A Critical Appraisal of the Probation System as a Corrective Device

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The origin of crimes in modern societies is mainly due to the sociological context in which an individual offender is situated. Without understanding the sociological context, the crime cannot be understood; and without its understanding, its prevention cannot be effected.

In analysing the causes of crimes, the American sociological researches illustrate, that modern societies which are organised on the basis of industrial economy contain disintegrating factors in the social organisation. This disintegration of the social organisation brings about heterogeneity in values governing that social organisation. This leads to the existence of numerous normative systems, each with its own value system. If such value systems are different then there will be conflict of values and what is legal is forced to exist with what is illegal. The distinction becomes thin. In such situations these enquiries throw light upon the significance of legality. That is, the term 'legal' has its connotation which evolved historically during feudal days when there was great stability in those societies due to the operation of a single value system. But how far such connotation can be applied to modern societies which are qualitatively different from feudal organisations? This is the sub-

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stances of the reformatory theory of punishment of offenders, that has become popular after the advent of the 20th century.

To understand this, an analysis of the present sociological context of India is to be made. Here there are many value systems in existence. The first value system is the constitutional value system. This system itself produces other normative systems due to the industrial economy that is existing in the polity, which have given rise to normative conflict in the whole system.

How these conflicts in normative systems originate? The Constitution of India in its preamble assures on the basis of equality - political, social and economic. This means that the political philosophy underlying the Indian-polity is egalitarian which holds the promise to all that they can desire anything and realise it. This can happen when there is maximum production. Maximum production presupposes that there should be encouragement for individual initiative based on merit and competition, which is individualistic, more akin to western social organisations.

These social organisations need an infrastructure based on mobility of the individuals to man the different aspects of the economic organisation. This mobility proceeds in two ways—

i) the industrial organisations attract competent individuals, and

ii) the individuals themselves under the egalitarian ethos seek to better themselves economically and migrate.

From here starts a chain of reactions which end up in the disintegration of the homogeneity of the social organisation. This is because of migration, the family structure becomes small and individual needs cannot be attended to, as was the case under large families under feudal economy. This mobility also affects the local community and the local community also suffers the same dilution in values. This mobility also affects the local hierarchical structure of the society, because of new entrants with different sociological experiences. Thus in an industrial economy, social organisations are organised and in their struc-
ture there will always be persons competing to better themselves. In this situation, Richard A. Cloward and Lloyd E. Ohlin observe, "What seems expedient, rational, and efficient often becomes separable from what is traditional, sacred, and moral as a basis for the imputation of legitimacy, under such conditions it is difficult for persons at different social positions to agree about the forms of conduct that are both expedient and morally right. Once this separation takes place, the supporting structure of the existing system of norms become highly vulnerable." Thus each professes his own value system and thus the heterogeneity. This may lead to individual deviation or collective deviation by similar individuals, grouping themselves as groups. In this view, any individual or group deviant behaviour, can be explained.

This is the situation of our country and if such individuals come under the grip of a certain ideology or parochial views like marxian ideology with its many variations, then the heterogeneity of the social value system becomes more acute. Here the value system of those under the group of this ideology is different and conflicting with the value system of the Indian polity. To this is added, further cleavages, like caste, identity, regional identities, language identities and religious identities, to name only a few.

There is also in existence individual frustrations due to, personal limitation to compete, and such individuals have their own values.

Each of these has a normative order of its own. All these normative orders are to operate within the normative order of the constitutional value system. If these value systems are compatible, then there is no problem. When they are not compatible there arises conflict between them. In such conflicts the individuals are encouraged to withdraw their sentiments in

support of the established system of norms. Once freed of allegiance to the existing set of values, such persons devise delinquent means to achieve success. This is what is meant by normative conflict. This leads to legal and illegal mores of behaviour.

This sociological significance has to be seen in the general frame of the political philosophy of our political organisation. The political philosophy is that, individual human being is inherently good and it should be perpetuated by the institutions of the state. This is also the political philosophy of modern western democracies and most of the developing nations. Thus when they believe in the inherent goodness of the individual, the idea of the social welfare is the result of the individual welfare. So the individual welfare is the ultimate objective of the political organisation.

