Alternatives to Imprisonment

Probation of Offenders Act, 1958

JUSTICE WITHOUT BARS

PRISON REFORMS PROGRAMME

COMMONWEALTH HUMAN RIGHTS INITIATIVE (CHRI)

Acknowledgment

The idea of a briefing paper on probation emerged in the context of concern for the relative neglect of the Probation of Offenders Act, 1958 in the state of Rajasthan and need for an informed debate on this non-custodial measure as a social defence mechanism and its implementation by the various agencies of the criminal justice system.

The Commonwealth Human Rights Initiative (CHRI) wishes to thank Monika Milinauskyte for writing the briefing paper while interning with CHRI.

CHRI is greatly thankful to Mr. R.K. Saxena, Retd. I G. Prisons, for guiding and editing the briefing paper on Probation of Offenders Act, 1958 prepared in the Prison Reforms team of the Commonwealth Human Rights Initiative. Mr. Saxena has been promoting alternatives to imprisonment both as a prison administrator as well as a Committee Member of the Justice Mulla Committee for Jail Reform, and his experience has been the foundation for this paper.

CHRI would also like to thank the Social Justice and Empowerment Department for its support and the Department of Prosecution, Jodhpur, in assisting with information about the use of the Act by the trial courts of Jodhpur Division in Rajasthan.

Special thanks are also due to team members of CHRI's Prison Reform Programme, Sana Das, Madhurima Dhanuka, Sugandha Shankar, Tripti Kanungo, Anisha Joseph and Raja Bagga for their inputs and suggestions in finalizing the briefing paper on this crucial subject.

This research would not have been possible without Maja Daruwala, Director, CHRI, who has been invaluable in giving direction and encouragement to research, capacity building and advocacy on the issue. CHRI thanks her deeply.

Lastly, CHRI would like to thank the Open Society Institute for its generous support to the briefing paper.

CHRI 2013

Alternatives to Imprisonment

Probation of Offenders Act, 1958

JUSTICE WITHOUT BARS...

Research and Writing: Ms. Monika Milinauskyte

Editing: Mr. R.K. Saxena

Special Thanks to: Mrs. Maja Daruwala & Team Members of Prison Reform Programme

CONTENTS

I. Introduction: The Relevance of Probation to Prison Reform: An Approach to Restorative Justice

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 offenders[1] and even repeat offenders. The purpose of probation is a 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 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 juvenile 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' 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 or on trial. As a result, prisons remain massively overcrowded, with 40, 144 more prisoners than the authorised capacity[2]. 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

---

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

[2] National Crime Records Bureau, Ministry of Home Affairs, Crime in India Statistics, 2011, p 13. The total capacity of jails in the country: 3,32,782. Total number of jail inmates as on 31.12.2011 :3,72,926

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.[3]

> It can be claimed that probation can deter offender from re-committing the crime and prevents 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.

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:[4]

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;*[5]
5. *Getting immediate contribution to the total national income from the offender through his purposeful work in socially approved pursuits suited to his age;*[6]
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;*[7]

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.[8] Further, not enough research data is available about comparative merits of particular penal or correctional systems.[9]

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.

---

[3] Draft National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research and Development, Ministry of Home Affairs, 2007, p. 100 – 101.
[4] H. Singh (ed), the Journal of Correctional Work XVII, Government Jail Training School, Lucknow, 1971, p. 27.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 14.

- Limited budgets are given by States to develop a strong correctional programme.
- Indifferent attitudes of courts and prosecution.[10]
- Lack of standardisation of Probation Rules in the various states.
- Non-use of probation officers by the courts.

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 2000 there were 85% of offenders confined to prisons who were sentenced for short-term imprisonment ranging from one to six months.[11] 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.[12]

According to the Prison Statistics (2011) the total prison population comprises of 3,72,926 inmates of which there are 2,41,200 undertrials in India and 0.02% of the total population are those between 16–18 years old[13] with 43.7% being between 18-30 years[14].

