

State Level Consultation for Chief Judicial Magistrates of Rajasthan

Probation of Offenders Act & Undertrial Review Committee

1 September 2013



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JUSTICE WITHOUT BARS

Under the aegis of
RAJASTHAN HIGH COURT

State level Consultation
for
Chief Judicial Magistrates
on
Probation of Offenders Act &
Periodic Review Committee for Undertrials

In Collaboration with
COMMONWEALTH HUMAN RIGHTS INITIATIVE (CHRI)
SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT (SJE)



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Content List

1	Message from Hon'ble Chief Justice	4
2	Message from Hon'ble Justice R.S. Chauhan	7
3	Message from Maja Daruwala, Director, CHRI	9
4	Introduction: Purpose of the Consultation	10
5	Recommendations & Suggestions	11
6	Discussion, Challenges and Good Practice	19
7	Feedback from Participants	27
8	Annexures A. Agenda B. List of Participants	30

State Level Consultation for Chief Judicial Magistrates of Rajasthan

Message from the Hon'ble Chief Justice, Rajasthan, Mr. Amitava Roy

Brother Chauhan, Brothers and Sisters of the Judiciary, and Others,

At the outset I would like to take this opportunity of profusely thanking the Commonwealth Human Rights Initiative, in particular and especially, Mrs. Maja Daruwala, its Director, of giving me this opportunity to interact with you after the day-long deliberations on issues relating to Probation of Offenders Act and Periodic Review Committee. I would like to thank the Social Justice and Empowerment Department for the keenness that it has shown of the necessity of addressing deficiencies that are transpired and filled in the implementation of the Probation of Offenders Act as well as those of the other cognate laws, mainly the Juvenile Justice (Care and Protection of Children) Act and the provisions of Code of Criminal Procedure, 1973,



I thank Brother Chauhan for his kind words. I have always believed that actions should speak.

Friends, I must tell you very frankly while I was going through the literature provided by CHRI it gave me a very uncomfortable feeling... What is really the philosophy of probation? Though if you remain within the framework of the Probation of Offenders Act, it seems that probation comes in at the stage of sentencing of the offender, but the 'concept' of probation as it is, does not remain limited to that because it has a direct relation with the right to civil liberty unless imprisonment is the absolute necessity in law.

So the 'concept' of probation stresses upon the framework of the Probation of Offenders Act and this is manifest amongst other provisions of the Cr.P.C. as well, be it in the form of bail, be it in the form of release in the course of investigation, be it in the form of release of prisoners who complete more than half of the term of imprisonment prescribed by law. So let us visualize and fulfil the 'concept' of probation in that larger perspective.

Coming back to the provisions of the Probation of Offenders Act, I find two key figures: the court or the judicial officer manning the court and the probation officer, wherever under the provisions of the Probation of Offenders Act, his or her role is essential. The concept of probation that I was just referring to has relevance with regard to the level of consciousness a judicial officer must possess to exercise the power of releasing a person who is in jail waiting for his or her trial to commence or whose trial is on and it may be that he or she may not be required to be in jail even till the end of the trial.

In the matter of implementation of the Probation of Offenders Act, some broad problems have surfaced: inadequate number of probation officers, so much so that the courts are finding it difficult even if the courts are keen in implementing the Probation of Offenders Act to get the timely services of the probation officers so as to enable them to exercise the discretions under the Act in situations of necessity. Though Mr. Ajitabh Sharma has informed us that 53 new Probation Officers have been recruited and they have been assimilated in the districts, there must be a set of rules governing their service and ensuring security of their services. That should add to the quality of their performance. But the problem is that these 53

officers are burdened with multifarious jobs under different schemes. So for all practical purposes, the problem remains where it is.

Therefore a fresh look, a fresh thought is required. Firstly, to further enhance the number of probation officers. The duty and role of the probation officer under the Act is a statutory one and therefore it has to receive due primacy and preference. I say so in the context of too many works that are expected to be done by the probation officers and there cannot be two opinions that the duties of the probation officers have to receive foremost importance in the order of priority in their jobs.

There is no prescribed academic qualification and conditions of eligibility to become a probation officer. What is insisted upon is a graduate degree for appointment as a probation officer. But the job is a specialised one and they must have necessary training before they are put to their respective roles. Now this training is important for the department. While training, the Social Justice & Empowerment Department has to be careful to infuse in him or her the aspect of human rights that is conceived of in law, and, above all, under the Constitution of India. They have to be sensitised in the course of the training, that apart from the job that is required to do under the law that mandates it, they must have that approach as well so that they are equipped to do the job trusted to them and respond to it in an appropriate and timely manner. Looking into the purpose of the report of the probation officer, timeliness and responsiveness are two very inalienable requirements. Otherwise, the very purpose of calling up of the report would get lost. Thereby, the provisions of the Act would also get frustrated.

The CHRI literature that I have been reading points to a lack of coordination between the stakeholders and the duty-holders in a district. The judiciary, the Social Justice and Empowerment Department, the Prosecution Department, Police and State Legal Services Authorities need to coordinate. Though I would not attribute failure but I would like to say that it is high time the State Legal Services Authority must step into the arena and provide its services. Lack of coordination according to me is very apparent. Maybe the stakeholders have not felt the importance of the right of the probationer as has been recognised in the law. Probably we have not been able to understand and realise that this has a direct nexus with the possible violation of the fundamental rights, that is, the right to life and liberty of the person.

The present composition of the PRC, headed by the Chief Judicial Magistrate, may find it practically difficult to implement the legal provisions. The composition of the Committee is noticeably through an executive order. Now those who are engaged in taking the coordinated steps feel that you do away with this problem and that the Committee has to be broad based to include the District Judge which will make the Committee a little bigger in size. I think this step can be taken and should be taken in this regard for two purposes – one, it takes care of the implementation of the Probation of Offenders Act, including sessions trial cases, and would also add a bit more teeth to the body to summon, to convene, and to exercise the required authority for the purpose of the PRC to carry out requisite mandate.

The non-availability of the probation officers is only incidental. If the duty holders sit together, coordinate with each other and act as per the letter and spirit of the provisions of the Probation of Offenders Act as well as the Executive Order, supplemented by the fit necessity of the exigencies of the situation, I do not think it is a big problem to be sorted out. What is necessary is we need to make aware ourselves, coordinate with each other and do the needful.

Not for a moment I would say, my Brother and Sister Judicial Officers, that we are unmindful of the volume of work that you have to tackle. We are fully aware but at the same time that is not an answer to say that what is expected of us can remain unattended,...Never.

Therefore, while going through the CHRI report, the two reasons that are cited for not holding the PRC meetings - busy schedule and administrative reasons - frankly speaking, I could not swallow that. May be

true, but that should not have been the reason. More particularly, when it is clear to all of you that there has to be one meeting of the PRC per month. If Ganganagar could achieve 11 out of 13, why is it that others could not? May be it is lack of priority given to this job, may be because of a host of other works. I do not blame anybody, but as we meet here to sensitise ourselves, more particularly, with the requirements to actualise probation let us remind each other that we need to be more sensitised and more conscious of the rights of prisoners and apply ourselves more in the manner expected of us.

There is no difficulty for the High Court to consider guiding the Chief Judicial Magistrates about when to call for report of the probation officer though I think that is not necessary as such, because my judicial officers are fully aware of the law, of what they are required to do. They are supposed to assess every proceeding before then and then come to a conclusion by judging the requirement of the application of the law of probation as to what should be the optimum stage when the report of the probation officer should be called for. Nevertheless, we will consider this aspect at the High Court level.

We have to ponder over the requirement, if any, to devise a measure or a yardstick of the results of today's discussion and discoveries, of the performance expected of us hereafter. We have discussed, highlighted the problems, suggested the solutions and, at least, the first step has been taken but the realisation with which we are supposed to leave this hall, if at all today's deliberations are to achieve some results, are meaningful and fruitful, this realisation must translate into true performance.

I have gone through the recommendations of the CHRI. They are all very well thought of and relevant but I can understand that it will take time to implement all those. We have made a beginning and we will go forward.

I thought there needs to be a higher level monitoring committee, maybe at state level. The PRCs at the district level would function as they are supposed to and the state level monitoring committee would oversee and monitor the functioning of the PRCs and, for that matter, district level PRCs would have to be in a network kind of arrangement to the state level monitoring committee. If that be done, I hope and understand that the much desired coordination between different players can be put in place. There would be a sense of accountability, there would be overseeing and monitoring of the activities, there would be an impact assessment of the performance of the PRCs. This state level monitoring committee can be apprised of the day-to-day problems by the PRCs which can be discussed at the state level by the Monitoring Committee and also recommendations and suggestions be made. There may be periodical interactions between the state and district level committees. If the concept is accepted we would have to act on it and decide on the composition and then go ahead in deciding the mandate.

