3:1 Introduction

The appraisal of the Act in the preceding chapter proves that probation is not an ideal treatment-cum-case disposition method in all cases. It cannot invariably reform and rehabilitate offenders, prevent the commission of the crime and thereby, protect the society. As an effective and viable alternative to imprisonment, it can at best work on selective basis. This entails careful selection of reclaimable offender, favourable community reactions towards the criminal, avenues for amelioration, assistance rendered by the correctional agencies etc.

An appropriate sentencing decision - whether release on probation of good conduct or award of imprisonment can achieve the avowed objects of criminal justice, is based on the scanning of host of factors by the Court. This brings out the primary role of the court which sets in motion the probationary process provided in the Act.

Sentencing poses a complex problem which has become more complicated in view of its individualisation under the current criminal justice system. This highlights the important role a judge is assigned because he is required to weigh a number of considerations before granting probation. No judge

1. Rama Harin v. State of U.P. (1973) 2 SCC 86,
can make a correct sentencing decision unless he is well conversant with sentencing guidelines, progressive penal provisions of the Act and the Code, practical working of probation and imprisonment especially of short term, community reaction to the offence, rehabilitative and deviant potentials of the offender, deterrent effect of sentence on the offender and other prospective criminals. This necessitates with sentencing repertory of the judge coupled with sufficient material on the record relating to the circumstances of the offence, personality, antecedents, character, socio-economic background and reformatory traits of the offender.

3.2 **Sentencing Guidelines: Probation Or Imprisonment**

Sentencing alternatives open to the court are imprisonment, probation and fine. In the present context, the choice is between probation and imprisonment. Neither the Act nor the Code lays down guidelines for courts for awarding the sentence of imprisonment or grant of probation except to ban the benefit of probation to offenders found guilty of offences punishable with death or imprisonment for life. Both provide that if the court 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, the court may so release him on his executing a bond for observing the conditions of probation order. The legislature has not laid down guidelines for the evaluation of these factors. This highlights the necessity of presence of
sufficient material on record concerning the said factors. The Code does not provide for it\(^2\) as evidence of bad character is irrelevant unless good character of the accused is itself in question\(^3\). The post conviction stage which has become as important as the proof of guilt still remains the weakest point of Indian Criminal law where very little attention is paid by the trial courts who have hardly any time for sentencing reflection. This aspect is also ignored by the accused who considers it as weakening of his defence\(^4\). The absence of requisite material relating to the aforesaid factors and guidelines makes the complex question of sentencing more vexatious. This highlights the drawbacks of a rational sentencing policy. In this respect, the Supreme Court has succinctly observed:

> It is now increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One of such deficiencies is the lack of comprehensive information as to the character and background of the offender\(^5\).

The said deficiency continues to pervade Indian justice system inspite of the previous observations of the Supreme Court made long back in *Habib Mohammad vs. State*\(^6\). The court held that character of the accused is extremely essential for determining the correct type of sentence\(^7\). What criterion the court should follow in making an apt selection between

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7. Id., at 59.
probation and imprisonment still remains a sentencing quandary of the judge.

Justice Chinnappa Reddi seems to have resolved this problem in the Probation year (1971). Fashioned on the American Model Penal Code, he spells out the following guidelines for the sentencing judge:

Before imposing sentence judge must try to answer several questions: was the offence directed against property only or did it involve danger to human life? Was it committed without premeditation or after due deliberation? Is the offender so perpetually and constitutionally at war with the society that there is no hope of his ever reclaiming being a menace to the society? Or is he a person who is potentially amenable to reformation? Is he a person on whom sentence of imprisonment will have a wholesome effect or is he a person on whom sentence of imprisonment will have a deliterious effect? Will an order of probation have the effect of reclaiming the offender and deviate him from the path of crime thereafter or will it have the effect of making him take a career of crime with impunity? What effect will a sentence of imprisonment or an order of probation have on other potential offender?  

With regard to the recording of special reasons under section 361 of the Code for not granting probation, the learned Judge supplements his above exposition as:

The special reasons contemplated by section 361 must be much as to compel the court to hold that it is

impossible to reform and rehabilitate the offender after examining the matter with regard to the age, character, antecedents of the offender and the circumstances in which the offence was committed.

Special reasons are reasons which are special with reference to times, i.e., with reference to the contemporary ideas in the field of criminology and connected science. Special reasons are those which lead inevitably to the conclusion that the offender is beyond redemption, having due regard to his personality and proclivity, to the legislative policy of reformation of the offender and to the advances made in the methods of treatment etc.

The Supreme Court has further thrown some light on the policy of sentencing to be followed by the subordinate courts. For instance in the case of N. Vankatakrishna Versus State of A.P., it has explained the object of the sentence of imprisonment as protection of the society against crime. This object can only be achieved if the period of detention is utilised to make the offender a law abiding and self respecting person. On his return from the jail, he is willing to lead a peaceful life. It implies that imprisonment is the appropriate sentence when the offender must be isolated from the society for its protection or he can learn to readjust his attitudes and patterns of behaviour only in a closely controlled environment.

Probation is the best method of dealing with offenders if the past history of the criminal gives good reason to believe that

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10. AIR 1979 SC 480 repeated in Sunil Batra v. Delhi Administration AIR 1980 SC 1579 para 75,
he is not of a criminal type and is capable of real reform and becoming a useful citizen\(^\text{12}\).

According to justice Krishna Iyer, the community which the offender has offended by committing a crime is the best place for his proper rehabilitation if he is amenable to reclamation. Endevour should be to allow the offender to live productively in the society rather than to ship him off to the institutional confinement which tantamount to banishment from the society\(^\text{13}\).

This, of course, is not to say that probation should be used in all cases, or that it will always produce better results. In some cases the ends of justice can only be met by the imposition of the sentence of imprisonment. Offender's freedom becomes a security risk for the society. His incarceration incapacitates him from committing crime till he undertakes to lead a lawful life outside the penitentiary. The judge is expected to be very cautious and correct in making a choice between probation and imprisonment. He should devote sometime to keep himself in touch with the sentencing guidelines laid down from time to time by the higher courts. For example, the latest decision of the Gauhati High Court\(^\text{14}\) needs to be emulated by the subordinate courts in order to avoid the evils of imprisonment to those who favourably respond to

\(^{12}\text{Id.,para 12 repeated in Satto v. State of U.P. (1979) 2 SCC 628,p.5.}\)

\(^{13}\text{Sentencing Alternatives, Correctional Administration, Juvenile Justice and Community Participation in Crime Control", 1980 Cri.L.J.Journal Section, pp.8 & 9.}\)

\(^{14}\text{Joseph Chandra Deb Naih v. State of Assam 1982 Cri.L.J.NOC 210(Gau.)}.\)
rehabilitation through probation. The High Court set aside the sentence of imprisonment of 3 months and released the petitioner on probation of good conduct. The factors considered by the court were:

1. The accused was a poor hawker who had to bear mental agonies and economic loss; (ii) there was inordinate delay in the disposal of his case and he was not responsible for it; (iii) the question of rehabilitation in jail was not possible; (iv) he was likely to come in touch with hardened criminals in jail; (v) it was his first offence and that too, of a minor type; and (vi) short term sentence of 3 months would neither be in his interest nor in the interest of the society.

The foregoing judicial exposition of sentencing alternatives of probation and imprisonment coupled with statutory recording of special reasons under section 6 of the Act and 361 of the Code place a heavy responsibility on the sentencing judge for proper individualisation of the sentence. Consequently, the judge must be aware of the purpose of punishment. He must know that the object of sentence in criminal cases is to reform the offender as well as to deter other prospective criminals from commission of crime and protect the society. He must impose that sentence which is commensurate with the purpose of law, i.e., the sentence awarded by him should be neither too excessive nor too lenient. This adds to the

15. Ibid.
16. In case of offenders below 21 years.
17. In all cases irrespective of age.
imperatives of the presence on the record of sufficient material relating to the conditions, personality, antecedents, character, surroundings and family background of the offender and circumstances underlying the commission of the offence.

This brings forth the role of the presentence report in the domain of probation as the information on the aforesaid sentence determining factors is best available from the presentence report or in the alternative provided by the process of sentence hearing envisaged by the Code. The requisition of presentence reports by the Courts has been analysed in Chapter IX. Hence the omission of the discussion of the topic.

3:3 Sentence Hearing By Courts

The deficiency of presentence report, to some extent, can be made up by effective resort to sentence hearing under sections 235(2) and 248(2) of the Code. Both these sections make provision for hearing the accused on the question of sentence in warrant cases after he is found guilty by the Sessions Judge or the Magistrate respectively. But the accused is heard on the question of sentence only after the court decides not to release him on probation of good conduct. The sentence hearing provides new opportunity to the offender.

18. Section 235(2) of the Code provides:
If the Accused is convicted, the judge (Sessions Judge) shall, unless he proceeds in accordance with the provisions of section 360 (in the present context section 3 and of the Act), hear the accused on the question of sentence, and then pass sentence on him according to law.

Section 248(2) provides: Where, in any case under this chapter (Chapter XIX - Trial of Warrant - cases by Magistrates),
after he is found guilty, to bring to the notice of the court such circumstances as may help it in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case.\(^19\)

The Code gives chance to both the parties to bring to the notice of the court facts and circumstances which assist the court to individualise the sentence from the reformatory angle. It is very essential to put such laudable provision to dynamic judicial use.\(^20\) The Supreme Court in *Santa Singh versus State of Punjab*\(^21\) held that these are mandatory provisions and their non-compliance is an illegality that vitiates the proceedings. The Summit Court observed that the object of sentence hearing is:

To draw attention of the court to the nature of the offence, previous criminal record, circumstances - extenuating or mitigation, the age, the records, the employment, background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for rehabilitation, the possibility of return to normal life in the community, the possibility of treatment or training of the offender, the possibility of sentence serving as deterrent to offender and others, and

\(^{19}\) *Yaplok Singh v. State of Punjab* Cr LJ 1139 (SC) paras 2.


\(^{21}\) AIR 1978 SC 1078.
current community needs, if any, for such a deterrent in respect to the particular type of the offence\(^\text{22}\).

The sentence hearing also provides an opportunity to the prosecution to adduce evidence of bad character of the accused which otherwise is considered as irrelevant under Section 53 of the Evidence Act, 1872 and not permitted under section 54 unless good character of the offender is in question. Therefore, Sections 235(2) and 248(2) have been enacted with the object of enabling the sentencing judge to have before him sufficient material necessary for the selection of an appropriate sentence and avoid a wrong one, the consequences of which are very serious, relate with far reaching repercussions. But both these sections provide for sentence hearing after the court decides not to release the offender on probation of good conduct. In the absence of presentence report and other material relating to the circumstances of the case including the nature of the offence and character of the offender, which generally is there, it is not possible for the judge, with his little sentencing knowledge to make an appropriate choice between imprisonment and probation. The purpose of sentence hearing is served if the presentence report of the probation officer is available. Therefore, both these sections need amendment. The words "unless he proceeds in accordance with the provisions of section 360" in section 235(2) and the words "but does not proceed in accordance with the provisions of section 360", in section 248(2)\(^\text{22}\), ibid.
shall be deleted from therein. A proviso should be added to both the sub-sections. It shall provide for dispensing with the sentence hearing where the presentence report of the probation officer has been obtained. Even otherwise the presence of the words "Section 360" has created a confusion. The courts misunderstand that sentence hearing is mandatory only in case they do not release the offender on probation under section 360 and not otherwise. Section 360 as such has no justification because this section is not operative where the Act is in force. The reference should be to sections 3 and 4 of the Act in the area where the Act is applicable.

