CHAPTER 2
ORIGIN, CONCEPT & HISTORICAL BACKGROUND OF LAW OF PROBATION

2.1 Introduction

All correctional measures in the field of penology essentially involve individualized diagnostic formulation of each delinquent which will determine the nature of the control and treatment plan for him. This, in other words, equates an offender to a patient who needs to be cured rather than punished. Probation as a correctional measure undoubtedly lays greater emphasis on treatment methods. But from the legal standpoint it is not the question of putting the delinquent in a hospital, instead it is rather question of imitating judicial investigation and surveillance in offender’s case under a definite legal procedure. The procedure established under judicial system requires that once a person is held guilty, the sentencing process in his case must begin forthwith.

In the historical perspective, probation’s evolution reflects tensions between care, control and custody, discretion and individualism versus legalism, and rehabilitation/reintegration as opposed to repression.

From the 1800s to the present day, probation officers have tried in various ways to reform, remake, remolds and restructure the lives of offenders into good, honest, law abiding citizens. It was after the Second World War, however, that the majority of strides were made that led to the development of the complex and modern probation service structures that now exist. It was a time of great optimism in the efficacy of social work with offenders to achieve the ‘perfectibility of man’ and probation officers in the 1960s were part of a criminal justice system which was moving towards the rehabilitative ideal.
2.2 Origin & Development Of Probation System

General

Probation and parole emerged as techniques to initiate consequence of severe punishment when imprisonment became the more common mode of penal sanction in place of transportation and capital punishment.¹

The origins of what is today known as “probation” can be traced to early English practices, and experienced a gradual development until the 19th century. During the 1880s, significant contributions were made by several other countries. In the 1870s, it began to receive acceptance in the USA. However, essentially it developed from the beginning of the twentieth century, although for various reasons and in varying degrees - throughout Europe and North America. Probation has its origins in two distinct traditions, common and civil law, but its historical development was also influenced by the development of the juvenile justice system, “positivism” in criminology and ideologies of control outside of the criminal justice system.

Probation as it is known today can be traced to the use of several judicial practices exercised in English and later, American courts. "Release on recognizance" or bail, for example, allowed defendants who agreed to certain conditions of release to return to the community to await trial. After setting bail, judges sometimes failed to take further action (Abidinsky). Thus, similar to modern-day probation, defendants were released to the community conditionally. If they failed to meet the condition of release, they were faced with the threat of revocation. And in some instances, they were spared further contact with the criminal justice system.

In English courts, judicial reprieve empowered judges to temporarily suspend either the imposition or execution of a sentence in order to permit a defendant to appeal to the Crown for a pardon (Abidinsky; Allen et al.). Although suspension was intended to be temporary, further prosecution of such cases was sometimes abandoned (Allen et al.). Judges in the United States exercised a similar power, enabling them to suspend the sentence of a convicted defendant if justice had in any way been miscarried. The use of judicial power to suspend a sentence was extended to cases in which there existed no miscarriage of justice. Sentences were suspended seemingly to give defendants another chance. Documentation of this practice in Boston dates back to 1830. Such suspensions were challenged near the turn of the twentieth century in a New York state court (1894) and later in the Supreme Court (1916). Both courts held that absent a legislative directive judges did not possess the authority to suspend sentences.²

During roughly the same time period, a shoemaker-philanthropist in Boston, named John Augustus, began the practice of bailing offenders out of court and assuming responsibility for them in the community. Bailing hundreds of offenders between the years 1841 and 1859, John Augustus is most often credited as being the founder of probation in the United States. Augustus bailed the offenders out after conviction. As a result of this favor and with further acts of friendliness such as helping the offender obtain employment and aiding the offender’s family in other ways, the offender was indebted to Augustus and was willing to abide by agreements.

After a period of supervision in the community, the bailed offenders returned to court armed with Augustus’s sentencing recommendations. Due to his efforts John Augustus’s charges were typically spared incarceration.

² Website used – www.leg. state. nv. us/ 74th bills
John Augustus's probation bears much resemblance to probation as it is practiced today. Augustus took great care in deciding which prisoners were promising candidates for probation. He considered the person's "character," age, and factors that would impact the offender after release. In dubious cases, he required the offender to attend school or to be employed. Thus, Augustus's activities provided the origins for the presentence investigation as well as common conditions of present-day community supervision such as education or employment.

Not long after John Augustus published an account of his work in 1852, the Massachusetts legislature in 1878 passed a bill authorizing the city of Boston to hire a probation officer (Abidinsky). The practice of probation spread through the state of Massachusetts and was later adopted by numerous states around the turn of the twentieth century. Between 1897 and 1920, for example, twenty-six states and the District of Columbia passed adult probation statutes (Champion). By 1927, all states except Wyoming had adopted some type of probation law for juveniles. However, probation was not available for all adult offenders in the United States until 1956.

Regardless of whether the origins of probation are traced to judicial reprieve or to the work of John Augustus, it is clear that the guiding philosophy of probation was rehabilitation. John Augustus leaves no room for doubt, stating: "It became pretty generally known that my labors were upon the ground of reform, that I confined my efforts mainly to those who were indicted for their first offence, and whose hearts were not wholly depraved, but gave promise of better things . . ." (Augustus). Probation implies "forgiveness" and "trial," or a period during which offenders may prove themselves capable of obeying the law and abiding by society's norms. Court opinions as well as state statutes generally affirm that the overarching purpose of probation is rehabilitation (Brilliant).
Prior to the mid-nineteenth century most offenders were sentenced to flat or *determinate sentences* in prison. Under this type of sentencing, an offender received a specific amount of time to serve in prison for a specific crime. This created a major problem when prisons became crowded. Governors were forced to issue mass pardons or prison wardens had to randomly release offenders to make room for entering prisoners.

