Probation developed as an alternative to imprisonment, especially of short-term, is a method of dealing with offenders found guilty of not very serious offences. It is a suspension of imposition of the sentence on the condition of good behaviour which the offender undertakes to observe for a specified period under the supervision of a probation officer. In case of violation of conditions of probation order, the probationer renders himself liable to the punishment for the original offence and the quantum of imprisonment is determined by the concerned court.

Supervision is an integral part of probation. There is no probation without supervision. This is true about U.S.A. and U.K. from where the concept was imported and adopted in the Code of Criminal Procedure, 1898. But in India, no provision was made for supervision under the said Code and the position remains same under the new one as well. The release on probation of good conduct under the Act may be with or without supervision. The court while releasing the offender on probation of good conduct under Section 4(1) of the Act may not invoke the provisions of sub section (3) of the said section which provides for placing the offender under the supervision of a probation officer. In Punjab as in the rest of the country supervision does not automatically follow probation order as in the United States of
America and England. Rather probation without supervision has become a general rule and with supervision an exception. The court may put the released offender under the supervision of a probation officer, if it is necessitated by the public good and the interest of the offender. This is fully borne out by the number of offenders released on probation of good conduct with or without supervision during the period of 6 years, i.e., from 1977 to 1982:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of persons released on probation</th>
<th>Total number of offenders released on probation without supervision</th>
<th>% of offenders released on probation without supervision</th>
<th>Number of total offenders released with supervision</th>
<th>% of offenders released with supervision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>6384</td>
<td>5039</td>
<td>79</td>
<td>1345</td>
<td>21</td>
</tr>
<tr>
<td>1978</td>
<td>6758</td>
<td>6895</td>
<td>79</td>
<td>1863</td>
<td>21</td>
</tr>
<tr>
<td>1979</td>
<td>11704</td>
<td>11688</td>
<td>85</td>
<td>2016</td>
<td>15</td>
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<tr>
<td>1980</td>
<td>14170</td>
<td>11547</td>
<td>82</td>
<td>2623</td>
<td>18</td>
</tr>
<tr>
<td>1981</td>
<td>13252</td>
<td>11909</td>
<td>90</td>
<td>1343</td>
<td>10</td>
</tr>
<tr>
<td>1982</td>
<td>15393</td>
<td>14184</td>
<td>91</td>
<td>1209</td>
<td>9</td>
</tr>
</tbody>
</table>

The probation without supervision is unjustified and undesirable for it defies its very definition according to which it means a conditional suspension of sentence. The violation of conditions of probation order leads to its revocation and imposition of the suspended sentence. It implies that there must be someone to ensure the compliance of conditions by the probationer. When there is no one to enforce these conditions, practically it means there is no condition. This is warranted in the absence of strong public surveillance, court supervision.
or any other controlling authority which can detect and report the violation to the court. The probationers who are criminals, cannot be expected to report their violations and suffer the suspended sentence. Supervision, therefore, is an integral part of probation as understood in the modern penal systems of the world, its Indian version is a distortion.

The existing provision of probation without supervision should be deleted from the Act. Till the sufficient number of probation officers is appointed to supervise all the probationers, the Act should provide for recording of special reasons by the court to exonerate the probationer from supervision. Supervision order must be a rule and probation without supervision an exception.

The provision of discharge of probationers due to the observance of good behaviour should be enforced liberally. This will certainly relieve the probation officer from additional burden and encourage other probationers to improve, reform and conform to the conditions imposed. In this respect, if the probation officer at the very first meeting finds the probationer fully readjusted in the society without any need of further control or help, he must straightway recommend his case to the court for early discharge. The court should ordinarily accept the recommendations of the probation officer. The power of release after admonition under section 3 of the Act should be exercised sparingly. The benefit of the section should generally be confined only to the young offenders held guilty under sections 380, 381 and 420 of the I.P.C. In case of adult offenders guilty of offences punishable under the said
sections, release on probation of good conduct is appropriate.

The avowed object of the Act is to reclaim first and young offenders and prevent their conversion into recidivists as a result of their association with the hardened and professional criminals in jail. This is in consonance with the current thinking in penology according to which efforts must be made to reform the redeemable offenders. The Act is not meant for letting loose all offenders simply because they are young or first offenders. The underlying purpose is to reclaim back to the fold of civilized and orderly society only those offenders and recalcitrants who for certain reasons, have gone astray and committed crimes under compulsion, emotion, impulse or poverty etc., but have reasonable potential of easy and amicable readjustment, resettlement and rehabilitation in society they offend against. They are at a curable stage as crime has not gone deep into them. The community based treatment of probation is not intended for hardened, habitual, professional criminals or the dangerous recidivists who are a security risk and require prolonged detention in prison in the interest of social defence. The preliminary postulate of probation is the careful selection of reclaimable offenders by the concerned court.

