CHAPTER II

AN APPRAISAL OF THE MAIN PROVISIONS OF THE ACT

21 Object of the Act

The object of probation everywhere is the protection of society by preventing the crime through rehabilitation of the offender in the society as its useful member without curbing his freedom, subjecting him to unsavoury prison life and depriving him of his social and economic obligations. The Act seeks to accomplish this object by introducing individualization of punishment. It shifts the focus of criminal justice from crime to the criminal by replacing punitive approach with reformatory one. Therefore, the Act is a milestone in the progress of modern liberal trend of the reform in the field of penology. It is the result of the recognition of the principle that the purpose of criminal law is more to reform the criminal than to punish him. The Act is enacted with a view to introduce a social reform. It prevents the turning of reclaimable offenders into hardened criminals by providing them educative and reformative treatment in the community.


The underlying object of the Act has very lucidly been spelled out by the Supreme Court and the High Court of the State of Punjab as:

The purpose of the Act is to stop the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology according to which efforts should be made to bring about correction and reformation of individual offenders and not to resort to retributive justice. Modern Criminal Jurisprudence recognises that no one is a born criminal and that a good many crimes are the result of socio-economic milieu. Although not much can be done for hardened criminals yet a considerable emphasis has been laid down, on bringing about reforrna of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is provided that young offenders should not be sent to jail except in special circumstances.

The Act is not meant for letting loose all young offenders with reckless unhampered potential because they are young or first offenders. Where the Court is of the opinion


that the probation officer would not be in a position to control or supervise the activities of the offender, the release on probation cannot be granted. The kind probationary process envisaged by the Act is not intended to cover the cases of socio-economic offenders whose anti-social activities imperil the safety of the society and whose prolonged detention is the best assurance of the protection against him.

The aforesaid judicial exposition of the purpose of the Act is comprehensive so far as the young offenders are concerned. However, these judicial pronouncements have failed to highlight the utility of the Act for first offenders, who commit crime through ignorance, or due to influence of others, who but for such isolated lapse are expected to be good citizens. Sending such persons to jail is not in tune with the spirit of the Act. Rather it defeats its laudable object. A comprehensive judgement of the State High Court or Supreme Court, in this context, is a prime need of the time. Subordinate Courts with their traditional approach do not flatly open their doors for probation of first offender unless they are goaded by the higher judicial mandates. In the alternative a directive from the Central Government of mandatory nature should be issued.

In sum, the purpose of this progressive enactment is to reclaim back to the fold of civilized and orderly society those young and first offenders, who for certain reason have

have fallen in wrong company or gone astray or committed crime under compulsion etc., but still have reasonable chances of easy and amicable adjustment in the society. They are at a curable stage and the crime has not gone deep into them.] The Act is not designed for hardened and habitual criminals who are beyond redemption. The non-institutional community based correctional treatment under the Act is not intended for those young and first offenders who have undergone a sufficient crime training, who if given a chance, are not likely to keep the peace and be of good behaviour. For instance pick pockets.

2.2 Scope of the Act

The Act is pervasive as the scope of release on probation of good conduct is wide enough. It applies to all offences whether under the Indian Penal Code or under other laws except those punishable with death or life imprisonment as mentioned in section 18. Unlike Section 562 of the old

7. There are 51 sections under the Penal Code which are precluded from the purview of the Act as these are punishable with death or imprisonment for life. The offence under section 11 of the Prevention of Food Adulteration Act, 1954 and the Railway Act, 1926 are also punishable with imprisonment for life.

Section 18 of the Act excludes from its ambit section 31 of the Reformatory Schools Act, 1897, Section 5(2) of the Prevention of Corruption Act, 1947, the Suppression of Immoral Traffic in Women and Girls Act, 1956 or of any law in force in state relating to juvenile offenders or borstal schools.

The Suppression of Immoral Traffic in Women and Girls Act was amended in 1978 and offences under Sections 7 and 8 were made subject to the provisions of the Act. Rather court is required to call for the report of probation officer and then record reasons for not releasing first female offender found guilty under the said sections on probation of good conduct. Law Commission of India in its 47th Report recommended the bar of probation to socio-economic offences committed by adult offenders. Necessary changes in some Acts have been made but not in the Act. These are discussed in Chapter V,
Code and Section 360 of the Code the Act has done away with the distinction on the basis of age or sex. All the offenders whether below 21 or above are equally entitled to avail of the benefit of release on probation. Moreover, the grant of probation is not confined to first offenders as is the case under the Code. The Court is competent to release a previous convict on probation of good conduct if it thinks it desirable to do so having regard to the circumstances of the case including the character of the offender and nature of the offence. Thus, the scope of the Act is pervasive as it takes within its wings all offences not punishable with imprisonment for life whether committed by the young, first, woman or even previous convict.

The power under the Act can be exercised by any Magistrate where as such power under the Code is restricted to the Judicial Magistrate of the First Class. Second class Magistrate can grant probation under Section 360 of the Code if he is specially authorised by the High Court in this behalf.

The most distinguishing feature of the Act is the provision for placing the released offender under the supervision of a probation officer a sine qua non of the very concept of probation as currently understood and accepted.

The court while releasing the offender on probation of good conduct under section 4(1) may pass a supervision order putting

8. Proviso to section 360(1) of the Code.
9. Definitions and explanation of the concept in Chapter I prove this.
the probationer under the supervision of probation officer. The power of the Court is discretionary. It can be exercised if the court is of the opinion that supervision is desirable in the interest of the offender as well as of the public. No supervision provision was made under Section 562 of the old Code nor there is any such provision under section 360 of the Code. The probation under the Act is wider in scope, it is a correct exposition of the concept (though half way) and a major departure from the Code where it was introduced as a misnomer without spelling out the infra-structure for its implementation.

The power to grant probation under the Act is discretionary. Section 6 lays down an injunction not to impose a sentence of imprisonment on offenders below 21 years found guilty of offences not punishable with imprisonment for life.

10. Section 4(3) of the Act.

(1) When any person under twenty one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and character of the offender, it would not deal with him under Section 3 or Section 4 (release after admonition or release on probation of good conduct) and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or 4 with an offender referred to in sub section (1), the Court shall call for a report from the Probation Officer and consider the report if any, and other information available to it relating to the character and physical and mental conditions of the offender.
In case the court considers it undesirable to release the young offender on probation of good conduct, it shall record its reasons for that. And for recording such reasons, it shall call for the report of probation officer and consider it. Only then and then, the court can sentence a young offender to imprisonment. This is a mandatory provision and all courts, whether trial or appellate, are bound to follow it. The sentence of imprisonment imposed on the young offenders without compliance with the provisions of section 6 is illegal. The post-1958 advances in the field of penology and their acceptance by the Indian Parliament in the Code have further constrained the discretion of the Court. They have filled up the void created by Section 6 in case of offenders above 21 years of age. Section 354(4) of the Code discourages imposition of short term sentence of imprisonment. Section 361 requires that the court shall record reasons in its judgment for not releasing the eligible offender on probation of good conduct. Sections 13 and 14 of the Act stop the operation of Section 562 of the Code to the area of application of the Act. The provisions of Section 360 of the Code which are the same as those of Section 562 do not apply where the act has been enforced. Therefore, the court is bound to assign reasons for not granting probation under the Act only.

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L.J. 921 (Punjab and Haryana)

Section 361 Special Reasons to be recorded in certain cases:

- Where in any case the court should have dealt with -
  (a) an accused under Section 360 or under the Probation of Offenders Act, 1958 (30 or 1958), or
  (b) a youthful offender under the Children Act, 1940 (60 of 1940) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but

has not done so, it shall record in its judgment special reasons for not having done so.

Section 19 of the Act stops the operation of Section 562 of the Code to the area of application of the Act. The provisions of Section 360 of the Code which are the same as those of Section 562 do not apply where the act has been enforced. Therefore, the court is bound to assign reasons for not granting probation under the Act only.
215(2) and 248(2) provide for sentence hoarding where the court has decided not to release the offender on probation of good conduct. These sentence hearing provisions are intended to serve the same purpose as Section 6(2) i.e., the report of probation officer, as section 360 is mute on calling for such report. The latest but not the last is the addition of the statutory obligation under Section 10(6) and 10(7) of the Suppression of Immoral Traffic in Women and Girls Act, 1956\(^{15}\). Both the sub-sections correspond to sub section (1) and (2) of section 6 of the Act. The court is restrained from imprisoning first female offenders found guilty under section 7 and 8 unless it records its reasons on the basis of report of probation officer and other available material which justifies the imposition of imprisonment. The inclusion of the said provisions prove that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of the criminal justice in our country\(^{16}\). Hence, the vital role of probation under the existing criminal justice system in India.

The composite effect of sections 6, 361 and 10 is that the court is under a statutory obligation to state special reasons in its judgement for not granting probation to the
offender irrespective of his age.) The special reasons are to be recorded not on the basis of guess work but after consulting the presentence report or hearing the accused on the question of sentence. No such mandatory obligation is cast on the court for releasing the offender on probation of good conduct. It implies that non-institutional treatment of probation is the normal case disposition method and the imprisonment is to be awarded in special cases attended with special reasons. The non-compliance with the provisions of section 361 (which impliedly include section 6 and 10) is a ground for interference by the Higher courts. The High Court in revision or the Supreme Court in special leave to appeal can release the offender on probation by setting aside the imposition of imprisonment. Hence, the widening scope of Act in the humanitarian administration of criminal justice.