**Analogous Provisions**

**Probation In U.S.A.**

It is generally said that great ideas often have modest beginning. This is true with the origin of probation as well. In American John Augustus, a shoe-maker of Boston in 1841 volunteered to stand bail for a person charged with drunkenness in a local court. The defendant showed signs of reform. The judge ordered a nominal fine and released the offender. Fascinated by this incident, John Augustus started standing bail for more and more offenders and took upon himself the duty of helping and supervising them during the period of bail. Subsequently, he helped delinquent women and children also in their rehabilitation. It is from here that the system of probation began. John Augustus, was however, cautious in selecting offenders to be accepted under his charge. He picked up only those delinquents and accepted them as apprentices who were not totally depraved but showed signs of reformation. He arranged to send them to school and provided them with some honest employment and lodging. He maintained an up-to-date record of all the cases he had handled. This provided a blueprint for modern probation system. Later, Father Cook of Boston also took keen interest in the rehabilitation of young offenders. He drew attention of the courts to the fact that these offenders were mostly the victims of their

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3 Criminology and Penology by Dr. N.V. Paranjpe. Illrd edition 2000, Chapter XXI, page no. 308.
circumstances and were corrigible if placed under proper supervision and guidance. He associated himself with the criminal courts of Boston to advise the judges in matters of juvenile trials.

Probation law was formally enacted in Massachusetts State for the first time in 1878 and probation officers were appointed for the city of Boston. The probation programme was subsequently extended to other cities in the State of America. In course of time juvenile courts were established and the system of probation was extended to these courts also. By the middle of the twentieth century probation became so popular that it began to be extensively used in cases of adults, juveniles and women in most parts of the United States.

Expressing his views about the extension of probation system Donald Taft rightly observed that other States were rather slow to follow the Massachusetts’s example. Illinois adopted the system of probation in 1899. Thereafter, other States followed the suit and by the year 1956 all States accepted probation for rehabilitation of their delinquents.

Under the American probation law, the benefit of release on probation extends to following offences:

1. Crimes of violence
2. Crimes involving use of deadly weapons:
3. Sexual offences
4. Crime against the Government or treason
5. Offences for which specific mandatory punishment is provided
6. Recidivists

In some of the American States probation is being extensively used for all offenders excepting the recidivists who are excluded from being admitted to the benefit of probation law. The jurisdiction of Federal Courts as regards admitting the offenders to the benefit of probation is,
however, narrowed down by several statues passed during the preceding few decades.

Probation and parole emerged as techniques to initiate consequence of severe punishment when imprisonment became the more common mode of penal sanction in place of transportation and capital punishment.

Probation came into existence to save some selected types of person from the rigours of punishment even of found guilty by a court of law - Parole on the other hand developed due to number of factors, operating independently of each other. Before transportation as a mode of punishment came to an end.

The convicts were sent to America and Australia from England and the job of transportation was assigned to the shipmaster or some contractor. After 17D the British govt. gave the contractor or shipmaster "Property in the Service" of the prisoner until exploration of his term.

In England and the USA the source of probation can be traced to binding over of a person for good behavior or recognizance for appearance in the court required.

3. **Probation in U.K.**

In U.K. the system of probation received statutory recognition in 1907 with the enactment of Probation of Offenders Act in that year. At Birmingham, however, a separate court for the trial of teenager criminals was established earlier in 1905. The Probation of Offenders Act, 1907 provided that an offender could be discharged on probation either after certain sentence being imposed on him or even before the imposition of the sentence. His release on probation could either be absolute or conditional, depending on his antecedents, character, age, physical and mental condition, and the circumstances which prompted him to commit

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4 Criminology and Penology by Dr. N.V. Paranjpe. IIIrd edition 2000, Chapter XXI, page no. 309.
the offence. Probation officers were separately appointed for adults and children. The Act was amended in 1908 and again 1914. With the enactment of the Criminal Justice Act 1948, probation was extended throughout England as a measure of correctional method of treatment. The entire country was divided into a number of probation areas for this purpose each having a fixed number of probation officers to help and advise the courts. Although probation for women was introduced in England at a much later stage than for adult males but it has yielded wonderful results so far rehabilitation of women offenders is concerned.

The Brooklyn Plan which recommended differed prosecution for delinquents provided that a juvenile offender charged with an offence is to be admitted to probation without being convicted.

Probation of offenders has been considered as an effective method easing pressure on prisons. The Courts are provided with an improved range of non-custodial alternatives to avoid unnecessary incarceration of offenders.

The English Criminal Justice Act, 1982, however, suggested reorganization of Probation Committees for the purpose of redressing the situation created by House of Lord’s decision in Cullen v Rogers. The opinion of House of Lords that there was no power to include in a probation order a requirement that the probationer should attend a day-centre caused considerable alarm. There are at present nearly one hundred such centers operating in Britain. Thus the system of probation, supervision and conditional release on license is now practiced as an effective After-care programme for treatment and rehabilitation of offenders in United Kingdom.

In deciding whether an accused should be allowed or denied the benefit of release on probation, the English courts are generally guided by policy considerations. This contention finds support in the decision in Pickett v. Fesq wherein an elderly woman of small means pleaded guilty
of a charge of having attempted to take out of the country £ 5 sterling under the Exchange Control Act, 1947. She pleaded that the money had to be taken to Italy where her son was without any work and was in great financial distress. She was released on probation but in appeal it was held that respondent's offence being a deliberate one, should not have been taken lightly by the trial court. The case was, therefore, remitted to trial court with a direction that the probation order be withdrawn and respondent should be punished for the offence which related to country's economy.

4. Probation systems of Sweden

Sweden is internationally known for its progressive penal philosophy and initiative in the correctional field. Only twenty per cent of the total number of offenders are sent to prison while the remaining 80 per cent are subjected to correctional treatment method such as probation, parole, half-way houses, work centres etc. Even the cases of those who are sent to prison are constantly reviewed so that they can be transferred to non-institutional service as soon as possible. The supervision of offenders under probation is entrusted to the "Commission of Trust" consisting of volunteers who seek advice from probation officer. Efforts are also being made to intensify treatment and supervisory services through probation in non-institutional sector.

5. Probation system in Japan

Progressive treatment system for offenders has found statutory recognition in the administration of criminal justice in Japan. The Japanese Code of Criminal Procedure, 1922 expressly stipulated the

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6 Criminology and Penology by Dr. N.V. Paranjpe. Illrd edition 2000, Chapter XXI, page no. 311.
discretionary power of the public prosecutors in matter of suspension of prosecution and execution of sentence. The offenders, particularly the juvenile delinquents, are placed under probationary supervision.