The scope of the Act is so wide that it applies even to those offences for which the minimum sentence of imprisonment has been fixed. This shows the sweeping away of rehabilitatory approach of criminal justice writ large in the Act.
The offences punishable with death or imprisonment for life are kept out of the purview of the Act. The application of the Act is withheld, even for offences for which shorter imprisonment than life can be awarded or where life imprisonment is an alternative punishment. The age or sex of the offender is no exception to the said restriction. The policy of the Act is to deny probation to those offenders who are guilty of serious offences. The gravity of the crime is measured by the term of imprisonment. The absolute ban on grant of probation to the reclaimable first and young offenders guilty of offences punishable with life imprisonment is without logical justification vis-a-vis the accepted reformatory approach of modern criminal justice for which the criminal is more important than the crime for awarding punishment. There are 51 sections in the Indian Penal Code and some in other laws which are punishable with life imprisonment. The Code fixes the maximum term of imprisonment but not the minimum, which may be till the rising of the court. Severity and excessiveness of punishments under the I.P.C. was admitted by its makers who suggested their review by the successive generations on the lighter side. Moreover, many offences punishable with life imprisonment are triable by the Judicial Magistrate of the First Class whose sentencing power does not exceed three years of imprisonment. For all practical purposes, the maximum term of imprisonment for these offences remains three years. The denial of probation to first and young but chance offenders who are involved by way of constructive liability or as abettors; and are at the threshold of their
life and career or are the only bread winners of the family, and show utmost remorse for their isolated lapse, defeats the very object of the Act which has provided for individualisation of punishment.

The imposition of absolute ban on the grant of probation to offenders guilty of offences punishable with life imprisonment should be removed. Section 4 of the Act should be amended accordingly. All the offences punishable with imprisonment for 10 years or above should be tried by the Court of Sessions. First Schedule of the Code ought to be amended to effect the said change. The Sessions Judge should be required to record special reasons for giving the benefit of the Act to the first and young chance offenders convicted of offences punishable with imprisonment for life. In such cases the requisition of the report of probation officer for recording of special reasons must be made mandatory except when there is sufficient material on record for evaluating the possibility of probation.

A fixed place of residence or regular occupation of the offender is a precondition for grant of probation under the Act. The appalling poverty and absence of social security system in India make men without means to move from place to place in search of livelihood. They are disqualified for probation without being responsible for not having a fixed abode and regular job due to our faulty economic set up. The reclaimable young and first offenders are deprived of the benefit of probation for reasons which are beyond their control. In fairness to these misguided and unfortunate delinquents, the said
restriction in the Act should be deleted. The amended proviso should provide that where the court is of the opinion that it is desirable to release the offender on probation of good conduct but for his having a fixed place of residence or regular occupation, it shall release him on probation of good conduct on his personal bond and direct him to be kept in the Hostel/Home for probationers. The requisite number of Hostels/Homes should be set up for the said homeless and hapless probationers in the state.

Section 18 of the Act excludes from the purview of probation those offenders who are found guilty under the specified enactments mentioned therein. The Reformatory Schools Act, 1897 and the Suppression of Immoral Traffic in Women and Girls Act 1956 are included in the specified enactments. The Reformatory Schools Act has ceased to apply by virtue of the passing of Children Acts in various states and the application of Children Act, 1960 in Union Territories. In Punjab, the East Punjab Children Act, 1949 has replaced the Reformatory Schools Act. The Suppression of Immoral Traffic Act was amended in 1978 and the benefit of probation was made available to the offenders held guilty under its sections 7 and 8. The retention of these Acts in section 18 of the Act has become redundant. They should be deleted from the text of section 18 by making suitable amendment in the Act.

In pursuance of the recommendations of 47th Report of Law Commission of India, the amended provisions of the Income Tax Act, the Customs Act, the Central Salt and Excise Act, the
Prevention of Food Adulteration Act and the Gold Control Act have denied the benefit of probation to the adult offenders found guilty under these Acts. This is neither justified in all cases nor can it achieve the desired object. The courts continue to grant probation to adult offenders found guilty under the said Acts despite a ban to the contrary. The obscure disqualification clause is hardly taken note of by the overburdened Magistrate. The fate of Public Prosecutor is the same. The counsel of the accused, if aware of it, deliberately conceals it. The possibility of involvement of innocent retailers is quite common. The chances of proving their innocence in view of the presumption of mens rea and other related facts are very remote. The ends of justice call for the grant of probation in many such cases. Correct comprehension of the concept demands the inclusion of a disqualifying clause in section 18 and not in these specific Acts. A proviso should be added to section 18 which shall provide for grant of probation to the first adult offender found guilty of petty offence under the aforesaid enactments. The judge may be required to record special reasons for giving the benefit of probation in such cases.

Section 19 of the Act stops the operation of section 562 of the Code of Criminal Procedure, 1898, to the areas where the Act has been enforced. The corresponding provision of section 562 in the Code is section 360 which provides for the release of offender on probation of good conduct. Section 8(1) of the General Clause:Act, 1897 makes it abundantly clear that any reference to any section of the Code of 1898 means reference to the corresponding section of the new Code of 1973. Inspite of this, the non-
replacement of the words "section 562 of the Code of Criminal Procedure, 1898" by the words "Section 380 of the Code of Criminal Procedure, 1973" has led to a lot of misunderstanding on the part of the courts including the state High Court and the Supreme Court. For instance, the Punjab and Haryana High Court in Sturn Parkash versus State of Punjab, Criminal Appeal No. 720 of 1975 decided on 22.2.1979 and Argum Chaud versus State Criminal Appeal No. 1161 of 1975 decided on 19.4.1979 released the accused on probation of good conduct under section 360 of the Code, Again the Supreme Court in Dilbag Singh versus State of Punjab, (AIR 1979 SC 680) released the appellant on probation of good conduct under section 380 of the Code despite the fact that the Act is in force in the whole state of Punjab. In order to crystallise the position, section 19 should be amended at the earliest possible. The words "Section 360 of the Code of Criminal Procedure, 1973" should be inserted in place of the words "section 562 of the Code of Criminal Procedure, 1898".

