



Protection and Rehabilitation of Offenders in Indian Criminal Justice System

Shahid Meraj

Research Scholar

Faculty of Law

Allahabad University, Allahabad

Dr. Sanjeev Kumar

Assistant Professor

Faculty of Law, University of Allahabad

ARTICLE DETAILS

Research Paper

Keywords :

Offender reintegration
programmes, crime,
offenders, dignity,

ABSTRACT

Offender reintegration programmes have become a mainstay of the criminal justice system, globally. They are embraced as a proactive way to reduce crime and re-offending. Ex-offenders face several challenges during the transition from prison to the community. Upon release, many ex-offenders have common needs such as accommodation, mending of family relationships and employment, amongst others. The traditional approaches to dealing with crime favoured retribution and incarceration of offenders. Research shows that this punitive approach to dealing with the problems of crime, increased rather than decreased crime rates. The years of experimentation with the punitive and retributive approach led to skyrocketing prison populations, leading to the conclusion that a punitive approach is hardly a deterrent to crime. In light of the growing body of scientific evidence showing the limitations of a punitive approach to crime, many countries worldwide have moved towards a more holistic approach in dealing with offenders. This holistic approach abandons punishment and mainly focuses on the



need to rehabilitate and reintegrate offenders into mainstream society in a manner that reduces the likelihood of reoffending. Within this approach, communities and families from which offenders come from form an integral part of any efforts to successfully rehabilitate and reintegrate offenders. On the other hand, the rehabilitative approach is sensitive to the rights of offenders, It seeks to ensure that the worth and dignity of offenders are upheld at all times in the criminal justice system. Within the rehabilitative approach, “offenders are valued human beings and, as such, deserve the chance to redeem themselves and to live worthwhile and better lives

I. Introduction:

The current criminal justice system is often criticized for its punitive approach, which focuses primarily on punishment rather than rehabilitation. However, a progressive vision for criminal justice reform seeks to shift the paradigm from punishment to rehabilitation, with the goal of transforming offenders into productive members of society¹. This approach acknowledges that punishment alone does not address the root causes of criminal behavior, and that addressing underlying issues such as mental health, addiction, and social inequities is crucial to reducing crime and promoting public safety. The correctional system of any nation is deeply rooted in history and tradition and represents societal attitudes formed by changing legal, ethical, and societal cultural norms².

The Probation of Offenders Act, of 1958 is a law that seeks to provide the release of offenders following proper reprimand in all appropriate circumstances when an offender is not found guilty of an offence that carries a death or life sentence. This law was enacted to offer offenders a chance to demonstrate that they can behave better in public and continue to live in the same community without doing anything to endanger it. In Section 562 of the Code of Criminal Procedure, published in 1898, the first provision

¹ Falsk Raza, 'From Punishment to Rehabilitation: A Progressive Vision for Criminal Justice Reform' Constanza Vicente Department of public health, Imperial College London, available at <https://www.researchgate.net/publication/370074142> last visited on 13.10.2024.

² Dubey Divya and Agarwal Vedika, 'Overview of Correctional Reform in India: A “Different” Approach to Offender Rehabilitation', Amity Institute of Behavioural and Allied Sciences, Amity University, India, (2001). Available at <https://www.researchgate.net/publication/353648935> last visited on 13.10.2024.

addressing probation was made. Following the 1973 revision, Section 360 of the Code of Criminal Procedure³ addressed probation. Now in Section 401 of Sanhita, 2023⁴.

There are several UN treaties that provide guidance on the treatment of offenders during trial, prison and after release when they are reintegrated back to their communities. Examples of such treaties are as: the International Covenant on Civil and Political Rights (1966), the United Nations Standard Minimum Rules for the Treatment of Prisoners (2016); United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988); United National Basic Rules for the Protection of Juveniles Deprived of their Liberty (1991); United Nations Basic Principles for the Treatment of Prisoners (1991) and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1989). In all these treaties, the issue of preservation of human dignity and basic human rights of offenders.

II. Indian Legal Regime to deal with Protection of Offenders:

i. Section 3 of the Probation of the Offenders Act, 1958 deals with the power of a court to release the offender after admonition. In literal terms, an admonition is a stern warning or reprimand. When a person is found guilty of violating Section 379, Section 380, Section 381 or Section 404 or Section 420 of the Indian Penal Code, 1860 or any other offence punishable by a fine, a term of imprisonment of not more than two years, or both under the Indian Penal Code, 1860 or under any other law, Section 3 explains how the offender is benefited on the basis of admonition after satisfying the following conditions. A person shouldn't have a prior conviction for the same offence. The offender's personality and the nature of the crime are taken into consideration by the court. Instead of punishing the defendant, the court may release him on probation for good behaviour under Section 4 of the Act or release him after giving him a proper warning.