The system of granting probationary supervision to those who are granted suspension of the execution of sentence was fully introduced in Japan in 1955. Almost twenty per cent offenders are allowed probation under supervision while eighty per cent are given probation without supervision. There is a network of probation supervision officers to look after the probationers.

6. Probation in European Countries

Probation as a measure of treatment of delinquents is practiced in several other countries of the world in different forms. It is being extensively used as an effective after-care remedy for the treatment of juvenile offenders. In France, Germany and Russia, probation has been adopted as a measure of social defense. In Austria, probational remedies are mandatory for offenders under eighteen years of age. Greece accepted probation as a correctional measure in 1951. Similar system is adopted in Ireland, Israel, Italy, Switzerland and Netherland also.

7. Probation system in India

In India, probation is used as an institutional method of treatment which is a necessary appendage of the concept of crime. The western view disfavour the use of institutional methods in a legal system because it is likely to create problems. In their opinion probation service should be exclusively administered by voluntary organisations and welfare boards comprising sociologists, psychologists, psychiatrists, etc. and the judges should not be associated in the functioning of these agencies. The
The objective of the institutional treatment through probation is to correct the effects of the causative factors of criminality in the controlled atmosphere of probationary supervision, utilizing the helpful factors in the offender’s personality, his family situation, attitude etc. This approach helps the probationer to restructure his life-pattern with renewed vigour and adjust himself in the community through healthy inter-personal relationships.

**The Indian probation law provides the judicial power should be solely vested in the judiciary.** The reason being that if the power of probation is delegated to extra-judicial agencies which lack judicial techniques, it would create serious problems as these agencies will be guided by their own value considerations. That apart, sociologists and psychologists would be concerned only with the problem of offender's reformation and would not be able to appreciate the legal implications of reformative measures. Thus, entrusting, probation service to social agencies will mean delegating judicial functions to non-judicial bodies which is against the accepted norms of justice. Even assuming that probation is highly skilled technique which needs to be handled by specialized agencies, the fact that it is subjected to judicial review under Art. 226 of the Constitution of India, would make it obligatory for the judges to finally take it up for judicial scrutiny.

### 2.3 Historical Perspective of Probation Law In India

The history of probation can be traced back to the medieval concept of benefit of clergy "Surviving in England and America until the middle of the 19th Century"⁹ The privilege of 'benefit of clergy' permitted clergy and other literates to escape the severity of the criminal Law.

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⁹ Radzinowiczleon :- The growth of crime page no. 308
The first statutory expression to the penal system reflecting probation philosophy is to be found in section 562 of the Code of Criminal Procedure, 1898. Later the Children Act, 1908 also empowered the court to release certain offenders on probation of good conduct. The scope of provisions of probation law was extended further by legislation in 1923 consequent to the *Indian Jails Committees Report (1919-1920)*. In 1931 the Government of India prepared a Draft Probation of Offenders Bill and circulated it to the then Provincial governments for their views. However, the Bill could not be processed due to pre-occupation of the Provincial Governments. Later, the Government of India, in 1934, informed the Provincial Governments that there were no prospects of central legislation being enacted on Probation and they were therefore free to enact suitable laws on the lines on the Draft Bill.

As a result of the recommendations of the Jail Committee the Government of Indian decided to have a comprehensive legislation on probation law in India. To attain this objective, a Bill on Probation of Offenders was introduced in Lok Sabha on November 18, 1957. On 18th November, 1957 an amendment to the motion for consideration of the Bill was accepted by Lok Sabha and Rajya Sabha discussed he motion on November 25-26, 1957 and concurred with the suggestion that the Bill he referred to a Joint Committee of the Houses. Consequently, a Joint Committee was formed for considering the Bill to provide for release of offenders on probation or after due admonition and matters connected therewith. *The Joint Committee handed over its report to Lok Sabha on 25th February, 1958. On the recommendations of the Joint Committee the Probation of Offenders Bill was introduced in the Parliament.*

The question of release of offenders on probation of good conduct instead of sentencing them to imprisonment has been under consideration for some time. In 1931, the Government of India prepared
a draft of Probation of Offenders Bill and circulated it to the then Local Government for their views. However, owing to pre-occupation with other more important matters, the Bill could not be proceeded with. Later in 1934, the government of India informed Provincial Governments that there was no prospect of Central legislation being undertaken at the time and there would be no objection to the Provinces undertaking such legislation themselves. A few Providences accordingly enacted their own probation laws.

In several States, however, there are no separate probation laws at all. Even in States where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. In the meantime, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effect of jail life. In view of the widespread interest in the probation system in the country, this question has been re-examined and it is proposed to have a Central law on the subject which should be uniformly applicable to the States.

It is proposed to empower courts to release an offender after admonition in respect of certain specified offences. It is also proposed to empower courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made putting restrictions of their imprisonment. During the period of probation, offenders with remain under the supervision of the probation officers in order that they may be reformed and become useful members of society. The Bill seeks to achieve these objects.

Section S.562 of the Code if Criminal Procedure, 1898, was the earliest provision to have dealt with probation. After amendment in 1974 it stands as S.360 of The Code of Criminal Procedure, 1974.
It reads as follows:- When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behavior.

S.361 makes it mandatory for the judge to declare the reasons for not awarding the benefit of probation. The object of probation has been laid down in the judgment of Justice Horwill in In re B. Titus : S. 562 is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of mature years who for the first time may have committed crimes through ignorance or inadvertence or the bad influence of others and who, but for such lapses, might be expected to make good citizens. In such cases, a term of imprisonment may have the very opposite effect to that for which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve.

In 1958 the Legislature enacted the Probation of Offenders Act, which lays down for probation officers to be appointed who would be
responsible to give a pre-sentence report to the magistrate and also supervise the accused during the period of his probation. Both the Act and S.360 of the Code exclude the application of the Code where the Act is applied. The Code also gives way to state legislation wherever they have been enacted.

Section 4 of the Act provides for probation. S.4 Power of Court to release certain offenders on probation of good conduct. (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behavior.