In this general frame, the existence of the normative conflict and the consequential legal and illegal mores, the distinction between legal and illegal become thin and obscure. More so from the point of view of the deviant individual. Such individuals think that the means that leads to their desired end is right. Here the problem is lack of appreciation of certain basic values. Can they not be educated to appreciate these basic values? and if education brings about that required change in the appreciation of basic values of a social organisation, is it not a better means to smash the origins of crime? The policy of crime-prevention must aim at effective social control. This social control is an effect of recognition and rewards secured by the general value system of the polity. It can never be deterrent penalty. This can happen only when there is absorption of these individual deviants so that they have a chance to educate themselves about the general value system of the polity.

Here the reformative theory of punishment becomes significant and it asks the question that under these circumstances how far one can conclude that an individual deviant of a legal norm be answered with a retributive vengeance? Is not, the society's well being and welfare dependent upon the reformation of such deviants? This appears to be the basis of the system of probation.
CONCEPT OF PROBATION IN COMMON LAW: WITH PARTICULAR REFERENCE TO ENGLAND AND UNITED STATES OF AMERICA:

A. England:

The concept of probation was not new to common law. There was in existence a concept akin to probation. It expressed itself in various forms like (i) securing sanctuary, (ii) right of the clergy, (iii) pardon, (iv) judicial reprieve, (v) simple way of refusal to execute the sentence and (vi) circumvention of the statute to avoid penalty.

1. Securing Sanctuary: An offender could avoid punishment if he took refuge in a church. Such offenders could stay for 40 days in the monasteries and at the end of the period they were sent out of the realm, in a particular route. This was the practice from 13th to 16th centuries. During 16th century these refugees were compelled to spend the rest of their life in an assigned locality in England. By 18th century, with the breaking up of monasteries system, this practice came to an end.

2. Right of the Clergy: The clergy enjoyed jurisdiction in law to try its own officers under ecclesiastical jurisdiction. Here the punishments were less severe and people began to claim this jurisdiction. Any one who could read the Fifty First Psalm came under this jurisdiction. This was in practice from 13th to 18th centuries. In 1705 an Act was passed which denied this jurisdiction, to ecclesiastical courts and secular courts got the jurisdiction, through which the guilty offenders were sent to a house of correction. By the end of 18th century it became obsolete.

3. Pardon: This is another mode of avoiding punishment. It has its origin in the absolute nature of Kingship and was exercised, with reference to people of high social status. It is even now present in all states. Generally the rule is ‘more severe the crime, more severe the sentence, and more probable the release by pardon.’

4. Avoidance of punishment by mere refusal to execute the sentence: This is practiced when there is a great flux in sociological factors which give rise to rapid change in values. Because of this the state itself refuses to execute sentences.
5. Judicial Reprieve. In this the courts themselves were prepared to allow the offender, on the promise of good conduct to rehabilitate himself as a useful member of the society by deferring the passing of sentence. This is the precursor of the modern probation system.

6 Technical Circumvention of the Statutes: This is a common feature in the Anglo-Saxon system of law. Here the offender can successfully manipulate the technical aspects of evidence, and on grounds of insufficiency of evidence — both on the basis of policy of law and compliance with the particular procedure of evidence he can escape punishment. Even now this is in existence.

B. United States of America:

The common law tradition of suspending a sentence on the assurance of good behaviour, was practiced in the United States of America. The offender after trial would be set at large under a system of tutelage, under which he promised good behaviour. In the event of violation he will have to face the sentence for his original crime. He was under the supervision of a person appointed by the court. This person who was appointed as supervisor had to stand surety for the offender and his promise of good behaviour.

In this context of American life, John Augustus, a shoemaker at Boston, in 1841 offered himself to be a security for an offender in the Boston Police Court, for suspending the sentence on the offender. Under this man's kindly eyes, the offender, parooven drunked, turned out to be a 'sober and industrious' citizen. This encouraged John Augustus to continue his tutelage and in the course of next 14 years he acted as surety for nearly 1946 persons which included children, women and varieties of offenders. He claimed a very high proportion of success.

