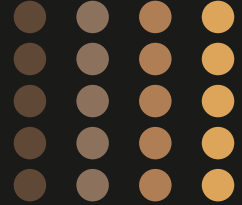


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DECONSTRUCTING THE PROBATION PARADIGM: A CRITICAL ANALYSIS OF THE PROBATION OF OFFENDERS ACT, 1958 & THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Oshin Sharma*

Abstract

Probation of offenders is generally accepted as one of the effective measures for reformation and treatment of corrigible offenders. It is built upon the premise that situational criminals commit large number of crime and they may be reformed and saved from becoming recidivists. Probation as a method of extramural reception of criminals has been known to the world since nineteenth century. This article probes the legislative scheme underlying probation sentencing in India as laid down under the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Probation of Offenders Act, 1958. This article explores the probation system prevalent in India by critically examining the Probation of Offenders Act, 1958. Tracing the roots of probation and admonition in ancient Indian jurisprudence, and the historical development of the modern legal framework, it highlights how, despite the progressive intent of the Act, its implementation remains inconsistent and underutilised. Through a doctrinal analysis, the article identifies key legal and structural gaps, including unclear legislative intent, lack of supervision, inadequate staffing, and an ambiguous sentencing philosophy. By comparing Indian practice with probation systems in the UK and the US, the article argues that reforms such as structured supervision, technological integration, and a centralized administrative framework will further probe the difficulties faced in the exercise of the power. It is also an endeavour of this work to lay down certain suggestions, which will improve efficacy of probation sentencing. The article concludes that there is the need of revising the legal policy of probation. This would necessitate the adoption of such norms as are employed and recognised by other legal systems, where probation has proven to be a successful insurance against the wrongdoer's dangerous acts, as well as giving insurance to good social risks against the prison's detrimental consequences. This necessitates a reform in the law to ensure that it follows consistent principles.

Keywords: Probation, Bharatiya Nagarik Suraksha Sanhita, Probation of Offenders Act, Ancient Indian Jurisprudence

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I. INTRODUCTION

The probation system in India presents a paradox. Admonition and conditional release have been recognized by Ancient Indian jurisprudence. Modern researchers validate the effectiveness of probation, and its success in the US and UK portrays it as a pioneer in the reformatory system. However, in India, probation has become a symbol of leniency. Since the Probation of Offenders Act, 1958 (POA), the application and procedural system has remained fragmentary. Probation is underutilised in India, as supervision is often absent, and the conditions for release are generic. The probation officials are drastically overloaded because there are not enough officers. The recent criminal laws, the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which brought comprehensive reforms to criminal law, omit to define probation or incorporate it into the sentencing framework. This article addresses three questions. Does Indian law, as formulated in the POA 1958, conceptualise probation as an alternative to incarceration or a suspended sentence, and what are the shortcomings of the probation system in India? What are the structural barriers that make probation a failure? What reforms would transform probation in India into a well-resourced sentence alternative? This analysis employs doctrinal analysis of the POA 1958 and BNSS 2023, and a comparative examination of the UK and American probation systems.

A. Meaning and Definition of Probation

Offender rehabilitation is a critical subject that has gained significant attention in recent years. There is no question that various forms of punishment may be used to reduce crime. The emergence of a more humanistic perspective on life and living has raised the issue of social rehabilitation of criminals, where punishment serves as a deterrent. It is a significant topic attracting the attention of social scientists worldwide. The argument that improved ways of reducing crime are needed has gained traction as the subject of social humanism receives greater attention. As the social order evolves, logic and social humanism become the bedrock of society, and social scientists have begun to debate whether it is necessary to take an offender's life as a form of punishment.

In his scientific work on the evolving order of society, Émile Durkheim notes that in primitive societies, punishment was rigorous because an offence was seen as damaging to the group's members.¹ Aside from that, in primitive civilizations, the perpetrator was responsible for demonstrating his innocence. As a result, in early communities, the technique of dipping an offender's hand in hot oil to establish his innocence existed. When Durkheim pointed out that, as rationality rises in contemporary complex cultures, offensive behaviours become less sacrilegious. In the same way, the form of punishment becomes rational. For example, the death sentence by hanging is considered inhumane, but it can be made more acceptable to society by using an electric chair or injecting poison. The death penalty is currently being debated in society as to whether it is necessary. This issue is becoming increasingly prominent. Similarly, in modern civilizations, it is the society's responsibility to prove an offender's guilt or innocence.

Probation emerges as one of the non-punitive approaches to dealing with criminals. For the past five to six decades, probation has proven to be a viable alternative to jail. Probation is considered as a shining prospect in the realm of rehabilitation.

The main goals of probation, according to Roy, are “first, to avoid the formation of criminal proclivities among offenders; to allow them to return to their natural environment rather than being exposed to the damaging atmosphere of a jail.”² Surprisingly, there is no legal meaning for the term probation. Probation is not defined under the criminal law including the newly enacted criminal laws. Etymologically, probation means 'I prove my worth', the term probation is derived from Latin word 'probare' which means to test or to prove.³ Probation is a conditional suspension of punishment for chosen criminals in exchange for their promise to maintain good behaviour for a set length of time, with or without the supervision of a probation officer. It is a technique of non-

¹ Émile Durkheim, *The Division of Labour in Society* (Free Press 1964).