S. 6 of the same Act lays special onus on the judge to give reasons as to why probation is not awarded for a person below 21 years of age. The Court is also to call for a report from the probation officer before deciding to not grant probation.

The provision under the Code and the Act are similar, as they share a common intent, that, punishment ought not to be merely the prevention of offences but also the reformation of the offender. Punishment would indeed be a greater evil if its effect in a given case is likely to result in hardening the offender into repetition of the crime with the possibility of irreparable injury to the complainant instead of improving the offender.
Yet there are a few differences, which have been enumerated below. S.4 of Probation of Offenders Act, S.360 of the Cr.P.C.

Any person may be released on probation, if he has not committed an offence punishable with death or imprisonment for life. (No distinction is made on ground of sex or age) Any person not under 21 years of age, if convicted of an offence punishable with imprisonment for not more than 7 years or when any person under 21 years of age or any woman is convicted of an offence not punishable with death or imprisonment for life may be released on probation. It is not necessary that the person must be a first offender. This section applies only when no previous conviction is proved against the offender. Any magistrate may pass an order under this section. Magistrate of the third class or of the second class not specifically empowered by the state government had to submit the proceeding to Magistrates of the first class or Sub-Divisional magistrates. Supervision order may be passed directing that the offender shall remain under the supervision of a Probation Officer. Besides these two enactments, the Juvenile Justice (Care and Protection of Children) Act, 2000 also provides for the release of children who have committed offences to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, or any fit institution as the Board may require, for the good behavior and well-being of the juvenile for any period not exceeding three year.

2.4 Present Status of Law of Probation

Section 6 of the probation of Offender Act, 1958 is the nature of a proviso of Secs. 3 and 4 of the Act, 1958, the Legislature has expressed a special tenderness for offenders under 21 years of age and has couched the section with a command that no offender under 21 years of age shall be sentenced to imprisonment if he is found guilty of an offence not punishable with imprisonment for life unless the Court records its
reason for not extending to him the benefits under Secs. 3 and 4 of the Act, 1958. The Court is conferred with the power to call for a report from a Probation Officer for assistance while granting or denying the benefit under Secs. 3 and 4 of the Act, 1958 to such an offender. In the scheme of the Act it would appear that the orders envisaged are (a) admonition; (b) bond for good behavior, Sec. 6 of the Act, 1958 is an additional command to a Magistrate that an offender under 21 years of age shall not be sent to imprisonment and shall be given the benefits of Sec. 3 or Sec. 4 of the Act, 1958 as the circumstances of the case justify. It is a restriction on imprisonment of persons under 21 years of age. Mechanism has been provided to obtain from a Probation Officer report concerning the character, mental and physical condition of the offender and for consideration of the report obviously to assess the cause of the crime and the impact of imprisonment before giving or denying the offender on the benefits of Sec. 3 or Sec. 4 of the Act, 1958. The denial of the benefit is required to be supported by written reasons enabling superior Courts to scrutinize whether the grounds for refusal are reasonable or not. There are other provisions in the Act, 1958 such as Sec. 8 of the Act, 1958 which relates to variation of the conditions of probation and Sec. 9 which deals with the procedure in case an offender failed to observe the conditions of a bond. Both these sections only speak of Sec. 4 of the Act, 1958 because that section alone relates to a bond and not Sec. 6. It could not be the intention of the Legislature that if a bond had been given by a n offender under 21 years of age there could be no variation in the condition of his bond and he could with impunity disobey the conditions of the bond. Section 6 only deals with a situation with reference to the age of an offender and in essence the bond is obviously obtained under Sec. 4 of the Act, 1958 and therefore, Sec. 6 of
the Act, 1958 is not independent of Sec. 4 of the Probation of Offenders Act, 1958.\textsuperscript{10}

Section 6 of the Probation of Offenders Act deserves to be liberally construed so that its operation may be effective and beneficial to young offenders who are prone more easily to be led astray by influence of bad company.\textsuperscript{11}

The question of applicability of the Probation of Offender Act, 1958 has been raised for the first time while filing the Special leave petition. The accused has not claimed benefit of Sec. 6 of the Act during trial before the Additional District and Sessions Judge or the High Court. Only material which was placed before the Sessions Judge or the High Court is the statement of accused recorded under Sec. 313 of the code of Criminal Procedure where in the age of accused was given as 20 years. Thus, it cannot be said that there is "creditable evidence" or "trustworthy material" that the accused was less than 21 years of age at the time of commission of offence. Therefore, such question cannot be permitted to be raised for the first time in the Supreme Court.\textsuperscript{12}

Section 6 of the Probation of Offenders Act would apply to the accused who is under 21 years of age on the date of imposition of punishment by the Trial Court and not on the date of commission of the offence. If on the date of the order of conviction and sentence by the Trial Court the accused is below 21 years of age the provisions of Sec. 6 of the Act applies in full force.\textsuperscript{13}

Section 691) of the Act, 1958 enjoins that an accused who is under 21 years of age, if convicted of an offence punishable with imprisonment

\textsuperscript{11} Siddesh Anil Shirsat v. State of Maharashtra, 2009(3) Crimes 755 at p. 760 (Bom.).

(46)
but not with imprisonment for life, shall not be sentenced to imprisonment. Thus, if a person under 21 years of age has been convicted of such an offence, then the Court is to decide whether he should be sentenced to imprisonment or he should be released on probation under Sec. 3 or 4 of the Act, 1958, then it can pass the orders. However, if the Court comes to the conclusion that it will not be desirable to deal with him under Sec. 3 or Sec. 4 of the Act, 1958, then it cannot sentence him to imprisonment unless a report from the Probation Officer is called and considered as required by Sec. 6(2) of the Act, 1958. There is no mention of calling of the report of a Probation Officer in Sec. 6(1) of the Act. In Sec. 6(2) of the Act it is mentioned that if the Court wants to satisfy itself that it would not be desirable to deal with the accused under Sec. 3 or Sec. 4. Then it shall call the report of the Probation Officer. As stated above, however, if the Court comes the conclusion that taking into consideration the circumstances of the case including the nature of the offence and the character of the offender it is desirable to release him on probation under Sec. 3 or Sec. 4 of the Act, then no report is required to be called for under Sec. 6 of the Act from the Probation Officer.\textsuperscript{14}