After the death of Augustus, his noble work was continued efficiently by Rufus R. Cook, a chaplain at the country jail and a representative of Boston's Childrens Aid Society. Other volunteers carried on similar work. The supervision work of these,
was more systematic than that of either the sureties or police. Their work even though unsophisticated, included investigations, home-visits, job placements and other elements of probation.

This started the American practice of probation. Gradually it became institutionalised and sciences like sociology, psychology and psychiatry were made use of in the tutelary supervision. They now have gone to the extent of the institutionalisation of the whole process where even the stigma of 'probation' and 'probationer' will be erased, besides the whole community acting as a reinforcing institution of the 'supervisor' and his 'supervision.'

**CONCEPT OF PROBATION UNDER INDIAN LAW**

**A. Under ancient Hindu Law:**

The probation of offenders is not a new concept to ancient Indian polity. Its existence as a social process can be traced to antiquity - to the times of the epic periods. As a social process it is based on the inherent goodness of the individual and his bad qualities are only manifestations of the socio-economic milieu of the society at a particular phase of the evolution of society. The Indian Political Theory as expressed in the *Mahabharata* is that the polity is organised on the basis of a contract between the ruler and the ruled through which the ruled have agreed to the code of conduct necessary for the achievement of social welfare. Here the emphasis is on the individual and his free consent to be bound by the welfare concept in the polity. Within this frame the idea of *Danda* - Sanction or punishment - for deviations of legal norms are to be viewed. In the early and later Vedic periods and during the period of Epics, it was the last resort to be used to coerce the individual to comply with the legal norms. This is borne out by *Smriti* writers. This seems possible in the view of the modern sociological theories. Modern sociological theories say that during feudalistic organisation which was not egalitarian, there was feudal economy and each community or sub-community was self sufficient. The unit of the society was family, often large. Here the needs, both material and emotional, was catered to by the family of the individual.
This was reinforced by the neighbouring community. As a result there was a single value system. The family and the community provided effective means to correct the deviation from the accepted standard of behaviour. Since it was a stratified society the value system of the social organisation permeated to all its strata and there was homogeneity in the value system. This homogeneity of the value system provided no scope for deviant behaviour. In spite of this, if there was any deviation in behaviour then it would be dealt with Danda. This is how one has to understand the idea of sanction in Hindu Law. This is reinforced by the following observations in *A. M. Sinha v. A. K. Biswas,* \(^2\) "The Dharmasastras did not ordain similar punishment for similar offences irrespective of the antecedents and the physical and mental conditions of the offender" \(^3\) Dr. P. K. Sen has pointed out in his Tagore Law Lecture on ‘Penology Old and New’ that the direction given by the ancient law-givers in the matter of punishment compares favourably with the advanced modern systems as regards the relevance of the objective circumstances antecedent on the commission of the crime and the subjective limitation of the offender." \(^4\)

**B. Development of Probation System in India:**

1. **Juvenile Probation:** The Children Acts in India, both of the states as well as of the union territories, are significant. These juvenile legislation initiated juvenile probation. Before legislation, there were philanthropic bodies and social institutions for children, minors, insane persons etc. Circumstances prior to juvenile legislation, were highly unfavourable to the child-delinquent. The Children Act of 1960 for union territories deserves some special mention. S. 21 of the Act empowers the juvenile court, in appropriate cases to allow the juvenile offender to go home after advice or admonition or direct that the child be released on probation of good conduct and may order the child to be placed under the care of parent, guardian or other fit person. Such a person has to execute a bond for the

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care of such child for a period of not less than 3 years. The child may be directed to a special school or the court may direct the child (where it is over 14 years) to pay a fine. This provision is indeed undesirable because it becomes a punitive measure. What is much desired is 'treatment' and not punishment. The child may be placed under the supervision of a probation officer for a period of not less than 3 years. If the report of the probation officer on the child is unfavourable, the child has to be sent to a special school. There the child is kept under an administrator and is in his safe custody while under detention. It is the duty of such administrator to take good care of the child.