As I have the benefit to have all my Chief Judicial Magistrates before me, I take this opportunity again to requesting you to step up your activities for disposing cases. I have been talking to you over video-conferencing, I would expect that by end of the year you should be able to target and dispose off at least 10-20% of the cases which can be tackled and disposed off. We have been talking about the Action Plan but till that broad Action Plan is in place you have been requested to put up your own action plans to act upon. Institutions are rising but comparatively disposals are not being able to backstop. Again, I do not blame anybody, please do not misunderstand me. I know you are working in the best of your capabilities but the demand is such that the more you do, the more is expected.

Find out. Target cases. At least 10-20% of the cases that can be tackled and disposed off and, in this regard, use your discretions under the Probation of Offenders Act as well. It is not that in every case you need to have the report of the probation officer and for that, the matter is stuck for proceeding. Identify those cases which would not require too much of contest and dispose them off. I have always felt and I would like to share with you that one of the most important essentials of getting the job done is to be regular in your approach. Take out a time slot. I know, it is easier said than done, but friends, there is no

State Level Consultation for Chief Judicial Magistrates of Rajasthan

alternative. You have a job, you have to perform and there is no alternative. Keep that time slot for those particular cases, deal with them expeditiously and finish them. This is apart from the *lok adalats* and other things that you have to hold from time to time.

With these words, I would for the day conclude. I believe that today's deliberations have been very, very fruitful. Problems will always be there. Do not walk out of the problems, find a way out. You are a moving stream, not stagnant water. With the moving stream the water flows, it can counter big boulders on its way. The flow does not stop, it manoeuvres the boulders and goes around. We have to go around... we have to go around to reach our goals. This is the spirit in which we have to take our problems. Be frank as you have been. This is something that I notice and I have been told as well that you have opened up and showed frankness in expressing your difficulties. Never ever think that if you sight your problems to us we will get annoyed or irritated. We are aware of the conditions in which you work, but all said and done, first do whatever is possible to make your functioning as smooth as possible. But as you have been responding to our appeals, we expect that this would also be an aspect that would receive your due attention.

Dear Brothers and Sisters, here is an aspect which has a direct nexus with the rights of the persons to whom law gives certain privilege. Let that privilege not be for lack of action. Thank you and Good Luck!



Message from Hon'ble Justice R.S. Chauhan

Brothers and Sisters of the Judiciary, Mrs Maja Daruwala, Dr. Vijay Raghavan, Mr. Ajitabh Sharma, Others,

We are finally dealing with something very important not just for judiciary but society at large. Not only is judiciary coming up with challenges but the criminal justice system is being challenged. Time has come to discuss these challenges. I do not want the deliberation to end here. That is not the purpose. We can carry it out and concretize it. I request each one of you to be as vocal as possible today. Thanks to CHRI for making this workshop possible. It is important that Dr. Vijay Raghavan from Tata Institute of Social Sciences (TISS), Mumbai, is here to speak about the Maharashtra experience of probation. I would like to share with you all a verse from Oscar Wilde's "The Ballad of Reading Gaol". It reflects the sentiments of those in the jail and literally the faceless people we deal with in prisons.



<p>I know not whether Laws be right, Or whether Laws be wrong; All that we know who lie in gaol Is that the wall is strong; And that each day is like a year, A year whose days are long.</p>	<p>But this I know, that every Law That men have made for Man, Since first Man took his brother's life, And the sad world began, But straws the wheat and saves the chaff With a most evil fan.</p>	<p>This too I know—and wise it were If each could know the same— That every prison that men build Is built with bricks of shame, And bound with bars lest Christ should see How men their brothers maim.</p>	<p>With bars they blur the gracious moon, And blind the goodly sun: And they do well to hide their Hell, For in it things are done That Son of God nor son of Man Ever should look upon!</p>
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I will never forget what a prisoner told me which captures the unimaginable experience of incarceration. On a parole related case, I visited the Central Jail, Jaipur... I told this prisoner, "send your relative to my house behind the Birla temple", he looked astonished. "*Jaipur mein Birla temple hai?*", he asked me. (Does Jaipur have a Birla temple?) "*Sahab, Main pichle 14 saalon se is chardiwari ke andar hun, mujhe kya pata jaipur mein kya kya ho gaya...Mujhe kya malum aap ka shahr kitna bada ho gaya, isme kya nai imaratein aa gayi hai*" (Sir, for the last 14 years I have been inside these walls...how am I to know what all has happened in your city, how big it has become, what new monuments have come up?)

So, what is the problem we are dealing with – is it only phenomenal increase in the crime? The problem is face of the prison population is changing drastically. 48% of undertrials are between 18-30 years, an age group that should be contributing to developing the country. 95% are first time offenders. Unless we move them from their criminal way of life and deviant behaviour, we are stuck with a big problem. How do you do that?

There are the deterrence theory and theory of retribution which believe in locking offenders up and forgetting about them, it will give exemplary message to society not to commit crime and at the same time exact punishment. Then there is the restorative theory of justice which privileges reforming them and teaching them new skills and bringing them back to the society. Problem of jails and courts is the same – overcrowding – it is files and people, respectively. Today's question is how do you deal with this

population and overcrowding in jails? Therefore two very important things – Probation of Offenders Act and Periodic Review Committee.

We should not see prisoners as a burden or as a routine job. It is an imposed duty. For the probation officer too it is a duty given to them. It is like a *bhagvadi*. If we do not follow this, it will lead to lawlessness and anarchy. My humble request today – when you go back, carry this zeal with you that we have to deal with this problem.

Judges must work towards implementing the Constitution. Probation of Offenders Act is not outside of the constitution. It is not to listen to two sides and give decision but beyond that, to prevent crime in the society. In the Indian context, probation is not considered right. There is a lot of resentment in the media today about attention to the offender and demands for only the victim being considered. However, judges have a role beyond creating dialogue between victim and offender. Victim or public may have vengeful mentality as in ‘Nirbhaya’ case. Judges have to work towards a certain kind of criminal justice system. Judges should not stop their plan of action on probation or from implementing the law. Rather, they should change the popular mindset. “*Samaaj ke adhaar par hum kalam nahin rok sakte hain. Hum judges kis baat ke hain phir*”. For this magistrates should record the reasons why they give probation. When Delhi Court gave judgment on homosexuality they did not think about what the society is going to think but what the constitution demands. The Probation of Offenders Act should be similarly seen in the framework of the Constitution.

Even before England had a law on probation of offenders in 1905, India had it in Code of Criminal Procedure (1861), well before that. Something which we had for more than a century now is still to be implemented in its true spirit. Surprisingly, though the Probation of Offenders Act came in 50 years ago it is yet to be implemented in its true spirit. I would like you to note Section 12 which, if implemented, can really prevent unnecessary cases from coming in to do with disqualification. Recently I wrote about the use of Section 12 of the Probation of Offenders Act in a judgment and asked the Registrar to circulate it. This will reduce many cases in case of clarification for those persons who are about to enter the job market after completing their bond period.

In some ways the Probation of Offenders Act is much more useful than plea-bargaining because the guilty person, in the latter case, still may have to undergo half his sentence. But in probation, depending on the nature of offence, especially first time offenders who make up over 95% of all cases, though guilty, they can be dealt with the alternate punishments provided under the Probation of Offenders Act. The State benefits most from this act because the trial costs are curtailed, the cost of incarceration are saved and most importantly the risk of first time offenders, young and petty offenders falling into bad company and wicked employment opportunities in jail is nullified, increasing the possibility of rehabilitation. It is a way of managing criminality through non-penal measures.

Do not restrict the implementation of Probation of Offenders Act, rather take up the education of society with the Legal Literacy Services. Merely asking for the antecedents of the offender does not reveal the judicial mind. When on the Bench, Chief Judicial Magistrates must not be silent on Probation of Offenders Act; judges must reveal their mind. The court takes it that its officers are impartial and objective. Why should they be so scared? They have obligations to fulfil a duty. They have the strength of the law. They must demonstrate their impartiality. Or else the training to judicial officers needs to be refreshed!

Message from Maja Daruwala, Director, CHRI

Hon'ble Justice Chauhan & Dear Judges,

The Hon'ble Chief Justice *Sahab* is coming and that is a signal as to how important this meeting is, and how much importance he gives you all.

What is 'Commonwealth Human Rights Initiative'? We work with Police and in the workshops we do with them they say 'Arrey, human rights *vale aa gaye*'. But why is human rights so *paraya*? It is only a value system. This value system is already there in the notion of fair trial. The Fair Trial Manual for Judges that CHRI has created is not so much for Supreme Court judges but mainly for you all. It is a guide to human rights and constitutional law.