² JG Roy, *Prisons and Society: A Study of the Indian Jail System* (Gian Publishing House 1989).

³ R Harish and V Udayavani, 'General Study on Probation of Offenders Act' (2018) 120(5) *International Journal of Pure and Applied Mathematics* 2935–2944 <<http://www.acadpubl.eu/hub/>> accessed 30 December 2025.

institutional correctional treatment for criminals that was devised as an alternative to incarceration after it was discovered that short-term imprisonment is detrimental and ineffectual.⁴

Edward Fitzgerald has given a generally accepted definition of probation in USA. As per Fitzgerald probation is “a form of disposition under which a court suspends either the sentence or the execution of the judgment of sentence of selected offenders, releasing them conditionally on good behaviour, under prescribed terms and rules and subject to the control, guidance and assistance of the court as exercised through officers appointed to supervise them”.⁵

B. Purpose and Philosophy of Probation

The importance of probation must also be understood in the backdrop of jail overcrowding in India. According to the Prison Statistics, jails housed 5,11,542 prisoners against a sanctioned capacity of 4,53,769, an occupancy rate of 112.7%. These figures indicate the need to strengthen non-institutionalised correction methods.⁶ For example, the capital city, Delhi, reported a prison occupancy rate of 194.6% in 2024, nearly double its sanctioned capacity, indicating extreme overcrowding.⁷

Probation is not available to professional or hardened criminals who are beyond redemption. Their antisocial behaviour is pervasive and dangerous. As the sole guarantee of society's safety and criminal prevention, their constant and unstable anti-social actions compel their continuing incarceration. The release of such incorrigible criminals on probation would defeat the purpose of probation in the first place, encouraging them and their potential partners to threaten public safety, erode public trust and victim confidence in criminal justice administration. The basic purpose of probation is to keep the delinquent

⁴ NK Chakrabarti, *Probation System in the Administration of Criminal Justice* (Deep & Deep Publications 1995).

⁵ CL Newman, *Sourcebook on Probation, Parole and Pardons* (Charles C Thomas 1968).

⁶ National Crime Records Bureau, *Prison Statistics India 2024: Executive Summary* (Ministry of Home Affairs, Government of India 2025) <<https://www.ncrb.gov.in/uploads/files/ExecutiveSummary2024.pdf>> accessed 11 August 2026.

⁷ *ibid.*

at bay from evil consequences of incarceration and offer him opportunity to correct his conduct to lead a socially useful life without violating the law.⁸ The philosophy underlying probation is that most people who indulge in criminal activities do so because of their environment and special circumstances, and that, in suitable cases it is possible to change the conditions which led to a person's fall from proper standards and reclaim him as a sound, normal citizen. Probation is a form of corrective measure that attempts to mitigate the rigours of incarceration rather than making the offender suffer in prison.

Probation is perceived as a let-go rather than a punishment because of a lack of understanding of the concept. Probation, when compared to institutionalisation, is more flexible and results-oriented, as it is formulated to give the delinquent a chance to correct himself with the facility of bringing him back to jail if he violates the conditions of probation. Modern criminologists favour non-institutionalized forms of punishment. They see probation as a reasonable form of punishment. The United Nations Report on Probation and Related Measures makes this very apparent.⁹ Probation has been described as a modern approach to offender treatment. Larger social and cultural trends influence it. It is a reaction to the usual oppressive and punishing attitude. Probation is described as a way of preventing crime by enhancing social circumstances and providing social services. It is the offender's social rehabilitation through criminal policy. Because of the above reasoning, we may deduce that probation is a judicial activity. It is used as an alternative to incarceration. It is a conditional release of an offender into the community. During his release, the offender will be supervised in order to help him change his ways. If the criminal violates the terms of probation, probation may be revoked.

C. Brief History of Probation

Historical precedents of probation are found across various legal systems. Clergy benefits in the British system have a strong resemblance to

⁸ JH Shah, 'Probation Services in India' (1974) 18(2) International Journal of Offender Therapy and Comparative Criminology 187, 189.

⁹ United Nations, *Report on Probation and Related Measures* (United Nations, n d) <<https://digitallibrary.un.org/record/3955564?v=pdf>> accessed 30 December 2025.

probation. In common law, a court's suspension of sentence is often considered a form of probation. The power of the King's pardon in the 12th century for transgressions is one such example. In the United States, John Augustus is renowned as the Father of Probation.