The names of such children should not be published and no report in any newspaper, magazine or news sheet is permitted to disclose the name, address or school or any other particulars relating to the juvenile delinquent. The photo of such child should not be published. When a child is kept in a children's home or special school, the administrator, if he thinks it suitable and desirable, may release the child from such home or school and grant him a written license for such period and on such conditions as may be specified in the licence. Accordingly he may permit the child to live with or under the supervision of any responsible person named in the licence who is willing to receive and take charge of the child with a view to educating him for some useful trade or calling.

The Children Act of Mysore 1964 deserves some special mention here in this context. The probation officers appointed by the state government come under the supervision and guidance of juvenile courts and they are considered as officers of the court.\footnote{See Children Act (Mysore), 1964 Ss. 35, 36.}

The joint trial of child and adult is prohibited by the Act. The Act contemplates the trial of the child in privacy and normally prohibits the appearance of legal practitioners. The court may require the presence of parent or guardian or may dispense with it as well. Children suffering from dangerous dis-
eases may be committed to approved places. All reports of probation officers are treated as confidential. The Act has empowered the Government to establish Certified Schools, Remand Homes and other Institutions. The Act under Chapter VI has contemplated special offences like employing children for begging, sale of tobacco etc. to children and others and has made them punishable. The Act has also contemplated measures for the care, protection and detention of victimised children. Chapter IX of the Act provides for the maintenance and treatment of committed children. Chapter X of the Act empowers the state government to establish or recognise an after-care organisation and vest them with necessary powers for effectively carrying out their functions under this Act. It also empowers the State Government to establish hostels for homeless children in principal cities and towns. Disqualifications attaching to convictions are removed under S. 93 of the Act.

2. Adult Probation: The developments in America regarding Probation attracted the attention of the European States in the middle of the last century and these nations caught the eye of the Indian Legislators also. The Indian Jails Committee recommended that a finding of “convicted and discharged” should be recognised in Indian penal law.

Then the idea of a conditional sentences was incorporated in law. This was similar to judicial reprieve with reference to a class of offences which are thought to be less serious. It was regarded as adequate penalty for occasional and first offenders in substitution of imprisonment. The Criminal Procedure Code 1872 S. 562 envisages, the benefit of probation of good conduct provided they are young and their offences are not punishable with more than two years imprisonment. This was amended in 1888 to apply to first offenders below 21 years of age guilty of offences not punishable with death or transportation for life; and to first offenders above 21 years guilty of offences punishable with imprisonment for not more than seven years.

These were the beginning of probation in India before the enactment of the Probation of Offenders Act, 1958. The courts under this Act have the power to release certain offenders after
admonition or on probation of good conduct. This they can do having regard to the circumstances of the case including the nature of the offence and the character of the offender. This Act enumerates the duties of probation officers, who are declared as public servants. They have the power of inquiry, supervision and advice. Their bonafide acts have been legally protected and they are subject to the control of the District Magistrate. They are appointed by the State Government or they may be recognised as such by the State Government. They may be persons attached to societies recognised by the State Government. Any other person who in the opinion of the court is fit to act as a probation officer, in exceptional circumstances, is considered a probation officer.

The courts under this Act have the power to release certain offenders after admonition or on probation for good conduct. The offender may be required to enter into a bond with or without sureties, to appear and receive sentence when called upon during that period, which should not exceed 3 years. The released offender is expected to keep peace and be of good behaviour. Before making the release order, the court is to take into consideration the report of the probation officer, if any, and should be satisfied, that the offender or his surety has a fixed place or abode or regular occupation in the jurisdictional limits of the said court. The court, if it finds fit, may pass a supervision order also, placing the released offender under a probation officer for not less than a period of one year and may also impose conditions of supervision. The conditions may be with respect to residence, abstention from intoxicants and any other matter with the object of preventing the recurrence of the same crime or any other crime. The court has power to require the released offenders to pay compensation for loss or injury caused to any person by the commission of the offence and may also direct him to pay costs.