It is clear from the provisions that a person who is under the age of 21 years and who is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life) should not be sentence to imprisonment unless the Court is satisfied having regard to the circumstances of the case and nature of the offence and character of the offender that it would not be desirable to deal with him under Sec. 3 or Sec. 4 of the Act, 1958. In such a case if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. It is not necessary for the accused person to specifically raise the plea of this benefit.\textsuperscript{15}

\textsuperscript{14} Paras Ram v. State of Haryana, 1974 Cr.L.J. 39 at pp. 41,42.
In a Delhi High Court’s case, the record showed that no question was put to the Investigating Officer in his cross-examination on behalf of the appellant that he (appellant) was below 21 years of age. Even otherwise, at the time of his conviction the appellant does not claim to be below 21 years of age. It is settled law, as reflected from various decisions of the Supreme Court referred to by Duggal, J. in her order dated 24th October, 1989 that the object of the Probation of Offenders Act, 1958 would make it clear that the question of age of the person is relevant not for the purpose of determining his guilt but for the purpose of punishment which he should suffer for the offence of which he has been found, guilty. When the Court finds that the offender is not a person below 21 years of age on the date when the Court finds him guilty, benefit of the Act, 1958 has no application to him. No decision to the contrary has been cited at the bar by the counsel for the appellant.

In *Rattan Lal v. State of Punjab,* 16 it was observed that in the case of offenders below the age of 21 years an injunction is issued to the Court not to sentence the offender to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is not desirable to deal with him under Secs. 3 and 4 of the Act, 1958. In column 2 of page 447 it is stated that if an appellate Court or a revisional Court finds a person guilty, then in view of Sec. 6(1) of the Act, 1958, it shall not sentence him to imprisonment unless the conditions laid down in that section are satisfied. In the case of *Ramji Missar v. State of Bihar,* 17 the Supreme Court observed that the object of the Act, 1958 is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the

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normal punishment for their crimes. Again, in the aforementioned case of Rattan Lal v. State of Punjab, the Supreme Court observed that the Act, 1958 is a mile-stone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. These objects of criminal law is more to reform the individual offender than to punish him. These objects of the legislation would be defeated if the Courts were to by-pass the provisions of Sec. 6 of the Act, 1958 even when the case of an offender falls within its ambit. In the objects and reasons appended to the Bill it was stated that "there has been increasing emphasis on the reformation and rehabilitation of the offender a useful and self-reliant member of society without subjecting him to the deleterious effect of jail life. In view of the widespread interest in the probation system in the country, this question has been re-examined and it is proposed to have a central law on the subject which should be uniformly applicable to the States". The collective wisdom exhibited by the chosen representatives of the country in the shape of the Act, 1958 and especially Secs. 3, 4 and 6 thereof, cannot be permitted to be cast away by sheer indifference n the part of the Courts. Section 6(1) of the Act, 1958 vests the Courts with ample discretionary powers on the point whether or not to allow the offender the benefits of the Act, 1958. If the Court feels justified, for reasons stated in writing, that the offender does not deserve to be treated under the Act in the context of his antecedents or the particulars of the offence committed by him it may inflict appropriate sentence on him. However, the Court cannot shut its eyes to the provisions of the section ad proceed to treat a young girl of 16 years who has committed an offence under Sec. 380 of the Indian Penal Code, while employed as a domestic servant

in the manner it would sentence a grown-up person with propensities to recidivism.\textsuperscript{19}

\textbf{Any person under 21 years of age}-: Where the accused was less than 21 years of age, on the that of commission of offence, but when the Magistrate found him guilty, he was not a person under the age of 21 years, it was held that the benefit under the section is not available to him.

If the offence of which the offender is found guilty is punishable with imprisonment for life, even though the accused is under 21 years of age, the benefit of Sec. 6 of the Probation of Offenders Act, 1958 is not available to him.

\textbf{The circumstances of case including the nature of the offence and the character of the offender}-: Meaning of.

- This expression is used in Secs. 3, 4 and 6 of the act, 1958. An expression, almost in similar language has been used in Sec. 562 (1) of the code of Criminal Procedure of 1898 (Sec. 360(1) of the code of Criminal Procedure of 1973), which is to the effect "regard being had to the age, character or antecedent of the offender and to the circumstances under which the offence was committed". This expression has received judicial construction in several well-known authorities. The tests laid down under that section are that the excurse of power under the section is entirely in the discretion of the Court to be exercised according to the circumstance of each case. The fact that an offender is a first or a youthful offender is by itself not sufficient to invoke the section. Both the conditions are the first essentials without which the section would have no application. Further restriction has been imposed after a youthful offender commits a first offence. The section is generally made applicable where a youthful first offender succumbs to sudden temptation or uncontrollable impulses or does thoughtless act or acts under the

\textsuperscript{19} Mafaldina of Fernandes v. State, 1968 Cr.L.J. 1340 at pp. 1341, 1342.
influence of others. The section is not to be applied to cases where the
defence was act of daring and reprehensible nature, or the commission of
the offence implied previous preparation or deliberate effort on the part of
the accused, or where the conduct shows a design or a general character
of craft and deceit. It is not necessary

In view of this observation, the court shall have to see whether on
the date the judgment was passed by the Trial Court, the accused was or
was not of 21 years of age. The principal that their Lordship of the
Supreme Court invoked to decide this question was that the order which
the Appellate or Revision Court ultimately passes is the correct order
which the Trial Court should have passed and if the Trial Court had
passed had order when the provisions of Sec. 6 of the Probation of
Offenders Act, 1958 are attracted, then to see whether such a benefit
could be claimed by him at that time or not. In this case, the correct
order of conviction was passed by the high Court when the petitioner had
crossed the age of 21 years but according to the theory and the logic
relied upon by the Supreme Court this order of conviction ought to have
seen passed by the Trial Court on which date the petitioner admittedly
did not attain the age of 21 years and as such the benefit of Sec. 6 of the
Probation of Offenders Act, 1958 must be extended to him as he could
have got this benefit if he were rightly convicted by the Trial Court.

