CHAPTER XIII

JUVENILE PROBATION.

13.1.1. Probation is one of several types of treatment for the delinquent child, or in the case of the neglected or destitute child. Probation has been called by the Economic and Social Council of the United Nations "one of the most important aspects of the development of a rational and social criminal policy", and they urged all governments "to adopt or extend the system 'as a major instrument of policy in the field of the prevention of crime and the treatment of offender." 1 Probation in effect is the suspension of execution of a sentence awarded to an offender who, during the period of probation specified by the sentencing court, is bound over to and placed under supervision of a probation officer. The term 'probation' appears to have been derived from either of the two Latin words - 'probo' meaning 'I prove (my worth)' and 'probatio' meaning 'test on approval'. Like many other progressive social concepts, probation derives its meaning and content as much from the history and traditions of administration of justice as from its objectives and social purpose and methods and organisational set-up used to achieve them.

13.1.2. Objects of probation

The sole intention of the legislature in passing probation laws is to give persons of a particular type a chance of reformation which they would not get if sent to prisons. The type of persons who are in the contemplation of the legislature under the probation laws, are those who are not hardened or dangerous criminals but those who have committed offences under some

momentary weakness of character or some tempting situation. By placing the offender on probation the Court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Probation also serves another purpose which is quite significant though of secondary importance, it helps in eliminating overcrowding in jails by keeping many offenders away under probation programmes.

13.1.3. Probation and Parole distinguished

Parole and probation have some common characteristics in the field of correctional measures adopted both for delinquent and non-delinquent juveniles. Probation and parole have the same objectives - rehabilitation of offenders. In both the techniques, skilful supervision of selected offenders is involved outside the prisons. But there is an important distinction between the two. In probation the offender is not sent to jail after being found guilty and the decision to grant probation is to be made by the Court. In parole the convict is released after serving his sentence for some time and the release is not the result of any judicial decision.

13.1.4. Probation as a socialised penal device and as an extramural alternative to institutionalisation has come about as the result of modification over a period of time of the doctrine of deterrence into the principle of reformation, a development which paved the way to the introduction of a clinical approach and the principle of individualisation in the handling of offenders. The probation system in the jurisprudence of States' Children Acts in India provides for a method by which a deviant child, instead of being sentenced to any punishment, or of being lodged for a long time to an Institution such as Borstal, Reformatory or Industrial or Certified School, may be brought
under direct personal influence of a man or a woman, as the case may be, chosen for excellence of character and personal influence, lending authority to supervision and securing humane treatment to the child. The jurisprudence in the probation system under the Indian Juvenile Laws, makes a significant departure from the prevalent law of probation, which has an outlook different from the probation law under the Children Acts.2

13.1.5. Fundamentals of modern correctional procedures and methods such as individual study, classification and differential punishment and detention were expressed in ancient Hindu books of law centuries before Plato, and the idea of releasing an offender after due admonition is stated to be as old as the Smritis.3 The concept of probation of child offenders first originated in England in 1820 in Warwickshire Quarter Sessions.4 A young attorney, Mathew Davenport Hill, when a Recorder of Birmingham, popularised probation system of young offenders when he believed that the young individual was not wholly corrupt and had reasonable chances of reformation, if a guardian or a parent kind and competent enough could take charge of such a young convict. Confidential police officers (now their counterpart probation officers) visited guardians from time to time, recording progress of the offender and keeping his regular account. In 1860, this system was adopted in London police courts. The English Probation of First Offenders Act, 1887 did not make the real probation law. The probation supervision developed in England in its early stage through police officers, and later on, through philanthropic

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4 Criminal Justice Act 1948 - Sections 3 to 12 and First Schedule to the Act is now the law in England regulating the practice of probation.
social workers. In 1886, New Zealand enacted the real probation law, establishing conditions of probation and making provisions for employment of salaried probation officers by the State for investigating into cases of first offenders and recommending probation in suitable cases. The probation law in its proper sense was enacted in England in 1907 following more or less the New Zealand pattern. America, however, is the pioneer in the field of probation work. Sri P.K. Sen nicely points out, "Probation may well be regarded as America's contribution towards the growing scheme of measures of safety." In 1841, Augustus, a Boston book maker and a philanthropist, first took up the probation work. In 1869, Massachusetts law provided for appointment of state agents for attending criminal courts for watching proceedings against children. Such agents were required to make arrangement for private home or agency placement of some and the placement 'on probation to friends' of others who were not committed. By 1876, Massachusetts made provisions for appointment of salaried probation officers. The Massachusetts model of probation system with local variations here and there was adopted by almost all the American States through the juvenile court laws, thus manifesting the common concern for the prospects of rehabilitation of the young offenders and a sincere desire for treating juvenile delinquency with utmost leniency. At present, all the American States through their Juvenile Court laws enforce probation system. The Indian Jail Committee in its Report suggested for the first time for adoption of probation system of young offenders. It advocated for appointment of

