

# Probation Officers Training Program Report

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## Context

*Probation*, as a social defense strategy, is an integral part of Penal Reform anywhere. Therefore, probation officers have a constructive role to play in the re-engagement and rehabilitation of offenders. The laws of probation place obligations on courts/magistrates to restrict imprisonment of offenders and to further the new penal philosophy of reformation.

However, in several states, probation officers remain either un-appointed or un-trained in criminology to play the mandated role. Probation officers often come with required background in sociology and psychology but are not exposed to various perspectives of crime and youth work. Associated persisting problems have been the non-use of probation officers by the courts even where they are appointed, and lack of standardization of Probation Rules in the various states. Cumulatively taken, these practices could be said to account for the large number of re-offending rates as well as an overcrowded prison population.

In this regard, the state of Rajasthan appointed 21 Probation Officers placing them with the Social Justice and Empowerment Department. This is a positive development that can be guided towards the fulfillment of liberty and social defense goals that are embedded in new penal philosophy.

As a collaborative endeavor with the Social Justice Empowerment Department, Rajasthan, CHRI was given an opportunity to conduct a 4 day intensive training program for the Probation Officers from *18th – 21st September, 2012*. Through various sessions over the four days of training program, our efforts were directed towards equipping the newly recruited probation officers with the sound knowledge of probation policy and enforcement procedures, and of the key legislations setting out the framework of custodial and community sentences. Critical thinking regarding the various agencies of the criminal justice system, role clarity, understanding structural and behavioral factors causing crime and management of offending behavior as well as sensitivity to the social context and circumstances of the offender was also covered extensively.

## Details of the program

**Date:** 18<sup>th</sup> – 21<sup>st</sup> September

**Venue:** HCM Rajasthan State Institute of Public Administration, Jaipur, Rajasthan

**Attendees:** 50 Probation Officers (New Probation Officers and Probation Officers with work experience)

### List of Speakers:

- ❖ **Ms. Aditi Mehta**, Addl. Chief Secretary, Social Justice & Empowerment Department, SJE Dept and Social Security
- ❖ **Mr. Omendra Bharadwaj**, DG Prisons & Correctional Services
- ❖ **Justice Pana Chand Jain (Retd.)**, Rajasthan High Court
- ❖ **Mr. Pravin Gupta**, Commissioner, Social Justice and Empowerment Department, Rajasthan
- ❖ **Mr. Prem Krishna Sharma**, Senior Counsel, Supreme Court of India and President of People's Union of Civil Liberties, Rajasthan
- ❖ **Mr. Shyam Sundar Bissa (IAS) Retd.**
- ❖ **Dr. Vijay Raghavan**, Prayas, Tata Institute of Social Sciences, Mumbai
- ❖ **Mr. Vikas Kadam**, Prayas, Tata Institute of Social Sciences, Mumbai.
- ❖ **Mr. R. K. Saxena**, Retd. I.G. Prisons & Consultant, CHRI
- ❖ **Ms. Sana Das**, Programme Coordinator, Prison Reforms Programme, CHRI
- ❖ **Mr. Aditya Barthakur**, Programme Associate, Prison Reforms Programme, CHRI
- ❖ **Ms. Ranjana Singh**, Consultant, Prison Reforms Programme, CHRI
- ❖ **Ms. Sugandha Shankar**, Project Officer, Prison Reforms Programme, CHRI
- ❖ **Ms. Anisha Joseph**, Project Officer, Prison Reforms Programme, CHRI

## Institutions Involved



**Commonwealth Human Rights Initiative (CHRI)** is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI advocates for better respect for, protection and promotion of international human rights standards and ensuring greater adherence to Commonwealth Harare principles. Issues relating to accountability and participation in governance – access to justice and access to information – are at the heart of CHRI’s work. The Commonwealth Human Rights Initiative’s access to justice work in India addresses removal of systemic obstacles to justice and builds accountability of justice sector actors vis-à-vis the rule of law and human rights standards. In Rajasthan, CHRI hopes to further its endeavours by capacity building of various actors of the criminal justice system – advocates, magistrates, probation officers, paralegals, jail officials, law students, and strategic interventions in prisons and courts to build safeguards against unnecessary pre-trial detention.



**The Social Justice & Empowerment Department, Rajasthan**, is the state chapter of the Ministry of Social Justice & Empowerment, erstwhile Ministry of Welfare, aiming to provide protection to socially, economically vulnerable categories, the disabled, destitute, victims of substance abuse and senior citizens, and also juveniles in conflict with law. Social Defence is one of its promoted endeavours reaching out to the above categories.