In its January 2010 Report, Cutting crime: the case for justice
reinvestment,4 our predecessor Committee encouraged the then
Government to look at criminal justice through a lens that reflected the
costs and benefits of existing policy and to reconsider sentencing,
 enforcement practices and existing efforts to reform offenders in an effort
to reduce the huge growth in the criminal justice budget. The Committee
extensively rehearsed the strong fiscal reasons for tackling re-offending
more effectively and concluded that any new Government could not
continue to allow the resources needed for probation, and wider
community rehabilitative provision, to be diverted into the spiralling costs of imprisonment.

Over the course of the last two decades, and at an accelerating pace over the last five years, the field of crime control and criminal justice has been reconfigured in important ways. In Gwalior division the probation service is deeply implicated in that transformation, though its relation to the process has been problematic.

The service gives the impression of being caught up in a current that is sweeping it away from its bearings and it is caught between trying to resist and trying to swim with the tide.

This is a strange position for the service to find itself in. After half a century of being in the vanguard of progressive change, the probation service now appears as a conservative force, straining to hold on to a framework that is fast disappearing.

Independent of the philosophical orientation, debate and controversy, probation has, nonetheless, proven useful as a non-custodial sanction, one that offers assistance and guidance as well as punishment.

Increasingly, once again, probation is viewed as a realistic public policy option - the imposition of a cheap, efficient and cost-effective, non-custodial punishment for offenders whose crimes are not deemed to justify the imposition of higher level and more expensive custodial options.

The early diversion of offenders from incarceration is becoming an increasing factor in departmental planning of programs and services for offenders.

Offenders are selectively targeted at the pre-sentence stage of the judicial process in which courts are encouraged to use prisons as the penalty of last resort and to promote the use of community based alternatives.
In an international context of rising crime, however, there is also the necessity of developing a non-prison centric penal framework. Thus, there is a growing recognition that probation must once again form a vital and dynamic part of an integrated criminal justice strategy that includes crime prevention, policing, victim recognition and support, and the management of offenders.

2.5 Practice and Theory of Probation Law - Confiction

The problem of crime was understood as a problem of individuals and families in need of help and support, of communities that were disorganized and disadvantaged. The focus of attention was not the crime itself - the instant offence being a matter of mostly legal concern - but instead the personal and social problems that underlay criminal behavior. Crime was a presenting symptom, a trigger for intervention, rather than the focal point for the probation officer’s action.

The probation service was the lead agency carrying forward a progressive programme of crime control through social intervention. It was at the forefront of the effort to rationalize and humanize penal practice - to use expertise, social work techniques, criminological knowledge, and trained clinical judgment to deal with crime.

As such, it was part of, and drew support from a wider political project – the project of the welfare state, with its concerns for solidarity through state provision, integration, inclusiveness, and with the distinctive ‘social’ rationality - a style of reasoning, or a habit of thought that looked for social causes and social solutions to deal with any problem that emerged in the field of government.

Probation was also part of the wider structure of institutions and power relations that gave enormous authority and prestige to professional expertise.
**Lacuna in the Act**

It is for the Legislature of rectify the lacuna existing in the Act and not for the Courts to give a strained meaning to the words used by the Legislature which they do not bear.\(^{20}\)

What should have been the provision is not a matter with which the court is concerned. The court must construe the section as it is.\(^{21}\)

**Spirit of the Act:**

The spirit of the law may well be an elusive and unsafe guide in the interpretation of the statutes and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act, and the rules made there under. If all that can be said of these statutory provisions is that construed according to the ordinary grammatical and natural meaning of their language they work injustice, the appeal must be made to the Parliament and not to the Supreme Court.\(^{22}\)

**Comparison of Secs. 4 and 6**

Reading Secs. 4 and 6 together, it would be obvious that the latter section is, as it were, a proviso to the former and is special provision made by the Legislature for the benefit of offenders under 21 years of age. The section enacts in the case of offenders under 21 years of age that where such as offender has been found guilty by a Court of having committed an offence punishable with imprisonment but not with imprisonment for life, then such Court shall not ordinarily sentence him to imprisonment, and before doing so must satisfy itself whether having regard to the circumstances of the case including the nature of the

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offence and the character of the offence and the character of the offender it would not be desirable to deal with him under Sec. 3 or Sec. 4 of the Probation of Offenders Act, 1958, as the case may be, and if it is so satisfied, then the benefit of the appropriate section must be given, but if it is not so satisfied, the Court is required to record its reasons for coming to that conclusion and for passing a sentence of imprisonment against the offender. The section further lays down that in order to be able to come to a proper conclusion as to whether the offender should not be given the benefit of Sec. 3 or Sec. 4 of the Probation of Offenders Act, 1958, as the case may be, the Court shall call for a report from the Probation officer and consider it together with any other information which may be available to it relating to the character and physical and mental condition of the offender.

The importance of this provision would be further obvious by a reference to Sec. 11 of the Probation of Offenders Act, 1958, which lays down that notwithstanding anything contained in the Code of Criminal Procedure or any other law, an order under this act may be made not only by any Court empowered to try and sentence the offender to imprisonment but also by the High Court or any other Court when the case comes before it on appeal or in revision. The correct position in law, therefore, unmistakably is that when a Court has found a person under 21 years of age to be guilty of an offence not punishable with imprisonment for life, then the Trial Court, before it passes any sentence of imprisonment on the offender, must satisfy itself that it would not be desirably to deal with him under Sec. 3 or Sec. 4 of the Probation of Offenders Act, 1958, having regard to the circumstances of the case including the nature of the offence and the character of the offender and where the Court sentences him to imprisonment, it must record its reasons for doing so, and further a duty has also been laid upon the High
Court or any other Court dealing with such a case on appeal or in revision to satisfy likewise.