D. Historical Development of Probation in India

(i) Roots in Ancient Indian Jurisprudence

The notion of admonition has its origins in ancient Indian jurisprudence. Gentle admonition, stern reproof, fines, and physical punishment are four different ways or types of punishment that can be used singly or in combination depending on the nature of the offence.¹⁰ Preceptors, *purohitas*, and sons, according to *Brihaspati*, should be condemned to reprimand wordily. At the same time, other individuals involved in conflicts should be reprimanded or fined, and those guilty of *Mahapatakas* should be subjected to corporal punishment. This demonstrates that admonition and reproof were used as forms of punishment, suggesting that ancient Indian civilization was a sensitive society in which verbal communication was also used as a form of punishment. *Atrishamhita* incorporates Raja Dharma, whose fundamental obligations are comparable to those of our current Constitution. It provides that a king should perform five *yajñas* (*selfless duties*), among which are punishing the wicked and remaining impartial towards the litigants.¹¹ The notion of *Kṣamā*, or forgiveness, was also essential in the ancient system. Employees are prone to make mistakes or even commit wrongdoing since they are human. When workers make genuine errors or blunders, the employer should excuse them and only punish them fairly when they commit wrong.¹² The severity of the penalty must be proportionate to the seriousness of the offence and should not be excessive. According to P.V. Kane,¹³ the various purposes of punishment were recognised by Ancient Smriti

¹⁰ SC Raina, *Probation: Philosophy, Law and Practice* (1st edn, Regency Publications 1996).

¹¹ *Atri Samhitā: Samūrtar Chanādhikaraṇa* (Digital Library of India edn, 1953)

¹² M Rama Jois, 'Justice Dr M Rama Jois Speech Delivered at Tenth Durga Das Basu Memorial Lecture' (West Bengal National University of Juridical Sciences, 11 February 2017).

¹³ PV Kane, *History of Dharmaśāstra* (2nd edn, Bhandarkar Oriental Research Institute 1941) vol 2.

writers. To restrain the strong urge for revenge or retaliation and ensure that the individual does not take the law in his own hands, the State's law provided adequate punishment to the wrongdoer that satisfied the emotion of retaliation to some degree. We find the current concept of releasing an offender after light reprimand in *Manusmriti*. Manu states that the penalty should be given after scientific evaluation of the offender's recurrent propensities, antecedents, and capabilities.¹⁴ *Brihaspati*, in his '*Dandabheda Vyavastha*', wrote about exhortation as punishment over 2000 years ago. As per *Brishhaspati*, a gentle scolding should be given to a man for a minor offence. The principles contained in the *Brihaspati Samhita* clearly illustrate that the current concept of individualising punishment was contemplated even then. Factors such as the offender's caste, social standing, education, financial and other situations were meticulously considered while determining penalties. *Brihaspati* proposed that a monarch should use gentle admonition while punishing elders, domestic priests, and other respected persons. *Yājñavalkya* further stipulated that, after determining the offender's culpability, circumstances and capacity, the punishment should be administered. In his *Arthashastra*, *Kautilya* advises the monarch to impose punishment that is neither moderate nor harsh. The Smriti authors were aware that one of the major purposes of punishment for the transgression was reformation or correction of the culprit. They also stipulated that minor infractions should be punished by expiation. Therefore, it is evident that the concept of probation is not entirely new in Indian Criminal Law and that the present probation system has its roots in ancient texts.

(ii) Mauryan Period

The Maurya kings were pro-mild punishment. One of Emperor Ashok's edicts provides for the remission of penalty. He instructed his staff to review and lessen the punishments meted out to inmates, taking into account conditions that closely resemble those outlined by the Smriti authors.

¹⁴ *ibid.*

(iii) Medieval Period

Due to the mingling of religions and cultures resulting from changing rulers, such as the Mughals, Rajputs, Marathas, and, subsequently, the Peshwas, the notion of probation remained alive as a component of the Criminal Justice process in the medieval period, though not explicitly, but indirectly. Until the arrival of British rulers in India, the administration of criminal justice was based on Islamic criminal law, which did not recognise concepts of correctional procedures or admonition.

However, we can identify probationary principles during the Maratha and Peshwa rule if we broaden the concept of probation to include cases in which offenders were allowed to redeem themselves rather than face an immediate sentence. Two notable Indian probation cases illustrate this. First, the Case of Vishwanath Bhatt Patankar of Mouje Khed, who was arrested for theft in 1775-1776. The district officer ordered him to Huzur since he was unable to provide security. Janardan Bhatta Bhide stood surety for him, vowing that he would not commit any further crimes. The second case is of Janki Lagadin, who was imprisoned in Fort Visapur for adultery in 1785-1786. She was released on probation after her father, Shivaji Gaikwad, guaranteed her future good behaviour.

(iv) Modern Period

The modern system of probation in India is an outgrowth of the historical practices like clergy benefits which lasted until the mid-nineteenth century in England and America.¹⁵ This privilege allowed clergy and other literati to circumvent the harshness of the criminal law. Probation was first formally introduced in India in the Code of Criminal Procedure, 1898, under section 561, enacted by the British. Honourable Gangadhar Rao Madhav Chitanvis emphasised the importance of probation in his speech in the Legislative Council in March 1898. He stated, "*About clauses 561, 562 and 563,*

¹⁵ L Radzinowicz and JF King, *The Growth of Crime: The International Experience* (Basic Books 1977).