Inspite of the pervasiveness of the Act and its growing importance as an instrument of enlightened criminal justice, it continues to receive little attention from the courts.

2:3 Release After Admonition

Admonition by the court means a censure or warning to the accused that he is being let-off but in case of repetition

he would be punished severely in accordance with law. It is an extension of the principle that leniency should be shown to the young first offenders guilty of minor offences to whom verbal condemnation coupled with future caution would be sufficient to meet the ends of justice. Section 3 of the Act provides:

When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years or with fine or with both, under the Indian Penal Code or under any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of the opinion that, having regard to the circumstances of the case including the nature of the offence and character of the offender, it is expedient to do so, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

20. Actually admonition is not probation as there is no conditional suspension of the punishment. The offender is not required to execute a bond for observing the conditions of probation order. There is no imposition of the suspended punishment in case of the repetition of the offence. Admonition form an integral part of the Act and also occupies an important place in the ancient criminal justice system of India; P. V. Kene, HISTORY OF DHARANISHASTRA, Vol. II, at 391. The Code of 1898 as well as the Code provides for release after admonition. Keeping in view its place in the Act and the Code, a brief appraisal of its substantive provisions and working in the state is considered essential.
Explanation: for the purpose of this section, previous conviction against a person shall include any previous order against him made under this section or section 4(21).

A careful reading of the section shows that it includes within its scope all offences, whether under the Penal Code or under any other law, punishable with imprisonment not exceeding two years\(^2\) and also the offence of theft, criminal misappropriation and cheating punishable with imprisonment in excess of the general limitation of two years. There are about 170 offences under the Penal Code and a large number of offences under the local and special laws which lie within the purview of the section. Hence, the wide scope of admonition under the Act.

The admonition is meant for those cases where the offender but for such isolated lapse that led him to commit the crime, would be expected to make a good citizen.\(^3\) The power to release an offender after warning is discretionary. But before exercising the discretion, the court is required to make its mind that, in view of the circumstances of the case including the nature of the offence and character of the offender, it is an appropriate case for meeting the requirements of section 360 of the Code.

22. Supreme Court in Radharam v. the State of M.P. 1981Cri.L.J. 1705 released on admonition a woman found guilty under section 307 of the I.P.C. This is in violation of the provision of Section 3 of the Act and not permissible under the law. It has been criticised by Sh.P.R. Thakur in his paper "Is Release After Admonition For An Offence Under Section 307, I.P.C. Legally Permissible" published in 1982 Cri.L.J., Journal Section, at 1.

of justice by the administration of admonition to the offender. The exercise of discretion by the Court needs a considerable sense of making proper decision. This pre-supposes the existence of sufficient information relating to the said factors which guide the exercise of discretion. There is no provision under the section to call for the presentence report of the probation officer. This is also a weak point of this provision. There is no provision for sentence hearing in cases to be dealt with under the section because all the offences punishable upto 2 years imprisonment are summons cases. Such cases are generally tried summarily. Even theft, criminal misappropriation and cheating fall within the jurisdiction of summary trial.

The other major defect of the section lies in its kind application to economic offenders found guilty of theft, misappropriation and cheating. These offences are the result of preplanning catered by well guided motive and not the offshoot of sudden impulse or mistake. Setting free swindlers and pickpockets after simple warning will not deter them from future relapse to crime. Rather the idea to commit crime with immunity is likely to spring up in their minds. There is no proper record of previous criminal conduct of the offender in

24. Rule 24 of the Punjab Probation of Offenders Rules, 1962 provides for the calling for of such report. But the Rule is hardly made known by the court.
25. Section 289 of the Code. The sentence hearing provided under section 248(2) is available only in warrant cases.
question. Therefore, the misuse of the section to these hardened offenders in the guise of first offenders defeats the very purpose of reprimand. It causes injury to the victim without protecting the society and preventing the crime. The imperatives of social defense and fair play of justice call for barring the benefit of admonition to said offenders. Instead, in appropriate case, probation may be given. However, the benefit of this provision should be given to the first and young offenders who deserve the application of the kind provision of the correctional justice clause.
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(1) Magistrate Magistrates
(2) Judicial Magistrates

No. of Offenders Released on Admission by

Use of Section 3 By Courts as Given In Reports of the State High Court

Table 3-4
Table 1 and 1-A show the use of section 3 by the courts of the state from 1967 to 1981. This version of Probation Officers is not correct. Many vicissitudes in the operation of the section are in direct conflict with the figures prepared by the High Court in its Annual Report entitled "Notes on the Administration of Criminal Justice in the State of Punjab". The reports prepared by the officers of the High Court on the basis of the reports of the subordinate courts are also not correct. The columns used in the reports show the use of the section by the Magistrates and Chief Judicial Magistrates. They do not mention the application of the section in appeal cases especially by the Session Courts. But to say that there was marked decline in the use of the section by the courts after 1971 which further increased making the section practically inoperative, is absolutely wrong. The admonition is still liberally but irrationally applied by the courts. The inspection of the relevant record prepared by judicial and probation officers and personal inquiries from them lead to the conclusion that the release after admonition has yet to be put on its proper footing.

The humane approach of modern penology does call for the effective use of admonition in appropriate cases, i.e., where the verbal censure coupled with apprehension of severe future punishment are sufficient deterrent for chance and first offenders guilty of minor offences. Some imperatives in this context are extremely essential. Calling for the presentence
report should be stressed and section be amended accordingly. Sentence hearing should also be allowed in summons cases and the Code should be amended to accommodate this change. The benefit of the Section should be confined only to the first young offenders and not to all offenders found guilty under sections 380, 381 and 420 of the Penal Code. All the suggested changes will certainly help the courts in making an appropriate use of the section.

214 Release on Probation of Good Conduct

Section 4 of the Act occupies a pivotal position in the community based rehabilitative scheme of probation envisaged by the Act. It provides for the release of an offender on probation of good conduct with or without supervision. As an embodiment of progressive penal policy and enlightened criminal justice, it states:-

(i) 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 the opinion that, having regard to the circumstances of the case including the nature of the offence and 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.

(2) Before making an order under sub section (1) the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub section (1) is made, the court may, if it is of the opinion that in the interest of the offender and of the public it is expedient to do so, in addition pass a supervision order, directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (1) shall require the offender, before his release, to enter into a bond, with or without sureties to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular
circumstances, considers fit to impose for preventing a repetition of the same offence or commission of other offences by the offender.

(5) The Court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offender, the sureties, if any, and the probation officer concerned.

A perusal of the aforesaid provisions of section 4 makes it clear that it covers the cases of all offenders irrespective of their age, sex or previous record except those guilty of offences punishable with death or imprisonment for life and those specifically excluded from its purview. It shows that probation is not meant for serious offences, i.e., those punishable with death or imprisonment for life. The other disqualification for probation is the non-existence of fixed place of abode or regular occupation either of the offender or his surety.

2:5 Restriction on Grant of Probation

Fixed Place of Abode or Occupation. The proviso to sub-section (1) of the section forbids the court from exercising its power of granting probation where neither the accused nor his surety has a fixed place of residence or regular occupation either within the jurisdiction of the court exercising the power.


28. The scope of the section is covered under the scope of the Act. Therefore, repetition has been omitted.
under the section or at a place where the offender is likely to stay during the period of suspended sentence. This means that fixed place of abode or regular occupation is pre-condition for releasing the offender on probation of good conduct.

Consequently, an offender above the age of 16 years in the State of Punjab, U.P., and Maharashtra, and of 16 years if male and of 18 years if female in the rest of the country, without a fixed place of residence or regular occupation inevitably suffers imprisonment and languish in jail. He may be a chance offender and reclaimable one being at a curable stage. Poverty supplemented by his vain attempts to get employment, moving from pillar to post, uncalled compulsion or bad company and others etc., might have landed him in the arms of criminal

19. Such a restriction was not imposed under (Corresponding provisions) section 5 of the Bombay Probation of Offenders Act, 1938 and section 5 of the Central Provinces and Berar Probation of Offenders Act, 1936. Now the Act has been enforced in the area of operation of the said local enactments, the restriction is applicable throughout.

30. This information is taken from the publication of National Institute of Social Defence, New Delhi entitled TOWARDS DELINQUENCY CONTROL (1979) at 27.

31. The Central Children Act, 1960 (Applies to Union territories) and the State Children Acts (in Punjab, the East Punjab Children Act, 1949) bars the imprisonment of a child offender and provides for his keeping in the certified/special school where he is kept away from the unhealthy jail atmosphere and reared in homely environment and is given educational, vocational and ethical training. Section 29 of the East Punjab Children Act provides for the commitment of youthful offender to the certified school. Section 30 deals with release on probation of good conduct. No condition of fixed abode or occupation is appended there.