The role of pre-sentence investigation report of the probation officer under section 4(2) of the Act has become a major point of controversy among the Higher Judiciary. Absence of the judgment by the Supreme Court on the point has added to the sentencing dilemma of the judges on the correctional side. The majority of the High Courts hold the view that calling for the report of the probation officer is a precondition for passing the order of release on probation of good conduct under section 4(1) of the Act. Accordingly, the grant of probation without
requisition of the report is bad in law and liable to be quashed in revision. The minority view does not deem the demand of report as mandatory before passing order under the said section. The latter is the correct view. If the intention of the Parliament were to make the requisition of the report mandatory, then it would have been provided: "Shall call for the report of probation officer" in section 4(2) of the Act. The said words figure in section 6(2) of the Act and section 10(7) of the Suppression of Immoral Traffic Act, 1956 where the requisition of the report is mandatory if the court decides not to grant probation to young offender below 21 years of age or to first female offender respectively. Even otherwise calling for the report in each case is not feasible. The probation officers of the state hardly submit reports in 1 percent of cases dealt with under the Act. There is no need to requisition the report where sufficient information relating to various aspects of the offender is already on record and established as well.

The salutary effect of section 12 which removes disqualifications attached to the conviction of probationers has been whittled down by the narrow interpretation given to the section by the courts. They only consider the removal of that disability which automatically follows conviction for the offence. If the action is an offshoot of departmental inquiry which renders the probationer jobless, section 12 does not help him in being reinstated. This defeats the very purpose
of probation which is primarily granted to protect the employment of reclaimable offender. Moreover, there is implicit bar on the removal of probationer from the service as a result of disciplinary punishment for his misconduct which led to his conviction for an offence. For real attainment of the object of grant of probation to an employed offender, a proviso to section 12 should be added which should provide that a copy of the court order releasing the delinquent employee on probation of good conduct shall be considered as a sufficient proof for revocation of order of his suspension or removal from service, where the retention of the probationer in service is not desirable at all the more appropriate measure would be to deny probation or if it has been granted, its revocation and imposition of suspended sentence of imprisonment for the original offence.

Section 9 of the Act dealing with violation of conditions of probation needs to be amended. When the court is satisfied about the failure of the probationer to observe the conditions of good behaviour, it should issue bailable warrant of arrest instead of summons which are, generally, returned unserved. The provision relating to the issuing of summons should be replaced by the one requiring the issuing of bailable warrant of arrest.

The implementation of Section 5 of the Act which provides for the payment of compensation by the probationer to the victim of his crime is kept in suspended animation. Absence of social security system and poverty of the victim add to the imperatives of quick payment of reparation for rehabilitation of the destitute dependants of the victim. The courts show no
comiseration for the hapless victim who languishes in distress. This is attributed mainly to the discretionary power of the court to award compensation and the capacity of the offender to pay the reparation. The effective enforcement of this much needed provision calls for its amendment. The courts are not likely to pass order for payment of compensation unless they are constrained to do so by the law. Section 5 should be so amended as to provide for recording of special reasons by the court for not awarding compensation to the victim of the crime by the probationer. A common compensation fund should be created for this purpose. Apart of the general fine imposed as punishment by the court and amount of compensation realised from probationers whose victims do not need it, should be diverted to this pool.

Probation as an effective and viable method of dealing with offenders can work on selective basis. This entails careful selection of reclaimable offenders, favourable community reaction towards probation, avenues for amelioration, and surveillance and assistance provided to probationers. The selection of offenders for probation by the court rests on the sound sentencing knowledge of the judge and presence of sufficient material on record of the case relating to rehabilitative or degenerative potentials of the offender. Evidence of bad character is not permitted unless good character itself is in question. This aspect is concealed by the accused who considers it as weakening of his defense. Comprehensive information about the character and background of the offender is best available from the
presentence investigation report. In the alternative it can be gathered from the sentence hearing.

Magistracy which handles over 95 per cent trial cases is without academic and professional knowledge of the working of probation. The Act is neither a part of university syllabus in the universities of the State nor any pre-service or inservice training is imparted to the judges in the correctional administration of criminal justice. With little sentencing knowledge, the Magistrate dispenses justice which is not in conformity with current correctional policy integrated with criminal administration by passing of the Act or incorporation of relevant provisions in the Code of 1973. He makes rate use of the presentence report which has been accepted as a basic document in the correctional administration of criminal justice. The courts in the state requisition reports in only 1 per cent of cases. The report is extremely essential where there is no sufficient material on record relating to the character and antecedents of the offender. The provision of sentence hearing is put in action after the court decides to refuse probation to the offender. Moreover, this progressive and laudable provision, inspite of its immense importance for selection of right type of sentence, has been reduced by the Magistracy to a mere legal formality. The result is that the Magistrates with their little sentencing knowledge are not in a position to find out appropriate method of dealing with the offenders convicted by them. Consequently, many offenders who merit probation languish
in prison which turns them out as confirmed offenders. On the other hand, many incorrigible and professional offenders are released on probation which they take just as acquittal. They pose a serious threat to the security of society by violating the law with impunity and encouraging other prospective offenders to commit crime with the probable hope of getting a let-off through probation. This defeats the very purpose of the Act which is meant for young, first and chance offenders who can easily rehabilitate in society by observing conditions of good behaviour. The evil effects of inappropriate application of the Act by the courts in the state have been fully brought out with the help of Tables and their appraisal in Chapter III of the study.