*those which relate to the release of first offenders, I am confident that the operation of these sections would prove very wholesome. The power to release first-time offenders on good-conduct probation is widely used in England, and the same concept is urgently needed in our nation, in the interests of both inmates and society”.*¹⁶ Section 561 of the Code of Criminal Procedure of 1898, which was replaced with section 562 after the amendment to the code in 1923. Sections 562, 563, and 564 of the Code of Criminal Procedure allowed for the conditional release of first-time offenders of various ages, depending on the nature of their offences. Later, it was renumbered as S. 360 of the Code of Criminal Procedure in 1974. The Probation of Offenders Act, 1958 (Act 20 of 1958) was enacted by the Indian Parliament on May 16, 1958, ushering in a new era in the realm of probation.

II. LEGAL FRAMEWORK IN INDIA

The Probation of Offenders Act, enacted in 1958, deals with the legal framework of probation, requiring the engagement of probation officers for preparing a pre-sentence report and supervising the offenders during probation. The Probation Act and S. 401 of the Bharatiya Nagarik Suraksha Sanhita, 2023 both preclude the Code's applicability if the Probation Act is in effect; in such instances, the state law takes precedence. Section 401 of the Bharatiya Nagarik Suraksha Sanhita empowers the Court to sentence an offender to good-conduct probation in specific situations. This section applies to both juveniles and adults, including women and individuals under and over the age of 21. These provisions apply to first-time offenders who are granted leniency because of their age, demeanour, or their predecessors, as well as to the contextual circumstances of the offence. The court uses its discretion in light of the facts of the offence, as well as the offender's age, character, and antecedents.

The importance of the Probation Act has been very lucidly spelled out by the Supreme Court in *Ramji Missar v State of Bihar*¹⁷ that the object of probation

¹⁶ Sneha Lata Tandon, *Probation: A New Perspective* (Reliance Publishing House 1990) citing *Abstracts: Proceedings of the Council of Governor General of India, Assembled for the Purpose of Making Laws and Regulations* (vol 37, Govt Printing Press 1898) 164–165.

¹⁷ AIR 1963 SC 1088.

is to prevent the turning of young offenders into criminals by their association with hardened criminals within the walls of a prison.

A. Confusion in the Legal Framework: The Overlap Between S. 360 and the Act

Sections 401 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (previously section 360 of the Criminal Procedure Code), and Sections 3 and 4 of the Probation of Offenders Act overlap significantly and provide comparable remedies. There will certainly be confusion about which provision will take precedence in such a case. Though both statutes are good, the Probation of Offenders Act is a complete code, well-structured, that prescribes the method and procedure of probation. As a result, the Act of 1958 would take precedence over Section 401 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

The Supreme Court, in *Chhanni v State of UP*,¹⁸ decided the dispute, which clearly upheld the prevalent character of the Act. The Court, while differentiating between Section 401 BNSS and Section 3 and 4 Probation of Offenders Act, observed that where the provisions of the Probation Act are applicable, the employment of Section 401 of the Code is not to be made. In such cases, it would constitute an illegality with highly undesirable consequences, which the legislature, which gave birth to the Probation Act and the Code, sought to obviate. However, the legislature, in its wisdom, has obliged the Court, under Section 360 of the Code, to apply one of the other beneficial provisions, whether Section 361 of the Code or the provisions of the Probation Act.

The Supreme Court further observed that the courts have to provide special reasons for not invoking the beneficial provisions. The comparative elevation of the provisions of the Act is further noticed in sub-section (10) of Section 361 of the Code (now s.401 of the BNSS), which makes it clear that nothing in the said Section shall affect the provisions of the Probation Act.

In examining the scope of Section 401 of the Code, we find that it relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any

¹⁸ (2006) 5 SCC 396.

person under 21 years of age or any woman convicted of an offence not punishable with a sentence of death or imprisonment for life. In contrast, the scope of Section 4 of the Probation Act is much wider as it encompasses any person found guilty of having committed an offence not punishable with death or imprisonment for life. Additionally, Section 401 of the Code does not provide for Probation Officers to assist the Courts with supervision and other matters, whereas the Probation Act does.

Furthermore, Section 12 of the Probation Act states that a person found guilty of an offence and dealt with under Section 3 or 4 of the Probation Act shall not suffer disqualification attached to conviction of an offence under any law. Such a provision is not contained in the Code.

The Court therefore held that the two statutes, with such significant differences, could not be intended to coexist at the same time in the same legal milieu, as that would lead to anomalous results. The provisions of Section 360 or any other provision of the Code do not indicate an intent to keep the requirements of Section 360 of the Code and the provisions of the Probation Act, as applicable, simultaneously in the same legal milieu. Therefore, the court referred to Section 8(1) of the General Clauses Act and held that, where the provisions of the Act have been brought into force, the provisions of Section 401 of the Code are wholly inapplicable.

Thus, as per this finding, there is no ambiguity in this respect, and hence the Probation of Offenders Act of 1958 shall take precedence over Section 360 of the Criminal Procedure Code (now S.401 of BNSS).