There is no institution in the State for the keeping of offenders above 16 years. The only Borstal jail at Faridkot meant for young prisoners has practically been converted into an ordinary prison as large number of adult prisoners are housed there.
law. But for such isolated lapse, he is a perfectly law
abiding citizen without an iota of deviant trait. The absence
of social security system and the faulty socio-economic set up
are the root cause of his not having a fixed place of residence
or regular occupation or none standing security for him.
Sentencing such a person to a term of imprisonment on the sole
said ground is against the basic tenets of administration of
the modern criminal justice which primarily aims at the
reformation and rehabilitation of all the curable offenders and
the underlying object of the Act. When such a person comes
out of prison, the stigma of conviction and incarceration
deprives him of any employment and frustrates his endeavours
for rehabilitation in the society. Disgusted with his luck and
discarded by the community, he is impelled and compelled to
adopt a career of crime. It is pertinent in this context to
mention the personal experience of Sh, P.B. Gajendragadkar,
former Chief Justice of India and Chairman of the Law Commission:

In my early days as a judge, the case of a young
habitual offender was brought before me in a criminal
revision application; the offender was 21 years old, and
had nine previous convictions recorded against
him. His statement before the trial Magistrate showed
that he began his criminal career out of poverty and
was imprisoned for three months for his first offence.
When he came out of jail, he tried his level best to
get a job, but failed. Everytime, when a job appeared
to come his way, an inquiry was made about his past;
he had honestly to intimate his prospective employer
the fact of his conviction, and the employer invariably

32 Supra notes 3 and 16.
turned his back to him. The result was that the only way he could manage to live was to commit an offence and to go back to jail.

It is, therefore, suggested that the proviso to sub-section (1) of section 4 be amended. It 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.

There is no Home/Hostel for probationers in Punjab.

It is further suggested that the Rule 29 of the Punjab Probation of Offenders Rules, 1962, which is being kept in abeyance should be enforced in letter and spirit by setting up requisite number of Homes/Hostals for probationers in the State. The infrastructure for the efficient working and management of the institution should also be outlined. To mention a few: requisite facilities for character building, vocational education, academic and ethical, employment etc., must form an integral part of the Hostel/Home for probationers. This will certainly prevent the degeneration of indigent reclaimable offenders. Their proper resocialisation in the society as its productive members.

34. Rule 29 provides for the maintenance or approval of institutions or other premises for the reception of probationers required to reside therein by supervision order under section 4(3). Hostels/ Homes for probationers have been set up in the states of Bihar, Maharashtra, Orissa, Rajasthan and Tamil Nadu. Source: 1979 Statement of National Institute of Social Defense, New Delhi.
Offences punishable with Death or Imprisonment For Life

The Act precludes from its purview the offences punishable with death or life imprisonment. These offences being considered very serious and heinous, their perpetrators have been deprived of the benefit of the non-institutional treatment of probation. The Legislature has withheld the benefit of kind probationary process to all, irrespective of age or sex, who are found guilty of offences punishable with death or life imprisonment whether under the Penal Code or under any other law.

The fact that imprisonment for a term shorter than the life imprisonment can be awarded does not take the offence out of the category of offences punishable with life imprisonment. The offence continues to be as such if one of the punishments prescribed for the offence is death or imprisonment for life.

The underlying policy of the Act is not to grant probation in very serious offences, viz., those punishable with death or life imprisonment. This leads to the conclusion that probation under the Act is a corrective but selective treatment cum case disposition method designed for the first and young offenders not guilty of severe and harsh offences.

The absolute ban on the grant of probation to offenders guilty of offences punishable with death of life imprisonment is

S. 10. PRBBA.

is without justification and against the spirit of the modern criminal justice as it stultifies the reform of young and first offenders. There are about 51 sections under the Penal Code which are punishable with death or life imprisonment. The I.P.C. prescribes the maximum limit of imprisonment and not the minimum, the latter may be till the rising of the court. It is a fact that punishments under the IPC are excessive.

The Penal Code was framed at a time when the classical theory dominated the domain of the criminal jurisprudence according to which punishments under the Penal Code were designed to fit the offence and not the offender. This is contrary to the current theory of individualisation of punishment which takes into consideration the offender more than the offence. The punishments provided under the Penal Code were to be reviewed and reduced accordingly as each successive generation is expected to review the crime and punishment. Even the framers of the Penal Code admitted of the severity of its punishments and wished their mitigation. They observed:

We entertain a confident hope that it will shortly be found practicable greatly to reduce the terms of imprisonment which we propose wherever such a Code shall come into operation, we conceive that it will be advisable greatly to shorten many of the terms of imprisonment which we have proposed.

39. Supra note 37, at 1359.
40. Supra note 37, at 1359.
The lapse of a century and one quarter of its years has gone down the drain and the noble wishes of the authors of the Penal Code are yet to be fulfilled. The I.P.C. Amendment Bill, 1972, which sought to overhaul the Code and give it a new look in tune with the contemporary penal thinking, died a tragic death after rotting in the Parliament for eight long years. Progressive marches in the field of penology and their judicial recognition are set at naught by the maximum limit of imprisonment for life which is very rarely awarded unless it is the minimum one. The imperatives of rationalisation of punishments and constitutional obligations for humanising the rigours of incarceration have failed to quicken the conscience of our law makers. In this context, the punitive theory continues to hold its sway in the Indian Penal Code though it has, since long, been discarded and replaced by the reformatory approach of Individualisation of Punishment.

Moreover, it is pertinent to note that in some offences punishable with life imprisonment, the sentencing power of the trial court is far below even the period of 14 years which is now recognised as standard measurement of the term life imprisonment.

41. The first draft of the I.P.C. was prepared in 1937 by Lord Megaw and his team.
42. The term imprisonment for life means imprisonment for the whole-life. Section 57 of the I.P.C. provides that in counting fraction of imprisonment, the imprisonment for life shall be taken as twenty years. Now Section 433-A of the Code bars the release of life convict unless he has undergone imprisonment for 14 years.
For instance, the offences under section 326, 377, 389, 394, 409, 467, 472, 474, 475 and 477 are punishable with life imprisonment but triable by the Judicial Magistrate of First Class whose sentencing power does not go beyond the imprisonment for a period of three years. Therefore, for all practical purposes the maximum sentence for these offences is three years imprisonment. It implies that the offences where the imprisonment cannot exceed three years are taken out of the ambit of the kind treatment of probation under the guise of life imprisonment which has been kept in continuous suspended animation by circumscribing the sentencing power of the trial court.

On the other hand offences under section 423, 235, 240, 306, 315, 316, 329, 331, 333, 366, 366A, 366B, 367, 372, 373, 399, 437, 439, and 450 are punishable with ten years imprisonment but triable by the Court of Sessions whose sentencing power is not circumscribed except by the maximum that is permitted under the law. In these cases the period of imprisonment is, generally, more than the maximum of 3 years that can be awarded by the Magistrate in the said offences punishable with life imprisonment. The offences under section 124, 126, 234, 308, 397, 398 and 402 are punishable with imprisonment for 7 years but triable by the Sessions Judge. Even in these cases the

43. First Schedule of the Code.
44. Section 29(2) of the Code.
45. The classification of offences given by Sh. J.P.S. Sirohi in his paper "Probation Officer's Investigation Report in the Realm of Criminal Judicial Administration" Journal of Indian Law Institute (July-September 1979) at 313: is not correct. The offences punishable with 7 years triable by sessions judge have been shown as punishable with 10 years.
The punishment that Court can impose is double the permissible one to be awarded by the Magistrate in life imprisonment cases. The aforesaid serious offences triable by the Court of Sessions are made subject to the benefit of the Act whereas said cases of life imprisonment handed over to Magistrates are denied probation. If period of imprisonment is the measuring rod of seriousness of the offence, then there seems to be no rationalisation in the said classification for depriving the use of probation to desirable cases of offenders punishable with imprisonment for life. In view of the uncertainty of review of the sentences under the Penal Code, the arbitrary limit of life imprisonment should not stand in the way of probation where all other factors favour it. This finds support in the latest judgement of the State High Court where it has been held that severity of the offence should not come in the way of grant of probation if other factors favour it. 

There are some cases where a person is held liable for an offence by the principle of constructive liability either by sharing common intention or concurring in common object or entering into conspiracy. Sections 34, 149 and 120-B are invariably put to use by the police. It is a common practice that all the male members of a family or a group or leaders of party or well placed persons in the family are involved in the case and necessary circumstantial evidence is procured. These innocent are rarely discharged by the police after investigation.

or by the court after inquiry. For instance a young engineer
or doctor, or civil servant or a student is entrapped in a case
as a result of sudden fight arising out of sudden quarrel. The
place may be his native village or hostel or a cinema hall or
marriage site or other such place. The fault of the man is his
presence which is deemed to be active involvement by the
application of the principle of joint responsibility. Such a
person deserves probation as sending him in jail is to ruin his
promising career which is an asset for the society and turns
him into a professional criminal which is a liability for the
community. Similarly, an abettor of these offences should also
be admitted to the benefit of probation and the barrier of life
imprisonment should not come in the way of granting him
probation. Other deserving cases like the desolate woman
found guilty under Section 307 of I.P.C. for jumping into the
well with her children call for the release on probation of
good conduct. The Supreme Court in Radharani versus the State
of M.P.\(^{47}\) has gone too ahead by releasing the accused after
admonition\(^{48}\) for an offence under Section 307 of I.P.C. which
is punishable with life imprisonment.