Why have we come here? It is because of the state of prisons in India today. Who are these first time offenders in prison? They are not the Daruwalas and Saxenas. They do not have the strength to protect themselves against unreasonable arrests. For instance, during the *Urs* festival, suddenly the prison population increases.

We tend to imagine that it is because of something they would have done wrong. But in thinking thus, you are destroying their whole life, their potentiality. Not only them, but other lives related to theirs. These migrants who come, they leave everything and come. But once you put them behind bars, it is this life's sanctity that you must protect.

I have heard this again and again, "We are overburdened and do not have the training, that is why *hum doosron pe atyachaar karte hain*". This is not an excuse. We are clear – when a person is in custody, you are his *Maibaap*. We would like to believe that fair trial is possible for everybody.

The jewel in India's crown is the trial of Ajmal Kasab – he did get a fair trial. Every person deserves a fair trial and the law should be there for everybody, for who knows, if one day, my son or daughter is there behind bars, they should get the benefit of the same provisions of fair trial.

There is judiciary and there is the executive. We, as judiciary, are doing our work but others may not be doing so. We found in our study that no one knew about the importance of the mechanism of periodic review of undertrial cases. Nowhere did all the 12 meetings happen. When you find a 70 year old in prison, you have to see this gap as a failure of the protective laws. When you come across a less than 18 year old in jail, you know that it is due to a lack of coordination. Probation officers are new. Prisons want people to move out. But they think the solution is not in their hands. The solution is in your hands. When you go from this Consultation, please be pro-active and say "*Mere zilla mein yeh nahin hoga*". He/she should not stay even one minute more in prison than they should.

Finally, yes, we are an NGO and we have been working in this sphere for many years. There is also the Board of Visitors for jails and we have been trying for their appointment in different states for a long time now, about 10 years. There is also with us Dr. Vijay Raghavan from TISS - they have a lot of training material and expertise. We are placing all our knowledge at your feet. To take or not is your decision. If you say you do not need us and we should go away, we will...



Introduction

Purpose of the Consultation

Facilitated by the High Court of Rajasthan, the CHRI and the Social Justice & Empowerment Department organized a one day State Level Consultation for Chief Judicial Magistrates in Jaipur, Rajasthan. The aim of the consultation was to take stock of the implementation by the courts of the neglected Probation of Offenders Act, 1958 and the Periodic Review Committee for undertrial prisoners in the state, the *Avadhik Samiksha Samiti*.

The meeting saw the active participation of Chief Judicial Magistrates from 33 districts, 2 Additional Chief Judicial Magistrates, 8 Probation Officers, the Chief Probation officer, the Commissioner of the Social Justice & Empowerment Department, the D.G., Prisons, the Member Secretary of the State Legal Services Authority and other representatives, and other representatives from the High Court such as the Registrar General and the new Director of the State Judicial Academy in Rajasthan.

The objective of the workshop was three fold:

- i. to familiarise the audience of Chief Judicial Magistrates who have other judicial officers below them with the potential of implementing the Probation Offenders Act which is under-utilised and for them to pass the information on where it is best utilised;
- ii. to present them with evidence of our findings that the PRCs which are to be convened by them as a measure of reducing undertrial prisoners and prisoners staying overlong in custody is not being convened by them to the detriment of prisoners;
- iii. to prompt under the aegis of the Chief Justice better coordination of the criminal justice system agencies at district level so that the many provisions put in place can be optimised.

The two mechanisms in the state have immense potential to act on unnecessary detentions and overcrowding through their emphasis on alternatives to imprisonment and for improving inter-agency coordination necessary between the various departments of the judiciary, the prisons, the prosecution, the Social Justice & Empowerment Department, the legal services authorities. To that effect, Maja Daruwala, CHRI Director, called upon the Chief Judicial Magistrates to protect the principles of justice and to say a vehement NO to unnecessary detention in their own districts.

The key thrust of the deliberations and recommendations in the consultation can be summed up in the emphasis placed by the Hon'ble Chief Justice of the state, Mr. Amitava Roy and Hon'ble Justice R.S. Chauhan on young, first time and petty offenders, who ought to be placed in custody in strict accordance to law and for as short a time as necessary. The Consultation promised to take forward executive orders with judicial force pushing many of these safeguards into the realm of the 'practical' to assist the needs of the state, the rights of prisoners and due process of law.



Recommendations and Suggestions

The consultation addressed systemic and institutional bottlenecks in the implementation of the Probation of Offenders Act and the Periodic Review Committee (PRC), ascertained the constraints of magistrates to implement the Probation of Offenders Act in its full spirit and making PRC a fully functional and successful mechanism of review and release. Along with these difficulties, several legal and practical solutions were also discussed.

The Chief Justice and the senior High Court Judges impressed upon the Chief Judicial Magistrates and the Social Justice Empowerment Department to understand and implement the purposive, legal, constitutional intent of the Probation of Offenders Act which privileged both the principle of liberty as enshrined in the Constitution, the need for reparation to society and also the reintegration of offender in the society as a law abiding citizen. The irregular functioning of the Periodic Review Committees (PRCs) as a big discomfort in judicial functioning was the next big area of discussion. The Chief Judicial Magistrates being the Convenors of these inter-agency review bodies were motivated to step up their jail visits and meetings and guided with targets for performance towards actual releases in cases of unnecessary detentions in the prisons of their districts. The consultation drew upon the learning experience of Maharashtra's implementation of the Probation of Offenders Act.

Like a big ship it is, no doubt, going to take a while to sort out infrastructural and human resource shortcomings to get the two mechanisms working effectively in the state, but given below are some that can be immediately sorted out.

I. Managing Criminality through Non Penal Measures: Implementation of the Probation of Offenders Act

❖ What the Judicial Officer can do

1. **Exercise** the law, implement the act to give opportunity for reform and to reduce recidivism
2. **See** the Probation Officer as friend and officer of the court, and give him/her due recognition
3. **Give** equal attention to the cases of adult offenders for probation and use of probation officers and their reports in the same mandatory way as in the implementation of the Juvenile Justice (Care & Protection of Children) Act, 2000
4. **Extend** the benefit of probation to women who are currently a neglected group due to bias
5. **Ask** for probation officer's pre-sentence report well in advance when charge sheet is filed
6. **Give** enough time, at least 2 weeks, for a good pre-sentence report to come from the probation officer
7. **Read** and consider the probation officer's report and make it the basis of the order when an accused is found guilty
8. **Evaluate** whether the antecedents, circumstances, past behavior of the person justify sending him to the influences of the jail, whether it is going to destroy any possibility of this person coming out better, when there are options. Jail need not be the first resort
9. **Talk** directly to the offender to evaluate his eligibility for the different empowering sections of the Act - the Court can admonish under Section 3; release on personal bond, sureties and supervision under Section 4 which can be conjoined innovatively with Section 5 which relates to paying compensation
10. **Use** innovatively the flexibilities and conditionality clause available under section 4 - "any other matter as the court may consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender"- to craft necessary punishments or compensations

(section 5) that fit the crime and the criminal and satisfy the victim's right to justice, while releasing on personal bond

11. **Utilise** the powers under Section 13(c) of the Act to appoint ‘...in any exceptional case, any other person who, in the opinion of the Court, is fit to act as a probation officer in the special circumstances of the case.’
12. **Utilise** Borstal school in appropriate cases where a person is a young offender, between 18 to 21 years of age, and in the eyes of the judge he/she is neither fit for release under probation nor confined to a prison
13. **Inform** the accused under what section of the Act he/she is being released, and accordingly, what the conditions are, if any, and what is expected of him/her during release or supervision
14. **Deploy** power and flexibility under section 8 of the Act to vary bonds, sureties and supervision in petty offences.
15. **Include** a line in the order using Section 12, which will ensure that the person will not face disqualification for employment and will further lessen the future burden of the court
16. **Dissipate** suspicions of favouritism and bias, leniency and harshness by revealing your mind and by recording reasons in your judgment, as Section 6 of the Act demands, for appropriate release or imprisonment, so that both victim and offender understand the rationale behind a non-penal order or conversely, a penal one
17. **Recognise** NGOs to assist in this field for which provisions are given under Rules 23, 24 and 25 of Rajasthan's Probation Rules