In view of the mandatory nature of sentence hearing for recording special reasons as required under section 361 and its necessity for making an appropriate sentencing decision, the courts were expected to pay due attention to sections 235(2) and 248(2), and make their proper use. But so far, the Magistracy in the state has not understood the true import and importance of sentence hearing. It has shown an indifferent attitude which continues unabated inspite of the many reminders of the Highest Court especially in *Santi Singh versus State of Punjub*23, *Manal Singh versus State*24, *Tarlok Singh versus State of Punjub*25, *Mohammed Gaisuddin versus State of A.P.*26, and *Lankala Vidy Kumar versus the Public Prosecutor*27. The

23. Supra note 21.
26. Supra note 20.
27. 1979 Cri. L.J. 1527(SC)
said attitude has recently been summed up by the Supreme Court in *Dilbar Singh v. State of Punjab*\(^\text{28}\) as:

> The sentence hearing for which the Cr.P.C. provides in section 235(2) and Section 248(2) has hardly received the serious concern of the courts despite the probation and therapeutic accent on penological literature\(^\text{29}\).

The sentencing judge must know that hearing the accused on the question of sentence is an important stage of a criminal case which needs due attention by him. He must give reasonable time gap after finding the accused guilty and passing the sentence. For this he should provide proper opportunity to both the parties and then draw his own conclusions with regard to this.

In order to ensure proper use of these laudable provisions, a directive of the High Court drawing the attention of the courts to the observation of the Supreme Court in the aforesaid cases, is extremely essential. The High Court in revision should take serious note of such lapses and send a copy of the concerned judgement to all the courts of the State.

34 Judges' Knowledge of Probation Law

The Punjab Probation of Offenders Rules were framed in 1962 by the Punjab Government under section 17 of the Act. Consequently the Act was first enforced in seven districts of the composite state of Punjab and by 1st January, 1967, it was made applicable to all the districts. The Act shifted the

\(^{28}\) AIR 1979 SC 680,

\(^{29}\) Id., para 6.
emphasis from crime to the criminal by introducing individualisation of sentence. This was a major change in the penal policy from the conventional punitive approach writ large in the Code of Criminal Procedure, 1898. This necessitated the comparative change in the sentencing policy of the court which in turn required sound knowledge of the Act and progressive penology, i.e., the role of probation in criminal justice of the free Indian Society with human constitutional roots. This was more demanding in the absence of the rational sentencing policy. The proper understanding of the various relevant provisions of the Act is dependent upon the academic and professional background of the judge, interim refresher courses in correctional criminal justice, comprehensive directives highlighting the role of the probation under the Act, the interest of the judge in the subject and endeavours of the probation officers and the Bar for proper use of probation.

**Professional and Academic Background**

Judicial Magistrates in the state are selected on the basis of a written examination conducted by the Punjab Public Service Commission. There is no interview to judge the knowledge of the new incumbents in the correctional administration. There is only one criminal law paper that consists of I.P.C., Cr.P.C. and the Evidence Act. The prospective judicial officers do not read the Act as it is not in the syllabus. After their selection, they are given some training in revenue matters and judgement writing. The Act does not figure anywhere in their
professional career till its benefit is claimed by some one. Even there, they do not read the Act or try to go into depth but notice the relevant section or case law from the book handed over by the Advocate representing the accused who would present the case law or commentary as it suits him and hide the one that goes against him. Even the academic background is of no help in this respect.

The reformatory approach of the Act, and comparative marches in the progressive penology that make up the corrective deficiencies of current sentencing do call for the compulsory study of the subject for LL.B, and P.C.B. Judicial Examinations. The new entrants should be trained in the imperatives of appropriate sentencing. In view of the recording of special reasons for not granting probation, a judge is supposed to have knowledge of the Act as well as of the Code. Therefore, he must be made professionally and academically competent in the know-how of both.

Steps for Making Judiciary Probation Minded

The Act brought about a social reform in the criminal justice of India, first introduced by the code of Criminal Procedure, 1898, in rudimentary form by shifting the focus of the penal policy from crime to the criminal. This was a major drift in the sentencing policy which was mainly punitive. It was, therefore, necessary to acquaint the judiciary, especially subordinate, with the reformatory approach and consequent change in their sentencing pattern. This was more desirable in
view of their academic and professional background as discussed above. But nothing concrete was done for a considerable period, the probation officers were expected to create public opinion in favour of probation; convince the court of the dynamic role of probation. The District Probation Officers after their post was made interchangeable with the Deputy Superintendent of Jail, hardly took any interest in their job and always tried to go to the parent Department of Prison. Want of the knowledge of correctional justice, inferiority complex, the indifferent attitude of the judges, lack of any Departmental Supervision etc., further added to the sorry state of affairs. The rosy picture presented in the Monthly Progress Statements of District Probation Officer was only a mis-statement based on guess work.30

Inspite of the dire necessity, no directive was issued by the High Court to subordinate courts of the state spelling out the true import of the Act and its liberal but appropriate use. The judges did not show any interest in the administration of correctional justice under the Act. The sentencing policy of the judges and the purposes of the Act sought to be achieved through the non-institutional dispensation of justice created a gap which remained unbridged. The non-organisation of any orientation course in correctional justice for the judicial officers of the state further widened this gap. The probation was considered as a leniency and let-off, and not as an effective measure of achieving the ends of criminal justice.

30. The Institution of Probation Officer is in Chapter XX
by the rehabilitation of the reclaimable offenders in the
society. The Courts granted probation rarely and that co,
on guess work rather than on merits. They were not aware of
their statutory obligation not to impose a sentence of imprison-
ment on young offenders below 21 years of age at the time of
conviction unless they call for the report of the probation
officer and then on the basis of that record their special
reasons for denying probation. The initial attitude of the
courts in the state is best explained with the example of the
case of Rattan Lal versus The State of Punjab. The appellant
16 years of age was convicted under section 354 and 451 of the
I.P.C. and sentenced to imprisonment for 6 months by the
Magistrate. In his appeal to the Additional Sessions Judge,
he was not granted probation without complying with the
mandatory provisions of section 6. He filed revision petition
before the Punjab High Court requesting it to exercise jurisdi-
cion under section 11 of the Act. The High Court which is
under the same obligation as the trial court by virtue of the
mandatory nature of the said section dismissed the petition.
The Supreme Court in special leave to appeal recommended to
the High Court to follow the mandatory provisions of section 6
and remanded the case. The Highest Court instead of remanding
the case should have disposed it of under section 11 of the Act.
This also indicates the interest and attitude of the Supreme
Court.

The position up to 1971 in the state as well as in the

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rest of the country is summed up by the then Chief Justice of India, Justice S.M. Sikri, while delivering the inaugural address of the Probation Year, in this context, he observed:

   But is it not enough to pass law and say that probation is good thing? Not only should the serious students and Probation Officers be convinced of its advantages but the Judiciary and the Bar must become its votaries. Unfortunately at present very little serious attention is paid to this aspect by the judiciary and the Bar. As a matter of fact I was shocked to see that in a number of cases which came to the Supreme Court recently, even the existence of the Act was not known. No reference to the relevant provisions of the Act was made in Courts below, the point was taken in the grounds for special leave to appeal to the Supreme Court.  

1971 was celebrated as Probation Year. Before this the Ministry of Social Welfare, Government of India, constituted a Central Bureau of Correctional Services and Central Advisory Board on Correctional Services with the object of preparing public opinion in favour of correctional work. The main purpose of the celebration and cooperation among various agencies concerned with probation. The Central Bureau of Correctional Services organised seminars and functions on probation at different places in the country. The state of Punjab did not host any one. The legal luminaries such as Chief Justice of India and his colleagues, The Chief Justices of the High Courts and their fellow judges and the eminent jurists, delivered key-note addresses in which they expressed their opinion about the

place of probation in criminal justice and its weaknesses. One of the important drawbacks of the system was lack of knowledge of progressive penology and practical working of probation by the sentencing judges. Therefore, it was considered essential that comprehensive directive on the role of the Act and its liberal use should be issued by the High Courts to their respective subordinate courts.

The Punjab and Haryana High Court issued the said directive to all the Sessions Judges, and through them to all the Magistrates. Part II of the directive reads:

The Probation of Offenders Act, 1958, was enacted by the Parliament to provide for release of offenders after due admonition or on probation and for matters connected therewith. The Act shifts the emphasis from deterrence to reformation and from crime to the criminal in accordance with the modern outlook on punishment. Reformation and Rehabilitation is the keynote of the Act. These objects of the Act would be defeated if the courts were to by-pass the provisions of the Act even when the case of the offender falls within its ambit. The Hon'ble Chief Justice and Judges would like every judicial officer to acquaint himself thoroughly with the important provisions of the Act and to consider the advisability of applying these provisions to suitable cases.

powers under the Rules such as to call for the report of the 
probation officer. The attention of the Sessions Judges was also drawn to section 11 of the Act which permits them to 
exercise the powers of trial court as Appellate and Revisional courts. Part IV directed the courts to mention, separately in 
their monthly statements the number of cases dealt with under 
the Act. It also cast a duty on the Sessions Judges to address 
the Judicial Magistrates of their respective jurisdiction 
regarding the scope and object of the Act so that the end in 
view could be achieved.

The celebration of the Probation year culminated to the 
holding of a "National Correctional Conference on Probation and 
Allied Measures" in October, 1971. A large number of representa-
tives from the Judiciary, Social Welfare, Probation, Prison, 
Police, the Bar and the non-official agencies participated in 
the conference. The conference made wide ranging recommenda-
tions for proper functioning of probation. In the present 
context, it recommended that:

(a) Probation should form a part of professional education 
of judges and lawyers;

(b) Regular refresher courses for judicial officers should 
be organised;

(c) Probation Advisory committee headed by a serving judge 
of the High Court should be set up in each state, and

(d) The High Court Manual should include detailed instruc-
tions regarding the Act, its implementation and 
effective coordination between courts and probation 
officer.
These recommendations, a sine qua non for putting the correctional justice on its correct pedestal are still slumbering and gathering dust as nothing has been done to carry them out in letter and spirit. The High Court directive remains to be continuously flouted by the indifferent attitude of the courts reflected in the frequent violations of the mandatory provisions of the Act and section 361 of the Code. Even the Sessions Judges failed to perform their duty of apprising the Magistracy of the provisions of the Act and the objective sought to be achieved. The Magistrates by and large, are not probation minded and they hardly take pains to realise their professional duties envisaged by the Act and outlined in the High Court directive continuously echoed in the judicial pronouncements of the Supreme Court.