It is, therefore, suggested that the arbitrary bar of
life imprisonment should be removed by making necessary
amendment in the Act. All the offences punishable with life

\(^{47}\) 1981 Cri.L.J.1705(S.C.)

\(^{48}\) Section 3 of the Act.
imprisonment and imprisonment upto 10 years, now triable by
the Magistrate must be tried by the Sessions Judge. The First
Schedule of the Code of Criminal Procedure should be amended
accordingly. The report of Probation Officer in such cases shall
be made mandatory.

2:6 Factors to be Considered by the Court

The term of imprisonment, a yard stick for determining
the seriousness of the offence and eligibility for probation, is
not the sole deciding factor. It is clear from the wording of
section 41(1) that the discretion of the court in making a
choice between imprisonment and probation has to be exercised
with due regard to the circumstances under which the offence
was committed, the character of the offender and nature of the
offence.

2:7 The Place of Presentence Report Under the Act

Contents and Its Object

Section 4(2) of the Act deals with consideration of the
report of probation officer commonly known as presentence report
or social investigation report. Section 14 of the Act spells
out the duties of probation officer. Under its sub-section (a)
the Probation Officer is under statutory obligation to submit
the report if demanded by the Court.) Rules 24 and 14 of the
Punjab Probation Of Offenders Rules further elaborate this.

49. The detailed discussion of the topic follows at an appropriate
place in Chapter III, "Courts and Probation", see 3:2
'Sentencing Guidelines'.
50. Contents of Section 4(1) and 4(2) have been given earlier in
this Chapter.
The former prescribes the mode in Form IV for calling for the report and latter specifies the duty of the Probation Officer in preparing this report. Form III prescribes the proforma of the presentence report. Probation Officer is required to give the following information in the report:

Personal History: Behaviour and habits (Moral, recreational etc.)
Temperament (outstanding character and personality traits)
Physical and mental history and present condition. Leisure time activities.

External Influences: School record and report of teachers if available, employment history, present occupation and wages (also conditions of labour, leisure etc.) Report of employer, if any; Association, contacts with social and religious organisations, if any; Home Conditions, Family history of father,

51. Rule 14 reads:
(i) For the purpose of section 14(a) of the Act, the probation officer shall, after making discreet inquiries regarding the offender's character and antecedents, his social and environmental conditions, the financial and other circumstances of his family, the circumstances in which the alleged offence was committed and any other facts which the court has directed him to enquire into, put down the relevant facts fully and faithfully in the report, as nearly as may be in Form III.

(ii) The summary required to be given in Form III shall include an objective statement of facts along with the probation officer's assessment of the case, so as to help the court in determining the most suitable method of dealing with the offender after he is found guilty.

(iii) The report shall be treated as "Confidential" and delivered to the court on the date specified by it. It shall be enclosed in a sealed cover if sent to the court or delivered on a date prior to the date of delivery of judgement.

Section 7 of the Act provides that the Report of Probation Officer shall be treated as confidential.
mother, step father, step mother, Brothers, Sisters, Wife,
Children and other interested relations, if any; economic
conditions of the family, any social agencies, institutions
or individuals interested in the family. Reports of parents
and relations, attitude of family towards offender and extent
of its influence on him; report of neighbours, home surroundings
and general outlook, is poverty or unsettled life the cause of
offence?

Legal History: Previous institutional record, if any; statement
of present offence and circumstances in which it was committed;
offender's own reaction to the offence and his attitude towards
possible punishments, any special information required by court.

The probation officer is also bound to give Summary
of the report which is a part of the proforma. It includes:

(a) Factual background of the offender and his environment
and offence.

(b) Diagnosis (offender's attitudes, defects in character
or family, motivations and other factors regarded as
causal factors for the offence).

(c) Prognosis (treatment considered most suitable and
estimates of chances of improvement).

(d) Recommendation (if asked by court)52.

A perusal of the contents of the report leads to the
conclusion that it is a fundamental document in the correctional
field of the non-institutional treatment of probation. The
underlying object of this report is multifacets viz., to throw
light on the personality and character of the offender,

52. Similar proforma is prescribed under the different States' Probation of Offenders Rules.
offer insight into his problems and requirements, exhibits his surroundings, tells about his relationship with other people, discovers the factors responsible for his crime and his conduct in general. It is also helpful in determining the appropriate form of labour and other measures which the criminal court may think necessary for deviating the offender from the path of crime. To deprive the sentencing judge of the use of the presentence report is to undermine the modern penological procedural policies that have been carefully adopted. Even in the eyes of section 14(a) of the Act, its purpose is to assist the court in determining the most suitable method of dealing with the offender. The question for discussion that follows is whether the requisition of the report is mandatory in each case or not.

Judicial Controversy over its Role under the Act

There is a sharp division of judicial opinion as to the role of presentence report under section 4(2) before passing an order of release on probation of good conduct under section 4(1). The word 'if any' has been given different meaning by


the various High Courts. In view of the absence of Supreme Court decision on the point, the controversy goes on unabated. It has undermined the power of the court regarding the grant of probation and led to far reaching repercussions.

The majority of the High Courts hold the view that the court is bound to call for the report of probation officer before considering the question of release on probation of good conduct. In case the court releases an offender on probation of good conduct without the requisition of the report and its consideration, if received, the order of release is bad in law and is liable to be quashed in revision. According to this view, the report of probation officer is a precondition for grant of probation under the Act. It is pertinent, in this context, to mention the view of Punjab and Haryana High Court. In the case of Parkash versus State of Haryana it held that the calling for the report of probation officer is not mandatory for granting probation under section 4(1) of the Act. But this view no longer holds good. It being a Single Bench decision stands overruled in the light of a Division Bench decision to the contrary. In State of Punjab versus Naib Singh, the Division Bench held:

56. The text of sub-section (2) is given at p.16.
58. 1976 FLR 246.
59. 1978 CLR 264.
We are of the opinion that recourse taken by the trial court to the provisions of sub-section (1) of section 4 of the Act, without having called for the report of probation officer thereby, not duly complying with provisions of sub-section (2) of section 4 of the Act, vitiates the order of probation.

The latest in this context is the view of the Madras High Court which reads:—

Before deciding to act under section 4(1) it is mandatory on the part of the court to call for a report from the probation officer and if such report is received, it is mandatory on the part of the court to consider it. But, if for one reason or the other the report is not forthcoming, only then the court can decide the matter on the basis of other available material. The word 'if any' in section 4(2) covers a case where notwithstanding the requisition of the presentence report, the probation officer has not submitted it.

The ratio of these judgments is a law in their respective areas of jurisdiction. It puts a legal ban on the release of a person on probation of good conduct without calling for the presentence report.

On the other hand minority view is held by the Bombay High Court. According to it the judge may or may not call for a presentence report of the probation officer for acting under section 4(1) of the Act. He can dispense with the calling for the report if he is of the opinion that it is expedient to do so.

60. Mahalingam supra Note 57.
The requisition of the presentence report is not a pre-condition for invoking the provisions of section 4(1) of the Act.

**Correct Position**

The view of the Bombay High Court is the correct one and is workable under the prevailing circumstances as there is very small and insufficient number of probation officers in the state as well as in the rest of the country. There are two sections vis., section 6 of the Act and section 10(7) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 which provides for the mandatory calling for the report of probation officer if the court decides not to release the offender below 21 years of age and first female offender under section 7 and 8 respectively on probation of good conduct.

The special reasons to be recorded by the Court for not granting the benefit of probation shall be based on the information of presentence report and other available material. The words used in these sections are "shall call for the report of probation officer and consider the report, if any". Had this been the intention of Parliament, it would not have omitted the use of these words before the words 'if any' in section 4(2) of the Act. The fact is that Sub-section (2) makes the consideration of the available report binding and not its calling for.

The place of the report under section 4(2) and its desirability in all cases was deliberated by the National Committee on Juvenile Justice and Children's Welfare, 1961. or see supra note 15.
Correctional Conference on Probation and Allied Measures held in New Delhi in October, 1971. Keeping in view the immense utility of the report for the selection of an appropriate sentence, it was suggested to drop the words 'if any' in subsection (2) and make the report mandatory in all cases. But in view of the deficiency of probation services it was recommended:

As the probation officers are not available in sufficient number, it was not considered necessary to drop the words "if any" occurring in section 4(2).

This also shows that calling for the report is not binding before grant of probation under the Act. This too finds support in the recent decisions of the Supreme Court where it released the appellants on probation of good conduct without calling for the report of probation officer.

The exigencies of the absolute ban on the invocation of the kind of provisions of the Act without calling for the report do demand the overruling of the aforesaid cases by the Summit Court. But at the same time it must lay emphasis on the desirability of the report in maximum possible cases to avoid improper use of probation on guess work and its adverse consequences.

Desirability of the Report

The recording of special reasons under section 361 of the Code for not granting probation, the deficient knowledge of

the trial judge in progressive aspects of criminology and practical working of probation, the little time he devotes to sentencing etc., add to the desirability of the presentence report in all cases except the one where there is sufficient material on the record that makes up its deficiency. This is also evident from the following observation of the Supreme Court:

Finally comes the post conviction stage where the current criminal system is the weakest. The court’s approach has at once to be socially informed and personalised. Unfortunately, the meaningful collection and presentation of penological facts bearing on the background of the individual, the dimension of damage, the social milieu and what not—these are not provided for in the Code and we have to make intelligent hunches on the basis of the materials adduced to prove guilt.

