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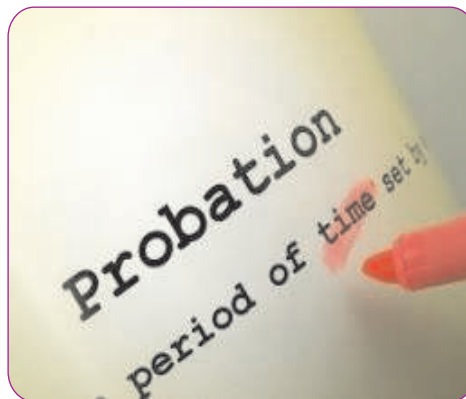
RELEASE THE OFFENDER ON PROBATION OF GOOD CONDUCT

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ABSTRACT: -

The "probation" is that preventive measure which seeks to save the offender from evil effect of institutional incarceration and affords him an opportunity of reformation. Under the probation system the offender against the penal law instead of being punished by a sentence, is



given an opportunity to reform himself under the supervision and subject to the condition imposed by the court, with the end in view that if shows the evidence of being reformed, no penalty for his offence will be imposed. But if he violates the condition, then the probation of the offender would be revoked and the court can impose

the sentence on him.

The success of the probation system mainly depends up on the efficient working of the probation officer. At present time most probation officer are heavily (work) loaded with number of cases, they may not be able to provide adequate time to every case. Thus their work load should be reduced, so that they can fully justify their duties by giving reasonable time to each case during the investigation and supervision. Further it is necessary that the probation personnel should be well qualified and efficient.

KEYWORDS: probation of good conduct, previously not convicted, Age of offender, not punishable with death and life imprisonment.

INTRODUCTION :

The object of criminal justice is to protect the society against the criminals by punishing them according to enacted penal law in the state. Thus, the punishment can be used as a method of reducing the incident of criminal behavior either by deterring the potential offenders by incapacitating and preventing them from repeating the offence or by reforming them into law abiding citizens. The modern approach of punishment is based on the reformatory theory of punishment. The ultimate object of the punishment is to establish the crime free society. Therefore, the duty of state is not finished by imposing the punishment on the offender. If the offenders only detained behind bar and they are not socialize, it will cause great harm to society. When they came out side of the prison they would take the revenge from society for their punishment and might become the harden criminals. Their empty mind during the imprisonment shall be engaged in to the constructive work. Therefore the treatment to the offender is most important during the pre as well as post conviction period. The probation is one of the form of treatment provided to offender.

India has adopted the precautionary system from the probation system of United States and United Kingdom, in both the countries; it was very successful and playing important role in criminal justice system.

The probation was emerge to prevent young person from being committed to jail where they may

associate with the harden criminals, who may lead them further along the path of crime, and to help even men of mature years who for the first time may have committed crimes through ignorance or inadvertence or the bad influence of others and who but for such lapses, might be expected to make good citizens. In such cases, a term of imprisonment may have the very opposite effect to that for which it was intended, such person would be sufficiently punished by shame of having committed a crime and by the mental agony and disgrace that a trial in criminal court would involve.

The provisions of release of offender on probation of good conduct provided under section 360 (1) of the code of criminal procedure, 1973 and section 4 of the probation of offender Act, 1958.

RELEASE OFFENDERS ON PROBATION OF GOOD CONDUCT:-

1. When any person is found guilty of having committed on offence punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of offence and the character of the offender, it is expedient to release him on probation of good conduct, then notwithstanding anything contained in any other law for the time being in force, the court may instead of sentencing him at once to any punishment direct that he be released on his entering into a bond with a without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the mean time to keep the peace and be good behavior.¹ Provided the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.
2. Before making any order under sub section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.
3. When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.
4. The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with a without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.
5. The court making a supervision order under sub-section (3) shall explain to the offender the terms and the conditions of the order and shall forth with furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

