

IMPLEMENTATION OF PROBATION OF OFFENDERS ACT (1958) IN TAMIL NADU: A CRITICAL STUDY*

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ABSTRACT

Probation is a treatment established as an alternative to imprisonment, it provides an opportunity to reform the first time offenders involved in minor offences. Imprisonment of these first time offenders increases the chance of them becoming recidivist through association with professional offenders inside the prison. According to Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) probation not only reforms and rehabilitates the offenders but also creates a sufficient deterrence to keep them away from criminality. Hence, probation as an effective correctional treatment in criminal justice system across the world, benefits the first time offenders to reform and reintegrate through the responsive guidance and supervision of probation officers. In this context, in the year 1958, Government of India enacted the Probation of offender Act (P.O. Act) as one of its significant mechanisms in the correctional process of offenders. Against this background, the present study was conducted on the objectives (1) to examine the implementation of P.O. Act and (2) to understand the role of P.O. Act in reducing the recidivism. The present study was conducted by using secondary data derived from (1) the annual reports (2007 - 2014) of Probation branch, Tamil Nadu Prison Department; (2) from the admission notebooks of eight Central Prisons and three Special Prisons for Women located across Tamil Nadu. The study found that during the period 2007-2014 there were 7141 probation enquiries were conducted under sub-section (2) of section 4 or sub-section (2) of section 6 of P.O. Act to know whether the offender is suitable or not to release under probation

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supervision. It was found that based on those (7141) enquire reports 3919(54.9%) supervisions were ordered by the magistrates. Notably, it was revealed that among the 3919 supervised probationers only 08 (0.20%) were reverted into crime. On the other side, the study also found that there were 23993 offenders convicted for two years and below, who might be eligible to release under probation supervision by using the section 3 or section 4 of Probation of Offenders Act.

Keywords: Probation; Probation of Offenders Act 1958; Recidivism

INTRODUCTION

Ample of research studies have been done in the field of probation and its importance in correctional system in India. However, the studies regarding the implementation of the probation act and its effectiveness in correctional system have yet to be studied. Huge gap in ideal to implantation of acts, laws, policies and programmes becoming a significant challenge in Criminal Justice Administration of India created high need towards the critical studies about implementation. Hence, the present research is an initial step and attempt towards studying the implementation, focusing Probation of Offenders Act, 1958 with regard to the state of Tamil Nadu. This study also tried to shed light on the effectiveness Probation of Offenders Act, 1958 in reducing recidivism.

BACKGROUND

Earlier, imprisonment of the offender was the only approach in the penal system to control crime and to create deterrence. However, the modern penal system approach has been refined introducing new forms of sentencing such as release on admonition, the imposition of fines, probation, community service, compensation, and so on. Imprisonment of offenders who indulged in minor offences increases the chances of them becoming recidivist through association with professional offenders inside the prison and decreases his ability to readapt to the common society after the completion of imprisonment (Trayosha, 2015). Thus the new form of sentencing established as an alternative to imprisonment provides an opportunity to reform the offenders involved in minor offences. Among those new forms of sentencing, probation is an effective correctional treatment in the criminal justice system across the world, as it benefits the minor offence committers to reform and reintegrate through the responsive guidance and supervision of probation officers (Ghosh, 2008).

Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), (2004) also indicates that probation not only reforms and rehabilitates the offenders but also creates sufficient deterrence to keep them away from criminality. Hence, United Nations recommends all the countries to adopt the probation system as a major mechanism of policy in

the field of crime prevention and offenders' treatment. In this context, in the year 1958, Government of India enacted the Probation of offender Act (P.O. Act) as one of its significant mechanisms in the correctional process of offenders.

