

PROBATION IN BANGLADESH : PROBLEMS AND PROSPECTS

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Introduction

It is a recognized fact that an offender faces certain ready problems in his readjustment to the community after release. It is mainly due to the 'stigma' he earns through official punishment. In view of the socio-legal implication of the matter, final disposition of the criminal, it could be said, should neither lie in imprisonment nor in freedom, but in the conditions under which he may seek readjustment with the community after having been free.

In recognition of these facts some alternative methods of releasing offenders have arisen. These are suspended sentence, probation, unconditional release of offender after a short jail term, payment of a fine etc. All these methods have, however, not been developed on sound logic or are effective. But two of these methods—probation and parole are guided by legal philosophy with a noble purpose of saving the offenders who are not essentially criminal in attitude or in life organization. The relatively inexperienced or whose habits are still in a formative stage are considered to remain unstigmatized in the greater interest of the society.

Of the two methods probation is more appreciated and accepted means of correctional treatment all over the world. It means "a process of treatment, prescribed by the court for persons convicted of offences against the law, during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court (or other constituted authority) and is subject to supervision by a probation officer"¹ It is a type of suspended sentence, buttressed with legal restrictions, and implying study of the offender's personality and background mainly through a guiding supervision by an officially assigned person.² The principal

1. Friedlander, walter A (1968) Introduction to Social Welfare (3rd ed.) Englewood Cliffs, New Jersey P. 450.
2. Cavan, Ruth Shonle (1962) Criminology (3rd ed.) Thomas Y. Crowell Company, Illinois P. 519

characteristic of probation is, therefore, the postponement of either the final judgements or the postponement of the execution of the sentence combined with certain conditions imposed by the court under the guidance and supervision of a probation officer. Having been imbibed with the ideals "attitudes are not changed merely by platitudes," "human conducts are improved through guided human contacts" the underaged deviants preferably the first offenders (may be adult also) are, within legal framework, granted probation by the court allowing them to live freely in the community with family members, relatives, friends or foster parents under the supervision of probation officers.

The analysis of above facts would give us the following social elements of probation conducing possible adjustent for the offender in the society : (1) probation permits the probationer to live a normal life in the community and to readjust to socially acceptable attitudes without being cofined to a penal or correctional institution; (2) it is granted, on the basis of a social investigation by the court, assuming that the probationer has the potential ability to live a lawful life and (3) it provides a process of adjustment with the society under the supervision of a probation offecer.³

Origin and Development of Probation

As a modern innovation of justice, probation has deep roots in its evolution from earlier methods of dealing with the offender. The punitive reaction was at one time mitigated by the methods such as securing sanctuary, right of clergy, judicial reprieve, and technical circumvention of statutes.⁴ Under the common law of crimes the court could suspend sentences temporarily for various reasons of above nature. In the early days, the court, at times, suspended sentences by permitting convicted offenders to live freely on 'good behaviour' or on "keeping the peace." Sometimes, the offenders were compelled to furnish financial guarantee in favour of their pledge taken to project good behaviour during the suspended period. In such situations, persons came forward as volunteers to assist the offender fulfil the objective of the suspension which might be called a counterpart method of probation. John Augustus,

3. Friedlander, Op. cit. P. 450

4. Sutherland E H & Cressey D.R (1955) Principles of Criminology, (Fifth ed.) J.B. Lippincot Co. New York, P. 423

a shoe-maker of Boston, as one of the earliest volunteers (in 1841) secured the release of a confirmed drunkard from a Boston Court by acting as surety for him. He was, however, successful in his attempt to rectify the drunkard fully. He, then extended his service to a large number of offenders⁵ during next seventeen years and thus he inspired a lot of volunteers otherwise called probation officers before probation was authorized by the statutes.

The first statutory provision for probation was the Massachusetts Law of 1878. The law authorized the Mayor of Boston to appoint and pay a probation officer by empowering the municipal court to place offenders on probation.

The term 'probation' is derived from the Latin word 'probo,' 'I prove' which gives an idea of the original intent of the device i. e., it is a measure by which an individual may be given a second chance to prove his worth as law abiding citizen. However, in order to check the outgrowth of the problem of crime particularly delinquency in the modern world first time non-serious offenders—adult or underaged are helped by applying probation among some other methods to readjust by turning them out into sober, industrious and law-abiding persons. Probation is, by now, a popular and well-practised method of judicial treatment in the developed as well as developing countries in the world.