## Day-Wise Report

The four day training program was structured theme-wise around which the sessions were organized. The structure and the sessions were as follows:

- On Being a Probation Officer – Aspirations, Aptitude & Perspective
- Understanding Institutions & Duty Holders in the Criminal Justice System (*Court, JJB, CWC, Police and Prosecution, Legal Services Authority*)
- Understanding Institutions & Duty Holders in the Criminal Justice System (*Prison, State Human Rights Commission and Rehabilitation Institutions*)
- New Penal Philosophy & Approaches to Punishment: Reformation, Probation & the Meaning of Social Defense

Fundamentals of the  
Profession and  
Understanding Criminal  
Justice System

DAY 1

- Debate -Should 18 be the Legal Age for Criminal Liability?
- The Probation of Offenders Act & Its Implementation in Court: *The Law & Practices of Magistrates*
- The Probation of Offenders Act & Its Implementation in Court: *Critical Analysis of Judgments*
- The Procedures: Systems for Reporting to Court & Systems for Relating to Probationer (*Procedural Relationship between Probation Officer and Court/Magistrate*)
- Film Screening - *Pahal: Ek Nayi Shuruwat*

The PO Act and its  
Implementation

DAY 2

- Understanding Society and the Social Context of Probationers
- Developing Professional Skills
- The Probation of Offenders Act & Its Implementation in the Social Context: *The Law, Society & Practices of Probation*
- The Procedures: Systems for Reporting to Court & Systems for Relating to Probationer - *Procedural Relationship between Probation Officer & Probationer*

Understanding Society,  
Probationer and Probation  
Officer's role

DAY 3

- Debate on Fair Trial
- Preventing Recidivism: Making Probation Work - *What Works and What Does Not Work*
- Rehabilitation Strategies and Schemes
- Good and Bad Practices – Regional Case Studies - Indian States and Other Probation Models
- Values & Ethics - Duties towards Court, Probationer & Confidentiality