The National Institute of Social Defence, successor of Central Bureau of Correctional Services has undertaken the onerous responsibility of organising refresher courses in Correctional services on permanent basis. It has no independent building. Therefore, it has not set up any training institute for the judicial officers, probation officers and social welfare officers. The Central Institute for imparting the said training is one of the cherished objects, conceived long back, but yet to be achieved. The National Institute provides funds to the State Probation Department for organising refresher courses. These refresher or orientation courses are of ceremonious nature where very little attention is paid to solve
the problems of probation officers vis-a-vis the Courts. No judicial officer attends these courses for whom these are really meant. This observation is based upon by association with these courses for the last seven years.

The Act has yet to be included in the professional education of judges and lawyers. Neither LL.B. syllabus in the state universities nor the P.C.S. Judicial Examination's syllabus, nor the post-selection initial training yet provides for the study of the Act. The Probation Advisory Committee is nowhere even under consideration in the state. The inclusion of detailed instructions relating to the Act in the High Court Manual is yet to be accomplished. No concrete step, so far, has been taken in this direction. There is no coordination between the probation officers and the Courts. The higher wings of both work at cross roads. The Chief Probation Officer has no rapport with the Sessions Judges or the High Court. The underlying reason of this is deliberated in detail in Chapter VI.

The passing of over a decade of the celebration of Probation Year, the enforcement of the Code - an embodiment of progressive penology and continuous stress of the Supreme Court and the High Court on effective role of the Act under the current criminal justice have failed to make the subordinate judiciary probation minded in the state. There is no material change in their attitude. They are wedded to their traditional punitive approach and are convinced of the fact that reform of the offender through probation is not possible. They do
not administer justice in accordance with the accepted notions of correctional justice outlined under the Act. Probation is granted by them on guess work for extraneous consideration; best known to them. However, there are some exceptions. The following observations of the Supreme Court give the correct picture of the judicial attitude towards the reformatory approach of criminal justice. This is followed by the examples of the violations of the mandatory provisions of the Act by the Courts of the State.

Probation of Offenders Act is a social legislation which is meant to reform juvenile offenders so as to prevent them from becoming hardened criminals by providing them an educative and reformatory treatment. Unfortunately, though the provisions of section 6 are mandatory, the courts do not appear to make wise use of these provisions which is necessary to protect the younger generation from becoming professional criminals and, therefore, a menace to the society.

Recently the Supreme Court in *Dilbag Singh versus State of Punjab* while releasing the appellant on probation in appeal under Article 136 of the Constitution observed:

Enacted law (probation law under the Act) is guilty of inaction, because its obscure presence on the statute book escapes the vigilance of the Bar. Where even the court ignores it what is vital to the littleman (offender) the guarantee of sentencing legality becomes a casualty. This case is an

instance in point.... Probation and Community oriented methods lying in legal limbs may be activated.... And yet the exacting art (probation ) is more honoured in breach than in observance.... The appellant has served a substantial part of his sentence in jail because of the judicial ignorance in the area of non-institutional disposition... sentencing legality is violated when the judge shirks (responsibility ) and the Bar is often alien to the correctional alternatives and concentrates its ammunition on culpability and extenuatory scaling down of imprisonment36.

Keeping in view the increasing role of probation in the administration of criminal justice, the emerging progressive trends in sentencing principles and penology, the little knowledge of sentencing judges and their punitive policy, it is of utmost urgency to educate them about the true import and role of probation. Justice C.Chinnappa Reddi of Andhra Pradesh High Court (now Judge of the Supreme Court) stated, in this context, in the Probation Year:-

The Judges and Magistrates must educate themselves for the latest and progressive aspects of criminology and methods of treatment of offenders and in particular with the ideas and treatment of probation.37

In this respect, Dr Mrs. Singh observed in the Probation Year:-

Knowledge of criminology is equally essential (for judges) for passing appropriate sentence which is likely to benefit the individual offender as well as to the state.38.

37.Supra note 8 p.54.
Justice V.R. Krishna Iyer, then a member of Law Commission of India (now retired Judge of the Supreme Court) observed in the same historic year in his inaugural address to the National Correctional Conference on Probation and Allied Measures:

The awareness of the need to be educated in the current thought on the causes, syndromes and treatment of crime and criminal is the beginning of the forensic appreciation of probation and allied methods. Indeed, Modern Criminal jurisprudence and allied Social and Psychiatric Departments have gone so far ahead of the lagging Indian Courts, cloistered in their out worn ideas, that a national or refresher programme for the criminal judiciary, from the lowest to the highest echelons, is an imperative need.

Highlighting this urgency Justice P.N. Bhagwati of the Supreme Court observes that it is imperative:

To educate them in the new trends in the penology and sentencing procedure so that they may learn to use penal law as a tool for reforming and rehabilitating criminals.

The discussion is concluded with the observations of Justice M.Fiaz Ali:

It is the prime need of the hour to set up training institutes to educate new judicial recruits or even serving judges in the changing trends of judicial thought and new ideas which the new judicial approach has imbibed over the years as a result of the influences of new circumstances that have come into existence.

41. Ibid.
For due dispensation of justice in accordance with the progressive provisions of the Act, the study of the Act, the Rules and case law on probation, is of utmost importance. Therefore, the Act and the Rules should be included in the syllabus of LL.B. Course and P.C.S. (Judicial) Examination. Pre-entry training in the apt working of the Act and the Rules should be imparted to the new entrants in the state judiciary as well as to the new incumbents in the Probation Services. Regular refresher courses in probation and Allied Measures should be arranged for Judicial and Probation Officers. A monthly journal of probation cases decided by the State High Court and the Supreme Court should be started by the Probation Department of the State. It should be distributed free of cost to all the judicial and probation officers of the state.

3:5 Violation of Statutory Minimum Limit of Supervision Order

Section 4(3) of the Act prescribes the minimum period for which an offender can be placed under the supervision of a probation officer. It provides that the supervision order shall not be less than a period of one year. The maximum limit is three years. This makes the position absolutely clear regarding the minimum and maximum length of supervision order. It means any order of a court placing the offender under the supervision of a probation officer for a period of less than one year is bad in law as being violative of the mandatory minimum limit of one year. But the courts in the state go on committing the mistake of law by passing supervision order for
a period of 6 months and 9 months. About nine years back the following letter was written by a District Probation Officer to the Chief Judicial Magistrate drawing the later’s attention to this flagrant violation.

From:

MR X,
District Probation Officer,
Y.

To

The Chief Judicial Magistrate,
X,


Subject: Release of Sh.K. under section 4 sub-section (3)
for six months.

I may bring to your kind notice that when any person is released under the above section, the supervision period is not to be less than one year vide section 4 sub section (3) of Probation of Offenders Act, 1958. This is for your kind information.

Sd. X,
District Probation Officer,
Y.

No. 592 Sept 25/74, dated 12.9.1974

Copy forwarded to the Inspector General of Prison, Punjab, Chandigarh for information

Sd. X,
District Probation Officer,
Y.
Neither the Chief Judicial Magistrate nor the Inspector-General of Prisons took notice of the appreciable step of the perhaps only Probation Officer in the State. This was not brought to the knowledge of the subordinate courts by the Chief Judicial Magistrate. The Inspector-General of Prisons, being the Chief Controlling Authority of Probation Services in the State, should have discussed this matter with the Registrar of the state High Court. He should have got a directive issued to the courts of the state drawing their attention towards this lapse of law. Statement No. V (Supervision) of State's Statistics Relating to Probation Services, prepared on the basis of the Proforma circulated by the National Institute of Social Defence, is patently wrong. Relevant part of this is reproduced below to drive home the point.

**Statement V (Supervision)**

Number of Probationers placed under supervision during (year) by offences, Length of supervision and age group.

<table>
<thead>
<tr>
<th>By Length of Supervision</th>
<th>Upto One year</th>
<th>More than one year</th>
<th>More than two years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>More than one year</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>and upto two years</td>
<td>years</td>
</tr>
</tbody>
</table>

The official statistics annually submitted by the District Probation Officer do not indicate the number of probationers placed under supervision for a period of 6 and 9 months because these are included in the first category. In order to rectify this error of law, the words 'upto one year' should be replaced by 'One year'. The case of supervision less than one year should be taken down separately. So far, nothing has
been done by the Department to correct the said wrong application of the Act by the courts. Even the National Institute of Social Defence has omitted to detect this miscarriage of law by the Courts. Table III on the following page shows the violation of the statutory minimum limit of one year by the courts in all the districts of the state.

The figures in Table 8 show that the violation of the statutory minimum was confined to the Magistrate Courts in the districts of Amritsar, Bhatinda, Faridkot, Jullundur, Kapurthala and Sangrur. This implies that the Sessions Judges in these districts were well aware of the provision of the Act especially of the statutory minimum limit of the supervision order. However, they did not transmit this knowledge to their subordinates as was required under the High Court directive of 1971. The Sessions Judges of Ferozepur acted wrongly in 21 cases leaving only two violations to their subordinates. The Judges seemed to be ignorant of the supervision limit. Next comes the number of Ludhiana where out of the total 3 violations 2 were committed by the Sessions Court. There were 4 such mistakes of law in Gurdaspur out of the total 11. In Patiala the share of Sessions Judges was 3 but this was too small out of 56 violations in all. In Hoshiarpur and Roopnagar there was only one violation out of 5 and 4 respectively. The magistracy recorded the highest violations (53) in Patiala followed by 23 in Faridkot and 7 in Gurdaspur. It is pertinent to point out that in all the districts the magistracy violated the statutory minimum by passing supervision order to the tune of six months. But in case of 9 months supervision order, the violation was confined
to five districts of Bhatinda, Ferozepur, Hoshiarpur, Patiala and Roopnagar. In toto, the statistics exhibit the perpetuity of the error of law by the guardians of law. This needs immediate rectification by proper education of the judges of the state in the correctional approach of the modern Indian criminal justice envisaged by the Act.

3:6 Wrong Application of the Act to Offenders Below 16 Years of Age

As discussed in Chapter II section 18 of the Act is a saving clause. Among other exclusions it also provides that the Act shall not affect the provisions of any law in force in any state relating to juvenile offenders or Borstal Schools. It means that the existence of any state legislation concerning juvenile offenders precludes the operation of the Act. The East Punjab Children Act has, since 1969, been enforced in all the districts of the state. This Act provides for the trial, punishment, treatment and rehabilitation of the youthful offenders. Youthful offender means a male or female below 16 years of age.