The number of petty offences committed are relatively high: 9,610 of undertrials committed robbery, 5,045 burglary and 23,267 committed thefts.[15] In addition, Recent Crime in India Statistics (NCRB) show that out of total arrestees (32,70,016) during the year 2012, there were as many as 93.1% (30, 43,287) new offenders. Furthermore, re-offending rates or the share of recidivists among all offenders have been at a constant 6.9 % in 2011 and 2012 (Crime in India Statistics) [16], and the absolute figures involved in repeating IPC crimes continue to be very high. During the year 2012 it was as high as 2,26,729 and 2,16,189 in the year 2011. Sikkim and Chandigarh 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 17.2% of the total population of undertrials in India's prisons.[17]

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 under 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.

Though there are no systematic studies in India to demonstrate the impacts of probation on offenders in the community the probation officers do constitute a critical group, who, if trained well, will enquire into the social conditions of the 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

---

[10] Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 14.
[11] Bhattacharyya, S.K. Juvenile Justice: an Indian Scenario, 2000, p. 134.
[12] Ibid.
[13] National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India, 2011, p. 12.
[14] NCRB Prison Statistics 2011 Page 55 &58
[15] National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India, 2011, p. 85-86.
[16] National Crime Records Bureau, Ministry of Home Affairs, Crime in India Statistics, 2011, p. 527.
[17] National Crime Records Bureau, Ministry of Home Affairs, Government of India, Prison Statistics India, 2011, p. 116.

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 a 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 to participate in community service or releasing the juvenile on probation of good conduct rather than sending him to a special home for three years.'[18]

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 judgement 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.

---

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

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. [19]

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

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.[20]

However, under the 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.[21]

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.[22]

In 1934 the Government of India informed the Provincial Governments to enact their own legislations on Probation.[23] 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.[24] Later this was replaced by the Central Act known as the Probation of Offenders Act 1958, Central Act (IX of 1958).[25]

---

[19] Draft National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research and Development, Ministry of Home Affairs, 2007, p. 100 – 101.
[20] Universal's Criminal Manual, Code of Criminal Procedure, 1973, p.221-223.
[21] H. S. Ursekar, *Law and Social Welfare: towards an ordered evolution*, 1973, p. 237.
[22] Universal's Criminal Manual, Code of Criminal Procedure, 1973, p. 223.
[23] Probation Branch, Tamil Nadu Prison Department, Access on June 19, 2012 from: http://www.prisons.tn.nic.in/probation.htm.
[24] Ibid.
[25] Ibid.

The Act introduced comprehensive measures regarding probation to be implemented and applicable to the whole country.[26] The Act calls for a social investigation report by courts from the probation officers in respect of all offenders below 21 years of age.[27] It also imposes restrictions on the imprisonment of offenders 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.[28]

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'.[29] 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.[30] 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. [31]

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.[32] 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.

---

[26] Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 4.
[27] Ibid.
[28] Social Defence in India, Statement presented before the 4th UN Congress on Prevention of Crime and Treatment of Offenders, 1970, pg. 4 – 5.
[29] V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p. 25.
[30] Bhattacharyya, S.K. Juvenile Justice: an Indian Scenario, 2000, p. 134.
[31] Ibid.
[32] 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 379[33] or Section 380[34] or Section 381[35] or Section 404[36] or Section 420[37] 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 may instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4* ***release him after due admonition.***[38]
>
> *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*

---

[33] 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.*

[34] 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.*

[35] 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.*

[36] 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.*

[37] 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.*

[38] The Probation of Offenders Act, 1958, p. 2.

> *sentence when called upon during such period, not exceeding there years, as the court may direct, and in the meantime to keep the peace and be of good behavior.*[39]

Method 1 – **Admonition for first time petty offenders**. The 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 Act (Care and Protection) Act, 2000, came into force become redundant but been absorbed in the JJ Act of 2000[40].

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 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**.*[41]
>
> *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.*[42]

[39] The Probation of Offenders Act, 1958, p. 3.
[40] 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).
[41] Universal Criminal Manual, Code of Criminal Procedure, 1973, p. 47.
[42] Universal Criminal Manual, Code of Criminal Procedure, 1973, p.145.

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 379[43] read with Section 109[44] Indian Penal Code.[45] 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.