It is also important to point out in this connection that for the purpose of satisfying itself within the meaning of Sec. 6 whether it would not be desirably to deal with an offender under Sec. 3 or Sec. 4 the Court shall call for a report from the Probation Officer and consider it together with any other relevant information which may be available on the record. Where the age of the accused as recorded in his statement before the Trial Judge appears to be 20 years and he has been held guilty under Sec. 304, Pt. II of the Indian Penal Code, which is an offence not punishable with imprisonment for life, as the maximum punishment provided thereunder is ten years only. These two conditions having been satisfied, it must follow that the Trial judge could not have passed a sentence of imprisonment on the offender unless he came to the conclusion, for reasons to be stated in writing, that having regard to the nature of the offence and the character of the offender and the other circumstances of the case. Nor does it appear that he called for any report from the Probation officer in this connection. In this state of circumstances it was held that the order of the learned Trial Judge sentencing the appellant to three years' rigorous imprisonment cannot be maintained and must be set aside.23

**Effect of Sec. 361 of the Cr. P.C. on the provisions of this Act**

Section 361 of the Code of Criminal procedure, treats the provisions of Sec. 360 of that code of Criminal Procedure at par with the Probation of Offenders Act, 1958. Where the provision of Probation of Offenders Act, 1958 are in force (See Sec. 18 and the Notifications issued under Sec. 1 (3) of this Act) Sec. 360 of the Code of Criminal Procedure shall cease to

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apply **state of Punjab v. Harbans Lal**,\(^{24}\) sub-section (10) of Sec. 360 of the Code of Criminal Procedure further makes it amply clear that nothing contained in that section shall affect the provisions of Probation of Offenders Act, 1958. Read with these provisions Sec. 361 simply provides that where in any case the Court could have dealt with an accused person under the provisions of the Probation of Offenders Act, 1958 but has not done so, it shall record in its judgment the special reason for not having done so. Section 361 thus, makes the application of the provisions of Probation of Offenders Act, 1958 mandatory only to a limited extent. In Case in an appropriate case the Court refuses to extend the benefit of probation without assigning any special reason, it is contrary to law and the decision is likely to be interfered with by the Supreme Court.\(^{25}\)

The provisions of Sec. 361 of the Code of Criminal Procedure are mandatory in nature and enjoin upon the Court to give special reason if convict is not dealt with under Sec. 360 of the Code of Criminal Procedure or under Probation of Offenders Act, 1958.\(^{26}\)

In the instant case, the learned Trial Court followed the deterrent theory of punishment and therefore, declined to extend the benefit of the Probation of Offenders Act, 1958 to the accused. This view of his was also approved by the Appellant Court, the approach of both the Courts below in the case is quite contrary to the provisions of the Probation of Offenders Act, 1958. Perfunctory manner of discharging the sentencing function by the Courts has been deprecated by the **Supreme Court in R. Ved Prakash v. State of Haryana**.\(^{27}\)

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\(^{24}\) 1983 Cr. L.J. 13 at pp. 15, 17 (P & H)


\(^{26}\) Surender Kumar v. State of Haryana, 2004 (2) R.C.R. (Cr.) 783 at 785 (P. & H.)

\(^{27}\) A.I.R. 1981 S.C. 643; Ranka Sahu v. State of Orissa, Crimes 1995 (4) 8 at p. 10 (Orissa)
Confliction

The problem of crime was understood as a problem of individuals and families in need of help and support, of communities that were disorganised and disadvantaged. The focus of attention was not the crime itself - the instant offence being a matter of mostly legal concern - but instead the personal and social problems that underlay criminal behavior. Crime was a presenting symptom, a trigger for intervention, rather than the focal point for the probation officer’s action.

In this professionalized context, social problems - including the problems of crime, delinquency, resettlement and family breakdown - were problems that required professional, social solutions, and more and more trained social workers.

Probation was also part of the wider structure of institutions and power relations that gave enormous authority and prestige to professional expertise.

The offence took place on 10th of April, 1988, on that day the appellant was under twenty one years of age. However, on the date of conviction i.e. 29th June, 1992 he was no longer a person under twenty one years of age. Thus, he did not fulfill the requirements of Sec. 360. As held in Ramji Missir v. State of Bihar, wherein the court was dealing with similar provision of Sec. 6 (1) of the Probation of Offenders Act, 1958, it is the date upon which the Trial Court had to deal with the offender which is the crucial date for reckoning the age of the accused. Same would be the position under Sec. 360 of the Code of Criminal Procedure and thus on the date on which the trial Court had to deal with the appellant, the benefit hereunder could not be extended to him as he was not a person under twenty one years of age and the sentence prescribed for the offence for which he was convicted was more than seven years. However, since the conviction now has been altered the
appellant is entitled to be given benefit of probation having regard to the extent of punishment prescribed for the offence for which he is now convicted though he is above twenty one years of age and that benefit can be extended in exercise of powers of this Court under sub-section (4) of Sec. 360 of the Code of Criminal Procedure.

The section is a piece of beneficent legislation. The object of the section is to avoid sending the first offenders to prison and thereby running the risk of turning him into a regular criminal. In the instant case this is the first conviction of the appellant. He is a student. He is in his twenties. He is not a person with criminal tendency. There is nothing to show that he is a person of bad character. He has a fixed place of abode. He is incident happened were unfortunate. This thus is eminently a fit case to show leniency and sympathy to the appellant in the exercise of the discretion under the section. It is needless to emphasize that benefit of this section must be given in an appropriate case consistently with the object behind it. Indeed its provisions are mandatory as held by the Supreme Court in the case Surendra Kumsr v. State of Rajsthan. The appellant, therefore, deserves to be given benefit of probation of good conduct having regard to the age and character of the appellant and the circumstances in which the offence was committed.

Therefore the law is now well settled that the crucial date for reckoning the age is the date on which the trial Court had to deal with the offender, for the purpose of punishment.

Value of age stated in Sec. 313 of the Cr. P.C.,1973, in the absence of plea.- The age given by the two accused in their statements has no special significance in the absence of a proper plea under the Probation of Offenders Act, 1958. The Trial Court would therefore have no occasion or reason to have the accused medically examined.
The plea of availability of the benefit of the prevision of Sec. 360 of the Code of Criminal Procedure or Sec. 6 of the Probation of Offenders Act, 1958 is to be taken at the earliest opportunity. Again, mere statement at the time of examination of the accused under Sec. 313 of the code of Criminal Procedure would not be sufficient so far as the question of age is concerned. Proper proof is necessary. In short it may be noted that someone desirous of having the benefit of Probation of Offenders Act, 1958 must come with appropriate proof and that too at the earliest opportunity. In the Instant case it was not so done. Moreover, it appears from the charge - sheets that the age of the accused person was much higher than what is now being pleaded by the respondent.