The subordinate judiciary has yet to become probation minded in the correct context. It is, therefore, necessary that the Act should form a part of LL.B. Course; the criminal law paper in P.C.S. Judicial Examination should include thorough study of the Act and the Punjab Probation of Offenders Rules, 1962. Besides the pre-entry training refresher courses in correctional justice should be organised for the judges regularly. Probation Advisory Committee, headed by a serving judge of the High Court should be set up in the state; and the state High Court's Manual should include detailed instructions regarding the Act, its implementation and proper coordination between courts and the probation officers. Where sufficient material concerning the rehabilitative or degenerative aspects
of the offender is available on the record either from the presentence report or otherwise and the court decides to deny the grant of probation, the requirement of hearing the accused on the question of sentence should be dispensed with. In case the said material is absent, the sentence hearing should be conducted before deciding for or against probation. This will save precious time of the court and enable it to have a deep insight into the sentencing factors. Sections 235(2) and 248(2) of the Cr.P.C. which deal with the sentence hearing by the Sessions Judge and the Magistrate respectively should be amended to incorporate the above suggestions.

After the implementation of the East Punjab Children Act, 1949 in the state of Punjab, no juvenile offender below 16 years of age can be released on probation of good conduct under the Act. He can only be dealt with the methods laid down in section 35 of the Children Act. The grant of probation to the child offender under the Act is illegal by virtue of its section 19. Tables 5 and 6 in Chapter III show that 251 juvenile offenders were released on probation of good conduct under Section 4 of the Act. This illegal application of the Act to the large number of juvenile offenders who can be better handled under the Children Act proves the poor knowledge of the Act by the judges of the state especially of the Magistracy. The courts of the state should know that a juvenile offender, even if guilty of an offence punishable with life imprisonment, can be granted probation under the State Children Act whereas
he is otherwise punishable with imprisonment. They should desist from granting probation to juvenile offenders under the Act but handle them with more humane and protective treatment provided under the Children Act.

Section 4(3) of the Act makes it clear beyond any shadow of doubt that the length of supervision under passed by the court shall not be less than one year. Any supervision order of shorter duration is unlawful. There are 142 probationers out of a total of 1,000 investigated for the study whose supervision period varied between six and nine months. The courts of the state especially the subordinate ones as is evident from Table 4, made illegal application of the Act in the said cases. This further highlights the ignorance of correctional law by the judiciary of the state, the mistake of which there is no justification.

The lack of proper understanding of the Act by the Courts in the state is also evident from the large number of convicts sentenced to short term imprisonment. Table 7 in Chapter III shows that one-fourth of offenders admitted to jails of the state from 1975 to 1980 were those whose imprisonment order did not exceed 3 months period. Among them 50 per cent convicts were such whose maximum imprisonment period was upto one month. Such a short-term of imprisonment serves no useful purpose. It is neither in the interest of the offender nor for the good of the society. Probation particularly developed as an alternative to avoid short term stay in the jail has been lost sight of by the judiciary in the state. This is no inspite
of the mandatory ban on the award of imprisonment for a lesser period than 3 months under section 354(4) of the Code. The courts should realise that release on probation of good conduct is the most appropriate alternative to the said period of incarceration. The state High Court should take serious note of the violation of Section 354(4) and issue directions for its strict compliance by the subordinate courts. Only then, the evils of short-term imprisonment can be avoided and cherished goal of the Act can be realised in the true sense.

The courts of the state especially of the Magistrates do not discharge their statutory obligations laid down in sub-section 5 of section 4 of the Act. Neither they explain conditions of supervision orders to the offenders put under supervision nor they send a copy of the said order to the concerned probation officer. This lapse is less on the part of Sessions Courts. Table 8 in Chapter III proves it. Out of 3,000 probationers taken for study, 471 were granted probation by the courts of sessions and 2529 by the magistrates. Sessions Judges explained conditions of supervision order to 238 probationers and the Magistrates to 26 probationers. The non-compliance is 50 per cent by the former and 99 per cent by the latter. The Sessions Judges do send copy of supervision order to the probation officer in almost all the cases in which they explain conditions of this order. The court of Sessions and the office of District Probation Officer being located in the same city, the former, generally, directs the constable present in the court.
or some courtier to take the probationer to the latter. On the other hand the Magistrates very rarely send a copy of the supervision order to the probation officer or direct the probationer to report to the probation officer. The non-compliance of the aforesaid mandatory obligations by the courts sets in the process of faulty functioning of the probation which further defeats the very purpose of supervision. This is fully borne out by the appraisal of the working of supervision of probationers in Chapter VII. The courts should furnish to the probation officer, a weekly list of cases dealt with under the Act. The Sessions Judge must take serious note of this statutory lapse and warn the erring judges for their professional failures.

