Probation in Food Adulteration Cases

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The legislative and judicial policy of probation of offenders is an instrument of enlightened criminal justice. The present day penology emphasises the reformative and preventive aspects of punishment. The slogan “bail them and not jail them” signifies the inefficaciousness of our jail system. It also pinpoints a fact that incarceration of criminals has to be a matter of last resort. Indian Parliament has amply reflected this thinking in the Probation of Offenders Act 1957 and in Section 360 of the Code of Criminal Procedure 1973.

However, probation philosophy cannot be regarded as a panacea for the ills of the Indian social and penal system. Too much emphasis on the probation of offenders cannot be allowed to outweigh the interests of the society. In other words, benevolence to one individual offender should not be allowed to so operate as to imbalance the interests of millions of innocent individuals. When a court is confronted with such a situation it has to strike a working balance between these clashing and conflicting interests. In such cases the court is expected to perform its “social engineering” function.

One such area of law in which an individual’s interests are to be counter-balanced against the interests of the whole society is food adulteration cases. In such cases the courts are

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confronted with a dilemma as to whether to release the offender on probation or not. On the one hand is the progressive penological policy of probation under the Probation of Offenders Act, 1957 and Section 360 of Criminal Procedure Code, 1973; and on the other hand is the need of curbing an anti-social and anti-national evil in the form of widespread adulteration of food articles. After all the public is also “entitled to be protected against people who consciously and deliberately ignore the rules framed for the protection of society”.  

Here the court is faced with a variety of problems: (i) should a food adulterator be at all and be ever released on probation? (ii) if yes, when and when not? (iii) if no, why not? (iv) if a food adulterator is denied the benefit of probation, will it not be nugatory of Probation of Offenders Act, 1957? (v) if a food adulterator is ultimately released on probation and sent back to his nefarious environment, would he not be a more serious menace to public health? and (vi) when a statute has provided for a minimum mandatory sentence, does it negate the benefit of probation in all cases? The courts are, time and again, required to probe these and similar questions and find solutions to them. It is proposed to examine in this paper the judicial responses and trends in regard to probation philosophy vis-a-vis food adulteration cases in consumer protection perspectives.

Perspectives of Probation of Offenders

Probation is a modern method of treatment of offenders. Probation of offenders is a universally accepted, effectively tried and widely practised non-institutional method to be used by the judiciary at their discretion to treat and rehabilitate a good variety of selected persons, especially young offenders, without sending them to prisons. It is an alternative method of dealing with offenders. It is developed as an alternative to imprisonment. It is pressed into service in cases where guilt of the accused is established but the judiciary considered that imposition of a
prison sentence upon him will do no good either to him or to
the society. The probation philosophy highlights the ineffectiveness and harmfulness of short term prison sentences.

The concept and law relating to probation of offenders is statutised in India in the Probation of Offenders Act 1957. This Act embodies the modern humanitarian approach of reforming offenders with freedom rather than punishing them. The question of releasing the offenders on probation is left to the discretion of court.4 According to D. C. Pande and V. Bagga, the concept of probation recognises the elemental need of reforming the offender within a framework fabricated for the purpose and without impairing the interests of public safety or having unwholesome side effects thereon. In their view, “It is wrong to assume that the probation merely seeks to reform the offender .... Probation is primarily directed at the protection of society rather than the reform of the offender”.5 In the words of Judge Alexander Holtzoff: “..... (T)he aim of probation is to protect society against a repetition of the defendant's depredations by rehabilitating him into a law-abiding member of the community”.6 The same view is expressed in the Wickersham Report in these words:

Probation .... has as its primary objective the protection of society against crime .... Probation is an extension of the powers of the court over the future behavior and destiny of the convicted person .... (I)n probation (there) is the recognition that in certain types of behavior problems which come before the courts confinement may be both an unnecessary and an inadequate means of dealings with the individuals involved; unnecessary because in that particular case the ends ought, i.e., the protection of society, may be achieved without the cost of confinement, and inadequate because the prison sentence may create

3. In short, P.O.A.
6. Ibid. at p. 58.
difficulties and complications which will make more rather than less, doubtful the reinstatement of that particular individual as a law-abiding citizen.⁷

The judges in India have time and again elucidated the purpose of POA. The Supreme Court, speaking through Ayyangar, J. in Ramji Missar v. State of Bihar,⁸ opined.