III. LOOPHOLES IN THE PRESENT INDIAN PROBATION SYSTEM

While the legislative framework provides the foundation for probation in India, its practical application and interpretation help us identify inconsistencies and systemic flaws. This section examines the major conceptual and practical loopholes affecting probation. It is widely acknowledged that to attain progressive correctional standards, a greater focus on probation is required. Its proponents must clarify the ideology that underpins probation and

launch a concerted educational effort to dispel preconceptions against correctional measures and explain their broader goals. We should not forget that even the greatest systems have flaws that threaten the system as a whole. However, it should not deter our efforts to improve progressively.

A. Ambiguity in Concept

Firstly, the concept and fundamentals of probation are misplaced. By definition, probation is 'suspension of sentence' or 'postponement of penalty', as seen here. Subsection 4 of Section 4 of the Probation Act allows the offender to be released if he signs a bond to appear in court and suffer a penalty if he violates his probation requirements. If he fails or violates the probation condition, the court penalises him. The court may sentence him to the original offence, or impose a fine; if he does not pay the fine, the court may sentence him to the original offence. However, probation should be viewed as a “substitute for incarceration,” rather than a suspended sentence. When probation is viewed in this light, the probationer will not be subjected to the threat of court punishment for the original offence for which punishment was temporarily postponed, but will instead face the threat of punishment by the probation officer for violating probation conditions. When a person is released from a correctional facility and commits a new offence, he is reconvicted for the new offence rather than the previous one for which he has already served time. If a prisoner breaks the prison regulations while in jail, he is dealt with by the prison authorities rather than the court. Probation services should follow the same procedure.¹⁹

B. Unsupervised Probation

Secondly, the Act provides for probation with or without supervision, giving the court the option to impose either. Nevertheless, there cannot be probation without supervision in true sense. Some experts believe that probation necessitates monitoring. The primary objective of supervision is to assist the offender in developing the desire and capacity to use his abilities to achieve goals while minimising major conflict with the interests of other people and society.²⁰

¹⁹ Ram Ahuja, 'Probation Act – A Sociological Appraisal' (1979) 40(2) Indian Journal of Social Work 201, 203–05.

²⁰ Jyotsna H Shah, *Studies in Criminology: Probation Services in India* (N M Tripathi Pvt Ltd 1973).

This perspective implies an underlying presumption that the offender may not have received adequate support from his parents, family, peers, or others. Therefore, releasing perpetrators on probation sans supervision is inconsistent with the probation philosophy because it essentially grants the probationer freedom at the expense of society.²¹ Probation is incomplete without supervision.

In the United States or the United Kingdom, there is no probation without supervision. In India, however, neither the Criminal Procedure Code of 1898 nor the Code of Criminal Procedure 1973 had any provision for supervision. Furthermore, the Probation of Offenders Act does not require mandatory supervision for offenders granted probation for good behaviour.

Moreover, Section 4(1) subsection (3) of the Act, which allows the criminal to be placed under correctional supervision while releasing the perpetrator on probation is underutilised. Probation without monitoring is improper because it is, by definition, a conditional suspension of punishment; violating the terms of a probation order might result in the order being revoked and a suspended sentence being imposed. Thus, while releasing a felon on good-conduct probation, supervision should be made necessary, and the present provision of probation without supervision should be re-evaluated.

C. Lack of Uniform Policy

There are practical difficulties with the probation framework, arising from a lack of a uniform implementation policy. Many states lack separate probation departments, and some have different departments that handle it; for example, the inspector general of prisons is responsible for probation in Gujarat, Bihar, and Kerala, whereas the Directorate of Social Welfare oversees it in Rajasthan. Under the Act, the state government or a society recognised by the state is responsible for appointing probation officers and in the absence of the person designated in the supervision order, the District Magistrate of the district where the offender resides may appoint any probation officer.²² The goal of

²¹ S Srivastava, 'The Legal Framework of Probation in India' (1970) *The Indian Journal of Social Work* 263.

²² Probation of Offenders Act 1958, s 13.

making Probation Officer services available through diverse sources is most likely to ensure that no case is closed without a pre-sentence investigation due to a lack of probation officers. However, it is common practice for state governments to appoint probation officers exclusively at district locations, with the idea that the District Probation Officer will cover the taluka courts. However, due to great distances, the District Probation Officer is unable to visit all of the talukas.

This results in inconsistency as each one has a different outlook. For example, the Law Department's Probation Officer will focus on ensuring that all legal formalities in the case are strictly followed rather than flexibly attempting to rehabilitate the probationer. The Probation Officer of the Prison Department, on the other hand, is more likely to avoid taking any risks and would rather send him to prison for a minor infraction than try to treat him openly. In contrast, the Probation Officer of the Social Welfare Department is more likely to emphasise the probationer's welfare and to regularise legal deviations.²³ As a result, it is vital to decide which government entity should be in charge of probation, whether it should be under the jurisdiction of Administrative Departments or the Judiciary, whether it should be a voluntary or professional service, or a combination of the two. Cooperation between the Probation Department and other state agencies, such as police, courts, and prisons, is essential to ensure the success of the Probation Act. According to Reid, coordination can be achieved if three key criteria exist among organisations, i.e., collaborative goals, resource complementarity, and the presence of efficient management mechanisms for whatever trades are involved.²⁴ The overall goal of all organisations, including police, courts, prisons, the community, and probation, is to regulate, decrease, and prevent crime to the greatest extent possible.