- In **Keshav Sitaram Sali v. State of Maharashtra**⁵, the appellant worked for the Railways. In the case before Special Judicial Magistrate First Class (Railways), Bhusawal, on the counts of charcoal stealing, he assisted Bhikan Murad in carrying out a charcoal theft crime. The State Government appealed the learned Magistrate's acquittal decision before the Bombay High Court after the learned Magistrate cleared the appellant of that offence. He was given a 500-rupee fine and two months of strict jail time if he didn't pay it. Some coal was stolen, with a value of Rs. 8.

³ Section 360 of the Code of Criminal Procedure, 1973.

⁴ Section 401 in Bharatiya Nagarik Suraksha Sanhita, 2023

⁵ AIR 1983 SC 291

The Supreme Court ruled that rather than imposing fines in cases of petty thefts, the High Court should grant benefits under Sections 3 or 4 of the Probation of Offenders Act of 1958 or Section 360 of the Code of Criminal Procedure of 1973.

- In **Basikesan v. State of Orissa**⁶, a 20-year-old was found guilty of an offence under Section 380 of the Indian Penal Code, 1860. As a result, the case had to be submitted under Section 3 of the Probation Act and the young person had to be released after being warned.
 - In **Ahmed v. State of Rajasthan**⁷, the court said that the benefit of the Probation of the Offenders Act does not extend to anyone who has indulged in any activity that resulted in an explosive situation leading to communal tension.
- ii. Section 4 of the Probation of the Offenders Act, 1958 talks about the release of the offender on the basis of good conduct. It is one of the Act's most crucial sections. If the perpetrator is found guilty of an offence that carries a death sentence or a life sentence, Section 4 of the Act does not apply. The circumstances of the case, particularly the crime's nature and the offender's personality, must be taken into account by the court. In order to release the offender on probation for good behaviour, the court may issue a monitoring order.

The supervisory period is not to be shorter than one year. The probation officer must supervise the individual for such a span in such a situation. In the supervisory order, the name of the probation officer should be listed. The offender can be ordered by the court to sign a bond, with or without sureties, promising to show up and receive their penalty when required during that time, which should not be longer than three years. The defendant might be released from custody if they behave well. When issuing a supervision order, the court must explain its terms and conditions to the offender and may impose any necessary conditions. The perpetrator should receive this supervision order right away. Although the probation officer's report is not required to enforce this requirement, the Court must consider it when giving a probation order for good behaviour if the material is required to be recorded.

- In **Smt. Devki v. State of Haryana**⁸, it was noted that Section 4 would not apply to the despicable offender who was found guilty of kidnapping a juvenile girl and forcing her to do sexual acts for profit.

⁶ AIR 1967 Ori 4

⁷ AIR 1967 Raj 190

⁸ AIR 1979 SC 1948



- In **Phul Singh v. State of Haryana**⁹, the court ruled that the Section 4 clause should not be erroneously and arbitrarily used in circumstances when a person in their early 20s commits rape. Due to the horrific nature of the act, the court rejected the motion for probation and found the defendant guilty.

iii. Section 6 of the Probation of the Offenders Act, 1958 talks about the restriction on the imprisonment of offenders under twenty-one years of age. According to this clause, offenders under the age of 21 are not detained in facilities where the crime did not merit a sentence of life in prison or death. The court must request the probation officer's report when the accused is under the age of 21. If the court determines that the offender is not suitable for admonition (Section 3), release on probation for good behaviour (Section 4), or both, the court may sentence the offender, under 21 years old, to imprisonment. However, the court cannot sentence the offender without stating its reasons for doing so. Whether or not Sections 3 or 4 of the Act apply must be determined by the Court. The report of the probation officer must be requested by the court for this reason.

Therefore, if the offender is under the age of 21, the Probation Officer's report is required. Before making a decision, the court takes into account the character, physical health, and mental state of the offender as well as the nature of the offence. Because it is impossible for the court to determine whether or not Sections 3 or 4 apply without taking the report of the probation officer into account, the report of the probation officer is required by Section 6 of the Act. The Court reviews the report after receiving it and then decides whether or not the criminal can be freed with a warning or probation for good behaviour. After receiving the report, if the court orders that the offender shall not be released, applying Section 3 or Section 4 of the Act, the Court can pass sentence to the offender recording the reasons for doing so.