5 P.K. Sen: Penology old and New, Tagore Lectures, University of Calcutta, P -163.
7 Indian Jail Committee Report, 1917-1920 paras 373-375.
probation officers by the Government for watching over the conduct of a child-offender under probation and to act as its guide, philosopher and friend. The origin of probation was not the result of a deliberate creative, legislative or judicial act, but rather the result of a gradual growth, an almost unconscious modification of legal practices. In the history of criminal policy, the development of probation and related measures constitutes an integral part of the more general movement away from the traditional, punitive and repressive approach, and towards the substitution of humanitarian and utilitarian considerations for considerations of general deterrence and retribution. This modern trend coincides with attempts to prevent crime by the improvement of social conditions and by the development of social services. It is characterised, furthermore, by the recognition of the social rehabilitation of the individual offender as a main object of criminal policy, and the rational selection and development of effective means to the end. The legal origins of probation are derived from the English Common Law practices. These practices were: (i) the benefit of clergy, which granted certain privileges to ordained clergy and exempted them from the rigours of punishment and which was later extended to all criminals who could read scriptures; (ii) the judicial reprieve, which was a temporary suspension by the court of either the imposition or the execution of a sentence if the presiding judge was not satisfied with the verdict or the evidence, and felt that leniency was justified to enable the convicted person to apply for a pardon; (iii) the right of sanctuary, which gave a person, convicted of felony, immunity from arrest in the place of worship or a sanctuary (this practice was abandoned in England in 1623 for crime, and in 1723 for civil processes); and (iv) the
recognisance (or binding over) which was, and is being, used even to-day, as a measure of preventive justice, both to ensure the appearance of an offender before the court at a future date when called upon, and as a disposition (or a part thereof) in the case of convicted offenders.

13.2.1. Development in India.

In India, the historical process originated in a penal provision, relatively progressive by any standard - Section 562 of the Criminal Procedure Code of 1898 - which provided for release of a first offender on probation of good conduct if he satisfied requirements regarding age, character and antecedents, nature of offence and extenuating circumstances precipitating the commission of offence. This provision carried, for the first time in India, the embryonic concept of probation. The small beginnings of probation, as is now understood, are clearly discernible in the acceptance of a suggestion made in 1918 by the then Chief Presidency Magistrate of Bombay for the appointment of a police court missionary. The proposal was that first offenders charged at the police courts for minor offences and released under Section 362 of the Criminal Procedure Code on executing a bond of good behaviour, might be interviewed before trial by a representative of a social service institution. This agent was supposed to find out surety in cases of necessity, inquire into the difficulties of the offenders, bring to light extenuating circumstances in relation to the offence and finally to keep in touch with the offenders who were released, so as to put them on their good behaviour and help them out of their troubles and temptations and report to the magistrates if they went on a wrong track. No police officer was to be entrusted with the work as it was feared that in his hands the device might degenerate into an
13.2.2. Before any special legislation, providing probation with supervision was introduced in any of the States in India. Section 562 of the Code of Criminal Procedure was made use of by the courts for the release of certain selected offenders on probation of good conduct. In 1923, the Section was substantially amended in respect of period of probation and types of offences. This provision, however, did not come anywhere near the modern method of probation as it still excluded the element of supervision of the probationer, which was the essence of probation. As in U.S.A., where probation received a great impetus from the growth of juvenile court movement, so in India legislation providing probation with supervision was first introduced in Madras in 1920 for juvenile offenders. The Madras Children Act (1920) was followed by the Bengal Children Act in 1922, and the Bombay Children Act in 1924. The provision for probation with supervision was by appropriate legislation extended to adult offenders in 1936 in Madras and the former Central Provinces and in 1938 in Bombay and Uttar Pradesh (formerly the United Provinces). Juvenile probation was introduced in the erstwhile Hyderabad State with the passing of the Hyderabad Children Act in 1951, and in the erstwhile Saurashtra by the Saurashtra Children Act in 1954. In the States where special laws had not been operative, the provisions of the Criminal Procedure Code still remained the only provision for releasing offenders on probation till the Central Probation of Offenders Act (1958) was enacted. Another noteworthy development was the formation of All India Jail Manual Committee (1957-57), which, in its report inter alia, recommended as follows:

"Probation should be more extensively used than at present in respect of delinquent children and adolescent offenders. To facilitate this, each State should organise a wide network of probation service."9

13.2.3. Long felt and much awaited need for a comprehensive, countrywide, progressive legislation in this area led to the enactment of Union legislation on the Probation of Offenders Act, 1958 (Act XX of 1958), the relevant related provisions incorporating recommendations of 41st Report10 in the Code of Criminal Procedure 1973, Act (II of 1974), and the Children Act, 1960 which aim at rehabilitation of juveniles with a view to reform their anti-social attitudes and moulding them into responsible citizens. Non-institutional treatment of offender, which was only a possibility earlier, became a reality with the enactment of Probation of Offenders Act, 1958. Contemporary State Children Acts as well as the Central Children Act of 1960 have also fallen in line in prescribing probation as a distinct method of outdoor treatment.

