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HANDBOOK FOR PROBATION OFFICERS



COMMONWEALTH HUMAN RIGHTS INITIATIVE

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A. INTRODUCTION: THE RELEVANCE OF PROBATION TO PRISON REFORM: AN APPROACH TO RESTORATIVE JUSTICE¹

I. Meaning, Purpose and Importance of Probation in India

Probation is an alternative to imprisonment, and is considered the most viable sentencing option for juveniles, young offenders, first time and petty offenders² and even repeat offenders. The purpose of probation is reform of 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. While infliction of punishment has as its objective i.e. the suffering of the offender; probation is intended at reformation and re-socialisation in line with the reform of the penal system. It is guided by the belief that many offenders are not dangerous criminals but have acted in misfortune, improvidence, misguidance, and have landed in conflict with law.

Incarceration can have a negative impact on offenders, especially, if they are juveniles or first time offenders because they are likely to come in contact with criminals charged with serious or heinous offences when sent to jail. This, in turn, can lead to the possibility of a relapse into crime and even hardening of personality rather than improving social behaviour. Probation is intended as a non-custodial treatment for those offenders who are likely to not re-offend if appropriate supervision is provided.

The importance of probation as a non-custodial measure is recognized by the international community as evidenced by formulation of the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) in 1988, of and their subsequent adoption by the Eighth (8th) UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990.

Many criminal justice system administrations have tried to adopt and integrate probation as a 'social defence' approach to correction. The social defence movement, a post World War II feature, developed as a movement in 1949 with the founding of the International Society for Social Defence by Italian Filippo Gramatica, who wished to replace criminal law with non-penal methods of re-socialising those considered 'anti-social', and thereby, to change the structure of state, society and penal methodologies towards restorative justice and care. The growth of this philosophy has modified worldwide the conditions of punishment and treatment of lawbreakers. Prisoners are now incarcerated under more humane conditions than earlier, juvenile offenders are segregated from hardened ones and 'chance offenders'

¹ Written by Monika Milinauskyste, edited by Anisha Joseph & Sana Das, Commonwealth Human Rights Initiative.

²M. Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 2006, p.86.

or 'first offenders' get the opportunity for release either under probation or parole to live within the community.

The Indian context shows that the criminal justice system is characterized by long detentions in the pre-trial and trial stage. The large majority of the total prison population are remand prisoners awaiting trial or on trial. As a result, prisons remain massively overcrowded, with 40,144 more prisoners than the authorised capacity³. In India, in spite of the shift in penal philosophy from deterrence to reformation with the passing of the Probation of the Offenders Act by the Indian Legislature in 1958, and amendment of Cr.P.C. provision Section 562 into Section 360; large numbers of young, first time and petty offenders continue to form the main bulk of overcrowding figures in prison population of the country. The effective use of probation can prevent the unending wait of many offenders who could otherwise avail the benefits of non-custodial treatment.

The provisions under the Probation of Offenders Act are premised on the philosophical presupposition that the release of offender on probation under supervision will result in a probable reduction of crime and reformation of the offender. The framework within which this supervision based reform and re-integration is carried out is referred to as probation. This Act applies to offenders of all age groups including repeat offenders not charged with life imprisonment.

The option of probation has great potential to promote reformation and rehabilitation of convicted offenders as it avoids incarceration and its consequential ill effects on the incarcerated prisoners besides preventing congestion in prisons.⁴

It can be claimed that probation can deter offender from re-committing the crime and prevent the offender from stigmatization as incarceration can often cause this psychological trauma, especially, for juveniles, young offenders and first time convicts.

The strength of probation is its goal to allow the offender during probation period to develop new skills, and to educate himself to become a law-abiding member of the community. In this respect, the Probation Officer can guide the offender in developing self-sufficiency, confidence and control which is part of a rehabilitation process allowing him to move away from criminal tendencies or crime as an option.

³National Crime Records Bureau, Ministry of Home Affairs, Crime in India Statistics, 2013, p I. The total capacity of jails in the country: 3,47,859. Total number of jail inmates as on 31.12. 2013 : 4,11,992.

⁴ Draft National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research and Development, Ministry of Home Affairs, 2007, p. 100 – 101.

How can probation benefit society?

In fact, the use of probation method can bring benefits not only to certain kinds of offenders but to the society at large. The ways by which it can benefit a society are by:⁵

1. *Providing release options to non-criminal offenders*
2. *Preventing recidivism and providing opportunity for reform to all kinds of offenders*
3. *Preventing congestion in prisons*
4. *Saving expenses of maintaining the offender in an institution;*⁶
5. *Getting immediate contribution to the total national income from the offender through his purposeful work in socially approved pursuits suited to his age;*⁷
6. *Preventing mixing up of hardened criminals and young, petty and first time offenders;*
7. *Preventing further offences from happening because the work of probation is both preventive and curative;*⁸

Probation system, if used to its full potential, can help to address overcrowding of prisons, which are largely neglected, understaffed and poorly managed.

The Problems

There is a general resistance all over the world to making changes in the criminal justice system and India is no exception.⁹ Further, not enough research data is available about comparative merits of particular penal or correctional systems.¹⁰

The implementation of provisions laid down in the Probation of Offenders Act, 1958, has proved to be difficult for the following reasons:

- Limited number of probation officers recruited and inadequate training provided to them.
- Limited budgets are given by States to develop a strong correctional programme.
- Indifferent attitudes of courts and prosecution.¹¹
- Lack of standardisation of Probation Rules in the various states.
- Non-use of probation officers by the courts.

⁵H. Singh (ed), the Journal of Correctional Work XVII, Government Jail Training School, Lucknow, 1971, p. 27.

⁶Ibid.

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰ Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 14.

¹¹ Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 14.

The statistics of those convicted and confined for petty offences such as thefts and burglaries instead of being released on probation show that there is a vast field open for probation work and supervision in the community. For instance, in the year 2000 there were 85% of offenders confined to prisons who were sentenced for short-term imprisonment ranging from one to six months.¹² Clearly such short periods of imprisonment are not enough for imparting training or discipline to the offender while exposing the inmate to interaction with hardened criminals and may develop a propensity for committing more crimes.¹³

According to the Prison Statistics (2013) the total prison population comprises of 4,11,992 as against authorized capacity of 3,47,859 inmates of which there are 278503 (67.6%) undertrials in India and 30 of the total population are those between 16–18 years old¹⁴ with 32.1% convicts and 46.8% undertrials being between 18-30 years¹⁵.

The number of petty offences committed is relatively high: 10,220 of undertrials committed robbery, 6086 burglary and 25285 committed thefts.¹⁶ In addition, recent Crime in India Statistics (NCRB) show that out of total arrestees (35,23,577) during the year 2013, there were as many as 92.8% (32,70,079) new offenders. Furthermore, re-offending rates or the share of recidivists among all offenders have increased to 7.2% during 2013 as compared to 6.9 % in 2011 and 2012 (Crime in India Statistics)¹⁷, and the absolute figures involved in repeating IPC crimes continue to be very high. During the year 2013 it was as high as 2,53,498 as compared to 2,26,729 in the year 2012 and 2,16,189 in the year 2011. Assam (27.5%) and Lakshadweep (43.3%) have shown highest rates of recidivism as States and Union territories, respectively. The number of undertrials who were detained for 6 to 12 months reached 17.6% of the total population of undertrials in India's prisons.¹⁸

These figures draw attention to the use of powers and fulfilment of obligations bestowed upon the courts, and a set of officers called the probation officers who are expected to ensure the benefits of new methods of treatment legitimised by the Act.

Penal reform anywhere needs to sit well with such social defence strategies that either the state has already institutionalised or needs to do so. In fact, the laws of probation place obligations on courts/magistrates to restrict imprisonment of offenders less than twenty one years of age and to furnish substantiation for not utilising provisions for probation-based release of offenders not sentenced to life imprisonment. Here, there is a large constructive role that magistrates and probation officers can play in the re-engagement and rehabilitation of offenders.

¹² Bhattacharyya, S.K. Juvenile Justice: an Indian Scenario, 2000, p. 134.

¹³ Ibid.

¹⁴ National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India, 2013, p. i.

¹⁵ NCRB Prison Statistics 2013 Page iii.

¹⁶ National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India, 2013, p. 85-86.

¹⁷ National Crime Records Bureau, Ministry of Home Affairs, Crime in India Statistics, 2013, p. 139.

¹⁸ National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India, 2011, p. 111 & 116.

Though there are no systematic studies in India to demonstrate the impacts of probation on offenders in the community the probation officers do constitute an offender that could have contributed to offence-based behaviour, recommend to court the type of probation suitable, and offer various social defence mechanisms made available by the state for their rehabilitation and simultaneously, protect society. Whilst probation and its administration are expensive, they are nowhere near, financially or socially, as expensive as incarceration.

But for all their advantages in furthering new penal philosophy of reformation, in several states, probation officers remain either un-appointed or insufficiently trained in law and criminology to play the mandated role of supervision and reformation. They often fear to venture into the community or to engage with agencies of the criminal justice system. The criminal justice system, on its part, is not sufficiently open to give them the required access to penal and correctional institutions, or the necessary official recognition and dignity required for them to feel useful, motivated and purposeful. Cumulatively taken, these practices could be said to account for an overcrowded prison population and to an extent, the re-offending rates as well.

The Objectives and Structure of the Study

Objectives: The purpose of this paper is to provide consolidated information and assessment of the rules laid down in the Probation of Offenders Act, 1958. The paper attempts to examine the structure, objective and the usage of the Act by providing detailed analysis about the provisions stating how the probation is granted and how it ought to be implemented. It also includes relevant case laws to illustrate how the Act was or was not used. Furthermore, this paper draws a significant focus towards two main powers of the Act to ensure probation is being effectively implemented – the Magistrate and the Probation Officer.

It looks at the roles and duties of the Magistrate and the Probation Officer enshrined not only in the Probation of Offenders Act but also at three other relevant documents, namely *the Juvenile Justice Act (2000, amended 2006)*, *Model Prison Manual (2003)* and the *Mulla Committee Report (1983)*.

These Acts and other documents were chosen on the basis of their focus on reformatory and non-custodial measures to be applied to cases of juveniles and young offenders. As mentioned earlier the Probation of Offenders Act, 1958, in itself is the first legal document addressing the importance of probation and where it can be applied and ultimately it strengthens the idea that alternatives to imprisonment ought to be used in cases of first time petty offenders, juveniles and those whose crimes have not been extremely serious or harmful to the society at large.

For instance, the JJA is an important document which complements the Probation of Offenders Act and strengthens the idea that juveniles in conflict with law should be regarded differently from other adult or hardened offenders and should not be imprisoned. It contemplates advising the juvenile and counselling parents, requiring

participation in community service or releasing the juvenile on probation of good conduct rather than sending him to a special home for three years.¹⁹

Additionally, the Model Prisons Manual recommends the rules regulating the treatment of prisoners which ought to be applied to the whole country. The Model Manual contains relatively similar provisions especially with regards to the role of the Probation Officer and the treatment of young offenders. It also highlights the significance of the pre-sentence report of the Probation Officer to be provided before the judgment is made. This clearly strengthens the argument that young offenders should only be sent to prison as a last resort and benefits of probation should be provided in such cases.

Structure: The first part of the paper serves as introductory part which entails information about the numbers of petty offenders, first time and habitual offenders as well as establishing definitions. The section introduces how the Probation of Offenders Act came about, what is the law of probation in India and what are the challenges of fully implementing the Act in the country, particularly in the context of changed laws on juvenile justice and recommendations on penal reform.

The next section analyses the scope and structure of the Act, it assesses the major sections of the Act with illustration of some case laws to show how the Act was or was not implemented.

The later part of the paper goes into more detail and outlines the roles and duties of the Magistrate and the Probation Officer by looking at the Act itself with contextual references to the Juvenile Justice Act, the Mulla Committee Report on Jail Reform and the Model Prisons Manual.

The final parts of the paper serve to provide recommendations that need to be considered by judicial authorities and government departments to make effective the alternatives to imprisonment provided through probation.

II. Law of Probation in India

Probation of Offenders Act, 1958

The Probation Services in India are being regulated by Probation of Offenders Act (1958) and Section 360 of Code of Criminal Procedure (Cr.P.C.) 1973 which allows release of the offender on probation on fulfilling certain conditions in lieu of his/her stay in prison on conviction.²⁰

The Section 562 of the Cr.P.C (1898) was the earlier provision which dealt with probation. However after the amendment in 1974 it became the Section 360 which states:

¹⁹ Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p. 25 – 26.

²⁰ Draft National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research and Development, Ministry of Home Affairs, 2007, p. 100 – 101.

When any person not under twenty-one years of age is convicted of an offence punishable with fine only 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 behaviour.²¹

However, under Section 360 of the Cr.P.C., benefits of probation can only be given to the first time offenders while the Section 4 of the Probation of Offenders Act allows the benefits for probation to repeat and petty offenders as well.²²

In addition, the Section 361 of the Cr.P.C. further specifies the duty of the judge such as declaring and recording the reasons why the benefits of probation have not been provided to a young offender. Clearly these provisions strengthen the probation concept and call for its application to all the suitable cases. The section reads as follows:

Where in any case the Court could have dealt with –

- (a) An accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958, or*
- (b) A youthful offender under the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgement the special reason for not having done so.²³*

In 1934, the Government of India informed the Provincial Governments to enact their own legislations on Probation.²⁴ The State of Madras was the first to adopt Probation after the enactment of *the Madras Probation of Offenders Act* in 1936 which was the first Probation of Offenders Act in India.²⁵ Later this was replaced by the Central Act known as the Probation of Offenders Act 1958, Central Act (IX of 1958).²⁶

The Act introduced comprehensive measures regarding probation to be implemented and applicable to the whole country.²⁷ The Act calls for a social investigation report by courts from the probation officers in respect of all offenders below 21 years of age.²⁸ It also imposes restrictions on the imprisonment of offenders

²¹ Universal's Criminal Manual, Code of Criminal Procedure, 1973, p.221-223.

²² H. S. Ursekar, *Law and Social Welfare: towards an ordered evolution*, 1973, p. 237.

²³ Universal's Criminal Manual, Code of Criminal Procedure, 1973, p. 223.