The section 4 of the probation of offenders permits release on probation of even the adult offenders who are not recidivists and show potentiality for re-adjustment to normal life in the society. The court may order release of such offender on entering a bond on probation of good conduct with or without surety. The benefit of probation cannot be extended to offenders whose offences are punishable with death or imprisonment for life. Under this Act the courts have generally declined to grant the benefit of release on probation to persons who are convicted for offences involving sex-perversity, lust loaded criminality, corruption, adulteration, against public welfare, anti social acts etc

RELEASE AN OFFENDER UNDER CRIMINAL PROCEDURE CODE:-

The section is intended to provide opportunities for reformation and rehabilitation of certain corrigible offenders instead of sentencing them to a term of imprisonment. It enables the court to release offenders after admonition or on probation of good conduct under certain circumstances. The object of section 360 is to provide the offender an opportunity to reform and rehabilitate himself as a useful and self-reliant member of society, without subjecting him to deleterious effect of prisonization. The benefit of release on probation of good

conduct is however, denied to the hardened and incorrigible offenders who are a positive danger to society and their prolonged confinement in jail is considered to be the only best alternative for protection of society against their criminal activities.

The purpose of release on benefit of probation is to prevent the young and first offenders from being sent to prison and thus avoid their contact with the habitual and hardened criminals of the jail.

The benefit of release on probation of good conduct under section 360 Cr.PC cannot be extended to offenders who have been previously convicted or those found guilty of any offence punishable with death or imprisonment for life sub-section.

CRIMINAL PROCEDURE CODE SECTION 360 (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 21 years of age or any woman is convicted of an offence not punishable with the death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the court may direct and in the meantime to keep the peace and be good behavior.

Provided that 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 the section should be exercised, he shall record his opinion to that effect, and to 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).

Nature and Scope of Section 360 Cr.PC and section 4 of the probation of offender Act:-

The criminal procedure code, 1973 has classified the offender in following categories for the purpose of release on probation:-

- A. The offender below the age of 21 years.
- B. The offender above the age of 21 Years.
- C. The woman offender.

The offender above the 21 years of age are entitled to get the benefit of the probation for an offence punishable with only fine or for an imprisonment for a term of 7 years or less. If further extent its applicability to when any person under 21 years of age or any woman is convicted of an offence not punishable with death or imprisonment for life.²

Under the probation of offenders Act 1958 has not differentiated the offenders in above criteria for release the offender on probation. It provided that when any person is found guilty of having committed an offence not punishable with death or imprisonment for life³ his is entitled to consider for such release.

The probation offender Act, 1958 is broad in reference to applicability of the offences. The code of criminal procedure 1973 proceeding the applicability of said provision for the offenders above the age of 21 years for the offences punishable up to 7 years imprisonment. While probation of offenders Act providing the benefits for all offence except the offences punishable with death penalty or life imprisonment.

In the case of Som Nath Puri Vs. State of Rajasthan⁴ the offender had been convicted for an offence under section 409 of the Indian Penal Code. Punishment for the offence under section 409 the IPC is the same as for the offence under section 326 namely, imprisonment for life, or imprisonment of either description for a term which may extended to ten years and the liability to pay fine. It was held by the Supreme Court that in such a case the provisions of section 4 of the probation of offender Act, 1958 cannot be invoked. It may be mentioned that section 4 of the probation of offenders Act also excludes from its operation persons convicted of offences punishable with imprisonment for life. In that connection, the court observed that the offence of criminal breach

of trust under section 409 of the Indian Penal Code is punishable with imprisonment for life, the provisions of section 4 are only applicable to a case of a person found guilty of having committed an offence not punishable with death or imprisonment for life.