13.3.1. THE PROBATION OF OFFENDERS ACT, 1958

The Central Probation Act was enacted in 1958. The object of this Act is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crime.11 In the case of Rattan Lal Vs. State of Punjab12, the Supreme Court held that the Act is a milestone in the progress of the modern liberal trend of reform.

9 All India Jail Manual Committee (1957-59) para 135.
10 Paras 46, 24, 46, 25 and 27.11 as well as Notes on Clauses Pare - 251.
in the field of penology. It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him.

13.3.2. Before the enactment of 1958, many States had their own probation laws and some of them continue to have them even now. Most of the States have adopted the Probation of Offenders Act, 1958. The following table gives the information relating to the enforcement of various probation laws in different States and the extent to which probation schemes have been extended to the various parts of the country upto 1968.\(^\text{13}\)

Table 13.1

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>State/Union</th>
<th>Name of the Probation Act</th>
<th>Total No. of Dists. in force</th>
<th>No. of Dists. covered</th>
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<tbody>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>1. Probation of Offenders Act, 1958</td>
<td>20</td>
<td>3</td>
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<td></td>
<td></td>
<td>2. Madras Probation of Offenders, Act, 1936</td>
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<tr>
<td>2</td>
<td>Assam</td>
<td>Probation of Offenders Act, 1958</td>
<td>11</td>
<td>11</td>
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<tr>
<td>3</td>
<td>Haryana</td>
<td>- do -</td>
<td>7</td>
<td>7</td>
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<tr>
<td>4</td>
<td>Gujarat</td>
<td>Bombay Probation of Offenders Act, 1938</td>
<td>17</td>
<td>17</td>
</tr>
</tbody>
</table>

\(^{13}\) Probation and Prisons, 1964-68, Central Bureau of Correctional Services.
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<tbody>
<tr>
<td>Kerala</td>
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<td>9</td>
<td>9</td>
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<tr>
<td>Madhya Pradesh</td>
<td>do -</td>
<td>43</td>
<td>42</td>
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<tr>
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<td>1. C.P. and Berar Act, 1958.</td>
<td>27</td>
<td>4</td>
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<td></td>
<td>2. Bombay Probation of Offenders Act, 1938.</td>
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<tr>
<td>Mysore</td>
<td>Probation of Offenders Act, 1958.</td>
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<td>19</td>
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<tr>
<td>Orissa</td>
<td>Probation of Offenders Act, 1958.</td>
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<td>13</td>
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<tr>
<td>Punjab</td>
<td>do -</td>
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<tr>
<td>Rajasthan</td>
<td>do -</td>
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<td>26</td>
</tr>
<tr>
<td>Tamil Nadu</td>
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<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>U.P. First Offenders Probation Act, 1938.</td>
<td>54</td>
<td>32</td>
</tr>
<tr>
<td>West Bengal</td>
<td>1. The West Bengal Offenders Reseased on Probation and Ammunition Act, 1954.</td>
<td>16</td>
<td>?</td>
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<table>
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<tr>
<th>SI. No.</th>
<th>State/Union Territory</th>
<th>No. of Offenders on Probation</th>
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<tbody>
<tr>
<td>1.</td>
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<td>2623</td>
</tr>
<tr>
<td>2.</td>
<td>Gujarat</td>
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<tr>
<td>3.</td>
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<tr>
<td>4.</td>
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<tr>
<td>5.</td>
<td>Mysore</td>
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<td>6.</td>
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<td>808</td>
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<tr>
<td>7.</td>
<td>Punjab</td>
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<td>Tamil Nadu</td>
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</tr>
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<td>10.</td>
<td>Uttar Pradesh</td>
<td>8616 (Figures for</td>
</tr>
</tbody>
</table>

During the period 1964-68, the total number of offenders placed on probation under this central legislation and other similar legislations was 33,094 in various States for which figures are available. These figures do not include those who were part on probation under the Children Acts during the same period. The breakup for the States is shown by the table below. 14

Table 13.2

14 Ibid.
13.3.3. During the period 1982-1983 the total number of persons remained on supervision at the end of the year is 11,173 in India, and that of 641 in West Bengal. These figures in some of the States are satisfactorily high such as in Andhra Pradesh 2085, in Gujarat 1054, in Kerala 1025, in Punjab 1571, in Tamil Nadu 3,302 which is highest.