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.[46] 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.[47] 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.[48] The fine which has already been paid by the appellant shall be refunded to him.[49]

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 aluminum container.[50] 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.[51]

The counsel for the offender informed the court that the occurrence in this case pertains to the year of 2003.[52] The offender has already suffered the protracted trial for over a period of more than one decade.[53] Petitioner has already undergone the sentence for about two months and no other case is pending against him at the moment.[54] Thus, taking all circumstances into consideration it

---

[43] 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.*
[44] 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.*
[45] Supreme Court of India, *Keshav Sitaram Sali v. State of Maharashtra,* 1983; Access on June 1, 2012 from: http://www.indiankanoon.org/doc/647109/.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Punjab-Haryana High Court, *Balwinder vs State Of Haryana,* 2012; Access on July 31, 2012 from: http://www.indiankanoon.org/doc/54395191/.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.

was decided to release the offender on probation under Probation of Offenders Act. The fine was however enhanced to Rs. 5000 [55]

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

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 there years, as the court may direct, and in the meantime to keep the peace and be of good behavior.[56]

Overlapping Jurisdictions of Sections 3 & 4: It is to be noted that there is 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

The 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'.[57] 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.

---

[55] Ibid.
[56] The Probation of Offenders Act, 1958, p. 3.
[57] 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.

Case law 3

In the case of *Moti Lal Bairwa vs State Of Rajasthan (1986)* the accused petitioner has been found guilty for an offence under Section 295[58] IPC.[59] 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.[60] Thus, the offender has been accused under the section 295 of the IPC.[61] 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.[62]

At the time of conviction the offender was 18 years of age and there was no previous conviction on record against the accused-petitioner.[63] 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.[64] 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**.[65]

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**.[66] As indicated by M.B. Sharma, the court in the Moti Lal Bairwa case does not appear to have considered

---

[58] 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 nay 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.*

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

[60] Ibid.

[61]

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

[63] Ibid.

[64] Ibid.

[65] Ibid.

[66] Ibid.

these aspects of the Act and clearly made ill decision regarding the judgment of a juvenile.[67] 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.[68]

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.[69] 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.[70]

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.[71] 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 or Section 360 of the Code of Criminal Procedure are not applicable.[72]

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.[73] Ultimately it was decided to remand the case for revision and file it to the Additional Metropolitan Sessions Judge, Visakhapatnam, directing him to restore Crl. 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.[74]

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. [75]

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

---

[67] Ibid.
[68] Ibid.
[69] Andhra High Court, *Meruva Satyanarayana vs State Of Andhra Pradesh, 1995;* Access on July 31, 2012 from: http://www.indiankanoon.org/doc/774648/.
[70] Ibid.
[71] Ibid.
[72] Ibid.
[73] Ibid.
[74] Ibid.
[75] The Probation of Offenders Act, 1958, p. 4.

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'.[76]

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.[77]

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-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.

[76] 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.
[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, p.3.

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?

The 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.[78] 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.[79]

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.[80]

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

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 Juvenile Justice Act 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.

The 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'.

---

[78] The Probation of Offenders Act, 1958, p. 4.
[79] Probation of Offenders Act, 1958, p. 4.
[80] Probation of Offenders Act, 1958, p. 4.

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.[81]

(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****.[82]*

(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.[83]

Case law 5

In the case of *Kamroonissa 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.[84] He was sentenced to suffer rigorous imprisonment of 18 months and pay the fine of 500 Rs.[85] The appellant submitted an appeal regarding the judgement but the High Court of Bombay dismissed the appeal.[86] 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.[87]

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 behaviour in the sum of 100 Rs.[88] 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.[89] 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 judgement indicating his ultimate decision regarding the case.[90]

---

[81] Probation of Offenders Act, 1958, p. 7.
[82] Ibid.
[83] Ibid.
[84] Manupatra, MANU/SC/0153/1974, Supreme Court of India, *Kamroonissa vs. State of Maharashtra,* Access on July 30, 2012.
[85] Ibid.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid.
[90] Ibid.