The courts in the state as well as in the rest of country are overburdened with case loads, the areas of which are on the plus side. This further adds to the pressing necessity and role of the report in the proper administration of criminal justice of the free Indian Society. The Supreme Court has very aptly projected this as:

Trial Courts in this country, already overburdened with work, have hardly any time to set apart for sentencing reflection. This aspect is misled or deliberately ignored by the accused lest a possible plea for reduction of sentence may be considered as weakening his defence. In a good system of administration of justice, presentence investigation may be of great sociological value.

65. Tejini Supra note 6.
Dr M.K.S. Singh precisely projects the role of presentence report in criminal justice as under:-

The success of probation lies in social investigation of cases for which the court is dependent on the probation officer making these investigations. If reports are submitted in more cases it will facilitate the job of a judge to award appropriate sentence.  

The consequences of the wrong type of sentencing are highly dangerous and counterproductive. These have to be avoided through the safeguard of the presentence report. Hence, the desirability of the report in all cases to ensure appropriate sentencing. This can be summed up with the following observation of Dr. Shah with a little modification given thereafter:-

It is universally accepted that probation has to be applied after a very judicious selections of those who are likely to be benefitted from probation order, the presentence report is an essential instrument in this selective process. Ideally, such presentence investigation report should be carried out in every case, so as to avoid confinement of young offender to an institution (prison) or to avoid granting probation when a sentence of imprisonment is necessary.

67. Supra note 4 at 151.
69. Supra note 51. The Report of the Indian Jail Committee, which disfavoured the presentence report is now obsolete in view of changed conditions and times. New Report (unpublished) has recently been submitted to the Parliament.
However, there seems to be no justification for calling of the report where on the very face of the case there is a clear cut case for grant of probation. Requisition of report in such cases is likely to serve no purpose except to cause delay in the disposal of the case and unreasonable inconvenience to the corrigible offender.

Requisition of Reports by the Courts:

Table 2 below gives the number of presentence reports called for by the courts of the state from 1975 to 1981.

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<tr>
<td>Kapurthala</td>
<td>7</td>
<td>896</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Ludhiana</td>
<td>5</td>
<td>726</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Patiala</td>
<td>-</td>
<td>509</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Roopnagar</td>
<td>2</td>
<td>303</td>
<td>1</td>
<td></td>
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<tr>
<td>Sangrur</td>
<td>133</td>
<td>1333</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>134</strong></td>
<td><strong>14170</strong></td>
<td><strong>1</strong></td>
<td></td>
</tr>
</tbody>
</table>

**1991**

<table>
<thead>
<tr>
<th>District</th>
<th>Total No. of reports called for</th>
<th>Total No. of persons released on probation under the Act</th>
<th>Percentage of persons granted probation to the total no. of persons granted probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>16</td>
<td>2530</td>
<td>1</td>
</tr>
<tr>
<td>Bhatinda</td>
<td>12</td>
<td>615</td>
<td>2</td>
</tr>
<tr>
<td>Faridkot</td>
<td>26</td>
<td>1465</td>
<td>2</td>
</tr>
<tr>
<td>Hoshiarpur</td>
<td>23</td>
<td>2189</td>
<td>1</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>14</td>
<td>1324</td>
<td>1</td>
</tr>
<tr>
<td>Jullundur</td>
<td>3</td>
<td>820</td>
<td>-</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>9</td>
<td>1479</td>
<td>1</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>12</td>
<td>953</td>
<td>1</td>
</tr>
<tr>
<td>Patiala</td>
<td>1</td>
<td>470</td>
<td>-</td>
</tr>
<tr>
<td>Roopnagar</td>
<td>2</td>
<td>213</td>
<td>-</td>
</tr>
<tr>
<td>Sangrur</td>
<td>4</td>
<td>386</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>151</strong></td>
<td><strong>13252</strong></td>
<td><strong>1</strong></td>
</tr>
</tbody>
</table>
The number of presentence reports requisitioned by the Courts vis-a-vis the strength of offenders released on probation of good conduct under the Act practically displays a nil role of the basic document in the administration of criminal justice in the state on the correctional side. The insignificant demand of the reports by the courts indicates that they are not aware of the vital role in the selection of right type of sentence. This also leads to the conclusion that the courts do not apply the benign provisions of the Act on merits but purely on guess work. The trial judges do not want to make up their sentencing deficiency which is in plenty in the state, with the help of the presentence report. They continue to deliver injustice in the administration of justice by making a wrong selection of the offenders for probation. In their view, probation is a leniency and nothing else. They fail to realise that it is an instrument of enlightened penal justice which lays stress on the criminal rather than the crime. Therefore, it is their primary duty to make its use with due diligence. The courts advertently or otherwise have thrown to winds the sentencing guidelines and other compelling reasons for making an apt choice between probation and imprisonment. The nil demand of the reports further confirms the belief that there is a yawning gap between the sentencing policy of the judges and the underlying object of the Act. This also shows that they hardly bothered for the directive of the State High Court (vide circular No. 12944 dated 19.8.1971) issued in 1971 regarding the liberal
demand of presentence report by the courts for proper application of the Act.

Even in cases of insignificant demand for the report, there has been no coherence and consistency. The courts of the same district act differently or the very same court after setting a healthy trend of requisitioning of report leaves it in oblivion either consciously or otherwise. For example, in 1975 the courts in the district of Hoshiarpur sent requisition for 23 reports and released 259 persons on probation under the Act. It means that the report was called for in 9 cases out of the 100 persons granted probation. This was the highest percentage of requisition of the report during the span of 7 years from 1975 to 1981. Thereafter, came the sudden change and report was called for in 1976. During the remaining period of 5 years only 1, 3, 1, 2 and nil reports were called as compared to 306, 788, 984, 820 and 820 offenders granted probation respectively. Similarly in the district of Roop Nagar, no report was demanded in 1975. This was followed by the requisition of 2 reports in 1976 and 1 in 1980 leaving the other 4 years absolutely blank. Needless to mention, the figures of other districts do not represent a positive approach. They also present a gloomy picture of presentence report in the correctional field of probation.

The Table also indicates the lack of cooperation between the courts and the probation officers. The judge treats the probation officer as a subordinate, unworthy of any assistance
and symbol of corrupt practices. He does not want to be aided and guided by the probation officer whose integrity is always in doubt and more so, in the submission of a correct and compact report. The judge, overburdened with work and with little time for the selection of appropriate sentencing alternative, prefers to decide the case without the report. In some cases, he shows grace or obliges the counsel of his liking by releasing his client on probation of good conduct who otherwise might have merited imprisonment. This implies that probation is used as a let-off and not as an effective individualised treatment for the rehabilitation of the reclaimable offenders.

Personal inquiries supplemented by the negligible demand for presentence report do bring forth also the negative role of the Bar in calling for the report of probation officer. The advocates with the sole purpose of getting their client honourably acquitted, if not so, released on probation without supervision, poison the ears of the judge against the probation officer. The requisition of the report, generally, means that recommendation of probation with supervision by the probation officer which the advocates do not relish. They continue to stress on and ultimately succeed in majority of the cases in making the judge believe that the calling for the report would mean unnecessary delay, wastage of the precious time of the court, undue exploitation of the accused by the Probation Officer and submission of the biased report which in no way will assist the court in arriving at an appropriate sentencing decision. The continuous tirade of
the advocates against the probation officer, just with the
sole object of winning more clientage, mostly of hardened and
professionals, by getting them released on probation and no
proper endeavour of the probation officer for clearing the
dubious deck of prejudice, aggravate the already deteriorated
situation. The judge does not make any effort to set the
records straight by either calling the explanation of the
probation officer or bringing the matter to the notice of
Chief Controlling Authority through the Sessions Judge. Thus,
the court does not take any concrete step to ensure the concise
and correct submission of the report. The judge rather decides,
for ever, not to requisition the report and select the probationers
according to his own whimsical notions rather than on merits
of the case. Only few conscientious and progressive judges who
are not misled by the Bar are responsible for the average
one percent demand of the pre-sentence report which should have
been given due place in the field of probation.