- In the case of **Mohamad Aziz Mohamed Nasir v. State of Maharashtra**¹⁰ the appellant was under the age of 21. The appellant once enjoyed success as a well-known child actor in movies, earning various accolades. He then started hanging out with terrible people and turned to evil. The Supreme Court ruled that even if the issue pertaining to Section 6 is not brought before the High Court, the court must still take note of its provisions and provide the applicant benefit from them. It further held that Section 6 imposes an injunction not to impose a sentence of imprisonment on a person who is under the age of 21 and who has been found guilty of an offence punishable by by

⁹ AIR 1980 SC 249

¹⁰ 1976 SCC (Cri) 148

imprisonment other than that unless it is satisfied that it would not be desirable to deal with him under Sections 3 or 4. This restriction on the court's ability to impose an imprisonment sentence applies not only to the trial stage but also to the stage where the case is brought before the the High Court or any other court in an appeal or revision.

- However, in **Uttam Singh v. Delhi Administration**¹¹, the 36-year-old appellant was apprehended with three decks of cards and lewd pictures. Considering his age and the nature of the offence, the SC refused to grant him the benefit of a a probationary release.
- In **Ramji Nissar v. State of Bihar**¹², According to the Supreme Court, the purpose of the Act, of 1958 is to stop young offenders from developing into criminals by contact with more experienced criminals inside a jail. Instead of punishing them as usual for their misdeeds, misdeeds, the technique employed is to try to reform them if possible. The person's age issue is significant for punishing the offence for which he or she is found guilty, not for determining the person's guilt. Therefore, Section 6 does not apply if a court finds that the defendant was above 21 on the day the court convicted him guilty.

III. Provisions in Bharatiya Nagarik Suraksha Sanhita, 2023¹³

Section 401 of the Sanhita provides the provision for concerning with the Order to release on probation of good conduct or after admonition. These provisions are as under

1. 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 or bail bond 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.

¹¹ 974 AIR 1230 1974 SCR (3) 722 1974 SCC (4) 590

¹² AIR 1963 SC 1088

¹³ Act no. 46 of 2023

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2)¹⁴.

2. Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

3. In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Bharatiya Nyaya Sanhita, 2023¹⁵, punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

4. An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

5. When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

6. The provisions of sections 140, 143 and 414¹⁶ shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

¹⁴ Bharatiya Nyaya Sanhita, 2023

¹⁵ *Ibid*

¹⁶ Bharatiya Nagarik Suraksha Sanhita, 2023



7. The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.
8. If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.
9. An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.
10. Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958¹⁷, or the Juvenile Justice (Care and Protection of Children) Act, 2015¹⁸ or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

IV. Judicial Trend towards Probation:

- i. **Abdul Qayum v. State of Bihar** The defendant, in this case, was found guilty under Section 379 of the IPC and given a 6-month severe jail term. Together with another person who was also charged with the theft, he perpetrated it. The appellant was 16 years old when the crime was committed, and he was 18 when he was found guilty. According to Section 6 of the PO Act, the probation officer recommended that he be released on probation. According to the Probation Officer's report, the accused was not a hardened criminal or an associate of hardened criminals, therefore, imposing a prison sentence would be contrary to the PO Act's intent and instead would link him to hardened criminals.
- ii. The Trial Court refused to give him the benefit of probation, citing the fact that he was a friend of the other accused, a seasoned criminal, as justification. The High Court upheld the decision. In a case involving an appeal, the Supreme Court decided to let him live a normal life as a law-abiding citizen because it believed that if he were released on probation for good behaviour, there would

¹⁷ Act no. 32 of 2012.

¹⁸ Act no. 02 of 2016

be a chance that he would be reclaimed. In accordance with Section 4 of the Act, the conviction was overturned, and the appellant was discharged.

- iii. **Rattan Lal v. State of Punjab**¹⁹ The Supreme Court noted that both appellate courts and revisional courts are included in the term "court" in Section 6(1). As a result, any court with the power to convict and sentence the offender to jail, as well as the High Court or any court to whom an appeal or revision is taken, may make an order under Section (11)(1) of the Act.
- iv. **MCD v. State of Delhi**²⁰ It was held that it is mandatory on the part of the Court to call for a report from the probation officer before proceeding under Section 4(2) of the Probation of offender Act, 1958.
- v. **Daulat Ram v. State of Haryana**²¹: In this instance, it was decided that the purpose of this Section was to safeguard children. If the young offenders' crimes weren't heinous enough to warrant life in prison or death sentences, they wouldn't be detained. Consequently, the clause should be broadly construed while bearing in mind the meaning intended by it.
- vi. **Dalbir Singh v. State of Haryana**²² Given the necessity to consider all the relevant circumstances in this case, the court determined that probation for the offender for his exemplary behaviour was acceptable and should be imposed. "The essence of the offence" is one of the factors influencing the aforementioned opinion that cannot be ignored. Thus, Section 4 can be redressed where the court recognizes the circumstances of the situation, in particular the "character of the crime," when the court decides whether it is reasonable and necessary for the execution of a defined reason that the defendant should be released on the grounds of good conduct.