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 section 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 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;*[91]

Provided that no such variation shall be made without giving the offender and the surety or sureties mentioned in the bond an opportunity of being heard.[92]

(2) *If any surety refuses to consent to any variation proposed to be made under sub-section (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.*[93]

(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.*[94]

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*

[91] Probation of Offenders Act, 1958, p. 9.
[92] Ibid.
[93] Ibid.
[94] Ibid.

any, requiring him or them to attend before it at such time as may be specified in the summons.[95]

(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.[96]

(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— [97]

(a) Sentence him for the original offence; or [98]

(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.[99]

(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.[100]

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.[101]

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.[102] 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.[103]

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.[104] 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'.[105]

Under the JJA, a juvenile is brought before a *Juvenile Justice Board* (JJB) rather than a Magistrate or Judge.[106] Unlike the Probation of Offenders Act, the JJA does not provide for sentencing a

---

[95] Ibid.
[96] Probation of Offenders Act, 1958, p. 10.
[97] Ibid.
[98] Ibid.
[99] Ibid.
[100] Ibid.
[101] 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.
[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. 9.
[103] Ibid.
[104] V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p.1.
[105] V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p. 25.
[106] Ibid.

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.[107] The Act refers to the offender as a *juvenile in conflict with law* rather than *accused* or *convicted.*[108]

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 than sending him to Special Home for three years.[109] 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.[110]

The Act also states the effective involvement of informal social arrangements at the level of the family, voluntary organizations and the community.[111]

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.[112]

(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.[113]

(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.[114]

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.[115]

(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.[116]

---

[107] Ibid.
[108] Ibid.
[109] Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p. 25 – 26.
[110] Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, p.26.
[111] V. Hansaria and P.I. Jose, *Juvenile Justice System: Working Manual for Stake Holders*, 2008, 2.
[112] *Juvenile Justice Act*, 2000, p. 5.
[113] Ibid.
[114] Ibid.
[115] Juvenile Justice Act, 2000, p.6.
[116] 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".[117]

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.[118]

Mulla Committee Report, 1983

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

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:

---

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

(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)*[119]

(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)*[120]

(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)*[121]

(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)*[122]

(5) *At each institution there should be a Review Board. (Recommendation 451)*[123]

(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)*[124]

[119] Mulla Committee Report, 1983. Access on June 27, 2012 from: http://www.aipoa.com/
[120] Ibid.
[121] Ibid.
[122] Ibid.
[123] Ibid.
[124] Ibid.

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.

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.*[125]

(b) *A person provided for this purpose by a society recognised in this behalf by the State Government.*[126]

(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.*[127]

Inquiring, reporting and supervising probationers

The 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.[128]

(b) Supervise probationers and other persons placed under his supervision, and where necessary endeavor to find them suitable employment.[129]

(c) Advise and assist offenders in the payment of compensation or costs ordered by the court.[130]

(d) Advise and assist in such cases and in such manner as may be prescribed, persons who have been released under section 4.[131]

(e) Perform such other duties as may be prescribed.[132]

---

125 Probation of Offenders Act, 1958, p. 13.
126 Probation of Offenders Act, 1958, p. 14.
127 Ibid.
128 Ibid.
129 Probation of Offenders Act, 1958, p. 15.
130 Ibid.
131 Ibid.
132 Ibid.

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 and other circumstances of his family will put down relevant facts, information in the report as required by the Court.[133]
- 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.[134]
- 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.[135]
- 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.[136]

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.[137]

- 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.[138]
- 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.[139]
- 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.[140]

---

[133] Chapter XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, http://court.mah.nic.in/courtweb/static_pages/page5b.php, p. 16.
[134] Ibid.
[135] Ibid.
[136] XI, Criminal Manual, *Probation of Offenders Act*, District Courts of Maharashtra, http://court.mah.nic.in/courtweb/static_pages/page5b.php, p. 17.
[137] Bhattacharyya, S. K. Juvenile Justice: an Indian Scenario, 2000, p. 137.
[138] Ibid.
[139] Bhattacharyya, S. K. Juvenile Justice: an Indian Scenario, 2000, p. 138.
[140] Ibid.

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 juvenile, and advise him during the probation period so that he fulfills his promise not to re-offend again.[141]

- 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.[142] The purpose of the report is to examine the juvenile's background and identify the reasons for committing the offence. [143] 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.[144]

- Furthermore, the PO has to do a follow up on juveniles after their release to continue providing guidance to them and visiting their residence.[145]

- 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.[146]

(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.[147]

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'.[148]

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:[149]

(a) *Release on admonition*;[150]

(b) *Release on taking a bond of good conduct with or without conditions from the young offenders and from parents/guardians/approved voluntary organizations*;[151]

---

[141] M. Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 2006, p. 84.
[142] Ibid.
[143] Ibid.
[144] Ibid.
[145] M. Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 2006, p. 85.
[146] Juvenile Justice Act, 2000, p. 9.
[147] Ibid.
[148] Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 30.
[149] Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 286.
[150] Ibid.