Recidivism and  
Rehabilitation

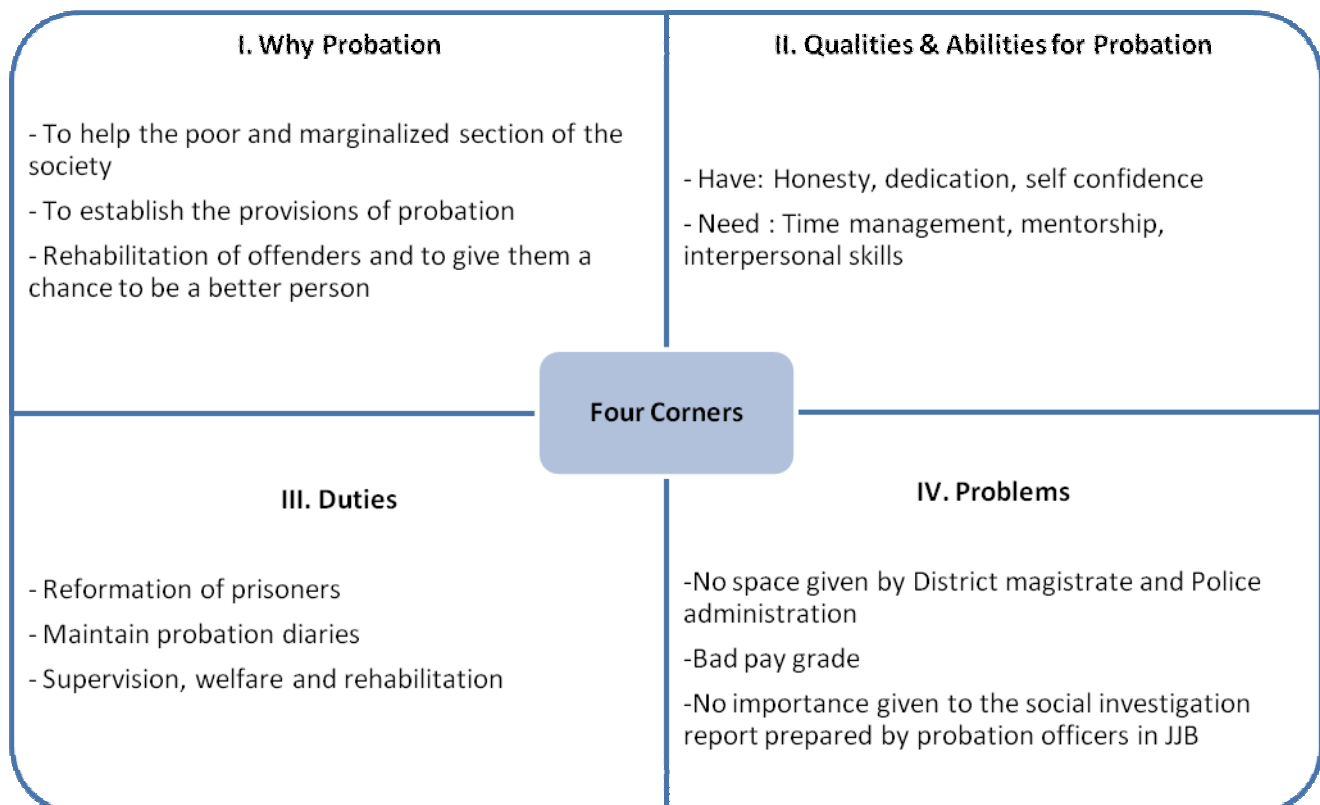
DAY 4

**Day 1** of Probation Officer's Training program was focused towards building the fundamentals of the probation officer's profession and instilling a sound understanding of the criminal justice system. The day started with a pre-session exercise to gauge the level of understanding of newly recruited probation officers. The pre-session exercise comprised of 30 objective and subjective questions circled around technical, soft skills as well as perception based questions to understand the focus areas for the training program. A quick analysis showed that training was required more on the technical aspects of the Probation of Offender's Act as well as the societal context of the probationer.

This was followed by an ice-breaking session wherein probation officers were asked to introduce themselves using Four Boards in Four Corners of the room signifying the following -

- Board 1: Why Probation: Mention one reason why you chose probation duty
- Board 2: Qualities & Abilities for Probation: Mention two that you have and two that you need to acquire
- Board 3: Duties: Mention two duties that probation officers perform
- Board 4: Problems: Mention two key problems that probation officers have to address.

The boards came with responses like:



The **Inaugural Session** was presided over by **Ms Aditi Mehta**, Add.Chief Secretary, Social Justice and Empowerment Department, Rajasthan, **Mr. Pravin Gupta**, Commissioner, Social Justice and Empowerment Department, Rajasthan and **Mr. R.K. Saxena**, Retd. I.G. Prisons and Consultant CHRI. They discussed on the *Aspirations, Aptitude and Perspective* that probation officers should have while working with individuals who come in contact with the criminal justice system. Ms. Aditi Mehta spoke of her delight to collaborate with CHRI for this training program. She encouraged the probation officers to put in effort in order to acquire both professional as well as personal strengths. She mentioned that as probation officers, their key role is to find solutions and to take ownership to every work related to probation. Mr. Pravin focused on coordination skills at all levels - office, probationer, family of probationer, etc. as well as a sound knowledge of the acts and rules related to probation. He also emphasized on the need for proactive communication with the higher authorities and to ensure that all information reaches them. Mr. Saxena differentiated between the traits of a common man like punctuality and honesty and traits of a probation officer. He communicated that the traits of a common man should be inbuilt and that the traits of a probation officer are to be acquired as part of their duties. He reiterated the need to find solutions to problems that they would face on the ground to avoid being part of the problem itself.

The Inaugural session was followed by afternoon sessions on *Understanding Institutions & Duty Holders in the Criminal Justice System*. This included an in-depth understanding of the structure, composition and role of Courts, Juvenile Justice Board, Child Welfare Committee, Police and Prosecution, Legal Services Authority, Prison, State Human Rights Commission and Rehabilitation Institutions. Since the probation officers act as a link between the different agencies of the criminal justice system and the community, it was important to get an understanding of these institutions in order to equip them with the technical aspects of their work. The mode of session was through presentations and discussions presided over by **Dr. Vijay Raghavan** from Tata Institute of Social Sciences (Mumbai), **Mr. Saxena** as well as various staff members of CHRI – **Mr. Aditya Barthakur** (Programme Associate), **Ms. Ranjana Singh** (Consultant) and **Ms. Anisha Joseph** (Project Officer). Various doubts were clarified by the probation officers pertaining to their interface with these institutions. Dr. Vijay Raghavan gave a critical perspective on the existence of multiple institutions for one group. He raised a question whether the society should move towards decentralizing and creating multiple spaces for the same vulnerable group or there is a dire need to synergize and to make one institution. For example, where should a Dalit woman go to in case her rights are violated? Should she go to the police or the Ministry of Women and Child development or National Human Rights Commission or State Human Rights Commission or National Commission for Women?

The evening session dealt with the *New Penal Philosophy & Approaches to Punishment & Incarceration* which set a foundation towards understanding crime and punishment. A panel discussion was conducted with people who have great expertise in the philosophical as well as the practical aspect of crime, punishment, reformation, restorative justice and the social defense approach. In order to address the various prejudices about prisoners and criminal justice system that the probation officers came with, it was important to get into the philosophical debate of what is crime, who commits crime and what is restorative justice.