²³ S Srivastava, 'The Legal Framework of Probation in India' (1970) *The Indian Journal of Social Work*.

²⁴ William Reid, 'Interagency Coordination in Delinquency Prevention and Control' (1964) 38 *Social Service Review* 418, 422.

D. Social Investigation

The court is not required to transmit each case for social inquiry to the Probation Officer before releasing the offender on probation, according to the existing requirements of the Probation Act. The Act stipulates that the court may request a report on the accused's character from a probation officer. Section 4 (3) and 6(2) require the court to examine the Probation Officer report, if any, before making an order for probationary release. In this regard, we believe that social investigations should be made necessary in all situations where courts intend to sentence criminals to probation with or without monitoring. According to the current Probation Act, the probation officer must report to the court (i) the offender's character and personality, (ii) the circumstances in which the offender is living, (iii) his problems and needs, (iv) his interpersonal relationships, (v) factors that underpin his specific offences, and (vi) any other matters that the probation officer believes the court should consider before making the probation order. The use of the pre-sentence investigation report to set a treatment plan is clearly stated here. The diagnostic report is not intended to aid the judge in determining whether a person accused of committing a crime will be found guilty. This is demonstrated by the fact that the magistrate opens the probation officer's sealed report only after the offender has been found guilty, to learn more about the offender's character before issuing a release order. For a diligent judge to make the best use of probation, he or she must obtain comprehensive, accurate, dependable, and private information at the time of the offender's sentence. To expect a judge to simply assume whether the criminal should be sentenced to prison or placed on probation with or without monitoring is about as pointless as expecting a doctor to give medicine without first learning about the patient's illness. True, it may be argued that there are not enough probation officers, and that their workloads are excessive. However, these are administrative issues that are simple to resolve. As a result, a change to Sections 4 and 6(2), requiring a mandatory pre-sentence inquiry and requesting the probation officer's opinion on probation or commitment is both required and desired, and should be viewed as an idealistic solution.

E. Impractical Bond Conditions

Furthermore, when we look at the terms of release set out in the bond under Section 4 of the Probation Act, it may be argued that some of the bond's criteria are unnecessary.²⁵ Take, for example, the prerequisites of avoiding bad company, abstaining from intoxicants and antisocial activities, refraining from committing any crime punishable by law, and attempting to make a decent living.²⁶ In reality, these are the types of behaviours that all law-abiding members of any community are required to exhibit. When an offender is placed on probation, the expectation is that he will be given another chance to become a law-abiding person.²⁷ Why should these criteria be clearly stated in the bond when every citizen is expected to refrain from antisocial behaviour and earn money through honest means?²⁸ Especially, when the offender can be penalised even if they are not specified, only those conditions should be imposed that have a direct impact on the probationer's criminal value system, that allow the probation officer to manipulate both the formal and informal institutional and group environments in which the probationer will live during the probation period, and that are appropriate for individualised probationer treatment.²⁹

F. An Appeal Against the Trial Court by the Probation Officer

Let us look at sections 4 and 6 of the Probation Act, which deal with the release of some offenders on probation, notably juvenile and teenage delinquents, as well as section 14, which outlines probation officers' responsibilities. Section 6 (1) restricts the imprisonment of offenders under the age of 21 who are guilty of an offence that is not punishable by life imprisonment and requires their release on probation unless the court determines that the case is not within the purview of probation or that such release would be contrary to

²⁵ R Ahuja, 'Probation Act—A Sociological Appraisal' (1979) 40(2) *The Indian Journal of Social Work* 201–208.

²⁶ S Bansal, 'Probation Service in India: Some Administrative and Organizational Issues' (2016) 34(1) *Indian Journal of Social Work* 55, 58–60.

²⁷ B Dasgupta, 'Scope of Application of Probation in Correctional Work' (1959) 19(4) *Indian Journal of Social Work* 321.

²⁸ *ibid.*

²⁹ Bansal (n 26).

the interests of justice. Despite this clause, it is well known that courts do not actually release all eligible criminals, including adults and children. When sentencing offenders, judges utilize probation far less frequently than they do jail. The Probation Act includes a provision for appealing a trial court decision.³⁰ Not only can the convicted person and the prosecution file an appeal against the court's decision to refuse to deal with the offender under provisions of the Act, but the legislature has also given the Probation Officer the power to feel aggrieved about the propriety of the imprisonment order passed by the trial court and to move to the court by way of an appeal against the order. Currently, after delivering the investigative report to the court, the probation officer is simply a passive observer in the trial processes. At the same time, given his knowledge of the offender's past, he should be more active. This does not advise any changes to any sections of the Act, but emphasises the need for probation officers to take Section 11 more seriously.