²⁴ Probation Branch, Tamil Nadu Prison Department, Access on June 19, 2012 from: <http://www.prisons.tn.nic.in/probation.htm>.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 4.

²⁸ Ibid.

below 21 years of age and if such offender deserves, in the eyes of the judge, to be sent to prison, reasons for doing so have to be recorded by the judge.²⁹

In 1958 the Legislature enacted the Probation of Offenders Act which brought to the fore the significance and importance of non-custodial measures such as probation in the field of criminal law. The Act presents consolidated provisions and information regarding probation where it can be applied and who can benefit from it.

It is the only legal document in India that deals specifically with the concept of probation and how it ought to be implemented. It states that first time, young and repeat offenders who have not committed any crime punishable with death or imprisonment for life are entitled to benefit from the Act and ought to be released either after admonition, or on probation without supervision or under the supervision of Probation Officer. Additionally, the Act outlines the roles of the Probation Officer and the Magistrate who are entrusted with the responsibility of ensuring the implementation of probation work when an offender is given the benefit of the Act.

The Probation of Offenders Act, 1958, provides for care, protection, treatment and rehabilitation of delinquent and neglected juveniles and 'makes the juvenile justice system more responsive to the developmental needs of the juvenile'.³⁰ With the coming into force of the Juvenile Justice Act in 2000, the care and custody of juveniles is interpreted under the more substantive rules of the JJ Act under which, too, the Probation Officers are mandated a supervisory role.

Objective of the Act

The Supreme Court of India observed that the objective of the Act was to prevent the youthful offenders from turning into criminals by their association with hardened criminals.³¹ Thus, the scope of probation needs to be viewed from this angle and efforts need to be made to reduce overcrowding in jails and other institutions.³²

Under the Act a provision is made for new methods of treatment for offenders of various ages, both under and above 21 years who are likely to not re-offend if supervision is provided. The purpose of the Act is a reform of the offender by means of constructive treatment and supervision rather than punishment.³³ Further, the Act differentiates the treatment for first time offenders and repeat offenders convicted of petty offence or offences not punishable with death or imprisonment for life, subject to antecedents and character of the offender and circumstances of the case.

²⁹ Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 4 – 5.

³⁰ V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p. 25.

³¹ Bhattacharyya, S.K. *Juvenile Justice: an Indian Scenario*, 2000, p. 134.

³² Ibid.

³³ Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, http://court.mah.nic.in/courtweb/static_pages/page5b.php, p.1.

Scope and Structure of the Act

Admonition & Probation: Firstly, the Act introduces two methods for release with different treatment for first time petty and other serious or repeat offenders – (1) Admonition and (2) Probation.

Probation of Offenders Act (1958) Sections 3 and 4:

Regarding the Act, both Sections 3 and 4 allow first time petty offenders to be released, though with different approaches. Section 4 of the Act allows even repeat offenders to be released. The appropriate application of the sections is determined primarily by whether it is a first time offence that can be made punishable with fine or imprisonment for not longer than two years or not punishable with death or imprisonment for life. These provisions of the Act are analyzed in the following chapters. Taken together the two sections make the scope for non-custodial release very vast which should prove beneficial for criminal justice reforms.

*Section 3: When any person is found guilty of having committed an offence punishable under Section 379³⁴ or Section 380³⁵ or Section 381³⁶ or Section 404³⁷ or Section 420³⁸ of the Indian Penal Code 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 cases including the nature of the offence and the character of the offender it is expedient so to do than notwithstanding anything contained in any other law for the time being in force the court*

³⁴ Universal Criminal Manual, Indian Penal Code, 1860, p. 550, Section 379 of the IPC states: **Punishment for theft:** *Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

³⁵ Universal Criminal Manual, Indian Penal Code, 1860, p. 550, Section 380 of the IPC states: **Theft in dwelling house, etc:** *Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

³⁶ Universal Criminal Manual, Indian Penal Code, 1860, p. 550-551, Section 381 of the IPC states: **Theft by clerk or servant of property in possession of master:** *Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

³⁷ Universal Criminal Manual, Indian Penal Code, 1860, p. 559, section 404 of the IPC states: **Dishonest misappropriation of property possessed by deceased person at the time of his death:** *Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.*

³⁸ Universal Criminal Manual, 1860, p. 565, section 420 of the IPC states: **Cheating and dishonestly including delivery of property:** *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

*may instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 **release him after due admonition.***³⁹

*Section 4: 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 behavior.*⁴⁰

Method 1 – Admonition for first time petty offenders. Section 3 of the Act deals primarily with the treatment of first-time petty offenders found guilty of certain specified offences or offences punishable with **not more than two years of imprisonment**. It provides for release of such offenders after due admonition.

Who is a petty offender or what constitutes a petty offence?

A “petty offence” has not been defined anywhere, either in the Indian Penal Code (IPC), Code of Criminal Procedure (Cr.P.C) or the Evidence Act. Criminal justice institutions and legal fraternity, in their common parlance, use this expression to mean offences which are bailable or non-cognizable or compoundable or punishable with short term imprisonment with or without fine, or with fine alone. Anyone charged under such sections is considered a petty offender.

Sections 27 and 27(2) of the Code of Criminal Procedure (Cr.P.C), 1973 initially referred to such petty offences and the ‘jurisdiction of courts in case of offences committed by juveniles’ but these sections, have, since the Juvenile Justice (Care and Protection) Act, 2000, came into force become redundant but been absorbed in the JJ Act of 2000⁴¹.

What is admonition and when is it given?

An admonition is like a scolding and is given to a first time offender before releasing him and always accompanied with a verbal direction by the magistrate not to repeat any offence in future. It is the duty of the magistrate as well as of the legal counsel to

³⁹ The Probation of Offenders Act, 1958, p. 2.

⁴⁰ The Probation of Offenders Act, 1958, p. 3.

⁴¹ Provisions under Section 3 of the Probation of Offenders Act pertaining to petty offenders, therefore, need to be reinterpreted afresh in the light of the Juvenile Justice (Care and Protection) Act, 2000 being passed (and further amended in 2006).

warn the first time offender receiving the benefit of Section 3 that this disposition will debar him from any consideration under this Section of the Act if he repeats a crime.

Since Section 379, 380, 381, 404, 420 are sections that specify where offence is small but quantum of punishment is more than 2 years, the scope of Section 3 is wider than normally assumed as covering offences with two years imprisonment. Furthermore, there are other considerations that are taken into account for eligibility such as antecedents of the offender, character of the offender, circumstances, and damages done.

Cr. P.C (1973) Sections 27 and 27 (2):

27: Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.⁴²

27 (2): Any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 (4 of 1939), or under any other law which provides for convicting the accused person in his absence on a plea of guilt.⁴³

Case law 1

In the case of *Keshav Sitaram Sali v. State of Maharashtra* (1983) the offender was accused of stealing coal from the railway goods wagon and the High Court of Bombay allowed the appeal and convicted the appellant of an offence punishable under Section 379⁴⁴ read with Section 109⁴⁵ Indian Penal Code.⁴⁶ The court imposed a sentence of fine of Rs. 500 on the appellant and in default of payment of fine to suffer rigorous imprisonment for two months.

⁴² Universal Criminal Manual, Code of Criminal Procedure, 1973, p. 47.

⁴³ Universal Criminal Manual, Code of Criminal Procedure, 1973, p.145.

⁴⁴ Universal's Criminal Manual, Indian Penal Code, 1860, p. 550, Section 379 of the IPC states:

Punishment for theft: *Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

⁴⁵ Universal's Criminal Manual, Indian Penal Code, 1860, p. 433, Section 109 of the IPC states:

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment: *Whoever abets any offence, shall if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.*

⁴⁶ Supreme Court of India, *Keshav Sitaram Sali v. State of Maharashtra*, 1983; Access on June 1, 2012 from: <http://www.indiankanoon.org/doc/647109/>.

However, Mr. Shri S. V. Tambwekar, learned counsel for the appellant, at the hearing of this appeal confined his argument to the question whether the appellant should be dealt with either under Section 360 of the Cr.P.C. or Sections 3 and 4 of the Probation of Offenders Act, 1958.⁴⁷ The court adhered to the special circumstances of this case and declared that the case should have been given the benefit of either Section 360 of the Cr.P.C. or Section 3 and 4 of the Probation of Offenders Act to the appellant instead of imposing a sentence of fine on him.⁴⁸ The final decision of the court was to set aside the sentence imposed upon the appellant and remit the case to the Trial Court to pass an appropriate order under either of the two provisions referred above.⁴⁹ The fine which has already been paid by the appellant shall be refunded to him.⁵⁰

Case law 2

In the case of *Balwinder vs State Of Haryana* (2012) the offender was accused of stealing 20 kgs of ghee for public sale in aluminium container.⁵¹ He was convicted under Section 16(g)(i) of the Prevention of Food Adulteration Act and was sentenced to undergo rigorous imprisonment for six months along with the fine of 1000 Rs.⁵²

The counsel for the offender informed the court that the occurrence in this case pertains to the year of 2003.⁵³ The offender has already suffered the protracted trial for over a period of more than one decade.⁵⁴ Petitioner has already undergone the sentence for about two months and no other case is pending against him at the moment.⁵⁵ Thus, taking all circumstances into consideration it was decided to release the offender on probation under Probation of Offenders Act. The fine was however enhanced to Rs. 5000⁵⁶

Method 2 – Probation based release. The Section 4 (1) empowers the courts to release such offenders under probation as well.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Punjab-Haryana High Court, *Balwinder vs State Of Haryana*, 2012; Access on July 31, 2012 from: <http://www.indiankanoon.org/doc/54395191/>.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

This method accounts for release of **first time and repeat offenders, offenders under both petty and grievous charges**, on probation of good conduct and entering into bond **with or without sureties**, if the offence committed is **not punishable with death or imprisonment for life**.

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 behavior.⁵⁷

Overlapping Jurisdictions of Sections 3 & 4: It is to be noted that there is an overlapping jurisdiction of Section 3 and Section 4. Those eligible for release under Section 3 may also be brought under Section 4, subject to the circumstances of the case including the nature of the offence and the character of the offender.

However, the scope of Section 4 is broader and unlimited, except for the two exceptions of offences punishable with death or imprisonment for life. In contrast to the Section 3, these provisions are applicable to all offenders including repeaters who have committed a crime that was not punishable with death or imprisonment for life. So, the only exception to eligibility for release under this provision is offence punishable by death or life imprisonment. All other offences can get accommodated for consideration of probation. The Section permits the usage of probation for offences including petty (as cited in the cases below) and ultimately encourages using alternatives to imprisonment such as probation in cases where offence has not been serious or harmful to the society as a whole.

Entering into a bond with or without sureties

Section 4 also indicates that the offender should enter into a bond and he may also be required to give sureties. 'It would normally be advisable to take sureties in addition to personal bonds, as sureties are themselves a guarantee of some supervisory efforts towards reform and a safeguard against the offender removing himself outside the jurisdiction and breaking the conditions of the bond'.⁵⁸ However, in cases where the person may be too poor to have sureties, it may be considered to release on personal bond without sureties as permitted under both Section 4 of the Probation of Offenders Act and the Section 360 of the Cr.P.C. with all precautions of supervision.

Case law 3

⁵⁷ The Probation of Offenders Act, 1958, p. 3.

⁵⁸ Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, Access on May 21, 2012 from: http://court.mah.nic.in/courtweb/static_pages/page5b.php, p.2.

In the case of *Moti Lal Bairwa vs State Of Rajasthan (1986)* the accused petitioner has been found guilty for an offence under Section 295⁵⁹ IPC.⁶⁰ The offender damaged the deity of *Shankerji* by throwing a stone at it which resulted in defiling the place of worship and insulting a religion of people who worship the place.⁶¹ Thus, the offender has been accused under the section 295 of the IPC.⁶² The offence under Section 295 IPC is punishable with imprisonment which may extend to two years or with fine or with both. The offence is therefore such that could have been dealt with under Section 4 of the Probation of Offenders Act or Section 360 Cr. PC.⁶³

At the time of conviction the offender was 18 years of age and there was no previous conviction on record against the accused-petitioner.⁶⁴ Therefore, in a case where the accused is less than 21 years of age and is convicted for an offence which is not punishable with imprisonment for life, it is the mandate of law that the case of the accused should be dealt with under the provisions contained in the Probation of Offenders Act as well as Section 360 Cr. PC.⁶⁵ However, the accused-petitioner has been sentenced to imprisonment and it can be claimed that the court has committed illegality.

It is important to draw attention to the Section 6 of the Act which places restriction to the power of the court to sentence a juvenile for imprisonment when he is found guilty of having committed an offence punishable with imprisonment, but not with imprisonment for life, 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.**⁶⁶

⁵⁹ Universal Criminal Manual, Indian Penal Code, 1860, p. 504, section 295 of the IPC: **Injuring or defiling place of worship with intent to insult the religion of any class:** *Whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class or persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

⁶⁰ Rajasthan High Court, *Moti Lal Bairwa vs State Of Rajasthan*, 1986, Access on July 28, 2012 from: <http://indiankanoon.org/doc/1172051/>.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Rajasthan High Court, *Moti Lal Bairwa vs State Of Rajasthan*, 1986, Access on July 28, 2012 from: <http://indiankanoon.org/doc/1172051/>

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

Additionally, the sub-section 2 of Section 6 of the Act provides that for the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or 4 with an offender referred to in Sub-section (1) of Section 6, 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.**⁶⁷ As indicated by M.B. Sharma, the court in the Moti Lal Bairwa case does not appear to have considered these aspects of the Act and clearly made ill decision regarding the judgment of a juvenile.⁶⁸ According to Mr Sharma, the court could have passed an order to release the offender on probation of good conduct on furnishing a bond in the sum of Rs. 2000/- with one surety in the like amount for a period of 6 months to the satisfaction of the trial court, instead of sentencing him to imprisonment.⁶⁹

It is to be noted that the above case antedates the Juvenile Justice Act which today would not permit the conviction of an 18 year old in the first place.