The panel consisted of:

- ❖ **Mr. Omendra Bharadwaj**, DG Prisons & Correctional Services
- ❖ **Ms. Aditi Mehta**, Addl. Chief Secretary, Social Justice & Empowerment Department, SJE Dept and Social Security
- ❖ **Mr. RK Saxena**, Retd. I.G. Prisons & Consultant, CHRI
- ❖ **Dr. Vijay Raghavan**, Prayas, Tata Institute of Social Sciences, Mumbai

Mr. Omendra Bharadwaj spoke about the definition of crime and the societal definition of criminals. He said that the court sends the offender to jail so that he cannot commit crime again or as a measure of deterrence to the society. He advised the probation officers not to look at the offenders the same way the society looks at them i.e. DANGEROUS. He mentioned that most prisoners' mindset is not tilted towards crime. Hence, there is a dire need to create a robust support system to them so that they can be rehabilitated back into the society. He further spoke about how offenders 'rationalize' their act of crime. It is upto the probation officer who deals with them to understand their rationalization and to either put efforts in changing the circumstances or changing the mindset of the person. While speaking about 'why probation', Mr. Bharadwaj urged that it is time for a 'Calibrated Reform Process' if we take the path of restorative justice. He gave the example of Parole and said that out of 2000 prisoners who are given parole, only 1.1% escapes and adverse publicity happens for that. But considering the rest 98.9% who have moved towards reformation, the risk is very low. Hence, how we evaluate an offender and our approach towards their reformation becomes an important part of the penal philosophy. Mr. Saxena gave a clear distinction between offender and criminal and mentioned that prisoners should be called offenders who commit an offense against an established law. He encouraged the probation officers to put in their effort to not let the offender become a criminal. He threw a very interesting question to the floor of who a habitual offender is – whether an individual who has been a skilled pickpocket for 10 years and never been caught or an amateur pickpocket who was caught thrice for the same offence. He also mentioned that some cultures define crime. For example, if a boy runs away with a girl from another caste, it is considered a wrongful act by the society in which they live in. If the

boy runs away with a minor, then the law punishes the boy for kidnapping. However, in both cases, the boy and the girl would have run out of their own will due to lack of support from the family. Hence, two processes emerge from this 'Criminalization of Behavior' and 'Justification of Behavior'.

Dr. Vijay Raghavan spoke about why people commit crime, types of theft and discussed briefly on the labeling theory. He said that 'society creates crime and people commit them'. Citing an example of the 'chor bazaar' (underground market), he mentioned that maximum cases of theft are not for self consumption but for further sale in the market. The latter comprises of 99% cases wherein we are part of this demand-supply chain. In the context of labeling theory, he said that the criminal justice system 'tags' an offender as criminal at all stages – arrest, detention, prison, etc. Hence, the probation officers should put in efforts to 'normalize' these labels for complete rehabilitation. They should look at how the probationers are different from us and how similar they are to us. He also spoke about 'Social Defense' and drew parallel with the Physical Defense. He spoke about the importance of social defense mechanisms so that people don't fall below the basic standard of life. He emphasized on the change in the thought process towards reformation and the penal philosophy over the years. He drew our attention towards the fact that Probation supports three very important ideologies:

1. 'Crime is not Individualistic'
2. 'Custody is not suitable for all'
3. 'Pains of imprisonment – Moving away from Prisonization'

Ms. Aditi Mehta introduced the idea of 'Satta' (Power) and spoke about the power relations within the society and the system. Towards the question of 'why people commit crime', she drew the attention towards the influence of 'Satta' in the Economic, Social and Political Sphere. Since we are invariably part of this hierarchy, we ought to understand the impact and our role in this system. She posed a question - if we are part of this system then does it necessitate us to punish anyone? She mentioned that it is the society that creates norms and then takes the shape of a law. Giving the example of a small boy stealing a banana to pacify his hunger, Ms. Aditi asked the probation officers to be the best judge, if the law protects somebody's rights or violates? In this context, she also emphasized on the need to have an in-depth knowledge of CrPC and all the other Acts so that one can critically analyze the power relations in the system.



**Day 2** was concentrated towards empowering the probation officers with the comprehensive knowledge of the Probation of Offender's Act and its Implementation. This helped to dwell deep into the various sections of the Act, CrPC provisions and the procedural relationship of probation officers with the Courts. The day started with a debate coordinated by CHRI Staff - **Ms. Sugandha Shankar** (Project Officer) and **Ms. Anisha Joseph** (Project Officer) on – '*Should 18 be the Legal Age for Criminal Liability?*' The participants were divided into two groups - Affirmative and Negative – to speak on the given topic. Following situation and questions were given to them for group discussion first and then to debate:

*A 17 year old boy coming from a low socio-economic background has raped a 15 year old girl. Should he be treated as a Juvenile and rehabilitated or should he be treated as an adult and punished as per the relevant IPC sections.*

The two groups presented their views and many interesting perspectives came from the discussion. Majority of the probation officers were of the opinion that due to today's fast pacing world, children mature faster and hence the legal age should be brought down to around 12 years. It was evident that there was a wave of classical school of thought that people commit crime after weighing their options and should be punished to deter them and the society from repeating the act. Few probation officers spoke about the ecological perspective and supported that the 17 year old boy should be treated as a juvenile and should be given the opportunity to be rehabilitated back to the society.