The East Punjab Children Act, 1949 also lays down the procedure for bail, custody, trial of the youthful offender. This power under the Act is conferred on the High Court, Sessions Court, juvenile Court and the Judicial Magistrate specially empowered by the High Court. Even if the court has not followed the procedure of inquiry or trial under the Punjab Act, it can, on determination of guilt deal with the child offender in any of the manners provided in section 35. The methods of dealing with the youthful offender given in section 35 are:
(a) Discharge after due admonition;
(b) Committing to the custody of a person who undertakes to execute a bond for being responsible for his care;
(c) Putting under the supervision of a person named by the Court;
(d) Release on probation of good conduct;
(e) Detention in certified school;
(f) Payment of fine.
years of age who has been found to have committed an offence. The youthful offender can only be dealt with the methods mentioned in section 35 of the Children Act and not otherwise. It is, therefore, quite unambiguous that the release of an offender below 16 years of age on probation of good conduct under the Act is forbidden by the said Children Act. In spite of this mandatory prohibition, the courts in the state release the youthful offender under section 4(1) or 4(1) read with Section 4(3) of the Act i.e., grant of probation without or with supervision order.

Out of 3000 probationers, 82 probationers were below the age of 16 years. The District-wise break up is given below:

Table 5

<table>
<thead>
<tr>
<th>District</th>
<th>Probationers</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>600</td>
<td>6</td>
</tr>
<tr>
<td>Bhatinda</td>
<td>450</td>
<td>9</td>
</tr>
<tr>
<td>Faridkot</td>
<td>200</td>
<td>15</td>
</tr>
<tr>
<td>Ferozepur</td>
<td>150</td>
<td>4</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>250</td>
<td>3</td>
</tr>
<tr>
<td>Hoshiarpur</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td>Jullundur</td>
<td>150</td>
<td>3</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>150</td>
<td>11</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>150</td>
<td>4</td>
</tr>
<tr>
<td>Patiala</td>
<td>450</td>
<td>6</td>
</tr>
<tr>
<td>Roopmarga</td>
<td>100</td>
<td>3</td>
</tr>
<tr>
<td>Sangrur</td>
<td>250</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>3000</td>
<td>82</td>
</tr>
</tbody>
</table>

on
This violation of the Children Act, even in the International Year of the Child is reported in the official statistics submitted by the District Probation Officers in their Annual Statements. The figures collected from these Annual Statements for period of five years i.e. from 1975 to 1979 are given below. The official statistics though not authentic do indicate the official recognition of the misapplication of the Act to offenders below 16 years of age.

Table 6

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>9</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Bhatinda</td>
<td>4</td>
<td>-</td>
<td>4</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td>Faridkot</td>
<td>8</td>
<td>6</td>
<td>-</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Hoshiarpur</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Jullundur</td>
<td>9</td>
<td>9</td>
<td>2</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>8</td>
<td>8</td>
<td>2</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Patiala</td>
<td>30</td>
<td>28</td>
<td>13</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Roopnagar</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sangrur</td>
<td>11</td>
<td>6</td>
<td>7</td>
<td>14</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>84</td>
<td>70</td>
<td>29</td>
<td>44</td>
<td>29</td>
</tr>
</tbody>
</table>

These statistics may not tally with the statement published by the National Institute of Social Defence because...
firstly, these are not correctly recorded in the Annual Statement by the District Probation Officer; and secondly, the statistics furnished by the State Head Office are not correctly sent as they are not accurately prepared but based on the figures of the previous year which themselves are the product of guess work. This finding is based on the examination of the record and then comparing these statistics with the figures submitted in the Annual Report.

It is evident from Table 6 that the only exception to the wrong application of the provisions of the Act to the juvenile offenders below 16 years is the district of Hoshiarpur. This is attributed to the location of Certified School at Hoshiarpur. The very existence of the School for the keeping of the juvenile offenders in lieu of their imprisonment makes the Bench and the Bar there to know the purpose of the Children Act. The courts in the district treat the offender under the Children Act which rules out the release on probation of good conduct under the Act. However, in the rest of the state there is no change as regards to the exclusion of the jurisdiction of the Act to the youthful offenders.

Neither the study of 3000 case files nor the five years official statistics (1975 to 1979) show any case of youthful offender being dealt with under section 30 of the Children Act which provides for the release of the said offender on probation of good conduct. The statement II (Enquiries for courts) and Statement III (Supervision of the proforma of the Annual Statement) do mention the state Children Act. An examination of these statements of all the districts from 1975 to 1979 reveals nil
operation of the probation provision of the East Punjab Children Act. This proves the ignorance of the judges for the probation of youthful offenders under the Children Act. This further leads to the inference that though the courts in the district of Hoshiarpur did not commit the mistake of law by the application of the Act to juvenile offenders yet they did not realise their duty under section 30 of the state Children Act which provides for the release of youthful offenders on probation of good conduct.

Section 30 is a comprehensive provision as it allows the grant of probation to offenders below 16 years even accused of an offence punishable with imprisonment for life. Moreover, the court while dealing with the youthful offender under the Children Act does call for the social investigation report of probation officer. As discussed in Chapter II this report enables the court to select an appropriate method of handling the young offender i.e., whether the keeping of the Child in the Certified School or release on probation subject to the supervision of probation officer would meet the ends of justice. An early report to the Children Act is a prime need of the time. It will prevent the incarceration of child offenders and ensure their rehabilitation either through probation or the institutional custody in the school.

Moreover, personal inquiries from probation officers, probationers, clerical staff of probation officers and residents of the probationers’ locality reveal that majority of
youthful offenders granted probation under the Act belong to the delinquent families. They were found guilty under section 61 of the Punjab Excise Act, 1914 i.e., illicit liquor cases. They were either apprehended while their parents ran away from the place or they were made to take the blame in order to take advantage of their tender age or they associated with their parents in the commission of crime or they carried on the profession of their parents when they (parents) were undergoing imprisonment in order to successfully litigate in higher courts and for earning livelihood. They are under an unhealthy influence where crime is considered a good bargain. All relevant sentence determining factors are concealed from the sentencing judge by the counsel of their parents. The public prosecutor is also won over and kept silent. The tender age provides a good excuse for release on probation which enables the young offender to resume his job. The judge overburdened with work, indifferent towards appropriate sentencing and eager to oblige the intimate counsel throws aside the negative factors by granting probation to the undeserving youthful offender.

These young offenders who are at a curable stage must be removed from the unsavoury home and surroundings. Their incarceration is also injurious. But keeping them in the Certified Schools where educational, ethical and vocational instructions are imparted is extremely essential for their proper rehabilitation in the society and to take them away from
the path of crime. They can only be provided such treatment and care through the provisions of the Children Act and not by resorting to the sentencing alternatives under the Act or the Code. Therefore, it is the fundamental duty of courts to know the important provisions of the Children Act and their appropriate role in the rehabilitation of youthful offenders. This will enable the court to grant probation to the offenders below 16 years who merit it and need parental care for their resocialisation but are deprived of probation under the Act on the ground of being guilty of offences punishable with life imprisonment.

3:7 Impropropriety of Short-Term Imprisonment

It is clear that probation has developed as a sentencing alternative to imprisonment due to the realisation of ineffectiveness and harmful consequences of imprisonment mainly of short-term. Short-term confinement in prison breeds evils without doing any good either to the offender or the society. The period is too short for any educational or vocational or ethical training. The very association or occasional get-together with habitual criminals trains the first comers with short duration in the art of crime, turns them into obdurate criminals, and removes the fear of prison life which is considered to be the best deterrent to crime.

44 Jotana H. Shah, PROBATION SERVICES IN INDIA, at 1.
It puts an additional burden on the overcrowded prisons and the strained economy, brands the offender with the stigma of imprisonment, results in loss of employment and blocks his rehabilitation after release from the jail. Therefore, the real problem of social defence starts when the prisoner comes out of jail.

Right from the findings of the Indian Jail Committee, 1919-20 till today there has been a persistent demand for the abolition of short-term imprisonment and its replacement by other sentencing alternatives viz., probation and fine. The latest in the hierarchy are the Report of Haryana Jail Reform Commission submitted in 1980 and the Report of All India Jail Committee submitted in March, 1983. The latter is still a privileged document and yet to be published. Both Mr. K.C. Shenkar and Mr. B.S. Gill, the former Inspector-General of Prisons, Punjab and the present incumbent Shri T.L. Katoch, on the basis of their long personal experience of prison administration, are strongly opposed to short-term imprisonment which they think is meaningless and injurious. Dr. B.R. Sharma, Director, Central Forensic Science Laboratory, Chandigarh, on the basis

46. The summary of the Haryana Report was published in the Tribune dated 30th and 31st of October, 1980, under the authorship of Shri Tik Chand (retired Judge of Punjab High Court) the Chairman of the Commission. The findings of short-term imprisonment appeared in essay titled 'Crime, Criminals and Jails'. The summary of the All India Jail Committee Report was published in instalments in the newspapers from April 2, 1983 onwards e.g. The Indian Express dated 3-4-1983 and the Tribune dated 10-4-1983.
of his personal study (unpublished) is of the confirmed view that short-term imprisonment does only a harm and no good as it stigmatises the convict, makes him learn new tricks from the professional criminals and turns a casual offender into a professional confirmed offender. I consider it necessary to quote a few empirical studies which attribute recidivism to a great extent, to a sojourn to prison. Dr. S.K. Bhattacharya while dealing with the overcrowding of Indian prisons and measures to relieve pressure on jail says:

The dangerous and uselessness of short term imprisonment should be investigated fully... short term sentences beyond having nuisance value accomplish little. The offender is degraded and humiliated and nothing more. Extra pressure is unnecessarily put on jail population. Apart from the fact that reformation is impossible during such a short period of time, the fear is lost upon this class of prisoners. Short term sentences should be eliminated as far as possible. In no case should young people be sent to prison on a short term sentence. As an opportunity for training short term sentence is useless. It is merely harmful and cruel. The element of constructive punishment is absent from a short term prison sentence 47.

Dr (Mrs.) M.K.S. Singh on the basis of her empirical study has very aptly brought out the evil effects of short-term imprisonment especially on young offenders 48.

Dr. K. S. Chhabra, on the basis of his case study of short-term prisoners, is fully convinced of putting an end to short-term imprisonment and suggests nine months as minimum limit of imprisonment. He suggests fine or probation as the substitutes for short-term imprisonment because:

Short term puts the offender on the life of crime both on account of learning from association of hardened criminals and removal of any ideas of grave hardship in jail life... When short term sentence cannot possibly give any treatment for rehabilitation and on the contrary confirms the offender on the track of crime by virtue of association in jail with hardened criminals, we can conveniently conclude that this short term sentence - is the most probable and most dominant cause why the rate of second recidivism goes up. 49

Moreover, the prisons in India are an correctional institutional infrastructure. There is a collusion between the professionals and the staff which gives rise to many vices such as homosexuality, auto-erotic practices, gambling and menial labour. A study by a social scientist based on visits to various prisons in the country confirms this exploitation. 50

The observations of the Supreme Court in Dilbag Singh 51 and Satto Cases 52 finally culminated in Sunil Batra 53 further corroborate the exploits of young and first prisoners and the

49 K. S. Chhabra, QUANTUM OF PUNISHMENT IN CRIMINAL LAW IN INDIA, 1970, at 159-160.
50 The interview of the Social Scientist in the service of Govt. of India who wanted to be unidentified published in THE TRIBUNE, dated 18.8.1979. The similar findings are given by in the Indian Jail Committee Source, The INDIAN EXPRESS, dated 10.4.1983.
51 AIR 1979 SC 660.
52 (1979) 25 CC 638.
53 1980 Cr L.J. 1099(SC).
vices ingrained in them. My visits to jails in Punjab do lead to the conviction that short-term imprisonment is of no use except attended with perils of social defence.