The individual attitude of the judge plays a vital role in the working of probation. A judge who is not in favour of probation as a case disposition method or the one who is in sympathy with the principles of probation but is hesitant to carry out the same or the one who grants probation without proper scrutiny renders the Act practically inoperative or operates it against the principles of correctional justice underlying the Act. Inspite of the compelling constraints of the recording of reasons for not applying the Act to the eligible offences, it is the judge alone who decides whether to give the benefit of the Act or not in a given case. Table 12 in Chapter III gives the number of probationers dealt with under the Act by each judge out of a total of 2,400 probationers in the state (the exact identity of the deciding judge could not be
ascertained in the remaining 600 cases). It proves that the working of probation system in the state is dependent on a few judges. The majority of the judges is not probation minded. For instance under two similar circumstances in Mansa Tehsil of Bhatinda district, one Magistrate granted probation to 199 offenders whereas his other colleague only to 27 offenders. Some Magistrates seem to be altogether indifferent to the pressing need of probation. In Fazilka, Pathankot and Nabha tehsils and Raloh sub-tehsil only 3, 2, 7 and 1 offenders respectively were released on probation of good conduct. No offender was given the benefit of probation in Phillaur tehsil of Jullundur district. However, Sessions Judges and Chief Judicial Magistrates do not make wide variation in the application of the Act. Each Sessions judge at his monthly meeting with the judicial officers of the district should draw their attention to the uniform pattern of probation. He should pull up the erring ones and restrain those who indiscriminately grant probation. He should guide them for making appropriate use of the Act which can and should work on selective basis.

There is a wide variation, inconsistency and irrationality in the application of the Act by the Courts to the offences under the Indian Penal Code. District-wise grant of probation given in Table 13 and discussion of position in each district make it abundantly clear. The courts confine the benefit of the Act to a few selected sections of the I.P.C. while totally leaving the other sections out of the purview of
probation. The commonly and frequently committed offences connected with unlawful assembly in various manifestations under Chapter VIII, contempt of lawful authority under Chapter X and offences relating to marriage under Chapter XX have been denied the benefit of the Act. Where no active part is played, the members of an unlawful assembly who join it in a heat of passion or under instigation unattended with any due deliberation, do deserve release on probation of good conduct for future rehabilitation. The contempt of lawful authority is not a very serious offence. In many cases it is due to the provocation by the public servant and insult to the dignity of the accused. The offender may be a perfectly law abiding citizen, a man of reputation and position but is involved in the case due to political overtones. The release of such offender on probation is in the best interest of justice. This is the most appropriate method of saving him from the injurious effects of prison life.

Bigamy has been made an offence to protect the interest of a lawful spouse. Where the accused undertakes to sever his relations with the keep or paramour etc., and gives written assurance of harmonious relationship and fidelity, the release on probation of good conduct is the apt measure to restore matrimonial harmony and meet the ends of justice. The application of the Act even to small number of such cases would have shown the concern of courts for probation in the current and correct perspective but its total neglect is not justified on any ground whatsoever. Moreover, the persons convicted of offences under the aforesaid three chapters of the I.P.C. do not
constitute a type of criminals who can reasonably be classified as a separate class unfit for probation. This is clear from the intention of law makers in Parliament who denied the benefit of the Act only to those I.P.C. offences which are punishable with death or imprisonment for life.

The grant of probation to 2 offenders held guilty under section 326 I.P.C. each in Faridkot and Hoshiarpur districts and to offender found guilty under section 436 I.P.C. in Ludhiana district, is illegal. Both these offences are punishable with imprisonment for life which takes them out of the ambit of the Act. Despite of the clear ruling of the Supreme Court in the case of Jasdev Singh versus State of Punjab (AIR 1973 SC 2427) from the state on the said point, the courts continue illegal application of the Act under these sections. The lack of knowledge of the Act is the main cause of such illegal application.

The probationers found guilty of I.P.C. offences constitute 16 per cent of the offenders dealt with under the Act. This is obvious from Table 13. This highlights the role of other Acts in the working of probation in the state as the probationers held guilty under them constitute 84 per cent of the total beneficiaries of the Act. Among the Local and Special Acts, lion’s share goes to the excise offences. 66 per cent probationers were held guilty under section 61 of the Punjab Excise Act, 1914. They are categorised as:

(a) Those found running working still for commercial purposes;
(b) those found running working still for personal consumption of liquor;
(c) those apprehended red handed in possession of huge quantity of liquor either in transit or otherwise;
(d) those found in possession of liquor in small quantity;

d) those found in possession of large quantity of lahan in drums;

(f) those found in possession of small quantity of lahan in pitchers; and

(g) those found in possession of apparatus, material, etc., used for keeping lahan or distillation of liquor.

The application of the Act to the above mentioned 7 categories of offenders in all the districts of the state is not appropriate. The offenders in categories (a), (d), (e) and (g) are, generally, professional criminals who carry on this anti-social, health hazard and revenue eroding activity on a large scale. Crime has gone deep into them and they are beyond redemption through release on probation of good conduct. After their release, they resume their activity with reinforced vigour and take all precautions to avoid future detection. They take probation as a mere let-off. This encourages other prospective offenders to commit crime with the expectation of being released on probation of good conduct. The prolonged detention of the said professional excise offenders in the prison is the best safeguard to protect the society and prevent the crime. However, offenders below 21 years of age should be given the benefit of probation and segregated from the unhealthy home surroundings and put in the probation Hostel/Home.