13.3.4. The Act registers a notable advance over all existing State probation laws in many respects of which the two important ones are: (a) removal of the restriction regarding age limit (all adult offenders except those charged with serious offences who are above 21 years of age being now eligible) and (b) obligation to order social investigation of all offenders, the fettering discretion given to the court under the State laws to be selective in such matter being eliminated. No law can, however, compel the court to grant probation which is a matter entirely of its individual judgement and sole discretion. Section 3 of the Act deals with the power of the Court to release offenders, after due admonition, found guilty of having committed an offence under certain specified sections of the Indian Penal Code, in particular, or of having committee an offence punishable with imprisonment for not more than two years or with fine or with both under the Indian Penal Code, generally (or under any other law) and where no previous conviction is proved against him. An order of admonition under Section 3 puts an end of the

case, it being final order against the convicted person, subject to the orders of the appellate court in case the convicted person appeals against his conviction. Section 4 of the Act provides that 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 offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond. The court shall consider the report of the probation officer in relation to the case before making any order under Sub-Section 1 of Section 4. Sub-Section (3) of Section 4, however, provides for an additional order of supervision if in the interests of the offender and of the public it is expedient so to do. In fact, Section 4, it appears, is a combination of probation and the type of preventive action which can be taken by the Court under the Code of Criminal Procedure against a vagrant or a person convicted of an offence. Section 5 of the present Act makes a
provision for making an order directing the offender to pay the costs of the proceedings and the amount has been left to the discretion of the court. It is said that all statutes which give costs are to be construed strictly on the ground that the costs are a kind of penalty. Section 6 of the Act imposes restrictions on imprisonment of offenders under 21 years of age. Under the Act, it is provided that the report of the probation officer referred to in Sections 4(2) and 6(2) of the Act should be treated as confidential.16

13.3.5. Under Section 8(1) of the present Act, the Court may vary the terms or conditions of probation bond, if it is of opinion that in the interests of the offender and the public, it is expedient or necessary to do so. The duration of probation can be extended or diminished subject to the restrictions specified in the provisions. If any surety refuses to consent to any variation proposed to be made under Sub-Section 1 of Section 8, 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.17 Section 9 provides in case of the convict's failure to observe the condition of the bond that he and his sureties be summoned to court which may remand the accused to custody or grant him bail and, if satisfied that he had failed to observe any of the conditions of the bond forthwith to sentence him for the original offence and where the failure is for the first time to impose upon him a penalty not exceeding Rs. 50/- without prejudice to the continuance in force of the bond. In case a convicted person has not been able to observe the conditions of the bond, he in a way, stands to suffer larger punishment than what he would have

16 Section 7 of the Probation Offenders Act, 1958.
17 Section 8 (2) of the Probation of Offenders Act, 1958.
got in the first instance, in addition to the sentence which would be passed upon him although he had already, for a certain period, observed the conditions of the bond and also in view of the provisions of Section 5, paid compensation to the victim of the offence and costs of the proceedings which are recovered as fine. Section 14 of the Act points out the duties of the probation officers. A probation officer shall -

(a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;

(b) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;

(c) advise and assist offenders in the payment of compensation or costs ordered by the court;

(d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under Section 4; and

(e) perform such other duties as may be prescribed.\footnote{Section 14 of the Probation of Offenders Act, 1958.}

13.3.6. According to Russel, the object of probation is threefold: (1) Many offenders are not dangerous criminals but weak characters who have surrendered to temptation or through misfortune have been brought within the operations of the police and the courts;

(2) In assigning this type of offender to the care of the Probation Officer, the court encourages his own sense of responsibility for his future and saves him from the stigma and
possible contamination of prison;

(3) Such a practice not only assists the offender but also result in economy by relieving the prisons of a large number of first offenders, short prisoners and other classes of quasi-criminal offenders.10

13.3.7. The benefits of the probation system are secured in case of juvenile offenders under Section 360 of the Code of Criminal Procedure, 1973, though of course the section is not exclusively restricted to cover the cases of juvenile offenders as it is also applicable to persons of advanced age. The prime aim of the section is intended to prevent young persons from being committed to jail where they may associate with hardened criminals, who may lead them further along the path of crime.20

If the offence is by no means a simple crime such as committed by children out of mere thoughtfulness rather than of criminality, but it shows a singular combination of design and ingratitude and a general character of craft and deceit, it would call for a severe punishment indeed, and resort should not be had to the provisions of this Section.21 A note of caution is also sounded to Magistrates in the use of this section by misplaced leniency and sympathy.

21 Emperor. V. Allahdino, 35 Cr. L.J.1149 (1150); Saryalal. V. Emperor, 25 Cr. L. J. 1224.
13.3.8. An appraisal of the Probation of Offenders Act, 1956

An analysis of the Probation of Offenders Act shows that the Act needs to be amended in certain respects for making it a more effective instrument for correction and reformation of criminals. Inter alia, one would like to suggest the following amendments in the Act:

(a) At present the said Act is not applicable to the State of Jammu and Kashmir. It comes into force in a State on such dates as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State. It is not known why such a piece of beneficial social legislation cannot be made uniformly applicable throughout India.