The I.P.C. Amendment Bill 1972\(^{54}\) which sought to achieve the object of minimising the scope of short-term imprisonment died a tragic death after gathering dust for eight long years in the August Parliament. Section 354(4) of the Code puts restriction on the power of the Court to award sentence of imprisonment for a period below three months. It requires that the court shall record reasons for imposing such a short-term sentence where the maximum term of imprisonment that can be awarded is a year or more. This section which is intended to discourage short-term imprisonment and encourage the use of alternative sentencing methods like probation and fine has hardly been noticed by the Magistrates in the state.\(^{55}\) Inspite of its presence and continuous caution against the imposition of short-term imprisonment, a substantial number of new entrants in the Punjab jails is for a period less than one year. Table 7 shows the length of sentences of convicts admitted into the jails of the state during the period of six years from 1975 to 1980.

\(^{54}\)Published in Gazette of India Extraordinary Part II Section II dated 11.12.1972.
The number of new entrants into the prisons of Punjab during the three years period shows that the prisoners below three months imprisonment constitute about 30 per cent of the total prison population. An approximately equal number is with imprisonment period from three months to one year. The implied bar under 354(4) on the imprisonment for a period below three months has been almost kept in abeyance. Inspite of the glaring but patent defects and uselessness of short-term imprisonment, not alien to the trial courts, it continues to dominate their sentencing policy. There is no shift in this sentencing policy of the Magistracy as the percentage of prisoners below three months imprisonment and also upto one year incarceration remained same for the period of three years. This also proves that the courts did not make proper use of the provisions of the Act which are specially designed as a viable substitute for short-term imprisonment.

Probation or fine are the other sentencing alternatives. The scope of fine is limited as the economic condition of the majority of the offenders is not sound and the imposition of fine ultimately leads to their imprisonment in default of payment of fine. Therefore, probation is the most suitable sentencing alternative to short-term imprisonment which continues to receive little attention in this perspective. This implies that the very purpose of the Act has been defeated by the indifferent attitude of the courts. Some imperatives are immediately needed to avoid perils and uselessness of Short
sojourn to prison. It is now an established fact that there should be at least one complete year to accomplish the goals of incarceration. This period is essential to impart vocational and ethical instructions, will enable him to earn livelihood out of jail, prove a sufficient deterrent for him and other prospective offenders. There is no justification for a sentence of imprisonment less than six months. Probation and fine should be the only sentencing alternatives. Section 354(4) of the Code should be amended. The court should be required to assign reasons for awarding a sentence of imprisonment short of one year. It should also bar the imposition of imprisonment below six months. There are a few sections in the I.P.C. and other laws which provide for an imprisonment of shorter duration. These sections should be amended and a minimum sentence of six months imprisonment should be provided. In minor cases fine, admonition or probation can serve the ends of justice. Till the suitable amendments in the law are made, the High Court should issue directive with stern warning for awarding short-term imprisonment. It should direct the effective use of probation as an effective substitute for short-term imprisonment.

18 Infringement of Mandatory Obligations by Courts

Mandatory Obligations

Section 4(5) of the Act lays down that the Court passing the supervision order under sub-section (3) shall explain to the offender the terms and conditions of supervision
order. It also obligates the court to supply one copy of the order to each of the offender, the sureties if any, and to the concerned probation officer. As discussed in Chapter II the proforma of supervision order has been prescribed under Rule 25 of the Punjab Rules. It is given in Form VI which contains eight conditions. The person placed under supervision executes the bond given in Form VII as required under section 4(4). The bond specified in Form VII repeats the eight conditions of supervision order with the addition of one more undertaking by the probationer to accept and fulfil the eight conditions of the supervision order.

The underlying object of these conditions is to ensure the rehabilitation of the probationer in the society through self-restraint with the assistance and surveillance of the probation officer; by endeavours at honest and industrious life; and abstention from relapse to crime. In other words, these terms and conditions of suspension of punishment aim at the prevention of crime and protection of society by resocialising the offender through release on probation of good conduct. The conditions are primarily meant to safeguard the society against the possible future danger from the probationer. Therefore, the Parliament thought it necessary to make the explanation of the said conditions binding on the court. The explanation of the conditions to the offender is of utmost importance to make him realise that probation is a suspension

55. For conditions see footnote 76 Chapter Two.
of sentence which can be imposed if he fails to abide by his undertaking. It is essential to make him understand the true implications of the order which otherwise is projected as a mere let-off by his counsel. Moreover, how can an offender observe these conditions unless he understands them and their consequences. Hence, the necessity of the compliance by the court with the requirements of section 4(5). The discussion on the subject is confined to the violation of explanation of conditions; and information to the probation officer; and their consequential disadvantages and distortions.

Explantion of Conditions to Probationers

The very first requirement of the supervision order is the reporting by the probationer to the probation officer within fourteen days from the date of the supervision order. Actually, the supervision commences from the date when the probation officer meets the probationer and knows about him and his rehabilitative potential and requirements. The personal appearance before the probation officer enables him to set the probationary process in action. The court is required to explain this to the probationer. The study of 3000 case files of probationers, interviews of probation officers and the probationers and the concerned staff, prove: that the courts of the state hardly take note of this statutory duty or bother to perform this. The explanations given by the probationers for not appearing of their own within 14 days as recorded in their supervision files and the number of probationers reporting
to probation officer without notice are the supporting factors.
My presence in the courts to watch the grant of probation and compliance of section 4(5) makes me to rely on the entries in the probationers' files regarding the non explanation of the conditions of supervision. The following table shows the total number of cases and the number of cases in which the conditions were explained by the courts in each district of the state.

<table>
<thead>
<tr>
<th>District</th>
<th>Total No. Cases</th>
<th>Cases in which conditions explained by courts</th>
<th>Cases in which conditions explained by the ions</th>
<th>Cases in which conditions explained by Magistrate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>450</td>
<td>18</td>
<td>15</td>
<td>432</td>
</tr>
<tr>
<td>Bhatinda</td>
<td>200</td>
<td>11</td>
<td>9</td>
<td>189</td>
</tr>
<tr>
<td>Faridkot</td>
<td>150</td>
<td>67</td>
<td>935</td>
<td>83</td>
</tr>
<tr>
<td>Ferozepur</td>
<td>250</td>
<td>130</td>
<td>67</td>
<td>120</td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>150</td>
<td>10</td>
<td>4</td>
<td>95</td>
</tr>
<tr>
<td>Hoshiarpur</td>
<td>250</td>
<td>25</td>
<td>16</td>
<td>125</td>
</tr>
<tr>
<td>Jullundur</td>
<td>150</td>
<td>8</td>
<td>5</td>
<td>142</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>150</td>
<td>33</td>
<td>21</td>
<td>117</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>450</td>
<td>96</td>
<td>31</td>
<td>354</td>
</tr>
<tr>
<td>Patiala</td>
<td>100</td>
<td>17</td>
<td>12</td>
<td>83</td>
</tr>
<tr>
<td>Roopnagar</td>
<td>250</td>
<td>43</td>
<td>9</td>
<td>207</td>
</tr>
<tr>
<td>Sangrur</td>
<td>3000</td>
<td>471</td>
<td>238</td>
<td>2529</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3000</strong></td>
<td><strong>471</strong></td>
<td><strong>238</strong></td>
<td><strong>2529</strong></td>
</tr>
</tbody>
</table>
The table shows the gross violation of the statutory requirement of explanation of conditions of supervision order to the offender placed under supervision. The infringement is 99 per cent in case of lower courts and about 49 per cent in case of Sessions Courts. The percentage of Sessions Court may be less because the Sessions Judges by and large are experienced and well conversant with the progressive provisions of the Act and their responsibilities outlined therein. Only the fresh promotions and new addition from the Bar continue to follow their traditional approach and remain indifferent towards their mandatory duties. Otherwise Sessions Judges do explain the conditions of supervision order to the offender while releasing him on probation of good conduct and concurrently passing order of supervision. The percentage of 49 per cent may fluctuate upto 25 per cent but not below this. Such a number of violations is certainly there in case of Sessions Courts. Twenty-five per cent variation can be attributed to the foul play of counsel and the clerk.

The infringement in the lower courts is 100 per cent in majority of the cases. The average one per cent compliance is attributed to a microscopic minority of conscientious and progressive Magistrates who apply probation in letter and spirit by performing all their statutory obligations including the one under discussion. On the whole, the explanation clause is kept in abeyance in the state. This lends credence to the conclusion that probation in the state in lower courts is granted on guess work and considerations other than merit.
The non-explanation of conditions also shows the concern of the courts towards the seriousness and implications of the conditions. This corroborates the version of the defence counsel that probation is nothing but a mere leniency or let-off. The counsel makes the offender believe so by saying that if it were not so the Court must have told him of the observance of the conditions. It means that these are only paper formalities of which he should not care for and take it as an acquittal for all practical purposes.

This lapse of the court encourages the violation of the conditions of supervision order by the probationer. He hardly bothers to report to the probation officer as required under the order or obey other conditions of the order. This is further accentuated by the non-supply of the copy of order and the bond in form VII executed by the probationer. The clerk of the court especially the *Ahmed* does this work on behalf of the Magistrate. Generally, he is in league with the defence counsel and supplies nothing to the probationer that lets him know of his obligations under the bond and the supervision order. Rather, he hands over the copies to the counsel. Taking conditional suspension of punishment as acquittal, the probationer hardly bothers to report to the probation officer. This sets in the vicious process of violation which continues unabated as is clear from the table. This further erodes the efficacy of the rehabilitatory approach of probation and shatters confidence of people in the correctional administration of criminal justice. The exigencies of the proper
functioning of the supervision of probationers do call for an immediate end to this gross violation which goes on unchecked. Some effective steps are necessary to ensure the compliance of the sub-section and prevent the subsequent farcical operation of supervision of probationers by the probation officer. There is a need to forge coordination between the courts and the probation officer to prevent the misuse of this lapse of the court. The latter can apprise the former of the goings on in his court especially the illegalities of the Ahlmad for monetary gains. Initially Ahlmad is approached by the clerk of the defence counsel. The probation officer can reject and put an end to the false pleas of the probationer, in this context, after confirming from the Magistrate that the conditions were explained. This will facilitate proper action by the court on the complaint of the probation officer and deter the other probationers from violating the conditions of the supervision order. The Sessions Judge must issue timely verbal or written instructions to the Magistrates about the said violations. The other remedial measures are interlinked with the information to Probation Officer and therefore, are outlined after the discussion of the second aspect of the sub-section.