Case law 4

In the case of *Meruva Satyanarayana vs State Of Andhra Pradesh* (1995) the offender was convicted under Section 36(a), (b) and (c) of A.P. Excise Act 68 read with rules 19, 54 and 55 of A.P. Foreign Liquor and Indian Liquor Rules, 1970 and sentenced for imprisonment for 6 months along with the fine of 100 Rs.⁷⁰ The Counsel indicated that the offender is entitled to be given the benefit of the provisions of Section 4(1) of the Probation of Offenders Act 58, in view of the fact that the offence is of highly technical nature.⁷¹

The Section 4(1) of the Probation of Offenders Act requires ascertaining if the offender is of a good character and conduct in order to release him on probation.⁷² However, at the consideration of the case before the Trial Court the Magistrate initially refused to give the benefits of the Act to the offender concerned on the grounds that he crossed the age of 30, hence the provisions of Probation of Offenders Act

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Andhra High Court, *Meruva Satyanarayana vs State Of Andhra Pradesh*, 1995; Access on July 31, 2012 from: <http://www.indiankanoon.org/doc/774648/>.

⁷¹ Ibid.

⁷² Ibid.

or Section 360 of the Code of Criminal Procedure are not applicable.⁷³

Such reasoning is rather inadequate because the Act does not indicate the age limit when the offender can benefit from the Act or not, especially when the offence committed prescribes minimum sentence of imprisonment and thus can be released on probation if he possesses good character.⁷⁴ Ultimately it was decided to remand the case for revision and file it to the Additional Metropolitan Sessions Judge, Visakhapatnam, directing him to restore CrI. Appeal No. 66 of 1990 and to consider the release of offender on probation under the section 4(1) of the Probation of Offenders Act.⁷⁵

Secondly, the Act empowers the court under Section 4 (2) to consider report, if any, of the Probation Officer before making the judgement of the case concerned.⁷⁶

It should be kept in mind that neither under the new JJ Act, nor the Probation of Offenders Act is the reference to the Social Investigation Report called for by the magistrate a matter of discretion. Sub-section 2 of Section 6 of the Probation of Offenders Act which the magistrate refers to determine whether offender is to be dealt with under Section 3 or Section 4 of the Act uses the words “‘shall’ call for a report from the Probation Officer”.

Under the Section 4 (3) the court is also entitled to make a **supervision order** and direct additional conditions to be inserted in the bond to be entered into by the offender under Section 4 (1). ‘The terms and conditions of the supervision order shall be explained to the offenders and one copy of the supervision order shall be furnished forthwith to each of the offenders, the sureties, if any, and the Probation Officer concerned’.⁷⁷

In fact, in suitable cases, the offender might be directed under Section 5 to pay compensation and cost of proceedings to the person to whom he caused loss or injury.⁷⁸

The Section 6 places restrictions on the Court’s power to imprison offenders who are below twenty-one years of age. These provisions are further elaborated in the chapter on the powers of the Magistrate.

Furthermore, the Act lays down the roles of the Probation Officer in Sections 13 and 14. One of the most important duties of the PO enshrined in the Act is the pre-

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ The Probation of Offenders Act, 1958, p. 4.

⁷⁷ Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra. Access on May 21, 2012 from: http://court.mah.nic.in/courtweb/static_pages/page5b.php, pp. 2-3.

⁷⁸ Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra. Access on May 21, 2012 from: http://court.mah.nic.in/courtweb/static_pages/page5b.php, p.3.

sentence report which he provides to the court before decision is made regarding offender's case. The PO is also entitled to conduct research and interact with the offender and his family in order to understand his background, profile and assess whether he/she is suitable for release on probation.

The later parts of this paper look into more detail of such provisions and explain the significance of the PO's role in implementing probation law.

III. Powers and Obligations under the Probation of Offenders Act, 1958

The Magistrate

This section identifies the role of the Magistrate laid down in the Probation of Offenders Act. It also draws attention to other documents such as Juvenile Justice Act, Model Prisons Manual and the Mulla Committee Report which further elaborate the roles and duties of the Magistrate.

Considering report of PO and passing a supervision order:

What are the powers of the court to pass supervision orders?

Section 4 (2) permits the court before making any order to consider the report, if any, of the probation officer concerned in relation to the case.⁷⁹ In addition to this, the court under the section 4 (3) is empowered to make a **supervision order** and direct additional conditions to be inserted in the bond to be entered into by the offender under Section 4 (1).

*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.*⁸⁰

Some other conditions which must be followed by the offender have been stated in the section 4(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.*⁸¹

Providing grounds to use the Act in the case of young offenders (18-21):

⁷⁹ Probation of Offenders Act, 1958, p. 4.

⁸⁰ Probation of Offenders Act, 1958, p. 4.

⁸¹ Probation of Offenders Act, 1958, p. 4.

In the context of the Juvenile Justice Act (JJA) having come into force as a separate law for dealing with juveniles in conflict with law, the magistrate must take into account Section 15 of the JJA which states that all persons below 18 years of age and in conflict with law shall be dealt under the provisions of the JJ Act.

So offenders under the age of 18 would no longer be administered by the Probation of Offenders Act. They shall be dealt with under the Juvenile Justice Act but shall still involve and engage the services of Probation Officers for the supervision of these offenders. However, young offenders, falling within the age group of 18 and 21 are directly eligible to be considered under the Probation of Offenders Act.

Section 6 of the Probation of Offenders Act focuses on restriction on imprisonment of offenders below the age of 21. This should be re-interpreted in the context of the JJ Act having come into force to read 'as any person above 18 years but less than 21 years'.

The objective of this section is to ensure that young offenders are not sent to jail for offences that are not serious and prevent them from a contact with hardened and habitual criminals of the jail.⁸²

- (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.***⁸³
- (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.*⁸⁴

Case law 5

In the case of *Kammoonissa vs. State of Maharashtra* (1973) the offender was accused of stealing a gold necklace and was convicted under the section 379 of the Indian Penal Code.⁸⁵

⁸² Probation of Offenders Act, 1958, p. 7.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Manupatra, MANU/SC/0153/1974, Supreme Court of India, *Kammoonissa vs. State of Maharashtra*, Access on July 30, 2012.

He was sentenced to suffer rigorous imprisonment of 18 months and pay the fine of Rs. 500.⁸⁶ The appellant submitted an appeal regarding the judgement but the High Court of Bombay dismissed the appeal.⁸⁷ The court also called for a report of the Probation Officer who stated that the appellant was less than 21 years of age on the date of conviction and ought to be given the benefits of the section 6 of the Probation of Offenders Act.⁸⁸

The report of the Probation Officer showed that the offender was arrested in 1971 while moving in local train in suspicious circumstances but she was released on bond of good behavior in the sum of 100 Rs.⁸⁹ Thereafter, she was tried under the section 379 of the Indian Penal Code in connection with an incident dated on March 5, 1973 but ultimately she was acquitted. The appellant has committed similar thefts at several times but those were undetected.⁹⁰ The court's decision to imprison the offender rather than give the benefit of the section 6 of the Act was based on the ground that it is not a proper case to for applying provisions of section six and additionally provided list of reasons at the paragraph 21 of his judgment indicating his ultimate decision regarding the case.⁹¹

Changing the decision regulating release on bond

Can the court change its decision on duration and conditions of the bond?

Under Section 8 of the Probation of Offenders Act the court is empowered to change its original decision regarding duration and conditions of the bond during the period that the bond is effective.

The provision permits courts to vary their original orders regarding the bond, to the extent of discharging the bond or extending the period of the bond not exceeding 3 years, depending on the conduct of the probationer as accounted by the application of the Probation Officer.

In the case of a juvenile offender it is the principle of best interest of the child as under the Juvenile Justice Act that should guide the magistrates.

(1) If, on the application of a probation officer, any court is of opinion that in the interests of the offender and the public it is expedient or necessary to vary the conditions of any bond entered into by the offender, it may, at any time during the period when the

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

*bond is effective, vary the bond by extending or diminishing the duration thereof so, however, that it shall not exceed three years from the date of the original order or by altering the conditions thereof or by inserting additional conditions therein;*⁹²

*Provided that no such variation in conditions shall be made without giving the offender and the surety or sureties, mentioned in the bond, an opportunity of being heard.*⁹³

- (2) *If any surety refuses to consent to any variation proposed to be made under subsection (1), the court may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.*⁹⁴
- (3) *Notwithstanding anything hereinbefore contained, the court which passes an order under Section 4 in respect of an offender may, if it is satisfied on an application made by the probation officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into by him.*⁹⁵

What happens if the offender breaks the bond?

If the offender fails to follow the conditions stated by the Court, a sentence suitable for the original offence may be imposed on him or a fine. These provisions are outlined in Section 9 of the Act.

- (1) *If the court which passes an order under Section 4 in respect of an offender or any court which could have dealt with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.*⁹⁶
- (2) *The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date which it may fix for hearing.*⁹⁷
- (3) *If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith—*⁹⁸
 - (a) *Sentence him for the original offence; or*⁹⁹
 - (b) *Where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.*¹⁰⁰

⁹² Probation of Offenders Act, 1958, p. 9.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Probation of Offenders Act, 1958, p. 10.

⁹⁸ Ibid.

⁹⁹ Ibid.

(4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.¹⁰¹

Ordering Follow up on Cases

Appointment of Probation Officer by Court: The Court may appoint a Special Probation Officer under sub-section 1 (c) of the Section 13 of the Act in view of the special circumstances of particular case.¹⁰²

Monthly Reports by Probation Officers: It is also provided in the rules made under the Act that when a supervision order has been passed and the Probation Officer has been appointed, he is obliged to submit monthly reports on the conduct of behaviour of the offender.¹⁰³ The Court is entitled to observe the progress of the probationer and if necessary, under the Section 8 of the Act, should vary conditions in the bond such as extending or reducing its duration.¹⁰⁴

Juvenile Justice Act, 2000

The JJ Board and Review of Cases

What is the context and provision for probation under the JJA?

The JJA provides a separate system of justice-dispensation for instances where children are accused of committing offences.¹⁰⁵ The Act provides for care, protection, treatment and rehabilitation for delinquent and neglected juveniles and 'makes the juvenile justice system more responsive to the developmental needs of the juvenile'.¹⁰⁶

Under the JJA, a juvenile is brought before a *Juvenile Justice Board (JJB)* rather than a Magistrate or Judge.¹⁰⁷ Unlike the Probation of Offenders Act, the JJA does not provide for sentencing a juvenile on being found guilty of an offence. Instead, it requires passing a final order when the JJB finds that a juvenile has committed an offence.¹⁰⁸ The Act refers to the offender as a *juvenile in conflict with law* rather than *accused or convicted*.¹⁰⁹

The Act does not call for imprisonment of a juvenile; instead it 'contemplates advising the juvenile and counselling parents, urging the participation in community service or releasing the juvenile on probation of good conduct rather

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, Access on May 22, 2012 from: http://court.mah.nic.in/courtweb/static_pages/page5b.php, pp. 8.

¹⁰³ Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, Access on May 22, 2012 from: http://court.mah.nic.in/courtweb/static_pages/page5b.php, pp. 9.

¹⁰⁴ Ibid.

¹⁰⁵ V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p.1.

¹⁰⁶ V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p. 25.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

than sending him to Special Home for three years.¹¹⁰ In short, the Act provides an opportunity for the juvenile in conflict with law to avoid incarceration and psychological stigma and not to be viewed as a criminal.¹¹¹

The Act also states the effective involvement of informal social arrangements at the level of the family, voluntary organizations and the community.¹¹²

In particular, the Act states that a Magistrate is a member of the Juvenile Justice Board (JJB). It is a unique body which exercises powers in regards to juveniles who committed a crime. The Act states that:

- (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act.*¹¹³
- (2) *A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.*¹¹⁴
- (3) *No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health education, or welfare activities pertaining to children for at least seven years.*¹¹⁵

Additionally, the Board is empowered to do the following:

- (1) *Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.*¹¹⁶
- (2) *The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.*¹¹⁷

¹¹⁰ Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p. 25 – 26.

¹¹¹ Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p.26.

¹¹² V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, 2.

¹¹³ *Juvenile Justice Act*, 2000, p. 5.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Juvenile Justice Act*, 2000, p.6.

¹¹⁷ *Ibid.*

The JJA Act, unlike the Probation of Offenders Act, draws the focus mainly on the powers of the Magistrate and the JJB which is empowered to review juvenile cases and pass judgements accordingly. The strength of such an Act can be seen in its objective to draw a strong line of distinction between a juvenile offender and an adult convict who might have both committed a serious offence. The JJA complements the Probation of Offenders Act by emphasizing that reformatory or other alternatives to imprisonment ought to be applied for petty offences and juvenile cases.

Model Prisons Manual, 2003

What does the Model Prison Manual say regarding the role of courts vis-à-vis young offenders?

The Manual does not specifically single out the duties of the Magistrate as the above Acts do. However, it mentions the role of the courts regarding the treatment of young offenders as well as stresses the importance of pre-sentence report to be provided to the courts prior the judgment. No mention is however given regarding whose responsibility it is to provide such report and how it is to be processed.

Courts for Young Offenders

The Manual also suggests, "*Courts to be known as 'Courts for young offenders' exercising the powers, and discharging the duties conferred on such courts, in relation to the trial and commitment of young offenders between 18-21 years of age, should be set up for specified areas according to requirements in each State/Union Territory.*

Before making any order, the court should take into account the pre-sentence investigation report of the probation officer. This report should be a statutory requirement for deciding the cases of young offenders".¹¹⁸

Pre-Sentence Investigation Report

Pre-sentence investigation report should include information about the social, economic and psychological background of the offender so as to identify the sequence of his criminal behaviour. It should also seek to determine the degree of the young offender's involvement in vice and crime. This report should attempt a prognosis in regard to the young offender's resettlement in a socially useful way of life.¹¹⁹

Mulla Committee Report, 1983

What are the Mulla Committee's recommendations for young offenders?

¹¹⁸Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 287.

¹¹⁹ Ibid.