Mr. Vikas Kadam summarized the debate and spoke drew our attention towards this disturbing variation in the age specified by law and the constitution when it comes to defining a 'child'. For example,

- Article 41 of the Constitution defines a child at 14 years of age who should not be employed in a factory or any hazardous employment.
- Section 375 IPC says sexual intercourse with one's own wife even with her consent is rape if she is below 15 years of age
- Immoral Traffic (Prevention) Act defines a 'child' as a person who has not completed the age of 16 years.
- According to Indian Majority Act, 1875, a person attains majority when he/she attains the age of 18 years.

After this intensive discussion, **Justice Pana Chand Jain (Retd.)**, Rajasthan High Court was invited for a lecture and discussion on *The Probation of Offenders Act & Its Implementation in Court: The Law & Practices of Magistrates*. He started with a brief understanding of the changing trend of penal philosophy from the concept of ‘eye for an eye’ in the olden days to the concept of ‘Human Rights’ today. He also threw some light on capital punishment and how it does not deter crime to the extent that we commonly think. He gave the example of England where in earlier times, if a maid stole a spoon, she would be punished to death by public hanging. However, during the hanging itself, 68 other cases of robbery occurred. Due to this shift in thought of the law makers, 130 countries have now adopted ‘No Capital Punishment’ policy. Even India has adopted the ‘rarest of rare’ cases approach but is yet to ensure its proper implementation. It is because of this decreasing trend of belief in the concept of ‘eye for an eye’ and ‘deterrence’ that section 360 of CrPC and the Probation of Offenders Act was introduced. It was based on the belief that ‘people can change if given an opportunity’. And this change can be sustained only if the probation officers have the commitment towards such provisions.

He stated that in Rajasthan, the Act has been in implementation since 1961. He then detailed the powers and duties of magistrates and probation officers, particularly Sec 3, 4 and 6 of the Act and Sec 360 of the Cr.P.C.

#### **Section 3 of PO Act. Power of court to release certain offenders after admonition.**

When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860.) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

#### **Section 4 of PO Act. Power of court to release certain officers on probation of good conduct.**

- (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his

surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

- (2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.
- (3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.
- (4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.
- (5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

#### **Section 6 of PO Act. Restrictions on imprisonment of offenders under twenty-one years of age.**

- (1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.
- (2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

#### **360 of CrPC. Order to release on probation of good conduct or after admonition.**

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

Many doubts of the probation officers were clarified around the various provisions of the Act. 'Character of the Offender' under section 3 of the Act was discussed in detail and Justice Pana Chand asked the probation officers to look at the character in a holistic manner with proper research and background of the person. Multiple meetings with the offender, the family and the neighbors help in a big way. He gave a word of caution in terms of how 'character' can be misinterpreted by different people in different contexts. Under section 4 of the Act, he mentioned that the role of a probation officer is not just limited to a supervisory role but more of a mentor role. The probation officers ought to look at their rehabilitation and not just have meetings with them to 'check' their progress. The obligation of the court to record its reasons if the offender is not considered under section 3 and 4 but is eligible for the same was emphasized. Answering to one of the queries about the possible interventions by the probation officers in case their report (on the probationer) is not considered in the court, he said that they can appeal further or write a complaint to the District and Sessions Judge of the district. Reference was also made to the judgment *R Mahalingam vs G Padmavathi and another (Supreme Court of India), 1978*. which held that before deciding to act under S. 4(1) also, it is mandatory on the part of the court to call for a report from the Probation Officer. He clarified that the role of the PO starts under Section 4 of the Act and that the 'if any' clause on probation under Section 4 and Section 6 of the Act does not mean that PO's report will not be called for, rather that the court's work will not stop.

The handbook that was prepared by CHRI as a guide book was given to all the probation officers for their reference to the Act. The handbook was looked at briefly to understand the application of different sections of the act under different situations. The handbook also contains information on role of probation officers, significant judgments, case studies, FAQs and relevant provisions mentioned in the CrPC which would be helpful for them as they work in the field.

He highlighted the role of the Probation Officer in pleading for the benefits to the accused by a thorough understanding of the separate provisions. He pointed out that the PO's job is also to maintain diary and prepare proper investigation report. This report to the magistrate is confidential and can be seen only by the magistrate at the time of delivering his sentence. Under Section 9 a copy of the bond is to be given to the accused, under Section 4 (5) of the Act the Probation officer is expected to prepare a Social Investigation Report for the Court when called upon, Section 5 deals with compensations and costs, Section 12 is prevention against stigma so that the individual is not disprivileged for future employment. In case the magistrate rejects the P.O's report the P.O. can appeal to the Appellate Court. Further if a positive report by the P.O. is rejected by the Magistrate the latter has to furnish reasons under Section 6.