Non-sending of Information to the Probation Officer

As seen earlier the Court is under statutory obligation to furnish a copy of the supervision order to the probation officer. The probationer is required to report within 14 days to the probation officer. The information to the probation officer
should reach at least within a week from the date of supervision order. The general trend of non-reporting by the probationers to the probation officer without notice adds to the necessity of early intimation to the probation officer so that he is able to issue notice to the probationer for reporting as required under the supervision order. This enables the probation officer to check the first compliance with the conditions of the order, i.e., reporting to the probation officer within 14 days from the date of the order.

It is a standing complaint of the probation officers, confirmed from their staff in their absence and further corroborated by the late receipt of the copy of the order, that the courts by and large do not send the copy of the supervision order to the probation officer or intimate him of the action of the court. The examination of various notices issued by the probation officers and date of receipt of or collection of copy of supervision order from the court shows that by the time the probationer pays first visit to the office of probation officer, almost half or three-fourth of the supervision period is over. For instance supervision order passed by the Court on 9th September, 10th October, 31st October, 5th November and 1st December 1979 were received by the District Probation Officer Patiala in the late June 1980. The period of supervision was one year in all cases and none of the probationers

56 The reporting of probationers to the probation officer has been discussed later on in Chapter VII, see 7:1. Here only the relevant point has been touched just to highlight the impact of the violation by the Court.
reported to the probation officer. Notices were issued for appearance. The probationers appeared before probation officer after the service of the second notice in the month of August. The probationers completed most of their period of supervision without any supervision required by the order. This is just one example to highlight the consequences of the statutory violation by the courts. There is no dearth of other similar examples. Thus, the non-supply or late furnishing of information to the probation officer regarding placing of the probationer under the supervision of probation officer defeats the basic object of the supervision provision which is meant for rehabilitation of the probationer in the community through the requisite assistance, counselling, guidance and surveillance of the probation officer.

During the examination of the case files and other relevant record in all the offices of District Probation Officers, no covering letter of the court accompanying the copy of supervision order except one was found. This case is the only testimony of the complete compliance with the mandatory requirement of the supply of copy of the order to the probation officer. I consider this case as a model for others to emulate and therefore, reproduce it below:-

From

Shri X, P.C.S,
Judicial Magistrate Ist.Class,
Y,

To

District Probation Officer,
Z, No.1367/JM dated 30-10-1979
MEMO

I have today convicted Mr. M. Singh, S/O N. Singh of village O, Tehsil P under section 61(1) C of the Punjab Excise Act and released him on probation for a period of one year under section 4(3) of the Probation of Offenders Act and placed him under your supervision for that period. A copy of each of the bonds furnished by him has been handed over to the accused who has been directed to report to you within a fortnight for further instructions. A copy of the bonds is sent herewith for information.

Sd,
Judicial Magistrate, 1st Class, Y.

In order to prevent the gross violation of the sub-section it is suggested that the covering letter as given above should accompany the copy of supervision order and bonds executed by the probationer. A copy of covering letter should be filed in the court record of the case. The Sessions Judge must make it compulsory for the subordinate courts to despatch all cases of probation under supervision to the probation officer within a week. It should be made mandatory for all the courts in the district to furnish a copy of such intimation to the Sessions Judge. The higher courts should keep a check on subordinate courts to ensure the compliance with the statutory mandatory requirement. This will prevent the malpractice in this context currently prevalent in the courts. Many probationers
do not want to be under the supervision of the probation officer. They mostly are the persons who do not want to deviate from the path of crime but are granted probation without merit as discussed earlier. There is every likelihood of the detection of their violation of conditions of supervision order and imposition of suspended sentence. They do not want to take this risk and therefore, resort to corrupt practices for getting the supervision order hushed up. The clerk of the advocate bribes the Ahlud who removes Form VI and VII from the case file. Photostat copy of these forms removed by the Ahlud from court order is attached at p4527-28. Generally, no intimation of such cases is sent to the probation officer. Even if the probation officer comes to know of it and issues notice to the probationer for his appearance, the latter says that he was released on probation without supervision and as such was not directed to appear before the former.

When inquired from the probation officers for bringing this matter to the notice of the Magistrates, the uniform reply of all the probation officers was that the Magistrates did not entertain such complaints. Moreover, disgusted with the indifferent and in some cases hostile attitude of the Magistrates, they never dared earn the anger of the clerk of the court to whom they had to go again and again for collection of cases. Moreover, the Chief Probation Officer or the Chief Controlling Authority has no rapport with the Sessions Judges or the High Court. Therefore, no effort is made at the higher level to stop this nefarious practice. Actually the lack of interest in job, absence of supervision by the higher authority, lack of coordination between the probation officer and courts and indifferent attitude of the State Counsel vis-a-vis
intriguing role of defence counsel, are the contributing factors of this vice. Therefore, the prompt information to probation officer as suggested above will bring an end to this sprawling corrupt court practice.

3:9 **Effect of Non-compliance of Statutory Obligations**

Besides the distortions and malpractices pointed out in the foregoing analysis, non-performance of statutory obligations by the courts of the state under Section 4(5) of the Act adds to the malfunctioning of probation. The lack of coordination between the courts and probation officers, the indifferent attitude of courts towards probation and their little knowledge of probation laws, the disinterest of probation officers in their job as correctional case worker further aggravate the situation by making two vital wings of probation to work at cross-roads. As seen earlier no court can make appropriate use of the Act without the assistance of the probation officer. The latter cannot make correct assessment of the working of probation unless he knows the exact number of persons released on probation by the courts and has complete information of their social, economic and personal factors. It is distressing to note that courts hardly bother to make proper mention of probation cases in their report to the state High Court. Similarly, rather more indifferently they either send the cases to the probation officers or allow the latter to have true account of them. The clerk of the court does not know his job in this respect. He makes wrong entries in various columns of the report relating to disposal of the cases under the Act. These initial mistakes, either knowingly or
unknowingly are allowed to be published as such in the Annual Administration Reports. There is a marked difference between the reports of courts and those of the probation officers submitted to their respective heads—both in terms of number of persons dealt with under the Act and application of the various provisions to them. This is evident from Table 9 on the next page which reproduces a replica of Reports for a period of three years i.e., from 1975 to 1977. The complete record of the subsequent years is not available in this respect.

Table reveals many distortions in the judicial version of the application of the Act. For instance, no offender released on probation of good conduct, so far, has been ordered by the court to be kept in a Probation Home/Hostel or other such place. Neither there is any Probation Home/Hostel for probationers in the state nor any such private institution has been recognised by the Government for this purpose. The mention of 100 probationers in 1976 and staggering number of 653 in 1977 for being kept in probation Homes/Hostels when there is not even a single institution and a single order of the court to this effect, is nothing short of making mockery of the Act by the concerned officials. They make mention of other statistics not on the basis of correct record but out of their imagination just to complete the legal formality. It is unfortunate to note the perpetuation of such a blunder on the part of the High Court officials who are supposed to know their job and are under duty to verify the correctness of the reports of the courts.
<table>
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<th>1975</th>
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</tr>
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<td>382</td>
<td>666</td>
</tr>
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<tr>
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<tr>
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</tr>
<tr>
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<tr>
<td>Chief Judicial Magistrate</td>
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</tr>
<tr>
<td>Total</td>
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Part I of the table has been taken from the "Notes on Administration of Criminal Justice in the State of Punjab". The latest published report is of 1977.
### Table 9: Part II

Number of Offenders dealt with under the Act as Shown by the Probation Officers

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>Ers</th>
<th>R</th>
<th>Persons</th>
<th>T</th>
<th>Th</th>
<th>R the Act</th>
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<tr>
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<tr>
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<tr>
<td>probation without</td>
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</tr>
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<td>Released on</td>
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<tr>
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<td>Released on</td>
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<td>Probation Officer</td>
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<tr>
<td>Re e on probation &amp;</td>
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<tr>
<td>required to reside at</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>probation of home/hostel</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>or other places</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Judicial Magistrate       | 149 | 4952 | - | 1458 | - | - | 1975 |
| Chief Jd. Magistrate      |     |      |   |       |   |    |      |
| Total                     | 149 | 4952 | - | 1458 | - |    |      |

| Judicial Magistrate       | 170 | 5896 | - | 1392 | - | - | 1976 |
| Chief Jd. Magistrate      |     |      |   |       |   |    |      |
| Total                     | 170 | 5896 | - | 1392 | - |    |      |

| Judicial Magistrate       | 237 | 5023 | - | 1345 | - | - | 1977 |
| Chief Jd. Magistrate      |     |      |   |       |   |    |      |
| Total                     | 237 | 5023 | - | 1345 | - |    |      |

Part II of the table is taken from the Annual Report of the Prison Department on Probation. There are many clerical mistakes in the Official Reports. Corrected version of figures is given here. The rectification is based on the scrutiny of Annual Reports of the District Probation Officers of the State.
Another gross mistake relates to column 4 of Part I of the Table. A large number of offenders has been shown to be put under the supervision of probation officers specially appointed by the courts. This is absolutely incorrect. The verification of records, inquiries from probation officers, courts and the Chief Probation Officer show that the court while releasing an offender on probation of good conduct orders him to be placed under the supervision of a District Probation Officer of the area for a specified period. He is not a special officer appointed by the Court within the meaning of section 13(1)(c) of the Act. But he is misunderstood as such not by the concerned court but by its clerk who prepares the Monthly and other Reports for submission to the High Court. Actually the number of probationers in column 4 should have been nil. It should have been carried over to column 5. The figures in column 4 and 5 when compared with their counterparts in column 3 and 5 show a lot of duplication. Take for example the years 1975 and 1977. The number of probationers shown to be placed under the supervision of specially appointed probation officers by the courts and official probation officers taken together is 2806 and 3113 probationers respectively. The comparative number shown in the record of probation officers is 1459 and 1345. The figures given in Part I are about two times of the figures given in Part II. This also leads to the conclusion that more than half of the offenders placed under supervision were not known to the official probation officers who in actual practice supervise probationers within
their respective jurisdiction. This conclusion is not true as a small number of probationers placed under supervision, escapes notice of the probation officer due to the reasons stated in the preceding discussion on "Infringement of Mandatory obligations by Courts under section 4(5)". Only a slight variation is admissible.

The Table also represents a big difference as to the number of offenders released on probation without supervision. The mistake seems to be more on part of the Clerk of the Court rather than on the probation officer. Both are negligent with respect to their duty. It is only a question of degree.