Separate courts for young offenders

The report does not provide specific reference to the duties of the judge. Instead, it lays down important recommendations for courts and the treatment of juveniles while in custody. The Report also indicates the importance of a specialized legal body to assess and review the cases of young offenders in order to ensure their release on probation rather than being sent to prison. It states:

- (1) *Separate courts for young offenders should be established. Pre-sentence investigation reports of the probation officers should be a statutory requirement for deciding the cases of young offenders. (Recommendation 430)*¹²⁰
- (2) *Pre-sentence investigation report should include all relevant antecedents of the young offender and should also attempt a prognosis for his resettlement in a socially useful way of life. (Recommendation 432)*¹²¹
- (3) *Young offenders involved in minor violations should, instead of being kept in police custody, be kept with their families/guardians/approved voluntary agencies on the undertaking that they will be produced before the police as and when required for investigation. (Recommendation 433)*¹²²
- (4) *Young offenders, involved in serious offences, while in police custody should be kept separate from adult criminals and the police custody should be only for a minimum period required for investigation. (Recommendation 434)*¹²³
- (5) *At each institution there should be a Review Board. (Recommendation 451)*¹²⁴
- (6) *At the end of every six months the Review Board should examine the case of every young offender and determine his suitability for release on licence. (Recommendation 452)*¹²⁵

IV. Powers and Obligations: The Probation Officer

This section serves to introduce the duties and roles entitled to the Probation Officer under the Probation of Offender Act. It highlights the importance of a pre-sentence report and social investigation, two most important duties of the PO, which allow assessing if the offender is suitable to be considered for probation and further benefits of the Act.

Additionally, comparisons with the Juvenile Justice Act, Model Prisons Manual and the Mulla Committee Report are included in the section as well because they provide wider perspectives on the treatment of young and petty offenders and importance of probation services.

¹²⁰ Mulla Committee Report, 1983. Access on June 27, 2012 from: <http://www.aipoa.com/>

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

Probation of Offenders Act, 1958

Appointment

Section 13 of the Act states the following in regards to the appointment of the Probation Officers:

- (a) *A person appointed to be a probation officer by the State Government or recognized as such by the State government.*¹²⁶
- (b) *A person provided for this purpose by a society recognised in this behalf by the State Government.*¹²⁷
- (c) *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.*¹²⁸

Inquiring, reporting and supervising probationers

Section 14 of the Act indicates the following duties of the Probation Officer:

- (a) *Inquire in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submitting reports to the court.*¹²⁹
- (b) *Supervise probationers and other persons placed under his supervision, and where necessary endeavor to find them suitable employment.*¹³⁰
- (c) *Advise and assist offenders in the payment of compensation or costs ordered by the court.*¹³¹
- (d) *Advise and assist in such cases and in such manner as may be prescribed, persons who have been released under section 4.*¹³²
- (e) *Perform such other duties as may be prescribed.*¹³³

Preparing a pre-sentence report

One of the most important duties of a PO entrusted in the section 14 (a) of the Act is the preparation of a **pre-sentence report** for the guidance of the Court whether to grant the benefit of probation to the accused or not.

- For the purpose of Section 14 (a) of the Act, the PO shall after making inquiries regarding the offender's character, his social conditions, financial

¹²⁶ Probation of Offenders Act, 1958, p. 13.

¹²⁷ Probation of Offenders Act, 1958, p. 14.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ Probation of Offenders Act, 1958, p. 15.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

and other circumstances of his family will put down relevant facts, information in the report as required by the Court.¹³⁴

- The summary of the case shall include a statement of facts along with the PO's assessment of the case to help the court determine the most suitable method of dealing with offender after he has been found guilty.¹³⁵
- The report shall be treated as 'confidential' and delivered to the Court on the date specified by it; it must be enclosed in a sealed cover if delivered to the Court a day prior of the judgment.¹³⁶
- If the PO considers the probationer has made sufficient progress and further supervision is not needed he shall make an application to the Court in consultation with the District Probation Officer under intimation of the Chief Probation Superintendent for discharging the bond under sub-section 3 of the Section 8 of the Act.¹³⁷

Visiting and checking on probationers

The PO may, subject to any provisions of the supervision order, require the probationer to report to him at the stated intervals and meet him frequently to ensure that the stipulations of the rules of the order are followed.¹³⁸

- The PO shall visit the probationer periodically in his home surroundings or his occupational environment in order to assess the progress made by him and difficulties he/she faced during such probation period.¹³⁹
- Additionally, the PO has to keep a track of the juvenile and maintain a follow up action even after the completion of the supervision period.¹⁴⁰
- Ultimately, the PO strives to bring a change to the behavior of the offender and motivate him/her to make a progress towards his/her successful rehabilitation in the community.¹⁴¹

The Juvenile Justice Act, 2000

In addition to these provisions, the JJA empowers the PO to assist the Juvenile Justice Board (JJB) whilst making decisions or passing orders with regards to the

¹³⁴ Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, http://court.mah.nic.in/courtweb/static_pages/page5b.php, p. 16.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, http://court.mah.nic.in/courtweb/static_pages/page5b.php, p. 17.

¹³⁸ Bhattacharyya, S. K. *Juvenile Justice: an Indian Scenario*, 2000, p. 137.

¹³⁹ Ibid.

¹⁴⁰ Bhattacharyya, S. K. *Juvenile Justice: an Indian Scenario*, 2000, p. 138.

¹⁴¹ Ibid.

juvenile, and advise him during the probation period so that he fulfills his promise not to re-offend again.¹⁴²

- Under Section 12 of the JJA, the PO's report is sought by the JJB whilst entertaining a bail application and also at the time of final disposal of the case.¹⁴³ The purpose of the report is to examine the juvenile's background and identify the reasons for committing the offence.¹⁴⁴ Though the PO's report has only recommendatory value, the JJB takes this report into consideration prior to taking any decision in respect of the judgment of the juvenile.¹⁴⁵
- Furthermore, the PO has to do a follow up on juveniles after their release to continue providing guidance to them and visiting their residence.¹⁴⁶
- Under the JJA, the duties of a PO are not as comprehensive as in the Probation of Offenders Act but there are certain similarities such as investigation and preparation of offender's profile who is subject to release on probation.

The JJA empowers the Probation Officer with the following roles:

- (a) *Obtaining information regarding the juvenile's family background of the juvenile and other material circumstances to assist the Board in preparing a social investigation report on the juvenile and preparing further report regarding the necessity, nature and period of after-care.*¹⁴⁷
- (b) *Supervising a juvenile either pending inquiry by the Board or on a final order passed by the Board on finding that the juvenile has committed an offence or after the juvenile is discharged from the Special Home.*¹⁴⁸

The Model Prisons Manual, 2003

On the other hand, according to *the Model Prisons Manual* the role of a PO is to 'look after all matters relating to pre-mature release including probation under the supervision of Assistant Director Correctional Services'.¹⁴⁹

*When a young offender is found guilty and is likely to be punished with imprisonment not exceeding one year, the court should take recourse to any of the following non-custodial measures:*¹⁵⁰

¹⁴²M. Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 2006, p. 84.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶M. Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 2006, p. 85.

¹⁴⁷ Juvenile Justice Act, 2000, p. 9.

¹⁴⁸ Ibid.

¹⁴⁹ Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 30.

- (a) *Release on admonition;*¹⁵¹
- (b) *Release on taking a bond of good conduct with or without conditions from the young offenders and from parents/guardians/approved voluntary organizations;*¹⁵²
- (c) *Release on probation under the Probation of Offenders Act on any of the following conditions:*
 - (i) *Continuation of education/vocational training/employment;*¹⁵³
 - (ii) *Obtaining guidance from Probation Office/teacher/counselor;*¹⁵⁴
 - (iii) *Getting work experience in work camps during week-ends and on holiday;*¹⁵⁵
 - (iv) *Doing useful work in work centers (agricultural farms, forestry, housing projects, road projects and apprenticeships in work-shops);*¹⁵⁶
 - (v) *Keeping under constant supervision young offenders released on probation;*¹⁵⁷

The Manual also puts an extensive emphasis on the training and rehabilitation that need to be provided to an offender. It states that:

*Special emphasis should be given on a studied evaluation of individual offender's personality and careful planning of training and treatment programmes, to suit the needs of each inmate. Training and treatment shall include education, work and vocational training, recreational and cultural activities, discipline, case-work approach, group work activities, group guidance, individual guidance, counselling, character building, periodical review, release planning, pre-release preparation, after-care on a comprehensive basis, and follow-up study. The personal influence of the members of the prison staff will have considerable bearing on the reformation of young offenders.*¹⁵⁸

The Mulla Committee Report, 1983

The Report does not specify rules or duties of the PO but rather provides general recommendations regarding the treatment of young offenders and emphasizes that they should be sent to prison only as a last resort.

¹⁵⁰Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 286.

¹⁵¹Ibid.

¹⁵²Ibid.

¹⁵³Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 287.

¹⁵⁴Ibid.

¹⁵⁵Ibid.

¹⁵⁶Ibid.

¹⁵⁷Ibid.

¹⁵⁸Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 286

- *There should be separate institutions for young offenders to be called Reception Centres and Kishore/Yuva Sadans.*¹⁵⁹
- *The existing Borstal schools and juvenile jails should be converted into a system of diversified Kishore/Yuva Sadans and Reception Centres. Besides this, additional institutions (Kishore/ Yuva Sadans) as worked out in Chapter V of the Committee Report on Prison Buildings may be set up. These Kishore/ Yuva Sadans should be developed as centres of scientific study and correctional treatment for young offenders. (Recommendation 440)*¹⁶⁰
- *Young offenders should be sent to institutions only as a last resort. When a young offender is found guilty and is likely to be punished with imprisonment not exceeding one year the court should take recourse to non-institutional measures. Suitable cases of young offenders likely to be sentenced to periods above one year should also for as possible be processed through the non-institutional approach (Recommendation 438).*¹⁶¹

V. Conclusion & Recommendations

The use of Probation of Offenders Act, 1958, has a vast scope to be tapped by the judiciary and probation services particularly in the current context of prison reform that no longer sees prison sentence as the best mode of treatment to ensure the protection of society.

It is important that the various agencies of the criminal justice system come together to make probation an effective practice of non-custodial treatment in all appropriate cases where a restorative principle of justice needs to be applied.

As part of preparing a restorative community justice system, a probation program must consider the concerns of the victim, strengthen and promote community bonds, target and respond to the first time/young/petty offenders' as well as repeat offenders' 'problem' behaviour in ways that advance competencies. Government departments need to step up to this task that demands training, sensitization and inter-agency co-ordination.

Probation can take a proactive role in implementing restorative principles through the pre-sentence investigation report, which is submitted to the court at the time of offender's sentencing. Probation, under this model, can even deal with victim-offender mediation, dialogue, community group conferencing.

As part of restorative justice formula, principles of community safety, offender accountability, victim-offender mediation, dialogue, community group conferencing are seen to be advanced by probation with supervision and reform model.

All this includes redefining the broader definition of a 'case' from purely offender to victim, community, and offender reform.

¹⁵⁹ Ibid.

¹⁶⁰ Mulla Committee Report, 1983. Access on June 27, 2012 from: <http://www.aipoa.com/>.

¹⁶¹ Ibid.

This is a long term goal that requires addressing the limits of law and building a varied set of what may be called 'justice partnerships' within the criminal justice system, particularly between judicial officers, the probation system and prison administration, and between the criminal justice system as a whole and the community.

Recommendations

1. Reduce overcrowding in prisons by reforming the sentencing structure for non-violent petty crimes and first-time offenders to include alternatives to imprisonment through probation, community service, fines and psychological and drug treatment.
2. Encourage the judiciary that has been given the discretion to use probation instead of imprisonment to use the new tasks and techniques of corrections by ensuring effective use of Section 3, Section 4 and Section 6 of the Probation of Offenders Act, 1958.
3. Build better co-ordination between the judiciary, probation officers and the Prosecution Department who are in charge of probation cases for effective use of the Act. Periodical meetings of the judicial officers and probation officers have been helpful in creating awareness and strengthening importance and implementation of probation in India.¹⁶²
4. Develop a consultative system between judiciary and probation officers that builds formal recognition of probation officers and their trained role in the court.
5. Strengthen the role of the judiciary in probation system by ensuring that Magistrates order supervisions and call for substantive pre-sentence reports from the probation officers in court.
6. Strengthen the monitoring role of judiciary in probation and bail releases of juveniles and young offenders to ensure the accountability of probation officers to the criminal justice system, the reduction of recidivism and re-integration of probationer to society
7. Increase the importance of probation in Prison Monitoring Systems such as the Undertrial Review Mechanism inside prisons by improving budgetary allocation for probation and involving, without fail, representatives of the probation agencies in review and release
8. There should be at least one probation officer attached to every sub-divisional court so that he/she would not have to cover long distances to reach the

¹⁶² Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 6.

courts or the client.¹⁶³ Increase budgetary allocation for appointments of more numbers of suitable probation officers

9. Build and improve the probation, joint supervision and offender reform schemes with SOP for all stakeholders for effective co-ordination, reporting and accountability between probation services, magistracy, prosecution, police, legal aid authorities, the prison visiting authorities (NOVs), the prison administration and civil society groups operating at community level to prevent recidivism
10. Improve resource allocations for training, professional equipment, commitment and mentoring of probation officers and prison officers
11. Ensure that officers appointed as Probation Officers in the State are exclusively used for probation
12. The government should increase and improve the Borstal institutions for care and supervision
13. Implement recommendations under BPR&D's Model Prison Manual & Mulla Committee Report on strengthening probation as an alternative to imprisonment
14. Engage with probationers' family members and encourage community involvement in their rehabilitation and reintegration
15. Develop and implement guiding principles and SOP for risk and recidivism reduction:
 - Consider the offender's current stage of change in assigning supervision and/or treatment services
 - Match the offender's dynamic factors with appropriate services
 - The offender's risk factors should determine the supervision services
 - Develop/scrutinise supervision plan. The supervision plan should be a behavioural contract
 - The behavioural contract should encompass supervision requirements, and expected sanctions and incentives
 - Use problem-solving techniques with the offender to assist learning
 - Ensure balanced caseload ratio for each probation officer for effective supervision and to prevent violence or recidivism
 - Develop minimum supervision standards in the form of practice guidelines for different types of offenders and offenders of different gender and socio-economic-psychological background

¹⁶³ Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 5. According to Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970.

- Ensure intensive supervision of high risk cases through effective inter-agency coordination, observation of reactions to triggers, provision of treatment facilities where necessary

B. FREQUENTLY ASKED QUESTIONS

This document on Frequently Asked Questions (FAQs) is an attempt to simplify the provisions of the Probation of Offenders Act, 1958 in order to facilitate clear understanding of the standards and procedures prescribed by law.