The offenders belonging to categories (b), (d) and (f) are, generally, redeemable as they are not professional criminals. They should be released on probation and put under supervision of the probation officer. The court must provide
for frequent personal visits of probation officer to the residence of such probationers and for submission of their timely progress reports. The object ought to be to make the probationer shed his habit of liquor addiction and association of distillers or vendors; and earn livelihood through honest means.

Every ninth offender released on probation of good conduct is one who violated the provisions of section 9 of the Opium Act. The application of the Act to the opium offences is not as liberal as to the excise offences. The incidence of crime under Opium Act is about one-third of the crime under the Excise Act. This is clear from Table 15. The grant of probation to opium offenders is one-sixth of the excise offenders. There is no ostensible and logical reason for this variation. The following types of offenders are the beneficiaries of probation:

(a) Those who are opium or poppy addicts and keep the opium or poppy for personal consumption;

(b) those who are such addicts but also sell opium or poppy in small quantity for personal consumption of other addicts; and

(c) those who deal in opium as a profession for a living and profit.

The application of the Act to offenders in categories (a) and (b) is appropriate but not in case of (c). The professional opium offenders paralyse the economy of the state and the public health by their active involvement in the anti-national activity of smuggling of opium and its sale for commercial purposes. They are not likely to give up their criminal career which they consider to be a good bargain.
Their incarceration coupled with other safeguards can only prevent the deterioration of public health. The effective realisation of the object of the Opium Act, in this context, is best achieved by the rigid application of the punitive provisions. The offenders belonging to categories (a) and (b) deserve probation. All such offenders must be put under the supervision of the probation officer. The court should direct the probation officer to take the opium addict probationer to a medical expert to help him in shedding his addiction. The services of social worker and medical philanthropist should be made available to the said probationers. In case of poor probationers necessary financial assistance should be given by the Red Cross or other welfare organisations. The incarceration of such corrigible offenders will make them not only confirmed addicts and smugglers but also train them in other crimes. This is warranted by the existing criminogenic conditions inside the jails which have been highlighted by the Jail Reforms Committees and the recent writs before the Supreme Court.

The application of the Act to the offences under the Arms Act is the lowest as compared to the offences under the Excise and Opium Acts. The incidence of arms offences is two-third of opium offences whereas the grant of probation to the arms offenders is approximately one-third of opium offenders. There is marked variation and inconsistency in the use of the Act by the courts in various districts of the state. The majority of offences committed by the probationers relate to the recovery of barchha, long range knife or country made pistol. Most of
them are poor workers such as agricultural labourers, rickshaw pullers and domestic servants. Possibility of false involvement is quite common. If the weapon is recovered from the possession of master, it is shown to be found from the possession of servant. Such persons do deserve probation. The manufacturers and dealers of weapons or possessors of dangerous weapons must be denied release on probation of good conduct. They are a potential danger to the society because they provide material for disturbing its peace. Their prolonged detention is the best assurance of the protection of society and prevention of crime.

Under the current conditions in the state, the courts are expected to be more vigilant while deciding between probation and imprisonment in case of arms offences. The release order should invariably be with supervision. The probation officer should be directed to keep a constant watch on the offender in order to know his various activities and movements. If the probationer tries to re-establish his contacts with any anti-national or extremist organisation, the probation officer must immediately recommend for the revocation of his probation order.

In spite of the fact that the incidence of crime under the Gambling Act is quite common in the state and there is a wide scope for probation, the application of the Act to gambling offences in the state is negligible. The gambling offences are one-half of the offences under the Opium Act. This is evident from Table 15. But the grant of probation to gambling offenders is only 9 per cent of the opium offenders. This is totally irrational and unjustifiable. Gambling is not only confined to upper class people but takes within its wings people from
the lower middle class to the daily wage earners. Generally, the sentence of fine is imposed. The well-off offenders pay the fine and the indigent offender languish in prison in default of payment of fine. This runs counter to the reformatory approach of the Act which is designed to avoid short term imprisonment. The best method of handling these offenders is the release on probation of good conduct. The probation order should provide for frequent visits of probation officer to the locality of the probationer and enquire about his activities from the respectable residents of the area. The constant vigilance and fear of imposition of the suspended sentence would save the poor probationers from burning their hard earned money in nefarious activity like gambling. Those who act as tricksters or abetors should be awarded long imprisonment and for that matter, the Gambling Act ought to be amended accordingly.

In view of the significant incidence of crime under the Railway Act in the state, the application of the Act to the railway offenders is almost nil. No such offender was released on probation of good conduct in 10 districts of the state. The cases of poor offenders who in default of payment of fine suffer imprisonment deserve commiseration. The benefit of probation should have been given to them. This shows the casual concern of courts towards probation in relation to railway offences. Probation is the appropriate case disposition method as it saves the offender from the evil effects of jail life and deter him from future relapse through the constraints of conditions of supervision order.
The crime under the Essential Commodities Act is of economic nature. It is the result of greed and not need. Profit motive prompts its commission. Where the Act of the accused has not caused any damage to the general public or an individual and he is a chance and young offender, the release on probation of good conduct is appropriate. The benefit of the Act should be denied to the professional economic offenders who operate as a syndicate and erode the economy of a developing country like India. They are rarely caught-handed and more rarely found guilty. Only the long term of imprisonment coupled with heavy amount of fine, confiscation of the property and cancellation of trading licence can work as effective deterrent. The application of the Act by the Courts in the state to the offences under the Essential Commodities Act is justified only in 17 cases and uncalled for in 13 cases. There is no uniformity, rationality or justification in the judicial approach of the Magistrates towards probation vis-à-vis the offences relating to essential commodities.