Probation in Bangladesh

Probation as a correctional programme, in Bangladesh, came into existence through the promulgation of the probation of Offenders Ordinance in 1960. During Second 5-Year Plan period, two projects: Probation of Offenders project and After Care Service Project were initiated (in 1962). At the beginning, these programmes were started separately in ten places in the country. Later in 1965, these two projects were merged into an integrated one and since then 21 units have been in operation in 21 district headquarters (mainly old) under the management of Social Service Department, Government of Bangladesh. It may be mentioned that the Probation of Offenders Ordinance 1960 primarily indicated, by definition, that there would remain a 'Probation Department' responsible for the administration

5. The number was: male - 1152 and Female - 794

of the Ordinance.⁶ The probation officer who would be working for the purpose, was to be appointed by the said probation department and whose qualifications would also be prescribed by the rules under the ordinance.⁷

After an amendment by the erstwhile East Pakistan Assembly in 1964 the Ordinance was turned into an Act, called Probation of Offenders Act, 1964. By this amendment, the responsibility of administering probation service rests with the Directorate of Social Welfare (now Social Service Deptt). Accordingly, the Social Service Department has been administering the programme of probation along with its manifold services related to case work, group work, community development and general welfare.

Existing Plight of Probation Service

The probation, though important from legal, human and social viewpoints, is a relatively sick programme compared to other programmes of the Department. The reason, as it may readily be identified, is linked somewhere with the autonomy of overall administration of the programme. Probation is explicitly an extended court function. We know that the Probation Act has empowered, aside from juvenile court, court of sessions and magistrate (of the first class) courts to exercise power in deciding cases for probation. So, granting probation to an offender is basically a function of the court. Contrawise, the Social Service Department is to entertain the client placed on probation for helping him restore, acquire personal quality for social adjustment through certain processes of case work.⁸ Now, it becomes clear that the efficacy of probation service greatly depends on the nature and degree of relationship between the judiciary and the Social Service Department in charge of administering probation service.

Ours is an oriental society and we are being oriented to many new ideas and concepts through inconsistent and differential processes. As a natural consequence, there remain variations in our attitude

6. See Probation of Offenders Ordinance, 1960 under the preliminary elaboration of the concepts, Clause [1(2) (6)]

7. Ibid, see also Appointment of Probation Officers, Clause [12 (1) (2) (3)]

8. Case work is a method of social work which intervenes in the Psycho-social aspects of a person's life to improve, restore, maintain his social functioning by improving his role-play and relationship in the social environments

towards certain things and so also prevail in the treatment process. Incidentally probation is one of such things which claims to be measured first in terms of the attitude held by the departments involved in the process. As has been indicated, probation is a regular service of particular interest of the Department of Social Service whereas it seems to be an added function of the court. As if, it is an egg, the lay of which depends on the voluntary will of the court.

In addition, the need for sincere and unequivocal support of the the police (including prison authority) and of private efforts for correction cannot be ignored. After all, all concerned departments must come to an agreement both in attitude and in commitment to making the probation drive a success.

However, based on common observation and on informal interview with the probation officers, some problems related to the execution of probation programme are listed below in a bit descriptive form :

- (a) It is an admitted fact that for proper implementation of any Act there should be 'rules' spelling out the whole work process and functions to be carried out. In case of Probation Act no such rules are made by the Government for the purpose of of carrying into effect the provisions involved in it. As a consequence, the court has no clear guidance about the referral of cases to the probation officer.
- (b) Since the functions of a probation officer encompass court, prison and the client (probationer) the office of the probation should have been somewhere in the court premises. Because, a close and regular contact with the court is a must for picking up the suitable cases likely to be placed by the court on probation calling for pre-sentence investigation.
- (c) For the purpose of granting probation interview with the under trial prisoners is a vital part of the probation-function. The officer has to face, in this connection, certain difficulties relating to physical facility and in respect of cooperation expected to be available from the prison authority.
- (d) A Probation officer has been posted to a grater (old) district headquarter and the jurisdiction of his work is the whole of

the district. The staffing pattern of the probation office is very inadequate both in size and quality. The probation officer has no field workers to assist him, not even an office assistant. It is, however, understood from a source that the probation and after care service have been added to Rural Social Service Programme (RSS) in 258 upazilas. The concerned upazila officers are to take care of this programme.⁹

- (c) The probation is a relatively uncared programme of the Social Service Department than other programmes. Administration of this programme is in many ways weak and haphazard due to lack of proper guidelines and plan of action. The administrators of this programme at the headquarter are or were never well oriented, trained or keenly interested to work out proper strategy for implementing the programme. The supervision work is also highly irregular and unsystematic. It is evident from the poor volume of statistics of cases under a probation officer.
- (f) There remains a status conflict between the magistrate and the probation officer. The probation officer officially does not possess the status as the magistrate does. The question of the status consciousness becomes prominent because of the fact that they represent two different agencies but one intervenes in other's function. As has been indicated above, due to lack of general awareness about the matter and for want of spelled out legal bindings the nature of this relationship continues to exist as such. As a result, the probation officer has to take interest unilaterally and most often go for motivating the magistrate about probation without an unjust cause.
- (g) For supervision of the female probationer there should be the provision for female probation officer. A male officer has to face some practical difficulties in rapport building, guidance and supervision of female probationer. In a tradition bound society like ours we can easily conceive of the difficulties.
- (h) It is reported that most of the probationers come from poverty stricken families. Any rehabilitation programme for them

9. Huq, Shamsul *et al.* (ed) Probation Act O Punarbashan Karzabali, Social Service Deptt. Govt, Bangladesh P. 2

immediately necessitates some sort of economic support. But, in view of this immediate need, there is no provision for giving monetary assistance in the Departmental Programme. Besides, there is no such institutional arrangement by means of which the probationers could be helped to rectify themselves through some occupational therapy.

