare work.

12. At present, the work of probation is assigned to different department in different States. In some States probation service is placed under the Social Welfare Department while in others it functions under the Panchayat Department or the Home Department. It is advisable to have an independent Department of Correctional Services on the pattern of the State of Gujarat at the national level to exclusively deal with rehabilitation of offenders, of which probation is one of the techniques.

SUGGESTIONS TO MAKE PROBATION SERVICE FULFILL ITS PURPOSE.

A few suggestions have been given in this thesis which may be implemented at the legislative and the administrative level, which would make probation effective in India.

Changes that could be brought about in the law are enumerated below. These changes are mostly applicable to the
Probation of Offenders Act as it is more widely applicable than S.360 of the Code.

Due importance must be given to the reports of the probation officers by making necessary amendments in section 4(2) and section 6(2) of the Act. Probation must be based on thorough investigation into the case history of the offender and the circumstances associated with his crime. United Nations Standard Minimum Rules for Non-Custodial Measures also provides that the judicial authority must avail of such a report.

Recidivists have often proved a failure in the process of probation. It has, therefore, been generally accepted that probation should only be confined to the cases of juveniles, first offenders and women offenders. Though S.360 of Cr.P.C. lays down that only first offenders will be granted this benefit, if they are not below 21 years of age, no such condition has been laid down in the Act. Necessary amendment may be done to incorporate the same.

It must be made mandatory for offenders to be placed under supervision of a probation officer, by amendment under S.4(3) of the Act, as that would best serve the philosophy of probation. If the officer feels that the offender would not commit a crime, he could then submit to the court an application for the offenders discharge. Also, it has been left to the discretion of the Probation Officer to decide and inform the Court about necessity to vary an order of probation or to discharge the probationer, so there must be a complaint mechanism provided is a probationer wants to complain against a decision concerning the implementation made by the implementing authority, or the failure to take such a decision.

The proviso to S(4) of the Act lays down that probation would be granted only after the offender or his surety, have fixed place of abode or regular occupation. A large segment of offenders consists of the poor, the illiterate and the unskilled. It would not be possible for them to fulfill the
conditions in all cases, hence the proviso should be amended to not make it mandatory, and leave it at the jurisdiction of the Court. Amendment could be made to The Code of Criminal Procedure to include the provisions for pre-sentence report and supervision.

To make the judiciary more responsive, an amendment could be brought about in The Probation of Offenders Act which would make it mandatory for the judiciary to lay down the grounds as to why the benefit of probation must not be given, on the lines of S.361 of the Code.

The provisions under the Probation of Offenders Act and the Code of Criminal Procedure could be amended to be similar to the Juvenile Justice (Care and Protection of Children) Act, where more detailed procedures are laid down, like for the setting up of observation homes, report of the probation officer.

Changes could be brought about in the way administration deals with probation. Some of them are enumerated below.

India, being a developing country can't spend heavily on correctional measures, as its emphasis would be more on economic improvement. Due to lack of economic resources most developing countries violate the UN Standard Minimum Rules. It wouldn't be possible for India to adopt all of the measures prescribed by the UN, but India could adopt a few of the measures.

The first among them must be to have trained probation personnel. This isn't there today because the task of the probation officers is not given much importance in India. It is considered to be a mere formality, but if utilized well they would be most effective. The quality of probation service must be improved by making the service conditions of the probation staff more lucrative. This will attract well-qualified and competent persons to the profession. The probation personnel ought to be specially trained so that they can discharge their duty as probation officer competently.
A nation-wide uniform scheme of training for probation personnel with emphasis on social-work and rehabilitative techniques would serve a useful purpose to improve the efficacy of probation service in India. *Guidelines for the training of Probation officers as have been laid down in the United Nations Standard Minimum Rules for Non-Custodial Measures, may be followed to the extent possible.*

It is example of South Africa, though a developing country makes it necessary that desired entrants have degrees in criminology, psychology, or social work. There are also monitoring staff who work parallel to probation officers. Loans are offered for full and part-time study and short courses. Thus it is no excuse that probation may be implemented only in the developed and rich countries.

Further an increased investment on correctional services for the poor, illiterate and unskilled would be most productive not only in reducing crime but also in improving the quality of life among the strata they come from and are ultimately to return to. The Kerala Government has provided for an After Care Programme to rehabilitate probationers. They are given an assistance upto Rs.10,000/- per head. By utilizing this amount they can engage in small scale income generating activities. The amount of assistance is. If the amount is insufficient for meeting the expenses this can be attached with some bank loan. Such services could be extended to the rest of India.

Further, this system must be extended to rural courts where there is general lack of social agencies to undertake the task of rehabilitation of offenders. Rural delinquents may be more responsive to this correctional method of treatment than the urban offenders because of their relatively simple life-style. In developing probation and aftercare services it should be ensured that women and children are specially assisted.

At present the work of probation is assigned to different departments in different States. In some states probation service is
placed under the Social Welfare Department while in others in functions under the Panchayat Department or the Home Department. **It is advisable to have an independent Department of correctional Services on the pattern of the state of Gujarat at the national level to exclusively deal with rehabilitation of offenders, of which probation is one of the techniques especially in Madhya Pradesh.**

An attitudinal change, must be sought and brought about among the judicial officers towards the significance of the probation system, this would make the concept more workable and beneficial. Probation in India as of today is mostly at the States initiative. Instead a central policy towards probation must be formulated.

**According to researcher views, there are some more suggestions under the following :**

1. During this practical research work researcher feel that juvenile offender and habitual juvenile offender must be kept separate in Jail.
2. Under the probation the order of release from Jail to accused should be finalized by supertendent of Jail.
3. There should be a probation board in Jail like parole board to grant probation to offenders.
4. Probation is alternative form of punishment it should not used as defence of punishment.
5. The Court should do classification of juvenile offender and others.
6. State Govt. should make new policy for prisoners who are under the age of 21 years and having a good character in present to release from Jail.
7. Each and every person of any proved allegation should be kept in separate baric in prison under the classification of their offences.
8. When any person who is under the age of 21 years committed a crimes or grievous offence then Court should think nature of crime before issue the order of probation.
9. It can be dangerous to the society.
10. The Court should direct the probation board to such inquiry for previous behavior of accused.

LIST OF CURRENT CASES

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