The offences under the Prevention of Food Adulteration Act committed by adult offenders not below 18 years of age were taken out of the scope of probation by section 20-AAA of the said Act. The section came into force with effect from 1.4.1976. No notice has been taken of this vital change in law by many courts of the state. They, out of sheer ignorance of law, continue to grant probation to adult food adulteration offenders despite a ban to the contrary. The courts should know that adulteration...
of food is a health hazard. Such a serious offence committed for greed deserves deterrent punishment. No leniency of the law should be shown to a person whose clandestine operation weakens the vitality of the nutritiously deficient nation. Similarly, the benefit of the Act has been barred to adult offenders convicted of custom offences. The non-application of the Act to custom offences in the state is attributed to the nil recording of custom crime in the state from 1974 to 1978.

The offences punishable under the Dangerous Drugs Act and the Drugs and Cosmetic Act are very serious. They adversely affect the public health. Their commission is mainly for economic gain. The adult offenders except the drug addicts should be kept out of the purview of probation. Out of 14 probationers found guilty of offences under the said Acts, the release on probation of good conduct is apt only in 2 cases and uncalled for in the remaining. The courts in the state should be very vigilant while deciding to give the benefit of the Act to the offenders held guilty under the aforesaid Acts.

All the offences under the Explosives Act, 1884 are eligible for probation as the maximum sentence of imprisonment under the Act is three years. The benefit of the Act should be given to the first and young offenders such as possessors or manufacturers of crackers for use on festivals. As a general rule, the grant of probation to offences punishable under the Explosive Substances Act, 1908 should be denied. However, the minor offenders should be treated as an exception to the said rule. The offences under the aforesaid Act are very serious and
maximum term of imprisonment can extend to 20 years. Under the prevailing circumstances where dangerous explosions have become common occurrence in Punjab, the long-term of imprisonment can only meet the ends of justice. Section 18 of the Act should be amended to ban the benefit of probation to adult offenders found guilty of offences under the Explosive Substances Act.

All the offences under the Dowry Prohibition Act are eligible for probation. The release on probation is desirable where there is possibility of restitution of conjugal rights. If the dowry seeker expresses his repentance over his past lapses and undertakes to properly maintain his wife without future expectation of dowry, the application of the Act is appropriate. The court must take special written undertaking from the offender regarding his future behaviour towards his wife. The probation order must be with supervision and the probation officer should be directed to vigilantly watch the interest of the weaker sex. In all other cases, maximum term of imprisonment and a heavy dose of fine are more appropriate.

The probation officer occupies a pivotal position in the probation system. He guides the court in the selection of reclaimable offenders for probation and renders necessary supervision, counselling and assistance to the probationers released under his care for their proper rehabilitation in society. With his pronounced abilities he is expected to act as a case explorer, interviewer, motivator, educator, diagnostician, prognostician, a report writer and a community relation man. In the light of indifferent attitude of courts, community etc., towards probation, the role of probation officer assumes mo
significance for the successful working of the institution in the state. The aforesaid general characteristics of probation officer in a condensed form have been incorporated in Rule 7 as his essential attributes in Punjab.

There is no probation officer in the state who possesses all the characteristics of a correctional case worker. This is a fundamental weakness of the probation system of the state. This is attributed to defective organisational set up of Probation Services. The Inspector-General of Prisons is the Chief Controlling Authority of Probation Services in the state. The Probation Services are an integral part of Prison Department. The post of Chief Probation Officer, who is responsible for the working of probation in the state, is interchangeable with the Deputy Superintendent of Jail Grade I and that of District Probation Officer with the Deputy Superintendent Grade II. Similarly, the post of Probation Officer is interchangeable with the Assistant Superintendent of Jail or the Jail Welfare Officer. The District Probation Officer is responsible for the implementation of the Act in the concerned district. The prison officers do not have sound knowledge of behavioural sciences which is essential for understanding and reconditioning of human behaviour. Their attitude towards prisoners is callous; it smacks of fear psychology; and there is total disregard of human dignity. They are absolutely alien to the rehabilitative techniques required for the readjustment of the probationers in the society through the non-institutional treatment of probation. They do not evince
any interest in the new assignment nor they adapt themselves to the new job which is assigned manifold responsibilities for the enforcement of the Act. Actually the appointment as District Probation Officer or Probation Officer is taken as departmental punishment. The prison officer has many material and other benefits which are not available to the probation officer. Therefore, the probation officer always endeavours to go back to the parent post as Jail Officer. The correctional worker, made so by coercion, concentrates his efforts for transfer to prison and fabricates the performance of duties as probation officer. This is abundantly clear from the role performance by probation officers of the state and its adverse effects on the working of probation. The discussion in Chapter VI and VII highlights this aspect along with defective functioning of probation.

The supervision of probationers in the state is in real jeopardy. Hardly 9 per cent probationers report of their own to the probation officers as required under the conditions of supervision order. 36 and 19 per cent probationers appear before the probation officers after the receipt of first and second notice respectively. This is evident from Table 17 in Chapter VII. On the whole, approximately half of the supervision period lapses by the time of reporting. This weakens the vitality of supervision which is meant to transform the probationer into a law abiding citizen through necessary control and assistance of probation officer. The non-explanation of conditions of supervision to the probationers by the courts,
wrong advice of the defence counsel, malpractices of court clerk, absence of proper method of sending supervision cases to probation officers, illiteracy of probationers and indifferent attitude of probation officers and courts towards violation of conditions of supervision, are the main reasons of non-reporting by the probationers.