In case of offences committed by persons under 21 years of age (offences other than those punishable with imprisonment

7. Id., S. 13(c).
for life), the court, even when it finds him guilty, shall not sentence him to imprisonment unless it is satisfied that the circumstances are such, that the benefits of S. 3 & 4 of the Act ought not to be extended to him and in such cases the court should specify the reasons therefore clearly. Before taking such a step, the court shall call for a report from the probation officer and give due consideration for that. Such reports of probation officers shall be treated as confidential. The conditions of probation stipulated by the court are subject to variation after scrutiny of the application by the probation officer to that effect. In cases of breach of conditions by the offender, the court may issue a warrant of arrest or a notice to the offender and his sureties to appear before the court and explain. It may sentence him for the original offence or as a more lenient measure impose a penalty (not exceeding 501-Rs.) for the breach, subject to the continuance in force of the bond. If such penalty is not paid, the court may sentence the offender for the original offence.

S. 12 of the Act is very significant in the sense that a person found guilty and who is dealt with under SS. 3 & 4 shall not suffer disqualification attaching to a conviction of an offence under such law. This is a reformatory measure aimed at restoration of the offender back to society. This benefit, it is noteworthy, is not extended to the offender, who after release, is sentenced for the original offence.

**Judicial Approach to the Concept of Probation in India - Some Leading Cases Decided by the Supreme Court of India.**

The Probation of Offenders Act, 1958 as a piece of social legislation has come in for judicial scrutiny in several cases. It is intended here to give an account of the attitudes adopted by the Supreme Court towards some of the important provisions of the Act.

The Supreme Court of India has in the interpretation of this enactment consistently adhered to the view that unless prohibited by legislation, it has shown its willingness to take the
criterion of the Probation of Offenders Act, the criterion being 'having regard to the circumstances of the case including the nature of the offence and the character of the offender' as expressed in section 4 of the Act. To fix the significance of this abstract formulation of legislation, as a condition for the application of the Probation of offenders Act, it has gone to the facts of each case and its social context. It has thus emphasised the socio-economic nature of the origins of crimes. In this it has not adopted any dogmatic view with reference, either to the offender or to the deterrence that the punishment envisages.

This can be seen in its many pronouncements about allowing the offenders on probation of good conduct. In a series of cases of offences against the Central Excise Act, it has gone to the facts of the case to ascertain the nature of offence and of the offender. In *Ratanlal v. State of Punjab* the Supreme Court remanded a case to lower courts to consider whether the offender can be dealt with under the Probation of Offenders Act. In that case the offence was committed when the Probation of Offenders Act had not come into force and by the time of its appeal in the Supreme Court, it had come into force and the Supreme Court took a view to extend its operation retrospectively - It said 'The Act is a milestone in the progress of the modern liberal trend or reform in the field of penology. It is the result of the recognition of the doctrine that the objective of criminal law is to reform the individual offender...'. This is adhered to in all the cases and for this 'circumstances of the case' is the restraining factor.

On the question of the adulteration of food, it is of the view from 1974. In *Isher Das v. The State of Punjab,* it was if an extenuating circumstance is found on evidence, then it is prepared to accord the benefit of the Act. This seems to be the view from 1974. In *Isher Das v. The State of Punjab,* it was held that adulteration of food was a menace to the public health. The application of the Probation of Offenders Act could not be excluded in cases of persons found guilty of food adulteration.

The same trend is followed in *P. K. Tejani v. M. R. Dange*\(^\text{10}\) where the offence was committed by Gits Food Products (India), Poona, by coating supari with artificial sweeteners in violation of the Prevention of Food Adulteration Act and the appellant was convicted. In dismissing the appeal, the Supreme Court said, the rehabilitatory purposes of the Probation of Offenders Act, 1958 is pervasive enough technically to take within its wings the offences under Prevention of Food adulteration Act. But the kindly application of the probation principles to offences.... is negatived by the imperatives of social defence and the improbabilities of the moral proselytisation (which) imperils numerous innocents and this white collar crime cannot be dissuaded by probation.

But, following the same trend, the Supreme Court, whenever it finds a ground for the application of the Probation of Offenders Act, it is prepared to extend the benefit of the Act. In *Sitaram Laxminarayan Agarwal v. State of Maharastra*\(^\text{11}\) it allowed the appeal of the second appellant but refused the appeal of the first appellant. The facts were, first appellant was a trader and the second appellant was his son under 21 years of age. On the crucial day incidentally the son had gone to the shop and was vending the adulterated stuff. The issue before the Supreme Court was the application of the Probation Act. The Supreme Court accepting the contention of the second appellant observes - "if we send him back to jail, he is likely to become a hardened criminal and the present policy of penology is reform the criminals than punish them."\(^{11a}\) The same attitude is being followed by other High Courts generally.