The object of the Act 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 normal punishment for their crime.⁹

Subbarao, J. expressed similar sentiments in Rattan Lal v. State of Punjab¹⁰ in the following words:

(A) milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of their recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him.¹¹

The Supreme Court reiterated its views again in these words:

The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail and provides for their release on probation . . . .¹²

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7. Id. at p. 57-58.
9. Id. at 1091.
11. Id. at p. 445.
This humanitarian penological concept is given statutory shape in Section 4 of POA. The relevant words of this section are: “When any person is found guilty of having committed an offence not punishable with death or imprisonment for life . . . .” It gives power to court to release certain offenders on probation of good conduct. It takes a two-pronged approach. In order to get the benefit of probation, there should be a probationable offender and a probationable offence. The following requisite conditions can be culled out from the provisions of Section 4: (1) the offence committed must not be one punishable with death or imprisonment for life; (2) the court must opine that it is expedient to release him on probation of good conduct instead of sentencing him to any punishment; and (3) the offender or his surety must have a fixed place of abode or regular occupation in a place situate within the jurisdiction of the court. 13

POA does not provide for any age qualification for the accused in order to secure the benefit of probation. However, there is an analogous provision in the Code of Criminal Procedure. 14 Section 562 of Cr. P.C., 1898 provided for the release of the offender on probation, inter alia, on the ground of “regard being had to the youth” of the offender. But there was no specific and clearcut age limit. This provision was amended in 1923. It introduced an age qualification for probation. The relevant words of the amended Section 562 (1) of Cr. P.C. 1898 were as follows:

“When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, 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 . . . .”

Thus for the first time not only the age but also the sex qualification was introduced as a pre-requisite condition for being eligible to be released on probation.

14. In short, Cr. P.C.
The Supreme Court, in *Rattan Lal v. State of Punjab*, emphasised the significance of this age qualification. It stated that this amended Section 562 distinguished offenders who are guilty of having committed an offence punishable with death or life imprisonment and those who are guilty of a lesser offence. In the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct subject to the conditions. But in case of offenders below the age of 21 years, an injunction is issued to the court not to sentence them 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 under Sections 3 and 4 of POA.

The Cr. P.C. was reenacted in 1973. The probation philosophy was embodied in its Section 360. The relevant words of this section are:

“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 . . . .”

The Section 360 of Cr. P.C. 1973 has left unaltered the *Rattan Lal* view.

Now on a perusal of the aforesaid legislative provisions and judicial *dicta*, the following criteria for the eligibility of probation could be formulated:—

(a) When the offender is not under 21 years of age and he is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, the court has absolute discretion as to whether he be released on probation or not.

(b) When the offender is under 21 years of age and he is convicted of an offence not punishable with death or imprisonment for life, the court is enjoined to lean favourably to release him on probation.

(c) When any women of any age is convicted of an offence not punishable with death or imprisonment for life, the court is enjoined to lean favourably to release her on probation.

**Consumer Protection Perspectives of Food Adulteration Cases**

Food adulteration in this country has assumed such a menacing proportion that it is perhaps the topmost social evil of the day. Its pernicious effects on the society and the nation have been manifold. The anti-social and anti-national conduct in fraudulently selling adulterated articles breeds mistrust amongst the citizens and thus weakens democracy governed by the rule of law. The statement of objects and reasons annexed to the Prevention of Food Adulteration (Amendment) Bill, 1974 highlighted the issue, in the following words:

Adulteration of food articles is rampant in the country and has become a grave menace to the health and well-being of the community. It makes a heavy dent in the already low nutritional standards, and the benefits of many public health programmes on which large sums of money are spent, are insidiously undermined. A major offensive against this evil is overdue. Keeping in view the gravity of the problem, and the growing danger which it poses to the health of the nation, it has become necessary to amend the Prevention of Food Adulteration Act, 1954, so as to plug loopholes and provide for more stringent and effective measures with a view to curb this menace.