(b) The criticism which has been levelled at the Act is the unsupervised release, permitted by Section 3 of the Act, after due admonition in offences like theft, cheating or any offence punishable with imprisonment up to two years. The Section applies to first offenders and the court has to use discretion in view of the circumstances of the case including the nature of the offence and the character of the offender. The courts, it appears, use this discretion quite liberally. The provision has been criticised on the ground that it does not require the court to call for a report from the probation officer and hence the court would not possess the information to decide the issue of the character of the person and other relevant facts. There is no doubt that not only would the situation be much more satisfactory if the report of the probation officer is made available, but also, if the release is made under the supervision of a probation officer. At present this is not at all required under Section 3 of this Act. Particularly, this will be provided for in view of
the fact that many cases of theft and cheating are really not petty in nature and may reflect dangerous criminal potentialities in the offender. At present, there are only two alternatives for the court in offences falling under Section 3, viz, to release the offender with mere admonition or to send him to prison. Release after admonition on probation should provide a better alternative in many cases. But it is also doubtful whether it would be possible to provide supervision in all the cases where offenders are released under Section 3 or even to have the report of a probation officer before the action is taken under Section 3 in view of the very insignificant number of probation officers in the country. It may also be observed that even without any report of the probation officer, the courts would not exactly be groping in absolute darkness regarding the facts connected with the character and other factors about the offenders. The circumstances of the offence and even the character of the offender become fairly clear to the court during the ordinary course of the proceedings. However, it may be pointed out that release of an offender without supervision is not restricted to Section 3 only. Even under Section 4, the court may release a person on probation on his entering into a bond with or without sureties. Section 4 (3) of this Act provides for an additional order of supervision if 'in the interests of the offender and of the public it is expedient so to do'. In other words, Section 4 of the Act has not fully incorporated the philosophy of probation in which supervision is an essential element. In fact, Section 4, it appears, "is a combination of probation and the type of preventive action which can be taken by the court under the Codes of Criminal Procedure against a vagrant or a person convicted of
(c) It is a question as to whether the benefit of the Probation of Offenders Act, should not be ordinarily granted to all youthful offenders under the age of twenty-one irrespective of the nature of the offence. No order of probation can be passed even in favour of a person below twenty-one years of age; if he is found guilty of an offence punishable with death or imprisonment for life. If such an offence is caused due to some kind of psychological maladjustment, perhaps no useful purpose would be served by sending such a youthful offender to jail. It is felt that discretion of the court in respect of such youthful offenders should not be unduly fettered as has been done under the present law.

(d) In keeping with the spirit of Section 6 of the Act, in undefended cases involving juvenile delinquents it should be made obligatory for the trial court to move suo motu in the matter of determination of the age of the offender and for that purpose to take evidence or, if need be, to send the juvenile for examination by a qualified medical officer of the State.

(e) As the object of Section 6 of the Act is to reform juvenile delinquents under twenty-one years of age it is felt that the expression under twenty-one years of age occurring in sub-Section (1) of Section 6 of the Act be so modified as to make it abundantly clear that the age of twenty-one contemplated by that Section refers to the age of the offender at the time of the commission of the offence and not at the time of the trial. In other words, if the offender was below twenty-one years of age on the date of occurrence, he should be entitled to the benefit of

22 Ahmad Siddique: Criminology - Problems and Perspectives, (Eastern Book Company, Lucknow) 1990 P 149.
Section 6 even if his age, at the time of the trial, happens to be more than twenty-one. Such an amendment has become inevitable as it has been held that in order to get the benefit of Section 6, the offender must be under twenty-one years of age at the date when he is found guilty by the Court.  

(f) Section 12 of the Act, as it now stands, seeks only to remove the legal disqualification attaching to a conviction and no other stigma. So this Section should be so amended as to remove all disqualifications including disqualification arising out of the misconduct inherent in the offence.

13.4.1. Probation system under the States’ Children Acts in India: The system of probation of juvenile delinquent under the States’ Children Law in India may be viewed from two aspects. The Juvenile Courts’ disposition by probation order partakes both of sentencing and correctional measures. The court orders conditional liberty in the community under the supervision of court-appointed probation officers. In ordinary probation, the court may set forth certain conditions under which the probation order is to be enforced. The probation procedure has two major facets: pre-sentencing investigational proceedings in regard to juvenile delinquents and supervising treatment of those sentenced to probation. The probation system is thus a correctional measure under the States’ Children Acts. Within the correctional measures under the probation system falls the pre-sentencing investigational proceedings by the Court’s probation officers under Court’s order for collection of materials for the Court’s final determination as to whether the subject should be placed on probation or should be institutionalised, and if put to probation, under what terms and conditions to be set forth in the

bond to be enforced by the court through the court’s probation officers. The States’ Children Acts provide for probation system in regard to juvenile delinquents upon the following basic considerations:

(a) the subject is a delinquent, found so on enquiry;
(b) his release on probation of good conduct upon assurance given in the bond by the sureties for enforcement of conditions set forth in the bond would be conducive to the education and rehabilitation of the subject, thereby, avoiding either long term institutionalisation order or imprisonment;
(c) probation being conditional upon due performance of the terms and conditions in the bond, keeps the individual under probation and the sureties within the court’s authority as a basis for possible revocation of the probation order and substitution therefor an institutionalisation order;
(d) and control and treatment of the subject in the community under the Courts’ superintending powers, exercised through its probation officers.