V. Conclusion and Suggestion:

The goal of the criminal justice system is to punish the offender, reform him or her, and protect society's security and that of its citizens. Thus, it serves as a corrective action. Other alternatives to incarceration, such as parole, admonition with a fine, and probation, also serve this goal just as effectively.

¹⁹ AIR 1965 SC 444

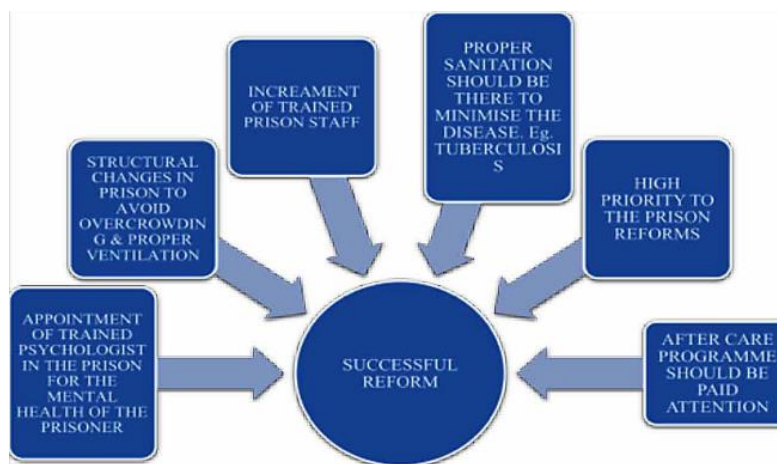
²⁰ AIR 2005 SC 2658

²¹ 1972 SC 2434

²² AIR 2000 SC 1677

The benefit of probation can also be applied in situations where people attempt suicide due to family strife, poverty, the death of close relatives, or other similar reasons. Its aim is to reform the offender and to make him see the right path. As previously said, this can be accomplished not only through legislative action but also through the administration's honesty. It is being carried out in the correct spirit in various areas of the nation.

The State Government and the resources it devotes to the programmes have complete control over the outcome of probation. In addition to others, resources are required to set up residences for those on probation, hire trained probation officers, and fund their training. To sum up, it may be claimed that the concept of probation would only be effective if the judiciary and the administration worked together and that the Magistrate (or Judge) and the Probation Officer needed to have a shared understanding. Only when a real effort is made to administer probation will it be effective. For a nation like India, where there are frequently overcrowded jails and numerous instances of human rights violations, which would harden a person's inner being, it would be quite beneficial.



Rehabilitative or restorative justice approaches prioritize individualized and holistic approaches to reducing recidivism and promoting successful reintegration into society. This means recognizing that each individual has unique needs, challenges, and circumstances that contribute to their criminal behavior, and addressing those factors in a comprehensive and personalized manner. Individualized approaches take into account the specific needs and risks of each individual, such as their mental health, substance abuse



history, education level, employment skills, family dynamics, and other relevant factors. By understanding and addressing these individual needs, interventions and programs can be tailored to effectively address the underlying causes of criminal behavior and promote positive change. Holistic approaches recognize that criminal behavior is often influenced by a variety of interconnected factors, including social, economic, psychological, and environmental factors. Therefore, addressing these factors comprehensively is important in preventing recidivism and promoting successful reintegration. This may involve providing a range of services and resources that address different aspects of an individual's life, such as education, job training, mental health services, substance abuse treatment, housing assistance, family support, and community engagement. By taking an individualized and holistic approach, rehabilitative or restorative justice approaches aim to address the multifaceted nature of criminal behavior and provide comprehensive support and resources that can facilitate positive change, reduce recidivism, and promote successful reintegration into society. These approaches prioritize understanding and addressing the underlying factors that contribute to criminal behavior, rather than solely focusing on punishment, in order to foster lasting and meaningful positive outcomes for individuals involved in the criminal justice system.