The object of this Act is to prevent adulteration of foodstuffs, and the manufacture, storing and sale of adulterated foodstuffs for human consumption. The Act has been enacted

to bring about a uniform single legislation applicable to all the States and for regulating the law so as to prevent the adulteration of foodstuffs. The enactment is a social legislation meant for the protection of the general public. The Act aims at ensuring the purity of articles of food sold to the public and to eradicate the anti-social evil of adulteration. Misbranding is prohibited under the Act of articles of food. Legislation for preventing food adulteration serves a very important role in securing to the citizens a minimum degree of purity in the articles of food and thereby protecting and preserving public health; it also serves to prevent fraud on the consumer public. The PFAA has been enacted to curb and remedy the widespread evil of food adulteration and to ensure the sale of wholesome food to the people. It is well settled that, wherever possible without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its objects, prevent its subtle evasion and foil its artful circumvention.

I. D. Dua, J. in Municipal Corporation of Delhi v. Surja Ram emphasised the consumer protection aspect of PFAA. He stated that such legislation served a very important role in securing to the citizens a minimum degree of purity in the articles of food and thereby protecting and preserving public health. It served to prevent fraud on the consumer public. The need for supply of unadulterated food to the citizens in socialist welfare republic has great importance. The evil of sale of adulterated food affects the health of the whole nation including the children. The Kerala High Court in State of Kerala v.

24. (1965) 2 Cri. L.J. 571.
Vasudevan Nair highlighted the consumer protection aspects of PFAA in the following words:

The Act is a piece of consumer legislation. It regulates to some extent the consumer-supplier relations. Consumerists demand enforcement of discipline among the producers or manufacturers of food to ensure safety in the realm of food. The consumer's legitimate ignorance and his almost total dependence on the fairness and competence of those who supply his daily needs, have made him a ready target for exploitation. The Act is intended to protect him against outright frauds.

Probation vis-a-vis Food Adulteration Cases

The provisions of the POA indicate that its operation is not excluded in cases of person found guilty of offences under PFAA. Section 4 of POA contemplated that "notwithstanding anything contained in any other law for the time being in force" the court may apply its power under Section 4. In view of this, the Supreme Court, in Isher Das v. State of Punjab, held that POA applied to food adulteration cases. The Ishar Das view was again reiterated in P. K. Tejani v. M. R. Dange. In Ishar Das the trial Court convicted the appellant under Sections 7 (1) and 16 (1) (a) of PFAA but released him on a bond of good conduct. Bedi, J., during inspection, found that this was improper in as much as the trial court failed in its duty as it did not award the minimum sentence under PFAA. Hence, the Punjab and Haryana High Court quashed the order of probation and awarded the minimum sentence. The Supreme Court agreed that selling adulterated ice cream was a menace to public health. However, it opined that the beneficient measure which "reflects and incorporates the modern approach and latest trend in penology" was also to be advantageously made available to those young offenders who

commit the public welfare offences. Though the Supreme Court followed *Ishar Das* in *Ram Parkash v. State of H.P.* \(^{28}\) it sounded a note of caution and opined that the Court should not lightly resort to probation philosophy in cases of persons above 21 years age in food adulteration cases. D. C. Pande and V. Bagga have protested the use and application of probation system to offenders who violated the law for economic gains by engaging in unethical business malpractices.\(^{29}\)

The ‘minimum sentence’ cases seem to have produced considerable confusion at the trial and appellate court levels. In *Ishar Das* the High Court refused to give the benefit of probation on the ground that the trial court had neglected to take into account the minimum sentence provision. However, the Supreme Court took quite the opposite view and upheld the probation order. The High Courts have apparently taken a sterner view in this area and have heavily leaned against probation.

In *Lucknow Municipality v. P. Gurnani*,\(^{30}\) the accused was convicted under Sections 7 (1) and 16 of PFAA. He was sentenced to a fine of Rs. 125/- and imprisonment till rising of the court. In a revision of this sentence the High Court held that the trial court gave less than the minimum punishment, and hence, enhanced it to 6 months' rigorous imprisonment and Rs. 1000/- fine. The offence was committed 7½ years back when one of the accused was below 21 years. The Allahabad High Court rejected the plea for probation on the ground that food adulteration was a menace to public health and so there was no room to dilute the minimum sentence. The accused was held to be not below 21 years on the date on which he was found guilty by the trial court. The Madras High Court also refused the benefit of probation in *State v. Ponnuvel*.\(^{31}\) In this case the accused had violated a minium sentence provision of the Protection of Civil Rights Act. The lenient sentence was

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29. Supra n. 5 at p. 85.
substituted by the mandatory one. The High Court opined that the beneficial social legislation on probation had to give way to express legislative provision of fundamental value of social equality.