❖ What the High Court can do

- a) **Identify** the learning need of the courts and guide them to know their duties and powers, recognise their short comings and develop systems that can help them, notwithstanding the shortcomings
- b) **Acknowledge**, give attention and respect to the good work of Chief Judicial Magistrates
- c) **Issue** a circular to the judicial officers to facilitate early calling of the Probation Officer's pre-sentence report after the chargesheet is filed, well before conviction stage since the Act calls for the report in a sealed envelope which may be opened only at the time of conviction and not before
- d) **Utilise** the powers under Section 13(c) of the Act to appoint its own panel of probation officers with the help of the State Legal Services Authority who will also monitor the probation services of the state
- e) **Find** alternative conditions for release on sureties demanded in the form of fixed place of residence or regular employment as both are disqualifying factors for a large section of poor and migrant offenders, to enable probation
- f) **Build** more dialogue between the judiciary and the probation officers to monitor and assess impact as to how many really are getting the benefit of probation laws and benefit of supervision, and remove difficulties through coordination
- g) **Provide** more training to judicial officers on the Probation of Offenders Act and other fair trial issues, especially the new district judges coming in, through the Judicial Academy
- h) **Direct** the Government to provide co-operation and assistance, instead of resistance, for community service for probationers and its monitoring
- i) **Ensure** monthly meetings between District Judge and District Probation Officer
- j) **Monitor** that judges themselves implement the Probation of Offenders Act and use it for the benefit of the state in controlling overcrowding and also as a yardstick to measure the judges performance vis-à-vis actual releases and reduction of unnecessary detention
- k) **Insist** on various departments to obey the court in the implementation of Probation of Offenders Act and PRC
- l) **Insist** on supervisory infrastructure from the Social Justice & Empowerment Department to make sure that the conditions of bond, or other order has been obeyed, so it does not become equal to an acquittal
- m) **Instruct** Department of Prosecution to keep a record of previous convictions that could be collected by the Department and to have their representative in each court to keep track of problems related to monitoring of probation



❖ **What the State Government can do**

1. **Increase** the numbers of probation officers with the Social Justice & Empowerment Department and support services through appointment of voluntary probation officers such as teachers and social workers. These must be full time salaried or part time and supported by a tiny stipend and travel allowance with official recognition on 15 August to spur them on
2. **List and direct** all relevant departments through a circular to assist in community service of probationers

❖ **What the Social Justice & Empowerment (SJE) Department can do**

1. **Use** the Probation of Offenders Act closely to advocate with the government to sanction more posts for probation officers
2. **Reduce** the burden of probation officers by appointing separate Social Welfare and Prison Welfare Officers
3. **Appoint** more women as probation officers so that fit cases of women offenders are identified under the Act for non-penal measures
4. **Appoint** Voluntary Probation Officers or part time probation officers as the Act permits it - create an identification criteria and prioritize retired school teachers
5. **Revamp** the training and sensitization of probation officers and increase its duration to three months for effective implementation of the Act
6. **Incentivise** the performance of probation officers as state of Maharashtra did, where a point was awarded to the probation officer for every pre-sentencing report he presented to the court
7. **Build** more dialogue between the judiciary and the probation officers to monitor and assess impact as to how many really are getting the benefit of probation laws and benefit of supervision, and remove difficulties through coordination
8. **Provide** list of appointed probation officers in every court of the district
9. **Provide** more travel and infrastructural support to probation officers for effective functioning
10. **Monitor** the work of probation officers such that they are available and present in court when called upon and the quality of their reports are guided and improved



❖ **What Probation Officers can do**

1. **Prepare** pre-sentence report timely, detailed and unbiased because it is to affect the life of a young person
2. **Appeal** in cases where they think benefit of Probation of Offenders Act could have been given by the court but was not
3. **Assess** the circumstances of home, economic and cultural situation and circumstances of the convicted person
4. **Visit** the courts on a regular basis to be of timely assistance with reports
5. **Visit** jail once a week, particularly identify women prisoners and those with children to assist them

➤ **What the State Legal Services Authority can do**

1. **Appoint** a panel of probation officers under the directions of the Chief Justice, and monitor their services to the court
2. **Make aware** legal aid lawyers about the provisions of this Act and they should intimate to the offender if he has been found guilty and that his freedom is conditional and the conditions of release as per the provisions of the Act applied



➤ **What CHRI can do**

1. **Help** and assist the SJE Department to replicate the incentivising system for probation officers with the Social Justice and Empowerment Department
2. **Assist** in preparation of Standard Operating Procedures (SOP) for effective probation system in the state



II. Making the Periodic Review Committee (PRC) More Effective

➤ What the Judicial Officer can do

1. **Fix** the meeting day in advance for the year or for the quarter and do not deviate from them to be assured of regularity of meeting
2. **Ensure** that PRC meetings focus upon using the proformas and follow through with compliance
3. **Pre-set** own guidelines and prioritize specific category of cases to be looked at in a particular meeting as reviewing all would not do justice
4. **Insist** all the courts to send Action Taken Report on the reviewed cases back to the committee
5. **Write** to Superintendent of Police, who is a member of the committee in cases where *challan* has not been submitted on time
6. **Call** for the Probation Officer, along with the District Probation Officer, to attend the meeting to get a more realistic picture
7. **Check** reasons for delay in trials
8. **Take up** production of undertrials through video conferencing only in case of delays at the time of remand
9. **Call** the undertrial and give them a hearing during a review meeting, when required
10. **Inform** the undertrials regarding the outcomes of the review
11. **Discuss** inter-departmental issues and bottlenecks in PRC meetings
12. **Review** proformas, as suggested in the CHRI study, and have separate proformas for women prisoners, juvenile offenders and mentally ill
13. **Conduct** special review of cases accused/charged under section 109 and Section 151 of the Code of Criminal Procedure, 1973
14. **Use** the standardised format, as suggested in the CHRI study, for recording minutes of the meeting



➤ **What the High Court can do**

1. **Issue** a circular to expand the mandate of Committee and areas of consultation to accommodate amendments to Code of Criminal Procedure, 1973 since the 1979 government order and give attention to the following categories with new proformas for them, such as:
 - (i) Long term incarceration
 - (a) detention beyond 4 months;
 - (b) detention exceeding half the period of sentence u/s 436A, criminal procedure code
 - (c) detention more than 1.5 years of session trial;
 - (ii) undertrials in the age-group of 18-21 years as they might actually be juvenile;
 - (iii) first time offenders;
 - (iv) petty offenders;
 - (v) repeat offenders;
 - (vi) mentally & physically challenged;
 - (vii) women;
 - (viii) no lawyer cases for legal aid;
 - (ix) preventive detention cases u/s 107, 108, 109, 151, Code of Criminal Procedure, 1973
2. **Ensure** that PRC addresses and provides solutions to systemic problems like delays in court production
3. **Empower** the PRCs by appointing District Judge as Convenor so that Sessions Court cases may be suitably taken up for which Chief Judicial Magistrates currently are not able to give recommendations
4. **Entrust** High Court judges with greater monitoring powers over the functioning of the committee in the districts of their supervision
5. **Include** State Legal Services Authority and the Prosecutor or Assistant Public Prosecutor as a part of the Committee
6. **Conduct** quarterly inter-departmental meetings in every district with District & Sessions Judge as Chair
7. **Authorise** the standardised format, prepared by CHRI, for recording minutes of the meeting
8. **Establish** Periodic Review Committees at the High Court level as well for cases of appeal for convicts

➤ **What the Prisons can do**

1. **Remind** the Chief Judicial Magistrate to convene the monthly meeting
2. **Prepare** the list of the undertrials for review with focus upon using the revised proformas and identifying cases on priority
3. **Ensure** that minutes of meeting are detailed
4. **Send** copy of minutes to the District Judge and the supervising Judge of the High Court
5. **Use** PRC as a formal space where probation fit cases can be identified
6. **Improve** computerization of prisoner data that is presently limited to central jails

➤ **What the Social Justice & Empowerment Department can do**

1. **Issue** a circular for probation officers to be part of the PRC along with the District Probation Officer



➤ What the State Legal Services Authority can do

1. **Send** representative of the District Legal Services Authority to every PRC meeting to take stock of cases with no legal representation
2. **Provide** list of legal aid lawyers in all prisons who may assist with representation
3. **Ensure** availability of lawyer and build legal aid clinics in jail for timely identification of PRC review suited cases
4. **Introduce** entries in the Undertrial Register in prison, maintained by the prison authorities, mainly – ‘Name and Details of Lawyer’ and ‘Whether Private or Legal Aid’ to ensure that legal aid requirement is recorded

➤ What Probation Officers can do

1. **Attend** PRC meetings regularly
2. **Identify** cases of vulnerable women who can benefit from review in PRC
3. **Maintain** dialogue with Chief Judicial Magistrates and District Judge on probation suited cases

➤ What CHRI can do

1. **Develop** all new proforma discussed for expanded mandate of PRC
2. **Facilitate the training** of legal, judicial and prison staff



Discussion, Challenges, Good Practice

Introduction

The Justice Mulla Committee Report on Prison Reforms has emphasised the importance of community-based alternatives to imprisonment for offenders convicted for relatively minor offences and also the need for periodic review of bail pending cases of detention in judicial custody. Moving in the spirit of these recommendations, the day's deliberations highlighted the significance of alternatives to imprisonment that could be exercised by use of probation laws and regular and systematic judicial review and release of undertrial prisoners.