(c) *Release on probation under the Probation of Offenders Act on any of the following conditions:*

(i) *Continuation of education/vocational training/employment*;[152]

(ii) *Obtaining guidance from Probation Office/teacher/counsellor*;[153]

(iii) *Getting work experience in work camps during week-ends and on holiday*;[154]

(iv) *Doing useful work in work centers (agricultural farms, forestry, housing projects, road projects and apprenticeships in work-shops)*;[155]

(v) *Keeping under constant supervision young offenders released on probation*;[156]

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.[157]

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 emphasises that they should be sent to prison only as a last resort.

- *There should be separate institutions for young offenders to be called Reception Centres and Kishore/ Yuva Sadans.*[158]
- *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)*[159]
- *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* (Rec. 438).[160]

---

[151] Ibid.
[152] Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 287.
[153] Ibid.
[154] Ibid.
[155] Ibid.
[156] Ibid.
[157] Model Prison Manual, Bureau of Police Research and Development, Ministry of Home Affairs, 2003, p. 286
[158] Ibid.
[159] Mulla Committee Report, 1983. Access on June 27, 2012 from: http://www.aipoa.com/.
[160] Ibid.

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.

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[161]

4. Develop a consultative system between judiciary and probation officers that builds formal recognition of probation officers and their trained role in the court

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

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 courts or the client.[162] 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 equipments, 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
- Ensure intensive supervision of high risk cases through effective inter-agency coordination, observation of reactions to triggers, provision of treatment facilities where necessary

---

[162] 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.

Annexes

Annexe 1 - Recidivism (table 11.1 taken from Crime in India 2011 Statistics, National Crime Records Bureau)

No.	State /UT	Total No. Of Persons Arrested	New Offenders		Old Offenders Convicted in the Past						
			No.	%	Once		Twice		Trice or More		Percentage of Recidivists (7) + (9) + (11)
					No.	%	No.	%	No.	%	
STATES:											
1	ANDHRA PRADESH	238564	222757	93.4	11532	4.8	4015	1.7	260	0.1	6.6
2	ARUNACHAL PRADESH	2312	2208	95.5	102	4.4	2	0.1	0	0.0	4.5
3	ASSAM	67146	66084	98.4	821	1.2	196	0.3	45	0.1	1.6
4	BIHAR	252349	242487	96.1	5067	2.0	3802	1.5	993	0.4	3.9
5	CHHATTISGARH	74017	59351	80.2	8608	11.6	1240	1.7	4818	6.5	19.8
6	GOA	3319	3308	99.7	8	0.2	2	0.1	1	0.0	0.3
7	GUJARAT	167251	148675	88.9	17008	10.2	1147	0.7	421	0.3	11.1
8	HARYANA	62708	58359	93.1	2955	4.7	1030	1.6	364	0.6	6.9
9	HIMACHAL PRADESH	17488	17140	98.0	145	0.8	126	0.7	77	0.4	2.0
10	JAMMU & KASHMIR	43576	41199	94.5	2063	4.7	259	0.6	55	0.1	5.5
11	JHARKHAND	51069	43325	84.8	5256	10.3	1790	3.5	698	1.4	15.2
12	KARNATAKA	166786	157598	94.5	7272	4.4	1312	0.8	604	0.4	5.5
13	KERALA	211771	210362	99.3	1115	0.5	242	0.1	52	0.0	0.7
14	MADHYA PRADESH	335644	290016	86.4	34958	10.4	8054	2.4	2616	0.8	13.6
15	MAHARASHTRA	309756	306293	98.9	2427	0.8	793	0.3	243	0.1	1.1
16	MANIPUR	1449	1449	100.0	0	0.0	0	0.0	0	0.0	0.0
17	MEGHALAYA	2135	1880	88.1	165	7.7	62	2.9	28	1.3	11.9
18	MIZORAM	1601	1027	64.1	297	18.6	191	11.9	86	5.4	35.9