IV. COMPARISON WITH THE US AND UK

Unlike India, where probation is underutilised as compared to prisons, probation in the USA is the most frequently used criminal sentence. According to Probation and Parole in the United States, 2019 report, probation is the most widely utilised criminal penalty, accounting for 56% of the overall penitentiary population and 80% of the total community supervision population.³¹ The probation framework in the USA is quite structured. The Proactive Community Supervision (PCS) model, the Strategic Training Initiative in Community Supervision (STICS) model, the Effective Practices in Community Supervision (EPICS) model, and the Staff Training Aimed at Reducing Re-Arrest (STARR) model are among the latest supervision strategies.³² All of these models are

³⁰ Probation of Offenders Act 1958, s 11.

³¹ Barbara Oudekerk and Danielle Kaeble, *Probation and Parole in the United States, 2019* (NCJ 256092, Bureau of Justice Statistics 2021) <<https://bjs.ojp.gov/content/pub/pdf/ppus19.pdf>> accessed 10 August 2026.

³² Kathryn Bird and Melena Ward, Probation in Europe: England & Wales (*Confederation of European Probation*, July 2021) <<https://www.cep-probation.org/wp-content/uploads/2021/07/Probation-in-Europe-England-Wales-final.pdf>> accessed 30 December 2025.

designed to educate probation officers on how to better use Risk-Need-Responsivity (RNR) concepts in individual case management meetings with the offenders they supervise. Similarly, in the UK, the probation framework is modern, with privatisation and facilities such as probation hostels and probation homes. In comparison, although probation is statutorily recognised, its implementation remains comparatively limited. A common feature in both the UK and the US is the role of probation officers and treating probation as a structured framework to reduce recidivism and unburden the prisons.

V. CHANGES THAT ARE NEEDED FOR BETTER IMPLEMENTATION

A. Establishing a Uniform System

The administration of probation services is overseen by several departments in various states, resulting in a lack of consistency in dealing with probation. The probation service in England and Wales is in charge of Probation Body which is a centralised legislative criminal justice service that is mainly responsible for community monitoring of offenders and for providing reports to criminal courts. It oversees adult perpetrators at all risk levels in collaboration with His Majesty's Prisons and Probation Service (HMPPS). We also need a centralised framework for probation services in India, under which state agencies would function.³³ All of the state's areas may be separated into zones depending on population, and probation services can be carried out appropriately.

B. Subjective or Offender-Specific Supervision

Not all probationers require the same level of care, and some require significantly more monitoring than others do. However, bearing in mind the probationers' requirement for 'intense', 'ideal', 'normal', and 'minimal' monitoring, the effectiveness of the probation and the development of non-criminal tendencies may easily be attributed to 'intensive' supervision alone. As a result, an ideal supervision considers the probationer's need for attention and care. The supervision must be established depending on the requirement. After all, probation is supposed to help us get back on our feet.

³³ *ibid.*

C. Use of Electronic Monitoring

This system consists of a transmitter strapped to the ankle of a probationer on house curfew or home detention, a receiver at the probationer's home that detects or confirms the presence the transmitter signal, and a computer in the probation office.³⁴ Since courts have ruled that pre-conviction electronic monitoring does not violate private rights, they will rule in favour of some form of post-conviction electronic surveillance. Although the courts have not examined the use of electronic gadgets to monitor persons released into the community, an overview of cases challenging arduous probation conditions concludes that courts may acknowledge that probationers retain a sense of privacy, which may actually prevent electronic surveillance when it fails to meet a significant stake or fails to rehabilitate or discourage criminal behaviour.³⁵ Electronic management is an integral part of the U.K Probation Service. Sobriety tags are also used to track if a community/suspended sentence order's alcohol abstinence monitoring requirement is being met.³⁶ Electronic surveillance can be either aggressive or passive.

D. Private-Sector Probation Services

A probation officer's typical caseload in India is higher than in England and the United States. In many Indian states, the situation is even more difficult, as probation officials are responsible for much larger populations. However, the number of probation cases under supervision at any given time is not a fair reflection of a probation officer's workload, because he also needs to conduct a pre-sentence examination of offenders' social backgrounds and submit a report to the court. In terms of time invested, one such investigation is equivalent to supervising five probationers. Probation officers' administrative responsibilities have also grown in recent years. As a result, in many circumstances, probation officer monitoring takes up just a small portion of the probation officer's time. A probation officer spends relatively little time per case per month, and in many cases, communication between the probationer and the probation officer is

³⁴ S Hall and R Canton, *Probation in Europe: England and Wales* (CEP 2014).

³⁵ *ibid.*

negligible. Given the inadequate number of probation officers and caseload, the need for a private-sector probation service is felt. In England, the trend toward greater private-sector probation provision is another important element of the growth of probation services in the twentieth and early twenty-first centuries.³⁷ In 1999, the Home Detention Curfew was implemented, allowing adequately risk-assessed convicts to be released early on a curfew that was electronically monitored by private sector providers.³⁸ Under the Offender Management Act 2007, which transferred responsibility for ensuring adequate probation provision from local probation boards to the Secretary of State for Justice, the authority was given to contract with voluntary and private organisations to provide some probation services.³⁹ The 2007 Act likewise established the foundation for the formation (and dissolution) of Probation Trusts.