The discussions, structured broadly under a thematic of 'Law & Inter-agency Coordination', built room for philosophy and rationale behind the mechanisms of probation and periodic review; legal provisions and judgments; the role of the various agencies - judiciary, prison department, social justice and empowerment department, the government, the legal services authority, the prosecution in implementing the law; importance of interaction and dialogue between judicial officers and probation officers on actual practices and solutions towards effective implementation of the two mechanisms. Attention was drawn to several experiments carried out in the field of probation in states like Maharashtra as well as internationally.

While Chief Judicial Magistrates from Jodhpur, Jaipur, Churu, Kota, Tonk, Sawaimadhopur, Sikar, Bhilwada, were particularly vocal discussing their experiences in these districts as well as those where they might have been posted earlier like the districts of Alwar, Ajmer, Ganganagar. Probation officers from 8 districts shared their experience of probation work with the courts and the PRCs in prison.

The day's discussions had two parts, one, dealing with powers, duties, implementation of the probation system in court, and the other, dealing with powers, duties, implementation of the periodic review system in prison to address non-penal measures and review of undertrial cases. It was further supported by an interaction between Probation Officers and the Chief Judicial Magistrates.

I. Law & Inter-agency Coordination: Implementation of Probation of Offenders Act, 1958 & the Courts

Discussion: Probation offers an alternative to imprisonment, and is considered the most viable sentencing option for juveniles, young offenders, first time and petty offenders. The purpose of probation is to reform the offender by means that are alternative to punishment such as admonition, constructive treatment, conditions of good conduct, and supervision rather than punishment and incarceration, by which, offenders, instead of being sent to jail, are put under the care of a probation officer by the court, thus saving them from stigma and influence of hardened criminals.

The Probation of Offenders Act was flagged out by Mr. R.K. Saxena, Retd. I.G. Prisons, as a very important law dealing with young offenders, through correction/reformation rather than punishment. He presented this law as both preventive and curative.

The provisions of the Act are supported by the sections 360 and 361 of the Code of Criminal Procedure, 1973. The potential of the Probation of Offenders Act is huge, he said. The bare act weighs 10 grams, has 19 sections but has a spirit that can create a change in society. Its history gives a clue to its intention. It was first formalized in the Philippines by the International Society for Social Defence. The basis for the



law is the philosophy that you cannot reform with cruelty, but with practical rehabilitation. Beyond the Juvenile Justice Act it is the one law that addresses the needs of young offenders between 18 to 21 years.

Any youth or person should not repeat his offence if care is taken and so an opportunity under the law may be given to him. Recidivism in the country is 4.7%. Though this is low can it not be reduced further? Young offenders should be given the opportunity to improve as an important human resource for the society. Actors of the criminal justice system, Mr Saxena stated, must not be giving in to emotional upsurge generated by public to find easy solutions in long incarcerations and hangings but must be guided by the principles of justice and further, restorative justice. In the same tone, Hon'ble Justice Chauhan advised the judges to try and change the societal thinking rather than the flow of the pen towards the command of law.

Restorative justice: The restorative justice principle underlying the Probation of Offenders Act was at the centre of the discussion on Probation of Offenders Act. The criminal, Mr Saxena said, is a part of our society and has to either be reformed or be a menace to society. The special importance of Probation of Offenders Act is that it is founded on the notion of rehabilitation and restorative justice which judges must see attained. One cannot be slave to society, whatever society's sentiments, justice has to be even handed and the judge's duty is to balance the rights and interests of both the offender and the victim.

The general misconception that Probation of Offenders Act was a 'leniency' tool in dealing with offenders was addressed. Rather, as Dr. Vijay Raghavan from TISS pointed out, it ought to be seen as a scientific tool that was first established as such in 1841 by John Augustus who saw a drunkard being convicted and asked the court to leave the drunkard in his care for three weeks and thus began a movement toward probation. Augustus demonstrated that reform was possible through a 'method' of supervision and rehabilitation – he asked for release of 2000 people who he brought back to court and society as reformed individuals.

Hon'ble Justice R.S. Chauhan presented probation's advantage over plea bargaining in terms of safeguard of liberty, addressing overcrowding, speedy justice, inclusion of societal defence as well as inclusion of the victim and law and order.

At the same time it was highlighted that the Act allows for society not to be burdened with un-reformed and re-confirmed criminal. The speakers reiterated that the idea is to help the victim feel that his concerns and the cause of justice have been served while not neglecting to provide an opportunity to the perpetrator provided he is willing to reform and not repeat offensive behaviour. To ensure reparations to victim (or to society) who is one of the driving forces of the criminal justice system, the offender could be asked under this Act to make compensation by a fine, forego professional fees, carry out community service, or have other conditions/restrictions placed on them during probation period.

Dr. Vijay Raghavan stated that the clause, "any other matter as the court may consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender" mentioned under Section 4 of the Act dealing with release under supervision, should be seen as a useful tool in the hands of the magistrate to ensure compensation to the victim. The idea of community service is new but it will only gather momentum if it is used. Here the Commissioner of the Social Justice & Empowerment Department, Mr. Ajitabh Sharma, committed that if backed by a High Court order the Department could take it up with the State Government as to how best a list of departments could be drawn upon to provide assistance for community service. Here, Justice Chauhan pointed out an innovative instance of community service that came out of a Supreme Court judgment involving Advocate Anand who was convicted for supporting a witness in a famous BMW hit and run case. In lieu of a year long punishment, the Supreme Court's order debarred him from paid practice for 3 years, he could not take fees for a year, but was required to use his legal knowledge in the service of the community giving *pro bono* advice.

Justice delayed is justice denied was the caution expressed by Hon'ble Justice Chauhan who called the attention of the Chief Judicial Magistrates to their role vis-a-vis the Constitution which judges must work towards implementing.

Key Challenges

✓ Of Probation Officers

- a) **Overburdened:** Probation Officers handle 250 welfare schemes of the Department, so they are challenged in terms of time to do probation work.
- b) **No recognition:** They are overburdened, have little or no recognition for their work, and in Rajasthan, the SJE department is yet to inform of the courts of their appointment, judges do not give them any importance.
- c) **Insecurity:** Their security of employment, ranks, promotions and scope for upward mobility are fraught with difficulties
- d) **Poor allowances:** The meagre travel allowances of probation officers cannot sustain the demands of home and field visits. They are expected to make as part of supervision work.
- e) **Problematic grounds for rejection of probation:** Their work is made more difficult by criteria set for rejection of probation on grounds like lack of fixed place of residence or regular employment of offenders which becomes discriminatory for a large section who are often from the informal sector or migrants lacking either privilege (this should be Key Challenges – of Offenders)
- f) **Gender problem:** Women are neglected as a category of offenders who could benefit from the implementation of the Act. There are very few women Probation Officers appointed as well.
- g) **Lack of coordination with Prison authorities:** There are difficulties in getting case information about women prisoners from prison authorities because they sometimes do not understand probation work or the role of probation officers in the PRC either. So there are obstacles in getting issues of women prisoners into the *Samiti* meetings.
- h) **Unused powers:** Probation Officer can appeal directly against a sentence, but this power goes largely unused in Rajasthan as in several other states
- i) **Neglect of the confidential pre-sentence report of the Probation Officer:** While Probation Officer's report is sought mandatorily by Juvenile Justice Board under the Juvenile Justice (Care and Protection of Children) Act, 2000, the same report is not being asked for in the implementation of the Probation of Offenders Act.
- j) **Need for orientations of duty holders:** Probation officers from Jodhpur felt that prison officers and new judicial officers needed orientation on the Probation of Offenders Act
- k) **Impossibility of supervision at large scale:** While the Chief Probation Officer pointed out the need for a High Court order asking all cases of probation to be handed over for supervision by probation officers, Chief Judicial Magistrate, Jaipur felt that the problem of actual supervision had to be recognised by the Probation department, particularly in places where unmanageable numbers were involved. For example, in a big district like Jaipur how would the probation officer manage to supervise 25 cases all at once?
- l) **Requirement for voluntary and part time probation officers:** This gap in supervision could be filled by teachers and social workers rather than only ex-servicemen whose basic orientation is towards policing rather than rehabilitation
- m) **Limited facilities of Borstal Schools:** Borstal schools provide the half way option between prison and release; it is a place of supervised non-penal option which the magistrate can use. However, the option is currently restricted in Rajasthan with only one such facility in Ajmer district.