Section 4 is applicable to all kinds of offenders whether under or above 21 years of age. This section is intended to attempt possible reformation of an offender instead of inflicting on him the normal punishment of his crime⁵ section 4 of the probation of offender Act, 1958 is based on 562 (1) of the Cr.PC, 1898 (New Section 360 of the Cr.PC 1973). There is no provision in section 360 of the Cr.PC, for placing such released offenders under supervision during probation period. Sub-section (3) of section 4 of the probation of the offenders Act, 1958 enables the court to place the offenders under the supervision of a probation officer. Under the proviso to sub-section (1) of section 562 of the Cr.PC, 1898, a magistrate of the third class or a magistrate of second class, not specially empowered by the state government in this behalf could not release an offender on probation under sub-section (1) of section 4 of the probation of offenders Act, 1958 all magistrates have jurisdiction to release an offender on probation.

The provisions contained in section 4 of the probation of offenders Act 1958 constitute a departure from the prior law as the various laws is state's only apply to cases of first offenders. Section 4 applies to recidivists also section 4 is the complete code in itself. It lays down the pre-requisite while extending the benefit of probation. It gives the discretion to the judges to form an opinion in respect to extending the benefit and imposing the conditions while releasing the offender.

The following are the considerable factors in extending the benefit of probation.

1. The accused/offender hold guilty for an offence not punishable with death, imprisonment for life.
2. The offender should not previously convicted.
3. The age of the offender.
4. Character of the offender.
5. Antecedents of the offender.
6. Circumstances in which the offence is committed.⁶

STAGE OF APPLICABILITY:-

The wording of section 4 initiated with when any person is found guilty indicates that section 4 of the Act will play its role after accused hold guilty of an offence. Unless and until accused is convicted, section 4 would not come in picture. The section 360 (1) of the Cr.PC also applicable after accused is convicted for an offence. Therefore both provisions would deal the accused after holding him guilty. When the court has convicted the accused it has to either sentence the offender or deal him instead of sentence.

INSTEAD OF SENTENCING:-

This words contained in the provision relating to probation that is section 360 of the Cr.PC, and section 4 of the probation of offender Act are containing the word "instead of sentencing". These words are reflects that the said provision play its role instead of sentence. If the sentence is passed and thereafter the court has exercised the power under this section it would be illegal. The same has been discussed in the case of Ishrat Hussain Vs. State of Maharashtra.⁷ In this case the magistrate sentenced the petitioner to suffer Rs. R.I. for one year and to pay fine of Rs. 5000/- and then ordered that he be released on his executing a bond of good behavior as contemplated under section 4 of the probation of offender Act. This is not in accordance with law. When a court intends to grant benefit of the provisions of the probation of offenders Act to an accused, the court is not required to rather is not permitted to impose a sentence upon him. This is clear from the terminology used in section 4 of the probation of offenders Act which makes it clear that the order of release on probation has to be passed instead of sentencing the offender. It is only in event of breach of the bond executed, that the offender would be liable to be sentenced.

Nature of offence and circumstance of case when the court may release the offender on probation under section 360 (1) of the Cr.PC and section 4 of the probation of offender Act enables the court to release the

accused on probation considering the nature of the offence and circumstances of the case. While releasing the accused on probation circumstances of the case needs to be scrutinize minutely, criminal justice is not a computer machine and it deals with complex human problems and diverse human beings and, therefore, differently shaped and differently circumstanced individual react differently in given situations,⁸ therefore each and every circumstances has to be judged along with the nature of the offence and character of the offender. Following are the some circumstances in which it would be appropriate to deal the offender for benefits of probation.

OFFENDER AGE AND PHYSICAL CONDITIONS:-

The offenders age and physical condition is always considerable fact to exercise the lenient view or release him on probation. In the case of Chudaman Vs. State of Maharashtra⁹ the Bombay High Court observed that the offender has been unfortunate in life, having met with accidents leading to a permanent disability after his conviction, the report of the probation officer, the fact that the offender had no previous criminal record before he was arrested in the said case and that, even after the said incident, the offender is not said to have committed any other offence, it would be proper, that the offender should be given the benefit of the provisions of the Act.