- (i) The probation officer has to run simultaneously 'after care service'¹⁰ alongwith probation. It is, according to them, difficult in practice to organize and manage both the programme, at a time effectively. As a consequence, neither probation nor the after care service has attained any satisfactory standard.
- (j) Social Service Department being an agency of multipurpose and multilateral programmes often engages the probation officer in other types of activities on the plea and contention that the said officer is relatively free in his own domain of work.
- (k) Probation is highly a professionally skilled service. Therefore, the personnel who would remain associated with this service must have adequate knowledge, skills and expertise about probation. But, the Social Service Department has no definite policy to recruit personnel for this specialized job. Persons of diverse academic background are now in charge of probation yielding an inconsistent contribution to it.

Present Imperatives

It is an undenyng fact that probation is a consistantly coordinated effort. As probation originated in the suspended sentence and is an extension of the judicial function the major control of the matter lies in the hands of the court. On the contrary, the the supervision of the client (probationer) is essentially an administrative work, cannot be judicial because the judge is not able to handle any work outside court. Moreover, the police particularly the prison authority is also entangled with the probation system. So, in view of the above circumstances and genuine importance of the service a separate organization with the particular aim of corrections and after care may evolve in the social-legal perspective of

10. After Care is an organized service for rehabilitation of the released prisoners. It is also a programme of the Department of Social Service initiated in 1962.

the vast issue of criminal justice and crime-control. The proposed organization may be named as 'Board of Correctional and After Care Service' under which the entire programmes for correction of the deviants and rehabilitation of the released prisoners may be administered. It may also be suggested, in this connection, that by a Government Order, the proposed Board may be an autonomous organization.

It is gratifying to note that some laws like the Bangladesh Children Act, 1974 and the Probation of Offenders Act, 1964 entail some significant services for greater benefit of the society which require to be administered within a socio-legal framework of thinking. With the overall increase of criminal incidents particularly among the juvenile and the youth, it may be predicted that the Government shall have to emphasize such programmes in near future by extending the number of projects and discovering new ones like the parole.

However, to make the probation service, under discussion, effective it is immediately essential to formulate probation rules which were supposed to follow the Probation Act for better understanding of the pros and cons and the overall implication of the Act as a whole by all concerned persons and agencies.

In the existing structure, a deliberate attempt should be taken to develop a working relationship among the departments e.g. judiciary, administrative, law-enforcement and social service by mutually recognising one another's role in probation. Without mutual coherent effort, a service like probation can hardly attain a success. It is, therefore, necessary to arrange interdepartmental meetings at policy-maker's level and organize training programmes, workshops for better orientation of the relevant personnels in the field.

Since crime prevention and control is one of the most vital national programme, along with the traditional legal measures, it is an ardent necessity to discover and underscore all possible socio-legal, extra-legal and social measures which may initiate, organize and order for our purpose. In the context of the aggravated crime situation of today we need to attempt to make the existing socio-legal institutional and non-institutional programmes more viable and strongly invite voluntary NGO efforts to initiate therapeutic rehabilitation programmes for helping the deviant persons adjust and

secure honourable resettlement in the society. In this connection the foreign NGOs may particularly be asked to direct their attention to such programmes in addition to or in lieu of their so-called welfare services.

Recruitment of the probation officer may be based on certain policies and principles. As correctional work involves professional service, it goes without saying that the persons dealing with probation work should be educated in professional discipline. Social work is such a discipline having close relations with probation. In the advanced world professional social workers are generally involved in probation service. So, in the context of the above, it is necessary to recruit persons having the educational background of social work/welfare. The status of the probation officer should also be determined in equivalence with other working partners.

The programme may be extended to upazila levels. A control office for supervising and monitoring the programme activities should be set up in each district headquarter. Staffing pattern at all levels should be so that can ensure better service.

For professional development of probation there should be an adequate provision for advanced training for the probation officer in and outside the country.

Finally, it may be suggested that there should be a Training and Research-cum-Evaluation Unit in the structural design of the proposed Board so that training may be offered to the relevant personnels of the concerned departments on a regular basis. Data obtained from the fields and periodical studies concerning the status of the programme may substantially contribute to the development of indigenous training materials for the profession.

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