✓ **Of Chief Judicial Magistrates**

- a) **No organic role of Probation Officer in court:** Chief Judicial Magistrates expressed their concern that probation officers have no link in court because they hardly visit. Nor do they inform court regarding compliance to bail bond or submission of 'bayaan' of the offender. There is no relationship between the judiciary and the probation officer
- b) **Work load:** Once a person has been convicted, judges are often under pressure to pronounce sentence quickly and often have no time to wait for the pre-sentence report of the probation officer for which at least 7 days is required
- c) **No reliable supervisory infrastructure to give judges the confidence to pass probation orders:** There is no supervisory infrastructure to make sure that the conditions of bond, or other order has been obeyed; so it becomes equal to an acquittal
- d) **Using Section 3 over Section 4 of the Probation of Offenders Act:** Some of the Chief Judicial Magistrates shared that they do not ask for pre-sentence report under Section 4 due to lack of probation officers or lack of their support infrastructure in different districts, but used Section 3 on admonition for petty offenders more as that did not require supervisory role
- e) **Pre-sentence investigation is a problem:** The sentence has to be crafted after the pre-sentence report but the reports are often not up to the standard, the probation officer will not come to court, there may be corruption, the probation officer is involved with many other works that are extraneous, there is inadequate infrastructure for them to actually do their work. They are also often dissatisfied with the timeliness of probation officer's reports (Chief Judicial Magistrate of Jodhpur did not get the report he asked for in one and a half years when he was Chief Judicial Magistrate, Alwar).
- f) **Lack of systems:** No systems to show records of previous convictions nor to gather probation officer's report into court
- g) **Dealing with misconception that release through Probation of Offenders Act is a "letting off":** Whenever magistrates use either Section 3 or 4 of the Probation of Offenders Act, victims perceive it as a "letting off". This problem is aggravated by the lack of practice of informing either the offender or the victim as to which section of the Act has been used. Chief Judicial Magistrate, Kota stated that this happens when magistrates do not talk to offender or the sureties directly.
- h) **Revealing the judicial mind:** There is need for proper understanding of role of magistrates in dispensing justice as per the Constitution, and this is possible only when magistrates record their reasoning as to why they have or have not opted for probation.
- i) **Unused powers:** The Borstal Schools Act provides for keeping a person in the age group of 18 to 21 years for reformation. If the magistrate thinks that the person is not fit for either probation or prison then they can be sent to Borstal schools, where the Superintendent is called the Principal.
- j) **Women not benefiting as much as they should from the Act:** Women are not given the benefit of this act because there are not enough women probation officers. This is ironic because women outside of murder and heinous crime could be particularly benefited by this law.
- k) **Timely use of the Probation Officer's report:** Justice Chauhan's solution to the problem of neglect of the probation officer's report was for judges to use their powers dynamically. Section 7 of the Act asks for a confidential pre-sentence report that must be given to the court in a sealed envelope and opened only by the magistrate just 'before' his sentence. This timing is not very suitable in preparing the judicial mind.



✓ **Good Practices of Maharashtra & International Experiences**

- a) Maharashtra had a glorious past as regards the training of Probation Officers and the implementation of the Probation of Offenders Act, where Tata Institute of Social Sciences (TISS) was the centre for guidance and training. The first training program for probation officers and prison officials happened in TISS.
- b) In order to revive the implementation of the Probation of Offenders Act the training of Principal District Judges was conducted in Maharashtra in all districts, and now the results are slowly showing. The gap between Judiciary and the Probation Officers created out of misconceptions on both sides should be filled by facilitating more interaction between both stakeholders in Rajasthan and training events for both
- c) A point system was followed for performance evaluation of probation officers in Maharashtra for the number of Social Investigation Report filed and supervision cases taken up
- d) Professional Probation Officers and 50,000 Voluntary Probation Officers are working. Voluntary Probation Officers report to Probation Officers. In Korea, there are Probation Officers and Assistant Probation Officers. Both Maharashtra and Rajasthan can learn from this.



II. Law & Inter-agency Coordination: Periodic Review Committees in Prison & Probation



Discussion: The PRC, comprising of the Chief Judicial Magistrates as its Convenor and four other members representing the District Magistrate, the Superintendent of Police, the District Probation Officer, and the Jail Superintendent, assures that undertrial groups in each prison are placed under periodic judicial attention so that no one slips through the cracks of the criminal justice system and is unnecessarily detained thereby.

Findings of CHRI's study: In this session CHRI presented the findings of its study based on Right to Information queries on the functioning of *Avadhik Samiksha Samitis* in Rajasthan before the Rajasthan judiciary. It drew attention to the several problem areas that require addressing for the proper functioning of the review mechanisms in order to provide justice to offenders who are eligible under their mandate:

- (i) The committee does not meet regularly.
- (ii) Proformas are not followed by the prison authorities in preparing list of cases.
- (iii) Case review process is unrealistic - on an average, 340 (Central Jail) to 177 (District Jails) cases are reviewed in single meeting;
- (iv) No set format or practice prevails to record minutes and quality varied from prison to prison
- (v) No Action-taken Report is provided by the respective courts to inform the *Samiti* about the case-wise progress made

View from behind the Bars: The judiciary deliberated on the suggestions made by the Director General (DG), Prisons, Rajasthan, to improve the functioning of the PRC. The D.G., Mr. Omendra Bharadwaj, emphasized that the prisons must focus on developing and using the proformas for vulnerable prison populations like (i) remand prisoners detained for longer than 4 months, beyond stipulated 60-90 days (ii) young offenders within the age group of 18-21 years, (iii) petty offenders, and (iv) elderly and infirm; and (v) mentally ill undertrials, and follow through with compliance towards release. He further recommended that the PRCs must create their own guidelines to ensure the mandate of the Committees expands to take into account criminal procedure code amendments and scrutiny over the use of preventive detention laws.

Solutions from the Judiciary: The Hon'ble Chief Justice announced the need for higher level district and state level committees with the involvement of District Judges to have some kind of monitoring of how the judges themselves implement the Probation of Offenders Act and use it to benefit the state as well as to monitor the judges' performance regarding convening of the PRCs and their disposal of bail pending and other vulnerable cases pertaining not only to the magistrate courts but also cases in the session courts. The district level committees would be in a network with the state level committee. He asked for bail releases to be stepped up through the PRCs and insisted on targeting and ensuring releases, as per the law, as a measure of judicial performance.

That justice should not only be done but also be seen to be done was the firm affirmation of the Rajasthan judiciary that took the leadership of penal reform in the state level consultation.

Key Challenges

✓ Of Judiciary

- a) **View Vs Review:** PRC's attempt to look at all prisoners at one time has been obstructive to its purpose. They have not built a practice of prioritizing issue or vulnerability for each meeting, particularly for big jails like Jaipur where strength of undertrials is 1750.
- b) **Limited mandate of PRC:** Amendments in the Code of Criminal Procedure, 1973, like 436A has not been incorporated into the PRC's mandate. Further, most prisoners are either in preventive detention under Section 151 or sections for 'keeping peace through bonds' such as Sections 107, 108, 109 or NDPS cases. Chief Judicial Magistrates felt that inclusion of such focus groups in the mandate would help and facilitate their work better.
- c) **Limitation of Composition & Jurisdiction:** The problem is in the case of Sessions Court cases. Chief Judicial Magistrates do not feel sufficiently empowered to discuss with District & Session Judge about delays in their cases. Chief Judicial Magistrate, Chittorgarh and Chief Judicial Magistrate, Rajsamand suggested that PRC should be headed by a District & Sessions Judge or there should be a District level Monitoring Committee headed by him. Similarly, probation officers felt that PRC ought to have representation from the SLSA/DLSA. Probation Officer could be a member of the District level Monitoring Committee as well.
- d) **No presence of Legal Services Authority and Department of Prosecution:** Lack of representation of the Legal Services Authority and the Prosecution Department in the prevailing PRC structure hinders the effective functioning of the PRC.
- e) **Difficulties of expediting chargesheet-delay cases:** Delayed chargesheet cases were presented by Chief Judicial Magistrates from Sawai Madhopur and Sikar as a key problem where *challan* has not been filed for 3-10 years. The obstacle here in acting on chargesheet delay cases is two-fold - (i) though the Superintendent of Police is part of the PRC there is no response to letters written by Chief Judicial Magistrates to act on such delays, and neither can case be closed easily in the case of heinous offences; (ii) prison cannot give this information to the PRC without the verification from the Prosecution Department as to when the chargesheet has been filed as the presence of a Case Reference number alone indicates that chargesheet has been filed in the case but not when.
- f) **Limited scope to act on 436A cases:** Chief Judicial Magistrate, Jodhpur pointed out that even in 436A cases their hands are tied, when there are 25 cases on one person, they end up being in prison only. Only where person has completed the full term can the person be released.
- g) **Missing proforma on court production delays:** In larger districts delayed court production is one of the reasons behind long period of detention. Without a proforma on how many times the person has been produced in the court, Chief Judicial Magistrates are unable to take up this issue through PRC. Chief Judicial Magistrates also suggested production through videoconferencing as a solution.
- h) **No proformas for women prisoners and those without legal representation:** Probation Officer from Jodhpur suggested a separate proforma in the PRC for women prisoners as they are a neglected group. A proforma is also required, as Chief Judicial Magistrate from Tonk mentioned, for cases requiring legal representation.
- i) **Problem of Action Taken & Follow-up:** The general process is to look at various groups/cases such as those eligible under section 436A, and then the PRC recommends to courts to have it cross checked and action taken. However, the actual action taken is neither tracked systematically nor reported back to the PRC for follow-up by prison and other bodies. Currently follow-up on cases is very poor. If same case comes up for review again it should be a concern as to why the recommendations of the previous committee meetings were not adhered to.