MILESTONES OF PROBATION SYSTEM IN INDIA AND IN THE STATE OF TAMIL NADU

In India, initially the provision releasing the minor offender on probation supervision was dealt by the Code of Criminal Procedure (CrPC), 1898 under the sections 562 to 564. Slowly, in the year of 1916, the then Union Government of India appointed a committee to strengthen the Code of Criminal Procedure (CrPC), recommended an amendment in section 562 of CrPC and extended the provision of probation supervision to all non-grievous offences. The Indian Jail Reforms Committees (1919-1920) suggested in its report that the minor offences are treated more liberally and it also suggested that offenders in such cases be released after admonition. In the year 1923 to muddle through the extended scope, in Bombay, Madras and Calcutta number of Remand Homes, Rescue Homes, Certified Schools and Industrial Schools were established. As a stepping stone towards the creation of separate and special act for probation in the year 1931, All India Probation Bill was drafted followed by circulated to all the provincial governments for their comments and intimated them in the year 1934 that they were liberated to enact suitable laws on the lines of the draft All India Probation Bill. After that, the Madras Provincial Government (present Tamil Nadu state is the major part of Madras Provincial Government) was the first government adopted the probation system through the enactment of 'The Madras Probation of Offenders Act, 1936' which was the first separate and special act for probation in India. Later on, this act was replaced by the Central Act enacted during the year 1958 known as 'The Probation of Offenders Act, 1958, Central Act (IX of 1958). According to that, the Government of Tamil Nadu framed rules in 1962 to execute the Act. Meanwhile, the major amendments in Code of Criminal Procedure (CrPC) in the year 1974 created Section 360 with 10 sub-sections stand for Order to release on probation of good conduct or after admonition and section 361 makes it mandatory for the judge to declare the reasons for not awarding the benefit of probation. Apart from Code of Criminal Procedure (CrPC), 1974 after the enactment of Probation of Offenders Act, 1958, the act becomes a major tool for the probation system in India (Code of Criminal Procedure, 1974; Bangladesh Legal Aid and Services Trust (BLAST) and Penal Reform International (PRI), 2013; Trayosha, 2015; Tamil Nadu Prison Department - Probation, 2017).

IMPORTANCE OF PROBATION SERVICE

As it is an alternative to custodial measures, first of all it prevents the minor crime offenders from imprisonment, because imprisonment itself leads to various negative consequences such as:

- during imprisonment, inmates learn the norms of the anti-social subculture from other prisoners
- increase the estimate of the probability of punishment for a new crime;
- increase the difficulty in coping with and accepting imprisonment;
- increase awareness of the weight of previous convictions and on the severity of subsequent sentences
- weaken his or her social bonds. These bonds include interpersonal, familial, work place, and economic relationships. Weakened social bonds resulting from imprisonment are likely to increase an offender's propensity to commit new crimes after release.
- social rejection
- labelling - a stigmatizing label once applied, creates more possibility to commit further offences
- lower self-dignity, shame and hopelessness

Moreover, convicting an offender to a term of imprisonment carries with it a humiliation, which makes difficult to the offender rehabilitation and reintegration in society. Probation supervision keeps the offender less in pro-criminals association and high pro-social association and makes away from the criminal world. Overall, the influence of major psycho-social determinants of recidivist behaviour was very less among the offenders who are under probation supervision (Hart, Andrews & Bonta, 1995; Andrews, Bonta & Wormith, 2006).

OBJECTIVES AND METHODOLOGY

The present study was conducted on the objectives (1) To examine the implementation of Probation of Offenders Act, 1958 in the state of Tamil Nadu and (2) To understand the effectiveness of Probation of Offenders Act, 1958 in reducing the recidivism in the state of Tamil Nadu. The present study adopted quantitative research approach and conducted by using secondary data derived from (1) the annual reports (2007 - 2014) of Probation branch, Tamil Nadu Prison Department; annual report is an authenticated document of the Prison Department contains the complete details of probation enquiries, supervisions, personal and demographic details of the probationers and so on. (2) From the admission note books of eight Central Prisons and three Special Prisons for Women located across the Tamil Nadu; admission note book is also an authenticated document of the Prison Department, all the basic personal, demographic details, offence committed, arrested under section, sentencing details and so on available in the admission note book.