However, in another minimum sentence case the Karnataka High Court took a different view. In Rahamtulla v. State\textsuperscript{32} six persons were convicted under Section 32 of the Karnataka Excise Act, 1966. The court relied on Ishar Das and granted probation.

Bakshi, J. tried to bring order in this confusion in Ram Bahadur v. State\textsuperscript{33} He made a distinction in regard to applicability of POA between offences punishable with a minimum sentence and those not so punishable. It was categorically held that benefit of probation can be granted only in that class of cases which fall within proviso (i) or (ii) of Section 16 (1) of PFAA. Here a minimum sentence is provided. In such cases the court, “for adequate and special reasons”, is empowered to award a sentence less than the prescribed minimum sentence. In such cases POA applied. But where the proviso to Section 16 (1) of PFAA was not attracted, the court had no jurisdiction to award less than a minimum sentence and also no benefit of probation can be given.

The cumulative effect of such observation is that in cases under the PFAA, the provisions of the POA are to be used most sparingly. The following are some instances where the provisions have been so used, namely,

(a) Extreme old age and acute sickness of the accused who was not active in business and was mostly confined in bed,\textsuperscript{34}

(b) imposition of minimum sentence of imprisonment and fine likely to result in great injury to the accused and his family members who were very poor,\textsuperscript{35}

\textsuperscript{32} 1978 Cri. L.J. 109.
\textsuperscript{33} (1975) 2 F.A.C, 211.
(c) no evidence against the accused that he had anything to do with the business or its management or had any share in its profit — he was very old and sat at a petty grocery shop only momentarily,\textsuperscript{36}

(d) appellant on a short visit was asked to look after a hotel for a day-his circumstances beyond his control;\textsuperscript{37}

(e) accused a student of 20 years sat at the shop in his father’s absence — no previous prosecution or conviction,\textsuperscript{38}

(f) applicant of 22 years, not a milk seller but had other job, good antecedents and married,\textsuperscript{39}

(g) petty shopkeeper in a remote village had \( \frac{1}{2} \) kg. of haldi which was coloured by a prohibited dye,\textsuperscript{40}

(h) accused having undergone a part of prison sentence,\textsuperscript{41}

(i) sample of milk containing fat to the extent of 4.7% as against statutory requirement of 4%,\textsuperscript{42}

(j) accused heart patient with deteriorating condition, left business due to ill health,\textsuperscript{43} and

(k) accused a heart patient, no longer taking active interest in his business.\textsuperscript{44}

Dewan, J. succinctly pointed out the interrelationship between the probation philosophy and the social evil of food adul-


teration. It was again pronounced, in *Shadi Singh v. State*,\(^45\) that the adulteration of food was a menace to public health. The PFAA aimed the eradication of this anti-social evil and for ensuring purity in the food articles. Moreover, the PFAA provided for a minimum sentence of imprisonment for a period of 6 months and a fine of Rs. 1000/-. So the court should not lightly resort to the POA in the case of persons above 21 years of age. Dewan, J. fully agreed with the Supreme Court's reasoning for exclusion of probation in such cases. In the words of Supreme Court in *Prem Ballav v. State*:\(^46\)

> The imperatives of social defence must discourage the applicability of the probation principle. No chances can be taken by society with a man whose anti-social activities in the guise of respectable trade jeopardise the health and well-being of numerous innocent consumers. It might be dangerous to leave him free to carry on his nefarious activities by applying the probation principle. Moreover, adulteration is an economic offence prompted by profit motive and it is not likely to lend itself easily to the therapeutic treatment by the probationary measures.

In such cases deterrent punishment is called for. A sentence of fine holds out no fear to such persons. It is only the sentence of imprisonment that can act as a damper to the propensity to further indulge in the said nefarious activity as also may prove deterrent to others.\(^47\)

The above 'minimum sentence' cases signify the anxiety of courts in allowing a free play to the probation philosophy in food adulteration cases. There is a strong judicial and non judicial opinion against this tendency of permitting the law of probation to make inroads in the arena of food adulteration cases. The preference for reformative and preventive purposes of punishment has been made subservient to deterrent punishment. However, the legislature has struck a functional balance

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46. 1977 Cri. L.R. 12 at p. 18.
between the total rejection of probation and its total application in such cases. It inserted a new Section 20AA in the PFAA.