13.4.2. The Acts aim mainly at supervision in the community under conditions set forth by the Court for educating and treating the subject with this view that those who undertake custody on probation are roused to consciousness of their duty to the child on penalty of forfeiture of the bond, executed for ensuring due performance of the conditions in the bond. The juvenile court employs its probation officers to supervise and guide the actions of those who take custody of the child under a bond as well as the child’s own conduct while on probation. The period of probation usually extends for a period of three years.
In deciding whether a juvenile delinquent should be sentenced to probation order, a juvenile court should raise the following questions, and find answers for them for the materials appearing in the reports of experts as well as of the probation officers in charge of the case:

1. Is the subject of dangerous character?

2. Is the probation system conducive to the mental and emotional make-up of the subject?

3. Does the subject have a suitable home and enough economic security to give him a new start to his career, if he is sent back to the community?

4. Will the society be benefitted, if the subject is placed on probation?

5. Does the subject have any previous delinquent history?

6. Was the criminal conduct of the subject induced by the stress of a strong provocation?

7. Does the character and attitude of the subject indicate his proclivity to commission of another crime?

8. Does the guardian or parents or the fit person with whom the custody of the subject on probation is to be entrusted have the capacity and aptitude for taking proper care of and power to exercise adequate control over the subject for educating him for the purpose of rehabilitation?

13.4.3. For a juvenile court to find answers to the questions as mentioned above, the pre-trial investigational reports of experts and of the probation officers are of vital importance under the Indian States' Children Acts. If upon consideration of the materials in the reports at the enquiry, duly proved by the experts and the probation officers examined as witnesses in the enquiry, the court finds that instead of
sentencing the subject to probation order, an order should be passed for his placement either in a Reformatory or a Borstal or an Industrial or a Certified School, the court should pass the order according to the needs of the individual subject. When placing the subject to any of the institutions as aforesaid, the court should send a copy of the proved report of experts and probation officers to the officers-in-charge of such institutions so that the authorities of the institutions may have materials to plan out a programme of correctional measures to be adopted for the needs of the individual ward, placed in the Institution. The probation officer’s pre-sentencing investigational report should be as much comprehensive as possible incorporating therein materials collected by experts as well as by the probation officers during investigation ordered by the Juvenile Court magistrate under the States’ Children Acts and the rules made thereunder. The materials in the report should contain the following information:

1. Details of the Crime
   (a) prior criminal history, if any,
   (b) history of associates of the subject,
   (c) attitude of the subject,
   (d) thorough personal history of the subject.
   i) physical development,
   ii) health,
   iii) education,
   iv) employment; if any
   v) habit,
   vi) character,
   vii) behavioural pattern,
   viii) associates,
ix) recreation,
xi) mental condition,
xiv) physical deficiency, if any,
(e) family history,
ix) relationship of the subject with the members of the family,
ii) family environment,
(a) social, (b) economic and (c) cultural,
(f) surroundings and neighbourhood where the subject usually lives,
(g) how people of the locality think of the subject and their attitude to him,
(h) a programme of probation plan suited to the subject.

13.4.4. The Children Acts of the Indian States have made provisions for probation system in skeletal forms to be supplemented by rules to be framed under the Acts as specially enjoined therein. For effective implementation of the probation system under the State’s Children Acts, comprehensive rules are to be framed by the relative State Governments under such Acts without fail, so that the system may not remain only in the cold prints in the statute book, thereby frustrating the very aim and object of such Acts. Mr. S.N. Bagchi the Hon’ble Judge, Calcutta High Court, points out that, "The States’ Children Acts make provisions for probation and institutionalisation systems in bare forms that need be worked out in detail through appropriate and effective rules to be enforced by the Juvenile Courts in regard to both delinquent and non-delinquent children."

13.4.5. As probation is conditional freedom, enjoyable under the superintendence of the juvenile court, exercised through its probation officers, the court can impose such conditions as would be best suited to the subject. The breach of conditions of probation would enable a juvenile court to withdraw freedom granted to the subject, and to order its lodgment to any of the correctional institutions with the complete loss of freedom. Modern penal systems aim at individualisation of offenders particularly juveniles. The system of probation enjoined by the States' Children Acts would not conflict with the full authority and discretion of the juvenile court, and would, at the same time, prevent justice from blindly striking at the offender, when the court gets relevant materials, gathered through probation officers, in collaboration with the experts and the investigating police officers, in the pre-sentencing investigational proceedings, ordered by the court.

13.4.6. The main duty of the probation officers after a subject is placed by a juvenile court under the probation system in the care and custody of a guardian, or parents or of a fit person on a bond executed by either of them, may be categorised as follows:

(a) To visit and receive reports from persons about the subject placed on supervision at such interval of time specified in the order of probation or as the probation officer is directed from time to time by the court;

(b) To see the child and to find if it is observing the conditions of probation set forth in the recognizance bond;

(c) To report to the court results of his personal inspection;

(d) To advise, assist and befriend the child under
probation;
(e) To suggest if any suitable employment of the child could be found.