To collect the data, the researcher obtained prior permission from the Tamil Nadu Prison Department Head Quarters and personally visited the Probation wing Head Office and all eight

Central Prisons and three Special Prisons for Women and collected the data from the above mentioned sources. Based on the availability of secondary data in Probation wing of Tamil Nadu Prison Department the researcher confined the period from 2007 to 2014 for the present study.

Descriptive statistics such as simple frequency, percentage and cross tabulation were used to describe the data. A semi-log growth model was used to analyze patterns and trends in implementation of Probation of Offenders Act 1958 in Tamil Nadu and No. of offenders who were sentenced two years and less than two years of Conviction in Tamil Nadu Prisons.

FINDINGS OF THE STUDY

According to P.O. Act 1958, Section 4 Sub-section 2, before making any order to release certain offenders on probation of good conduct, the court shall consider the **probation officer's enquiry report** concerned in relation to the case, socio-economic and demographic details of the offender, chances of rehabilitation and so on. The enquiry report is the first step towards ordering probation. It was found that there were **7141** enquiries ordered by the magistrate courts of Tamil Nadu during the period of **2007 – 2014**. It was found that the Probation Officer enquiries ordered by the court were in fluctuating trend i.e. **1160 in 2007** declined to **530 in 2012** and again increased to **1140 in 2014**. Semi-Logit model was applied to understand the Simple Growth Rate and Compound Growth Rate of the cases which have been ordered for enquiry report for the time period 2007 – 2014 shows that it has **decreased** over the years with a rate of **0.6 percent** (see Table 1 and 3).

P.O. Act 1958 Section 4 dealing with the supervision order and stating that certain offenders on probation of good conduct, the court may order **supervision order directing that the offender should be under the supervision of a probation officer** named in the order during such period, not being less than one year. It was found that there were **3916** supervisions ordered by the magistrate courts of Tamil Nadu during the period of **2007 – 2014**. Further, it was found that there was a drastic decline from **1034 (2007) to 425 (2014)** in the Probation Officer supervision orders. Semi-Logit model was applied to understand the Simple Growth Rate and Compound Growth Rate of the cases which have been ordered for supervision for the time period 2007 – 2014 shows that it has **decreased** over the years with rate of **14.1 percent** (see Table 1 and 3). When comparing the data between the probation officers enquiries and probation officer supervisions it was evident that 54.83 per cent of supervisions were made from the total enquires. Notably, it was found that among **3916** supervisions conducted by the probation officers, where only **8 (0.20 %)** supervised offenders were reverted into crime again.

On the other side, to compare the non-custodial measure (probation) with custodial measure (sanction) the researcher studied the conviction rate on two years and less than two years of

conviction in Tamil Nadu. It was found that totally **23993 offenders** were convicted and sentenced two years and less than two years during the period 2007-2014, who might be eligible to use the provisions of P.O. Act, 1958 under section 4 sub-section 2 & 3 to release certain offenders on probation of good conduct. When comparing with total number of offenders who were sentenced two years and less than two years of conviction in Tamil Nadu prisons (**23993 offenders**) with the number of Probation Officers enquiries (**7141**) and supervisions ordered (**3916**) by the magistrate courts of Tamil Nadu. It was found that a very minimal **29.76 per cent** (7141 enquires) of P.O enquires and only **16.32 per cent** (3916 supervisions) of P.O supervisions were ordered. Semi-Logit model was also applied to understand the Simple Growth Rate and Compound Growth Rate of the two years and less than two years of conviction for the time period 2007 – 2014, shows that it has **decreased** over the years with a growth rate of 5.8 percent.