E. Increasing Number of Probation Officers

It is a fact that a probation officer is the main functionary of the probation system. A common feature in both the UK and the US is the role of probation officers. The probation officer under the Act must also conduct a pre-sentence examination of the offender's social background and submit a report to the court, in addition to monitoring the probationer. As a result, a sufficient number of probation officers is necessary. The number of probation officers should be sufficient to provide for reasonable caseloads. The number of trainee probation officers hired each year has to be greatly increased. Every year, the government should make new hires.

F. Indeterminate Term

Section 4 of the Probation Act provides for the court to prescribe a fixed period of probation and supervision, ranging from one to three years. In this regard, it may be argued that these laws require a significant overhaul.⁴⁰ In their

³⁶ Bird (n 31).

³⁷ Hall (n 33).

³⁸ P Raynor and others, *Risk and Need Assessment in Probation Services: An Evaluation* (Home Office Research Study 211, 2000).

³⁹ *ibid.*

⁴⁰ Probation of Offenders Act 1958, s 4.

place, the indeterminate term system is proposed, which allows the court to set the minimum and maximum duration of probation, with the specific period determined solely by a Probation Board or Committee.⁴¹ If the indeterminate term system is approved, probation officers would gain authority to manage probation, thereby alleviating the time-consuming practice of seeking court approvals from their Chiefs and Directors for every decision. Given that probation officers are more concerned with offenders' welfare, it is proposed that sub-parts and sections relevant to the probation period be amended, and an indeterminate term policy be implemented nationwide.

G. Probation as Part of Treatment of Offenders in Penal Code

For probation to be effectively implemented, it must be recognised as an independent sentencing philosophy in substantive law, rather than merely a procedural mechanism. Currently, probation in India functions primarily through the Probation of Offenders Act, 1958 and the procedural code. However, the Bharatiya Nagarik Suraksha Sanhita, 2023, a new procedural statute replacing the CrPC, prescribes a new form of punishment under Section 4 but does not expressly recognise probation as a form of punishment.

Notably, probation is not acknowledged in the penal code either. As a result, probation is perceived as a relief granted by courts rather than as a legitimate alternative to incarceration.

Consequently, this legislative gap undermines the normative status of probation within the criminal justice system. If probation is to function as a genuine corrective measure and a meaningful substitute for imprisonment, it must be integrated into substantive penal law. Furthermore, specific offences that are suitable for probation should expressly provide probation as a sentencing alternative.

VI. CONCLUSION

The preceding analysis underscores the need to revise probation policy by fundamental changes to the probation system and the adoption of norms from

⁴¹ B Dasgupta, 'Scope of Application of Probation in Correctional Work' (1959) 19(4) Indian Journal of Social Work 321, 323–25.

other legal systems, where probation has proven to be a successful insurance against the wrongdoer's dangerous acts. Current approaches, such as unsupervised probation, fail to meet the true essence of probation. The Supreme Court noted in *Musa Khan v State of Maharashtra* (1976)⁴² that, while the provisions of the Probation of Offenders Act were mandatory, the courts did not appear to make wise use of them, which was necessary to protect our youths from becoming professional criminals and, as a result, a threat to society. The Probation of Offenders Act states that the court has the authority to issue probation, with or without monitoring. Probation without monitoring is as unimaginable as incarceration without the institution of incarceration. This effectively defies the principle of probation, which holds that probation is an opportunity for an offender to make amends under the supervision of a probation officer. Moreover, the social investigation report is a necessity for a probation sentence. While sentencing probation, the court has the authority to take it into account or overlook it. This, once again, contradicts the very point of probation. Early legislative action in this area would be beneficial to the healthy growth and development of probation and its institutions. A short-term solution is to relocate funds from prisons to support non-punitive reforms. Because the probation law is tangled up in the legislation and incomplete probation arrangements, the judiciary requires more prudence until the legislature understands the full weight of the idea of probation and the executive is completely prepared to execute it.

VII. SUGGESTIONS

A. There is a significant need to appoint more Probation Officers in accordance with the district's needs and the number of courts in the district. Each Probation Officer in a given region should be assigned to five criminal courts. The number of probation officers should also be proportional to the number of courts in the district.

B. For the successful execution of the Act, all Probation Officers shall receive ten days of training every year. The POs should be educated about

⁴² *Musa Khan v State of Maharashtra* (1976) 3 SCC 309.

criminological features and theories, their supervisory roles, how to write the preliminary enquiry report, social factors, legal issues, and structuring their thoughts with moral sense and ethical ideals, among other things. Every year, there is training for B.Ed and D.Ed teachers; similarly, probation officers should also have training.

C. The judges, probation department, jail system, police, and government departments should all work together. To do this, it is necessary to organise quarterly meetings of Judicial Officers, Probation Officers, Jailors, and the Superintendent of that District. The meeting's report should be transmitted to the department's higher authorities.

D. There is a pressing need to draw nongovernmental groups' attention and collaboration. To successfully assist the rehabilitative process, certain community mobilisation, involvement, and engagement initiatives should be planned.

E. The probation and parole officer should be provided with the necessary resources to visit probationers and parolees in their homes and establish relationships with their families, communities, and other stakeholders in the rehabilitation process.



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