13.4.7. The Juvenile Court has seisin of a case where the subject is placed under probation system in terms of the bond and for the period fixed therein; and during the operation of the probation order, the probation officer’s report to the court should be judicially examined and considered with notice to the child and the surety for court’s decision as to whether or not in substitution for the probation order, any institutionalisation order, suitable to the needs of the child, need be passed with an eye to re-educate and rehabilitate the child. The formalities of probation order, regular visits and reports of probation officers to juvenile court and the court’s supervisory and controlling authority over the subject placed on probation, all combine to secure a much stronger hold over the child offender than the simple recognizance bond under the Code of Criminal Procedure, 1973. Under the States’ Children Acts the probation system covers the pre-sentencing and post-sentencing activities of the probation officers, attached to a juvenile court. By the court’s order the probation system works at those two stages.

13.4.8. The Court can order, in case of a delinquent child before commencing with its inquiry, investigation by experts and probation officer i.e., pre-sentencing enquiry, in addition to police investigation well within the provisions of the Code of Criminal Procedure, 1973. In other cases, the court may order its probation officer to collect materials through investigation well within the provisions of the States’ Children Act and the rules, if made in that behalf. The probation, as a sentencing measure, is always conditional under the States’ Children Acts. The court
is required to be appraised of any situation that tends to the
breach of any condition in the bond, and the court does not cease
to exercise jurisdiction in the case till the time set forth in
the bond expires. So, the juvenile court can well employ the
probation officers, attached to it for reporting; if the
conditions of probation are being observed, and can deal with
such reports. The entire probation system under the States' 
Children Acts involves participation of exports and probation
officers in the process of investigation at pre-and post-
sentencing stages in a case under the orders of a juvenile court
for proper and effective implementation of the aims and objects
of the Acts and the rules framed thereunder.


Juvenile Probation is an integral part of juvenile
correction. According to Justice V.R. Krishna Iyer, "Juvenile
homes, care homes, rescue shelters, classified allotment of work,
keeping of dangerous prisoners separately - these and other
formulations are a part of the new horizons. Probation not only
saves the public exchequer considerable sums of money but
integrates the delinquent into the community."27 The probation
officer is not merely an instrument of juvenile correction but
the pivot on which the successful functioning of the system
rests.28 The role of the Probation Officer as mentioned in the
Act of 1960 is as follows:

(1) The probation officer is expected to inspect the special
schools, children's homes, observation homes, and after-care
organisations periodically.

27 V.R. Krishna Iyer : N.M. Tripathi & Co, Bombay Perspectives in
Criminology, Law, and social change, N.M. Tripathi & Co. Bombay
1980 P-571
28 Sushil Chandra ; Sociology of Deviation in India Allied
Publishes (Bombay), P-72.
(2) He undertakes an inquiry into the antecedents and family history of the child accused of an offence. The case-study compiled by the probation officer facilitates further inquiry by the Child Welfare Board or the Children's Court in the case of a neglected or a delinquent child who is the subject of inquiry.

(3) The Probation officer is called upon to visit neglected and delinquent children at such intervals as he thinks fit in the correction of the child. The period of supervision required for the correction of the behaviour of his subjects is determined by him alone.

(4) The probation officer submits, periodically, reports to the Board or the court pertaining to the behaviour of the children who are under his care.

(5) The Probation Officer advises and assists the neglected and delinquent children. He is a counsellor and his task is counselling. It is here that the Probation Officer is a case worker and has to effect transference and interactions in reshaping the behaviour of his charges.

(6) The Probation Officer examines, at regular intervals as to whether the conditions on which the child has been released under the care of the guardian, the parent or a fit person, are being properly complied with. This is an important function because if probation is a promise it has to be objectively evaluated in the interest of juvenile correction.

(7) In addition to the above mentioned functions and duties, the probation officer may be called upon to perform such other duties as may be prescribed in the interest of the care and correction of the neglected and delinquent children.

(8) The report of the probation officer shall be treated as confidential.
A probation officer is a public servant within the meaning of Section 21 of the Indian Penal Code and as such he carries all the responsibilities of the public servant in this context and is entitled to the protection available to a public servant.

Section 33 lays down that if no report of the probation officer is received within ten weeks of his being informed under Section 19, it shall be open to the Children’s Court to proceed without it, whereas Section 6(2) of the Probation of Offenders Act which is also a central legislation makes it obligatory on the court to call for and consider the report of a probation officer before passing orders under Section 6(1) of the said Act. It is not known why a different approach should be made in the application of modern correctional philosophy so far the Children Act is concerned. This dichotomy needs to be removed by amending the second proviso to Section 33 of the Children’s Act in such a way as to make it obligatory for the competent authority to call for and consider the report of the Probation Officer before passing final order concerning the child.


