



REFORMING CHILD OFFENDER IN COLONIAL INDIA: A DISCOURSE

Dr. NUTAKKI SATEESH, LL.M., Ph.D.
Child Rights Activist, Tadikonda, Guntur

Nearly the close of nineteenth century, children over the age of seven were not dealt with by the criminal courts very differently from adults¹. They were tried in the same courts and with the same procedures, sentenced to similar penalties and imprisoned in the same prisons. The first attempts to change this situation came in American state which thought that the existence of child offender was the result of some dereliction of duty by the state and therefore the state ought to guide and assist the child. The colonial state considered the view of American state as extreme and felt that bad upbringing, lack of suitable training for recognition of laws of property as the reasons for the involvement of children and adolescents on the crime. However this differential stand by the colonial state also could not fix the responsibility for crime with child. It therefore asked the courts to adopt the quasi-parental position towards child as in America and release them on probation² having regard not only 'to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances in which the offence is committed' but also such matters as the conditions of the offenders home, and any other conditions constituting his environment, his physical and mental condition and any special mental or physical strain to which he may have been exposed to. "The idea of probation system is to provide a method by which an offender, instead of being whipped or sent for a prolonged period to a reformatory or other school, can be placed under the direct personal supervision of some person, chosen if possible for strength of character and sound personal influence, who will watch over the offender's future conduct, give him assistance in procuring work, advice him on occasions of difficulty, dissuade him from associating with unsuitable friends, and generally direct an influence on his conduct for good. The person to be thus entrusted with supervision over a young offender may be a paid official, generally termed a probation officer, working under the orders of the court, or he may be a private individual interested in philanthropic or social work, in this country possibly a missionary, connected with some recognized mission. The court while discharging a child offender would place him under the supervision of such a probation officer or probation worker for a fixed period, imposing such further conditions or penalties as it saw fit". Along with the representative of



state in the position of probationary officer the parent of the child was jointly made responsible for conduct of the child. On the lines of policy adopted in America, it was proposed to take the measures of restitution by subjecting the parents for payment of fine or damage. It was also proposed “to release the offender on a bond to appear and receive sentence when called upon within any period not exceeding three years and in the mean time to keep the peace and be of good behaviour”. It was also contemplated to devise a plan like in Egypt where labour is extracted in lieu of imprisonment to engage the offender on probation on labour for few hours in municipal workshops (it seems the system of dealing with crime by the state has reached full a circle). In case of adolescent offender of special institutions like Borstal school it was proposed to release them on license on the lines of section 5 of English Act the Prevention of Crimes Act of 1908. The report of the Indian Jails Committee of 1919-20 recommended a committee of visitors with officials and non officials from large employers of labour to find work and missionaries such as Salvation Army to keep in touch with the offenders in the aftermath of their release from these institutions. It not only barred police from being appointed in the capacity of probation officers but also exercising surveillance over the released person.

From the above narration of development of systems of probation, certified schools for dealing with one special category of offenders it is clear that the colonial state tried first to keep one section of offenders in the society away from the institutions of prison without really decriminalizing their actions. In the process one of the institutions of criminal justice system, the court, was made to play the paternalistic role with the offender, going beyond the strict confines of legality and simultaneously expanding its purview of powers deep in to civil society in the crime management outside the prison. This means state was clearly entering in to domain of morality which was denounced by the Macaulay Committee of 1838. By involving the private initiatives such as large employers of labour, missionaries, voluntary organizations and families of the offenders at least in case of children and adolescents, the state not only extended its power of surveillance as an inbuilt mechanism in protecting the interests of dominant but also simultaneously could garner legitimacy for the management of crime.

References

1. The Reformatory Schools Act was passed in 1897 and it was followed by the Madras Children Act as under the former act the reformatory institutions were also run along the lines of prisons



-
2. In India the release of the offenders on probation is regulated by section 562 of the Code of the Criminal procedure. This section as first introduced in to the Code in 1898 and was based on section 1 of the Probation of First Offenders Act,1887, which has been replaced by the Probation of Offenders At, 1907. Under this section, release on probation is limited to offences under the Indian Penal Code, punishable with not more than two years' imprisonment, to which are added theft , theft in a building, dishonest misappropriation and cheating; it can not be resorted to if a previous