From all these fact and circumstances held that this is not a fit case for dealing with the provisions of Sec. 360 of the Code of Criminal Procedure or the Probation of Offenders Act, 1958.

**Variation of conditions of probation.**

If, on the application of a Probation Officer any Court which passes an order under Sec. 4 in respect of an offenders is of opinion that in the interest of the offenders and the public it is expedient or necessary to vary the conditions of any bond entered into by the offenders, it may, at any time during the period when the bond is effective, vary the bond by extending or diminishing the duration thereof so, however, that it shall not exceed three years from the date of the original order or by the altering the conditions thereof or by inserting additional conditions therein:

PROVIDED THAT no such variation shall be made without giving the offenders and the surety or sureties mentioned in the bond an opportunity of being heard.

(2) If any surety refuses to consent to any variation proposed to be made under sub-section (1) the Court may require the offender to enter into a
fresh bond and if the offender refuses or fails to do so, the Court may sentence him for the offence of which he was found guilty.

(3) Notwithstanding anything hereinbefore contained, the Court which passes an order under Sec. 4 in respect of an offender may, if it is satisfied on an application made by the Probation Officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into by him.

**Crucial date for determining age:**

Question now arises is that which is the crucial date for reckoning the age when the petitioner can claim the benefit of the provisions of the Act. This controversy is now well settled by the decision of the Supreme Court in *Ramji Misser v. State of Bihar.* The question that was mooted out in that case before the learned Judges of the Supreme Court was whether the age of offender to be reckoned is as at the date of the judgment of the Trial Judge or when the accused for the first time was in position to claim the benefit of Sec. 6 of the Probation of Offenders Act, 1958. Their Lordships, while deciding this controversy, observed as follows:

"We consider that on the terms of the section, on grounds of logic as well as on the theory that the order passed by an Appellate Court is the correct order which the Trial Court should have passed, the crucial date must be that upon which the Trial Court had to deal with the offender."

**2.6 Problems in the practical implementation of probation in India**

Sec. 6 of probation of offenders act, which makes it easier for a person below 21 years of age to benefit from probation. This is regardless of their antecedents, personality and mental attitude.

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It might lead to recidivism because many of them may not respond favourably to this reformatory mode of treatment. Also in many cases it is difficult to certain whether the delinquent is a fist offender of a recidivist.

The probation of offenders act, in Sec. 4(2) and 6(2) lays down that report of the probation officer is considered before awarding probation. But the courts generally have shown scant regard for persistence report of the probation officer because of lack of faith in integrity and trustworthiness of the probation officers.

In their view calling for the persistence report would mean unnecessary delay, wastage of time, undue exploitation of the accused by the probation officer and likelihood of based being submitted by him which would jeopardize the interest of the accused and would be contrary to the object envisaged by the correctional penal policy.

Sec. 4 of the probation offenders 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.

The lower judiciary in India has not at all taken into consideration the object and reasons of this act while applying its discretion in regard to grant of probation. In an umpteen number of cases the accused had to move the high court and supreme court to get the relief of probation.

If an accused gets relief of probation only in high court or supreme court. After passing through the turmoil of a long and cumbersome judicial process. He would psychologically, be believed towards hardenedness and the whole purpose of the ct would be forfeited.

Variation or discharge of the probationer is based so lay on the report of the probation officer. This leaves the probationer at the mercy of the probation officer.
After probation services are not very effective. Thus even considering that a sentence of probation has been passed and the offender is placed under supervision. It is nothing more than a regular visit to the officer. There is no scientific process of rehabilitation and the probation officers are not adequately trained.

They are recruited between 20 and 26 years of age. They are grouped into districts and supervised by a state/provincial chief. There is no in-service training and occasional refresher courses and thus they are not adequately trained.

Further, often there is a lack of interest for social service among the probation personnel. Lack of property qualified personnel, want to adequate supervision and excessive burden of case work are attributed as the three major causes of inefficiency of the probation-staff.

**Certain pit-falls in Probation System in India**

In spite of the merits of the probation technique, there are certain pit-falls in the system which need to be mentioned. They are:

1. 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. Keeping in view the increasing crime rate and its frightening dimensions, undue emphasis on "individual" offender at the cost of societal insecurity can hardly be appreciated as a sound penal policy.

2. Probation system lays greater emphasis on the offender and in the zeal of reformation the interest of the victim of the delinquent’s at

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29 Criminology and penology – Dr. N.V. Paranjpe, pg. 334, Chapter XXI, Probation of offenders.
are completely lost sight of. This obviously is against the basic norms of justice.

3. 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 reformatory 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.

4. 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.

5. 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.

6. 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.

7. Perhaps the lack of real interest for social service among the probation personnel presents a major problem in selecting right persons for this arduous job. Prof. Chute attributes lack of properly qualified personnel, want of adequate supervision and excessive burden of case-work as the three major causes of inefficiency of the probation staff. Particularly in India, probation is reduced to a mere farce and the correctional task is being handled by persons who are mostly inexperienced and inadequately trained for this work. 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 India.

As rightly pointed out by Donald Taft the acid test of success or failure of probation is its effect on recidivism. But this test can never be accurately carried out because of a variety of other factors influencing criminality and the quality of probation also varies according to time and place. It is generally agreed that probation is one of the most promising methods of protecting society against crime and criminals. Studies on probation have shown that the advantages of this correctional methods far outweigh its shortcomings. A case study conduct by Morris Caldwell on 180 probationers during his period of probation supervision reveals that a total of only 23.1 per cent either violated probation or absconded. This fairly demonstrates the success of probation as a method of reforming the offender within the community itself.

Be that as it may, it has generally been agreed that probation serves as a potential measure of social defense for reformation of offenders. It has now been accepted as the most significant contribution to the new penological practices which is expected to endure, while other
methods of treatment may undergo changes beyond recognition. Probation, together with the juvenile court system, has brought to the forefront, the personal needs and social problems behind the concepts of crime and punishment. It has helped in creation of new attitudes towards offenders and extended the function of criminal justice administration beyond traditional sentencing.