CONCLUSIONS

Effective implementation of Probation of Offenders Act, 1958 was facing several problems and challenges in Tamil Nadu. The trend of ordering probation supervisions has sharply declined during the period 2007 to 2014, which raises questions regarding the adoption of probation system in the penal system. Imprisonment remains the foremost penal sanction in Tamil Nadu. This might lead to negative impact on the society in general and among the individual offender in particular. The negative impact created by the society on prisoners might cause psychological problems, especially to the minor crime offenders. The same might affect prisoners' family, prison overcrowding, difficulties in social reintegration of that particular prisoner, and increased the risk of recidivism. It was observed through the results that the Courts have a lack of confidence in non-custodial penal interventions. The main purpose of the criminal justice system should be corrective, which means increased use of alternatives to imprisonment. Several research studies (Bailey, & Garland, 1986; Bangladesh Legal Aid and Services Trust (BLAST) and Penal Reform International (PRI), 2013; Ghosh, 2008) were also reveals that instead of imprisoning the offenders for minor offences, increasing the probationer officer supervisions among them will highly reduce the risk of recidivism. Further, the result shows that the most of the lawyers, public prosecutors and magistrates in Tamil Nadu are still unaware of the importance of granting probation to the offenders who proved guilty.

Table 1: Implementation of Probation of Offenders Act 1958 in Tamil Nadu

Year	No. of Enquires ordered	No. of Supervisions ordered	Reverted to Crime
2007	1160	1034	00
2008	797	582	00
2009	930	454	00
2010	837	455	05
2011	669	391	00
2012	530	246	00
2013	1078	329	00
2014	1140	425	03
Total	7141	3916	08

Source: Annual Reports of Probation wing (2007 – 2014), Tamil Nadu Prison Department

Table 2: No. of Offenders who were Sentenced two years and less than two years of Conviction in Tamil Nadu Prisons

Year	NO. OF OFFENDERS WHO WERE SENTENCED TWO YEARS AND LESS THAN TWO YEARS OF CONVICTION IN TAMIL NADU PRISONS											Total
	Central Prison – I Puzhal, Chennai	Central Prison, Vellore	Central Prison, Cuddalore	Central Prison, Coimbatore	Central Prison, Salem	Central Prison, Trichy	Central Prison, Madurai	Central Prison, Palayamkottai	Special Prison for Women, Chennai	Special Prison for Women Vellore	Special Prison for Women Trichy	
2007	190	385	293	991	322	577	636	369	02	65	59	3889
2008	225	286	261	902	314	471	557	333	00	66	64	3479
2009	290	200	201	739	292	468	368	290	01	32	62	2943
2010	270	278	228	700	296	526	327	347	00	32	83	3087
2011	240	237	189	813	266	411	257	328	02	29	57	2829
2012	260	238	211	727	237	408	228	226	14	30	38	2617
2013	280	265	242	726	274	282	234	168	00	31	44	2546
2014	375	263	214	786	259	245	192	201	01	23	44	2603

Total	2130	215	183	638	226	338	279	226	20	308	451	23993
		2	9	4	0	8	9	2				

Source: Convict Prisoners Admission Note Book of Central Prisons (8) & Special Prison for Women (3) from 2007 to 2014

Estimation of Compound Growth Rate

The growth of No. of Probation Enquiries ordered, Supervisions ordered and convicted offenders for the period two years and less than two years imprisoned in the central prisons and special prisons for women in Tamil Nadu during the period 2007-2014 has been analyzed by estimating the Semi Log Growth Model

$$\text{Log}(Y_t) = \alpha + \beta \text{ time} + U_t$$

The $\hat{\beta}$ gives the instantaneous growth rate. The Simple Growth Rate (S.G.R.) is calculated by $(\hat{\beta} \times 100)$ and the Compound Growth Rate (C.G.R.) can be calculated as $\text{C.G.R.} = [\text{AntiLn}(\hat{\beta}) - 1] \times 100$

Table 3: Estimation of Compound Growth

S. No.	Variables	Constant	β -value	't' value	Sig. value	R ²	F	S.G.R. (%)	C.G.R. (%)	Predicted value for 2018
1.	No. of Probation Enquiries ordered	6.791	– 0.006	0.14	0.89	0.003	0.018	–0.6	–0.6	826
2.	No. of Supervisions ordered	6.701	– 0.132	2.91	0.01	0.586	8.484	–13.2	–14.1	167
3.	All Central Prisons and Special Prisons for Women (Total)	8.254	– 0.057	6.27	0.01	0.868	39.36	–5.7	–5.8	1932

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