Other noticeable but grave mistake on the judicial side is the omission of Courts of Sessions and High Court in the report. It seems from the report that no person has been granted probation either by the High Court or by the courts of Session. This is wholly incorrect, as it fails to take note of a large number of probationers granted probation by the Sessions Courts. Similarly, a small but significant number granted probation by the High Court is reported in the Law Reports and has been cited in Chapter II, the present one and the following two chapters. Out of 3000 probationers released on probation with supervision order, the major basis of this study, there were 471 probationers who were granted probation by the courts of Session. This has already been shown in Table 7 in this Chapter. The Court-wise classification of probationers given in Table 12 later on in this chapter proves that Sessions Judges of all the districts of the state do grant probation rather more appropriately. The continuance of this
serious omission reflects the seriousness of the Courts towards the laudable purpose of probation and its understanding by them. Therefore, the prime need of the time is to rectify this gross mistake by setting the record straight. The sooner it is done the better it is. The job of preparing reports in the High Court should be handed over to the trained staff. Only competent officials can make the Clerks of the subordinate Courts and Magistrates to realise their mistakes, and put them on the right track. The Magistrates must be directed to thoroughly examine the reports before putting their signatures on them and not to allow such misrepresentation of the working of the Act in the State.

An other important error presented in the Table relates to the number of persons dealt with by the Courts under section 3 of the Act i.e., those released after the simple administration of admonition. There is a yawning gap between their number as shown in the Part I and part II of the Table. For instance the number of persons released on admonition in 1976 and 1977 shown in Part I is 6 and 7 times more than the corresponding number in Part II of the Table. This marked variation between the version of courts and probation officers is unfortunate as it shows the guess work and inaction on the part of both wings of the probation system. Such a variation is wholly incorrect. It also leads to the conclusion that either the probation officers do not collect information from Courts as to the number of offenders released after admonition or they are not supplied such information on the request. It is again the clerk of the court who is to blame as he is the concerned person who furnishes information to the
probation officer because meeting with the Magistrate is rare
and that too, a formality without any practical use. The
Magistrate directs the probation officer to see the clerk for
getting the requisite information. But one thing is quite
certain that the number of offenders shown by the probation
officers in their reports is much lower than the actual number
of offenders dealt with by the courts under section 3 of the Act.

The whole miscalculation, distortion, and malfunctioning
can be minimised if the courts are made to send a copy of their
monthly statements relating to disposal of criminal cases to the
probation officer. Similarly, the probation officer must be made
to supply a copy of his 'Monthly Progress Report of Probationers'
to the concerned courts. On receipt of the copy, the probation
officer can check up the exact number of cases dealt with by the
court under the Act and insist on supply of the record of the
case. The court can also ensure implementation of its order in
the sense that the offender is observing conditions of probation
and the probation officer is not taking advantage of the
indifferent attitude of the court by resorting to corrupt practices.
It is extremely essential to forge proper coordination between
the High Court and the Chief Probation Officer. The latter must
exchange information through the Registrar of the High Court.
Both must verify the number and specifications of the Act.
The necessary instructions to carry out the above suggestions must
be issued by the High Court to the subordinate courts and by the Chief Probation Officer to all the probation officers. The Chief Probation Officer must take the initiative and apprise the Registrar of the various said consequences due to the lack of cooperation between the Magistrates and the probation officers. He must strive hard to establish a proper rapport between the courts and probation officers. A meaningful endeavour to carry out the above suggestions will also prevent the defeat of the purpose of the Act by not sending or late sending of the record of the case by the courts to the probation officer and consequent passing of the remaining supervision period in the process of issuing notice for appearance.

3:10 Age and Sex-Wise Grant of Probation By Courts

It is evident from the discussion in chapter II that in view of the incorporation of section 361 in the Code, the scope of the mandatory application of the Act has now been extended to all eligible offenders. The section makes it binding on the court to record special reasons for non-grant of probation. Non-recording of special reasons renders the imposition of the sentence of imprisonment illegal and is a fit case for revision. The Revisional Court can either grant probation or remand the case to the trial court with the directions to comply with the

57. Milhka Singh v. State of Punjab 1980, C.L.R.227,
provisions of section 361. Tender age of the offender is required to weigh heavily in the mind of the court for granting probation even in those cases where minimum sentence of imprisonment has been fixed by the Legislature. It means that young age is the dominant factor to reckon with. How the courts in the state have made use of age factor in the application of the Act is given in Table 10 on the following page. 82 probationers below 16 years of age who should not have been dealt with under the Act have been included in the Table to make the age classification a complete one.

The Act does not make any special concession for the offenders belonging to the weaker sex. The female offender is put on the same footing as its male counterpart. This is not fair in the interest of the proper play of correctional justice. The women offenders deserve more humane treatment in view of their weak biological and social position. Article 15(3) of our Constitution upholds the constitutionality of the discriminatory legislation which is made to protect the interest of the women. Hence, the necessity of liberal use of the Act to the female offenders. Table 10 also indicates the patterns of grant of probation to female offenders.

---

<table>
<thead>
<tr>
<th>District</th>
<th>Total Below</th>
<th>% of</th>
<th>Below 5 yrs</th>
<th>Between 5 &amp; 7 yrs</th>
<th>Between 8 &amp; 10 yrs</th>
<th>Between 11 &amp; 13 yrs</th>
<th>Above 13 yrs</th>
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<tbody>
<tr>
<td></td>
<td>No. of 16 offenders</td>
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<td>34</td>
<td>33</td>
<td>9</td>
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<td>3</td>
<td>938</td>
<td>21</td>
<td>50</td>
<td>60</td>
</tr>
</tbody>
</table>

* TABLE 10 *

Age and Sex-wise Grant of probation
Table 10 shows that the application of the Act has been extended to all age groups of offenders by the courts in the state. It is only a question of degree. The grant of probation is the highest in the age group of 22-30 years. This is followed by the age groups of 15-21 years. In this group, the lowest application of the Act is in Faridkot District where it is 24 per cent. It is the highest in Patiala and Sangrur Districts. Section 6 of the Act plays a vital role in compelling the courts to grant probation to the offenders below 21 years of age. The liberal application of the Act to this age group is highly desirable as the Act is primarily meant for the young offenders who are to be protected from the bad association of hardened criminals in the prison. The release of offenders between the age group of 22-30 years is the highest because their number is the largest among the offenders. The individual variation in the application of the Act to this age-group which is 41 per cent to 21 per cent is not attributed to any rational basis founded by the courts. This also highlights the role of individual attitude of the court towards the grant of probation irrespective of age considerations in majority of cases.

The application of the Act to the remaining 4 age groups is in descending order. Starting from 13 per cent in case of offenders between 31-40 years it comes down to 6 per cent in case of offenders above 60 years of age. The application in individual districts records many ups and downs. The only

exception to the non-grant of probation to the age groups of 41-60 years is the District of Kapurthala. The denial of the benefit of the Act to this age group in the district shows the casual concern of the courts towards the reformatory approach of the Act. All the offenders of the said age group cannot be derived of the release on probation of good conduct. First offenders among them merit it as offenders belonging to other categories except the one below 21 years age. The courts should extend the benefit of the Act to all reclaimable first offenders irrespective of age consideration except the one as mentioned above.

It is clear from Table 10 that the grant of probation to female offenders is only 1 per cent of the total number of probationers. This may be due to the absence of the female probation officer or low criminality among them. Female offenders deserve more liberal application of the Act. In view of the almost mandatory application of the Act to first female offenders found guilty under sections 7 and 8 of the Suppression of Immoral Traffic Act, the scope of the Act has been widened. Moreover, Rule 11(1) forbids the placing of female probationers under the supervision of the male Probation Officer. The Women and Children Welfare Corporation of the State plans to appoint women Welfare Officers for each district. The female probationers should be put under the supervision of Woman Welfare Officer. If the number of female probationers registers increase, then separate Woman Probation Officers should be appointed for effective supervision and rehabilitation of the female probationers.
Compensation to the Victims of Probationers

Section 5 of the Act deals with payment of compensation to the victim of crime by the offender released on probation of good conduct. It empowers the court to direct the offender who has been released on admonition or probation to pay reparation for the loss or injury resulting from the offence committed by him. The court is also competent to order the probationer to pay the reasonable costs of proceedings. The amount of compensation should be reasonable and not excessive.

The underlying object of the section is to make the crime a bad bargain for the offender and financially rehabilitate the victim as far as possible. A complainant comes to the court to get justice for the wrong done to him. He spends money and time and puts a lot of labour to establish the guilt of the accused, that too, beyond a reasonable doubt. All this demands that he should get reasonable compensation for the injury and just costs of the proceedings.

(1) The court directing the release of an offender (Sec. 3 of Sec. 4) may if it thinks fit, make at the same time a further order directing him to pay:
(a) Such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
(b) Such costs of proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code of 1898 (now sections 421 and 422 of the Code of 1973).

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into consideration any amount paid or recovered as compensation under subsection (1) in awarding damages.

Corresponding section under the Code is 357.
Compensation is highly desirable and justified where the victim is physically rendered handicapped or incapacitated to follow his ordinary pursuits or made mentally retarded or financially crippled. It is even more demanding where victim crushed to death or injured happens to be the only bread winner of his family and there is no other source of income. The absence of the system of social security in India adds to imperatives of the compensation to the victims of probationers who need quick restitution. The recovery of damages through civil law is costly as well as delayed one. This does not help the poor victim or his dependants who want immediate help.

The principal object of section 5 of the Act is the same as that of section 357 of the Code as it is in pari materia with section 357. The courts in the state while granting compensation under section 5 of the Act must keep in mind the guiding principles laid down by the Supreme Court in Swam Singh versus the State of Punjab. In this context, the Supreme Court held:

In awarding compensation it is necessary for the court to decide whether the case is fit one for such an order. If it is found that compensation should be paid, then the capacity of the accused to pay compensation has to be determined. In directing compensation the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not in a position to pay a

68, AIR 1978 SC 1525.
compensation for, imposing a default sentence for non-payment of fine or compensation would not achieve the object. ... It is the duty of the court to take into account the nature of the offence, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay compensation and other relevant circumstances in fixing the amount of compensation. 62

The Supreme Court in *Mohammed Gaisuddin versus State of A.P.* 63 has highlighted the imperatives of payment of compensation to the victim of crime under section 357 of the Code of Criminal Procedure. This observation applies equally to the duty of the court under section 5 of the Act. Inspite of the fact that section 11(1) of the Act empowers the appellate and revisional courts to pass any order which a trial court can pass, the attitude of the higher courts towards the use of section 5 of the Act is lukewarm. It is only in isolated cases of judicial compassion that the necessity of the payment of compensation is stressed on. Recently the Supreme Court in *Phudoo versus the State of M.P.* 64 ordered the release of young offenders on probation of good conduct while holding the sentence of imprisonment not in the interest of justice. The court without actually awarding any compensation to the victim only observed that the complainant must be adequately compensated. The highest court should have awarded compensation while acting under

62. Paras 10 and 11.
63. (1977) 3 SCC 287 at p. 295.
64. AIR 1979 N.O.C. 157 (SC).
section 11(1) of the Act and directed the courts of the country to strictly enforce the provisions of section 5 in appropriate cases while granting probation to the offenders.

In order to know the actual application of section 5 of the Act by the courts in the state, the Annual Statements of all the Probation Officers of the state, Annual Reports of the Head Office, relevant record in the offices of Probation Officers and 3,000 case files of the probationers were examined. Besides this, personal enquiries from the Probation Officers and the Magistrates in this respect were made. Table 11 given below shows the award of compensation by the courts in the state to the victims of 3,000 probationers under study.