I. Concepts of Probation – Definitions and Scope of the Act

1. What is meant by Probation?

The word *probation* is derived from a Latin word *probatum*, which means "the act of proving." Probation is an alternative to imprisonment which allows a convicted defendant to go free with a suspended sentence for a specified duration on executing a bond with or without sureties for maintaining good behaviour and keeping peace. Probation is the period during which a person, "the probationer," may be placed under the supervision of a probation officer and must fulfil certain conditions.

2. Which state of India was the first to adopt a Probation of Offenders Act and when?

In 1934 the Government of India informed the Provincial Governments to enact their own legislations on Probation. The state of Madras was the first to adopt Probation after the enactment of the Madras Probation of Offenders Act in 1936 which was the first Probation of Offenders Act in India. Later this was replaced by the Central Act known as the Probation of Offenders Act 1958, Central Act (IX of 1958).

3. What is the purpose of the Probation of Offenders Act, 1958? How does it benefit the society at large?

It was enacted by Parliament, "to provide for the release of offenders on probation or after due admonition and for matters connected therewith." The purpose of **the Probation of Offenders Act, 1958 (hereinafter referred as 'the Act')** is to encourage rehabilitative efforts for all ages of offenders in India and reform the offender by means of constructive treatment and supervision rather than punishment. It can benefit a society in many ways:

- a) The release of offenders on probation, instead of sending them to prison, will reduce grave risk to their attitude to life, as they are likely to be exposed to hardened and habitual criminals in prison and will ultimately result in reformation of the offender;
- b) It gets immediate contribution to the total national income from the offender through his purposeful work in socially approved pursuits suited to his age;

- c) It saves expenses of maintaining the offender in an institution;
- d) The work of the Probation Officer is both preventive and curative.

4. Who is a 'Probation Officer'?

According to **Section 13** of the Act, a **probation officer (hereinafter referred as 'PO')** is:

- (a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government (they could be either part-time or regular salaried employees); or
- (b) a person provided for this purpose by a society recognised in this behalf by the State Government (they could be either part-time or full-time and also either voluntary or remunerated); or
- (c) 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

II. Implementation of the provisions of the Probation of Offenders Act, 1958

1. Does Court have the power to release any offender only on admonition?

Yes, **Section 3** of the Probation of Offenders Act deals with this. An offender can be released under Section 3 if all the following requirements are met:

- i. A person is found guilty of committing offence punishable under any of the sections mentioned herein:
 - Section 379, IPC – Punishment for Theft
 - Section 380, IPC – Theft in dwelling house, etc.
 - Section 381, IPC – Theft by clerk or servant of property in possession of master
 - Section 404, IPC – Dishonest misappropriation of property possessed by deceased person at the time of his death
 - Section 420, IPC - Cheating and dishonestly including delivery of property
 - 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
- ii. No previous conviction is proved against him
- iii. 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 offence, it is expedient to release him/her after due admonition.

2. Does Court have the power to release any offender on probation of good conduct?

Yes, **Section 4** of the Probation of Offenders Act deals with this. An offender can be released under Section 4 if all the following requirements are met:

- i. A person is found guilty of committing any offence other than punishable with death or life imprisonment
- ii. 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 offence, it is expedient to release him on probation of good conduct
- iii. The court **must** take into consideration the report, if any, of the probation officer concerned in relation to the case.
- iv. Court **may** ask him to enter into a bond, for a period not exceeding three years, with or without sureties to appear and receive sentence when called upon during such period,
- v. Offender or his surety **must** have 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
- vi. During this period the person must keep the peace and be of good behaviour

3. What is the difference between Section 3 and 4 of the Act?

S.No.	Section 3	Section 4
1	Deals primarily with the treatment of first time petty offenders found guilty of offences punishable with not more than two years of imprisonment or for some other offences of IPC specified in this section.	It is applicable to every offender (including a repeater) if s/he is found guilty of committing a crime not punishable with death or imprisonment for life.
2	Its scope is limited. It is applicable to specified type of first offenders and simply sends them back to the society, with verbal advice to behave properly in the future.	It permits the use of probation for all offences except those punishable with death or life imprisonment and ultimately encourages using alternatives to incarceration where offence has not been prohibitively serious or harmful to the society as a whole.
3	No need for an offender to enter into a bond.	The offender has to enter into a bond for keeping the peace and be of good behaviour for a period not more than three years and he may also be required to give sureties.
4	No provision for the consideration of the report of the PO to release the	The report of the PO, if any, must be considered by the Court after the

	offender under this section.	offender has been found guilty, in order to deal with him under this section.
5	No provision to place the offender under the supervision of the PO.	Court is entitled to make a supervision order for not less than one year and to impose additional conditions in the bond to be entered into by the offender.

4. When and how is an offender placed under the supervision of the Probation Officer?

An offender can be placed under the supervision of the Probation Officer as mentioned in **Section 4** of the Act.

- i. The Court may pass a supervision order directing that the offender shall remain under the supervision of a probation officer for not less than one year and not more than three years. Some conditions may be imposed in the supervision order as the Court deems necessary.
- ii. If the Court decides to pass the supervision order, it must require the offender to enter into a bond, with or without sureties, to observe the conditions specified in such order. Some additional conditions with respect to residence, abstention from intoxicants or any other may be further imposed having regard to the particular circumstances, to prevent a repetition of the same offence or a commission of other offences by the offender.
- iii. The court making a supervision order must explain to the offender the terms and conditions of the order and should also furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Can an offender be asked to pay compensation or other costs by the Court?

Yes, under **Section 5** of the Act, the Court may ask an offender, being released under Section 3 or 4, to pay:

- i. Such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
- ii. Such costs of the proceedings as the court think reasonable.

If a civil case is going on for the same matter, the civil court must take into account any compensation paid by the offender while computing damages.

6. Is any special consideration given to offenders below twenty-one years of age under the Act?

Section 6 places a restriction on imprisonment of offenders under twenty-one years of age. Following are the requirements under the section:

- i. A person of less than twenty-one years of age
- ii. Found guilty of having committed an offence, not punishable with imprisonment for life
- iii. The court should first consider whether it would be desirable to deal with the offender under section 3 or section 4 of the Act considering the circumstances of the case including the nature of the offence and the character of the offender
- iv. To decide whether it would be desirable or not to deal with the offender under Section 3 or 4, the Court must call for the report of the Probation Officer relating to the character and physical and mental condition of the offender.
- v. If the court passes any sentence of imprisonment on the offender, it must record its reasons for doing so.

7. What is a pre-sentence report?

The probation officer's report is a "fundamental document" for the guidance of the court on whether to grant (an accused) the benefit of probation or not. The object of this report is to appraise the court about the character of the offender and to give information about the offender's conduct in general and chances of his rehabilitation in particular on being released on probation. The preparation of presentence reports is critical not only to the individual offender and those directly affected by the offense, but to the systematic administration of criminal justice.

8. What should be covered in the pre-sentence report being prepared by the Probation Officer?

- i. The Probation Officer shall put down relevant facts fully and faithfully in the report after making discreet enquiries regarding the offender's character and antecedents, his social and environmental conditions, the financial and other circumstances of his family, the circumstances in which the alleged offence was committed and any other facts which the court has directed him to enquire into. The PO may include the following in the report:
 - a) Personal History
 - Behaviour and habits (Moral, recreational etc.)
 - Temperament (character and personally traits)
 - Physical and mental history and present condition
 - Leisure time activities
 - b) External influences
 - School record and report of teachers, if available
 - Employment history
 - c) Employment Details
 - Present occupation and wages (give also condition of Labour, leisure etc.)

- Report of employer, if any
 - Associates
- d) Family Details
- Family History
 - Other interested relations, if any
 - Economic condition of the family
 - Any social agencies, institutions or individuals interested in family
 - Attitude of family towards offender and extent of its influence on him/her
 - Home conditions
 - Contact with social and religious organisation, if any
- e) Report of Neighbours
- f) Home surroundings and general outlook - is poverty or unsettled life the cause of offence?
- g) *Legal History*
- Previous institutional record, if any, statement of the present offence and circumstances in which it was committed
 - Offender's own reaction to the offence and his attitude towards possible punishment.
- h) Any special information required by the Court.
- ii. The summary of the case must include an objective statement of facts along with the PO's assessment of the case so as to help the court in determining the most suitable method of dealing with the offender after he is found guilty.

9. Can a PO disclose information to any person regarding the report of the offender?

No, **Section 7** of the Act provides that the report of the probation officer must be treated as confidential. The court may communicate the substance of the report to the offender and may give him an opportunity of producing such evidence for the matter stated in the report.

10. Can the conditions of probation be altered/ varied?

Yes, the provisions for this are made under **Section 8** of the Act. The bond could be varied by extending or diminishing the duration.

- i. It can be done on the application of the PO before the Court at any time during the period when the bond is effective
- ii. The court is of the opinion that it is expedient or necessary in the interests of the offender and the public to vary the conditions of the bond
- iii. It should not exceed three years from the date of the original order or by altering the conditions or by inserting additional conditions

- iv. Before altering the conditions, the offender and the surety or sureties mentioned in the bond must be given an opportunity of being heard.
- v. If any surety refuses to consent to any variation proposed, the court may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.
- vi. Based on the application of the PO, the Court can also discharge the bond or bonds entered into by the offender, if it is satisfied that the conduct of the offender has been such that it is unnecessary to keep him any longer in supervision.

11. What is the procedure to be followed if the offender fails to observe conditions of bond?

Section 9 of the Act deals with this and following is the procedure to be followed:

- i. Court has to consider the report of the probation officer to decide whether the offender has failed to observe any of the conditions of the bond or bonds entered into by him.
- ii. Court may issue a warrant for his arrest or may issue a summons to him and his sureties, if any, requiring any of them to attend Court at a particular time.
- iii. When the offender is brought or appears in the Court, it may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date for hearing.
- iv. If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds, it may -
 - (a) sentence him for the original offence; or
 - (b) where the failure is for the first time, impose upon him a penalty not exceeding fifty rupees and the bond continues.
- v. If the penalty is imposed and the offender fails to pay the penalty within specified period the court may sentence the offender for the original offence.

12. What is the remedy available to the offender, who is under twenty-one years of age, when Court declines to deal with him under Section 3 or 4 of the Act and passes an order of imprisonment with or without fine from which no appeal lies?

Section 11 of the Act provides that in such a case the court to which appeals ordinarily lie from the sentences of the former court may call for and examine the record of the case, either:

- of its own motion or
- on an application made to it by the convicted person or
- on an application made to it by the probation officer

Then the Court can pass such order as it thinks fit.

13. Can the service/job of the offender found guilty and dealt with under section 3 or 4 of Act be terminated on the ground of conviction?

No, because **Section 12** of the Act clearly provides that if a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 will not suffer disqualification on the ground of his conviction. It was also held in *Mohan Singh vs State Of Rajasthan* (1994 CriLJ 2229, 1994 (1) WLN 561) that conviction of the appellant will not incur any disqualification in his service/career as he has been granted the benefit of Section 4 of the Probation of Offenders Act.

14. Can an offender released under section 4 of the Act and subsequently sentenced for original offence, avail the benefit of Section 12?

No, because the **explanation clause appended to Section 12** clearly mentions that the benefit of not being disqualified will **not** be given to a person who, after his release under section 4, is subsequently sentenced for the original offence.

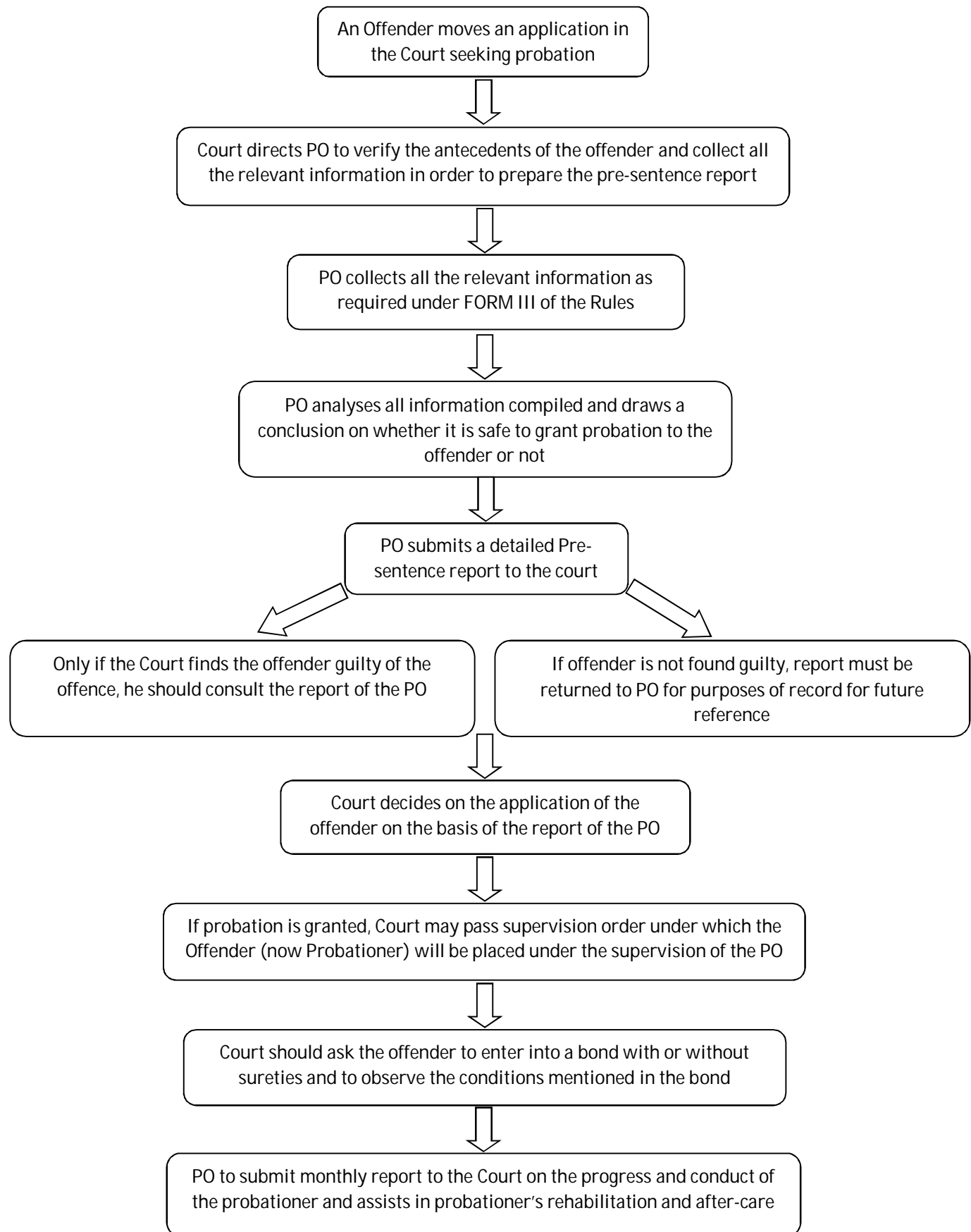
15. In regards to the duties of PO under the Act, which authority will have control over PO?