The Supreme Court had earlier sounded a caution that the provisions of the POA should not be lightly resorted to in case of persons above 21 years of age found guilty of offences under the PFAA. The Law Commission of India in its 47th Report recommended the exclusion of the POA to social and economic offences by suitable amendments. Presumably in response to this recommendation the legislature has in 1976 amended the PFAA by introducing a new Section 20AA therein.

Section 20AA was inserted in 1976 without any retrospective effect. So where the case occurred before 20-3-1976, Section 20AA did not apply. This Section 20AA provides: Nothing contained in the Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure, 1973 shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age. This section added a new age dimension to food adulteration cases.

One singular effect of this amendment has been not the total exclusion of probation principle in food adulteration cases but its selective implementation within its parameters. The bar under this section will not apply to persons who are under 18 years of age. Some of such selective post-amendment cases are listed below:

(a) six years elapsed since the accused was released on probation period was over, need not be sentenced,

50. See Supra n. 44.
(b) accused was an outsider on a visit looked after his father's shop released on probation,54

(c) five years elapsed since offence which was not of a grave nature, undergone one month's imprisonment, probation granted,55

(d) accused undergone sentence for more than 15 days, no previous conviction;56

(e) carrier carrying adulterated milk for others, age 16 years when offence was committed, case pending for 7 years, probation granted,57

(f) accused aged 73 years and his offence was only technical, benefit of probation given,58

(g) accused a poor harijan lady with a baby undergone a sentence of 4 months, released on probation,59

(h) accused aged 76 years, suffering from cataract and hernia, High Court did not interfere with the order of probation.60

The law relating to applicability of probation philosophy to food adulteration cases has suffered quite a number of vicissitudes. The courts have exhibited ambivalence between the progressive penology embodied in POA and anti-social and anti-national menace of food adulteration sought to be penalised by the PFFA. Occasionally, the courts have shown enthusiasm for probation a la Ishar Das. Desonant voices have been heard from different High Courts which have tended to turn their face away from probation philosophy. As against the High Courts the Supreme Court, though time and since cautioned against the liberal use of probation, has leaned more favour-

58. See Supra n. 34.
ably to it. Besides, the law of probation since 1898 was undergone change on two occasions. Both these amendments have considerably altered the requirements of the probationable offences and of the probationable offenders. The focus of probation philosophy is now on, _inter alia_, age and limits of punishments awardable to the offender’s offence. The _Rattan Lal_ view expressed by the Supreme Court still serves as guiding star even after the operation of Section 360, Cr. P.C. 1973. Briefly stated: (i) the court has absolute discretion in regard to probation in cases where the accused is above 21 years of age; (ii) but where the accused is under 21 years of age, if otherwise he is fit, the court should give precedence to probation philosophy over the public health hazard; (iii) in case of woman offender of any age the court should release her on probation.

The judicial vacillation is more evident in minimum sentence cases ranging from total rejection to total grant of probation. In this type of cases the High Courts have leaned towards deterrence and the Supreme Court towards probation. Baxi, J. in _Ram Bahadur_ sought to introduce order in this area. He pronounced that the benefit of probation could be granted only in cases covered by proviso (i) or (ii) of Section 16(i) of the PFAA. Strangely, this doctrine has neither been followed nor rejected nor even noticed in any later case. He further held, that where a minimum sentence was provided only “for adequate and special reasons”, a lesser sentence or probation should be ordered. However, in some cases the court’s insisted on passing the minimum sentence. But in the series of cases, though sparingly, probation orders were made. It is submitted that Baxi, J.’s doctrine symbolises a healthy _via media._

Section 20AA added a new age dimension in such cases. In effect, it reduced the Cr. P.C. laid down age limit of 21 years to 18 years of age. Hence, offenders under 18 years of age on their conviction are _ipso facto_ and _ipso jure_ eligible for probation. The benefit of probation would rather be quite difficult for an offender between 18 years and 21 years of age. And for those beyond 21 years of age the threat of deterrence will be dominant.