**TABLE 11**
*Payment of compensation by the Probationers to the victims of their offences*

<table>
<thead>
<tr>
<th>Districts</th>
<th>No. of probationers</th>
<th>No. of cases in which compensation awarded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amritsar</td>
<td>600</td>
<td>Nil</td>
</tr>
<tr>
<td>Bhatinda</td>
<td>450</td>
<td>Nil</td>
</tr>
<tr>
<td>Faridkot</td>
<td>200</td>
<td>Nil</td>
</tr>
<tr>
<td>Jatarnpur</td>
<td>150</td>
<td>Nil</td>
</tr>
<tr>
<td>Gujranwala</td>
<td>250</td>
<td>Nil</td>
</tr>
<tr>
<td>Nasirpur</td>
<td>100</td>
<td>Nil</td>
</tr>
<tr>
<td>Jullundur</td>
<td>150</td>
<td>Nil</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>150</td>
<td>Nil</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>150</td>
<td>Nil</td>
</tr>
<tr>
<td>Patiala</td>
<td>450</td>
<td>Nil</td>
</tr>
<tr>
<td>Roopnagar</td>
<td>100</td>
<td>Nil</td>
</tr>
<tr>
<td>Sangrur</td>
<td>250</td>
<td>Nil</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3000</strong></td>
<td><strong>Nil</strong></td>
</tr>
</tbody>
</table>

*Notes on the Administration of Criminal Justice in the State of Punjab during the year 1977 mention 28 cases where the compensation was awarded by the courts. On my verification from the concerned officials of the High Court it was found that that was not the correct version as the report was not properly prepared on the basis of Monthly Reports as required.
Table 11 on the preceding page shows that the compensation clause of the Act has been kept in suspended animation by the courts in the state. Both the Bench and the Bar especially at the lower level remain indifferent towards the just cause of the aggrieved party. Even the law in this respect is not reasonable to the victim as it is tilted towards the offender. While the court is required by section 361 of the Code and section 6 of the Act to record reasons for not granting probation to the eligible offenders, there is no constraints on the court for the award of compensation to the victim of the probationer. In this context, it is pertinent here to quote Michael Fooner who observes:

The history of crime and punishment in the whole civilized world reveals a steadily increasing concern with the treatment of the criminal, and a virtual blackout of attention to the situation of the victim. Justice Krishna Iyer aptly remarks in this respect that the tears shed for the accused are traditional and trendy but none for the victim of crime. Indeed the victim's reparation still remains the vanishing point of our criminal jurisprudence.

The fair play of the rules of criminal justice do not demand the payment of compensation to the needy victims of crime. The difficulty that comes in the way of award of

65. "Victim Induced Criminality" Science Vol. 3740
(Sept 2, 1965) at 153.
66. The Criminal Process And Legal Aid" Indian Journal of Criminology (1979), at 10.
compensation to the victim of the probationer is the poverty of the latter. The study of 3,000 cases of probationers shows that in majority of the cases, the probationers were not in a position to make payment of compensation. This difficulty can be overcome, to a great extent, if the award of compensation is made as a part of the probation order. The court shall record reasons for not passing order of compensation. The poverty of the probationer can be a plausible reason for not awarding compensation. Compensation fund should be created by the court. There are cases where the victim of his dependants do not need compensation. In such cases the amount should be put in the common pool. A part of the amount of fine imposed as punishment in other cases should also be diverted to this pool. The court should be at liberty to pay compensation out of this fund to the needy victims of the crime of probationers.

For the effective realisation of the said suggestions section 5 of the Act should be amended accordingly.

3:12 Attitude of Judges Towards Probation

The individual attitude of the judge towards probation plays a large part in the administration of criminal justice. A judge who is not in favour of probation as a correctional case disposition method or the one who is in sympathy with the tenets of probation but is hesitant to implement them or the one who applies probation without proper scrutiny, renders the Act practically inoperative or operates it to the detriment of the cherished goals of correctional justice sought to be achieved.
through probation. Inspite of the constraint of recording of special reasons for not granting probation, it is the judge and the judge alone who decides whether to give the benefit of the Act or not in a given case. Whether the offender found guilty of an offence not punishable with death or life imprisonment languishes in jail or is allowed to stay back in the community depends on the judge who happens to sentence him.

The study of case files and talks with some Magistrates & Advocates, and inquiries from Probation Officers lead to the conclusion that there is a great difference in the approach of judges with regard to the sentencing alternatives.

Out of 3,000 probationers, individual identity of the deciding judge could be ascertained in about 2,400 cases. The unidentifiable courts have been omitted. Table 12 on the following page gives the number of probationers granted probation by each court-trial or appellate.

Table 12 indicates the approach of the individual judge towards the application of the Act. (It is clear from the Table that probation in the state works on account of a few progressive judges who comprehend the underlying object of the Act and its place in the current criminal justice.) The other judges are not probation minded.) For instance, in Mansa Tehsil of Bhatinda district, out of 225 cases dealt with under the Act, 199 offenders were released on probation by one Magistrate while his fellow Magistrate confined his benevolence to 27 cases of young offenders below 21 years of age. The
<table>
<thead>
<tr>
<th>District</th>
<th>Total No. of offenders released on probation</th>
<th>Session Court</th>
<th>Chief Judicial Magistrate at District Headquarters</th>
<th>Judicial Magistrate at Tehsil</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
</tr>
<tr>
<td>Amritsar</td>
<td>450</td>
<td>9</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>61</td>
<td>3</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Bhatinda</td>
<td>300</td>
<td>5</td>
<td>6</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>199</td>
<td>27</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Faridkot</td>
<td>180</td>
<td>3</td>
<td>5</td>
<td>8</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td></td>
<td>24</td>
<td>8</td>
<td>20</td>
<td>11</td>
</tr>
<tr>
<td>Ferozepur</td>
<td>120</td>
<td>1</td>
<td>2</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gurdaspur</td>
<td>200</td>
<td>95</td>
<td>8</td>
<td>104</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>76</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hoshiarpur</td>
<td>80</td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td></td>
<td>42</td>
<td>7</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Jullundur</td>
<td>130</td>
<td>14</td>
<td>2</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>1</td>
<td>11</td>
<td>2</td>
</tr>
<tr>
<td>Kapurthala</td>
<td>120</td>
<td>4</td>
<td>1</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12</td>
<td>2</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Ludhiana</td>
<td>130</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15</td>
<td>2</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>9</td>
<td>15</td>
<td>4</td>
</tr>
</tbody>
</table>

**TABLE 12**
Number of offenders granted Probation by the Court

**Judicial Magistrate at Tehsil**
- Patti
- T. Taran Aingla
- Hansa
- B. Phul
- Haratpur
- Hora
- Pashikha
- Zira
- Nabodar
- Navan Sh. Philaur
- Phagwara
- Sultanpur
- Jagroon
- Samrala
- Amloh
nature of offences decided by both the courts and type of offenders is similar. Similarly, in Patti and Taran Taran Tehsils of Amritsar district, 61 and 152 offenders were granted probation by two Magistrates while their other counterparts remained indifferent to the liberal but correctional approach of their colleagues and applied the Act to only 9 and 32 offenders respectively.

It is needless to refer to other similar cases which are given in the Table. The Bench seems to be altogether allergic to the application of the Act in some Tehsils. The Bar is also inert there. For example, in Pafila tehsil of Ferozepur district, Patankot Tehsil of Gurdaspur district, Nabha tehsil and Amloh Sub-Tehsil of Patiala district probation was granted only to 1, 2, 7 and 1 offenders respectively. Phillaur Tehsil of Jullundur district tops the list by not giving the benefit of probation to any offender. (The concerned Probation Officers should have impressed on the judge for apt application of the Act to first and young offenders. The Probation Officer should not forget his duty under Rule 6(2)(a) which makes him responsible for the working of the Act within his respective jurisdiction.)

The attitude of superior judges i.e., Sessions Judges can be studied from two angles - grant of probation in trial cases and release on probation of good conduct in appeal or revision cases. Serious offences are made exclusively triable by the court of Sessions. The eligible offences for probation among them are considered grave by the Sessions Judges. Therefore, they do not generally grant probation in
cases which are tried by them. This is evident from Table 12.

Only 12 offenders in the whole state were given the benefit of
the Act by all the Sessions Judges. The constraint of calling
for the report of Probation Officer to record reasons for not
granting probation to the offender below 21 years compelled
them to apply the Act in cases exclusively tried by them.

In appeal cases the attitude of the Sessions Judges is
discernible from the Additional Sessions Judges and among the
Sessions Judges themselves there is a distinguishable variation.
Generally, the Sessions Judges grant probation whereas it is
denied by the trial court. It is evident from the Table that a
large number of probationers are beneficiaries from the
Sessions Judges, where there is hostile attitude of the
Magistracy. Table 8 in this Chapter which gives complete
number of cases decided by the Sessions and Magisterial Courts
shows that about 50 per cent probationers in Feroshpur district
and over 50 per cent in Guraspur district were given the benefit
of the Act by the Sessions Judges. This percentage is also
visible in Table 12 as 55 and 104 probationers have been dealt with
by the Sessions Judges in the said districts respectively.

The credit for making up the deficiency of Magistrates in these
districts goes to two Sessions Judges who headed the judiciary
in the said districts for an approximate period of years
coinciding with the period of cases under study. In Feroshpur,
out of 55 cases, 42 offenders were granted probation by the
Sessions Judge himself and 13 by his junior colleague. The
comparative figures in Gurdaspur district were 96 and 8. These two Sessions Judges are now at other District Headquarters. They are still giving lead in the application of the Act in the state.

(The Table also shows that Additional Sessions Judges are not liberal in the application of the Act. They still do not rate probation as a better sentencing alternative to imprisonment in cases of first and casual young but reclaimable offenders. They are yet to realise the efficacy and merits of probation. Only the senior most Additional Sessions Judges, to some extent, realise their obligations under the Act and the Code. But the new promotees or fresh appointees from the Bar indiscriminately award imprisonment just to prove their integrity and efficiency because they view release on probation as favour to the offender.)

On the whole, there is neither uniformity nor near coherence among the Sessions Judges or Senior most Additional Sessions Judges for the appropriate application of the Act. The High Court Directive of 1972 to Sessions Judges regarding liberal use of the Act and subsequent important decisions of Supreme Court as mentioned earlier seem to have escaped their

\[68\text{The examination of fresh cases under supervision in all the districts of the State and enquiries from the District Probation Officers prove it.} \\
69\text{New appointees tell that if they grant probation in such cases, complaints are made against them that they have taken bribe or have shown favour to their favourites. Therefore, they restrain from granting probation during the period of their own probation under Service Rules.}\]
notice advertently or otherwise. (The best example of our own High Court in *Shamashe vs. State of Harare* 70 needs to be followed scrupulously. They should fully understand that the object of modern criminal justice is to reform the offender and their endeavours should be to achieve this by appropriate application of the Act to all reclaimable offenders.)