19	NAGALAND	1067	810	75.9	172	16.1	68	6.4	17	1.6	24.1
20	ODISHA	87129	84245	96.7	1830	2.1	871	1.0	183	0.2	3.3
21	PUNJAB	45423	38356	84.4	4994	11.0	1711	3.8	362	0.8	15.6
22	RAJASTHAN	181407	170617	94.1	8194	4.5	2106	1.2	490	0.3	5.9
23	SIKKIM	718	692	96.4	15	2.1	8	1.1	3	0.4	3.6
24	TAMIL NADU	222124	199245	89.7	17701	8.0	4349	2.0	829	0.4	10.3
25	TRIPURA	10062	10039	99.8	20	0.2	3	0.0	0	0.0	0.2
26	UTTAR PRADESH	384605	381473	99.2	2391	0.6	611	0.2	130	0.0	0.8
27	UTTARAKHAND	10666	8382	78.6	1727	16.2	395	3.7	162	1.5	21.4
28	WEST BENGAL	143608	117673	81.9	17994	12.5	6276	4.4	1665	1.2	18.1
TOTAL (STATES)		**3095750**	**2885050**	**93.2**	**154837**	**5.0**	**40661**	**1.3**	**15202**	**0.5**	**6.8**
UNION TERRITORIES											
29	A & N ISLANDS	828	807	97.5	11	1.3	4	0.5	6	0.7	2.5
30	CHANDIGARH	2690	1525	56.7	965	35.9	128	4.8	72	2.7	43.3
31	D & N HAVELI	568	566	99.6	2	0.4	0	0.0	0	0.0	0.4
32	DAMAN & DIU	330	330	100.0	0	0.0	0	0.0	0	0.0	0.0
33	DELHI	40014	35777	89.4	2754	6.9	985	2.5	498	1.2	10.6
34	LAKSHADWEEP	76	23	30.3	28	36.8	10	13.2	15	19.7	69.7
35	PUDUCHERRY	5589	5578	99.8	8	0.1	3	0.1	0	0.0	0.2
TOTAL (UTs)		**50095**	**44606**	**89.0**	**3768**	**7.5**	**1130**	**2.3**	**591**	**1.2**	**11.0**
TOTAL (ALL-INDIA)		**3145845**	**2929656**	**93.1**	**158605**	**5.0**	**41791**	**1.3**	**15793**	**0.5**	**6.9**

Annexe 2 - Use of Probation of Offenders Act, 1958, by the Rajasthan Courts – A Glimpse

Information received from Deputy Director, Prosecution, Jodhpur Division vide letter no. i 105 (5) lkek / 12/ 1301 dated 6th November 2012 with regard to the use of Sections 3 and 4 of Probation of Offenders Act, 1958 by all the trial courts in Rajasthan and Jodhpur division between January 2009 - June 2012:

S.no.	Place	Under Section 3 of PO Act	Under Section 4 of PO Act
1	Jodhpur	2658	5091
2	Pali	1599	4211
3	Jalore	508	2138
4	Sirohi	1032	2904
5	Barmer	702	3613
6	Jaisalmer	308	1834
	Total	**6807**	**19791**

Note:

- Total sanctioned strength of Prosecutors = 67
- Prosecutors in each district = 16-18
- Total Prosecutors in the range = 67
- Data is obtained from the prosecutors of concerned courts in the range.
- Assistant Director, Prosecution is the head of the Probation Department in a district
- Data is requested from Assistant Director, Prosecutor. Assistant Directors, Prosecution obtain data from Prosecutors.

ABOUT CHRI

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 biennial CHOGM reports and periodic fact finding missions CHRI continually draws attention to progress and setbacks in 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. By holding workshops and developing linkages, CHRI's approach throughout is to act as a catalyst for activity around its priority concerns.

The Prison Reform Programme of CHRI is focused on increasing transparency of a traditionally closed system and exposing malpractice. 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 in place of the prevailing indifference and discrimination. It seeks to achieve its goals through research, legal analysis and advice, advocacy, capacity building, network building and conference facilitation. 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 overstays, 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.