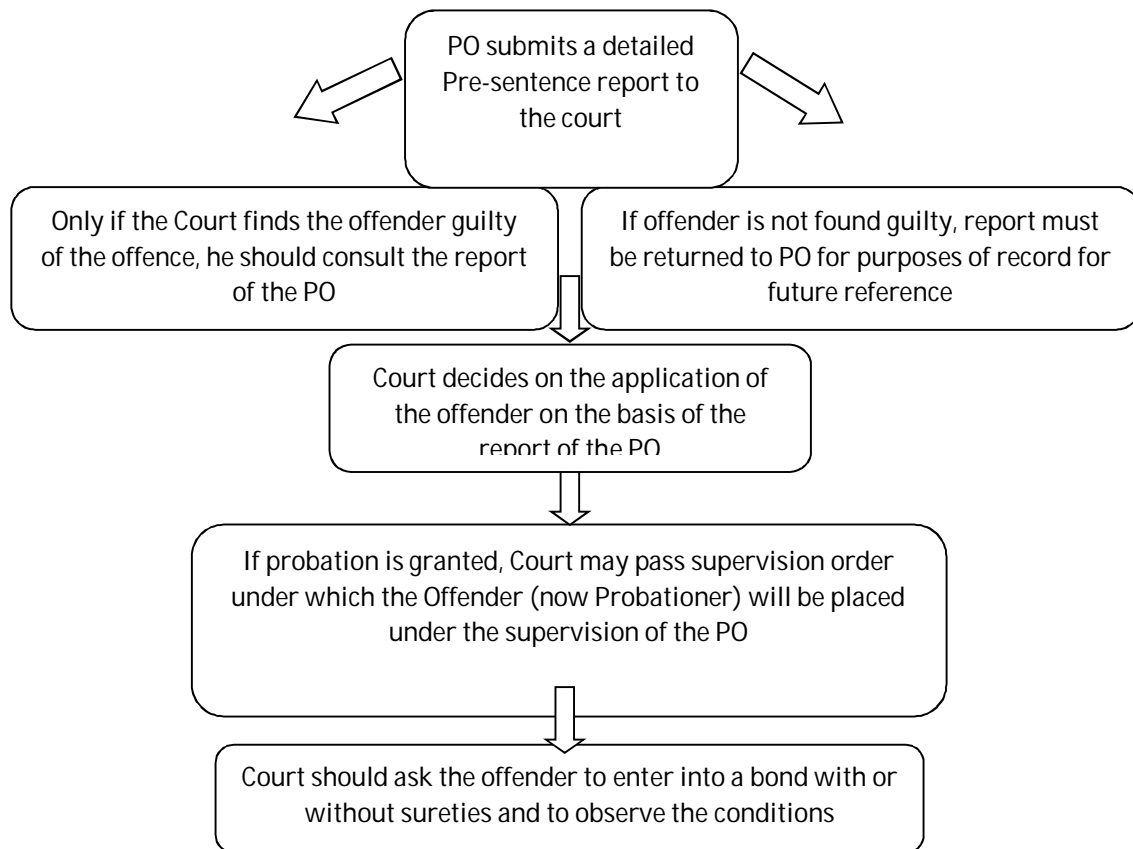
Section 13 of the Act provides that PO will be subjected to the control of the District Magistrate of the district in which the offender for the time being resides.

16. Can a suit or legal proceeding lie against the State government or a PO in respect of anything done under the Act?

Section 16 of the Act explains that if anything is done in good faith or intended to be done in pursuance of this Act or of any rules or orders, no suit or other legal proceeding can lie against the State Government or any probation officer or any other officer appointed under the Act.

17. What is the process to implement the Probation of Offenders Act?





III. Powers and Duties of the Magistrate

18. What are the powers of the Magistrate under the Act?

Mainly, following are the powers of the Court in relation to a PO and a probationer:

- 1) To release first time petty offenders after admonition (Section 3)
- 2) To release certain offenders on probation of good conduct (Section 4)
- 3) To ask an offender to enter into a bond with or without sureties to appear and receive sentence when called upon during such period, not exceeding three years (sub-section (1) of Section 4)
- 4) To make a supervision order directing that the offender to remain under the supervision of a probation officer for not less than one year (sub-section (3) of Section 4)
- 5) To ask an offender, being released under Section 3 or 4, to pay compensation or costs of the proceedings (Section 5)
- 6) To communicate the substance of the report of the PO to the offender and give him an opportunity to produce evidence (Section 7)
- 7) To vary the conditions of the bond by extending or diminishing the duration (Section 8)
- 8) To discharge the bond or bonds entered into by the offender, if it is satisfied that the conduct of the offender has been such that it is unnecessary to keep him any longer in supervision (Section 8)

- 9) To direct a PO to submit a report to enquire whether an offender has failed to observe any of the conditions of the bond or bonds (Section 9)
- 10) To issue a warrant for arrest of offender or issue summons to him and his sureties if the offender has failed to observe any of the conditions of the bond or bonds (Section 9)
- 11) To sentence an offender for the original offence or impose upon him a penalty not exceeding fifty rupees if the court is satisfied that the offender has failed to observe any of the conditions of the bond or bonds (Section 9)

19. What are the powers of the Appellate Court or High Court in cases of revision?

According to **Section 11** of the Act, when an order has been made under section 3 or section 4, the Appellate Court or the High Court in the exercise of its power of revision could set aside such order and pass sentence on such offender according to law. But the Appellate Court or the High Court cannot give a greater punishment than might have been given by the lower court.

20. What are the duties of the Court under the Act?

Broadly, following are the duties of the Court in relation to a PO and a probationer:

- 1) To take into consideration the report of the probation officer concerned in relation to the case (Section 4, 6 & 9)
- 2) To direct a PO (Form II) to submit a report (Form III) to enquire into the character and antecedents of the accused, circumstances in which the offence was committed or any other matter. (Section 4 & 6)
- 3) To explain to the offender the terms and conditions of the supervision order and to also furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned. (Section 4)
- 4) Not to sentence offenders under twenty-one years of age to imprisonment unless it is satisfied, considering the circumstances of the case, that it is not appropriate to deal with the offender under Section 3 or 4 (Section 6)
- 5) To direct a PO to submit monthly report on progress of probationer placed under his supervision for purposes of Sections 8 and 9 of the Act (FORM VII)

IV. Duties of the Probation Officer

21. What are the duties of the PO under the Act?

Section 14 of the Act provides for the duties of PO which are the following:

- i. inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;
- ii. supervise probationers and other persons placed under his supervision and where necessary, endeavour to find them suitable employment;
- iii. advise and assist offenders in the payment of compensation or costs ordered by the court;
- iv. advise and assist, in such cases and in such manner as may be prescribed, persons who have been relaxed under section 4; and
- v. perform such other duties as may be prescribed.

22. What are the skills and abilities required by the PO to carry out the above mentioned tasks?

Following skills must be developed by POs in carrying out the various responsibilities of their work:

- **Critical Thinking** — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems
- **Social Perceptiveness** — Being aware of others' reactions and understanding why they react as they do
- **Speaking** — Talking to others to convey information effectively
- **Active Listening** — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times
- **Monitoring** — Monitoring/Assessing performance of yourself, other individuals, or organizations to make improvements or take corrective action
- **Writing** — Communicating effectively in writing as appropriate for the needs of the audience
- **Reading Comprehension** — Understanding written sentences and paragraphs in work related documents
- **Complex Problem Solving** — Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions
- **Judgment and Decision Making** — Considering the relative costs and benefits of potential actions to choose the most appropriate one
- **Coordination** — Adjusting actions in relation to others' actions

23. What are the activities that could facilitate POs work in an efficient manner?

- **Getting Information** — Observing, receiving, and otherwise obtaining information from all relevant sources

- **Documenting/Recording Information** — Entering, transcribing, recording, storing, or maintaining information in written or electronic/magnetic form.
- **Interacting with Computers** — Using computers and computer systems (including hardware and software) to program, write software, set up functions, enter data, or process information.
- **Making Decisions and Solving Problems** — Analyzing information and evaluating results to choose the best solution and solve problems
- **Communicating with Supervisors, Peers, or Subordinates** — Providing information to supervisors, co-workers, and subordinates by telephone, in written form, e-mail, or in person
- **Identifying Objects, Actions, and Events** — Identifying information by categorizing, estimating, recognizing differences or similarities, and detecting changes in circumstances or events
- **Evaluating Information to Determine Compliance with Standards** — Using relevant information and individual judgment to determine whether events or processes comply with laws, regulations, or standards
- **Organizing, Planning, and Prioritizing Work** — Developing specific goals and plans to prioritize, organize, and accomplish your work
- **Establishing and Maintaining Interpersonal Relationships** — Developing constructive and cooperative working relationships with others, and maintaining them over time
- **Communicating with Persons outside Organization** — Communicating with people outside the organization, representing the organization to customers, the public, government, and other external sources. This information can be exchanged in person, in writing, or by telephone or e-mail.

C. STATUTORY PROVISIONS

THE PROBATION OF OFFENDERS ACT, 1958

No. 20 OF 1958 [16th May, 1958]

An Act to provide for the release of offenders on probation or after due admonition and for matters connected therewith.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

1. Short title extent and commencement.
 - (1) This Act may be called the Probation of Offences Act, 1958.
 - (2) It extends to the whole of India except the State of Jammu and Kashmir.
 - (3) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State.
2. Definitions. In this Act, unless the context otherwise requires,
 - (a) "Code" means the Code of Criminal Procedure, 1898 (5 of 1898);
 - (b) "probation officer" means an officer appointed to be a probation officer or recognized as such under section 13;
 - (c) "prescribed" means prescribed by rules made under this Act;
 - (d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (5 of 1898), shall have the meanings respectively assigned to them in that Code.
3. 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 offence, it is expedient 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.

Explanation For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. Power of court to release certain offenders 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 behavior:

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 subsection (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 subsection (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 subsection (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 subsection (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.
5. Power of court to require released offenders to pay compensation and costs.
 - (1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay
 - (a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
 - (b) such costs of the proceedings as the court thinks reasonable.
 - (2) The amount ordered to be paid under subsection (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.
 - (3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under subsection (1) in awarding damages.
6. 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 the in subsection (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
7. Report of probation officer to be confidential. The report of a probation officer referred to in subsection (2) of section 4 or subsection (2) of section 6 shall be treated as confidential:

Provided that the court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.

8. Variation of conditions of probation.
 - (1) If, on the application of a probation officer, any court of opinion that in the interests of the offender and the public it is expedient or necessary to vary the conditions of any bond entered into by the offender, it may, at any time during the period when the bond is effective, vary the bond by extending or diminishing the duration thereof so, however, that it shall not exceed three years from the date of the original order or by altering the conditions thereof or by inserting additional conditions therein;
 - (4) If a penalty imposed under clause (b) of subsection (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.
 - (2) If any surety refuses to consent to any variation proposed to be made under subsection (1), the court may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.
 - (3) Notwithstanding anything hereinbefore contained, the court which passes an order under section 4 in respect of an offender may, if it is satisfied on an application made by the probation officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into by him.
9. Procedure in case of offender failing to observe conditions of bond.
 - (1) If the court which passes an order under section 4 in respect of an offender or any court which could have dealt with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons
 - (2) The court before which an offender is so brought or appears may either remands him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date which it may fix for hearing.

- (3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith
 - (a) sentence him for the original offence; or
10. Provision as to sureties. The provisions of sections 122, 126, 126A, 406A, 514, 514A, 514B and 515 of the Code shall, so far as may be, apply in the case of bonds and sureties given under this Act.
11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.
 - (1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.
 - (2) Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentence of the former court.
 - (3) In any case where any person under twenty one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.
 - (4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.
12. Removal of disqualification attaching to conviction. Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law;

Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence.

13. Probation officers.
 - (1) A probation officer under this Act shall be
 - (a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government or
14. Protection of action taken in good faith. No suit or other legal proceeding shall lie against the State Government or any probation officer or any other
15. Probation officers to be public servants. Every probation officer and every other officer appointed in pursuance of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.
 - (b) a person provided for this purpose by a society recognized in this behalf by the State Government; or
 - (c) 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.
 - (2) A court which passes an order under section 4 or the district magistrate of the district in which the offender for the time being resides may, at any time, appoint any probation officer in the place of the person named in the supervision order.

Explanation. For the purposes of this section, a presidency town shall be deemed to be a district and chief presidency magistrate shall be deemed to be the district magistrate of that district.