One of the important insights by him was on the discretionary powers of the magistrates under Section 3 and 4 of the Act. Section 3 of the Act, his powers to release an offender under admonition, places responsibilities on him to discern if there is no *mens rea*. He mentioned that a magistrate should have a critical bent of mind. His role really starts from the time of the charge sheet filing itself though it is not mentioned in law. He should anticipate probation. Probation Officer's report should not be prepared at the last minute which is one of the plaguing problems and the magistrate should give time for its preparation. If PO's report is insufficient in facts, or prejudicial, he should be given another chance to prepare a better report. The PO's mistake should not be the cause of the offender's probation or imprisonment. Significantly, he pointed out that it is when the charge sheet comes before the magistrate, that he must ponder eligibility for probation and ask for social investigation report unless there is prima facie evidence of brutality and particularly if recovery has been achieved. Other than the Probation Officer's report the magistrate should also seek rulings on the subject. However, the participants pointed out here that larger problem at hand was that magistrates were not calling for the Social Investigation Report of the Probation Officer nor their Supervision Reports.

Section 4 also speaks about relief for repeat offenders, and the benefits of the Act can be given a second time. Moving on to Section 6 he explained that it was a restriction on the discretionary powers of the magistrate. The use of 'shall not' in Section 6 is as opposed to the use of 'may' in Section 3 and Section 4.

His insights on 'criminal' communities, like the Kanjhar community of Rajasthan, and the benefits of the Probation of Offenders Act were extremely useful for participants. If the rehabilitation of a child from this community is in question, the court can also direct orders to put the parents in a bond such that they child does not commit the offense again. Also, if the person concerned is under 21 years of age, a first time offender, he cannot be discriminated against because of his community and forefathers' activities. He clarified that exactly like the trade of liquor is not a fundamental right, thieving as a traditional occupation cannot be a fundamental right, though their right to life and livelihood is. Therefore if they cannot be permitted to continue their traditional occupation, government should consider rehabilitation. Institutionalization should be the last resort. On the issue of relief, he drew attention to the extraordinary powers of the Supreme Court to give any relief to anybody under Art 142 of the Constitution which is notwithstanding any law in IPC or CrPC.

The afternoon session was joined by **Mr. Prem Krishna Sharma**, Senior Counsel, Supreme Court of India and President of People's Union of Civil Liberties, Rajasthan and **Mr. Vikas Kadam**, Prayas, Tata Institute of Social Sciences, Mumbai. With this prominent panel, a *Critical Analysis of few Judgments* was done which

helped in understanding the actual execution of the Act in the field. Various situations were discussed and analyzed if the provisions of the Act can be used in those cases or not. Following cases were discussed

- a case of a boy more than 21 yr old boy found guilty u/s 159 IPC (Affray)
- a case of a boy under 21 years of age found guilty u/s 323 (voluntarily causing hurt)
- a case of an employee of a shop found guilty under the Prevention of Food Adulteration Act
- A secretary in a cooperative bank guilty u/s 409 (Criminal Breach of Trust)

It was discussed in detail which section of the Probation of Offender's act will apply in each case. At times, the variables were also changed like the age of the person, offence, punishment, etc. to understand the difference between various sections in the Act.

A much overlooked provision was also discussed in detail that a person who is found guilty of any offence and tried u/s 3 and 4 of the Act, cannot suffer any disqualification attaching to an offence. Few Judgments were also discussed to brainstorm if the guilty should be/could be given the benefit of probation as per the Act. Judgements like: *Lal Chand vs State Of Rajasthan, 1997 CriLJ 2170* – case of food adulteration was discussed to look at the possibility of application of probation of offenders act. Duties of the probation officer was discussed through *Tek Bahadur vs The State - 21 (1982) DLT 233* (petitioner convicted under Opium Act).

This helped in understanding the gap between theory and practice. The senior probation officers also gave their experiences on the field which helped in getting a perceptive of ground realities and ethical and procedural issues which hinder their work. Mr. Sharma then focused on the *Procedural Relationship between Probation Officers and the Court/Magistrate* which helped in building understanding of the requirements of reporting to the Court. He guided the probation officer's on how to fill up the various reports like the preliminary enquiry report, pre-sentence report, monthly report, etc. and the different avenues to collect information from. Mr. Vikas Kadam also spoke about various ground level difficulties and solutions to the same while working with the courts.

The day ended with a Documentary Screening of *Pahal: Ek Nayi Shuruwat*. The documentary compiled by the Prison Reform Program of CHRI was shown with a view to advocate for prisoners' rights. The video seeks to spread awareness about the rights and duties of inmates and highlight the importance of those rights and responsibilities.

**Day 3** was targeted towards understanding society and probation officer's roles and responsibility towards the probationer. At a professional level, the effort was to equip the probation officers with offender-management skills and to sensitize them about various social dimensions through which an offender passes. The purpose was to build a thinking mind towards holistic rehabilitative strategy and not just supervision. The day started with a session *on Understanding Society and the Social Context of Probationers* carried out by CHRI staff – Ms. Sana Das (Programme Coordinator) and Ms. Anisha Joseph (Project Officer). The session was activity based mainly to understand the power structures in the system and to break the hegemonic thought process. While passing a book in the first round, the leader could make new rules and ask people to leave the room or give them punishment for not following that rule. Whereas in the second round the leader told them rules of the game before the book was passed and the participants could follow them. The contrast in the two rounds was then elaborated to help them draw parallels to real life situation of who makes the rules/law in the society and how some vulnerable populations of the society get excluded from the mainstream due to this.