✓ **Of Prisons**

- a) **“Long Period” of detention is not qualified and thereby detracts ‘focus’** : The PRC order does not explicitly mention what constitutes ‘long period’ and should be a fit case for review, so all undertrial cases get taken up and that clogs the decision making and action taking. There are many who get released in 15 days of custody and the prison preparing the full list dilutes the effectiveness of the PRC’s action. The focus could be to list cases wherein 4 months detention is over and to include pre-decided ‘focus’ groups.
- b) **No data base maintained on the ‘no lawyer’ cases:** Many a times the offenders do not have defence counsel. But generally, this information does not reach the prison. Sometimes a lawyer may have been appointed but this is not informed to the accused. The prisoners keep saying that they do not have a lawyer. A list of legal aid lawyers from Legal Services Authority to be put up for such cases in all prisons.
- c) **No PRC for Convicts/Appeal cases:** Cases of convicts get excluded from the present PRC mandate. There is no comparable PRC at the High Court level to look into delays in actual trials and appeals. Many cases are pending for 9-10 years.

✓ **Of Probation Officers**

- a) **Integrating the Probation Officer into the PRC:** Probation suited cases are not being identified in the PRC meeting.
- b) **No link between petty offenders & work of probation officers:** Chief Probation Officer also mentioned that if there is a proforma for petty offenders this will help the probation officers to gather information and do appropriate follow up in such cases.



✓ **Good Practices**

- a) Chief Judicial Magistrate, Tonk, who served earlier as Chief Judicial Magistrate, Ganganagar, discussed how he managed to make PRC regular with participation of all stakeholders – it was the pre-fixing of day and timing of post lunch. The guideline followed was early disposal of cases. For delay in court production cases, the immediate solution was to have the production done in prison before the magistrate.
- b) In Maharashtra, there was District Level Committee that called for inter-departmental meetings every 3 months. The issue of court production was kept up with the Superintendent of Police to fix responsibility to produce the prisoner to the court.

Feedback from the Participants

All the judicial officers found the sessions on probation and periodic review committee useful for their learning and practical work and several of them outlined what they would be tackling in the next few months as priority targets to bring in good practice vis-à-vis the two mechanisms. A few probation officers also gave their feedback and that is presented separately.

I. Feedback from Judicial Officers

Probation of Offenders Act

Learning Areas

- Need to give benefits of probation to as many offenders as possible
- Conditions may be imposed at the time of passing order of probation for good behavior
- Significance of receiving the report of the Probation Officer at early stage - before framing charge or taking evidence
- Understanding the provisions of the Act, mainly Sections 3 to 12
- Use of Section 5 for compensation to victims and Section 12 to prevent disqualification of a probationer from future employment
- Concept of hostel schools for reformation
- Information on Borstal Schools as a mid-level approach to alternatives to imprisonment
- Role of SJE Department
- Probation Officer's problems
- Conceptions about jail authority, Probation Officer and police

Future Priority Areas

- Implementing the act in its real spirit in the day-to-day working of the court
- Provide the benefit of probation without any delay
- Find out the cases which are fit for probation
- Take the help of Probation Officer; maintain regular contact with Probation Officer; coordinate with Probation Officer
- Ask for Probation Officer's report for suitable persons and consider before passing order
- Call for the Probation Officer's report as soon as the chargesheet is filed
- Report of Probation Officer to be kept in sealed envelope and will be opened only at the time of decision
- Acquaint undertrials and other offenders with rules of probation
- Inform victim of compensation possibility under the Act
- Ensure that accused knows about the results expected while being released on probation
- Give benefit of Section 12 while giving the benefit of Section 3 or Section 4
- Record reasons for granting or not granting probation
- Have regular meetings with probation officers
- Consider imposing conditions when the order of probation is passed



Periodic Review Committee

Learning Areas

- Importance of PRC with regard to undertrial prisoners
- How to expedite cases of undertrial prisoners towards speedy justice
- How to implement bail related provisions
- Classification of undertrials
- All cases must be viewed and reviewed
- Committee should specify the cases which require compliance of law
- Discussion of every matter should be based on merits
- Report in proper format
- Giving recommendations to courts for release
- Sending report of meeting to Hon'ble District Judge

Future Priority Areas

- Have regular meetings
- Conduct meetings every month
- Prefix the date of meetings and also the time
- Prepare the list of cases; prepare the list court wise
- Prioritize cases of 4-6 months detention
- Use CHRI prepared proformas
- Ensure effective role of all stakeholders in the PRC
- Prepare detailed report in accordance to the proformas
- Send copy of minutes of meeting to the Monitoring High Court Judge of the district
- Give recommendations for release of suitable persons
- Take feedback from the courts and prisoners
- Monitor the implementation of orders of PRC - carry out follow-ups

Likes & Dislikes

Likes: The research work; participation of Probation Officers; easy and familiar discussion with all members and participants; usefulness of workshop; opportunity to make presentation and have healthy discussion; almost everything; it was a well-prepared event; got different ideas from different departments; practical tips; workshop provided ground for interaction; creating new areas for PRC meetings

Dislikes: Not realizing the actual issues or identifying the basic problems; that Probation Officers are not aware about their own Department and its circulars; timing of workshop up to 6.10 pm not comfortable; judicial officer is already overburdened with so many tasks

Suggestions for CHRI to help judicial officers in their work better and any other thought or feedback

- Keep up in-depth and practical research
- Such conferences should be organized periodically/quarterly to help keep judiciary informed and aware
- Such seminars should be organized at every divisional headquarter/every district
- Workshop material should be sent by post in advance of such workshops
- Time management should be better
- CHRI may bring more interaction, coordination with judiciary and probation officers
- More practical approach needed to the problem

State Level Consultation for Chief Judicial Magistrates of Rajasthan

- Ensure implementation of the Probation of Offenders Act and PRC - ensure that every district has monitoring committee headed by District & Sessions Judge and comprising of Chief Judicial Magistrates, District Probation Officer & Officer-in-Charge of Prison
- Ensure availability of Prosecution in Juvenile Justice Board
- Ensure member of the Juvenile Justice Board is eligible to take evidence
- Justice without bars is really not possible in view of present circumstances faced by our judicial system; rather we should look for possible alternatives
- Strict action should be taken against strike by lawyers
- Efforts should be made to improve the conditions of district and sub-jails
- Even a conviction does not make a person a criminal. The person must be given a chance to reform and to come into mainstream
- Justice for all – CHRI should organize similar programmes for victims' problems
- CHRI should send report of this seminar to all courts

II. Feedback from Probation Officers

Probation of Offenders Act

Learning Areas

- Sections of the Probation of Offenders Act
- How to supervise the offender
- Need to contact the District Judge, Additional District Judge for effective implementation of the Act
- Probation is an important tool for welfare of undertrial prisoners

Future Priority Areas

- Meet District Judge and request him to look at the probation and supervision cases

Periodic Review Committee

Learning Areas

- Its usefulness for betterment of prisoners

Future Priority Areas

- Review the proformas of PRC meeting so that undertrials can get benefit of probation
- Contact the Chief Judicial Magistrates and District Judge first
- Be present during *Avadhik Samiksha* meeting

Likes & Dislikes

Likes: Workshop provided a ground for interaction; liked the discussions with Chief Judicial Magistrates on probation

Suggestions for CHRI to help probation officers in their work better and any other thought or feedback

CHRI should conduct quarterly meetings and workshops at Division level on Probation of Offenders Act.