In dealing with the crimes under the Central Excise Act, the Supreme Court expresses the same view. The Supreme Court is of the opinion that it affects the economy of the state and should not be allowed. But this is subject to the common criterion of 'having regard to the circumstances of the case including the nature of the offence and the character of the

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11a. Id., at 1572 per Fazal Ali J.
offender.' In *A. M. Sinha v. A. K. Biswas* the respondents who were young men under 21 year of age with a rustic background, were found in possession of primary gold without permit. They were charged under R. 126 P. 1 (i) and 126 P. 2 (ii) of the Defence of India Rules 62, for failure to make a declaration in respect of the gold. They pleaded guilty and said that they were taking the gold for marriage purposes. The trial court released them on probation which was confirmed by the High Court. Against this the excise authorities appealed to the Supreme Court. The issue before the Supreme Court was whether the Probation of Offenders Act apply to offenders under Customs Act 1962 and to those parts XII A of Defence of India Rules 62. It answered this question in the affirmative. Tracing the history of probation and it being an aspect of penology from the period of the *Dharmasastras*, the Supreme Court observed - 'The Probation of Offenders Act is a reformative measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration can be usefully rehabilitated in society.... But the novice who strays into the path of crime, in the interest of society be treated as socially sick. Crimes are not always rooted in the criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of Offenders Act recognises the importance of environmental influence in the commission of a crime and presents a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a criminal who after a jail term, is apt to think that he has no more to loose or learn, (which) may breed a litter of crime.*

But in *Superintendent of Central Excise v. Bahubali* the same Court has held that the Defence of India Act 1962 and the Defence of India Rules 1962 had under Section 43 of the Act overriding effect and excluded the operation of the Probation of Offenders Act. The facts were, the respondent was in possession of primary gold and was found guilty for contra-

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12a. *Id.*, at 1820 *per* Chandrachud, J.
vention of the Defence of India Rules 1962 S. 126 P. 2 (ii). He was allowed the benefit of probation. This was challenged by the Appellent in the appeal before the Supreme Court. At the time of the crime the Defence of India Act 1962 was in force. But at the time of the decision of the Supreme Court, it was not in operation. The Court took the view on the basis of the Objective of the Defence of India Act 1962 which was passed to meet the emergency arising out of Chinese invasion. It interpreted S. 43 to have over-riding effect to exclude the Probation of Offenders Act. Here the Court was conscious of the social security implications of the crime under the Defence of India Act 1962 where the defence of the realm should prevail.

The same view is followed in State of Maharashtra v. Natwarlal. Here the respondent was caught in possession of primary gold being hidden in various forms like jackets etc., in his residence in violation of the Central Excise Act. He was found guilty and let on probation. This was challenged in appeal. The Supreme Court said in allowing the appeal 'Even so in a case of gold smuggling we are loath to accord to the accused found guilty, the benefit of the Probation of Offenders Act. Smuggling of gold not only affects public revenue and public economy but often escapes detection.'

So far as crimes involving the corruption of public morality, the Court has taken a very serious view. The cases concerned here are related to the offences of abducting a teenage girl and propogation of obscene literature. The Court has excluded the benefit of Probation to such offenders. Again here one can see the arguments of the Court being based on 'circumstances of the case including the nature of the offence and the character of the offender.

In Smt. Devaki v. State of Haryana a village girl was abducted by the appellant. The girl, when returning to her

14a. Id. at 599 per Sarkaria, J.
village through a highway was snatched inside a taxicab and forced to inhale a potion to make her unconscious. Later she was forced to sexual submission with commercial purpose. The girl was abducted in a village in Bihar and sent to Dhanbad, to Delhi and to Chandigarh, where she got out of the clutches of this appellant. The Appellant was found guilty of the offence of abducting and wanted the benefit of probation. The Supreme Court dismissing the appeal said - 'It is an insulting stultification of the ameliorating legislation viz., Probation of Offenders Act, to extend its considerate provisions to such anti-social specialist criminals' and the provisions were not applied to this appellant.