Bad beginning is made worse by the ignorance and disinterest of probation officers in the rehabilitation techniques and processes. Very rarely they explain the conditions of supervision order to the probationers and seldom spell out their role as correctional worker to the probationers; win their confidence and get necessary information; and advise them as to their future course of conduct. Table 20 and its appraisal makes it very clear. The number of visits by the probationers to the office of probation officer and visits to the vicinity of probationers by the probation officer is neither in conformity with the law nor according to the rehabilitative requirements of the probationers. Table 21 and actual recording in the case file No. 45/1979 (at page 338) are classical examples of role performance of probation officers. Rule 15 which casts heavy responsibilities on the probation officers for supervision of probationers, is practically kept in abeyance by the probation officers of the state.

Uncontrolled, unguided and unaided probationers violate conditions of supervision with impunity. Generally, neither they keep the probation officer apprised of their means of livelihood and place of residence nor they leave the jurisdiction
of the probation officer without his permission. The association with bad characters continues. There is no endeavour to earn an honest living. Honest and peaceful living remains a far-off goal. The addict probationers do not abstain from intoxicants. The commission of a fresh offence is not taken note of by the probation officer even if the matter is taken to the court by the police or the private complainant. Table 22 in Chapter VII shows the actual violations of supervision conditions which are shown negligible in the official reports (Table 23 and nil in the ceremonial declaration of the Chief Controlling Authority of Probation Services in the State.

The laudable provision of early discharge of probationer due to his exemplary good behaviour, much needed for the overburdened probation officers of the state to reduce their workload, is not being appropriately applied by the probation officers. Similarly, the revocation of probation order in case of undesirable and incorrigible probationers who are unfit for probation but get it through bribery or otherwise is factually rendered inoperative by the probation officers and the lower courts. Table 25 substantiates it. Rehabilitation work done by the probation officers for probationers under supervision is a far-off reality. They are unaware of the real spirit of rehabilitation. The completion of official formality in this respect, given in Table 26, exposes the farcical operation of rehabilitation of probationers in the state. The current correctional philosophy emphasises the increasing necessity and importance of rehabilitation but its actual working shows its decreasing factual performance even as per official version.
Unmanageable case-load of the probation officer adds to his indifferent attitude and inability to discharge the onerous responsibilities of a correctional case worker. Without adequate facilities, amenities and co-operation from concerned quarters, he is required to supervise more than double the optimum number of probationers, that too, at far-off places from his headquarters. It is humanly impossible for him to maintain contact with all the courts within his jurisdiction and supervise such a large number of probationers sprung over a large area. Consequently, he considers supervision as a mere formality. The optimum number that a probation officer can supervise ought to be 30 probationers. This can be increased to 50 if each probationer is inspected in his home surroundings once in two months. The calculation of work units of a probation officer should be as under:

1) One presentence enquiry
   5 units x 5 = 25

2) One inspection supervision report
   2 units x 25 = 50

3) Miscellaneous inquiries
   2 units x 5 = 10

4) Office work, court attendance travelling time etc., at 2 hours per unit
   2 units x 20 = 40

Total 125 units

The composite effect of section 5 of the Act and section 361 of the Code makes probation under the Act an equally important case disposition method alternated to imprisonment. Rather the current compelling constraints have made probation as a more viable method of disposing of the convicts than imprisonment. This is clear from the number of convicts admitted to prisons and released on probation in the state from 1978 to 1981.
Since probation has been accepted as a better sentencing alternative to imprisonment, the number of offenders disposed of under the Act has been increasing; and there is extreme necessity of supervision in overwhelming majority of these cases. The present scanty, unsatisfying and unsuitable set up of Probation Services needs overhauling for proper working of the Act. The current conditions in the state where most of the probation officers are called back to the prison to handle the agitators adds to its imperatives. The laudable correctional work is forlorn in oblivion and the factual functioning of the Act is in quandary. For appropriate assistance to courts and effective supervision of probationers, an independent Probation Department should be set up. It should be headed by a highly competent Director well versed in correctional services. Adequate conveyance and other facilities should be provided so that the object of the Act is carried out in letter and spirit. The infrastructure of the proposed Probation Services in the state is sketched on the following page.

There should be a recurring provision in the state budget for strengthening of the Probation Services both in quality and quantity. The number of probation officers ought to be in commensurate with that of the probationers under supervision. Punjab Probation of Offenders Rules, 1962 should be so amended as to fully adopt the suggested Probation System in the state.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of convicts admitted to jail</th>
<th>Number of convicts released on probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>12,589</td>
<td>8,758</td>
</tr>
<tr>
<td>1979</td>
<td>9,418</td>
<td>13,704</td>
</tr>
<tr>
<td>1980</td>
<td>8,304</td>
<td>14,170</td>
</tr>
<tr>
<td>1981</td>
<td>11,659</td>
<td>13,752</td>
</tr>
</tbody>
</table>
TABLE 18
Organisational Set Up of Proposed Probation Services in Punjab

Director of Probation Services

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S.P.O. District Probation Officer
S.D.P.O. Sub Divisional Probation Officer