Annexures

A. Agenda

JUSTICE WITHOUT BARS

A State Level Consultation with Chief Judicial Magistrates on Probation and Review Mechanisms

Co-hosted by

Commonwealth Human Rights Initiative & Social Justice and Empowerment Department, Rajasthan

1ST SEPTEMBER, 2013

HCM Rajasthan State Institute of Public Administration, Jawahar Lal Nehru Marg, Jaipur, Rajasthan

10:00 am – 10:30 am	Registration	
10:30 am – 11:00 am	INAUGURAL SESSION Welcome & Introduction Justice R.S. Chauhan, Rajasthan High Court; Sh. Ajitabh Sharma, Commissioner, Social Justice & Empowerment Department; Mrs. Maja Daruwala, Director, CHRI	
11:00 am -11:30 am	TEA BREAK	
11:30 am – 1:00 pm	SESSION 1: The Law & Inter-Agency Coordination: Court - Probation Systems MODERATOR: Justice R.S. Chauhan, Rajasthan High Court	
	Sh. R.K. Saxena, Retd. IG Prisons, Rajasthan <i>The Probation of Offenders Act & Practices of the Court in Rajasthan</i> (20 min)	Dr. Vijay Raghavan, TISS, Mumbai <i>View from the Field (Working with the Probation System & the Judiciary)</i> (20 min)
	Interaction & Voices from the CJMs (30 min)	
1:00 pm – 2:00pm	LUNCH BREAK	
2:00 pm – 3:30 pm	SESSION 2: The Law & Inter-Agency Coordination: Prison - Probation Systems MODERATOR: Mrs. Maja Daruwala, Director, CHRI	
	Ms. Sugandha Shankar, CHRI <i>Mandate & Functioning of the Avadhik Samiksha Samitis or Periodic Review Committees (20 min)</i>	Sh. Omendra Bharadwaj, DG (Prisons), Rajasthan <i>View from Behind the Bars – Seeking Release on Probation through Periodic Review Committee; Probation Officers & Role in Supervision Work during Parole (20 min)</i>
	Interaction & Voices from the CJMs (30 min)	
3:30 pm – 4:30 pm	SESSION 3: My Experience (<i>Mera Anubhav</i>) Q&A: Interaction between Judiciary and Probation Officers MODERATORS: Justice R.S. Chauhan, Rajasthan High Court &	

State Level Consultation for Chief Judicial Magistrates of Rajasthan

	Sh. Ajitabh Sharma, Commissioner, Social Justice & Empowerment Department		
	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Sharing by Probation Officers – <i>My Experience in Court, Prison, PRC and Observation Homes</i> (15 min) </td> <td style="width: 50%; vertical-align: top;"> Sharing by CJMs – <i>My Experience in implementing the Probation of Offenders Act and working with Probation Officers in Court & PRC</i> (15 min) </td> </tr> </table>	Sharing by Probation Officers – <i>My Experience in Court, Prison, PRC and Observation Homes</i> (15 min)	Sharing by CJMs – <i>My Experience in implementing the Probation of Offenders Act and working with Probation Officers in Court & PRC</i> (15 min)
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	Open Discussion (15 min)		
4:30 pm – 5:00 pm	TEA BREAK		
	CONCLUDING SESSION Recommendations, Solutions, Implementation <u>CHAIR:</u> Justice R.S. Chauhan, Rajasthan High Court		
5:00 pm – 5:30 pm	<u>OPEN FLOOR</u> VOICES: Solutions/Action Plan from the Judiciary, Directorate of Rajasthan Prisons, Social Justice & Empowerment Department (20 min) Sh. Omendra Bharadwaj, DG (Prisons) Rajasthan; Sh. Ajitabh Sharma, Commissioner, Social Justice & Empowerment Department		
5:30 pm – 6:00 pm	ADDRESS BY THE HON'BLE CHIEF JUSTICE, RAJASTHAN HIGH COURT SHRI AMITAVA ROY		
6:00 pm – 6:10 pm	VOTE OF THANKS by Mrs. Maja Daruwala, Director, CHRI		



State Level Consultation for Chief Judicial Magistrates of Rajasthan

B. List of Participants

Chief Judicial Magistrates			
S.No.	NAME AND DESIGNATION	S.No.	NAME AND DESIGNATION
1	Shri Ravi Prakash Chief Judicial Magistrate, Ajmer	19	Shri Suresh Chandra Bansal Chief Judicial Magistrate, Jalore
2	Shri Yogesh Kumar Gupta Chief Judicial Magistrate, Alwar	20	Shri Anish Dharij Addl. Chief Judicial Magistrate, Jhalawar
3	Shri Sushil Jain Chief Judicial Magistrate, Banswara	21	Shri B.P. Chhangani Chief Judicial Magistrate, Jhunjhunu
4	Shri Gopal Bijoriwal Chief Judicial Magistrate, Barmer	22	Ms. Chandra Kala Jain Chief Judicial Magistrate, Jodhpur District
5	Shri Hari Mohan Addl. Chief Judicial Magistrate, Baran	23	Shri Mukesh Chief Judicial Magistrate, Jodhpur Metro
6	Shri Mukesh Srivastav Chief Judicial Magistrate, Bharatpur	24	Shri Ganesh Kumar Chief Judicial Magistrate, Karauli
7	Shri Mahesh Kumar Sharma Chief Judicial Magistrate, Bhilwara	25	Shri Prem Chand Sharma Chief Judicial Magistrate, Kota
8	Shri Krishna Chandra Chief Judicial Magistrate, Bikaner	26	Mr. Yogendra Sharma Chief Judicial Magistrate, Nagaur
9	Shri Gambhir Singh Chief Judicial Magistrate, Bundi	27	Shri Manoj Kumar Sahariya Chief Judicial Magistrate, Pali
10	Shri Rakesh Katara Chief Judicial Magistrate, Chittorgarh	28	Shri Jitendra Singh Chief Judicial Magistrate, Pratapgarh
11	Smt. Indu Pareek Chief Judicial Magistrate, Churu	29	Shri H.N. Sasswat Chief Judicial Magistrate, Rajsamand
12	Shri Govind Agrawal Chief Judicial Magistrate, Dausa	30	Shri Deep Chandra Joshi Chief Judicial Magistrate, Sawai Madhopur
13	Shri Satish Chandra Kaushik Chief Judicial Magistrate, Dhaulpur	31	Shri Dharendra Singh Chief Judicial Magistrate, Sikar
14	Shri Ashok Kumar Aggarwal Chief Judicial Magistrate, Dungarpur	32	Shri Satish Chandra Vyas Chief Judicial Magistrate, Sirohi
15	Shri Daya Ram Godaram Chief Judicial Magistrate, Hanumangarh	33	Shri Vinod Kumar Soni Chief Judicial Magistrate, Sri Ganganagar
16	Shri R.L. Moond Chief Judicial Magistrate, Jaipur District	34	Shri Ajay Kumar Bhojak Chief Judicial Magistrate, Tonk
17	Shri B.B. Gupta Chief Judicial Magistrate, Jaipur Metro	35	Shri Ishwarilal Verma Chief Judicial Magistrate, Udaipur
18	Shri Sahab Ram Motyar Chief Judicial Magistrate, Jaisalmer		
Probation Officers			
1	Anshul Mehandirette, Ajmer	5	Jai Prakash, Jaisalmer
2	Abhishek Gujarati, Ajmer	6	Manmet Kaur, Jodhpur
3	Mod. Ashfaq Khan, Bikaner	7	Shardha Devi, Nagaur
4	K.K. Chandravanshi, Bhilwara	8	Rajendra Purohit, Pali

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Strategic Initiatives: CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN, and the African Commission for Human and Peoples' Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

Access to Information: CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation and assists partners with implementation of good practice. It works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interferences.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is aimed at highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. CHRI believes that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

About Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work, and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network.* These professionals can steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policymakers, highlight issues and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

International Advisory Commission: Yashpal Ghai – Chairperson, Members – Alison Duxbury, B. G. Verghese, Neville Linton, Vivek Maru, Sam Okudzeto, Edward Mortimer, and Maja Daruwala

Executive Committee (India): B. G. Verghese – Chairperson, Members – A. P. Shah, B. K. Chandrashekar, Kamal Kumar, Nitin Desai, Poonam Muttreja, Ruma Pal, Sanjoy Hazarika, Wajahat Habibullah, Jacob Punnoose and Maja Daruwala – Director

Executive Committee (Ghana): Sam Okudzeto – Chairperson, Members – Akoto Ampaw, B. G. Verghese, Neville Linton and Maja Daruwala – Director.

Executive Committee (UK): Neville Linton – Chairperson, Members – Derek Ingram, Joe Silva, Meenakshi Dhar, Richard Bourne, Sally-Ann Wilson, Rita Payne, Michael Stone and Syed Sharfuddin.

* Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association.

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