The insignificant requisition of the report has resulted
in gross miscarriage of justice. Inspection of case files,
Personal Inquiries from Probation Officer, corroboration from
clerical staff in absence of probation officers and visits to
the specified places, have established that many professional
or unreclaimable offenders are given the benefit of probation.
The appended Table 3 indicates the number of previously
convicted but professional criminals released on probation.
### TABLE 2

NUMBER OF PREVIOUSLY CONVICTED CRIMINALS RELEASED ON PROBATION

<table>
<thead>
<tr>
<th>District</th>
<th>Once</th>
<th>Twice</th>
<th>Thrice or More</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>14</td>
<td>4</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>Bhatinda</td>
<td>7</td>
<td>5</td>
<td>-</td>
<td>12</td>
</tr>
<tr>
<td>Faridkot</td>
<td>4</td>
<td>-</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Ferozepur</td>
<td>22</td>
<td>6</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>6</td>
<td>4</td>
<td>-</td>
<td>10</td>
</tr>
<tr>
<td>Hoshiarpur</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Jullundur</td>
<td>8</td>
<td>3</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>11</td>
<td>1</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>20</td>
<td>5</td>
<td>4</td>
<td>29</td>
</tr>
<tr>
<td>Patiala</td>
<td>23</td>
<td>3</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Roop Nagar</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Sangrur</td>
<td>7</td>
<td>2</td>
<td>-</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>129</strong></td>
<td><strong>35</strong></td>
<td><strong>18</strong></td>
<td><strong>182</strong></td>
</tr>
</tbody>
</table>
There are many villages in the state especially in the river belt which are notorious for the trade of illicit liquor. Illicit distillation continues to flourish in the hot (low lying) area from Roopnagar to Fazilka and similar areas of the State along Beas and Ghauggar rivers. The concrete working stills operate there round the clock under the patronage of Government officials. The area is not easily approachable by road transport and more so in the rainy season. These professionals have their informers in the police and the Excise Department who warn them of the impending raid. Permanent watch on the raiding party is also kept. Therefore, chances of their apprehension and prosecution are remote.

Whenever a raid is conducted by a special squad, there is a large scale recovery of liquor and other connected material. The prosecution of these professionals hardly end in conviction as they, with the money are able to secure the protection of the prosecuting agency. Their previous criminal record and activities are deliberately suppressed. Even the Magistrate hardly takes interest in awarding the deterrent sentence of imprisonment to such professionals and hardened criminals. They have the best counsels as their permanent defenders who by virtue of their good will get them released on probation of good conduct. So the criminals who deserve long confinement for the prevention of crime and dissuasion of their comrades are granted probation which is absolutely ruled out in such cases. It rather enables them to carry on their trade more
vigorously and encourage others to adopt it. If ever, the said offenders are placed under the supervision of probation officer, their supervisions tantamount to nothing. No probation officer dares visit these villages. There is no easy access, no community cooperation and likelihood of danger to the very personal safety of the probation officer. Even the women of these criminals are well aware how to teach a lesson to the probation officer. It is a hard fact that probation officers never visit these villages. As probation officers say their complaints to the courts in this context have continuously been without action. They falsely exhibit their visits to such places and show them in the Monthly Progress Report. Moreover, the court cannot know without the presentence report who is to be placed under the supervision and who is to be released on probation without supervision. Effective supervision is extremely essential for proper rehabilitation of the probationer. It throws light on the antecedents and character of the offender and his readjustment through probation. In the presence of presentence report, the judge cannot give the benefit of probation to the aforesaid or other professional criminals. The court should call such report where possible and in all cases of illicit liquor from the notorious areas. This would entail more probation officers which is discussed in detail in a separate chapter.

It is, therefore, necessary that the attention of the High Court should be drawn to the grant of probation to
professional criminals and non requisition of the presentence report. In order to change the current indifferent attitude of the courts towards the presentence report, a mandatory comprehensive directive of the High Court has become a prime need of the time.

2:8 Supervision Order

Sub-Section (3) of section 4 constitutes a major departure from the concept of probation as incorporated in the Code of Criminal Procedure, 1898 as well as the Code. It puts the probation in India on its correct pedestal, though a half way through, by introducing the provision of supervision of the offenders released on probation. It empowers the court to put the released probationer under the supervision of the probation officer whenever the court considers that such supervision is essential in the interest of the offender and also of the public. As discussed in Chapter I, supervision is an inseparable part of probation in U.S.A. and England. It is an

70. Text of sub-section (3) is given at p. 105.

Section 562 of the 1998 Code and corresponding section 360 of the Code do not provide for placing the released probationer under the supervision of the probation officer. Section 360 does not apply to the area of operation of the Act, (discussed at p. 105). However, the courts do resort to section 360 and release the offender on probation without supervision as there is no provision of supervision so far under the Code.

71. Rule 2(j) of the Punjab PROBATION OF OFFENDERS RULES, 1962 defines supervision order as an order passed under sub-section (3) of section 4 of the Probation of Offenders Act, 1938.

72. Carter and Wilkins, PROBATION, PAROLE AND COMMUNITY CORRECTIONS at 77 explain position of U.S.A. For England see Section 3(1) of CRIMINAL JUSTICE ACT, 1948.
integral part of the very definition of probation. The conditional suspension of punishment is meaningless unless there is someone to watch the observance of the conditions of probation order. The probation officer acts as a friend and guide of the probationer. His endeavour is to rehabilitate the offender in the society by solving his deviant problems through surveillance, counselling and assistance. Supervision is an individualised treatment for the resocialisation of the offender. Therefore, it is in the interest of the society as well as of the offender.

The power to pass a supervision order is discretionary. The Court can pass a supervision order if it is necessitated by the interest of the offender and the public. The terms "interest of the offender and the public" are vague in the absence of specific guidelines. The trial judges with little time for sentencing can hardly afford to appreciate their true import. This has led to the dilution of the concept of supervision which is an integral part of the probation. In this context, probation works at cross roads in India with its counterpart in the country from where it has been adopted.

The minimum period of supervision under the sub-section is one year. Any order of the court for a supervision of less than the statutory minimum of one year is illegal. This

73. Section 14(b) of the Act, Rule 15(1) of the Punjab Rules.
74. See supra notes 63, 65, 66.
75. See discussion of the concept of probation in Chapter I. Various workable definitions of the concept prove this.
illegality is quite rampant in the state which has been proved on the basis of empirical analysis in Chapter III.

Sub-Section (3) also empowers the court to impose any condition in the supervision order which the court considers necessary for the proper supervision of the probationer. Rule 25 of the Punjab Rules has prescribed the proforma of supervision order in Form VI. This is printed and circulated to the courts. The supervision order is passed on it accordingly. It contains fixed conditions which are imposed indiscriminately by the court. There is, therefore, no proper imposition of the conditions by the court in the supervision order as envisaged by the makers of the Act.

76. The stereotype conditions of supervision order in the state of Punjab are:

1) That he (probationer) will present himself, within 14 days from the date of the order, before the probation officer named therein, and will produce copies of the order and bond executed by him;
2) That he will submit himself to the supervision of the probation officer;
3) That he will (a) during the period specified therein, keep the probation officer apprised of his place of residence and means of livelihood (b) reside at income of place mentioned by court for a period of (given period of supervision);
4) That he will not quit the jurisdiction of (District Probation Officer) without the permission of the D.P.O.;
5) THAT he will not associate with bad characters or lead a dissolute life;
6) That he will live honestly and peaceably and endeavour to earn an honest livelihood;
7) That he will not commit any offence punishable by any law in force in India;
8) That he will desist from taking intoxicants;
9) That he will carry out the directions of probation officer given by him for the due observance of the aforesaid conditions.
Sub-section (4) provides for the execution of bond by the probationer placed under supervision. The bond to be executed may be with or without surety/sureties. The proforma of bond is given in Form VII. This Form also includes the bond to be executed by the surety. The surety bond being an appendage to the form VII, the courts take it as an integral part of the probation order. The discretion of demanding or not requiring surety has become redundant and the courts in this state invariably pass supervision order with surety. Similarly bond to be executed by the probationer in Form VII is the same as the supervision order in Form VI. The only difference is that here the probationer gives written undertaking for the acceptance of the said conditions. The underlying object of these conditions of supervision order is to ensure that the probationer would neither commit any other offence nor would repeat the same. This requires varied conditions of supervision in each case depending upon the rehabilitative requirements of the offender in question. The courts in the state prescribe the same conditions as outlined in the Form. These conditions prescribed in the Form VI are for the guidance of the courts. They are at liberty to vary them. This is taken as a rule by the courts. Hence no proper imposing of conditions for due rehabilitation of the offender.

It is quite evident from the reading of the supervision provisions that it (supervision) is a method of control on the

77. Text of the sub-section has been given earlier. See 2:4.
offender for the protection of the society. The imperatives of conditional suspension of punishment and rehabilitation of the offender do call for the guidance, control, assistance and counselling of the social worker who is to work as a viable link between the released offender and the court. The supervision also spells out the tremendous role of the probation officer in the non-institutional treatment of probation.

Sub-section (5) lays down that the court shall explain to the probationer the terms and conditions of the supervision order. The court is under statutory obligation to furnish one copy of the supervision order to each of the probationer. In case of surety (which is invariably there as seen in the foregoing discussion) a copy of the order must be supplied to him. It is also mandatory for the court to send a copy of the supervision order to the probation officer named in the supervision order. The compliance of these conditions is extremely essential for the successful working of probation. These obligations are not duly discharged by the courts in the state. This has jeopardised the whole working of the scheme of supervision. This has fully been borne out by the discussion in Chapter III.

2:9 Variation of Conditions of Supervision

Section 8 of the Act provides for variation of conditions of supervision by the Court which releases the offender on probation of good conduct. The Court either of its own or on

78. Reed K. Cleggy, PROBATION AND PAROLE (1964) at 97.
the application of probation officer can extend or reduce the period of probation by altering the conditions of bond entered into by the probationer. It can impose additional conditions. But no such variation can be made without giving an opportunity to the offender or his surety of being heard. The change in conditions can be effected if it is in the interest of the offender and the public i.e., for successful completion of the individualised non-institutional treatment of probation 79.