 - (3) A probation officer, in the exercise of his duties under this Act, shall be subject to the control of the district magistrate of the district in which the offender for the time being resides.
16. Duties of probation officers. A probation officer shall, subject to such conditions and restrictions, as may be prescribed,
 - (a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;
 - (b) supervise probationers and other persons placed under his supervision and where necessary, endeavor to find them suitable employment;
 - (c) advise and assist offenders in the payment of compensation or costs ordered by the court;
 - (d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been relaxed under section 4; and
 - (e) perform such other duties as may be prescribed.

officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

17. Power to make rules.
 - (1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power, such rules make provide for all or any of the following matters, namely:
 - (a) appointment of probation officers, the terms and conditions of their service and the area within which they are to exercise jurisdiction;
 - (b) duties of probation officers under this Act and the submission of reports by them;
 - (c) the conditions on which societies may be recognized for the purposes of clause (b) of subsection (1) f section 13;
 - (d) the payment of remuneration and expenses to probation officers or of a subsidy to any society which provides probation officers; and
 - (e) any other matter which is to be, or may be, prescribed.
 - (3) All rules made under this section shall be subject to the condition of previous publication and shall, as soon as may be after they are made, be laid before the State Legislature.
18. Saving of operation of certain enactments. Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or subsection (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947) or the Suppression of Immoral Traffic in Women and Girls act, 1956 (104 of 1956), or any law in force in any State relating to juvenile offenders or borstal schools.
19. Section 562 of the Code not to apply in certain areas. Subject to the provisions of section 18, section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.

D. CIRCULARS & ORDERS: WEST BENGAL

I. Job Chart of Deputy Chief Probation cum After Care Officers

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF CORRECTIONAL SERVICES, WEST BENGAL,
JESSOP BUILDING, 63, N.S.ROAD, KOLKATA-700 001.
Phone No. 033-2262-5694, Fax-033-2262-5604, email- adgcswb@gmail.com

CIRCULAR

MEMO NO. 5119/1(3)/PB-01/2011

DATED: 24.9.2014

- 1) Two posts of Deputy Chief Probation-cum-After Care Officers were created in terms of No. 1424-H.J. dated 18.10.1993 by the Department of Correctional Administration, Government of West Bengal.
- 2) The posts of Deputy Chief Probation-cum-After Care Officers have been filled up in terms of No. 984- DCA/4M-11/11 dated 23.09.2013 issued by Department of Correctional Administration, Government of West Bengal.
- 3) A Job Chart in respect of Probation-cum-After Care Officers was circulated under No. 378-SJL dt.07.03.05 by the Department of Correctional Administration, Government of West Bengal.
- 4) The recruitment rules in respect of Deputy Chief Probation-cum-After Care Officers and Chief Probation- cum-After Care Officer have been notified under No. 2497-DCA/4M-11/11 dt. 13.03.2013 & No. 862- DCA/4M-11/11 dt. 25.08.2014 by Department of Correctional Administration, Government of West Bengal.
- 5) The job chart in respect of Deputy Chief Probation-cum-After Care Officers has not been finalised and Audit team of PAG has noted their observation regarding poor implementation of 'Probation of Offenders' Act. Accordingly, in view of AG Audit observation and taking into consideration the administrative necessities, a proposed Job Chart of Deputy Chief Probation-cum- After Care Officers has been sent to the Additional Chief Secretary to the Government of West Bengal under this Directorate Memo no. 2753/ACC-30/2014 dated 06.06.2014 for consideration and issuance of approval.
- 6) Pending finalization of the approval, job chart is hereby circulated to the office of the Chief Probation- cum-After Care Officer with an advice to comply with the job distribution as enumerated below until further orders:

Job Chart of Deputy Chief Probation-cum-After Care Officers.

The basic objective for creation of the posts of Deputy Chief Probation-cum-After Care Officers were

- (i) To reduce the overload of Chief Probation-cum-After Care Officer, West Bengal;
- (ii) To provide all sorts of supervisory assistance in order to augment Probation-cum-After Care Service.

Job Responsibilities:

a) Under the overall supervision of Chief Probation -cum After Care Officer, Government of West Bengal the Deputy Chief Probation-cum- After Care Officers will departmentally supervise and monitor the office works of Probation-cum-After Care Officers, posted at various Districts, Sub- divisions, Courts of their respective administrative division.

b) Deputy Chief Probation-cum- After Care Officers will provide fruitful guidance & advice to the Probation-cum- After Care Officer(s) in taking appropriate decisions in complex, sensitive or controversial case situations.

c) Deputy Chief Probation-cum- After Care Officer will collect various types of official reports, returns, diary etc. from the Probation-cum- After Care Officers within his/her jurisdiction and sent it in due time to the Chief Probation -cum After Care Officer, West Bengal for onward submission to Inspector General of Correctional Services and Department of Correctional Administration, Government of West Bengal & other government departments, Courts etc.

d) Deputy Chief Probation-cum- After Care Officer will prepare a statistical performance report regarding the activities of Probation -cum After Care Officer(s) and sent the same quarterly to the Chief Probation-cum- After Care Officer, West Bengal.

e) Deputy Chief Probation-cum After Care Officers will collect& received various types of official information, message, letters etc. from the office of the Chief Probation -cum- After Care Officer, Inspector General of Correctional Services, Department of Correctional Services, Correctional Homes, Courts and other government & non-government departments ,agencies, institutions and sent & convey the same in due time to the Probation-cum After Care Offer(s)within his/her jurisdiction.

f) Deputy Chief Probation-cum-After Care Officers will perform professional and administrative work in assisting the A.D.G. & Inspector General of Correctional Services, West Bengal or Inspector General of Correctional Services, West Bengal (as the case may be),

Chief Probation-cum After care Officer, West Bengal in planning, developing, organizing, directing and coordinating the activities of Probation and After Care services of West Bengal.

g) Deputy Chief Probation-cum- After Care Officers will provide professional leadership by setting goals and priorities, establishing policy of temporary & premature release of convicts, and after care services.

h) Deputy Chief Probation -cum- After Care Officers will meet the various stakeholders for efficient discharge of official duties.

i) Deputy Chief Probation -cum- After Care Officers will perform related duties as may be directed from time to time by the Secretary in charge, Department of Correctional Services, Govt. of West Bengal, A.D.G. & Inspector General of Correctional Services, West Bengal or Inspector General of Correctional Services, West Bengal (as the case may be) and Chief Probation -cum- After Care Officer West Bengal or any other government departments as may be directed by the competent authority.

j) Deputy Chief Probation -cum- After Care Officer will participate in related public relations meeting, workshop and seminars etc.

k) Deputy Chief Probation -cum - After Care Officers may represent various governments and non-- government meeting, seminar, workshop etc. in absence of Chief Probation -cum- After Care Officer, West Bengal.

l) Deputy Chief Probation-cum-After Care Officers shall ensure that Probation-cum-After Care Officers visit the Correctional Homes under their area of operation/jurisdiction on regular basis (preferably twice a week) for counselling and preparation of other reports, as required from time to time of the inmates detained in the Correctional Homes of the State. In this connection duties and responsibilities as circulated under No. 378-SJL dt. 07.03.05 by the Department of Correctional Administration, Government of West Bengal must be taken into account. Special emphasis shall be given under clause I (n) of the circular.

Sd/-

**ADG & IG of Correctional Services,
West Bengal**

II. Circular on Guidelines for Parole Supervision

It is to be noted that a review meeting with all Probation-cum-After Care Officers was held and conducted on 26.12.2014 at 3.30 P.M. at the Conference Hall of Directorate of Correctional Services, West Bengal.

According to the said meeting report, the Chief Probation-cum-After Care Officer, West Bengal was instructed to prepare a Prisoner's Profile and to frame a Guideline for Parole supervision for future development of work of the Probation-cum-After Care Officers under correctional services, West Bengal.

As per the instruction of the ADG & IG of Correctional Services, West Bengal a draft of Prisoner's Profile and a Guideline for Parole Supervision have been framed by the Chief Probation-cum-After Care Officer, West Bengal and is being submitted before the Addl. Director General & Inspector General of Correctional Services, West Bengal for his kind perusal and signing with his kind approval to circulate the copy of the same by the Chief Probation-cum-After Care Officer, West Bengal to all the Probation-cum-After Care Officers for their future action.

Sd/-

**Chief Probation-cum-After Care Officer,
West Bengal**

Seen and approved as interim guidelines and prisoners profiles preparation for the probation cum after care officers on 24.3.2015.

Sd/-

**ADG & IG of Correctional Services,
West Bengal**

NB: See guidelines overleaf

Guideline of Parole Supervision

1	Name of Prisoner
2	Father's/Husband's/Guardian's Name
3	Present Home Address & Contact no.
4	Permanent Home Address (if any)
5	No. & Date of order of ADG & IG, CS, W.B. Granting Temporary Release
6	Date & Period of Temporary Release
7	Name of Correctional Home
8	Date of Return to Correctional Home
9	Purpose of Temporary Release & Report of Implication
10	Name of P.R. Bond Sureties & Present Views
11	Detail of Family Members lived with
12	Report of Family & Social Acceptance
13	Report of Vengeance or Recurrence
14	Conduct Report during Release Period
15	Any Adverse Report regarding Involvement with Bad Associates
16	Views of PACO regarding Fruitful Side of Confinement & Future Family/Social Reintegration
17	Any other Important Report

Prisoner Profile									
Prisoner Profile No				Affix Passport Size Coloured Photo					
Profile Started on									
Profile Ended on									
Name of Prisoner and No.									
Father's/Husband's/Guardian's Name									
Crime with Section of Penal Code									
Case No									
Sentencing Authority									
General Information									
Address of Prisoner				Permanent					
				Present					
				Contact No.					
Sex		Nationality		Religion		DoB /Age			
Physical Appearance		Eyes		Hair		Height		Weight	
Physical Health									
Mental Health									

Any Disability				
Marital Status				
Educational Qualification				
Vocation	Unskilled/semi-skilled/skilled		Trade	
Employment Status before Incarceration				
Present Socio-Economic Status of Family				
Relationship with the Family Members				
Relationship with Community Members				
Whether need any Legal Help				
Whether Help for Children Education & Care				
Whether Help for Employment & Rehabilitation				
Need any Other Help				
Incarceration Information				
Nature of Crime Committed				

Sentence for	
Name of CH & Date of Release	
Actual Sentence Served	
Character of Prisoner in CH	
Appeal Pending before any Court	
Any Other Additional Info	
No. of Paroles Aailed	From: To:
	From: To:
	From: To:
	From: To:
	From: To:
Parole Revocation, if any	
Disciplinary Violation in CH, if any	

Family Details				
Name	Relationship	Age	Occupation	Contact No
Name of Probation-cum-After Care Officer, the Profile Prepared by			Name:	
			Station:	
Profile Prepared on				
Signature of Probation-cum-After Care Officer with date				

III. Monthly Working Report of Probation cum After Care Officers

The Probation-cum-After Care Officer under Correctional Services in West Bengal used to submit their month wise working report as per non-standard form namely “Monthly Progress Report” framed by the then authority and that is very ancient. The work load as well as the periphery of work of a Probation-cum-After Care Officer has been spread in a broad way and to get the actual reflection of their month-wise work, it seems to me that the said non-standard form should be changed. To get best reflection of the month-wise work, I framed a new draft form (copy attached herewith) updating more points and am going to furnish the same to your end for your kind perusal and approval.

Submitted to the ADG & IG of Correctional Services, West Bengal for perusal and issuing necessary order.

Sd/-

**Chief Probation-cum-After Care Officer
West Bengal**

Seen and approved the proposed monthly progress report format to be followed with effect from 1.4.2015.

Sd/-

**ADG & IG of Correctional Services,
West Bengal**

NB: See format overleaf

Monthly Working Report of Probation-Cum-After Care Officer

For the Month of _____, 20__ for _____ District/Sub-division/Court.

Sl. No.	Subject of Report	Detail Information
	No. of P.E. orders received from court during the month under P.O. act,1958	
2	No. of P.E. reports submitted to the court during the month under P.O. act,1958	
3	Total no. of P.E. order received from the court 1 st January, 20-upto the end of this month under P.O. act,1958	
4	Total no. of P.E. reports submitted to the court from 1 st January 20,-upto the end of this month under P.O. act,1958	
5	No. of offenders released on probation under supervision of PACO during the month under P.O. act,1958	
6	Total no. of offenders released on probation under supervision of PACO from 1 st January 20,----upto the end of this month under P.O. act,1958	
7	No. of Probationers completed probation period during the month under P.O. Act, 1958	
8	Total no. of Probationers completed probation period from 1 st January 20---- up to end of this month	
9	Total No. of Probationers under Supervision (net) of PACO up to end of this month under P.O. Act, 1958	
10	No. of premature release enquiry order received during the month	
11	No. of premature release enquiry report submitted during the month	
12	Total no. premature release enquiry order received from 1 st January 20---- up to end of this month	
13	Total no. premature release enquiry report submitted from 1 st January 20---- up to end of this month	
14	No. of parole enquiry order received during the month	
15	No. of parole enquiry report submitted during the month	
16	Total no. parole enquiry order received from 1 st January 20---- up to end of this month	
17	Total no. parole enquiry report submitted from 1 st January 20---- up to end of this month	
18	No. of Parole supervision order received during the month	

19	No. of Parole supervision report submitted during the month	
20	Total no of Parole supervision order received from 1 st January 20---- up to end of this month	
21	Total no of Parole supervision report submitted from 1 st January 20---- up to end of this month	
22	No. of other state enquiry order received during the month	
23	No. of other state enquiry report submitted during the month	
24	Total no of other state enquiry order received from 1 st January 20---- up to end of this month	
25	Total no of other state enquiry report submitted from 1 st January 20---- up to end of this month	
26	No. of convicts counseled at Correctional Home during this month	
27	Total no of convicts counseled at Correctional Home from 1 st January 20---- up to end of this month	
28	No. of prematurely released convicts supervised during the month	
29	Total no. prematurely released convicts supervised from 1 st January 20---- up to end of this month	
30	No. of released convicts provided after care & rehabilitation facilities during the month	
31	Total no. of released convicts provided after care & rehabilitation facilities from 1 st January 20---- up to end of this month	
32	No. of interview facility provided as follow up cases to the being deserted convicts detained at Correctional Home	
33	Total no. of interview facility provided as follow up cases to the being deserted convicts from 1 st January 20---- up to end of this month	
34	No. of Correctional Home visits done during the month	
35	Total no of Correctional Home visits done from 1 st January 20---- up to end of this month	
36	No. of Court visit done during the month	
37	Total no of Court visits done from 1 st January 20---- up to end of this month	
38	Remarks:	