This was followed by an activity based learning exercise by **Mr. Vikas Kadam** focusing on *Developing Professional Skills* required by probation officers while working on the field. Role plays were used as the medium of session which helped in realizing the practical difficulties of working with probationer, probationer's family, prison officials, etc. The solution to the difficulties was also illustrated by Mr. Vikas through role play and discussion. He demonstrated the use of right communication skills, counseling skills, listening skills in order to work successfully with the probationer and probationer's family. He emphasized that different strategy needs to be adopted for each probationer keeping in mind that every human being is unique and has unique characteristics. Only once the psychology of the probationer is understood, will the probation officer be able to design a successful rehabilitation strategy for the probationer.

In order to get an in-depth understanding of the social context, specific to Rajasthan, **Mr. Shyam Sundar Bissa** (IAS) Retd. took a session on *The Probation of Offenders Act & Its Implementation in the Social Context: The Law, Society and Practices of Probation*. This was important from the perspective that the Probation Officers would have to deal with the societal structures and process in their daily work which has a direct/indirect impact on crime, criminality and rehabilitation. Mr. Bissa emphasized that a Probation Officer's role is 'social' in nature and that they do not deal with files that have dead paper, instead with 'live files'. He spoke about the different social groups of people in Rajasthan like Mawad, Mewad, Shekhawati, Mewa, etc. and explained how one varied from other in terms of behavior,

customs and practices. He marked an important point that Rajasthan in itself has such variety that every next district has a new dialect, new rules, new customs and new behavioral patterns. He also made linkages between socio-economic background and community behavior to offend. In terms of crime, the general notion is that property offence is mainly done by literate people and bodily crimes are done by Rajput and Jaat. From the perspective of interventions, he said that it is important to study the community first. For example in some places, talking to a woman may not be acceptable while in others it could be. He concluded by saying that 'one size fits all' approach should not be taken and urged the probation officers to appreciate this cultural diversity so that they can find ways to build acceptance in the community in which they work.

The day ended with a presentation cum discussion on *Periodic Review Committee (Avadhik Samiksha Samiti)* by **Ms. Sugandha Shankar**, Project Officer, CHRI. She explained the objective of PRC which is established to ensure that the situation of each prisoner awaiting trial is frequently reviewed and appropriate measures are taken to avoid illegal and prolonged detentions. She further elaborated the structure, importance and practical implementation of Periodic Review Committee (PRC) and how it intersects with the role of a probation officer. A few issues were raised by the senior probation officers who have had an experience of being part of the PRC like irregular meetings and non representation of probation officers. These were discussed in detail and possible solutions were arrived at like:

- Instead of district probation officers going for the PRC meetings, the junior probation officers should be sent as representatives because they deal with the cases directly. A letter should be sent to the home department to issue an order for the same.
- If the Magistrate does not look at the probation officer's investigation report before passing a judgment, the probation officers should write to the Chief Judicial Magistrate and advocate the importance of their role.
- To avoid rushing up on making a report due to short duration of time given to them by the magistrate, the probation officers should ask for early intervention and enough time for the investigation report to be comprehensive and detailed.