The surety must accept these varied conditions. In case the surety refuses to do so, the probationer is required to execute a fresh bond. If he refuses to enter into a fresh bond, the court can sentence him for the offence of which he was found guilty 80. If the court is satisfied on the application made by the probation officer that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under the supervision, it may discharge the bond entered into by him 81. It means that exemplary good behaviour is a ground for early termination of the probation by the Court. Where the probationer has fully readjusted in the society i.e., there is no violation of condition of probation by him and he gives proof by his conduct of future good behaviour; the early discharge is in the interest of the offender as well as of the public. It relieves the probation officer of his supervision obligation and allows him to devote saved time to due supervision of other probationers.

79, Sub-Section (1)
80, Sub-section (2)
81, Sub-Section (3).
This is a new provision. Neither the 1898 Code nor the Code contains corresponding provision. Both the Howard League for Penal Reforms, London and the United Nations on Probation considered the variations of the conditions of probation including early discharge of the probationer as a sine qua non for full and constructive realisation of the objectives of probation conditions in the individualised treatment. The stereotype imposition of conditions of probation cannot achieve the desired object in all cases. In the process of individualisation, a particular probationer may need a few conditions to be observed for his proper rehabilitation. Whereas in other cases the probationer may need more controlled supervision for proper readjustment in the society. It is the probation officer and not the Court who can better judge the selection of appropriate conditions of probation. Therefore, the power under the Act to vary the conditions of probation is in tune with the current thinking on the subject. This is more demanding in India and especially in Punjab where there is practically, no link between the court and the probation officer who is solely responsible for its working within his jurisdiction.

Section 9 lays down the procedure in case of the failure of the probationer to observe the conditions of probation.

82. Memorandum prepared by the Howard League for Penal Reforms, London, Topic LEGISLATION para 14; PROBATION AND RELATED MEASURES at 220.
83. Discussed in Chapter VI "Probation and Probation Officers".
order which he takes to follow. Where the court has reason to believe, either on the report of probation officer or otherwise, that the offender has failed to observe conditions of bond, it may issue a warrant for his arrest or may issue summons for his appearance at a specified date, if it thinks fit. In case there is any surety, the court may summon him also. When the offender is brought before the court by the execution of the warrant or appears before it as a result of summons, the court has been given a discretion either to release him on bail or remand him to custody until the conclusion of the case.

If after hearing the case the court is satisfied that the offender violated any of the conditions of bond, it may sentence him for the original offence, or where the lapse is for the first time, then without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding rupees five hundred.

In case of the failure of the probationer to pay the said penalty within the fixed period, the court can impose suspended sentence for the original offence.

The Court which passes an order under section 4 or which would have dealt with the offender is a competent court in case of the violation of the conditions of bond. If the offender is released on probation in revision or appeal, he can be proceeded against by the appellate or revisional court, as the

84. Sub-section (1).  
85. Sub-section (2).  
86. Sub-section (3).  
87. Sub-section (4).
case may be, or by the trial court. If the case is exclusively triable by the Court of Sessions and the probation is granted by the High Court or the Supreme Court, then it is for the Sessions Court concerned which can act under section 9. The Committing Magistrate is not competent to exercise power under the section.

Probation Rules framed by the various states cast a statutory duty on the probation officer to report to the court when a probationer fails to observe any of the conditions of the bond or behaves in a manner indicating that he is not likely to fulfil the purpose of supervision order. Rule 16(3) of Punjab Rules provides that the probation officer shall report such lapses to the court of the District Magistrate.

The discretionary power of the court to issue warrant or summons in lieu of warrants needs to be curtailed. In this context, the National Conference on Probation recommended the replacement of word 'May' in sub section (1) by the word 'Shall' in relation to the issue of warrant for arrest or summons. In my view, this will not solve the problem as the courts will, generally, issue summons which are likely to be returned unserved. Therefore, proper safeguard is to provide for the issue of bailable warrant of arrest. This is fully borne out by the actual violation of probation by the probationers under supervision which is discussed in Chapter VII.

2:11 Probation in Appeal and Revision

Section 11 of the Act widens the scope of probation under
the Act by adding an enabling provision regarding the competence of the courts to make order under the Act in appeal and revision and power of the appellate and revisional courts in this respect. The underlying object of the section is to ensure the proper utilization of the benign treatment of probation on selective basis. The Higher Courts have been empowered to grant probation in appropriate cases which was denied by the lower court and cancel probation where it is considered inexpedient, i.e., to prevent its misuse.

Section 11 reads:

1. Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or revision.

2. Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

3. In any case where any person under twenty one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentence of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass an order thereon as it thinks fit.

4. When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law.

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.
Competent Courts: Sub-section (1) confers some powers on the Appellate and revisional court as the Act gives to the trial court under section 3 or 4. This implies that the sub-section (1) ex facie does not circumscribe the jurisdiction of an Appellate Court to make an order under the Act only in a case where the trial court could have made the order. The language or expression used therein is wide enough to enable the appellate Court or the High Court to make such an order when the case comes before it. It was intentionally made comprehensive because the Act was made to implement a social reform. As the Act only introduces a provision to reform the offender without altering the quantum of sentence, therefore, there is no reason to take away the power of granting probation by the Appellate or Revisional Court. Any narrow interpretation of the sub-section would be against the spirit of the underlying object of the Act.

The use of word 'May' in the sub-section does not absolve the higher Court of its duty under section 6 not to impose a sentence of imprisonment on offender below 21 years of age. If the provisions of section 6 are not complied with, the order of the court is illegal and liable to be set aside in appeal or revision. A similar duty is cast on the appellate and the revisional Court not to impose a sentence of imprisonment on the young offender. Even if the point relating to the

89. The corresponding provision under the Code is Section 360(4).
applicability of section 6 is not raised before the trial court or the High Court, the Supreme Court in appeal by special leave under Article 136 is bound to take note of it and give its benefit to the appellant.  

Section 361 entered the statute book after the enactment of the Act. The insertion of the section in the Code was the result of indifferent attitude of courts towards the first offenders above 21 years of age. The mandatory requirement of recording special reasons for not granting probation impliedly figures in sub-section (1) of section 11. The Higher Courts are under some obligation in respect of first offenders as they are in respect of offenders below 21 by virtue of section 6 of the Act. The observation of the Supreme Court in Bhim Singh versus State of Punjab supports this:

The benefit of probation should have been given to the appellant. Since the learned additional Sessions Judge has not recorded any special reasons (S.361) for not doing so it would be desirable to set aside the sentence of imprisonment imposed on appellant and instead to direct that he be released on probation of good conduct.

The Supreme Court seems to have forgotten its own duty under sub-section (1) of section 11 of the Act which it has unreservedly accepted in Mohammad Aziz's case. Very recently

--

94. supra note 92.
95. Ibid.
96. supra note 92.
it set aside the sentence of imprisonment and upholding that a fit case of probation remanded the case to the trial court for passing appropriate order. Rather it should have released the appellant straight way on probation of good conduct.

**Appeal and Revision**

Sub-section (2) provides that an order of release after admonition under section 3 or an order of probation of good conduct under section 4 is appealable. The appeal shall be to the same court to which it ordinarily lies under the Code of Criminal Procedure. However, an exception has been made if the order is passed by the High Court. It means there shall be an appeal if the offender has been released on probation under section 4 by the High Court. The probationer has the right to challenge his conviction as well as the propriety of the probation order.

Sub-section(3) is an enabling clause which is a logical deduction of section 6. It empowers the higher courts to judge the propriety and correctness of the sentence of imprisonment imposed on offenders below 21 years of age. In a case, where a person under 21 years of age is found guilty and the court does not consider it desirable to release him on probation of good conduct and passes a sentence of imprisonment from which either no appeal lies or no appeal is preferred, then the court to which appeal ordinarily lies from such

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98. Chapter XXIX of the Code deals with appeals in criminal cases. The appeal under sub-section (2) is subject to the provisions of the said Chapter.
judgment can call for and examine the record of the case and thereafter, pass a suitable order. The revisional court is competent to proceed of its own or on the application of probation officer or of the convicted person. It is intended to provide protection to the young offenders who are sentenced to imprisonment by the trial courts but merit rehabilitation through probation. It does not extend such protection to first offenders above 21 years who deserve probation but are sentenced to imprisonment by the trial court.

Now the statutory requirement of section 361 of recording special reasons by the court in its judgment for not giving the benefit of probation does call for such a protection to all the first offenders. The background of the necessity of these special reasons given below by the Joint Committee adds to the imperatives of the said safeguard:

It has come to the notice of the Committee that the statutory provisions of the Probation of Offenders Act, 1958, the Children Act, 1960 or other similar laws (State Children Acts) intended for the treatment of the youthful offenders are being applied by the courts only rarely although it was expected that the provisions of these Acts would be applied liberally by the courts. To ensure that they are so applied, the new provision (S.361) has been inserted to give special reasons in the judgment for not applying the provisions of the special laws (probation) whenever they may be applied.

Moreover, the increasing emphasis on rehabilitation of offenders, positive results of probation, indifferent attitude . Supra note .
of the trial courts towards probation, deficient knowledge of sentencing judges in progressive penology and criminology, the absence of sufficient material on the record, non-existence of proper guidelines etc., do call for the extension of the provisions of sub-section (3) to all first offenders. Accordingly, the amendment of the sub-section is highly desirable.