The Juvenile Justice Act is nothing but the replica of the Children Act of 1960. The role of the Probation Officer as prescribed in the Act is as follows:

(a) Section 19(b) provides that the Officer-in-Charge of the police station has to inform the Probation Officer of that area of such arrest. It is the duty of the Probation Officer to obtain information regarding the antecedents and family history of the arrested juvenile. He has to collect information of other material circumstances which are likely
(b) The Probation Officer has to submit a report regarding the delinquent juvenile to the Juvenile Court within ten weeks of his being informed under Section 19 by the Officer-in-Charge of the Police Station after arrest of the juvenile. If the Probation Officer fails to submit the report within the stipulated period, the Juvenile Court may proceed without it.

(c) The report of the Probation Officer is confidential. Of course, the Competent Authority itself may communicate the substance thereof for production of relevant evidence for disposal of the case.

(2) Section 57(1) of this Act states that the State Government may appoint as many probation officers, officers for the inspection of special homes, juvenile homes, observation homes or after-care organisations and such other officers as it may deem necessary for carrying out the purposes of this Act. Section 57(2) mentions the following duties of the probation officer namely:

(a) in inquire into the antecedents and family history of any juvenile accused of an offence, with a view to assist the authority in making the inquiry;

(b) to visit neglected and delinquent juveniles at such intervals as the probation officer may think fit (Section 57(2)b);

(3) to report to the competent authority as to the behaviour of a neglected or delinquent juvenile;

(4) to advise and assist neglected or delinquent juveniles and, if necessary, endeavour to find them suitable employment;

(5) where a neglected or delinquent juvenile is placed under
the care of any person or institution on certain conditions, to see whether such conditions are being complied with; and

(6) to perform such other duties as may be prescribed.

Section 56 of this Act provides that the Probation Officer is a public servant within the meaning of Section 21 of the Indian Penal Code.

13.6.2. Hence it is suggested that during the proceedings courts should pay much consideration for the report submitted by the Probation Officer while deciding a case, because he is the key authority for the purpose of making enquiry into the character, family background, socio-economic status of the child and environmental conditions in which the child has been brought up. Hence he is the eyes and ears of the court to give the correct personality of the child for the quick and just disposal of the cases. It is better even to appoint a court wise probation officer for quick disposal of the cases and avoid overcrowding in the observation homes. At the same time it saves the funds of the exchequer by releasing the deserving children on probation and treating them in their natural environment.


The State Government framed rules regarding the duties of the Probation Officers which are mentioned below:

(1) On receipt of information from the Officer-in-Charge of a police station under clause(b) of Section 19, an order from the sanctioning authority under rule 26 of these rules, the probation officer shall enquire into the antecedents and family history of the juvenile and such other material circumstances as may be necessary and submit a preliminary report to the competent authority as early as may be allowed by the competent authority.

(2) Every probation officer shall carry out all directions
given to him by a competent authority and the Chief Inspector and shall perform the following duties:

(a) to make inquiries regarding the home and school conditions, conduct, character and health of juveniles under his supervision;

(b) to attend regularly the court of a competent authority and submit reports;

(c) to maintain diary, case files and such registers as may be prescribed from time to time;

(d) to visit regularly juveniles placed under his supervision and also places of employment or school attended by such juveniles, and to submit regularly fortnightly reports;

(e) to take juveniles, wherever possible, from the court of a competent authority to observation home, juvenile home, special home or fit person;

(f) to bring before the competent authority immediately juveniles who have not been of good behaviour during the period of supervision;

(g) follow up of juveniles after their release from the institutions and extending help and guidance to them;

(h) establishing linkages with voluntary workers and organisations to facilitate rehabilitation and social reintegration of juveniles and to ensure the necessary follow up.

(3) The probation officer shall not employ a juvenile under his supervision for his own private purposes or to take any private services from him.

13.7.2. An outline of the duties of a probation officer may be sketched for guidance as follows:
(i) preparation of a case record,
(ii) attendance and report to the court,
(iii) conference with the guardian or care-taker of the subject, before or after placement on probation,
(iv) inspection of the habitat of the subject for socio-economic and environmental studies,
(v) conference with medico-psychiatrical experts and police officers and local inhabitants of acceptable background.

13.7.3. According to V.R. Krishna Iyer,29 probation is prevalent in India in the law books. But when it comes to effective application of the principle the infrastructure is fragmentary, the cadres are poorly trained and poorly paid, the bench and the bar rarely resort to the policy, and thus non-institutionalized therapy through probation substantially remains in suspended animation.

13.7.4. In fact, the value of probationary supervision and the success or failure of probation depends primarily on the nature and quality of the personal relationship established between officer and probationer which vary very considerably according to the basic motivation and attitudes of the probation officer and according to the skill and insight with which the relationship is used for specific purposes. For the success of probation work, it is of the highest importance that probation officers should not only be trained and efficient, but also be sympathetic and willing workers - always eager to work for the love of their lofty labour - with an aspiration for doing good to those under their care. Moreover, there should be complete co-operation and harmony between the magistrates and the probation

officers, and similarly between parents or guardians and probation officers.