The issue of young age also deal by the Bombay High Court in the matter of Farukh Shaikh Mohammed Vs. State of Maharashtra¹⁰ that the appellant was hardly 19 years old at the relevant time and the overact the attributed to him occurred in the course of quarrel between two cricket teams and, therefore, he deserves leniency. Offender had been married and has children as well as his parents at his home to look after. He is the only bread winner in the family. There was no criminal record prior to the incident as well as during the last past 19 years after the Stray and unfortunate incident took place. The District probation officer has filed his report which is part of the record. The probation officer as well as the concerned police station have reiterated that since the date of incident there is no criminal activity which could be attributed to the offender after release from jail on bail. He is working as a technician with the cable network operator and is also playing auto rickshaw during right time in order to earn his livelihood. He is also seen to be the only bread winner of his family consisting of his wife, children and old parents. The District probation officer has also reported that he was satisfied after detailed enquiry in the neighborhood that the offender has repented has act and appears to be a person fit for consideration to give benefit under the probation of offenders Act.

It may further be noted that, while calling for the report of the district probation officer regarding the offender, the High Court also directed the District probation officer to make the report regarding present status and condition of the mother of the deceased i.e. the complainant in those case. It is seen that complainant Smt. Sarla Michael Guri is 67 Years old and devastated due to death of her only son. She was also suffering from blood pressure, diabetes, heart problem as well as gases and requires medical expenses. She gets monthly income of Rs. 1500/- from the saving left behind by her deceased husband who died due to shock of death of his only son i.e. deceased in present case. It is also reported that said complainant Smt. Sarla lives alone and her elder son lives separately and she requires constant attention as well as finances. In view of the facts and circumstances, High Court hold that, it would be in fitness of things if the offender pays compensation to the poor lady whose only son was killed at the hands of the appellant, vide provision under section 5 of the probation of offenders Act, 1958. So far as the quantum of compensation is concerned, the amount of Rs. 50000/- would be just and proper amount for compensation to the old lady taking into consideration her present status, requirements as well as her age.

The High Court has referred various circumstances while dealing with the offender for sentence and considering all these circumstances thinks fit to release the offender on probation. It did not restrained himself to consider the circumstances and nature of the offence on the part of offender, it equally consider the situation of mother of deceased after the period of post. Offence and tried to justified all of them.

OFFENCE COMMITTED UNDER HEAT PASSION:-

It appears from the various offences in rural areas that the incidents of the crime are generally cause due

to the small agricultural disputes. The farmers due to the dispute of boundary mark under heat of passion committed the offences punishable under section 324, 325 of the Indian Penal Code. The said farmers are not criminals they are causing under the heat of passion. In such circumstances courts has to consider to extend the benefit of probation.

SUDDEN PROVOCATION:-

There are the offences of affray and rioting and unlawful assembly are cause due to sudden provocation between the groups. There is exchange of words in two groups or persons which cause the sudden fight between them. It is not the planned fight ought to cause due to sudden temptation. Therefore in such circumstances court released the offender on probation.

POVERTY:-

In the case of the blue collar criminal, many times the poverty is the cause of the crime. The offences of theft of scrape, bullocks, chickens, goats, etc are causing due to poverty. If, it reveals from the circumstances that offences committed due to poverty, the offender be released on probation, if it complying the rest of the conditions. Nowadays, the young person are committing the theft of vehicle for the easy (earning) money. The offences of chain snatching are increased. The offence of chain snatching is required well planning, well skill to drive the vehicles in speedy manner. Generally such offender are professionally committing the offences. Such offenders shall not be consider for the release on probation.

INVOLVEMENT DUE TO PEER:-

In respect of the young person the many time the juvenile and young person are involved in the activities of the crime due to the involvement of their friends, peer groups and relatives. In such cases court has to be expedient to extend the benefit of the probation.

MITIGATION:-

Lord Halsburys has enumerated the list of mitigating circumstances in his book Halsburys laws of England. The following circumstances be treated as mitigation.