Sub-section (4) is a safeguard against the wrong application of probation. It empowers the appellate court or the High Court as a revisional court to set aside the order of release on probation passed by the lower court and pass a sentence of imprisonment permitted under the law.

2:12 Removal of Disqualification Attached to Conviction

Section 12 deals with the removal of disqualification attached to the conviction of the offence for which the offender is released on probation of good conduct. It is a salutary provision which supplements rehabilitation of the released probationer. The reformatory approach of the Act to resocialise the offender in the society as its productive member would have been incomplete but for this section. The probationer is not only saved from the deleterious influence of prison life but is also saved from various civil disabilities result from his conviction. The benefit under the section is provided to all

101. Section 12 reads

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provision of sec. 3 or sec. 4 shall not suffer disqualification, if any, attached to the conviction of an offence under such law; provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence.
offenders released under section 9 or section 4 irrespective of anything contained in any other law. The removal of disqualification under section 12 has been held as obliteration of only that disqualification which automatically flows from a conviction for an offence. It means if the disqualification follows the conviction, i.e., where it is either provided under the Act or Service Rules governing the offender released on probation of good conduct, for instance, if a person is debarred from contesting election on account of his conviction, his release on probation will remove this disqualification of contesting election. Similarly, where conviction for an offence is considered as a disqualification for appointment to a particular post, such a disqualification is removed by section 12. If the appointing authority rejects the candidature of the probationer on the sole ground of his being held guilty of an offence, the rejection is bad in law and liable to be set aside. This further implies that conviction of a delinquent employee simpliciter without anything more will not result in his automatic dismissal or removal from service.

Departmental punishment, either removal from service or short of it, is not an essential and automatic consequence of a


103. Id., Challagapu at p. 2224.
104. Id., Om Parkash at p.5.
105. Id., Challagapu at p.2222.
conviction on a criminal charge. The authority competent to take disciplinary action is required to consider circumstances of the case including hearing the delinquent employee and then to decide about the appropriate type of punishment. The authority may take a lenient view and exonerate him or give only a warning. Therefore, departmental punishment is not a disqualification within the meaning of section 12 as it does not automatically flow from the conviction for an offence. This also leads to conclusion that removal of the probationer as a result of departmental inquiry into his misconduct is not precluded under the section.

Some misunderstanding has been created by the wrong comprehension of the proviso (a) to Article 311 (2) of the Constitution. This Article forbids the dismissal, removal or reduction in rank of an employee except after a proper inquiry which includes submission of charge sheet and hearing him in respect of charge as well as penalty proposed to be imposed. The said proviso dispenses with the holding of an inquiry into the misconduct which has led to his conviction on a criminal charge. The dispensation of the inquiry does not mean that straightway removal from service or other punishment is permissible. The competent authority is still required to hold a summary inquiry for the ascertainment of proper action.

106. Id. On Parkash at p.104.
107. In many cases probationers are removed from service without hearing them. Three instances are given in Challaman's case.
It has been made clear by the Supreme Court in Challappan's case. While interpreting Rule 14(1) of Railway Servants (Discipline and Appeal) Rules, 1968, which incorporates a principle contained in Article 311(2) proviso (a), the Summit Court held:

The conviction of a delinquent employee would be taken as sufficient proof of misconduct and then authority will have to embark on a summary inquiry as to the nature and extent of penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of technical nature, it may refuse to impose any penalty inspite of the conviction, the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible\textsuperscript{108}. The perusal of the aforesaid observation coupled with the underlying object of grant of probation leads to the inference that there is an implicit bar on the removal from service of the probationer as a result of disciplinary punishment for his misconduct which led to his conviction for an offence. Dismissal or removal of probationer from service on account of his misconduct, through departmental action, defeats the basic purpose of the rehabilitatory approach of probation by unsettling him in life.

Probation is granted to an offender who is capable of reformation. In case of an employee, his poignant penitence

\textsuperscript{108} Id., \textit{Challappan} at p. 2252.
coupled with protection of his employment are the primary considerations for his release on probation of good conduct. The loss of employment defeats the rehabilitative spirit of the section. It is, therefore, suggested that the competent authority should abstain from rendering the probationer jobless. A copy of the court order or a certificate from the probation officer should be considered as a sufficient proof for the revocation of suspension of the delinquent employee. In order to prevent the probationer's removal from service, a proviso should be added to section 12. This will certainly help in the real realization of the reformatory object of the community based correctional criminal justice. Where the retention of the probationer is not desirable at all, the appropriate remedy lies in the revocation of his probation due to non-observance of the conditions of bond. His punishment for the original offence can justify his removal from the service.

2:13 Exclusion of the Jurisdiction of the Act
Section 18 excludes the application of the Act to certain enactments. It provides:

Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897, sub-section (2) of Sec. 5 of the Prevention of Corruption Act, 1947 (2 of 1947), or the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956) or an of any law in force in any state relating to juvenile offenders or borstal schools.

The Reformatory Schools Act has ceased to apply in the
state of Punjab by virtue of section 4 of the East Punjab Children Act, 1949. The Punjab Children Act provides for the trial, punishment and treatment of juvenile offenders. Therefore, the Act does not apply to young offenders below 16 years who are covered by the Children Act.

The Suppression of Immoral Traffic in Women and Girls Act was amended in 1978 and the benefit of release on probation of good conduct was made available to all first female offenders found guilty under section 7 and 8 of the said Act. But so far, this amendment has not been carried out in Section 18. The Law Commission of India in its 47th Report recommended the ban of probation to adult offenders found guilty of offences under the Income Tax Act, 1961; Gold Control Act, 1968; The Central Salt and Excise Act, 1944 and Customs Act, 1962. The Commission recommended the insertion of exclusion clause either in section 18 of the Act or in individual Acts. The individual Acts were amended and consequently, Section 292-A of Income Tax Act, 1961; section 98-D of Gold Control Act, section 9-E of Central Excise and Salt Act, Section 20-AAA of the Prevention of Food Adulteration Act, 1954 rule out the application of probation to the adult offenders under these enactments. But these amendments have not been reached the subordinate courts who only look to the saving clause under section 18. In order to make the law clear and simplified, it is essential to add the said amendments in section 18.

110. 47TH REPORT OF LAW COMMISSION, at 85.
The question of application of the Act to the adult offenders found guilty of socio-economic offences has assumed great importance in view of growing concern of the criminal law for their effective handling. This is discussed in Chapter IV while taking up the actual application of the Act by the courts to the offences under local and Special Acts.

2:14 The Act vis-a-vis Probation Under the Code

Section 19 provides that section 562 of the Code of Criminal Procedure, 1898 shall cease to apply to the states or parts thereof in which this Act is enforced. Section 562 of the repealed Code deals with the release on probation of good conduct. The corresponding provision under the Code is section 360. The words "Section 562 of the Code" have not been replaced by the words "Section 360 of the Code". This omission, though impliedly immaterial, has led to the wrong application of section 360 to the areas where the Act is in force. For instance the Punjab and Haryana High Court in criminal appeal No. 720 of 1975 Surai Parkash versus State of Punjab decided on 22.2.1978 and criminal appeal No. 1161 of 1975 Anil Chand versus State decided on 19.4.1979 released the accused on probation of good conduct under section 360 of the Code. Section 360 was applied to offences under section 5(2) of the Prevention of Corruption Act, 1947 which has been specially excluded from the scope of probation under section 18 of the Act.

Section 8(1) of the General Clauses Act, 1897 clarifies the whole position. According to it any reference to any

section of the Code of 1898 means reference to the corresponding section of the Code. Consequently any reference to section 562 means reference to section 360. The Punjab and Haryana High Court in *Garbchan Singh versus State* has set the record straight by clarifying the position of law on the point. In the State of Punjab section 360 of the Code does not apply because the Act is in force. Therefore, the offender cannot be released on probation under section 360 of the Code because its implementation has ceased in the state by virtue of section 19 of the Act. If, in Punjab, the offender is released on probation of good conduct under the Code such order is illegal and results into undesirable consequences. It is surprising to note that even the Supreme Court has in some cases failed to detect the error of law. The learned Judges of the Summit Court highlighted the indifferent attitude of the courts and imperatives of probation under the current criminal justice system in India and released the appellants under section 360 of the Code. Inspite of the profound exposition of the probation as a better sentencing alternative, the Court did not set the record straight by releasing the appellants under section 4 of the Act instead of under section 360 of the Code. It could not equate section 360 of the Code with section 562 of the old one. The courts in the state should grant probation under the Act only. It has again been amply made clear by the Punjab and Haryana High Court in *State of Punjab versus*

112.1980 Cri. L.J.417.
The mistake of law is likely to continue. It is, therefore, suggested that in order to prevent this, section 19 of the Act should be amended. The words 'section 360' of the Code should be inserted by deleting the words 'section 562' of the Code of Criminal Procedure, 1898.

The foregoing brief appraisal of the Act has pointed out various infirmities of the Act that impede its smooth functioning. An early amendment of the Act in accordance with the suggestions given in the preceding appraisal is necessary to ensure the fair play of probation in the administration of criminal justice in consonance with the prevailing notions of progressive penal policy.