

# Probation System in India



# FOUR MODES OF DEALING WITH YOUTHFUL OFFENDERS:



Sec/ 3: release after admonition



Sec/4 : release on entering a bond on probation of good conduct---compensation to victim----if failed then sentence and fine.



Sec/6: persons under 21yrs ---not to be sentenced unless report of probation officer and record reasons to the contrary in writing.



Person on probation does not suffer disqualification

# Probation of Offenders Act 1958



- Probation under the Act not confined to juveniles but extends to **adult** criminals also.
- Not confined to offences under Indian Penal Code but extends to **offences under special Acts** also like Prevention Of Corruption Act 1947, Prevention of Food Adulteration Act 1954, Customs Act 1962, Black Marketing And Maintenance Of Supplies Of Essential Commodities Act 1974.
- Probation only to offenders guilty of **committing offence not punishable with death or life imprisonment**
- **Sec 11** of the Act widens the scope by giving competence to the Court to make order of probation in **appeal and revision**

# Procedure



- At the **time of pronouncement** of judgment
- Court has to call for **report of the probation officer**. And then make the probation order because the material available on record may not be sufficient for the court
- Court has to record clear finding about **age** of the offender on evidence.
- To avoid delay court has to obtain the probation **report before trial** is completed.

# Probation of Offenders Act 1958



- In ***Municipal Corp Delhi v State of Delhi*** and another: Held: As High Court did not call for report of probation officer under Sec 4 of the Act before releasing the accused, the release is wholly illegal.
- ***Ram Singh v State of Haryana*** :Sec 4 and Sec 6 indicate the procedure of the release on probation and it requires the court to call for report probation from the officer and consider it.As per sec it is mandatory.

# Probation of Offenders Act 1958



- **Sec 360 of the Cr PC :**

excludes certain types of punishments

Prescribes Age limit for offenders

Provides that it applies to first offenders only

- **Sec 27 of Cr PC:**

offence not punishable with death or life imprisonment

Accused under age of 16 yrs----(raised from 15 to 16 in view of Children Act.....now 18 yrs under JJ Act 2000

- **Juvenile Justice Act,2000:**

Release of juveniles on probation of good conduct and placing them under care and protection of parents or fit for executing a bond.----3yrs.

# Sec 360 CrPC and Probation of Offenders Act



## Probation of Offenders Act

- Discretion to court to decide on facts and circumstances
- No distinction on the basis of age or sex all equally entitled to probation.
- Applicable to not only juveniles but also adults –offence not punishable with death or life imprisonment
- Not confined to first offenders but can be extended to recidivist if fit circumstances and character of offender

## Sec 360 CrPC

- Rigid—no discretion ---no inquiry
  - Applicable to :
    - Men above 21 yrs age--- less than 7 yrs punishment
    - Women of all ages, and men below 21 yrs of age-----not punished for life or death sentence
- Confined to first offenders only



## Probation of Offenders Act

- Probation officers are appointed for guidance supervision and assistance to offender.
- U /sec 12 of PO Act probationer not to suffer disqualification

## Sec/360 Crpc

- No provision for probation officer
- No provision for removing disqualification under sec360 of CrPC

# Sec 360 CrPC and Probation of Offenders Act



- **Hence where the PO Act is in force, Sec 360 is not applicable**
- **Chhani v State of Uttar Pradesh (AIR 2006 SC)**
- Held scope of Sec 4 under the Act is wider than Sec 360 of CrPC.
- Sec 360 no role of probation officers but it is provided under the Act.
- No provision for removal of disqualification u/Sec 360 CrPC

# Probation of Offenders Act 1958



- Sec 14 (a):
- For offenders above 21 yrs of age court , if the courts admits him for probation then it is mandatory for the court to obtain pre-sentence report from the probation officer
- After positive report from the officer, exact period of probation under supervision necessary for the offender for his rehabilitation is determined
- which may vary on the prospects of his capacity of readjusting to normal life in society.
- Probationer to be released at any time if he is considered fit for release by the **probation officer**
- Sec 7 of P O Act –maximum period of probation is 3 yrs.

# Probation of Offenders Act 1958



- Sec 7 of P O Act –maximum period of probation is 3 yrs.
- Sec 7 criticized:
- 1 probationers are at mercy of probation officer—disadvantages
- 2 feeling of discrimination among probationers.

# Judicial trend



- At the beginning, very less application of the law on probation, but after 1971(Probation Year)many judges emphasized on utility of probation as correctional technique and also need of the courts to apply it.
- Judges have to balance between security of the society and rehabilitation or correction of the criminal.

# Utility of Probation System-----Delinquent



Keeps the offender away from criminal world—through adequate guidance and supervision.

Fear of punishment---deters from law breaking—prevents from revengeful attitude towards the society.

Prevents evils of institutional vices and contamination.---avoids stigmatization.

# Utility of Probation System-----Delinquent



Rehabilitation through own efforts ----self sufficient self confident, self control and self for regulation.----suitable for free living in society.

Enables to attend domestic obligations and support the family financially.

Seeks to socialize due to necessary liberty

# Utility of Probation System-----Society



Interests of society best served –when members play positive role.

Training of offenders by sending to various educational vocational and industrial institutions-----secures a livelihood--- leads upright life .

No longer a burden on the society but contributes to national economy.

# Utility of Probation System ----- Probation officer



Gets a closer insight to offenders life and know real causes of crime– suggest remedies

Practical approach to the crime problem .

If properly administered, helps in socializing of criminal procedure.

Helps in individualization of treatment with more exactness

# Major functions and requirements of probation officer



Legal implications involved --- functions of various personnel---- policy issues .

Information of offenders antecedents – social and personal problems leading to the act

Attitudes and his readiness to co operate with the probation staff

Knowledge of functions and responsibilities of as a probation officer.

# Functions



Investigation and surveillance

Use of professional control to modify offenders behaviour

Acting as legal authority with responsibility of value change.

Decision making