1. A greater degree of provocation than normally expected;
2. Mental illness or disability;
3. Youth or age, where it affects the responsibility of the individual dependant offender;
4. The fact that the offender played only a minor role in the offence;
5. Previous good character;
6. Any assistance he may have given to the police as to offences committed by other which leads to their apprehension and prosecution;
7. Any serious delay between the commission for the offences and trial;¹¹

A court, after taking into account such mitigating circumstances exercise the discretion in favour of offender to show him leniency or release him on probation. In short offender in these circumstances entitled for the probationary treatment.

The offence against women is to be treated very cautiously. In India the atrocities against women are increase day by day. In *Ajhar Ali Vs. State of West Bengal*¹² the accused was convicted of an offence of outraging the modesty of woman punishable under section 354 of the Indian Penal Code. This was held to be "a heinous crime and with the social condition prevailing in the society, the modesty of woman has to be strongly guarded" and so the benefit of the probation of offender Act was not given to the offender.

In state of Vs. Sanjiv Bhalla¹³ the justice Lokur dealing the case of trial court laid down following principles:-

1. For awarding a just Sentence, the trial judge must consider the provisions probation of offenders Act, and the provisions on probation in the code of criminal procedure;

2. When it is not possible to release a convict on probation, the trial judge must record his or her reasons;
3. The grant of compensation to the victim of a crime is equally a part of just sentencing;
4. When it is not possible to grant compensation to the victim of a crime, the trial judge must record the reasons; and
5. The trial judge must always be alive to alternative methods of mutually satisfactory disposition of a case;

In another case where the accused are women. They were not have any criminal record or previous conviction. Having regard to their age, character and antecedents and the circumstances in which the offence was committed they should be released on probation of good conduct.¹⁴

where in one case the offender is policemen. He is supposed to have been acquainted with various provisions of law and therefore, should know as to how the words uttered could be interpreted and therefore no leniency show to such offender.¹⁵

In *Ankusha Shivaji Gaikwas Vs. State of Maharashtra*¹⁶ the Supreme Court held that while the award or refusal of compensation in particular case may be within the courts discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding or refusing compensation. This being the position of law, there is necessity of giving justice to the victim of a crime and by arriving at a fair balance, awarding a just sentence to the convicts by treating them in manner that tends to assist in their rehabilitation. It is the duty of a trial judge to utilize all these tools given by parliament for ensuring a fair and just termination of a criminal case.

The concept of probation would be effective only when the judiciary and probation department work together. The probation is a part of the reformatory process. Many offenders are not criminals but circumstances made them criminals and through misfortunes they are brought within the operation of judiciary system. By extending benefits of probation, courts encouraged their own sense of responsibility of future of the accused and save him from the stigma and possible development of criminal propensities. It is thus in tune with the reformatory trend of modern criminal justice to rehabilitate the young offenders as useful citizens.

Thus probation is the postponement of the final sentence in criminal case, given the offender an opportunity to improve his conduct and read just himself to the community, often on the condition imposed by the court and under the supervision of an officer of the court.

CONCLUSION:-

The probation offender Act, 1958 was on statute book, still our legislatures despite replacing the code of criminal procedure, 1898 with new code of criminal procedure 1973, kept the provisions pertaining to grant of probation under section 360 and 361 of the Cr.PC 1973. This makes it abundantly clear that the legislature want to apply both, code and the Act concurrently. Under section 19 of the Act restricts the scope of section 562 (1) of the code by providing that it shall ceases to apply to the states or part thereof in which this Act is brought into force. Further section 360 (1) of the Cr. PC (New Code) provides that where in any cases the court should have dealt with, an accused person under section 360 or under the provision of the probation of offender Act, 1958 but has not done so, it shall record in its order (judgment) the special reasons for not having done so. As the code and the Act present time entirely different scheme for the release of offender, so in such a state both the provisions co-exist and it is on the court to apply the relevant provision, depending upon the circumstances of each case.

FOOT NOTE & REFERENCES:-

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