In Uttam Singh v. State (Delhi Administration) on the question of applying the Probation of Offenders Act to the appellant found guilty under Sec. 292 of the Indian Penal Code for having sold obscene playing cards the Court said 'Having regard to the circumstances of the case and the nature of the offence and the potential danger of the accused's activity in this nefarious trade affecting the morals of society, particularly of the young, we are not prepared to release him under Sec. 4 of the Probation of Offenders Act.'

The Court has taken a conservative view in the interpretation of the offences that come under the Act. The view of the Court is in consonance with the language of the Act. The Act purports to apply to offences which do not carry a sentence of life imprisonment or death. In the interpretation of this provision the Court has always been guided by the plain meaning rule and adhered to the potential aspect of the punishment and not to the actual punishment. In Jugal Kishore Prasad v. State of Bihar where it was argued that the actual sentence be taken as the test for determining the offences to be governed by the Act, and not the potential sentence that it carries. This was with the purpose of attracting the operation of the Probation of

15a. Ibid.
16a.Id., at 1232 per Goswami, J.
Offenders Act. In that case, the offence was under Sec. 326 and 149 of the Indian Penal Code committed by the appellant who was under 21 years of age. If this contention were to have been accepted then the offence could have come under the Probation of Offenders Act, because though the offence carries the maximum punishment of life imprisonment, actually the sentence awarded will be less than the maximum. The Supreme Court rejecting the contention of the appellant said "...the plain meaning of the section is that, the section cannot be invoked by a person who is convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for the offence would not take it out of the category of offences punishable with imprisonment for life. The policy underlying the Act appears to be that, it is only in cases of not of a very serious nature viz., offences not punishable with imprisonment for life that the convicted person should have the benefit of provisions of the Act." 18 This view is followed by the other High Courts and the phrase 'imprisonment for life and death' in section 4 is interpreted further, disjunctively as to mean offences carrying imprisonment for life or offences carrying death sentence.

**CONCLUSION**

In this critical appraisal of probation as a corrective device, it is not intended, nor is it possible to draw absolute conclusions. So any conclusion drawn is purely tentative.

Probation, as a corrective devise, though western in origin was implemented indirectly under the ancient Indian legal system. But it is admitted that it was not so well organised as in the west.

It is wrong to infer that the introduction of the probation system is an unsuitable graft on the Penal Reform Movement in India. Rather it is in conformity with the concept of Danda as envisaged in the Ancient Indian Legal System. The fact that punishment or Danda should be the last resort bears ample testimony to this assertion.

18. *Id.*, *per* Khanna J. at 2525.
The Supreme Court of India has interpreted justly and equitably the Probation of Offenders Act as an instrument of social change. A study of the cases decided by the court convincingly proves that the court has never permitted abuse of the provisions of the Act by confirmed offenders who have posed a threat to social security.

The categorisation of dangerous offenders (punishable with death or imprisonment for life) and non-dangerous offenders is indeed unjust. A person who commits a single act of murder is certainly less dangerous than a habitual thief. Likewise a first offender may be really more dangerous than a previous convict. It is recommended, with the exception of those who have committed offences punishable with death sentence, the others should be entitled to the benefit of the Act including those convicted under Prevention of Corruption Act.

A considerable number of member-states of the American federation have extended the benefits of probation to almost all offences including that of manslaughter, but with the exception of offences of cheating, forgery and misrepresentation. It is suggested that a similar principle be followed in India and the benefit of probation be extended to all first offenders irrespective of the nature of the offence committed and the age of the offender.

It is suggested that persons with the right type of attitude and inclination be appointed as Probation Officers. The present practice of selection should be totally abandoned. The probation system in India has not been able to achieve the objective because of the improper and unsuitable personnel.

It is further suggested that vehicle facilities, at the cost of the State, should be provided to the Probation Officers to contact their wards who might be situated in different areas of the city. Otherwise effective contact and surveillance become illusory.