E. TABLE OF JUDGEMENTS

S. NO.	CASE NAME, CITATION & COURT NAME	ISSUE	DECISION
DUTY OF THE BAR AND BENCH			
1	<p>Ved Prakash vs. State of Haryana</p> <ul style="list-style-type: none"> • 1981 AIR 643 <p><i>Supreme Court of India</i></p>	<p>The Duty of the Bar and Bench when dealing with cases under Section 360 of the Code of Criminal Procedure Code</p>	<p>The Court held that “sentencing an accused person is a sensitive exercise of discretion and not routine or mechanical prescription acting on hunch. “It further highlighted the responsibilities of the bar and bench.</p> <p>Court</p> <ol style="list-style-type: none"> 1) The Court should collect materials necessary to help award a just punishment in the circumstances. 2) The social background and personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. 3) The Bench should fulfil the humanizing mission of sentencing implicit in such enactments as the Probation of offenders Act <p>Lawyers</p> <p>Drawing out on the lack of application of Probation of Offenders Act by the lawyers, the learned judge reasoned that the bar usually considers the subject Act which has provisions related to amelioration of punishment as a ‘Minor Act’, thereby attributing it with little consequence. He further lamented that due to such lack of attention, a person loses the chance of being treated as a non-offender instead of an offender which translates into a really wrong approach on behalf of the lawyers.</p>
CALLING FOR THE SOCIAL INVESTIGATION REPORT			
2	<p>R Mahalingam vs G Padmavathi and another</p>	<p>The learned Magistrate has found the respondents guilty of an</p>	<p>Before deciding to act under S. 4(1), it is mandatory on the part of the court to call for a report from the Probation</p>

	<ul style="list-style-type: none"> • 1978--LW(Crl)182 <p><i>Supreme Court of India</i></p>	<p>offence under S. 417, I.P.C. but released them under the Probation of Offenders Act.</p> <p>Whether in view of this sub-section, it is obligatory on the part of the Court to call for a report from the Probation Officer and then pass an order or refuse to pass an order under S. 4(1)?</p>	<p>Officer and if such a report is received, it is mandatory on the part of the court to consider the report. But, for one reason or the other, if such a report is not forthcoming, the court has to decide the matter on other materials available to it.</p>
3	<p>State of Maharashtra vs. Bodaya Ramji Patil</p> <ul style="list-style-type: none"> • 1978 CriLJ 411 <p><i>Bombay High Court</i></p>	<p>Whether calling of a report from Probation Officer is mandatory before making an order under the under Section 4(1)?</p>	<p>The Court held that calling of a report from a probation officer Under Section 4 (1) of the Act is not a condition precedent for making an order. Though it is very essential that such a report should ordinarily be called from a probation officer. However, while keeping this object in view, it must also be borne in mind that the exercise of the discretion given to the courts under Section 4 of the Act needs a considerable sense of responsibility and the courts should not be misled into the free use of the section by misplaced leniency and sympathy. Before making an order under Section 4 (1) of the Act, it is necessary for the Court to consider (i) the circumstances of the case, (ii) nature of the offence and (iii) the character of the offender. We, therefore, feel it necessary to emphasise that calling for a report from the probation officer under Sub-section (2) of Section 4 of the Act though not mandatory is absolutely essential, save in exceptional cases where there is sufficient material on record justifying the use of discretion conferred by Section 4 of the Act.</p>
GRAVITY OF OFFENCE VS. REPORT OF PROBATION OFFICER			
4	Tek Bahadur vs. State	The petitioner apprehended was found	Keeping in view the facts and circumstances, the antecedents and

	<ul style="list-style-type: none"> • 21 (1982) DLT 233 <p><i>Delhi High Court</i></p>	<p>in possession of 2 kgs of opium. He was convicted under Section 9 of the Opium Act, 1878. The report of the probation officer states that it is a fit case for the release of the petitioner on probation.</p> <p><i>Whether the quantum of opium in his possession when he was apprehended can disentitle him from getting the benefit of probation?</i></p>	<p>behaviour of the petitioner the Probation Officer recommends that the petitioner be given the benefit of the provision of Section 4 of the Act and further that he be placed under surveillance of the Probation Officer for some time so that proper counselling can be given to him and close watch be kept on him.</p> <p>The court held that it is apparent that he was a mere carrier and was a tool in the hands of some anti-social elements. It relied on a catena of cases and held that huge possession of illicit opium by itself did not appear to disentitle the petitioner from release on probation. Hence, the petitioner was released on the probation as he was the only bread earner of the family and sentencing him would amount to ruining the life of his young wife and children.</p>
APPLICABILITY OF S.4 OF THE ACT			
5	<p>M.C.D vs State Of Delhi And Anr</p> <ul style="list-style-type: none"> • AIR 2005 SC 2658 <p><i>Supreme Court of India</i></p>	<p>Exercising of power by Court under S.4 of the Act</p>	<p>While extending benefit of Section 4 of the Probation of Offenders Act, 1958, the discretion of the Court has to be exercised having regard to the circumstances in which the crime was committed, the age, character and antecedents of the offender. Such exercise of discretion needs a sense of responsibility.</p> <p>The Court is bound to call for a report as per Section 4 of Act but the High Court has failed to do so although the Court is not bound by the report of the Probation Officer but it must call for such a report before the case comes to its conclusion. The word shall in sub-section (2) of Section 4 is mandatory and the consideration of the report of the Probation Officer is a condition precedent to the release of the accused.</p>
6	<p>Moti Lal Bairwa vs State Of Rajasthan</p>	<p>Regarding applicability of S.4 of the Act</p>	<p>In a case under Section 295 IPC where the accused petitioner is less than 21 years of age without calling for the</p>

	<ul style="list-style-type: none"> • 1986 (1) WLN 287 <p><i>Rajasthan High Court</i></p>	<p>The accused petitioner has been found guilty for an offence under Section 295 IPC.</p>	<p>report of the Probation Officer and without considering the same, the accused-petitioner has been sentenced to imprisonment and thereby the courts below have committed illegality. In the facts and circumstances, looking to the age of the accused and nature of the offence, we are of opinion that it is not a case in which the benefit of Section 4 of the Act should have been denied.</p>
7	<p>Mohan Singh vs State Of Rajasthan</p> <ul style="list-style-type: none"> • 1994 CriLJ 2229 • 1994 (1) WLN 561 <p><i>Rajasthan High Court</i></p>	<p>The appellant was convicted by the Special Court, S. C. / S. T. (Prevention of Atrocities) Act, Jodhpur, for the offence under Section 323, I.P.C. and granted him the benefit of Section 4 of the Act.</p>	<p>A proviso has been added, by which it has been made clear that the provisions of Section 12 will not be applicable to a person, who, after his release under Section 4 of the Act, is subsequently sentenced for the original offence.</p> <p>Keeping in mind the object, for which the provisions of the Probation of Offenders Act have been made and in view of the provisions of Section 12 of the Act, we therefore, think it proper to direct that the conviction of the appellant will not incur any disqualification in his service career as he has been granted the benefit of Section 4 of the Probation of Offenders Act.</p>
APPLICABILITY OF SECTION 6 OF THE ACT			
8	<p>Daulat Ram vs The State of Haryana</p> <ul style="list-style-type: none"> • AIR 1972 SC 2334 • 1972 CriLJ 1517 • (1973) 75 PLR 146 <p><i>Supreme Court of India</i></p>	<p>Applicability of Section 6 of the Act</p>	<p>It is obvious that Section 6 places restrictions on the court's power to sentence a person under 21 years of age for the commission of offences mentioned therein unless the court is satisfied that it is not desirable to deal with the offender under Sections 3 and 4 of the Act. The Court is also required to record reasons for passing sentence of imprisonment on such offender.</p> <p>Object of Section 6 of The Probation of Offenders Act, 1958, broadly speaking, is to see that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to</p>

			life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals who may happen to be the inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly do them harm than good, and for that reason it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. It is for this reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6.
9	Yashwant Singh vs The State Of Rajasthan <ul style="list-style-type: none"> • 1978 WLN UC 66 <i>Rajasthan High Court</i>	<p>The appellant was convicted under Section 324, IPC to undergo rigorous imprisonment for four months. The accused was below 21 years of age on the date of occurrence.</p> <p>Whether the benefit of S.6 is to be given to accused considering his age at the date of occurrence or at the date of pronouncing judgement?</p>	<p>Learned Lower Court was definitely wrong when it held that the accused was not below 21 years of age when the judgment was pronounced. The relevant date on which the age of the accused has to be seen is the date when the occurrence took place.</p> <p>Reference may be made to Barshen Kumar v. Secretary, Municipal Corporation, Jobalpur and (1) 1973 Cr.L.J. 384 and Musakhan v. State of Maharashtra (2) 1976 Cr.L.J. 1987.</p>
POWER OF HIGH COURT UNDER S.6 & S.11			
10	Rattan Lal vs State Of Punjab <ul style="list-style-type: none"> • 1965 AIR 444 • 1964 SCR (7) 676 <i>Supreme Court of India</i>	<p>The Magistrate convicted the appellant under ss. 451 and 354 of the IPC and sentenced him to six months' rigorous imprisonment under each count and directed that the sentences should run concurrently. He further imposed a fine of Rs. 200/- and ordered that, in default of payment of</p>	<p>It is true that the appellant did not bring the provisions of the Act to the notice of the Court till after the disposal of the revision petition, but that does not absolve the Additional Sessions Judge and the High Court from discharging its duty under the Act.</p> <p>An ex post facto law which only mollifies the rigour of a criminal law does not fall within the prohibition of Art.20 of the Constitution.</p>

		<p>fine, he should undergo rigorous imprisonment for two months. The appellant was 16 years old at the time of his conviction.</p> <p>Conviction of accused by trial court before the coming into force of the Act - Whether High Court can exercise powers conferred on Court under S. 6?</p>	<p>Section 11(1) of the Act is the provision that directly applies to the case where under an order may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision. That sub-section ex facie does not circumscribe jurisdiction of an appellate court to make an order under the Act only in a case where the trial court could have made that order. The phraseology used therein is wide enough to enable the appellate court or the High Court, when the case comes before it, to make such an order it having been purposely comprehensive for implementing a social reform. This Court, after setting aside the order of the High Court, remanded the case back to the Sessions Court for making an order under Section 6 of the Act.</p> <p>When s. 11 (1) says that an appellate court or a revisional court can make an order under the Act, it means that it can make an order also under s.6(1) of the Act. If so, "court" in s.6(1) will include an appellate court as well as a revisional court.</p>
<p>11</p>	<p>Ramji Missar v. State of Bihar</p> <ul style="list-style-type: none"> • AIR1963SC1088 • [1963] Supp. 2 S.C.R. 745 <p><i>Supreme Court of India</i></p>	<p>Appellants charged for offence committed under Sections 307, 326 and 324, IPC. One of the appellants was below 21 years of age.</p> <p>Whether the learned Judge had an absolute and unfettered discretion to pass or refuse an order under the Act by virtue of the terms of s. 11 of the Act? - (1) whether or not s. 6(1) was applicable to the High Court, and (2) the proper construction of the terms of s. 11</p>	<p>This decision lays down three propositions, namely, (i) an appellate court or a revisional court can make an order under s.6(1) of the Act in exercise of its power under s.11(1) thereof; (ii) it can make such an order for the first time even though the trial court could not have made such an order, having regard to the finding given by it; and (iii) in making such an order it is subject to the conditions laid down in ss. 3, 4 and 6 of the Act.</p> <p>Appellate Court has no unfettered discretion in dealing with a case which comes before it under Section 11. The words in s. 11(1) "pass an order under the Act" are not to be construed so strictly and literally, but to be</p>

		<p>which empowers appellate and revisional courts to pass orders under the Act.</p>	<p>understood to mean "to exercise the powers or jurisdiction conferred by the Act. "The Courts mentioned in s. 11 be they trial courts or exercising appellate or revisional jurisdiction are thereby empowered to exercise the jurisdiction conferred on Courts not only under Sections 3 or s. 4 and the consequential provisions but also under s. 6.</p>
<p>DISQUALIFICATION UNDER SECTION 12</p>			
<p>12</p>	<p>Divisional Personnel Officer vs. T.R.</p> <ul style="list-style-type: none"> • 1976 SCR (1) 783 <p><i>Supreme Court of India</i></p>	<p>The respondents were Railway employees found guilty under Section 51A of the Kerala Police Act and instead of being sentenced, were released on probation under Section 3 of the Probation of Offenders, Act. The concerned Disciplinary Authorities however, removed them from service on the ground of their conviction without any further opportunity to the Respondents under Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968.</p> <p>The respondents challenged the orders of removal under Section 12 of the Probation of Offenders Act, 1958.</p> <p><i>Interpretation of Section 12 of the Probation of Offenders Act, 1958</i></p>	<p>The disqualification contemplated by section 12 is something attached to the conviction, namely, something which is a consequence or the result thereof. It does not 'go beyond it '. For example, the disqualification under S. 108 of the Representation of People Act, 1951 a person is disqualified to be a Member of Parliament or State Legislature if he is convicted of certain offences. The departmental proceedings will not come under meaning of disqualification as used in Section 12 because the departmental proceedings are not conducted because the erring man has been convicted. They would be conducted because of his original misconduct. Also if Section 12 will run against all disqualification then it will be ultra vires the Constitution (Art. 311(2) (a)).</p> <p>However, the order of removal of the respondents were anyhow quashed because the departmental proceedings under R. 14 did not take into account the gravity of offence, the entire conduct of the delinquent employee and the impact of his misconduct on administration which they should have been considered keeping in mind the principles of natural justice and fair play.</p>

About CHRI



"The degree of civilization in a society can be judged by entering its prisons"

Fyodor Dostoevsky, 1821-1881

The Prison Reform Programme of Commonwealth Human Rights Initiative (CHRI) is focused on increasing transparency of a traditionally closed system. The programme aims to improve prison conditions, reform prison management, enhance accountability and foster an attitude of cooperation between the various agencies of the criminal justice system. Over the years, we have worked in different parts of the country including Andhra Pradesh, Chhattisgarh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, and West Bengal. A major area of our work is focused on 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. We believe 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.

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 associations founded CHRI because they felt that while the member countries had both a common set of values and legal principles from which to work and a forum within which to promote human rights, there was relatively little focus on human rights issues.

CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, 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-state 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.

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

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