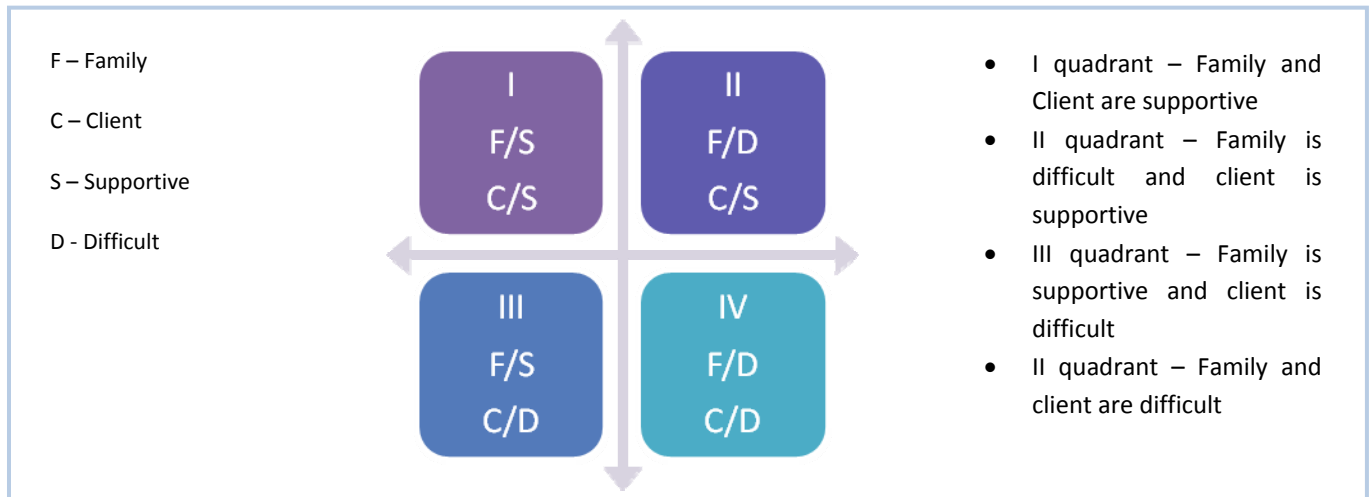


**Day 4** started with a *Debate on Fair Trial* organized by CHRI staff – **Ms. Sugandha Shankar** (Project Officer), **Mr. R. K. Saxena** Consultant) and **Ms. Anisha Joseph** (Project Officer). For the debate, example of a Pakistani terrorist, Ajmal Kasab, was taken to set the foundation for the day's theme i.e. Recidivism and Rehabilitation. Various viewpoints came but the majority was not in favor of a fair trial for Kasab. For them, Kasab had taken many lives and should have been hanged without any trial. Very few voices were in favor of a fair trial following the constitutional mandate and spoke about Kasab being part of a bigger political and terrorist regime which should be addressed.

This was followed by an interactive session lead by the senior probation officers on *Making Probation Work: What Works And What Does Not Work*. Each senior probation officer spoke about two real life cases – once success story and one where the expected outcomes were not achieved - from their experiences as a probation officer. They discussed their cases with the new probation officers relating to the role of probation officer and the practical difficulties on the field and how one can overcome that. This built a platform for the new probation officers to clarify their doubts related to the practical aspect of their work. Critical questions were raised like 'what if the probationer had committed a crime earlier and was not caught?', 'How certain schemes of social justice and empowerment department can be applied in case of probationers', etc.

Once the critical questions were addressed by the **Senior Probation Officers** and **Mr. R. K. Saxena, Mr. Vikas Kadam** took over from here to speak about *Recidivism and Rehabilitation Strategies*. Mr. Kadam initiated the session with the understanding of basic difference between 'going back' to the society and 'rejoining' the society. Drawing from Prayas' work, he spoke about recidivism as a failure of many social support systems/agencies like family, school, employment, etc. He asked the probation officers to look at offenders as 'Outstanding Individuals' who generally stand outside the norms laid down by the society which involves various push and pull factors that leads a person to commit an offence. He emphasized on the role of a probation officer who creates a bridge between the various institutions and the offender. And this bridge becomes easier to build when mainstream society merges with the institutions.

In terms of rehabilitative strategies, Mr. Kadam asked them to analyze the various support systems and the client psychology. This is because one cannot take the 'one-size-fits-all' approach but a unique approach to each client. He explained the same through the following quadrant:



He mentioned that most probation cases may fall under Quadrant I followed by the Quadrant III, Quadrant II and then Quadrant IV. CHRI staff also added to this line of thought by explaining how SWOT analysis could apply in analyzing and strategizing work with a probationer.

Being the last session of the training program, Ms. Sana from CHRI briefed upon the *Good and Bad Practices* across other states and other countries and summed up what had been covered in the training session till now. This was followed by an open house discussion for questions or queries. Apart from answering those questions, **Mr. R.K. Saxena** reiterated the *Values and Ethics* that a Probation Officer must follow in his/her profession. Towards the end of the day, a post-session exercise was conducted in order to gauge the impact of the probation officers training program.

Apart from these 4 days of training program, the curriculum is inclusive of a month of field experience and periodic review. In the *Closing Session*, a set of field assignments were given to the probation officers which deals with testing the abilities for enquiry, observation, research and investigation. These assignments includes preparing a mock social investigation report; researching the nature of offences in the area and background of offenders; building a data base of the various communities, police stations, government departments, rehabilitation centres, youth welfare centres, employment exchanges, rotary clubs, NGOs in the district; the rehabilitative schemes available for youth. Observation report on prison visits and implementation of PRC and parole; observation reports on police stations and numbers of first time, petty

and young offenders in custody; observation reports on court visits noting how people eligible to benefit from the Act are dealt with by the court (magistrate, police, prosecution, defence), are a significant assignment of this module. Towards the end of this field assignment, periodic review meetings will be conducted for impact assessment and problem solving.

Officials from the Social Justice and Empowerment department joined and Ms. Sana felicitated the opportunity given to CHRI for conducting this program and thanking all those who made the training program a success. As a closing note, **Ms. Aditi Mehta** encouraged the probation officers to go to the field with the shield of knowledge and a commitment towards this profession.